

Compendium

Good Practices in the **Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** by National Human Rights Institutions and National Preventive Mechanisms for the Prevention of Torture in the Americas



PRESENTATION

This Compendium offers an initial overview of the good practices implemented by the National Human Rights Institutions (NHRIs) that are part of the Working Group on the Prevention of Torture and Ill-treatment within the Network of National Human Rights Institutions of the Americas (RINDHCA): Argentina, Bolivia, Canada, Colombia, Costa Rica, Ecuador, Honduras, Mexico, Panama, Peru, and Uruguay.

This paper outlines several practical and effective strategies that National Human Rights Institutions (NHRIs) can utilize to fulfill their broad mandates and protection functions under the Paris Principles, with a particular focus on the prevention of torture. This is especially relevant for NHRIs that have National Preventive Mechanisms for the Prevention of Torture (NPMs) under their jurisdiction.

The Compendium presents an initial chapter that systematizes the contributions of each NHRI-NPM. In the subsequent chapters, each member country of the Working Group elaborates on its good practices, taking into account the criteria established by the Association for the Prevention of Torture (APT) for similar initiatives, adapted to the specific objectives of the Working Group:

1. Transparency culture in places of detention
2. Protection of Persons Deprived of Liberty
3. Cooperation and constructive dialogue
4. Global torture prevention system

These practices are addressed from a cross-cutting and inclusive perspective, focusing on areas such as: the treatment of persons deprived of liberty, conditions of detention, procedural guarantees during detention, the operation and management of places of detention, the attitudes and practices of responsible authorities, as well as relevant legislation and public policies, providing special attention to the protection of persons deprived of liberty in vulnerable situations (children and adolescents, women, persons with disabilities, ethnic minorities, foreign and migrant individuals, LGBT persons, older persons, etc.)

RINDHCA acknowledges the valuable experience and contributions of NHRI-NPMs in combating torture and ill-treatment. Therefore, the compendium aims to foster exchange with other regions and on a global scale, showcasing the work carried out by NHRI-NPMs in the region. It also seeks to initiate new developments and increase impact by promoting channels of collaboration with bodies within the Inter-American and universal systems.

We aim to gradually expand and enrich this compendium by incorporating additional experiences and good practices, thereby strengthening NHRIs and, above all, promoting the full exercise of human rights in our countries and regions.

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Good Practices of the American NHRIs in the Prevention and Protection of Torture in the Region



This chapter provides a systematized overview of the best practices employed by regional NHRIs in the protection and prevention of torture. It offers a summary of the detailed descriptions provided in the subsequent chapters, presenting the actions undertaken by NHRIs, organized under four key headings:

1. Transparency culture in places of detention
2. Protection of Persons Deprived of Liberty
3. Cooperation and constructive dialogue
4. Global torture prevention system

Good transparency culture practices in places of detention

The transparency best practices adopted by the members of the Working Group for the Prevention of Torture encompass monitoring activities, the development of protocols, trainings, and campaigns.

Monitoring of detention centers and shelters

[The Canadian Human Rights Commission](#) (CHRC) is committed to ensuring transparent and independent oversight in all detention facilities, aiming to prevent abuse and ill-treatment, reduce corruption, and restore the dignity and human rights of individuals in the most vulnerable circumstances. Through these contributions the CHRC has raised awareness of the disproportionate, diverse and intersectional impacts that deprivation of liberty has on particular groups, including members of indigenous peoples, Afro-descendants and other racialized individuals, persons with disabilities, women, youth, 2SLGBTQQIA+ persons, and homeless people.

The CHRC also highlights that these issues extend well beyond the prison system, affecting immigration detention centers, institutions for persons with disabilities, individuals confined for extended periods in residential care homes, and children institutionalized within the welfare system—particularly Indigenous peoples and Afro-descendants, who remain disproportionately represented in these systems.

To strengthen the monitoring and protection of the human rights of persons deprived of liberty across Canada, the CHRC continues to advocate for the prompt ratification of the United Nations Optional Protocol to the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT.) The CHRC believes that the subsequent designation of an appropriate National Preventive Mechanism (NPM) is a crucial step in this direction.

[The Colombian Ombudsperson's Office](#), through its monitoring of detention centers and shelters, identified the institutionalization of several concerning practices, including:

1. Prolonged and arbitrary confinement in conditions and spaces that violate human dignity
2. Inappropriate use of force by the custody and surveillance corps of the National Correctional and Prison Institute (INPEC, in Spanish)
3. Indiscriminate use of pepper spray in enclosed spaces
4. Institutional blockades within the establishments that prevented complaints from reaching oversight bodies and other competent authorities

[Mexico's NPM](#) employs a strategy aimed at fostering greater openness from prison authorities, thereby reducing obstacles for visiting teams to meet with persons deprived of liberty with fewer restrictions and ensuring greater access to official records. At the start of each intervention in detention facilities, the field team introduces themselves and explains to the responsible authorities the objectives and scope of the visit, consistently emphasizing the preventive function of monitoring. The team informs the authorities that the visit is part of a nationwide verification process aimed at identifying areas for improvement.

In 2021, in the context of the COVID-19 pandemic, the [Ombudsperson's Office of Panama](#), through its NPM and in collaboration with the Directorate of Specialized Units, organized two national processes of joint visits: one to shelters for children and adolescents and another to senior care homes. These visits were conducted again in 2022. A significant achievement for the Ombudsperson's Office-NPM in conducting this joint exercise was that, even during the COVID-19 pandemic, there were no issues with gaining unrestricted access to centers under state custody, including shelters for children and adolescents, as well as senior care homes, both public and private. This initiative also played a crucial role in raising awareness and providing training for participants on

human rights and the prevention of torture and other cruel, inhuman, or degrading treatment. Additionally, it helped to sensitize authorities to the importance of allowing the NPM to exercise its mandate in centers under State custody.

In 2021, [the National Ombudsperson's Office of Argentina](#) initiated ex officio investigations to gather data on the number of persons deprived of liberty who were vaccinated against COVID-19 in the jurisdictions with the largest prison populations: Buenos Aires, Mendoza, Santa Fe, and Córdoba. This measure enabled us to assess the progress of the Strategic Plan concerning the vaccination of individuals under state custody and to actively support penitentiary authorities in managing the health emergency caused by the COVID-19 pandemic.

During visits conducted by [the Ombudsperson's Office in Peru](#), it was found that correctional facilities lack detailed records of the LGBTIQ+ individuals they house, and there are no physical spaces designated exclusively for this population. All prisons segregate physical spaces solely based on the biological sex of individuals, following a traditional binary model that only recognizes men and women. The social rejection and exclusion experienced by LGBTIQ+ individuals is intensified to critical levels within the context of confinement, particularly in prison environments, which are often marked by informality, overcrowding, neglect, and a lack of resources.

The Ombudsperson's Office has made the following recommendations:

Establish a Registry of Violence Against LGBTIQ+ Persons in Detention Facilities, which systematically documents the types, prevalence, trends, and patterns of violence and discrimination faced by LGBTIQ+ individuals. The registry will also capture detailed information on the alleged perpetrators and the characteristics of the victims.

Adapt regulations to ensure that inmates have the right to wear clothing and use accessories that express their gender identity, as long as these items do not pose a risk to the safety or integrity of others.

Ensure that LGBTIQ+ individuals deprived of liberty, particularly those with partners within the same correctional facility, have access to intimate visits under the same conditions as other inmates, without discrimination based on sexual orientation, gender identity, or expression. This is in accordance with Article 68 of the Single Orderly Text (TUO, in Spanish) of the Criminal Enforcement Code (CEP, in Spanish) and Article 205 of the CEP Regulations, as approved by Supreme Decree N° 015-2003-JUS and amended by Supreme Decree N° 015-2010-JUS.

Establish a mandatory protocol for all prison staff that regulates the registration and admission procedures for LGBTIQ+ individuals visiting correctional facilities. This protocol must respect the dignity and integrity of the person, as well as their gender identity and expression, and must strictly prohibit any humiliating or degrading acts.

Ensure that search personnel of both genders are present in each detention facility housing LGBTIQ+ individuals.

Creation of Protocols

[Costa Rica's NPM](#) identified the need for the Ministry of Public Security to develop a comprehensive document outlining the legal guidelines for conducting apprehensions, from the moment of detention until the individual is released or transferred to judicial authorities. This document should establish the guarantees of the rights of detained persons and provide safeguards for both the detained individuals and the authorities.

[Ecuador's NPM](#) has been conducting visits to various places of detention since 2013. To facilitate these visits, it has developed information collection forms tailored to the specific characteristics of each center being visited. A good practice involves utilizing materials developed by the Association for the Prevention of Torture (APT,) such as the publication "Monitoring Places of Detention: A Practical Guide." This resource has been instrumental in addressing issues related to information collection in files and the structuring of reports by place of detention or on an annual basis. The guide covers essential topics such as treatment, protective measures, material conditions, activity regimes, and health. Additional topics have been incorporated, including general information about the center, administrative and infrastructure conditions. Depending on the circumstances, specific items related to certain situations have also been included, such as COVID-19 interventions, risk intervention plans, death registries, self-care issues, and other relevant aspects.

These forms serve as both a guide and a key tool in ensuring transparency and providing the basis for the reports generated from visits to detention facilities.

Training and Campaigns

[The National Ombudsperson's Office of Argentina](#) initiated a workshop focused on promoting human rights, specifically aimed at security personnel in juvenile detention facilities. The workshops cover a range of topics, including adolescents and youth, life trajectories, and social vulnerability; the various manifestations of violence (adult-centeredness, discrimination, harassment, etc.); the strategic role of Special Security and Surveillance Corps personnel; good practices; the rights, principles, and guarantees of children, adolescents, and youth; and the principle of specialty.

[Costa Rica's NPM](#) undertakes dissemination efforts by designing posters that outline the safeguards for individuals detained during the first hours of detention and placing these posters in inspected police stations. Additionally, it provides training to law enforcement officers, including Municipal Police, on these safeguards and the correct application of the protocol. The NPM also verifies that Law Enforcement personnel are aware of the protocol and are properly applying the Act on the Control of Apprehended Persons in Police Stations.

Protection of Persons Deprived of Liberty and Their Relatives

The good practices reported by the Working Group on the Prevention of Torture and Ill-treatment encompass recommendatory actions, strategic litigation, advisory opinions, initiatives to improve health conditions and medical care, protection of LGBTIQ+ individuals, and sensitization of authorities.

Recommendatory Actions

[The National Human Rights Commissioner of Honduras \(CONADEH, in Spanish\)](#) has issued recommendations regarding the excessive use of pretrial detention. This dysfunctionality within the criminal justice system contributes to a range of other issues, including overcrowding, inadequate access to timely medical care, insufficient security, and the failure to separate accused individuals from convicted ones. According to family members and those affected, prisoners face a daily scenario marked by inadequate health services, abuse of authority, harassment, torture, mistreatment of both inmates and their relatives, delays in the administration of justice, overcrowding, lack of basic services, and violence within the prisons.

Additionally, it is important to note that CONADEH has been monitoring the ongoing State of Emergency in the country, identifying gaps in Executive Decrees N° PCM 29-2022, PCM 01-2023, PCM 10-2023, PCM 15-2023, PCM 24-2023, PCM 33-2023, PCM 37-2023, and PCM 42-2023. These gaps could potentially lead to discretionary practices, a lack of clarity regarding the catalog of crimes, and the stigmatization of poverty.

It is important to note that the Prison System in Honduras has been under a State of Emergency since 2019. Consequently, the Executive Branch issued PCM-O68-2019, establishing an Intervention Commission for this purpose, composed of the Plenary of the National Inter-Agency Security Force (FUSINA, in Spanish). In 2022, a state of emergency was again declared in the National Prison System under PCM 03-2022, appointing the National Police of Honduras, through its full Strategic Directorate, as the Intervention Commission. In 2023, under PCM 028-2023, the Military Police of Public Order of the Armed Forces of Honduras (PMOP, in Spanish) was delegated sufficient powers to act as the Intervention Commission of the National Prison System.

In this context, CONADEH has recommended the mandatory and progressive demilitarization of the National Prison System, ensuring that civilian authorities gradually assume control with the necessary capacities in place. CONADEH warns that the return of military authority to prison administration represents a significant setback in terms of human rights.

[Costa Rica's NPM](#) identified significant deterioration in the prison infrastructure, particularly at the Zurquí Juvenile Training Center (CFJ, in Spanish,) where the material conditions were poor and inadequate to accommodate the number of individuals housed

there. The NPM recommended planning and executing a construction, remodeling, and/or refurbishment plan for the Young Adult Specialized Care Center and El Buen Pastor Institutional Program Center, to relocate the young adult population according to their specific needs, reserving the Zurquí Juvenile Training Center exclusively for minors.

On March 13, 2020, Uruguay declared a national health emergency due to the emergence of COVID-19, following the identification of the first cases in the country. About a month later, [the National Human Rights Institution and Ombudsperson's Office of Uruguay](#) (NHRI,) acting as the NPM, urgently called for protective measures, emphasizing the need to focus on the most vulnerable populations.

In Honduras, the [National Commissioner for Human Rights \(CONADEH\)](#) conducted extensive monitoring and inspections in prisons, which led to a series of recommendations aimed at upholding the rights of persons deprived of liberty, as well as their families. As part of its best practices, CONADEH issued official recommendations to the relevant authorities based on the findings from these inspections. For instance, on March 28, 2023, CONADEH issued recommendations to the State of Honduras, underscoring the need to avoid actions that infringe on the fundamental rights of persons deprived of liberty. CONADEH particularly highlighted the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules,) which state: "As far as possible, prisoners shall be detained in prisons close to their place of residence."

Additionally, CONADEH issued an Early Warning, emphasizing the State's obligation to respect and guarantee the rights of those in its custody. The warning called for the immediate implementation of emergency, protection, and prevention protocols across all prisons in the country. The current situation in Places of Detention poses a highly complex security challenge, with a heightened risk of riots in response to recent incidents. This situation demands that the State adapt its security measures to both uphold and protect the rights of persons deprived of liberty. Simultaneously, the State must urgently implement comprehensive public policies across all Detention Centers to address critical issues such as reintegration, overcrowding, violence, and recidivism. However, the situation also raises concerns about potential acts of torture against those suspected of involvement in incidents such as fires. These concerns are further exacerbated by punitive measures like food rationing, suspension of visits, limited access to medical care, and inadequate provision of hygiene supplies, among others.

Strategic Litigation

On March 7, 2023, the [Bolivian Ombudsperson's Office](#), in its capacity as the NPM, conducted a visit to the San Pedro de Chonchocoro Detention Center in the municipality of Viacha, Department of La Paz. During the visit, it was found that in sector E-2, there were 4 cells measuring 1x2 meters each, housing 7 individuals deprived of liberty. These people lacked beds and there was not even space for two mattresses in each cell. They

had no natural light and their only ventilation was a small opening in the door. There was also no electricity, the only shower in the area did not work, and there was no toilet. Of the 7 people in this sector, at least 4 showed symptoms of mental disorders.

On April 17, 2023, the Ombudsperson's Office filed a constitutional action on behalf of the individuals deprived of liberty in Sector E-2 of the Chonchocoro Detention Center (the plaintiffs.) The action was submitted to the First Sentencing Court against Violence against Women of El Alto, acting as the judge of constitutional guarantees. The filing detailed the facts and the rights that had been violated, highlighting the omissions by the prison administration that were found to infringe upon the right to personal integrity.

The court issued a ruling that ordered the following actions to be implemented within fifteen days:

1. Providing the plaintiffs with adequate space to ensure their habitability and avoiding overcrowding.
2. Ensuring access to electricity, natural light, and proper ventilation within the cells.
3. Providing hygienic sanitary facilities to allow the plaintiffs to meet their biological and personal hygiene needs under normal conditions.
4. Guaranteeing the plaintiffs' right to health, including conducting psychological evaluations to assess and address any potential mental disorders they may have developed.

[The Canadian Human Rights Commission](#) (CHRC) is mandated to protect the fundamental principle of equality of opportunity and to promote a vision of an inclusive society free from discrimination. In fulfilling this mandate, the CHRC collaborates with other government bodies. In litigation, the CHRC participates by appearing before the Court, presenting evidence, and making statements that it considers to be in the public interest, based on the nature of the complaint. The level of CHRC involvement in each case before the Court corresponds to the degree of public interest implicated by the complaint. The CHRC also advocates for legislative changes to improve the conditions of persons deprived of liberty, particularly those within the most vulnerable segments of the prison population. The CHRC may be called upon to appear before parliamentary committees considering proposed legislative amendments, or it may request to appear when it believes the issues at stake are of significant importance to human rights in Canada.

Actions to improve sanitation and health care conditions

[The Panamanian Ombudsperson's Office](#) highlights significant obstacles in health care for vulnerable populations within the Prison System. These challenges include restricted medical operating hours, difficulties in accessing specialists and medications, and the precarious state of medical equipment. In response, the Ombudsperson's Office

recommended that the Ministry of Health establish an inter-agency space specifically designed to address the mental health needs of individuals deprived of liberty, particularly those with mental or psychosocial disabilities. It also suggested evaluating mechanisms to prioritize and guarantee specialized care for women with additional vulnerabilities. These recommendations align with the State's obligation to comprehensively protect and guarantee the health of those in its custody.

Additionally, it was recommended that mechanisms for data systematization be strengthened in each facility to maintain updated information on women deprived of liberty with additional vulnerabilities. This would enable the design of specific actions based on their unique needs. Furthermore, the Ombudsperson's Office advised the General Directorate of the Prison System and the Ministry of Government, in collaboration with the Ministry of Health, to create an inventory of the needs and conditions of prison clinics in women's detention centers nationwide, taking into account the specific needs of this population.

[The Panamanian Ombudsperson's Office](#) also identified deficiencies and irregularities in access to drinking water at the La Joya and La Joyita detention centers, which adversely affected the basic rights of persons deprived of liberty. An initial meeting was held with leaders from various wings of the detention center, where the issue of water access was discussed, along with other concerns such as the need for alternative measures to imprisonment. These issues were subsequently addressed in discussions with the director of the detention center.

[The Colombian Ombudsperson's Office](#) highlights that medical care for vulnerable populations within the prison system faces significant obstacles. These challenges include restricted medical operating hours, difficulties in accessing specialists and medications, and the precarious state of medical equipment. It was also noted that most women deprived of liberty over the age of 60 reported not participating in activities or programs that would allow them to engage in social reintegration processes or potentially commute their sentences. As a result of this effort, it was recommended to the Ministry of Health to promote the creation of an inter-agency space specifically designed to address the mental health needs of persons deprived of liberty, particularly those suffering from mental or psychosocial disabilities.

Protection of LGBTIQ+ persons

[The Ombudsperson's Office in Peru](#) has emphasized that the identification of LGBTIQ+ persons, especially trans individuals, serves as a key protection framework against potential conflicts that could lead to violence and abuse. Through diagnostics and surveys, they have identified several critical issues, including the use of clothing and gender expression, body searches for persons deprived of liberty (PDL) and LGBTIQ+ visitors, the right to conjugal visits, access to healthcare, and the application of gender-based disciplinary measures against LGBTIQ+ individuals.

Protection of Children and Adolescents with Emotional Ties to Individuals Deprived of Liberty

In light of the lack of consideration for children's and gender perspectives within the prison system, the [Ombudsperson's Office of Argentina](#), in coordination with the Public Ministry of Defense, has issued advisory opinions to remind state authorities that requests for house arrest, grounded in the best interests of children and adolescents with emotional ties to individuals deprived of liberty, should only be rejected if it is demonstrably proven that the alternative measure would be detrimental to the minors' overall development.

The [Ombudsperson's Office of Argentina](#) has emphasized the need for criminal proceedings to uphold not only the presumption of innocence but also the principle of proportionality in sentencing and the dignified treatment of relatives of those deprived of liberty. This includes ensuring that the best interests of children and adolescents are given paramount consideration, while also providing differentiated protection for women, persons with disabilities, and other vulnerable groups.

Awareness Actions

The Correctional Service of Canada (CSC) operates prisons across the country and manages sentences greater than two years. Prison operations and administration are governed by a national set of policies affecting all aspects of a person's experience in prison and while on parole. The [Canadian Human Rights Commission](#) (CHRC) periodically issues written submissions during the CSC review process for existing policies at the national level, and/or for the creation of new policies. These submissions focus on the direct or indirect impacts of policies upon the human rights of people in prison, they identify areas of concern, propose the inclusion of human rights principles and language throughout, and issue several recommendations from a human rights perspective. One of the CHRC's recurring messages conveyed through this advisory work includes repeated recommendations to expand training and education for prison staff and people in prison on current and emerging human rights' issues affecting persons deprived of liberty.

[Mexico's NPM](#) states that at the conclusion of each visit to detention facilities, a meeting is held with the managing authorities to inform them of requests made by persons deprived of liberty (PDL) to the NPM visitors. Additionally, a preliminary diagnosis of identified risks is presented during this exchange.

Cooperation and Constructive Dialogue

In terms of cooperation and constructive dialogue, activities involving interventions in state or governmental mechanisms mandated by law, as well as specific initiatives carried out by NHRIs, are particularly noteworthy.

Lawful Cooperation of NHRIs

To establish focal points for strengthening the investigation of torture cases, [Mexico's NPM](#) maintains communication with prosecutors' offices and human rights commissions in all 32 states through institutional channels. This approach has enabled the NPM to expedite requests for intervention by these agencies in the investigation of complaints and denunciations received during visits to places where individuals are deprived of liberty. Additionally, to differentiate between the processes of torture prevention and investigation, efforts have been made to request the collaboration of local human rights commissions to accompany the visits, further expediting the complaint and denunciation processes.

[The National Commissioner for Human Rights of Honduras \(CONADEH\)](#) actively participates in the Technical Committee on the Compassionate Release of persons deprived of liberty, focusing on health-related issues such as terminal illness and severe disease. The Technical Committee on Compassionate Release is made up of Magistrates of the Criminal Chamber and the Court of Criminal Appeals from the Supreme Court of Justice, the Public Defense, the Public Prosecutor's Office, the National Prison Institute (INP, in Spanish) and the NPM-CONAPREV.” Additionally, CONADEH is a key member of the Advisory Council of the NPM-CONAPREV, as well as the Local Boards for the Prevention of Torture and Special Local Boards, which focus on vulnerable groups, including women deprived of liberty, LGBTI+ persons, children, adolescents, and migrants. The purpose of these local boards is to oversee Detention Centers and implement measures that enhance the reception and support of initiatives within these facilities, with the goal of facilitating the successful reintegration of persons deprived of liberty. Moreover, CONADEH serves as part of the Detention Center Surveillance Committee, which includes the Secretariat of Human Rights, the National Prison Institute, the Prison Pastoral, and various Civil Society Organizations.

Specific NHRIs Initiatives

In 2016, the [National Ombudsperson's Office of Argentina](#) established the Strategic Alliance for Children and Adolescents Affected by the Criminal System in collaboration with civil society organizations, and national and provincial public authorities involved in the comprehensive protection system for children and adolescents, as well as the criminal justice system. The aim of this alliance is to cooperate on the design, monitoring, and evaluation of public policies that provide special protection to children and adolescents with emotional ties to individuals deprived of liberty, prevent their involvement in the criminal justice system, and ensure the protection of their rights.

In 2019, the Youth Justice Roundtable of the Strategic Alliance for Children and Adolescents Affected by the Criminal System, coordinated by the Vulnerable Groups Area of the [National Ombudsperson's Office of Argentina](#), approved the "Youth Justice

Guidelines¹," a unified document that reflects the practical experience of each participating institution and the common objective of effectively guaranteeing the special protection that adolescents affected by the criminal system should receive from the State. The "Youth Justice Guidelines" were declared of legal interest by the Legislature of the Autonomous City of Buenos Aires.

Following the lead of the [National Ombudsperson's Office of Argentina](#) in the Youth Justice Roundtable, the "Inter-Agency Joint Declaration: Agreement on Basic Principles for the Repeal of Decree-Law 22.278 and the Enactment of a Youth Justice System¹" was established in November 2022, which emphasizes that the enactment of a Youth Justice Law must promote and guarantee respect for fundamental rights and freedoms, ensuring due process.

Following the lead from the [National Ombudsperson's Office of Argentina](#) in the Youth's Justice Roundtable of the Strategic Alliance for Children and Adolescents Affected by the Criminal System, the "Inter-Agency Joint Declaration: Agreement on Basic Principles for the Repeal of Decree-Law 22.278 and the enactment of a Youth Justice System¹" was established in November 2022, which considers that the enactment of a Youth Justice Law must promote and guarantee respect for fundamental rights and freedoms, with a supporting due process.

In March 2023, UNICEF Argentina and the Ombudsperson's Office for the Rights of Children and Adolescents convened a working session to address youth justice and its alignment with international standards. During the session, the commitments made in the 2022 Joint Declaration were reaffirmed. By the end of the day, a new inter-institutional document was issued and signed by various participating organizations and specialists, including: the National Committee for the Prevention of Torture; the National Public Defender's Office; the Ombudsperson's Office for the Rights of Children and Adolescents; the [National Ombudsperson's Office](#); the Children's Ombudsperson's Offices of the provinces of Córdoba, La Pampa, and Santiago del Estero; the National Criminal Prosecutor's Office; the Network of Judges and Judicial Officials of the Nation; the Inter-Agency Prison Control System; UNICEF Argentina; Alejandro Morlachetti, a specialist in Protection of Rights and Access to Justice from UNICEF; and Mary Beloff, a member of the Rights of the Child Committee.

In 2018, the [Canadian Human Rights Commission \(CHRC\)](#) collaborated with the Office of the Correctional Investigator -the national oversight agency for federal correctional facilities- on an investigation into the experiences of older persons in prison. This work acknowledged the elderly in federal custody as a vulnerable population within the general prison population and covered a series of interrelated human rights concerns regarding elderly persons in custody, including accessible living environments,

¹ https://www.dpn.gob.ar/documentos/20200708_32216_558120.pdf

accessible programs and services, and access to appropriate services and timely medical care, among others. The project resulted in sixteen (16) recommendations, which led the Correctional Service of Canada (CSC) to outline its commitments to address the needs of this particularly vulnerable segment of the prison population.

In another example, [CHRC and a non-profit legal advocacy organization](#) started coordinating advocacy for policy changes that would support the rights and protection of trans and gender-diverse persons in prison. Direct engagement and collaboration with the CSC resulted in policies that better acknowledge gender rights and support the protection of trans, non-binary and gender diverse persons in federal prisons.

Training and Campaigns

The [Colombian Ombudsperson's Office](#) organized several training workshops for 580 police units in Bogotá, Cali, Ibagué, Espinal, Cúcuta, Pereira, and Barranquilla. The workshops aim to foster a culture of prevention and zero tolerance for acts of torture, with a focus on the conceptual and legal framework of torture from a human rights perspective. These trainings include an overview of international instruments relevant to this issue, such as the Convention, among others.

[Costa Rica's NPM](#) enhances the specialization of technical and professional staff in two Detention Centers to provide a comprehensive approach to the population, with particular emphasis on upholding the socio-educational objectives of criminal sanctions for youth. It seeks to create a monitoring system within Detention Centers to identify young persons victims of coercion and/or violence from their peers and those who act as aggressors, in order to ensure their physical integrity and build a healthy coexistence through the comprehensive and interdisciplinary approach that the juvenile prison population must have.

In 2018, the [Bolivian Ombudsperson's Office](#) published the report "Volcar la Mirada a las Cárceles – Situación de Vulnerabilidad de las Personas Privadas de Libertad en las Cárceles de Ciudades Capitales de Bolivia" (Turning Our Gaze to Prisons – The Situation of Vulnerability of Persons Deprived of Liberty in Prisons in Bolivia's Capital Cities,) which highlighted the weakness of educational programs for social reintegration.

The Center for Social Research (CIS, in Spanish) contributed to addressing this issue by donating a stock of literary works to strengthen prison libraries. The donation was made in a public ceremony on September 18, 2019, with the participation of authorities such as the Departmental Director of the Prison Regime and Directors of Detention Centers.

The "Libros por Rejas" (Books for Prison Bars) Program, implemented in 2019, 2020, and 2021, has enrolled 865 persons deprived of liberty in a reading-based sentence redemption program, with 481 participants successfully completing it. The program has also contributed to the enhancement of 24 prison libraries across urban and rural areas

nationwide, providing a total of 14,000 books. As a result of requests for book donations to strengthen these libraries, 230 public and private institutions have become involved in donating books, enabling a segment of society to actively contribute to the social reintegration of persons deprived of liberty.

[The National Human Rights Institution and Ombudsperson's Office of Uruguay](#) executed the project "Cycle of Dialogues, Workshops, and Photographic Exhibition on Mental Health." This initiative was developed in collaboration with the School of Information and Communication, the School of Social Science, the Apex Cerro Program of the University of the Republic, and the NPM. The project's main goal was to raise awareness about the living conditions of individuals deprived of liberty due to mental health reasons, while also supporting the closure of isolation monovalent institutions by 2025, in compliance with Law 19,529 on Mental Health.

Global torture prevention system.

Some members of the working group highlight how cooperation with the TPS, along with the fact that the NPM's mandate derives from an international treaty, has positively impacted their institution's efforts to prevent torture and other ill-treatment through monitoring and training.

Monitoring

Since assuming guardianship, [Ecuador's NPM](#) has continued to issue warning notices regarding violations of the rights of persons deprived of liberty (PDL,) focusing on issues such as health, the risk of sexual violence against women and LGBTIQ+ individuals, food security, and specialized care for the children of PDL. The NPM has also addressed the needs of children and adolescents in conflict with Law, and provided assistance to the relatives of PDLs who died in violent circumstances. Additionally, it has submitted reports to the Constitutional Court on compliance with rulings related to the National Social Rehabilitation System (SNRS, in Spanish) and filed amicus curiae briefs on SNRS public policy matters.

Furthermore, the NPM has participated in the development of public policy, providing data for diagnostics and care components, intervening in regulations, contributing to the SNRS Regulations, Complaints Protocol, and proposing a protocol to prevent invasive examinations of children and adolescents.

[The Ombudsperson's Office in Peru](#) reports that the social protests that began on December 7, 2022, created a crisis scenario, prompting the NPM to intervene and repeatedly highlight the risks to the dignity, integrity, and lives of individuals. The NPM emphasized that State institutions had used excessive force in their efforts to restore public order. Additionally, the NPM raised concerns about the irregular use of "identity control" as a tactic to discourage protests.

Training

[The Ombudsperson's Offices of Colombia and Panama](#) highlight that awareness-raising and training for authorities are essential to enabling the NPM to effectively exercise its mandate in centers under state custody.

[Mexico's NPM](#) notes that, as part of its institutional approach, it has developed a series of training and refresher courses for public servants focused on the prevention of torture, the application of the Méndez Principles, and adherence to both the Istanbul and Minnesota Protocols.

ARGENTINA

National Ombudsperson's Office of Argentina



"Being sentenced to prison or placed in pretrial detention in a Latin American prison system today is, in essence, being subjected to a random death sentence—something akin to being sentenced to prison 'with the added risk that you may also be killed.'"

Elías Carranza (ILANUD)².

INTRODUCTION

While international treaties have helped raise awareness on the issue, torture itself is still far from being eradicated. *"Torture is perhaps the clearest embodiment of evil³."*

It is crucial to reconsider the scope of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984,) which defines torture as: *"Any act by which severe physical or mental pain or suffering is intentionally inflicted on a person for purposes such as obtaining information or a confession from them or a third party, punishing them for an act they or a third party have committed or are suspected of having committed, or intimidating or coercing them or a third party, or for any reason based on discrimination of any kind. Torture is inflicted by, at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity. Pain or suffering resulting solely from, inherent in or incidental to lawful sanctions shall not be considered torture."*

To determine whether suffering is inherent or incidental to the lawful deprivation of liberty, the Declaration on the Protection of Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by United Nations General Assembly Resolution 3452 on December 9, 1975, establishes the Standard Minimum

² CARRANZA, Elías, "Situación penitenciaria en América Latina y el Caribe ¿Qué hacer?", 2012 Anuario de Derechos Humanos, Santiago, Chile: Universidad de Chile (p. 46.) Text available at <https://biblioteca.corteidh.or.cr/tables/r29431.pdf>

³ DONNA, Edgardo Alberto in BARBERO, Natalia, Análisis dogmático-jurídico de la tortura: la tortura en derecho internacional: la tortura como delito y como crimen contra la humanidad en derecho argentino y español - 1st. Edition - Santa Fe : Rubinzal-Culzoni, 2011 (p. 9.)

Rules for the Treatment of Prisoners (Mandela Rules) as the guiding framework. While the Convention remains silent on this issue, its interpretation can be broadened by drawing on general rules and principles of international law, without the need to reference a specific legal instrument⁴.

This addition to the Declaration could be deemed unnecessary if sanctions are interpreted as always having to comply with these regulations; otherwise, it could be argued that they lose their legitimacy. The Convention does not specify whether legitimacy is based on domestic law or international law, creating a gap of ambiguity. A sanction may be considered legitimate by one State because it aligns with its internal legal framework, while being viewed as illegitimate by another State or the international community. This leaves discretion over the definition of torture in the hands of individual States, potentially allowing the occurrence of torture without the Convention being applicable⁵.

The goal is to ensure that legitimate sanctions do not amount to torture. To achieve this, the penalty must not be distorted from its intended purpose. In this regard, it would be preferable to omit the provision that introduces ambiguity into the Convention's definition, as it risks leading to interpretations that contradict the very spirit of the Convention⁶.

As for inhuman, cruel, or degrading treatment, the Convention does not provide an explicit definition. However, Article 16.1 clarifies that the distinction lies in the degree of intensity of the suffering caused by the treatment or punishment inflicted: *"Each State Party shall undertake to prohibit in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by, at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity."*

ARGENTINA'S NHRI

In Argentina, the 1994 constitutional reform established the National Ombudsperson's Office as an independent body with full functional autonomy, operating within the National Congress. Its mission is to defend and protect human rights, along with other rights, guarantees, and interests safeguarded by the Constitution and laws, in response to actions, omissions, or misconduct by the Administration, and to oversee the exercise

⁴ BARBERO, Natalia, Análisis dogmático-jurídico de la tortura: la tortura en derecho internacional: la tortura como delito y como crimen contra la humanidad en derecho argentino y español - 1st. Edition - Santa Fe: Rubinzal-Culzoni, 2011 (p. 40/41.)

⁵ BOULESBAA, Ahcene, The UN Convention on Torture and the Prospects for Enforcement, International Studies in Human Rights, Martinus Nijhoff, The Hague, 1999. Cited by Natalia Barbero in BARBERO, ob. cit. (p. 41.)

⁶ SANZ-DÍEZ DE ULZURRUN LLUCH, Marina, El concepto de tortura en la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes de 1984, in GARCÍA VALDÉS, Carlos et. al. (coords.), Estudios penales en homenaje a Enrique Gimbernat, Edisofer, Madrid, 2008, vol. II (p. 2276.) Cited by Natalia Barbero in BARBERO, ob. cit. (p. 82.)

of public administrative functions⁷.

At an institutional level, the prevention of torture and ill-treatment is managed by the Vulnerable Groups Area, in constant coordination with agencies within the criminal system tasked with protecting persons deprived of liberty and their relatives.

From a rights-based perspective, we consider the most effective prevention against torture and ill-treatment to be, in principle, the application of alternative measures to imprisonment.

Despite existing national and international standards, as the NHRI, we consistently remind national authorities of Argentina's commitments to ensuring the right to personal integrity and applying non-custodial measures in line with the principle of minimal intervention.

REGULATORY FRAMEWORK

Long before the emergence of human rights, Argentina's National Constitution of 1853 established the following: *"The death penalty for political causes, all forms of torment and flogging are forever abolished. The prisons of the Nation shall be healthy and clean, intended for the security and not for the punishment of prisoners, and any measure that, under the pretext of precaution, inflicts more suffering than necessary shall hold the judge responsible for authorizing it"*⁸.

In the midst of building the Argentine State, the framers of the Constitution recognized that confinement itself causes suffering and placed responsibility on those who use precautionary measures to justify excessive punishment.

Years earlier, when Argentina was part of the Viceroyalty of Río de la Plata, Jeremy Bentham's *An Introduction to the Principles of Morals and Legislation* (1789) was published in Europe. The father of modern utilitarianism argued that the general purpose of all laws should be to increase the happiness of the community and, therefore, to avoid anything that diminishes that happiness—essentially, to prevent harm. However, Bentham also noted that punishment itself inherently causes harm. On the basis of the principle of utility, he concluded that punishment should only be allowed to prevent a greater evil⁹.

Nearly two centuries passed since the publication of Bentham's principles before most countries in the Organization of American States (OAS) recognized, at a normative level,

⁷ National Constitution, Art. 86.

⁸ National Constitution, Art. 18

⁹ BENTHAM, Jeremy. *The Principles of Morals and Legislation*. Cited by Mary Beloff in "Algunas confusiones en torno a las consecuencias jurídicas de la conducta transgresora de la ley penal en los nuevos sistemas de justicia latinoamericanos", published by UNICEF in "Justicia y derechos del niño" Number 3, Buenos Aires, 2001 (p. 9.) Available at https://www.unicef.cl/archivos_documento/70/Justicia%20y%20derechos%203.pdf

that the harm inherent in deprivation of liberty extends beyond the individual on whom it is imposed.

The American Convention on Human Rights (ACHR,) signed in 1969 and entering into force in 1978, established the principle of the non-transcendence of penalties: the punishment must be personal and cannot extend beyond the individual who committed the offense¹⁰: However, recognizing that the impact of punishment inevitably extends to innocent individuals close to the offender, criminal law must work to minimize this collateral effect as much as possible.

In Argentina, both the principle of minimum transcendence of punishment and the principle of humanity¹¹, which excludes the application of cruel, inhuman, and degrading punishments, hold constitutional status.

Argentina ratified the ACHR in 1984 (Law N° 23.054.) In 1985, it signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by law in 1987 (Law No. 23.338.) With the 1994 constitutional reform, the Argentine State granted constitutional hierarchy to various international human rights instruments, including the ACHR, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture, and the Convention on the Rights of the Child¹².

The ACHR is further complemented by the Inter-American Convention to Prevent and Punish Torture, whose Article 2 states: "*Torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish. The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.*"

¹⁰ ACHR, Art. 5.3.

¹¹ National Constitution, Art. 18; Universal Declaration of Human Rights, Art. 5; American Convention on Human Rights, Art. 5.2; International Covenant on Civil and Political Rights, Art. 7.

¹² Article 75, paragraph 22 of the National Constitution states: "(...) The American Declaration of the Rights and Duties of Man; the Universal Declaration of Human Rights; the American Convention on Human Rights; the International Covenant on Economic, Social, and Cultural Rights; the International Covenant on Civil and Political Rights and its Optional Protocol; the Convention on the Prevention and Punishment of the Crime of Genocide; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child. Under the conditions of their validity, they have constitutional hierarchy, do not derogate any article of the first part of this Constitution, and must be understood as complementary to the rights and guarantees recognized therein. They may only be denounced, as the case may be, by the National Executive Power, with the prior approval of two-thirds of the total members of each Chamber (...)"

The Inter-American Convention defines torture more broadly than the United Nations Convention against Torture. Adopted in Cartagena de Indias, Colombia, on December 9, 1985, it was approved by Argentina through Law No. 23,652 on September 29, 1988, and ratified by the Argentine Government on March 31, 1989.

Neither the American Convention nor the Inter-American Convention to Prevent and Punish Torture clearly defines what constitutes cruel, inhuman, or degrading treatment or punishment, nor do they specify the boundary that separates these actions from torture.

The Inter-American Court of Human Rights (IACHR) recognized decades ago that the relatives of victims may also suffer cruel, inhuman, or degrading treatment.

The IACHR included the dignified treatment of relatives of persons deprived of liberty in the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (2008) and reaffirmed its significance in the Report on Persons Deprived of Liberty in the Americas (2011.)

In Advisory Opinion OC-29/22 on "*Differential Approaches with Respect to Certain Groups of Persons Deprived of Liberty*," the IACHR reiterated that respect for human dignity is the fundamental principle guiding the treatment of persons deprived of liberty, extending this respect to their relatives.

On July 12, during its 187th session, the IACHR held a regional thematic hearing addressing the "*Differential Impact of Prison on the Lives of Women Relatives of Persons Deprived of Liberty in the Americas*."

As an NHRI, we have consistently reminded state authorities that criminal proceedings must respect not only the presumption of innocence but also minimize the impact of sentencing on the relatives of those deprived of liberty.

These are individuals who share certain vulnerabilities in accessing justice (Brasilia Rules¹³;) such as age, gender, disability, and poverty—vulnerabilities that are further aggravated by the deprivation of liberty. This situation exposes both the incarcerated and their loved ones to greater discrimination and violations of their rights.

As early as 1990, the United Nations General Assembly, through Resolution 45/110, adopted the UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules.) In doing so, Member States committed to introducing alternatives to imprisonment in their legal systems to reduce the reliance on prison sentences, rationalize criminal justice policies, and ensure respect for human rights, social justice, and the rehabilitation needs of individuals involved in unlawful activities.

¹³ Brasilia Rules on Access to Justice for Vulnerable People.

The international community agreed to apply the Tokyo Rules to all individuals subject to prosecution, trial, or sentencing, at every stage of the criminal justice process. "*The use of non-custodial measures is to be guided by the principle of minimum intervention*¹⁴", as "part of a broader movement toward the decriminalization and depenalization of certain offenses..."¹⁵

More than 30 years later, despite the continued validity of these standards and numerous recommendations made to the Argentine State by both international and national organizations, as the NHRI, we continue to remind authorities that pretrial detention must remain exceptional, as it infringes on the right to liberty, the right to a prior trial, and the presumption of innocence. Although pretrial detention should be imposed only when absolutely necessary, for a limited time, and when no less restrictive measure is available, it remains the norm.

To comply with the ACHR, pretrial detention should be used solely to ensure that the accused will not obstruct the legal process or justice, with a prosecutor's report justifying why alternative measures are not feasible. However, preventive incarceration is often misused as anticipatory punishment.

In late 2008, Law N° 26,472 introduced amendments to Law N° 24,660 on the Execution of Custodial Sentences, as well as to the Criminal Code and the National Code of Criminal Procedure. The law empowered judges to order house arrest in specific cases:(a) when imprisonment prevents proper recovery or treatment of an illness, and hospitalization is not appropriate;(b) when the individual suffers from a terminal illness;(c) when imprisonment would result in degrading, inhuman, or cruel treatment for a person with a disability;(d) when the individual is over 70 years of age;(e) when the individual is a pregnant woman;(f) when the individual is the mother of a child under five years old or the caregiver of a person with a disability.

Despite these provisions and repeated denunciations of the abuse of pretrial detention by various United Nations and Inter-American bodies, the discretion to grant house arrest—one of the few alternative measures actually in effect—remains inconsistently applied.

The Argentine State fails to comply with the recommendations made by the Committee on the Rights of the Child during the 2011 Day of General Discussion concerning the special protection that should be provided to "Children of Imprisoned Parents." Additionally, it does not adhere to General Comment N° 14 (2013,) where the Committee references the conclusions of the 2011 discussion.

The criminal system remains distant from recognizing the distinct perception of time that

¹⁴ Rule 2.6.

¹⁵ Rule 2.7.

children have¹⁶. It rarely acknowledges the suffering behind the facades that children struggle to present. With its rigid structures and language, it often renders their suffering invisible.

There remains a long road ahead before the best interests of children and adolescents are truly prioritized, and differentiated protection is fully guaranteed for women, people with disabilities, and other vulnerable groups¹⁷.

Below, we outline some of our actions aimed at ensuring dignified treatment for those who, often due to the system's own selectivity, are subjected to criminal proceedings. Our hope is that one day, incarceration will be a true and necessary last resort, and its impact will be genuinely minimal.

GOOD PRACTICES

1. ADVISORY OPINIONS TO ENSURE THE PROTECTION OF CHILDREN AND ADOLESCENTS AFFECTED BY THE INCARCERATION OF THEIR EMOTIONAL CAREGIVERS

In 2023, recognizing the lack of a children's and gender perspective in the criminal system, we issued advisory opinions to remind State authorities that requests for house arrest, when based on the best interests of children and adolescents, should only be denied if it is proven that such a measure would be harmful to the minors' integral development. The only valid grounds for rejecting these requests is a clear demonstration that house arrest would negatively impact the well-being of the child or adolescent involved.

Reyna's case

Born via emergency cesarean at 32 weeks gestation, Reyna was hospitalized twice—once in intensive care—before her father, Cristiam, a Bolivian national without family in Argentina, was placed under definitive house arrest, convicted without a final sentence for drug-related offenses.

However, during her first 45 days¹⁸, Reyna was deprived of her mother Rossio's constant care and missed out on breastfeeding every three hours, as prescribed by medical guidelines and international standards. Rossio, also a Bolivian national with no family in Argentina, was unable to stay at the hospital's residence for mothers, as she had no one to care for her other children, Bayron (4) and Leonardo (6.)

¹⁶ Committee on the Rights of the Child, General Comment N° 14 (2013), on the right of the child to have their higher interest as a paramount consideration (Article 3, paragraph 1,) paragraph 93.

¹⁷ CN, Art. 75 par. 22 and 23; Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women -Belem do Para-; International Convention on the Rights of Persons with Disabilities; Brasilia Rules on Access to Justice for Vulnerable People, among other international instruments.

¹⁸ The Declaration of the Rights of Hospitalized Children guarantees that every child has the right to the constant presence of at least one parent while hospitalized. Available in [RIGHTS OF THE HOSPITALIZED CHILD](#)

The delays in the criminal justice system further exacerbated the precarious situation in which Rossio and her children found themselves, forcing her to choose between the health of her newborn daughter and the care of her two young sons.

Alone in the country and while Reyna remained hospitalized, Rossio was compelled to plead for her own discharge after a week, so she could reunite with her other children. She had been forced to leave them in the care of a school mother with whom they had no established relationship.

Reyna and her family missed the chance to receive the comprehensive support that hospitals provide to families with premature babies¹⁹. The interdisciplinary team was available only in the mornings—when Rossio had to focus on feeding and dressing Bayron and Leonardo before rushing to the hospital to breastfeed Reyna.

Meanwhile, the criminal justice system moved slowly, deliberating whether house arrest for Cristiam, Reyna's father and Rossio's partner, was the best option, despite an existing precedent

Since Cristiam's arrest in 2020, Rossio had been solely responsible for raising her two children and managing household duties. In March 2022, she suffered a miscarriage, and in October of the same year, while pregnant with Reyna, she was hospitalized for three days due to abdominal pain and complications.

At no point was Rossio informed that Cristiam could reapply for house arrest because her pregnancy was considered a "new fact" on which to base the request. When questioned, the public defender replied, *"If it's not a high-risk pregnancy, they will probably reject it."*

The National Ombudsperson's Office, the General National Defender's Office, the National Prison Solicitor's Office, and the Consulate General of the Plurinational State of Bolivia joined efforts to make the State authorities aware that a woman, two children, and a premature baby were suffering the consequences of a still-pending sentence against the father.

Despite the urgency, it took Argentine authorities 45 days to grant Cristiam house arrest, contingent upon Reyna's hospital discharge.

The "idyll" of the hard-fought house arrest lasted only three days. Given the need for beds, as soon as they could, hospital authorities hastily discharged Reyna.

In record time, without prior notice, the Argentine National Gendarmerie executed the federal court order and removed Cristiam from the family home just 30 minutes before

¹⁹ A premature newborn has the right to be constantly supported by their family, as such support is essential for a better and faster recovery . [FIRST WEEK OF OCTOBER](#)

Bayron was dismissed from school. Outside of court hours, with no available interlocutors, there was little that could be done.

The public defense had to prepare a new argument, but due to a court misunderstanding, Cristiam was relocated miles away from his family home instead of the nearest facility. For nearly five months, Reyna, Bayron, and Leonardo were unable to see their father, even missing their 5th and 7th birthdays together. The distance kept the family apart.

Reyna was later hospitalized again with severe bronchiolitis, requiring intubation. Despite the urgency, the public defense did not feel it appropriate to request an expedited hearing from the highest criminal court regarding the appeal that had denied Cristiam's request for permanent house arrest. The National Ombudsperson's Office and the Bolivian Consulate made the request instead.

Six months after the initial complaint regarding Reyna's birth, the highest criminal court granted the NHRI five minutes to state the obvious: that Reyna, Bayron, and Leonardo needed their father at home, along with their mother, Rossio, for shared parenting. Despite favorable rulings, the State arbitrarily continued to violate the family's rights.

That same afternoon, the Federal Chamber of Criminal Cassation annulled the previous ruling, and the next day, the Federal Court ordered Cristiam's house arrest without time limitations.

A month later, Bayron and Leonardo returned to school with their father at home, while Rossio stayed with Reyna during her second extended hospitalization.

After 50 days, Reyna was discharged, only to be readmitted two days later, once again intubated in intensive care. This time, Rossio was able to remain by her side, knowing that Bayron and Leonardo were safe with their father.

Brandon's case

The public defense requested the collaboration of this NHRI in a case involving house arrest, based on the best interests of Brandon, a 16-year-old boy whose father, a Peruvian national, was one of their clients.

Brandon's mother had passed away when he was just three years old, and his father was imprisoned when he was 10, leaving him in the care of his uncle and paternal grandparents. Despite multiple requests for house arrest, which would allow Brandon to grow up under his father's care, the requests had consistently been denied without taking into account the potential harm to the child's development.

When Brandon's family decided to return to Peru, his uncle arranged for a friend to temporarily move into their home to look after Brandon. This person, a stranger to Brandon, moved into the lower floor of his paternal home and began spending the last

hours of each day with him.

Feeling increasingly alone, Brandon expressed the need to be with his father. Since his father's imprisonment in December 2017, life had been incredibly difficult for him.

In the third intervention in this case, the representative advocating for Brandon's interests once again supported the request for house arrest for his father, with the primary aim of ensuring the boy's physical and emotional well-being, enabling his proper developmental progress. Although he considered it unnecessary to delve into the importance of the parent-child bond, he emphasized that the adolescent had no relatives in the country who could provide him with the care and attention appropriate for his stage of life.

The representative based his conclusion on Brandon's right to be cared for by his father²⁰ and the principle of equality with other minors²¹. He explained: "...When the 'best interests' of a child are invoked to grant house arrest, the analysis must shift.

It is not about whether the objective conditions outlined in the Criminal Code and the Law on the Execution of Deprivation of Liberty are met, but whether the rights and obligations emanating from the Convention on the Rights of the Child (CRC) are being fulfilled for the child's comprehensive development. Then, one must analyze whether the legal conditions established by the legislator adequately address those needs or those that have been assessed in the specific case when determining what is in the best interests of the child (...) If the legal conditions do not meet the needs of the child, the rules governing the process must be interpreted to ensure the normal or optimal development of the child..."

The Attorney General's report included testimony from Brandon's uncle, who had expressed concern for his nephew's future: "*I took him out of a bad environment. Now he goes to school and sells bread and fried cakes in the neighborhood. He used to hang out with a different crowd. He's on the right track, but I'm leaving, and the boy will be left alone...*"

Despite Brandon's evident vulnerability and the favorable recommendation for house arrest issued by the representative of the adolescent's interests, the Attorney General opposed the measure, citing sub-constitutional regulations—specifically, the Criminal Code—and showing a complete lack of a child- and gender-sensitive perspective. The Attorney General's stance suggested that a mere roof over Brandon's head, with basic and essential services, shared with an adult who wasn't even an emotional figure for the young man, was more beneficial than the emotional and practical care that Brandon

²⁰ CRC, Arts. 7 y 9.

²¹ CRC, Art. 16.

could receive from his father.

We pointed out the incoherence and arbitrariness of the Attorney General's decision and highlighted the unjustifiable legal delay, particularly given constitutional norms (Art. 75, par. 22 of the National Constitution,) which take precedence over the law cited by the Attorney General. It has long been understood that *"Harsh or rigorous laws must be limited to the cases for which they have been given... A judge must not punish what the law does not punish. If new laws are needed for new situations, they should be called for, developed, and enacted [meaning a new Article 75, par. 22, and a denunciation of the convention] But until then..., let us not stretch the laws to impose unnecessary suffering²²."*

Since no evidence was provided to show how Brandon's best interests would be negatively affected by his father's house arrest, it was clear that granting house arrest was the measure that best protected the adolescent's rights.

2. STRATEGIC ALLIANCE FOR CHILDREN AND ADOLESCENTS AFFECTED BY THE CRIMINAL SYSTEM

In 2015, the Argentine Ombudsperson's Office intervened in the case of a 15-year-old girl whose father had passed away and whose mother was deprived of her liberty. The young girl self-harmed and had multiple suicide attempts. The mother's defense had requested house arrest based on the best interests of her daughter, supported by psychological reports indicating that the girl needed her mother's presence at home.

Although the prosecutorial and judicial authorities did not provide evidence of how house arrest would undermine the young girl's best interests, they rejected the request. Unofficially, it was revealed that the real reasons for systematically denying the measure were the mother's belonging to the gypsy community and the fact that some of her male co-defendants, though not her, had attempted to escape.

The Argentine Ombudsperson's Office produced an extensive report highlighting the need to prioritize the best interests of the girl. However, it did not move the prosecutorial or judicial authorities.

The case exposed the lack of programs designed to provide special protection to children and adolescents with emotional caregivers deprived of their liberty, clearly contradicting their best interests and the principle of minimal or no impact from the punishment.

That year, we submitted a legislative proposal, and a series of recommendations aimed at prioritizing the best interests of children and adolescents in the criminal process and

²² Escriche, J., "Diccionario Razonado de Legislación y Jurisprudencia", T. III, p. 647, Ed. Imprenta Eduardo Cuesta, Madrid 1875.

the execution of custodial sentences²³.

In 2016, the Argentine Ombudsperson's Office formed the Strategic Alliance for Children and Adolescents Affected by the Criminal System with civil society organizations, national and provincial public authorities from the child protection and criminal systems. The objective was to work together to design, monitor, and evaluate public policies to provide special protection to children and adolescents with caregivers deprived of their liberty, as well as to prevent adolescents from entering the criminal system and guarantee their rights.

Following the call from the Argentine National Ombudsperson's Office, various organizations from the criminal and child protection systems reinforced their actions to provide special protection and promote the rights of this group of children and adolescents.

3. JUVENILE JUSTICE GUIDELINES

In Argentina, the current Juvenile Criminal Regime continues to be regulated by Decree-Law N° 22.278/80 (amended by Law N° 22.803,) which follows the "Guardianship Model or the Irregular Situation Model" and has been critically reviewed by the Inter-American Court of Human Rights (IACHR)²⁴ and the United Nations Committee on the Rights of the Child²⁵ for failing to meet the standards set by the CRC and other international treaties.

In 2019, the Juvenile Justice Work Group of the Strategic Alliance for Children and Adolescents Affected by the Criminal System approved the "Juvenile Justice Guidelines²⁶." For two years, the Vulnerable Groups Area of the Argentine National Ombudsperson's Office coordinated the various stages of the process, which culminated in a unanimous document reflecting the practical experience of each participating institution and the common goal of effectively guaranteeing the special protection that adolescents accused of committing unlawful acts must receive from the state.

In addition to the National Ombudsperson's Office, the following organizations participated in this collective effort: the Childhood and Youth Area of the Criminal Thought Association; the General Directorate of Juvenile Criminal Responsibility of the Council for the Rights of Children and Adolescents; the Commission for the Monitoring of the Institutional Treatment of Children and Adolescents of the National Public

²³ Recommendations submitted to the Inter-agency Prison Control System; the Ministry of Justice and Human Rights of the Nation; and the National Secretariat for Children, Adolescents and Family

²⁴ IACHR Court: Case of Bulacio vs. Argentina, judgment of September 18, 2003. Available at <https://bit.ly/1wq0HFh>. Case of Mendoza et al. vs. Argentina, judgment of May 14, 2013. Available at <https://bit.ly/1fOKoZ>.

²⁵ Committee on the Rights of the Child: Concluding observations on the fifth and sixth periodic reports of Argentina, par. 80 (CRC/C/ARG/CO/3-4). Available at <https://bit.ly/2JtHLjs>

²⁶ [JUVENILE JUSTICE GUIDELINES](#)

Defender's Office; the Undersecretary of Criminal Policy of the Ministry of Justice and Human Rights; the Education Management Secretariat of the Ministry of Education, Culture, Science, and Technology; the Vulnerable Groups Area of the National Prison Prosecutor's Office; the Protection Undersecretariat of the Human Rights Secretariat of the Province of Buenos Aires; the National Directorate of Adolescent Offenders of the Criminal Law of the Secretariat for Children, Adolescents, and Family; and the Coordination of Preventive Strategies in Detention Contexts of the Secretariat of Comprehensive Drug Policies.

The "Juvenile Justice Guidelines" developed by the Strategic Alliance for Children and Adolescents Affected by the Criminal System were declared of legal interest by the Legislation of the Autonomous City of Buenos Aires.

In terms of impact, several organizations have promoted proposals based on the Juvenile Justice Guidelines:

Joint Inter-agency Declaration: Agreement on Basic Principles for the Repeal of Decree-Law 22.278 and the Enactment of a Juvenile Justice System

The agreement was signed by the Ombudsperson's Office for Children's Rights, the National Prison Prosecutor's Office, the National Public Defender's Office, the National Committee for the Prevention of Torture, the Argentine Association of Magistrates and Officials of the National Judiciary, and the National Ombudsperson's Office.

In November 2022, following the path set by the Argentine National Ombudsperson's Office in the Juvenile Justice Work Group of the Strategic Alliance for Children and Adolescents Affected by the Criminal System, the "Joint Inter-agency Declaration: Agreement on Basic Principles for the Repeal of Decree-Law 22.278 and the Enactment of a Juvenile Justice System" was signed.

The agreement states that the enactment of a Juvenile Justice Law must promote and guarantee the respect for fundamental rights and freedoms, with a due process framework. The proposal advocates for a reform of the current regime, which must inevitably address the minimum age of criminal responsibility, the establishment of a specialized system, a catalog of alternative measures to legal proceedings and punishment, alternative sentencing options distinct from those applied to adults, and the ongoing adherence to juvenile justice standards.

"Towards a Juvenile Criminal Justice System that Respects the Rights of Children and Adolescents"

In March 2023, UNICEF Argentina and the Ombudsperson for Children's Rights convened a working session to address issues related to juvenile justice and its approach according to international standards. During the session, the commitments made in the 2022. Joint Declaration were reaffirmed. At the end of the session, a new

inter-agency document was issued and signed by the various participating organizations and experts: the National Committee for the Prevention of Torture; the National Public Defender's Office; the Ombudsperson for Children's Rights; the National Ombudsperson's Office; the Children's Ombudsmen of the provinces of Córdoba, La Pampa, and Santiago del Estero; the National Prison Prosecutor's Office; the Network of Magistrates and Judicial Officers of the Nation; the Inter-agency Prison Control System; UNICEF Argentina; Alejandro Morlachetti, UNICEF's expert on Rights Protection and Access to Justice; and Mary Beloff, member of the UN Committee on the Rights of the Child.

Working Group "10 years after the "MENDOZA" Ruling by the IACHR Court"

In May 2023, the National Public Defender's Office convened an inter-agency meeting to evaluate the impact of the "Mendoza et al. vs. Argentina" case by the Inter-American Court of Human Rights (IACHR,) 10 years after the decision. In that ruling, the Argentine State was condemned for imposing life imprisonment sentences on five individuals for crimes committed when they were minors, as well as for other human rights violations committed against them.

The meeting was attended by heads and other authorities from the following organizations: the National Committee for the Prevention of Torture; the National Public Defender's Office; the Ombudsperson for the Rights of Children and Adolescents; the National Ombudsperson's Office; the Ombudsperson of the City of Buenos Aires and the Committee for the Prevention of Torture of the City of Buenos Aires; the National Prison Prosecutor's Office; and UNICEF.

During the meeting, the impact of the ruling was evaluated both at the international and national levels, along with its state of implementation; the conditions of accommodation for children and adolescents in conflict with the criminal law; and instances of institutional violence.

Among the proposed measures, it was agreed to establish a permanent Working Group for the implementation of the "Mendoza" ruling and to organize an inter-agency campaign to raise public awareness about common misconceptions that link juvenile delinquency rates to the severity of sentences or the age of criminal responsibility.

4. REGULAR TRAINING FOR LAW ENFORCEMENT

In 2015 and 2016, the Argentine Ombudsperson's Office was invited by the National Secretariat for Children, Adolescents, and Family to participate in intensive courses for candidates for the Special Security and Surveillance Corps of juvenile criminal institutions.

In 2019, alongside the National Public Prosecutor's Office, this NHRI provided training on human rights and the juvenile criminal system as part of the Criminal Investigator

Course at the National Gendarmerie School of Argentina.

That same year, following his visit to the country in April 2018, the UN Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment presented his report to the Human Rights Council. He expressed particular concern over the vulnerability of minors deprived of their liberty.

Among his recommendations, he urged Argentine authorities to: "... i) *Ensure that all law enforcement officers and prison staff in all provinces receive initial and periodic training on human rights (including the Nelson Mandela Rules,) working with detainees in vulnerable situations, and early detection of potential mental illness, torture, and other ill-treatment.*"

In response, and given the strategic role of the Special Security and Surveillance Corps, the Argentine Ombudsperson's Office, at the request of the Council for the Rights of Children and Adolescents of the Government of the City of Buenos Aires, began conducting a human rights workshop for security personnel in juvenile criminal institutions in July 2023.

These workshops cover topics such as adolescence and youth, life trajectories and social vulnerability; violence and its various forms (adulthood, discrimination, bullying, etc.); the strategic role of Special Security and Surveillance Corps personnel; best practices; rights, principles, and guarantees for children, adolescents, and young people; and the principle of specialty.

5. PREVENTION OF COVID-19 DEATHS

Since the COVID-19 pandemic was declared, this NHRI has promoted compliance with recommendations issued by various international bodies, as well as the rulings of the country's highest criminal courts, to apply house arrest to all vulnerable groups to relieve overcrowded prisons.

Nonetheless, the need for an active vaccination policy for persons deprived of liberty became particularly important to reduce severe cases of the disease, hospitalizations, and deaths. This was especially true given the sustained increase in incarceration rates since the 1990s and the declaration of prison emergencies in the federal and Buenos Aires systems.

On December 23, 2020, the National Ministry of Health, as the governing body of the health system, published the Strategic Plan for COVID-19 Vaccination in Argentina, which included persons deprived of liberty as a target population.

In 2021, we initiated ex officio investigations to collect data on the number of individuals deprived of liberty who had been vaccinated against COVID-19 in the country's jurisdictions with the largest prison populations: Buenos Aires, Mendoza, Santa Fe, and

Córdoba.

This measure enabled us to assess the progress of the Strategic Plan concerning the vaccination of individuals under state custody and to actively support penitentiary authorities in managing the health emergency caused by the COVID-19 pandemic.

BOLIVIA

Ombudsperson's Office of the Plurinational State of Bolivia

National Preventive Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment



INTRODUCTION

The Bolivian Ombudsperson's Office, celebrating 25 years as a National Human Rights Institution with constitutional status, marked its first year as the National Preventive Mechanisms for the Prevention of Torture (NPM - Bolivia) in 2022.

The Ombudsperson's Office was incorporated into the Political Constitution of Bolivia in the constitutional reform of 1994²⁷ and in 1997 Law No. 1818 of December 22 was enacted, which established for the first time the form of organization and the attributions of the Ombudsperson institution, which began its work on April 1, 1998. The Ombudsperson's Office began its work on April 1, 1998²⁸ with the mandate of overseeing the enforcement and compliance with the rights and guarantees of the people in relation to the administrative activity of the entire public sector, as well as the defense, promotion and dissemination of human rights.

The current Political Constitution of the Plurinational State of Bolivia (in force since 2009) outlines the main characteristics of the Ombudsperson's mandate in Articles 218 to 224. These articles define the nature of the institution, its essential attributions, the eligibility conditions and selection process for its head, the guarantees protecting the Ombudsperson's work, and the obligation of public entities to collaborate with the institution. At the legislative level, Law N° 870 of December 13, 2016, serves as the legal framework establishing the powers, prerogatives, organization, and functioning of the Ombudsperson's Office. This is aligned with the Political Constitution's mandate to

²⁷ This milestone follows a long process of constitutional reform, which led to the enactment of Law N° 1585 on August 12, 1994, formally incorporating the Ombudsperson into the Political Constitution of the State of Bolivia.

²⁸ Ana María Romero de Campero was appointed as the first Ombudsperson by the National Congress (now the Plurinational Legislative Assembly) on March 31, 1998. Ombudsperson. Report to the National Congress, P. 5. Available in: [CHAPTER ONE Understanding the Ombudsperson](#)

defend society.

The Ombudsperson's actions extend across the public sector and private institutions providing public services, ensuring the protection, promotion, and fulfillment of human rights—both individual and collective—as established by the Constitution, laws, and international instruments. The institution is also responsible for advocating the rights of indigenous and aboriginal peasant nations and peoples, urban and intercultural communities, Bolivians living abroad, and the environment, including Mother Earth.

As a National Human Rights Institution (NHRI,) the Ombudsperson's Office conducts investigations into human rights violations through its People's Service System, a complaint service with 18 offices covering the entire national territory. Nine of these offices are called Departmental Ombudsperson's Offices, located in Bolivia's²⁹ nine departments, while the remaining nine are Regional Coordinating Offices, covering several municipalities. These offices are staffed by personnel who respond to complaints and requests from the public.

The Ombudsperson's Office can initiate investigations ex officio for cases that come to its attention through continuous monitoring of the media, social networks, or other means. When violations are identified that may involve criminal acts, the Office urges the Public Prosecutor's Office to take appropriate legal action. Additionally, the Ombudsperson's Office has the authority to access constitutional jurisdiction to file actions for unconstitutionality, liberty, constitutional amparo, privacy, popular action, enforcement, and direct appeal for annulment, all without the need for a mandate³⁰.

The Ombudsperson's Office also conducts specialized studies on various topics relevant to its substantive units (both legal and population-focused.) These studies serve as the foundation for recommendations, reminders of legal duties, and suggestions for corrective actions and measures to be adopted by all State bodies and institutions. Moreover, the Office can propose bills and amendments to laws, decrees, and non-judicial resolutions within its scope of competence. Finally, it plays a key role in human rights education, promotion, and dissemination through a wide range of activities.

With specific regard to the issue of torture and ill-treatment, Bolivia ratified the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* through Law No. 1939 on February 10, 1999, and the *Optional Protocol to the Convention against Torture* through Law No. 3298 on December 12, 2005.

On December 30, 2013, Law N° 474 was enacted, creating the Service for the

²⁹ Bolivia is territorially organized into departments, provinces, municipalities, and indigenous territories (Article 269 of the Political Constitution of the Plurinational State of Bolivia).

³⁰ Article 29 of Law N° 870 of December 13, 2016, on the Ombudsperson, states: I. The Ombudsperson's Office has the legal standing to file constitutional actions within the procedures defined by the Legislation regarding: 1. Abstract Unconstitutionality Action; 2. Action for Liberty; 3. Constitutional Writ of Amparo; 4. Privacy Protection Action; 5. Popular Action; 6. Enforcement Action; 7. Direct Appeal for Annulment; 8. Appeal for Extraordinary Review of Convicted Criminal Sentence, for persons deprived of liberty.

Prevention of Torture (SEPRET)³¹. However, following the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Bolivia from May 2 to 11, 2017, the Subcommittee expressed concern about SEPRET's legal framework in its report (CAT/OP/BOL/3)³². The report highlighted that SEPRET's placement under the Ministry of Justice compromised its independence. The GIEI-Bolivia Report reiterated this recommendation, emphasizing the need for a national preventive mechanism with full independence and autonomy³³.

In response to these observations, the Bolivian State, through the Plurinational Legislative Assembly, approved a legislative amendment to Law N° 870 (Ombudsperson Law) on December 13, 2016. This amendment was promulgated by the President of Bolivia as Law N° 1397 on September 29, 2021, which now serves as the legal basis for the National Preventive Mechanism (NPM) in Bolivia. Article 2, paragraph I of this Law amends Article 3 of Law N° 870, incorporating the following paragraph II: *"In compliance with the provisions of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Law N° 3298 of December 12, 2005, the Ombudsperson's Office is designated as the National Preventive Mechanism of the Plurinational State of Bolivia."* This legal provision establishes the mandate of the Bolivian NPM, explicitly linking it to the obligations under the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Since the Ombudsperson's Office has been designated as the NPM, it has assumed additional powers in its role as the NPM, complementing the authority it already held as a National Human Rights Institution (NHRI.) Its functions as the NPM are now an extension of its broader mandate.

The Ombudsperson's Office, both as an NHRI and as the NPM, is currently headed by Pedro Francisco Callisaya Aro, who was elected and sworn in in September 2022³⁴. He is leading the development of a new institutional identity, aiming to create a symbiosis between its reactive nature as an NHRI, focused on addressing complaints of rights violations, and its proactive role as an NPM, which analyzes systemic patterns and risks to prevent human rights violations.

As the Bolivian NPM is relatively new, it is too early to fully assess our practices.

³¹ The structure and powers of SEPRET (National Service for the Prevention of Torture) were established by Supreme Decree N° 2082 on August 21, 2014. SEPRET began its operations on July 1, 2016, and concluded on October 30, 2021.

³² Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report with observations and recommendations addressed to the State following its visit to the Plurinational State of Bolivia from 2 to 11 May 2017 (CAT/OP/BOL/3), para. 13, 13, 15 y 16. Available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CAT%2FOP%2FBOL%2F3&Lang=es

³³ Interdisciplinary Group of Independent Experts (GIEI) Bolivia (2021), Report on the events of violence and human rights violations that occurred between September 1 and December 31, 2019, p. 451, par. 9. Available at: [Informe sobre los hechos de violencia y vulneración de los derechos humanos ocurridos entre el 1 de septiembre](#)

However, we are hopeful that the actions outlined below demonstrate our commitment to preventing torture and ill-treatment. We strive to balance our forward-looking preventive measures—aligned with the clear mandate of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)—with decisive interventions in both present and past situations involving torture and ill-treatment. Our goal is to restore the rule of law and combat impunity.

1. ALLIANCE WITH THE PLURINATIONAL LEGISLATIVE ASSEMBLY FOR COMPLIANCE WITH THE RECOMMENDATIONS OF BOLIVIA'S NPM.

a. Background and Issues

The Bolivian Ombudsperson's Office recently completed its first year in its new mandate as the NPM and, on August 21, 2023, presented the 2022 Annual Report of the NPM to the Plurinational Legislative Assembly of Bolivia (national parliament.) This report has been published³⁵ and submitted to the Subcommittee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT,) contributing to the compliance with Article 23 of the Optional Protocol to the Convention against Torture (OPCAT) and paragraph 29 of the Guidelines for National Preventive Mechanisms (CAT/OP/12/5.)

The 2022 Annual Report outlines 30 concrete recommendations that aim to strike a balance between addressing structural problems and meeting urgent needs.

One of the key challenges the Ombudsperson's Office has faced, in its capacity as an NHRI, is ensuring that state authorities comply with its recommendations, as they do not have coercive force and rely on the magistracy of persuasion.

In instances where authorities or public servants fail to adopt the recommendations, reminders, or suggestions issued by the Ombudsperson's Office, or where the reasons for non-compliance are unjustified, the Office applies Public Censure. This involves including the names of the authorities or public servants, along with the facts and evidence, in the Special Annual Report of the Ombudsperson. This public censure serves to highlight cases where state institutions have not complied with the determinations of the Ombudsperson's Office, in accordance with the principle of transparency and accountability³⁶.

b. Actions, Recommendations and Achievements

The Ombudsperson's Office has adopted a strategy of seeking support from the

³⁵. Ombudsperson's Office. 2022 Annual Report NPM Bolivia. Available at: [REPORT](#)

³⁶ CPE, Article 222, paragraph 5; Article 28 Law 870.

Plurinational Legislative Assembly to ensure compliance with the recommendations issued in its capacity as the NPM, leveraging the parliament's oversight authority to hold public institutions accountable³⁷.

In Bolivia, the Plurinational Legislative Assembly is composed of two chambers: the Chamber of Deputies, with 130 members³⁸, and the Chamber of Senators, with 36 members³⁹. This body is the only one with the authority to approve and enact laws that govern the entire Bolivian territory⁴⁰.

According to the Rules of Procedure of the Chamber of Deputies, members may request written or oral reports from Ministries, Entities of the Executive, Judicial, and Electoral Branches, the Comptroller General's Office, the Ombudsperson's Office, the Attorney General's Office, the State Attorney General's Office, as well as the highest authorities of Autonomous Territorial Governments and Public Universities. These requests are made for legislative, information, or auditing purposes, and may include the proposal of investigations on matters of public interest⁴¹.

The Bolivian NPM has established contact with the parliamentary committees responsible for human rights, specifically the Human Rights Commission of the Chamber of Deputies and the Constitution, Human Rights, Legislation and Electoral System Commission of the Chamber of Senators. Meetings were held with their technical teams to explain the mandate of the Ombudsperson's Office in its capacity as the NPM.

Deputies and Senators from these commissions later joined the meetings, during which the scope of the NPM's mandate and the contents of the 2022 Annual Report were presented. The emphasis was placed on Bolivia's international commitments, particularly under the Optional Protocol to the Convention against Torture (OPCAT,) and the legal obligation to consider and implement the recommendations made by the Bolivian NPM, which align with United Nations treaty body recommendations. As a result of these discussions, the Ombudsperson's Office and the Plurinational Legislative Assembly agreed to jointly present the 2022 Annual Report of Bolivia's NPM.

The report, which was presented to the Plurinational Legislative Assembly on August 21, 2023, has been published⁴² and submitted to the Subcommittee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT, in Spanish,) in compliance with Article 23 of OPCAT and paragraph 29 of the Guidelines

³⁷ Article 158, paragraph I, section 17 of the Political Constitution of the Plurinational State of Bolivia assigns the Plurinational Legislative Assembly the power to "control and oversee the State bodies and public institutions."

³⁸ CPE, Article 146.

³⁹ CPE, Article 148.

⁴⁰ CPE, Article 145.

⁴¹ General Rules of the Chamber of Deputies 2022-2023, article 23, inc. b) Available at: [Legislatura 2022 - 2023](#)

⁴² Ombudsperson's Office. 2022 Annual Report NPM Bolivia, par. 22 a 121. Accessible at: [REPORT](#)

for National Preventive Mechanisms (CAT/OP/12/5.)

During the presentation of the 2022 NPM Report, Deputy Betty Yañiquez remarked: "When we talk about torture, we talk about human dignity, and when we talk about human dignity, we talk about the very essence of the human being (...) We must work to ensure that these recommendations are implemented, and even add to them based on our knowledge and experience (...)" Likewise, Senator Silvia Salame emphasized, "There are no exceptions when it comes to torture. Torture is condemned worldwide, and as a democratic country, we have the obligation to ensure that the most vulnerable people live in dignified and humane conditions."

The commitment expressed by these parliamentarians represents strong support for advancing the implementation of the NPM's recommendations and Bolivia's international obligations.

Moving forward, the Ombudsperson's Office will arrange meetings with relevant authorities and institutions to ensure compliance with the recommendations and begin providing technical support. Deputies and Senators from the human rights commissions are expected to actively support the implementation of the recommendations. This will involve their participation in key meetings and events, as well as the use of parliamentary oversight tools such as the Request for Written Reports. Through this mechanism, "Any Deputy may request, through the Presidency of the Chamber of Deputies, written reports from the highest executive authorities of Ministries, Entities of the Executive, Judicial, and Electoral Branches, the Comptroller General's Office, the Ombudsperson, and the Attorney General's Office." Additionally, Deputies, via the Committees of the Chamber, can request written reports from the highest executive authorities of the Autonomous Territorial Governments and Rectors of Public Universities for purposes of information,



research, and legislative oversight⁴³.”

2. Strategic litigation for compliance with recommendations of Bolivia's NPM

a. Background and issues

Strategic human rights litigation aims to use the law to promote social change, particularly for individuals whose voices may not otherwise be heard. This approach draws attention to human rights abuses and violations, emphasizing the State's obligation to fulfill its national and international commitments⁴⁴.

The Ombudsperson's Office has utilized strategic litigation, both nationally and internationally, to defend human rights through its authority to bring constitutional actions.

Article 222, paragraph 1 of the Political Constitution of the Plurinational State of Bolivia grants the Ombudsperson's Office the power to file actions of Unconstitutionality, Liberty, Constitutional Amparo, Protection of Privacy, Popular Action, Enforcement, and Appeal for Annulment, without the need for a mandate. Consistent with this constitutional provision, Law N° 870 of December 13, 2016 (Ombudsperson Law,) in its Article 5, paragraph 1, affirms that one of the Ombudsperson's powers is to file defense actions, including the Action for Liberty.

On March 7, 2023, as part of its mandate as the NPM, the Ombudsperson's Office conducted a visit to San Pedro de Chonchocoro Prison, located in the municipality of Viacha, Department of La Paz. During this visit, it was discovered that in sector E-2, four cells measuring 1x2 meters were housing a total of seven persons deprived of liberty. These inmates lacked beds and there was not even space for two mattresses in each cell.

They had no natural light and their only ventilation was a small opening in the door. There was also no electricity, the only shower in the area did not work, and there was no toilet. Of the 7 people in this sector, at least 4 showed symptoms of mental disorders.

b. Actions, Recommendations and Achievements

The Bolivian NPM issued recommendations to the General Directorate of Prison Regime to take immediate action to address the issues identified at the Chonchocoro Detention Center. During a follow-up visit on March 16, 2023, the Ombudsperson's Office found no progress, and the detainees continued to live in inhumane conditions. The only action

⁴³ Article 135 of the General Rules of the Chamber of Deputies 2022-2023. Available at: [Legislatura 2022-2023](#)

⁴⁴ Sandra Carvalho and Eduardo Baker. Experiences of Strategic Litigation in the Inter-American System for the Protection of Human Rights, p. 471 (citing Skilbeck). Available at: [EXPERIENCES OF STRATEGIC LITIGATION IN THE INTER-AMERICAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS](#)

taken was allowing inmates in Sector E-2 to use the sanitary facilities of another sector for showers and bathrooms.

The Ombudsperson's Office reiterated its recommendations to improve conditions in Sector E-2, and on March 30, 2023, formally requested written information from the General Directorate of the Prison Regime regarding the actions taken. Specifically, they requested updates on infrastructure modifications that would provide sufficient space for inmates to sleep in beds, allow fresh air and natural light to enter, and refurbish the bathroom facilities with a toilet and shower.

With no favorable response, the Ombudsperson's Office filed a constitutional action on April 17, 2023, on behalf of the individuals detained in Sector E-2. The action was submitted to the First Sentencing Court against Violence against Women of El Alto, which acted as the court of constitutional guarantees. The filing detailed the violations of the right to personal integrity (Art. 5.1 and 5.2 of the ACHR,) dignity (Arts. 73 and 74 of the CPE,) and a dignified life (Art. 15 of the CPE,) highlighting the prison administration's omissions that jeopardized the health and lives of persons deprived of liberty under national and international jurisprudence.

On April 18, 2023, a hearing was held in which the Ombudsperson's Office reinforced the argument that the State is obligated to guarantee the rights of persons deprived of liberty, given their special situation of subjection to the State. The General Directorate of Prison Regime, as the entity responsible for managing prisons, along with any related judicial or administrative bodies, such as state agents, are therefore the guarantors of the rights of individuals deprived of liberty. These institutions are required to act with due diligence to prevent violations and ensure the protection of detainees' rights.

After hearing the Ombudsperson's Office arguments, the judge issued Resolution N° 11/2023 on April 18, 2023, granting the requested protection and ordering the prison administration to:

- “1.- Provide adequate space for habitability, avoiding overcrowding.
- 2.- Ensure access to electricity, natural light, and proper ventilation within the cells.
- 3.- Provide hygienic sanitary facilities for the plaintiffs to meet their biological and hygiene needs under normal conditions.
- 4.- Guarantee the plaintiffs' right to health, including conducting psychological evaluations to address potential acquired mental disorders.

All measures were to be implemented within fifteen days of the notification.”

Thanks to this judicial ruling, the Ombudsperson's Office was able to enforce its recommendations, resulting in a significant improvement in the living conditions of

persons deprived of liberty within a relatively short period.

3. VISIT TO THE SAN PEDRO DE CHONCHOCORO DETENTION CENTER

ENVIRONMENT OF SECTOR E-2



Conditions of Sector E-2 (16.03.2023)



Interviews conducted by the Ombudsperson with Persons Deprived of Liberty



Bathroom in poor condition before the intervention of the Ombudsperson's Office



Working bathroom after Ombudsperson's Office intervention



Shower in poor condition before the intervention of the Ombudsperson's Office



Working SHOWER after Ombudsperson's Office intervention



Sector E-2 cells refurbished thanks to a constitutional action brought by the Ombudsperson's Office

4. PROMOTION OF READING FOR THE REDEMPTION OF SENTENCES AND SOCIAL REINTEGRATION

The following good practice is the only one that has been in development for several years, allowing for the evaluation of its results and the proposal of adjustments to enhance its impact.

In 2018, the Ombudsperson's Office published the report *"Volcar la Mirada a las Cárceles – Situación de Vulnerabilidad de las Personas Privadas de Libertad en las Cárceles de Ciudades Capitales de Bolivia"* (*Turning Our Gaze to Prisons – The Situation of Vulnerability of Persons Deprived of Liberty in Prisons in Bolivia's Capital Cities*), which highlighted the weakness of educational programs for social reintegration.

In response, the "Libros por Rejas" (Books for Prison Bars) program was introduced in 2019, incorporating reading as an alternative for sentence reduction. This program aims to support the rehabilitation and social reintegration of persons deprived of liberty by promoting education through literature.

a) Pilot test

The program began with a pilot test at the Miraflores Detention Center and in San Pedro (La Paz.) Coordination meetings were held with the authorities of the Prison Regime,

and assessments were conducted to evaluate the condition of the libraries. These assessments included reviewing the physical space, furniture, number of books, the presence of staff responsible for the library, and the methodology used for cataloging and loaning literary works. These assessments mainly identified the lack of books.

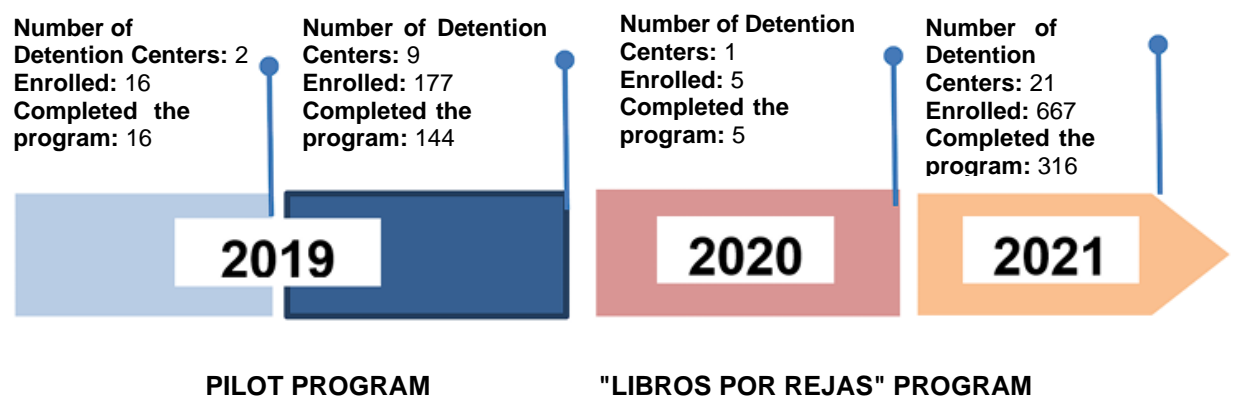
The Center for Social Research (CIS, in Spanish)⁴⁵ contributed to addressing this issue by donating a stock of literary works to strengthen prison libraries. The donation was made in a public ceremony on September 18, 2019, with the participation of authorities such as the Departmental Director of the Prison Regime and Directors of Detention Centers.

Ten men deprived of liberty from San Pedro and six women inmates from Miraflores voluntarily participated in the pilot test. The person in charge of the education area within the prisons assigned literary works based on the participants' educational level, giving them 10 days to complete the reading. Following this, the participants were evaluated by a Qualifying Commission, composed of authorities from the Departmental Directorate of Prison Regime and a multidisciplinary team. Upon successful evaluation, participants received a certificate equivalent to 15 hours, which is valid for sentence reduction.

b) Program implementation

The "Libros por Rejas" program was implemented nationwide, reaching a total of 36 prisons in both urban and rural areas and 865 participants during 2019 to 2021, as follows:

IMPLEMENTATION TIMELINE OF THE "LIBROS POR REJAS" PROGRAM



TOTAL PARTICIPANTS: 865
TOTAL BENEFICIARIES: 481

As shown in the graph, the number of beneficiaries has been steadily increasing, with

the exception of 2020, due to the COVID-19 pandemic. However, activities resumed in 2021. From 2019 to 2021, the program reached a total of 865 participants, with 481 persons deprived of liberty completing the program and receiving certificates. These certificates, reflecting between 15 and 30 hours of educational activity, are valid for sentence reduction under the criminal redemption system.

| MANAGEMENT | ENROLLED | BENEFICIARIES | DETENTION CENTERS | | | |
|------------|--------------------------|---------------|---------------------------------------|---|-------------------|---|
| | | | DEPARTMENT | CENTER NAME | NUMBER OF CENTERS | TOTAL, CENTERS |
| 2019 | 16 | 16 | La Paz | San Pedro and Miraflores. | 2 | La Paz: 5 Cochabamba: 7 Santa Cruz: 1 Chuquisaca: 1 Potosi: 3 Oruro: 1 Beni: 3 Pando: 1 Tarija: 1 TOTAL: 23 |
| | 177 | 144 | La Paz Oruro Chuquisaca Bení | San Pedro, Miraflores, Obrajes, Qalahuma and Chonchocoro. San Pedro. San Roque. Mocoví, Riberalta. | 9 | |
| 2020 | 5 | 5 | Tarija | Morros Blancos. | 1 | |
| 2021 | 667 | 316 | La Paz | San Pedro, Obrajes, Qalauma and Chonchocoro. | 21 | |
| | | | Pando | Villa Busch. | | |
| | | | Santa Cruz | La Bahía (Puerto Suárez.) | | |
| | | | Cochabamba | San Sebastián Women, San Sebastián Men, El Abra, Sacaba, Araní, San Antonio, Quillacollo. | | |
| | | | Bení | Riberalta and Guayaramerín. | | |
| Chuquisaca | San Roque. | | | | | |
| Potosi | Cantamarca, Villazón and | | | | | |
| TOTAL | 865 | 481 | 23 DETENTION CENTERS | | | |

It is important to highlight that the program also contributed to improving the libraries within detention centers by increasing the number of available books. Nationally, more than 300 letters were sent to various public and private institutions to raise awareness about the program and the need for reading materials in detention centers. As a result, 14,000 books were collected across Bolivia, covering a wide range of subjects, including short stories, novels, history, mathematics, theater, law, and human rights. At least 230 public and private entities participated, including international organizations like the UNODC, Bolivian publishers such as Jaguar Azul, public universities like UMSA, private universities like the Salesian University, embassies such as the Embassy of Japan, and state entities like the Central Bank of Bolivia.

To summarize, the following outcomes were **achieved**:

1. The implementation of the "Libros por Rejas" program, in coordination with the Departmental Directorates of Prison Regime, has allowed certificates granted to persons deprived of liberty to be valid for sentence reduction, thus reinforcing social reintegration by motivating inmates to voluntarily engage in reading.
2. The General Directorate of Prison Regime has officially adopted the "Libros por Rejas" program, ensuring its sustainability as part of state programs aimed at the

social reintegration of persons deprived of liberty. Furthermore, the program has been well-received by persons deprived of liberty.

3. The "Libros por Rejas" (Books for Prison Bars) Program, implemented in 2019, 2020, and 2021, has enrolled 865 persons deprived of liberty in a reading-based sentence redemption program, with 481 participants successfully completing it.
4. The program has also contributed to the enhancement of 24 prison libraries across urban and rural areas nationwide, providing a total of 14,000 books.
5. As a result of requests for book donations to strengthen these libraries, 230 public and private institutions have become involved in donating books, enabling a segment of society to actively contribute to the social reintegration of persons deprived of liberty.
6. There is interest and willingness from private institutions to contribute to the "Libros por Rejas" program, either through book donations or by participating in the formation of evaluation commissions, both of which are essential for the sustainability of the project.

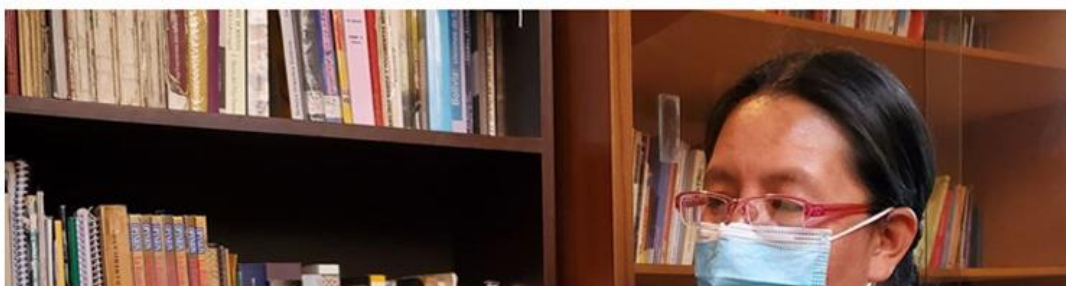
c. Perspectives

Although the number of beneficiaries of the "Libros por Rejas" program is not yet high, it has great potential to support persons deprived of liberty through reading and aid their rehabilitation and social reintegration. Additionally, it promotes personal development, fostering skills related to information exchange, knowledge, self-awareness, empathy, and values—important aspects for improving social skills and promoting peaceful coexistence in confinement settings. On the other hand, the program contributes to addressing one of the structural issues in Bolivian prisons: overcrowding.

While the "Libros por Rejas" program is not expected to significantly reduce overcrowding, efforts are being made to work with Sentence Execution Judges to ensure that reading and writing activities are recognized as valid for sentence reduction. Currently, judicial practice only accepts either work or educational activities for this purpose, creating a barrier to the program's broader impact. The challenge lies in ensuring that the practices of Judges of Criminal Execution align with a human rights approach, promoting and supporting both educational and labor activities that ultimately contribute to the processes of rehabilitation and social reintegration.

Reading to reduce sentencing in Bolivia: the program to combat prison overcrowding

The 'Libros por rejas' project offers education and social reintegration alternatives for inmates in a country with severe prison overcrowding.



CANADA

Canadian Human Rights Commission

National Preventive Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment



INTRODUCTION

The Canadian Human Rights Commission (CHRC) is Canada's national human rights institution, accredited with "A" status by GANHRI in 1999, 2006, 2011, 2016, and 2023.

The CHRC was established by Parliament through the Canadian Human Rights Act (CHRA) in 1977, with a broad mandate to promote and protect human rights⁴⁶. The Canadian Constitution divides responsibility for human rights between the federal government and the provincial or territorial governments. Under the CHRA, the CHRC has jurisdiction over federal government departments and agencies, Crown corporations, First Nations governments, and federally regulated private sector organizations. Meanwhile, provincial and territorial governments are responsible for their own human rights codes and regulations within their sectors.

The CHRC promotes and protects human rights by mediating complaints of discrimination, representing public interest in litigation, designing policies, conducting investigations, issuing public statements, and submitting special reports to Parliament. The CHRC also collaborates with the Government of Canada, domestic and international partners, and stakeholders to ensure continued progress in human rights protection, including Canada's obligations under various international human rights treaties.

Additionally, the CHRC holds mandates under the Employment Equity Act, the Accessible Canada Act, the Pay Equity Act, and the National Housing Strategy Act. The

⁴⁶ Available in English at: laws-lois.justice.gc.ca/PDF/H-6.pdf. Although human rights laws in Canada are not part of the Constitution, they are considered "quasi-constitutional," meaning all other laws must be interpreted consistently with human rights legislation.

Commission is also designated as the body in charge of monitoring Canada's implementation of the United Nations Convention on the Rights of Persons with Disabilities (CRPD,) in accordance with Article 33.2 of the Convention.

As part of its commitment to constructive engagement and collaboration with its regional network, RINDHCA. The CHRC is submitting this contribution to RINDHCA's Working Group on the Prevention of Torture and Ill-treatment to assist in the development of the Working Group's compendium of good practices, which will be presented at the 14th GANHRI International Conference in Copenhagen in November 2023.

1. TRANSPARENCY CULTURE IN PLACES OF DETENTION

a. Best Practices: Advocacy

Although Canada announced its intention to ratify the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in 2016, it has yet to fulfill this commitment.

Significant human rights issues continue to affect persons deprived of liberty in Canada. These challenges extend far beyond the prison system and include migrant detainees, persons with disabilities institutionalized in inadequate facilities due to a lack of proper community support, individuals confined in long-term care homes, and children institutionalized through the child welfare system—particularly Indigenous and Black children, who remain overrepresented in this system.

However, Canada's current monitoring and control mechanisms are insufficient. Many detention facilities—or specific aspects of detention within such places—are not subject to independent monitoring, as required by international human rights standards.

The system is predominantly reactive, lacking a robust, coordinated, and proactive monitoring and inspection framework. Stronger and more consistent human rights protections are urgently needed. Every individual, regardless of who or where they are, deserves to be treated with dignity and respect and to enjoy equal protections.

The CHRC believes that ratifying OPCAT would be a critical step for Canada to demonstrate its commitment to achieving positive change. This would help close the significant and persistent gap in human rights protection for various individuals and groups across the country. By doing so, Canada would not only strengthen its human rights safeguards but also affirm its dedication to fulfilling its international human rights obligations.

b. Recommendations / Actions:

To strengthen the protection of the human rights of persons deprived of liberty across Canada, the CHRC has consistently advocated for the ratification of OPCAT without

delay, both internationally and domestically, employing a range of strategies.

The CHRC believes that transparent, independent oversight and accountability mechanisms in all places of detention reduce the risk of abuse and mistreatment, decrease corruption, and restore the dignity and human rights of those in the most vulnerable situations. The CHRC views the ratification of the OPCAT and the subsequent designation of an appropriate NPM as a crucial and necessary step for Canada.

In line with OPCAT requirements, the CHRC has recommended that the selection of an NPM be conducted through an open, transparent, and inclusive process, engaging a broad range of stakeholders and adhering to the Paris Principles. For OPCAT to effectively enhance the protection of human rights for individuals deprived of liberty across Canada, the CHRC has also recommended that its implementation be carefully planned, adequately resourced, and coordinated across jurisdictions and sectors of society. This includes collaboration between the federal government, provinces and territories, human rights commissions, oversight bodies, civil society, Indigenous governments and organizations, and other rights holders.

The CHRC has actively advocated for the ratification of OPCAT in various submissions to international bodies, such as the Committee against Torture⁴⁷, mandate holders⁴⁸, Special Procedures, and the Human Rights Council during Canada's fourth Universal Periodic Review (UPR)⁴⁹. During Canada's previous UPR in 2018, 27 countries recommended that Canada ratify the OPCAT. Through these efforts, the CHRC has highlighted the disproportionate, diverse, and intersectional impacts that deprivation of liberty has on particular groups, including Indigenous peoples, African American and other racialized populations, persons with disabilities, women, youth, 2SLGBTQQIA+ individuals, and people experiencing homelessness.

At the national level, the CHRC has raised these concerns, advocating for OPCAT ratification with federal, provincial, and territorial ministers responsible for human rights⁵⁰. The CHRC has shared its OPCAT advocacy plans during various meetings with key national stakeholders, including the Office of the Correctional Investigator of Canada, an oversight body that independently monitors federal prisons to ensure they remain safe, fair, humane, and effective.

The CHRC continues to share its advocacy with the public through its social media

⁴⁷ Available in English at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fFR%2fCAN%2f45205&Lang=en

⁴⁸ As the Special Rapporteur on the Rights of Indigenous Peoples and the Special Rapporteur on Contemporary Forms of Slavery.

⁴⁹ Available in English at: Presentation before the United Nations Human Rights Council.

⁵⁰ Comments available in English at: Remarks at the 2023 Meeting of Federal, Provincial and Territorial Human Rights Ministers.

channels, particularly on significant awareness days such as Nelson Mandela Day and Justice for Prisoners Day. The CHRC's advocacy efforts and its recommendation in the most recent UPR submission were also highlighted in a reputable Canadian newspaper through an opinion piece by a civil society organization committed to protecting the human rights of incarcerated individuals in Canada⁵¹. This organization expressed its support for the CHRC's call for Canada to ratify OPCAT.

The CHRC's ongoing advocacy work also draws on the expertise of international organizations such as the Association for the Prevention of Torture (APT) and the Subcommittee on Prevention of Torture (SPT.) The CHRC has met with these organizations to seek guidance and advice on advancing its advocacy for OPCAT ratification in Canada.

While it is still too early to see the full results of the CHRC's international and domestic advocacy efforts, the CHRC remains committed to: building momentum and raising awareness of this critical human rights issue; cooperating and engaging in constructive dialogue with relevant bodies; and holding Canada accountable for its commitment to ratify OPCAT.

2. COOPERATION AND CONSTRUCTIVE DIALOGUE

a. Good practices: Collaboration with other supervisory bodies

In Canada, the CHRC does not have a formal oversight function granting free access to detention facilities, except when conducting formal investigations of complaints. Several oversight bodies carry out this role within Canadian correctional facilities, and the CHRC actively collaborates with one of them: the Office of the Correctional Investigator (OCI,) which serves as the national oversight body for federal correctional facilities. The OCI, under federal prison law, is empowered to enter and inspect any detention center, initiate investigations, and address systemic issues. While engagement with the OCI is ongoing, our organizations also collaborate on strategic projects to highlight specific areas of concern, such as the CHRC's advocacy for Canada's ratification of OPCAT.

b. Recommendations / Actions:

In 2018, the CHRC and the OCI collaborated on research into the experiences of older persons in prison, which resulted in the publication of a joint report entitled *Aging and Dying in Prison* (2019.)⁵² The report identifies elderly individuals in federal custody as a vulnerable population within the broader prison system, whose health, safety, and dignity are not being adequately protected. The joint research culminated in 16

⁵¹. Available in English at: Opinion: Canadian prisons need international oversight to prevent human rights violations - The Globe and Mail.

⁵² Available in English at: GROWING OLD AND DYING IN PRISON.

recommendations addressing a wide range of issues affecting older individuals in prison. As stated in the resulting report,

"Collaboration between the two organizations was essential to better understand how best to ensure public safety while respecting and protecting the unique needs, dignity and rights of older individuals in federal custody. The two organizations are uniquely positioned to assess the vulnerabilities of this segment of the prison population and identify areas where changes in organizational policy and practice are required. Staff from both organizations worked in close collaboration conducting interviews, reviewing literature and data, and the developing of joint findings and recommendations.

Partnerships such as this are important examples of how independent agencies, such as the Office and the Commission, can bring expertise and different perspectives together to examine an issue, report on findings and make informed recommendations that stem from collaboration, insight, access and expertise⁵³."

The report was published on both organizations' websites and attracted public attention through media coverage and strategic communication initiatives. The publication prompted the federal prison service to respond to each of the recommendations and outline its commitments to address the needs of this particularly vulnerable segment of the inmate population. This collaborative effort has contributed significantly to enhancing transparency and public accountability regarding the existing and planned commitments undertaken to improve conditions for elderly inmates.

Both organizations have leveraged the findings of this investigation and report to strengthen their ongoing advocacy and reporting efforts, both nationally and internationally. This includes the CHRC's recent submissions to the United Nations Human Rights Committee⁵⁴ and the Committee Against Torture⁵⁵. The report also provides a critical foundation for advancing the rights of senior inmates by advocating for systemic human rights remedies and representing the public interest in the complaint process under the Canadian Human Rights Act (CHRA.) This work encompasses a broad spectrum of intersecting human rights issues related to the vulnerability of older detainees, such as the need for accessible living conditions, tailored programs and services, and timely, adequate medical care, among other pressing concerns.

c. Good Practices: Dialogue and collaboration with Parliament, CSOs and the State

The CHRC has long been advocating for the rights of 2SLGBTIQ+ inmates, engaging in

⁵³ Ibid at pages 5-6.

⁵⁴ Available in English at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fIFR%2fCAN%2f44824&Lang=en

⁵⁵ Available in English at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fIFR%2fCAN%2f45205&Lang=en

dialogue and collaboration with Parliament, civil society organizations (CSOs,) and relevant state departments.

The addition of "gender identity or expression" to the list of prohibited grounds for discrimination in the Canadian Human Rights Act (CHRA) in 2017 provided explicit legal recognition of the rights of trans and gender-diverse individuals in prison. This became a crucial foundation for continuing efforts to protect this vulnerable group from rights violations in federal correctional institutions. Trans, non-binary, and gender-diverse individuals have historically been one of the most vulnerable populations in a prison system built around a rigid and limiting male-female binary framework. Trans and non-binary inmates often endure some of the harshest conditions in Canadian prisons, as they are frequently housed in facilities that do not align with their gender identity, face harassment, and lack access to services and facilities that meet their specific needs. They are also exposed to threats and violence. While stories of harassment, discrimination, and mistreatment have emerged, thanks to the brave individuals who have spoken out, many trans and non-binary persons remain silent. This is largely due to fear of retaliation from staff, violence from other inmates, and the risk of being forced to reveal their gender identity in a hostile, controlled environment that governs every aspect of their lives.

Recommendations / Actions:

1. In June 2017, the CHRC appeared before a parliamentary⁵⁶ committee studying the rights of trans prisoners as part of a broader Senate review of federally sentenced prisoners. The CHRC's testimony underscored concerns shared by various experts, advocates, and rights holders, emphasizing the importance of legislators hearing from those with lived experiences. The CHRC's insights were cited extensively in the Committee's 2019 interim report⁵⁷ and its 2021 final report⁵⁸, especially regarding the treatment of trans inmates.
2. Prior to these important appearances to provide evidence and advice to legislators, the CHRC engaged in formal and informal discussions with various groups to gather feedback and share perspectives on promoting the human rights of vulnerable prison populations. To support the study, the CHRC provided the Committee with recommendations and a report based on roundtable discussions with trans and gender-diverse persons from across Canada, input from an expert focus group, legal research papers, and ongoing engagement with stakeholders.
3. Another important avenue for advancing human rights has been dialogue and

⁵⁶ Available in English at: Senate Standing Committee on Human Rights (42nd Parliament, 1st Session)

⁵⁷ Available in English at: Study on the human rights of persons sentenced to federal sentences.

⁵⁸ Available in English at: https://sencanada.ca/content/sen/committee/432/RIDR/reports/2021-06-16_FederallySentenced_e.pdf.

collaboration with civil society and key government departments, such as Prisoner Legal Services (PLS,) a non-profit legal support organization, and the Correctional Service of Canada (CSC.) This collaboration arose in part due to frustrations with the complaint system under the CHRA, where several discrimination complaints filed by trans inmates rarely led to judicial resolutions.⁵⁹ In response, the CHRC and PLS coordinated efforts to change policy and improve the recognition and protection of trans and gender-diverse inmates, engaging directly with the CSC.

As noted in a joint press release in January 2018, a multi-year collaboration between the CSC, CHRC, and PLS resulted in key policy changes regarding how trans, non-binary, and gender-diverse individuals are housed in federal prisons across Canada.

"In the context of its daily operations, the CSC committed to providing ongoing education and awareness for staff and inmates, ensuring the health, safety, and dignity of all. As a result of the collaboration, new CSC operating practices include:

- Placement of [a person] in a male or female facility in accordance with his or her gender identity, if preferred, regardless of anatomy or the sex listed on identity documents, unless there are compelling health or safety concerns that cannot be resolved.
- Use of preferred name and pronouns in all verbal interactions and written documentation.
- Access [of inmates] to purchasing authorized items from CSC catalogs for men or women, based on their preference, provided there are no health, safety, or security concerns tied to the institution's security level.
- Establishment of measures to maximize privacy and confidentiality regarding [a person's] gender identity. This information is only shared with those directly involved in a person's care and only when relevant.
 - Provide Individualized protocols [for inmates] seeking to be accommodated on the basis of their gender identity or expression, to ensure the safety, privacy, and dignity of individuals when accessing shower and toilet facilities.
 - the choice of male or female personnel for strip searches, urinalysis and camera surveillance⁶⁰."

⁵⁹ See: WCPJS files human rights complaint on behalf of transgender prisoners.

⁶⁰ Cited from a joint press release available in English at: Changes to the way transgender offenders are accommodated in Canada's federal prison system.

Building on this work, in 2022, after further consultation with the CHRC and other stakeholders, the CSC introduced a new Directive "to guide procedural changes. This directive underscores the CSC's commitment to meeting the needs of its gender-diverse offender population, ensuring their human rights are respected and safeguarding their dignity and safety, as well as that of others within institutions and the community⁶¹."

The CHRC continues its efforts to hold the CSC accountable, advocating for the recognition of gender rights and the protection of trans, non-binary, and gender-diverse individuals in prison.

3. PROTECTION OF PERSONS DEPRIVED OF LIBERTY

a. Good practices: Advisory role

The CSC oversees prisons nationwide, managing sentences longer than two years. Prison operations and administration follow a national set of policies that govern all aspects of an individual's experience both in prison and while on parole.

While, over the years, some progress has been made in the state's recognition of the fundamental rights of inmates, there is still significant work to be done to ensure the rights of equity-deserving groups are fully realized and respected within Canadian prisons. In this context, the CHRC has positioned itself as a leading advocate for advancing human rights, striving to improve prison conditions and drive organizational culture change at all levels of the CSC.

Recommendations / Actions:

The CHRC's advisory work plays a crucial role in advocating for and promoting a human rights-based approach to prison practices. The CHRC regularly submits written proposals during the CSC's review process of existing national policies or the creation of new ones.

These proposals focus on the direct and indirect impact of policies on the human rights of persons deprived of liberty, identifying areas of concern, suggesting the inclusion of human rights principles, and making recommendations from a rights-based perspective. Additionally, the CHRC consistently urges the CSC to publish all its operational policies on its website to enhance transparency and encourage public scrutiny.

A recurring theme in the CHRC's advisory work is the recommendation to expand training and education for both prison staff and inmates on current and emerging human rights issues affecting persons deprived of liberty.

This advisory work has positioned the CHRC as a trusted source of human rights

⁶¹ See in English: Commissioner's directive 100: Gender diverse offenders

guidance for federal departments, including the CSC, largely due to its evidence-based recommendations and collaborations with various partners.

b. Good practices: Representing the public interest

The CHRC is mandated to protect the basic principle of equal opportunity and promote the vision of an inclusive society free from discrimination.

A fundamental part of this mandate is to represent the public interest in promoting the human rights of all Canadians. The CHRC achieves this in a variety of ways, most notably through its involvement in litigating complaints before the Canadian Human Rights Tribunal (the Tribunal) and in appearances before Parliament.

At the Tribunal, the process of resolving individual complaints of discrimination allows for the identification and examination of how systemic discrimination operates within Canada's structures, institutions, and attitudes. The CHRC's enabling legislation—the Canadian Human Rights Act (CHRA)—gives it the legal authority and the obligation to play this important role in promoting and protecting the human rights of people living in Canada.

As the country's national human rights institution, the CHRC also plays a crucial role in advocating for legislative changes that safeguard human rights, particularly for society's vulnerable groups such as persons deprived of their liberty. The interests, needs, and rights of incarcerated individuals are often overlooked in the discussions and debates involved in the Canadian legislative process. The CHRC works to amplify the voices of experts, rights holders, and their representatives as laws are debated and considered.

Recommendations / Actions:

1. In litigation before the Tribunal, the CHRC participates by appearing before the Court, presenting evidence, and making statements that it considers to be in the public interest, based on the nature of the complaint. Each case requires a degree of CHRC involvement proportional to its level of public interest. Occasionally, the work involves collaboration with organizations that file representative complaints under the CHRA, assist plaintiffs, or bring valuable expertise to specific issues.

The CHRC's public interest representation seeks solutions to address systemic areas of concern. To achieve this, the CHRC may engage expert witnesses, present documentary evidence, and craft legal arguments that advance the human rights issues at the heart of the complaint.

The CHRC's efforts have led to significant advances in prison policy, particularly for groups that have historically faced inequities due to unrecognized rights and needs—such as women, trans and gender-diverse individuals, Indigenous peoples, Black and racialized prisoners, and persons with disabilities, particularly those experiencing

multiple forms of discrimination based on intersecting identities.

2. The CHRC also advocates for legislative changes to improve the conditions of persons deprived of liberty, particularly those within the most vulnerable segments of the prison population.

The CHRC may be called upon to appear before parliamentary committees considering proposed legislative amendments, or it may request to appear when it believes the issues at stake are of significant importance to human rights in Canada. In addition to, or in lieu of, appearing in person before a parliamentary committee, the CHRC may submit written testimony to highlight relevant human rights considerations in the legislative initiatives under discussion.

An example of the CHRC's work related to the prevention of torture and ill-treatment is its contribution to the review of proposed updates to the law governing Canada's federal prison system. In May 2019, the CHRC Chief Commissioner appeared before the Standing Committee on Social Affairs, Science, and Technology to provide input on Bill C-83, An Act to Amend the Corrections and Conditional Release Act and another Act⁶². This bill aimed to initiate a review by the Correctional Service of Canada of the use of solitary confinement, officially referred to as administrative segregation.

Although the CHRC's recommendations were not fully reflected in amendments to the existing law, the CHRC remains committed to advocating for substantial changes to end practices that conflict with the Mandela Rules. This ongoing advocacy includes submitting recommendations to international bodies such as the Committee against Torture⁶³.

⁶² See in English: An Act to Amend the Corrections and Conditional Release Act and another Act.

⁶³ Available in English at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fFR%2fCAN%2f45205&Lang=en.

COLOMBIA

Ombudsperson's Office of Colombia

National Preventive Mechanism for the Prevention of Torture
other Cruel, Inhuman or Degrading Treatment or Punishment
Ombudsperson's Office of Colombia



INTRODUCTION

First of all, the Ombudsperson's Office of Colombia expresses its gratitude to RINDHCA for the kind invitation to participate in this significant space for dialogue, which will enable National Human Rights Institutions (NHRIs) to share their experiences, thereby strengthening mechanisms for protection and the fight against torture and other cruel, inhuman, or degrading treatment or punishment.

In presenting this overview on good practices, the Ombudsperson's Office will outline the institutional work and collaboration with other national entities that led to the implementation (2015) and subsequent monitoring of the National Complaints Mechanism against Acts of Torture in places of detention.

This work has allowed this NHRI to position itself as a leader in the prevention and differential attention to cases of torture, despite the fact that the Colombian State has not formally ratified the Optional Protocol against Torture.

1. BACKGROUND

- Through Law 70 of 1987, Colombia ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which had been adopted by Resolution 39/46 (1984) of the United Nations General Assembly.
- This international instrument, alongside the eventual ratification and implementation of the Optional Protocol, represents a critical mechanism for combatting acts of torture by urging states to adopt legislative, administrative, and judicial measures aimed at preventing such acts and ensuring complaints are addressed by competent authorities.

- As part of its constitutional mission to protect, promote, and disseminate human rights, the Ombudsperson's Office routinely conducts visits to verify the detention conditions of persons deprived of liberty (PDLs) across the country's various detention centers. Through these visits, the Ombudsperson's Office has identified an institutionalized pattern of torture, cruel, inhuman, and degrading treatment in these facilities.
- Consequently, this body has persistently urged the National Government to ratify the Optional Protocol, highlighting the need for strengthened independent and external oversight measures to prevent and reduce acts of torture in detention centers.
- On November 12, 2022, the Ombudsperson's Office formally requested that the Colombian Foreign Ministry urgently initiate the procedures for signing and ratifying the Optional Protocol, ensuring that its application would be adapted to the national context. This would further enhance independent and external oversight mechanisms.
- Following persistent advocacy by the Ombudsperson's Office and other specialized NGOs, the Ministry of Justice and Law and the Ministry of Foreign Affairs submitted Bill N° 276 on February 8, 2023, initiating the process to ratify the Optional Protocol against Torture.

2. DESIGN AND IMPLEMENTATION OF THE NATIONAL PREVENTIVE MECHANISM FOR DENOUNCING ACTS OF TORTURE IN PLACES OF DETENTION IN COLOMBIA LED BY THE OMBUDSPERSON'S OFFICE OF COLOMBIA

- It was identified that institutionalized practices included: (i) prolonged and arbitrary confinement in conditions and spaces that violate human dignity, (ii) inappropriate use of force by INPEC's custody and surveillance corps, (iii) indiscriminate use of pepper spray in enclosed spaces, and (iv) institutional blockages that prevented complaints from reaching control entities and other competent authorities.
- In response, the Ombudsperson's Office accepted recommendation N° 21 from the concluding observations on the fifth periodic report of the Committee against Torture regarding "Complaint and Inquiry Mechanisms. Impunity." Although this recommendation was addressed to the National Government and the Protocol had not been ratified, the Ombudsperson's Office acted upon it by creating the National Complaints Mechanism against Acts of Torture within its institution.
- This mechanism is defined as an inter-agency and differential instrument

designed to bring visibility to complaints of potential acts of torture against persons deprived of liberty (PDLs) and ensure that these are brought to the attention of competent authorities.

– Its operation requires coordination and collaboration among various entities, each playing a specific role in phases that begin with the receipt of the complaint and continue with supporting the victims of such crimes. The entities that comprise it are:

- Ombudsperson's Office
- Ministry of Justice and Law
- National Correctional and Prison Institute (INPEC, in Spanish)
- National Attorney General's Office (FGN, in Spanish)
- National Institute of Legal Medicine and Forensic Sciences (INMLCF, in Spanish)
- National Solicitor's Office (PGN, in Spanish)

It's main objectives are:

- Recognizing and making visible the practice of torture in the country's prisons.
- Establishing an effective complaint channel for persons deprived of liberty who believe they have been subjected to torture.
- Preventing the occurrence of these behaviors, generating a culture of zero ill-treatment among INPEC and National Police officers towards the population deprived of liberty.
- Generating a culture of zero tolerance and impunity towards acts of torture.

3. GOOD PRACTICES OF THE NATIONAL MECHANISM FOR COMPLAINTS AGAINST ACTS OF TORTURE OF THE OMBUDSPERSON'S OFFICE:

a) Training-Focused Prevention:

The Colombian Ombudsperson's Office developed a series of training workshops to foster a culture of zero tolerance towards acts of torture, focusing on the conceptual and legal aspects of torture through a human rights lens. These workshops introduce international instruments, such as the Convention against Torture, and other relevant

frameworks.

These trainings contribute to the advancement of human rights education by equipping public servants with the knowledge and understanding necessary to act appropriately and assertively, thereby preventing serious violations in the course of their duties related to the custody and surveillance of persons deprived of liberty (PDL.)

Since the implementation of the National Complaints Mechanism against Acts of Torture, the Ombudsperson's Office has focused on training INPEC staff, National Police officers, and PDLs. The following figures show the relevant impact of these conferences:

- INPEC personnel: 1,154
- Persons deprived of liberty: 624



The COVID-19 pandemic led to the temporary closure of INPEC-managed detention centers, worsening overcrowding in temporary detention facilities. In response, the Ombudsperson's Office expanded its efforts in 2022 to include police units tasked with the custody of PDLs, further extending the reach of its prevention and training initiatives.

- National Police officers.
- A total of 580 police units were trained in Bogotá, Cali, Ibagué, Espinal, Cúcuta, Pereira, and Barranquilla.



The mechanism was initially designed for implementation in the National Order Detention Facilities (ERON, in Spanish.) However, due to the increasing overcrowding in temporary detention centers such as police stations and immediate reaction units, the Ombudsperson's Office extended the implementation of this mechanism to police units where alleged acts of torture against the incarcerated population have been reported, whether caused by uniformed personnel or by PDLs themselves.

In response, the Ombudsperson Delegate for Criminal and Prison Policy activated the mechanism, coordinating with the National Institute of Legal Medicine and Forensic Sciences.

On the other hand, with the aim of influencing crime prevention efforts, the Delegate Ombudsperson's Office for Criminal and Prison Policy has been conducting training sessions for members of the Metropolitan Police Commands across the country since February 2023. These personnel were selected based on their frequent interaction with PDLs in temporary detention centers.



The training workshops focus on the conceptual and legal aspects of torture, utilizing a human rights framework, and presenting relevant international instruments such as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. They also cover the crime of torture within Colombia's legal system, outlining the criminal, disciplinary, and administrative consequences for public servants involved in such conduct.

These trainings contribute to the advancement of human rights education by equipping public servants with the knowledge and understanding necessary to act appropriately and assertively, thereby preventing serious violations in policing.

The Ombudsperson's Office emphasizes the National Police's role in facilitating these national training sessions, which are positively contributing to its institutional transformation.

Notably, in 2023, around 400 officers of the Colombian National Police were trained in cities including Armenia, Pasto, Bucaramanga, Cali, Cartagena, Medellín, Villavicencio, Riohacha, and Cúcuta.

b) Reception and effective transfer of cases:

Since the implementation of this mechanism, the Ombudsperson's Office has received and transferred 37 complaints from persons deprived of liberty in various detention centers across the country to the competent judicial authorities.

The conclusions are as follows:

- Stories compatible with acts of torture: 30
- Stories not compatible with acts of torture: 1
- Stories compatible with personal injury: 6

4. DIFFICULTIES AND CHALLENGES

- Shortcomings in the collection of material evidence: In all the cases studied, it was observed that investigations rely almost exclusively on the results of the medical-legal assessments based on the Istanbul Protocol. Both the Prosecutor's Office and the Attorney General's Office fail to take urgent actions to preserve and collect other crucial evidence that could provide a comprehensive understanding of the circumstances, time, manner, and location surrounding the alleged crime of torture. This is largely due to institutional blockages described earlier.
- Well-founded fear of victims deprived of their liberty: In dialogues with alleged victims of torture, it became evident that specialized psychological and medical care is inadequate compared to the severe impact caused by such crimes. Victims expressed a legitimate and understandable fear of reprisals and constant harassment by INPEC personnel towards those who report these incidents. This leads to a unique situation where victims are forced to live in constant proximity to their alleged perpetrators—a situation not commonly observed in other contexts of torture.
- Specific knowledge of the judicial authorities in charge of investigating and adjudicating these cases: It is essential for the Attorney General's Office and judges to understand the context and realities of detention centers in order to effectively advance investigations into alleged acts of torture occurring in environments closed to public oversight. There is also a clear difficulty in collecting material evidence, making it absolutely necessary to safeguard and protect the victim.
- Establishment of a bill to ratify the Optional Protocol against Torture. Finally, the Ombudsperson's Office acknowledges the Colombian State's determined efforts to prevent and address acts of torture in the country's prisons. However, it also recognizes the delays in the legislative and administrative processes needed for full compliance with international standards. The Ombudsperson's Office strongly urges all competent authorities to continue in their dedicated fight against torture within the prison system.

COSTA RICA

Ombudsperson's Office of the Republic of Costa Rica

National Preventive Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment



INTRODUCTION

1. MAXIMUM DECONCENTRATION: A LEGAL MECHANISM TO ENSURE THE INDEPENDENCE OF THE NPM WITHIN THE NATIONAL HUMAN RIGHTS INSTITUTION (NHRI)

Upon ratifying the OPCAT, Costa Rica committed to establishing a National Preventive Mechanism (NPM) as mandated by Article 17 of this International Convention. In response to this obligation, in 2007, an Executive Decree (now repealed) was issued, delegating the Ombudsperson's Office of the Republic the role of NPM. Operations commenced on January 19, 2009, as a unit within the NHRI.

Costa Rica identified the need to strengthen the mandate of the NPM, paying particular attention to Article 18, paragraphs 1 and 4 of the Optional Protocol, which states that countries must ensure the functional independence of NPMs and their staff, adhering to the Paris Principles:

"The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel (...)

In establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights."

The standards set forth in the Third Annual Report of the Subcommittee on Prevention of Torture (SPT,) particularly in point 51 concerning the independence of NPMs, were also highly relevant, where it was noted:

"In cases where already existing institutions, such as an Ombudsperson's Office or a national human rights institution, are designated as national preventive mechanisms, there must be a clear distinction between these

institutions, which generally respond to specific incidents, and national preventive mechanisms, which have preventive tasks. In these cases, the mechanism must be established as a separate unit or department with its own staff and budget."

The SPT made this observation because the heads of human rights institutions (Ombudsperson's Offices) are often appointed by the Legislative Branch, and in many cases, the appointments are made based on political rather than technical criteria. As a result, NPMs risk becoming politicized and losing their independence.

In line with the provisions of the Optional Protocol to the Convention against Torture, the Paris Principles, and the Subcommittee for the Prevention of Torture, Law No. 9204 was enacted in 2014. This law, known as the "Law Creating the National Preventive Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," sets out the structure and mandate of the NPM. Article 1 of the law states as follows:

The National Preventive Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is created, as established in the Optional Protocol to the Convention against Torture (...)

In regard to its mandate, Law No. 9204 provides important powers to the NPM, including access to all detention facilities in the country, as well as the possibility of interviewing all persons deprived of liberty. It establishes a duty of cooperation by the authorities and their obligation to comply with the NPM's recommendations. It also recognizes the prerogatives and immunities of its staff in accordance with OPCAT, among other aspects.

Article 3 of the law defines the NPM's legal nature, establishing it as Maximum Deconcentration Body. Said article states the following,

The National Preventive Mechanism will have competence throughout the national territory, as a maximum deconcentration body, administratively attached to the Ombudsperson's Office, and with functional and criterion independence.

As a note of clarification regarding the NPM'S legal nature as a Maximum Deconcentration Body, Article 83, paragraph 3) of the General Law of Public Administration, states:

*Deconcentration shall be maximum when the subordinate is exempt from orders, instructions, or notices from the superior.*⁶⁴

⁶⁴ Full text of Article 83 of the General Law of Public Administration, Law 6227: "Article 83

1. Any body other than the hierarchy shall be fully subordinate to the hierarchy and the immediate superior, except where deconcentration is provided for by law or regulation.

2. Minimum deconcentration will be given when the superior is unable to:

a) Revoke the subordinate's competence; and

From this perspective, the NPM is a body that, while integrated into the organizational structure of the Ombudsperson's Office, operates with maximum deconcentration as defined in Article 83 of the General Law of Public Administration. This means that the head of the Ombudsperson's Office does not have the authority to revoke, review, or substitute the actions of the NPM, either ex officio or upon request. Likewise, the head cannot issue orders, instructions, or notices to the Mechanism, which enjoys complete independence in carrying out its functions, in accordance with the provisions of the OPCAT.

Additionally, the administrative assignment of the NPM to the Ombudsperson's Office grants it access to necessary resources such as budget, technology, physical infrastructure, human resources, vehicles, and travel expenses. This provision was clarified in Transitory Provision 1 of the Law for the Creation of the Mechanism, which integrated the NPM's budget into that of the Ombudsperson's Office. The related expenses and needs are coordinated and managed through the Ombudsperson's Office.

This legal framework ensures the NPM's functional independence, allowing for the creation of its own regulations, such as Executive Decree No. 39062-MJP, which outlines its mandate and organization under Law N° 9204. Moreover, the Autonomous Statute on Organization, Appointments, Functions, and Coordination of the NPM was enacted, fulfilling legal obligations regarding the selection process and qualifications of NPM's personnel, as well as defining its coordination with the Ombudsperson's Office.

Maximum deconcentration ensures the NPM has the legal protection necessary to preserve its mandate, along with functional independence to develop its own monitoring systems, inspection methodologies, determine the locations for visits, draft thematic reports, and publish independent recommendations.

2. STANDARDIZATION OF RECORDS AND SAFEGUARDS FOR PERSONS DETAINED AT LAW ENFORCEMENT POLICE STATIONS

The documentary registration of persons detained at police stations is of great importance in preventing mistreatment and torture. Therefore, the NPM has deemed it relevant to observe the use of records by Administrative Police and to ensure compliance with safeguards during the first hours of detention.

As a result, the NPM has systematically conducted inspections at Law Enforcement Police Stations (National Civil Police,) emphasizing the review of the documentary records of detained persons. In its 2019 annual report, the NPM summarized the key findings on this topic:

The Ministry of Public Security (MSP, in Spanish) has been issuing guidelines and

-
- b) Review or replace the conduct of the subordinate, ex officio or at the request of a party.
 - 3. Deconcentration shall be maximum when the subordinate is exempt from orders, instructions, or notices from the superior.
 - 4. The inability to review or substitute the conduct of the subordinate shall imply the presumption of the power to revoke it, and vice versa.
 - 5. The rules establishing minimum deconcentration shall be applied restrictively against the competence of the deconcentrated body, while those establishing maximum deconcentration shall be applied expansively in its favor."

notices regulating the processes of apprehension, transfer, and custody in the cells of Cantonal and District Law Enforcement Police Stations.

It was noted that the record books did not contain information on the main safeguards, especially the records that did not adhere to the guidelines issued by the General Directorate of Law Enforcement.

There were omissions and gaps in the detention processes due to inconsistent compliance with the guidelines across all police stations. As a result, there were no uniform processes for the apprehension and custody of persons. This was because the guidelines were scattered and separate from one another.

The main efforts and advances on this matter are summarized in Table 1:

Since August 2017, the NPM held its first meeting with senior officials from the Ministry of Public Security, where the issues identified in the documentary records of Police Stations were systematically presented. This was positively received since it was considered a constructive proposal.

Subsequently, through official communication MNPT-073-2017 on August 30, 2017, addressed to the Sub-Directorate of Law Enforcement and the Legal Support Directorate of the Ministry of Public Security, the possibility of creating a single document (a protocol) that would compile the notices issued by this Directorate was presented. It would also include safeguards during the detention and custody processes in the detention cells.

During the inspections conducted in 2018, it was verified that these omissions were recurrent. Therefore, it was deemed necessary to establish a dialogue table with the General Directorate of Law Enforcement to highlight this issue, as the lack of clarity in the detention processes could lead to inhuman and degrading treatment or even torture.

The NPM convened a second dialogue table on November 20, 2018, where the need for this protocol was once again expressed, as it had been sidelined during the previous administration. At that meeting, the legal advisory team reported that the draft protocol had already been prepared, highlighting the following points:

1. The need for a single document (manual, protocol, regulation) on the processes of apprehension, transfer, and custody of detained persons.
2. The NPM considered it necessary for the authorities of the Ministry of Public Security to focus on the creation of a single document that would establish the legal guidelines for the acts of apprehension until the person is either released or transferred to judicial authorities. In this way, the rights guarantees for detained persons, as well as the safeguards for both the detained persons and the authorities, can be established.

Subsequently, the General Directorate of Law Enforcement submitted the draft document titled "Protocol for Handling, Transporting, and Treating Apprehended Persons in the Cells of Police Stations" to the NPM for review and observations.

70 The NPM made various observations on the document, and within this protocol, it was proposed to create a "Detainee Control Record," which incorporated important elements.

This was based on the fact that record books are one of the most essential controls in detention facilities. The NPM also requested the collaboration of the Association for the Prevention of Torture (APT,) to whom the draft protocol was sent. Feedback received from APT aligned with some of the NPM's recommendations.

Among the final observations, it was noted that records must be designed with key safeguards in mind, such as the reading of rights, health status and healthcare, the right to notify third parties about their detention, access to a lawyer to ensure their appearance before a judge as quickly as possible, safeguarding of personal belongings, provision of food, access to personal hygiene, recording the date and time of entry and exit from the police stations, listing personal belongings, among others.

In April 2019, the General Directorate of the Law Enforcement officially published the "*Protocol for Handling, Transporting, and Treating Apprehended Persons*," attaching the "Detainee Control Record" for the apprehended persons' logbook, with sections to input the relevant information.

After its approval and notification to all police stations nationwide, the NPM deemed it necessary to develop a second phase to monitor the protocol's implementation process, which can be summarized as follows:

a) Monitoring: Verify whether Law Enforcement personnel are familiar with the protocol and are applying the Detainee Control Record in Police Stations.

b) Posters: Design posters identifying the safeguards for detained persons during the first hours of detention and place them in the inspected police stations.

c) Training: Provide training to Law Enforcement officers on safeguards and the application of the protocol. A specific module was created to address these topics, which also includes Municipal Police.

For the NPM, the collaboration process in creating this *Protocol for Handling, Transporting, and Treating Apprehended Persons* has facilitated several elements:

1. The standardization of the processes for registering and documenting detained persons across all Police Stations in the country, as a single tool is used nationwide.
2. It facilitates the monitoring of safeguards' application during the first hours of detention for detained persons, providing greater legal certainty to the detention processes.
3. It aids in identifying the length of time detainees are held in police cells and in ensuring compliance with national standards regarding detention periods before being presented to judicial authorities.
4. The protocol also establishes a series of national standards for the construction of cells for detainees, which can also be verified on-site.

In summary, after its publication in 2019, the NPM has systematically monitored the application of these standards in all inspected police stations across the country. As the

protocol is standardized by the police force itself, it allows for immediate compliance with recommendations regarding the implementation, record-keeping, safeguards, and material conditions by police authorities.



CONTROL REPORT OF PERSONS DETAINED AT POLICE STATIONS

N°
Year

Personal Data

Name and Surnames:

| | | | | |
|-----------------------------|---------------|--------------|--------------------------|----------------------------|
| Costa Rican | Identity Card | None Foreign | Resident | Irregular Migratory Status |
| Document N° | Date of Birth | Alias: | | |
| Male | Female | BGLTI | Age Minor | Older Person |
| Language: Spanish | English | Other: | Translator required: Yes | No |
| Profession or trade: | | | | |
| Address: Province | | Canton | District | |
| Signing | | | | |
| Description of belongings: | | | | |

Legal Status

| | | | | |
|---|----------------------------|-------------------------------|-----------------------|-----------------|
| Apprehended by: | Arrest Warrant | Flagrancy Arrest | Warrant Child Support | Document Number |
| Detention date: / /20 | Time: | Rights are read | | |
| Crime: | | Reported to the authority at: | | |
| Victim (s): | | | | |
| Made Phone Call: Yes | N°, Name and relationship: | No | Why? | |
| Apprehended by: | | | | Signature: |
| | | | | Signature: |
| Guard Officer on Duty: | | | | Signature: |
| Signature of the apprehended person upon admission: | | | | |

Health Status

| | | | | |
|---|--------------------|-----------------------|----------------------|--------------|
| Good | Fair | Poor | Specify: | |
| Drunkness | Blood Alcohol Test | Performed by: Transit | Unit | Hospital |
| Visible injuries: Yes | No | Specify | | |
| Requires medical attention, suffers from chronic illness, requires special treatment: | | | | Yes No |
| Health care received: | | | Red Cross Uni | Hospitalized |
| Food provided: Breakfast | Lunch | Dinner | Did not accept food: | Other: |
| Time at which detainee was allowed to use the restroom: | | | | |

Departure of Apprehended Person

| | | | | | |
|---|-------|----------------|-----|--------------|---------|
| Date: / /20 | Time: | Release Order: | Yes | No | Doc N°: |
| Reason for departure: | | | | Destination: | |
| The belongings were returned to detainee: | | | | Yes | No |
| Departure and receipt of belongings: | | | | | |
| Name of apprehended person | | | | Signature | |
| Guard Officer on Duty: | | | | Signature | |

For the exclusive use of the Head Office or Deputy Head Office

(Supervision of the proper use of the Detainee Control Record)

| | | | |
|--------------|--------------------|------------------|-----------|
| Revisiondate | Chief Deputy Chief | Identity card N° | Signature |
|--------------|--------------------|------------------|-----------|

Photo: Detainee Control Report.

3. THE CREATION OF THE "SPECIAL REPORT ON INTRA-PRISON VIOLENCE IN JUVENILE CRIMINAL PROGRAM DETENTION CENTERS" AND ITS PHASES OF IMPLEMENTATION AND MONITORING

During 2013 and 2014, the NPM conducted an investigation with the research question of analyzing the main manifestations of intra-prison violence in the Juvenile Criminal Program Detention Centers, its characteristics and incidence in the dynamics of coexistence within the centers, and determining whether these acts constitute a violation of the right to personal integrity and a potential state responsibility due to tolerance or acquiescence to such practices. This investigation led to the *"Special Report on Intra-prison Violence in Juvenile Criminal Program Detention Centers."*

To achieve this objective, it was deemed necessary to analyze the main factors generating violence in the Juvenile Penal Program Detention Centers, specifically the Zurquí Juvenile Training Center (CFJ, in Spanish,) for minors, and the Young Adult Specialized Attention Center (CAE, in Spanish.) The goals of the investigation were to assess the manifestations of intra-prison violence concerning the human rights that protect persons deprived of liberty (PDLs); analyze the response of prison staff to violent incidents occurring in these juvenile criminal program detention centers; and evaluate a series of administrative and technical measures that could help reduce violence.

The research process took a qualitative approach to the subject matter. Three primary research techniques were used: Documentary review and analysis of personal records, precautionary measures, and technical assistance documentation, among others. Observation of material conditions and coexistence dynamics within the facilities; Semi-structured and in-depth interviews with PDLs and detention center staff, including directors, technical, and administrative personnel.⁶⁵

To operationalize the established research techniques, seven visits were made to the juvenile criminal program detention centers, four to Zurquí CFJ and three to Young Adult CAE. It is worth noting that the study did not focus on the increase in the number of violent incidents, but rather on the worsening of these actions and the types of aggression among the inmates.

One of the most significant challenges at Zurquí CFJ was related to the placement of PDLs in the dormitories and sections, given that there are ten different population categories based on gender, age, and legal status.⁶⁶

Furthermore, there was a need to separate inmates according to their personal profiles and the coexistence problems that arose within the dormitories. This situation caused significant disruption in the Center's dynamics, affecting not only the allocation of

⁶⁵ The interviews conducted with the prison population were private and individual, primarily focusing on individuals known to have been victims of intra-prison violence. It's important to note that special care was taken to minimize the risk of reprisals from other inmates or security personnel against those who agreed to participate. Throughout the visits made as part of this investigation, a total of 38 private interviews were conducted with persons deprived of liberty.

⁶⁶ Persons under 15 years of age, indexed; persons under 15 years of age, sentenced; women under 18 years of age, indexed; women under 18 years of age, sentenced; men under 18 years of age, indexed; men under 18 years old, sentenced; women over 18 years old, indexed; women over 18 years old, sentenced; men over 18 years old, indexed; men over 18 years old, sentenced.

dormitory space but also access to education, recreational outings, and participation in sports. Additionally, it was identified that the prison infrastructure, particularly at Zurquí CFJ, was highly deteriorated in terms of its material conditions and was insufficient to house the number of inmates present. This issue was exacerbated by the wide range of population categories, the limited recreational spaces, and the lack of modules to accommodate particularly problematic individuals, a situation that was also seen at Young Adult CAE. As a result, the report concluded that the infrastructure of the juvenile criminal program detention centers was deficient, insufficient, and limited. Moreover, the capacity of the technical staff to meet the demands of the population deprived of liberty, especially concerning individual and group care processes, as well as the implementation of social reintegration plans, was found to be insufficient. In the juvenile penal program, the socio-educational plan was particularly lacking. Furthermore, the growth of human resources had not kept pace with the increase in the population deprived of liberty.

On the other hand, the shortage of prison police personnel affected the entire institutional dynamic, as security personnel are responsible for ensuring that technical assistance, group processes, educational programs, medical visits, and many other functions can be carried out.

1. Manifestations of intra-prison violence:

The research report includes the results of several cases⁶⁷ that form the foundation of the study's conclusions. Within the prison system, particularly in the sections or dormitories, power groups struggle for control. These groups have leaders who are accompanied by other PDLs and seek to exercise coercive power over the rest of the population, sometimes through physical means and other times psychologically.

Power struggles within detention centers are often related to drug trafficking, use of weapons, internal management of beds and food, and determination of who can participate in recreational and sports activities or receive technical assistance or medical care—that is, who can leave the ward to carry out these activities and who cannot. They also determine who can have personal belongings, and in many cases, these belongings are taken by force. Particularly concerning is the coercion of individuals who are forced to attack others, even when there are no disputes between them.

In general, the following forms of intra-prison violence were identified:

1. Physical assaults using punches, boards, broomsticks, bunk bed slats, and sharp objects (e.g., broken sanitary fixtures, toothbrushes, rods, etc.) These assaults, although sometimes carried out individually, often occur in groups. Many times, the intent is not necessarily to kill the person but to cause harm and assert power.
2. It should be noted that, as a means of asserting power, individuals are often coerced into assaulting others, even when no conflict exists between them. Additionally, some are forced to smuggle drugs by concealing them within their bodies, demonstrating the existence of organized youth groups exercising control

and dominance over their peers.

3. Intimidation tactics such as throwing pieces of burning foam, hot coffee, bottles of water, bottles filled with urine, and buckets of water at others.
4. While individuals are lying down or resting, they are sometimes burned with melted plastic, their clothes are soaked, or newspaper is tied to their feet or waist and set on fire.
5. Some modules engage in a form of initiation called "capuchazo", where a blanket is thrown over a new inmate, who is then repeatedly beaten with punches, kicks, and sticks. Sometimes the aggressors cover their faces to avoid being identified.
6. There have been reports of individuals being tied to their beds to prevent them from attending family visits, forcing them to relieve themselves where they are restrained.
7. In at least two cases, sexual assault was observed as a form of attesting power, occurring even among minors under the age of 15.
8. Self-harm or self-mutilation is one of the most common forms of violence within the juvenile criminal program.

It is important to note that in many cases, the victims of intra-prison violence either could not identify their aggressors or simply stated they had nothing to say, likely as a defense mechanism to avoid retaliation from their peers. It can be assumed that they refrain from speaking as a defense mechanism to avoid retaliation from their peers.

2. Recommendations made:

The special report provided a detailed account of national and international standards and regulations related to the care of minors, persons deprived of liberty in juvenile detention centers, and the specialized training required for prison staff to prevent intra-prison violence.

Based on the findings in the Special Report on Intra-prison Violence in Juvenile Criminal Program Detention Centers, the NPM made the following recommendations to the prison authorities of the Ministry of Justice and Peace:

1. Train a corps of police prison security officers in juvenile criminal matters to ensure that the security staff working in the Juvenile Criminal Program Centers are specialized, in accordance with national and international regulations.
2. Plan and execute a construction, remodeling, and/or refurbishment plan for the Specialized Young Adult Care Center and El Buen Pastor Institutional Program Center, to relocate the young adult population according to their specific needs, reserving the Zurquí Juvenile Training Center exclusively for minors.
3. Enhance the specialization of technical and professional staff in both Detention Centers to provide a comprehensive approach to the population, with particular emphasis on upholding the socio-educational objectives of criminal sanctions for

youth.

4. Create a monitoring system within Detention Centers to identify young persons victims of coercion and/or violence from their peers and those who act as aggressors, in order to ensure their physical integrity and build a healthy coexistence through the comprehensive and interdisciplinary approach that the juvenile prison population must have.

3. Implementation and Monitoring Phase:

This report was duly submitted to prison authorities, who provided a compliance report regarding the recommendations made by the NPM, which were subject to verification and follow-up.

Nevertheless, the NPM considered that to constructively influence compliance with the recommendations, it was necessary to present the findings and recommendations of the report to the staff of both Juvenile Criminal Program Detention Centers.

Therefore, after the report was circulated, a workshop was held with all prison staff at both centers, where the manifestations of violence, relevant legal standards, and the recommendations made by the NPM were explained in detail. This provided an opportunity for dialogue with the staff responsible for the juvenile criminal population, allowing for improvements in compliance with the recommendations made.

In the following years, the NPM continued to monitor the findings and recommendations of this investigation, reiterating the implementation of the initial recommendations on at least two occasions.

To date, the NPM has observed improvements in the dynamics within both facilities, including the construction of new infrastructure and material condition upgrades, and significant efforts have been made to provide specialized training to prison staff on issues related to the care of the juvenile criminal population. Additionally, inter-agency⁶⁸ coordination spaces have been created where the situation of the juvenile criminal population is regularly analyzed, and intervention and care tools are developed.

⁶⁸ Since 2021, a permanent dialogue table has been in place with the participation of the National Mechanism for the Prevention of Torture, prison staff from the Juvenile Criminal Population Care Level, the Juvenile Criminal Execution Prosecutor's Office, the Juvenile Criminal Execution Public Defense, and the Juvenile Criminal Execution Court.

ECUADOR

Ombudsperson's Office of Ecuador

National Preventive Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment



INTRODUCTION

In the case of Ecuador, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (OPCAT) was signed on May 24, 2007. The ratification was carried out through Executive Decree 309 on April 5, 2010, and the ratification document was filed before the United Nations on July 20, 2010. (NPM Report, 2013, p.14)

In 2014, the country received its first visit from the SPT, and in 2022, a second visit took place due to the violent incidents within the National Social Rehabilitation System.

At the national level, Article 215, section 4 of the Constitution of the Republic of Ecuador assigns the Ombudsperson's Office the mandate to prevent and immediately halt torture, cruel, inhuman, and degrading treatment in all forms.

The 2020 Organic Statute on Organizational Process Management of the Ombudsperson's Office, in Article 9, defines the Management of the National Preventive Mechanism for the Prevention of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (NPM) within its institutional structure. The NPM's mission is to:

"Lead, plan, and execute actions to prevent torture and other cruel, inhuman, or degrading treatment in places of detention, both public and private, through strategies such as periodic visits, recommendations to competent authorities, proposals or observations on regulations or public policies, legal actions, and dissemination of its mandate, to improve the treatment of persons deprived of liberty, the conditions of their internment, and, where applicable, promote the full

restoration of their rights."

Despite the ratification of the Optional Protocol in 2010 and existing internal regulations, the NPM has faced challenges in gaining full recognition from other state institutions and civil society. Nevertheless, since its establishment, it has actively carried out preventive work within the framework of its competencies.

Ecuador's NPM has been conducting visits to various places of detention since 2013. To facilitate these visits, it has developed information collection forms tailored to the specific characteristics of each center being visited.

A good practice involves utilizing materials developed by the Association for the Prevention of Torture (APT,) such as the publication "Monitoring Places of Detention: A Practical Guide." This resource has been instrumental in addressing issues related to information collection in files and the structuring of reports by place of detention or on an annual basis.

The guide covers essential topics such as treatment, protective measures, material conditions, activity regimes, and health. Additional topics have been incorporated, including general information about the center, administrative and infrastructure conditions. Depending on the circumstances, specific items related to certain situations have also been included, such as COVID-19 interventions, risk intervention plans, death registries, self-care issues, and other relevant aspects.

These forms serve as both a guide and a key tool in ensuring transparency and providing the basis for the reports generated from visits to detention facilities.

They are adapted according to the type of facility visited. For example, Ecuador's NPM has developed forms for visiting shelters for children and adolescents, persons with disabilities, older persons, police and military training schools, centers for juvenile offenders, Specialized Centers for the Treatment of Alcohol and Drug Addiction (CETAD, in Spanish,) and psychiatric hospitals. The majority of its work, however, has focused on criminal detention centers.

To gather comprehensive information, the NPM triangulates data through interviews with various actors in places of detention, including facility directors, coordinators, legal representatives, staff, permanent personnel, persons deprived of liberty, and their families.

Another notable practice involves the publication of reports on the Ombudsperson's Office website, with reports from 2013 to 2020 available⁶⁹. In 2021, due to the pandemic, visitations were limited, leading to the publication of two key reports: the Follow-up

Report on the Implementation of the State of Emergency in the National Social Rehabilitation System and the Monitoring Report on Compliance with the Follow-up Phase Order N° 4-20-EE/21 and Consolidated, Case N° 4-20-EE and 6-20EE, as requested by the Constitutional Court of Ecuador.

In reference to the Follow-up Report on the Implementation of the State of Emergency in the National Social Rehabilitation System, the Court directed the Ombudsperson's Office to monitor the implementation of the measures ordered by the President of the Republic through Executive Decree N° 210, dated September 29, 2021, regarding the mobilization and involvement of the Armed Forces in the security control of Detention Centers⁷⁰.

Although the NPM's main role is preventive, its responsibilities extend beyond simple oversight due to the tutelary powers granted by the Organic Statute and the unit's limited personnel. A notable practice was developed through the coordination of the National Directorate of the National Preventive Mechanism for the Prevention of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and the provincial delegations of the Ombudsperson's Office. Together, they prepared a monitoring guide and conducted on-site visits to 18 detention centers across the country. These visits aimed to follow up on the implementation of the measures ordered by the President of the Republic through Executive Decree N° 210, dated September 29, 2021:

"... continuing to monitor the state of the rights of persons deprived of liberty in the centers that make up the National Social Rehabilitation System in the country, as well as overseeing the process of designing, approving, and implementing the public policy on social rehabilitation. This should be reported to the Court quarterly, along with the information submitted during the follow-up phase to comply with Judgment N° 1-13-SAN-CC⁷¹, issued in Case N° 14-12-AN."

As of August 2023, the Ombudsperson's Office continues this monitoring report, driven by the ongoing challenges in the National Social Rehabilitation System (NSRS.)

1. PROTECTION OF PERSONS DEPRIVED OF LIBERTY

The practices developed by the NPM in this area are framed within the following actions:

Participation in the process of public policy development, providing information for diagnosis and care components; involvement in regulations, contributions to the Regulations of the National Social Rehabilitation System (RNSRS,) a complaints

⁷⁰ Constitutional Court of Ecuador, Control de constitucionalidad del Dictamen 5-21-EE/21, <https://www.cor-teconstitucional.gob.ec/control-de-constitucionalidad-del-dictamen-5-21-ee-21/>.

⁷¹ Constitutional Court of Ecuador, Judgment N° 001-13-SAN-CC, [The Court verified compliance with sentence N° 001-13-SAN-CC, in which it declared the failure of the directors of the Social Rehabilitation Centers to open individual files on the admission of persons deprived of liberty.](#)

protocol, proposal for a protocol to prevent invasive searches of children and adolescents, the inter-agency protocol for handling human rights violations in facilities offering treatment of alcohol and drug addiction (ESTAD, in Spanish,) or in clandestine facilities that hold people with or against their will, functioning as rehabilitation centers or others of a similar nature; and contributions to the reform project of the Comprehensive Organic Criminal Code (COIP, in Spanish) and the project of the Code on Childhood and Adolescence regarding the care of adolescents in conflict with the law.

Contributions regarding the monitoring of protests for the Truth Commission reports, recording issues in the application of safeguards during the first hours of detention and conditions; contributions for the issuance of the "Guide for Action of the Ombudsperson's Office of Ecuador in Social Protest Contexts."

Once the NPM assumed its protective role, it continued issuing alerts regarding violations of the rights of persons deprived of liberty (PDL.) These alerts addressed critical issues, including health risks, sexual violence against female PDLs and LGBTIQ+ individuals, concerns related to food, specialized care for the children of PDLs, the situation of adolescents in conflict with the law, monitoring of dependents, and care requests from the relatives of PDLs who died in violent circumstances. The NPM sent reports to the Constitutional Court on the compliance of NSRS rulings, submitted amicus curiae briefs in cases concerning NSRS public policy, and raised concerns about mistreatment. Protective actions were filed to safeguard the right to life and health of PDLs, which helped facilitate the provision of care and vaccination within detention centers during the COVID-19 pandemic. Addressing the lack of multidisciplinary and occupational risk conditions of personnel.

Filing of information in the Habeas Corpus action N° 17295-2018-00255, in which the Ombudsperson's Office of Ecuador was ordered to follow up on the fulfillment of the sentence. It should be noted that in that ruling, among other aspects, the following was ordered: The Ministry of Justice must, within a maximum of 90 days, develop and execute a plan establishing a special regime for PDLs detained due to child support debts (MJDHC, in Spanish.) The NPM emphasized the lack of separation between PDLs involved in criminal activities and those detained for civil matters.

Furthermore, within the mandates given to the Ombudsperson's Office, the Imbabura Provincial Delegation provided information on the conditions of deprivation of liberty in response to a judicial ruling issued by the Multicompent Chamber of the Provincial Court of Justice of Imbabura in Habeas Corpus case N° 10103-2019-00029.

As amicus curiae, the NPM has offered information on prison conditions in protection action N° 17297-2021-00409, with a request for precautionary measures presented before the Quitumbe Judicial Unit by INREDH and the Legal Clinic of the Pontifical Catholic University of Ecuador (PUCE, in Spanish.) The judge partially upheld the claim regarding the direct violation of the right to prison security for PDLs, citing the

unconstitutional conditions of prison policy by the accused entities. In addition, in the selection of sentences for Case N° 365-18-JH, 278-19-JH, and 398-19-JH (consolidated) before the Constitutional Court, related to habeas corpus as a mechanism to protect the fundamental rights to life and personal integrity of PDLs, the NPM submitted an amicus curiae that included various observations made during visits to detention centers, particularly concerning allegations of mistreatment by other PDLs and prison security staff.

1. Please provide an example of positive change that can be attributed to the NHRI-NPM in at least two of the following areas:

- a. Treatment of persons deprived of liberty
- b. Detention conditions

The Ombudsperson's Office of Ecuador, through its NPM Directorate, has developed a document titled the "Guide for Action of the Ombudsperson's Office of Ecuador in Social Protest Contexts." This guide focuses on safeguarding and guaranteeing the rights of individuals during their first hours of detention.

The creation of this guide was motivated by the social protests that occurred in Ecuador in October 2019 and June 2022. During these protests, the Ombudsperson's Office coordinated independent reports on the alleged human rights violations committed in that context. It became evident that a protocol or guide was necessary to enable the staff of the Ombudsperson's Office to respond effectively during social protests, in compliance with the competences and attributions of the Institution, in an agile and effective manner, ensuring the protection of the fundamental rights of the population.

- a. Procedural safeguards during detention
- b. Operation and management of places of detention

For the NPM Directorate, a continuous practice has been its active participation in training and educational processes for the staff of the National Service for the Comprehensive Care of Adult Persons Deprived of Liberty and Adolescent Offenders (SNAI, in Spanish,) the governing and administrative body of the country's detention centers. Particularly concerning the recent training processes for prison security agents (ASP, in Spanish,) whose numbers have nearly doubled, with the latest group joining in October 2022.

For many years, the Ombudsperson's Office, in its role as NPM, repeatedly raised concerns about the significant deficit of these agents and recommended the recruitment of new staff. The lack of staff exacerbated security conditions inside prisons, led to self-governance, and made it difficult for persons deprived of liberty to engage in activities or attend medical and judicial appointments due to the lack of prison security agents.

- a. responsible authorities' attitudes and practices
- b. Legislation and public policies

After several persistent recommendations and calls to action by the Ombudsperson's Office of Ecuador in its role as NPM, especially following the massacres that occurred inside the country's detention centers, regarding the implementation of effective social rehabilitation public policies, supported by the corresponding funding, the Constitutional Court, in its follow-up ruling of March 3, 2021 (Nº 4-20-EE/21 and consolidated cases Nº 4-20-EE and 6-20EE of March 3, 2021,) ordered the governing body of the national social rehabilitation system to develop and implement a public policy on the matter. This policy was issued on February 21, 2021.

It established 308 short-, medium-, and long-term action lines, under the responsibility of various institutions involved in the matter, including the Ombudsperson's Office, which was tasked with executing seven of these action lines.

2. Please provide an example of how the work of the NHRI-NPM has contributed to increasing the protection of vulnerable persons deprived of liberty, such as children, women, persons with disabilities, ethnic minorities, foreign nationals and migrants, LGBTIQ+ persons, and older persons.

In its capacity as the National Preventive Mechanism (NPM,) the Ombudsperson's Office of Ecuador submitted a protocol proposal to the SNAI, aimed at preventing violations of the fundamental rights of children and adolescents visiting detention centers. The goal of the proposal was to ensure that invasive searches or other practices compromising the dignity and integrity of these young visitors were avoided.

Additionally, the NPM collaborated with various state entities, including the National Migration Directorate of the National Police, to develop and implement a protocol to protect the fundamental rights of individuals denied entry at the international airports of Quito and Guayaquil. This protocol was designed to ensure that while their migratory status was being determined, these individuals had access to essential services such as food, drinking water, and communication, and that their stay in non-admission areas was kept as brief as possible by activating competent mechanisms to expedite their cases.

Furthermore, the NPM supported the development of a protocol aimed at safeguarding the integrity of children and adolescents visiting detention centers, ensuring they would not be subjected to invasive searches. The NPM also monitored the conditions of children under the age of three who live with their mothers in detention centers, highlighting issues such as the lack of specialized care, inadequate budget allocations for food, and the fact that these children are often overlooked in the centers' occupancy statistics.

3. Cooperation and Constructive Dialogue

Convening and participation in inter-agency technical working groups; work with the Terre des Hommes Foundation and the National Council for Intergenerational Equality (CNII, in Spanish) to promote the Report on compliance with the implementation of the comprehensive restorative care model in centers for adolescent offenders and comprehensive development units, which addresses the situation of Juvenile Correctional Centers (CAIs, in Spanish) and Comprehensive Development Zone Units (UZDI, in Spanish.)

Joint work with the Attorney General's Office, Judiciary Council, Technical Agency of the Social Rehabilitation System, CETADS intervention protocol working group, SNAI in training processes, Assembly appearances; NPM's Advisory Council, approach to international organizations IACHR, OHCHR, SPT, APT.

Advocacy actions led by the NPM not only resulted in recommendations following visits to places of detention but also addressed critical issues directly with the Judicial Council. These included the excessive use of preventive detention and delays in processing prison benefits and regime changes. In 2019, working groups were established with the Judicial Council to implement prison guarantee judges at the national level. These working groups provided a platform to discuss the main concerns identified during NPM visits, particularly the lack of specialized judges dedicated to prison guarantees. Although the number of prison guarantee judges remains insufficient, the Judicial Council did appoint such judges in provinces with the largest inmate populations, including Azuay, Cotopaxi, Guayas, and Manabí. The NPM continues to advocate for the appointment of specialized prison guarantee judges in all provinces with detention centers and for criminal or multicompetent judges to no longer handle these cases.

4. Please provide an example of a successful measure implemented by the NHRI-NPM to establish dialogue with authorities and follow up on its recommendations.

The National Preventive Mechanism for the Prevention of Torture and Other Cruel, Inhuman, or Degrading Treatment (NPM) of the Ombudsperson's Office participated in the technical working groups to develop the Public Policy on Social Rehabilitation and the prison census. These efforts allowed the NPM to engage directly with various institutions, ensuring that their recommendations were addressed.

Moreover, the NPM initiated ongoing communication with judicial authorities to focus on reducing overcrowding, coordinating the timely processing of prison benefits and pardons.

The NPM continues to work closely with the Attorney General's Office, the Judicial Council, the National Social Rehabilitation System Technical Body, and other relevant institutions. This collaboration includes forming working groups to develop intervention protocols for CETADS (Centers for the Treatment of Alcohol and Drug Addiction,)

identifying PDLs appropriately, considering cases where individuals were sentenced without birth registration, appearances before the National Assembly, and forming the NPM Advisory Council with civil society organizations.

Due to the challenging prison situation in the country, the NPM has initiated dialogue with international organizations, including the Inter-American Commission on Human Rights (IACHR,) the Office of the United Nations High Commissioner for Human Rights (OHCHR,) the Subcommittee on Prevention of Torture (SPT,) and the Association for the Prevention of Torture (APT.)

In line with the Organic Law of the Ombudsperson's Office, the NPM has filed legal guarantees (protective actions, habeas corpus, amicus curiae, among others) to improve the living conditions of persons deprived of liberty (PDLs) and ensure their rights to life, health, and physical integrity.

The NPM participates in inter-agency working groups to address specific issues within the prison context. The purpose of the work meetings currently being held is to generate roadmaps to respond to existing problems and seek joint solutions regarding identity registration procedures for the children of persons deprived of liberty (PDLs,) as well as other issues related to this problem. This work is carried out in collaboration with state institutions involved in the prison system and the National Mechanism for the Promotion and Protection of Children and Adolescents of the Ombudsperson's Office.

Additionally, the MNPTT actively engages in regional meetings with other Mechanisms to develop safeguards for individuals suffering from schizophrenia during the early stages of detention.

5. Please provide an example of successful cooperation with NGOs.

In collaboration with the Council for Intergenerational Equality and Terre des Hommes Foundation, the NPM undertook the drafting of a diagnostic report on the situation of Centers for Adolescent Offenders (CAI, in Spanish.) Joint visits were conducted to all centers under the National Social Rehabilitation System to assess conditions, verify, and promote compliance with the Restorative Comprehensive Care Model (MAIR, in Spanish) for adolescents in conflict with the law in these centers, as well as in the Comprehensive Development Zone Units (UZDI, in Spanish,) addressing their specific circumstances.

6. Please provide an example of cooperation with other actors (e.g., professional associations, academia, judiciary, legislature, etc.) that has been key to achieving change

The Advisory Council of the National Preventive Mechanism for the Prevention of Torture and Other Cruel, Inhuman, or Degrading Treatment (NPM) has been established, including representatives from academia, civil society, and non-governmental

organizations. The goal is to provide support and advice to the mechanism and contribute to the development and strengthening of human and nature's rights. Regular meetings are held to discuss agendas, work lines, and proposals from the NPM, with the input and validation of the participants. During the meeting held in February of this year, work lines for 2023 were established, including: reviewing health issues (mental health, care for caregivers,) following up on public policy, and developing an annual statistical report.

2) GLOBAL TORTURE PREVENTION SYSTEM

1. Please provide an example of how cooperation with the TPS, along with the fact that the NPM's mandate derives from an international treaty, has positively impacted your institution's efforts to prevent torture and other ill-treatment. Please provide an example of how cooperation with other NPMs has had a positive impact on the work of your institution

In 2014, the country received its first visit from the SPT, and in 2022, a second visit took place due to the violent incidents within the National Social Rehabilitation System. The recommendations issued in the recent report highlight the challenges faced by the NPM in fulfilling its mandate, as well as guide the actions that the State must implement in its management of detention centers. It is worth noting that the support and advisory meetings between the SPT and the NPM have proven highly useful. Based on the latest visit and the report received, we are considering a review of our monitoring procedures, and we hope that the recommendations related to strengthening the NPM will lead authorities to take the necessary measures to comply with the recommendations issued by the SPT.

Additionally, in terms of engagement with international organizations, the NPM participated in the “Regional Meeting of National Preventive Mechanisms on the Prevention of Torture and Ill-treatment in the First Hours of Detention,” held in Mexico City from September 18 to 20, 2019, and promoted by the Association for the Prevention of Torture. This event allowed the identification of intervention strategies for national preventive mechanisms for the prevention of torture; the lessons learned were applied during visits to flagrancy zones amid the protests in October 2019 and 2022.

Similarly, during the visit of the Inter-American Commission on Human Rights (IACHR) to gather information regarding the situation arising from the protests, the NHRI accompanied Commission staff during visits to the El Inca Provisional Detention Center (CDP, in Spanish) in Quito and the Regional Social Rehabilitation Center of Cotopaxi, as well as during a meeting with indigenous organizations in Cotopaxi that had participated in the protests to collect information and testimonies from victims. It is important to note that the support reports generated in conjunction with the IACHR were handled confidentially, as requested by the Commission.

The Ombudsperson's Office has also participated in various meetings promoted by the United Nations High Commissioner for Human Rights, alongside national preventive mechanisms for the prevention of torture from the southern cone and the Association for the Prevention of Torture.

These forums have facilitated the exchange of experiences regarding the work of the different regional mechanisms in preventing torture, the sharing of activities and strategies undertaken by Ecuador's NPM, and the opportunity to learn from other experiences to strengthen the work of prevention and protection of persons deprived of liberty. This knowledge enabled the replication of certain monitoring practices during the pandemic.

Contributions were submitted for the Advisory Opinion of the Inter-American Court of Human Rights on vulnerable persons deprived of liberty, requested by the Ibero-American Federation of Ombudsperson and the Association for the Prevention of Torture. These contributions aim to serve as resources to enhance the protection of persons deprived of liberty in the Court's rulings, as well as to generate international jurisprudence on such cases.

2. Please feel free to provide any additional comments or suggestions that you consider relevant in shaping our regional contribution to global knowledge on the subject (for example, through contributions to the General Comments of treaty bodies.)

It would be a significant contribution to promote an annual follow-up system for the recommendations issued by both the Inter-American and universal human rights systems. Generally, state institutions aim to establish an action framework only when reporting deadlines are approaching.

Additionally, it is important to implement a practice where, upon a change in government, a compendium of recommendations and observations issued by these bodies is sent to the incoming presidents. Within a year, the mechanisms established under their administration should be reported, including any activities and indicators planned within public policy, programs, and services aimed at ensuring compliance with these recommendations.

Prepared by: NPM-Ecuador Technical Team

Reviewed by: NPM-Ecuador Technical Team

Approved by: Director of the National Preventive Mechanism for the Prevention of Torture.

HONDURAS

Ombudsperson's Office of the Republic of Honduras

National Preventive Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment



INTRODUCTION

The National Commissioner for Human Rights (CONADEH, in Spanish) is a constitutional and national institution created by Decree No. 2-95 of the National Congress through the reform of Article 59 of the 1982 Constitution of the Republic, "To guarantee the rights and freedoms recognized in this Constitution," as well as those in the Treaties, Pacts, Conventions, and Optional Protocols ratified by the Honduran State.

The "organization, prerogatives, and powers" are the subject of this Organic Law, as it derives from constitutional norms that promote and defend human rights, which are the supreme purpose of the State itself.

Historically, CONADEH is the product of a well-organized social movement for human rights, under circumstances of great risk for its activists since 1981. In April of that year, the Federation of University Students of Honduras (FEUH, in Spanish) filed the first complaint for the forced disappearance of about twenty people in a single day with the Inter-American Commission on Human Rights. A month later, the Committee for the Defense of Human Rights in Honduras (CODEH, in Spanish) was founded. Ten years later, the efforts of this committee in Geneva led the United Nations to offer human rights advice to the Callejas Administration, which accepted the offer, resulting in the creation of CONADEH as part of the Executive Branch.

Thus, CONADEH is a national institution by virtue of its actions and coverage, with only thirteen years of existence, as it functioned as part of the Executive Branch during its first three years (1992-1995) until it was granted constitutional status in 1995. It is also an independent institution, in accordance with the Paris Principles that govern such institutions, enabling us to be observers and quality witnesses in official commissions, but in no way part of any government—always a State body.

This position allows us to serve others through practices guided by principles and values, which we have defined under a new paradigm and incorporated into our institutional vision and mission.

Finally, the constitutional and national mandate renders irrelevant the efforts of various origins and natures to replace CONADEH in its powers and prerogatives through institutional fiefdoms or other equally reprehensible forms. Those of us committed to the national jurisdiction of CONADEH—which is irreplaceable, indisputable, and non-delegable—are well aware of this, as we remain committed regardless of the consequences, within our institutional and constitutional scope.

- Vision: We are an independent institution recognized for its efficiency and commitment to defending and promoting the dignity of all people.
- Mission: We promote the safety and integrity of all inhabitants of our country, acting with courage, integrity, solidarity, objectivity, respect, and in alliance with the best men and women in the world.

Introduction

The National Commissioner for Human Rights (CONADEH,) as a state organ of the Honduran government, guarantees the respect and promotion of the human dignity of all inhabitants and migrants, ensuring the progressive effectiveness and adequate protection of their human rights and fundamental freedoms. In exercising its powers, the NHRI carries out its functions with full autonomy, as its objective is the defense of fundamental human rights and the strengthening of the Rule of Law.

The primary work of the National Human Rights Institution (NHRI,) or the Ombudsperson's Office of Honduras, *as a good practice in preventing torture and ill-treatment, is carried out through the reception and investigation of complaints, the promotion/education of human rights, and supervision and inspections of places of detention, custody, or internment. These activities aim to periodically assess the treatment of persons deprived of liberty to strengthen, when necessary, the prevention and protection against torture and other cruel, inhuman, or degrading treatment.*

1. TRANSPARENCY CULTURE IN PLACES OF DETENTION

a) **Please provide an example of the contribution of the NHRI-NPM in fostering a culture of transparency in detention centers. Consider the ratification and compliance with the Optional Protocol and/or the establishment of the NPM, in terms of access to detention centers (e.g., access to new types of locations, increased frequency of monitoring visits, monitoring transitions between different types of detention, etc.)**

The National Commissioner for Human Rights (CONADEH, in Spanish,) as the National

Human Rights Institution (NHRI) of the State of Honduras, holds constitutional and legal powers, operating independently from the branches of government and other sectors of society.

CONADEH has recommended that national authorities guarantee the rights that have not been restricted by sentencing and which are inherent to persons deprived of liberty. These rights cannot be suspended or limited except in cases expressly stated in the Law. *Furthermore, the institution has emphasized the investigation of any act that may constitute torture or cruel, inhuman, or degrading treatment, as part of the obligations the State undertook when it ratified the Convention Against Torture and its Optional Protocol.*

b) In terms of access to places of detention:

CONADEH is empowered to conduct inspections, investigations, verifications, or any other actions necessary to clarify the facts of complaints. Additionally, it has access to any documents it deems necessary to consult within the scope of the Public Administration to clarify the issues.

c) Access to new types of places:

Currently, Honduras has 25 detention centers and two annexes that operate in the First and Second Infantry Battalions. It is worth mentioning that on Wednesday, March 22, 2023, it was announced that the Ministry of Security, through the Director of the National Police, is planning the construction of two new maximum-security prisons on Isla del Cisne and between the Patuca Mountain and Gracias a Dios, with a capacity for 1,500 persons deprived of liberty who will live under total isolation.

Therefore, on March 28, 2023, CONADEH issued recommendations to the State of Honduras, underscoring the need to avoid institutional actions that infringe on the fundamental rights of persons deprived of liberty. In doing so, it reminded the authorities of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules,) which state: "As far as possible, prisoners shall be detained in prisons close to their place of residence."

Additionally, CONADEH raised concerns to the authorities regarding the fact that Isla del Cisne and Gracias a Dios are ethnic and autonomous territories, with the right to participate in decision-making involving their lands, territories, and natural resources, as stipulated by ILO Convention N° 169 on Indigenous and Tribal Peoples and the United Nations Declaration on the Rights of Indigenous Peoples.

d) Increased frequency of monitoring visits:

As a good practice, in its role of overseeing and ensuring respect for the human rights of persons deprived of liberty, CONADEH carries out supervision and inspections of the

25 detention centers and the two annexes. These inspections and supervisions are conducted with the support of CONADEH's 19 regional offices throughout the country. In some cases, these visits are conducted on weekends when family visits take place, to observe the search process that visitors undergo, particularly in centers with a high number of inmates.

As a result of these inspections, a series of recommendations are made, which not only aim to ensure the rights of persons deprived of liberty but also extend to their families. As part of its actions and good practices, CONADEH issues recommendations to the relevant authorities through official letters based on the findings of the inspections and utilizes the Early Warning System. Early Warnings are preventive and humanitarian in nature, aimed at promoting preventive actions from a humanitarian, human rights, and human security perspective. They are fundamentally protective in nature, as they aim to prevent irreparable harm to the rights and living conditions of individuals. These are not national security documents.

Monitoring the transition between different types of detention:

In this case, the NHRI conducts inspections in detention locations such as police stations to verify the conditions of detention. Likewise, it provides training sessions and capacity-building workshops for both rights-holders and duty-bearers, such as members of the National Defense Secretariat (SEDENA, in Spanish) and the National Police, focusing on human rights with a gender perspective.

2. PROTECTION OF PERSONS DEPRIVED OF LIBERTY

a) Please provide an example of positive change attributed to the NHRI-NPM in at least two of the following areas:

Treatment of persons deprived of liberty:

Domestically, CONADEH has consistently raised concerns in its reports to the Nation.

DETENTION CONDITIONS:

According to family members and those affected, prisoners face a daily scenario marked by inadequate health services, abuse of authority, harassment, torture, mistreatment of both inmates and their relatives, delays in the administration of justice, overcrowding, lack of basic services, and violence within the prisons.

The National Prison System of Honduras comprises 25 detention centers and 2 annexes located in the First and Second Infantry Battalions. Through inspections of these various facilities across the country, CONADEH has documented high rates of overcrowding among persons deprived of liberty and has received numerous complaints from individuals serving sentences or under pretrial detention.

In this context, the NHRI has issued recommendations regarding the excessive use of pretrial detention. This dysfunction in the criminal justice system is a root cause of other issues such as overcrowding, lack of timely medical care, inadequate security, and the failure to separate convicted individuals from those awaiting trial.

Pretrial Detention is one of the most severe precautionary measures available in the criminal justice process and should only be used when strictly necessary. Its application should always aim to serve the pursuit of truth and not to impose an early sentence, as it has often been perceived.

Additionally, it is important to note that CONADEH has been monitoring the ongoing State of Emergency in the country, identifying gaps in Executive Decrees N° PCM 29-2022, PCM 01-2023, PCM 10-2023, PCM 15-2023, PCM 24-2023, PCM 33-2023, PCM 37-2023, and PCM 42-2023. These gaps could potentially lead to discretionary practices, a lack of clarity regarding the catalog of crimes, and the stigmatization of poverty.

A state of emergency creates the potential for acts of torture, ill-treatment, and cruel, inhuman, or degrading treatment during detentions. CONADEH has observed that, in several police stations where detainees are held, the registry book only notes that the detention was due to the existing PCM (Executive Decree.)

The National Commissioner for Human Rights (CONADEH) is always ready to address the situation in prisons. Our work is framed by our constitutional mandate to ensure respect and protection for human rights in the country, including the rights of detained or incarcerated populations. With the establishment of the Defender's Office for Persons Deprived of Liberty, we are documenting the situation of this population in greater detail.

CONADEH reiterates to the State of Honduras its non-negotiable duty to adopt concrete and immediate measures to guarantee the right to life and personal integrity of persons deprived of liberty and those in detention under its custody. In line with international standards, such as those established in the American Convention on Human Rights, which states, "No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of liberty shall be treated with respect for the inherent dignity of the human person."

These standards obligate the State to particularly respect and guarantee the life, liberty, and integrity of vulnerable populations, as interpreted by the Inter-American Court of Human Rights (IACHR,) which stipulates that "The essential aim of the deprivation of liberty shall be the reform and social rehabilitation of the sentenced persons."

Thus, CONADEH once again recommends that the State of Honduras implement comprehensive policies in detention centers to address key issues such as reintegration, overcrowding, violence, and recidivism. These policies should take into account the specific needs of vulnerable individuals deprived of liberty, with the aim of improving their

living conditions and guaranteeing their dignity, personal integrity, and life.

Moreover, the State must ensure the right of persons deprived of liberty to communicate with their families and legal representatives through written correspondence and monitored public telephones installed in detention facilities.

Prior to executing transfers of inmates from one facility to another, CONADEH has recommended that the administrative decision of the transfer be communicated to the competent judicial body, respecting the principle of the Natural Judge, and that official notification be provided to the relatives and legal representatives of the persons deprived of liberty.

Each transfer must be legally and properly notified, respecting the minimum guarantees established in the National Prison System Law and international treaties. The person being transferred must be accompanied by their personal belongings, as well as the original copies of their criminological, educational, and medical records. Copies of these records should remain at the originating facility.

It is important to note that the Honduran Prison System has been under a State of Emergency since 2019, as decreed by Executive Decree PCM-O68-2019, which appointed the full National Interagency Security Force (FUSINA, in Spanish) as an Intervening Commission. In 2022, the National Prison System was once again declared in a state of emergency by PCM 03-2022, with the National Police of Honduras appointed as the Intervening Commission through its Strategic Board. In 2023, PCM 028-2023 delegated sufficient authority to the Military Police of Public Order (PMOP, in Spanish) of the Honduran Armed Forces to act as the Intervening Commission for the National Prison System.

In this context, CONADEH has recommended the mandatory and progressive demilitarization of the National Prison System, ensuring that civilian authorities gradually assume control with the necessary capacities in place. This is crucial for fulfilling international human rights obligations.

CONADEH warns that the return of military authority to prison administration represents a serious setback in human rights.

Recommendations to State Institutions: In compliance with its constitutional mandate, CONADEH has made the following recommendations to State Institutions:

- To the Executive Branch: Create and implement comprehensive policies in detention places. The State must urgently ensure comprehensive public policies that address issues such as reintegration, overcrowding, violence, and recidivism in prisons. These policies must consider the specific needs of persons deprived of liberty and aim to improve their living conditions and guarantee their dignity and fundamental rights.

- To the National Prison Institute: a) CONADEH reiterates the need to design an inter-agency work plan with the participation of CONADEH and the NPM-CONAPREV to regain internal control of detention centers, which has historically been delegated to the inmates themselves. b) Formulate, along with the Judiciary, with the support of CONADEH and NPM-CONAPREV, a national plan to progressively reduce overcrowding in the country's detention facilities. This plan should establish indicators to measure the execution status, evaluate the institutional and professional performance of administrative and judicial staff, and assess the achievement of the plan's objectives and goals. c) Conduct comprehensive infrastructure evaluations: It is important to conduct thorough evaluations of prison infrastructure to identify and address deficiencies that may endanger safety. This includes maintaining and repairing firefighting equipment, acquiring and installing fire extinguishers, and ensuring safe conditions in the facilities.

- To the National Defense Secretariat: a) Improve security in detention centers by implementing effective security measures, such as installing fire detection and suppression systems, alarms, and advanced security technologies (surveillance cameras, metal detectors, access control systems, etc.) This will help prevent emergencies, riots, and ensure the safety of persons deprived of liberty. b) Extend the preparation time for prison guard staff to provide them with the knowledge, skills, and tools needed to perform their duties effectively and safely. Some of the specific objectives of the training may include: training in security techniques and risk management, allowing them to ensure a safe environment for themselves and for the persons deprived of liberty; promoting respect for human rights: The aim of the training is to raise awareness among guards of the importance of respecting the fundamental rights of persons deprived of liberty, thus avoiding abuse or inhumane treatment; preventing incidents and conflicts: By acquiring communication skills, conflict resolution and situation control techniques, prison guards are better prepared to prevent and manage incidents, reducing the possibility of riots, scuffles or other security problems and promoting rehabilitation and reintegration. Trained prison guards can play an active role in rehabilitation and reintegration programs for persons deprived of liberty, fostering their personal development and providing them with opportunities to positively reintegrate into society.

- To the Public Ministry: Investigate incidents and hold perpetrators accountable. Thorough investigations must be conducted into incidents such as fires and human rights violations within detention centers, with a gender-sensitive approach, identifying those responsible by action or omission. It is important that the corresponding sanctions be applied to those who have committed human rights violations.

- To the Judiciary: Investigate incidents that occur in detention centers to identify and hold those responsible accountable, while also implementing measures to prevent recurrence, ensuring justice for the affected individuals and their families.

- To the Honduran Fire Department: Periodically conduct fire risk assessments in detention centers and implement preventive measures to reduce these risks, in line with their action and fire prevention plans.

a) Please provide an example of how the work of the NHRI-NPM has contributed to increasing the protection of vulnerable persons deprived of liberty, such as children, women, persons with disabilities, ethnic minorities, foreign nationals and migrants, LGBTIQ+ persons, and older persons.

CONADEH, as the National Human Rights Institution (NHRI) of Honduras, based on its constitutional mission to oversee and guarantee respect for human rights, has been tasked with the responsibility of ensuring this oversight and protection. In 2022, CONADEH established the Defender's Office for Persons Deprived of Liberty in Honduras with the primary objective of providing improved attention to individuals deprived of liberty, who are under state custody, either serving sentences or held in pretrial detention. Additionally, it carries out preventive actions through inspections of Prisons, Detention Centers, and Juvenile Correctional Centers.

It is worth mentioning that this work is done in collaboration with various defender offices, such as the Defender of Children and Family, Defender's Office of Women, Defender's Office of Persons with Disabilities and Older Persons, Defender's Office of Indigenous Peoples (Ethnic Minorities,) Defender's Office of Human Mobility (Migrants,) and the Defender's Office of Sexual Diversity (LGBTQ+,) as well as the different CONADEH delegations nationwide.

The independent mechanisms and methodology used to inspect the various Detention Centers have a significant impact. The ability to enter these facilities at any time (though not always granted ideally at all facilities) aims to document and record complaints regarding the situation of persons deprived of liberty, assess the authorities, analyze the overall functioning of the detention centers, and provide constructive recommendations to improve the treatment and conditions of this population. Regular meetings are also held with prison authorities to update on the possible progress of the recommendations made.

In addition, training and awareness programs are provided with a strong emphasis on the prevention of torture for members of the Military Police of Public Order (PMOP, in Spanish,) the National Police, Prison Agents, Interdisciplinary Technical Councils, Persons Deprived of Liberty, and their families.

3. COOPERATION AND CONSTRUCTIVE DIALOGUE

a) Please provide an example of a successful measure implemented by the NHRI-NPM to establish dialogue with authorities and follow up on its recommendations

In the area of prevention of torture and cruel treatment, the NHRI participates in advocacy meetings of the Technical Committee for the Release of Persons Deprived of Liberty with health issues, such as terminal illnesses and severe diseases. This committee is composed of Judges from the Criminal Chamber and the Appeals Court with National Jurisdiction in Organized Crime and Corruption of the Supreme Court of Justice, Public Defense, Execution Judges Coordination, the Coordinator of the Criminal Court of the Judicial Section of Tegucigalpa, the Coordinator of the Sentencing Court of Tegucigalpa, the Coordinator of Prison Audits, the Deputy Delegate, the Defender's Office of Persons Deprived of Liberty from CONADEH, the Coordinator of the Criminal Records Unit, Legal Advisors, the Coordinator of the National Prison Institute, the Public Ministry, and the NPM-CONAPREV.

The creation of this technical committee for the release of PDLs has been of great support to the National Prison Institute and the prison population. From May to November 2023, the committee achieved the release of 725 men and 28 women, totaling 753 individuals who are now benefiting from parole nationwide.

Additionally, CONADEH is a key member of the Advisory Council of the NPM-CONAPREV, as well as the Local Boards for the Prevention of Torture and Special Local Boards, which focus on vulnerable groups, including women deprived of liberty, LGBTI+ persons, children, adolescents, and migrants. The purpose of these local boards is to oversee Detention Centers and implement measures that enhance the reception and support of initiatives within these facilities, with the goal of facilitating the successful reintegration of persons deprived of liberty.

b) Please provide an example of successful cooperation with NGOs

The Progreseño Care Center for Disability (CAPRODI, in Spanish,) along with the support of the National Commissioner for Human Rights of Honduras (CONADEH, in Spanish,) addresses the human rights situation of individuals with disabilities deprived of liberty in Honduras. This collaboration highlights the vulnerability and transgression experienced by individuals with disabilities in Honduran prisons, within the broader Central American region.

Please provide an example of cooperation with other actors (e.g., professional associations, academia, judiciary, legislature, etc.) that has been key to achieving change.

- In relation to Academia: CONADEH conducts training and awareness programs for members of the National Defense Secretariat (SEDENA, in Spanish,) the Military Police of Public Order (PMOP, in Spanish,) the National Police (PN, in Spanish,) Prison Agents, and members of the prison control force (FCCP, in Spanish.)

- Regarding the Judiciary, it is important to mention that following the violent events

on June 20, 2023, at the National Women's Social Adaptation Prison (PNFAS, in Spanish,) where 46 female inmates lost their lives, the Constitutional Chamber of the Supreme Court of Justice of Honduras initiated a corrective Habeas Corpus motion in favor of all persons deprived of liberty. The Chamber appointed magistrates from the Criminal Appeals Court as executing judges to inspect and verify the conditions of PDLs in the following detention centers: PNFAS, Támara National Detention Center, Siria El Porvenir Detention Center in the department of Francisco Marzan, Morocelí Detention Center, and the Danlí Criminal Farm in the department of El Paraíso. The judges were ordered to adopt preventive and/or corrective measures to guarantee the protection of the lives and physical integrity of PDLs and to implement necessary and urgent corrective actions to restore inmates' enjoyment and exercise of their rights and fundamental freedoms, while coordinating with the relevant authorities to ensure that any applicable legal benefits are provided. In this regard, CONADEH has been appointed to monitor compliance with these preventive measures through its Defender's Office of Persons Deprived of Liberty and to report on their implementation to the Constitutional Chamber of the Supreme Court of Justice (Case SCO-0849-2023.)

- Additionally, the NHRI has been appointed as an Executing Judge in Personal Exhibition requests related to the intervention conducted by the Military Police of Public Order under Operation FAITH AND HOPE.

MEXICO

National Human Rights Commission of Mexico

National Preventive Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment



INTRODUCTION

1. NPM MANDATE

The National Preventive Mechanism for the Prevention of Torture (hereinafter referred to as the National Preventive Mechanism or NPM,) affiliated with the National Human Rights Commission, operates based on the provisions of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (hereinafter referred to as the Convention against Torture,) which the Mexican State signed on September 23, 2003, and which was approved by the Senate on December 9, 2004, ratified on April 11, 2005, and came into force on June 22, 2006. This mechanism functions in accordance with Article 102, Section B, of the Political Constitution of the United Mexican States; Article 6, Section XI bis, of the National Human Rights Commission Law; Articles 73, 78, Section I, and 8, Section I, of the General Law to Prevent, Investigate, and Punish Torture and Other Cruel, Inhuman, or Degrading Treatment (General Law on Torture); and Articles 41, 42, and 45 of the Regulations of the National Preventive Mechanism for the Prevention of Torture.

In this regard, the National Preventive Mechanism began operations as an independent body from the General Visitor's Offices of the National Human Rights Commission in October 2017, following the enactment of the General Law on Torture, and is responsible for the permanent and systematic supervision of detention places throughout the national territory. To fulfill this mandate, its powers include access to all information regarding the treatment and situation of persons deprived of liberty, as well as the conditions of their detention.

2. CONTEXT

Mexico is a federal state composed of 32 entities, with municipalities forming the foundation of its territorial, political, and administrative structure. Currently, there are 2,475 municipalities and territorial demarcations.

This political-administrative division implies that the NPM must coordinate with a wide range of authorities to carry out supervision, follow-up, and special visits. This task is not always straightforward, as authorities—particularly at the local level—are often unfamiliar with the NPM's nature and authority to intervene in detention facilities throughout the country. To address this lack of awareness and promote better dissemination of the NPM's work, the following actions have been implemented:

- . Creation of a Microsite: As of October 1st, a dedicated web page for the NPM is available within the institutional website of the National Human Rights Commission (CNDH, in Spanish,) aiming to disseminate information about the NPM's powers and to facilitate access to reports produced from interventions in places of detention across the country.

- Institutional Outreach: To establish focal points for strengthening the investigation of torture cases, Mexico's NPM maintains communication with prosecutors' offices and human rights commissions in all 32 states through institutional channels. This approach has enabled the NPM to expedite requests for intervention by these agencies in the investigation of complaints and denunciations received during visits to places where individuals are deprived of liberty.

- Training. Mexico's NPM notes that, as part of its institutional approach, it has developed a series of training and refresher courses for public servants focused on the prevention of torture, the application of the Méndez Principles, and adherence to both the Istanbul and Minnesota Protocols. These courses are primarily directed at members of public security forces and public servants from prosecutor's offices and human rights commissions. The training programs are offered remotely to enable participants to balance their professional duties with training activities.

- Inter-Agency Coordination for On-site Visits: To differentiate between the processes of torture prevention and investigation, the NPM's Executive Directorate has requested the collaboration of local human rights commissions to accompany the visits, further expediting the complaint and denunciation processes.

- Presentation of Reports: To foster better understanding and, consequently, greater compliance with the recommendations issued by the NPM, a working meeting is held with the authorities involved at the time of publishing a report. During this meeting, the content of the document is explained, the rationale behind the recommendations is clarified, and any questions or concerns regarding the

actions required for proper implementation are addressed.

3. NPM's GOOD PRACTICES

a) Transparency culture in places of detention

Issue

The lack of knowledge regarding the NPM's mandate and powers has caused authorities at all three levels of government—federal, state, and municipal—to confuse the NPM's objectives with those of the National Human Rights Commission (CNDH) (investigation of human rights violations.)

Although this situation has not posed an obstacle to accessing places of deprivation of liberty, it has led to a degree of secrecy among the authorities being supervised. These authorities, under the false impression that they are under investigation, adopt a defensive posture and restrict access to the information requested out of fear of being held accountable.

b) Actions Taken to Address the Issue

The NPM's Executive Directorate has prioritized direct contact with the authorities in charge of managing detention facilities to enhance their understanding of the NPM's scope of action. Emphasis has been placed on explaining the purpose and intent of directly preventing torture or other forms of mistreatment.

In other words, it is explained that direct prevention stems from identifying risk factors during supervision visits, where the necessary information is gathered for the preparation of supervision reports, special reports, follow-ups, and the formulation of public policy recommendations.

c) Institutional Engagement

During on-site visits, it has been essential to communicate the NPM's mandate. This approach has helped reverse the initial distrust and has fostered greater openness and receptivity from the authorities at the visited facilities.

We have transitioned from a situation where we were perceived as a monitoring and complaint-investigation entity to one in which different areas of the Mexican State now view the NPM as an ally in institutional strengthening processes.

In this regard, we are particularly interested in spreading the message that our work is preventive and that, therefore, the actions and recommendations in our reports are aimed at preventing human rights violations in places of detention—especially the elimination of torture and other cruel, inhuman, or degrading treatment or punishment. By doing so, we contribute to the continuous improvement of their operation.

b) Training Initiatives

This year, we have conducted 55 training activities, which not only helped us meet the goal of raising awareness about the importance of preventing torture and ill-treatment but also provided an opportunity to inform public prosecutors and security institutions about our powers while strengthening ties with state human rights bodies.



NPM's personnel training public servants in Zacatecas, Zacatecas.

e) Strategies for Conducting Visits

Convinced of the importance for authorities to understand our powers and institutional objectives for conducting visits, as well as for accessing the documentation generated by these visits—such as records, internal regulations, or medical, legal, and administrative files—we have implemented the following dialogue frameworks during on-site visits:

- Visit Introduction. At the start of each intervention in detention facilities, the field team introduces themselves and explains to the responsible authorities the objectives and scope of the visit, consistently emphasizing the preventive function of monitoring. The team informs the authorities that the visit is part of a nationwide verification process aimed at identifying areas for improvement. This strategy has fostered greater openness and, most importantly, has facilitated the removal of obstacles for the visiting teams, enabling them to interview people deprived of

liberty with fewer restrictions. Additionally, it has allowed for greater access to official records.

- Visit Conclusion. At the conclusion of each visit to detention facilities, a meeting is held with the managing authorities to inform them of requests made by persons deprived of liberty (PDLs) to the NPM visitors. Additionally, a preliminary diagnosis of identified risks is presented during this exchange.



NPM staff during a visit to the facilities of the National Migration Institute in Guadalupe, Nuevo Leon.

The immediacy of feedback has had positive consequences for the timely attention to specific cases and the gradual improvement of services provided by the authorities, in at least three aspects:

- Through this approach, the supervised authority is given a voice to share their perspective on the identified problems and even to propose solutions to mitigate the risk factors.
- Dialogue is established to propose some of the components that could be included in the recommendations, allowing an exchange of views on their feasibility, considering the legal powers of the recommended entities. This ensures full compliance in the future.
- These interactions with the supervised authority help guide their actions to mitigate the risk factors identified during the supervision visits.

f) Notification and Presentation of Report Content and Recommendations

Once the information collected during the visit is processed, the corresponding report is prepared. For its notification, the NPM meets with the heads of the recommended institutions, presents the report, and explains its content. This approach has helped to raise awareness among the authorities regarding the need to comply with the

recommendations and, where applicable, to verify the actions they have undertaken toward that goal.

We believe it is essential for the notification of recommendations to be done in person. During these meetings, we reiterate the preventive nature of the NPM and its intent to preempt situations that, if not addressed, could lead to human rights violations. Additionally, these meetings serve as a platform to address any concerns about the standards and criteria the NPM will use to monitor and evaluate the implementation of the recommendations.

EXAMPLE OF GOOD PRACTICE IMPLEMENTATION

a) Dialogue Roundtables for Following Up on Report Recommendations:

Special Report 1/2023 by the NPM regarding supervision visits to the Federal Social Rehabilitation Center N° 16, Women's Facility, Coatlán del Río, Morelos.

The Mechanism met with staff from the Decentralized Administrative Body for Prevention and Social Readaptation (OAD,) the Mexican government institution responsible for the administration of penitentiary centers and the supervision of the social reintegration of persons deprived of liberty in federal centers. The meetings also included personnel from the Federal Health Secretariat, the Health Secretariat of the State of Morelos, and the Federal Social Rehabilitation Center CEFERESO 16. The purpose was to explain the report's contents and clarify that the recommendations aimed to strengthen mental health care for women deprived of liberty and prevent instances of self-harm within CEFERESO.

To ensure the recommendations' implementation, the NPM acted as a facilitator between the recommended authority and specialized entities that provided technical assistance for addressing the health conditions of women deprived of liberty.

This resulted in collaboration with the Women's Health City Hospital and the Fray Bernardino Álvarez Psychiatric Hospital, which offered expertise to the prison authorities to establish practices aligned with the highest human rights standards, particularly concerning quality sexual and reproductive health services and the care of individuals with mental disorders, respecting their human rights.

b) Special Report 03/2021 by the NPM on Torture Against Women in the Free and Sovereign State of Veracruz

To ensure the proper implementation of the recommendations made in the report, the NPM's Executive Directorate met with officials from the Under-Secretariat for Prevention and Citizen Participation of the Veracruz State Public Security Secretariat. The meeting focused on the importance of proper medical certification to prevent potential acts of torture, both within the center and during the detention of individuals.

Later, as part of the report's follow-up activities, a meeting was held with the General Directorate of Prevention and Social Reintegration of the State of Veracruz. During this meeting, authorities reported progress in meeting the recommendations: structural improvements were made in security personnel dormitories, the childcare area, the intimate visitation area, and separate activities for men and women were implemented. Additionally, progress was made in developing the Psychophysical Examination Protocol at Pacho Viejo Detention Center.

This follow-up meeting not only provided an opportunity to review the progress made but also facilitated real-time observations and exchanges of viewpoints with the supervised authority, leading to more effective compliance with the recommendations.

Veracruz's State Health Secretariat also reported health and training efforts benefiting both PDLs and health personnel. Furthermore, the NPM has scheduled a follow-up visit to verify that the reported progress is being effectively implemented at the detention facility.

NPM Supervision Reports 01/2021 on the Municipal Public Security Precincts of the State of Guanajuato, 02/2021 on the Municipal Public Security Precincts of the State of Coahuila de Zaragoza, 03/2021 on the Municipal Public Security Precincts of the State of Yucatan, and 04/2021 on the Municipal Public Security Precincts of the State of Puebla

As mentioned earlier, supervising in a federated state is complex due to the multiplicity of authorities. For municipal detention centers, the NPM issued recommendations to 61 municipalities across four Mexican states. This process presented challenges, as many municipal detention centers lacked the necessary communication tools for initial notification of the report via virtual conference or for conducting in-person follow-up meetings.

To address this, the NPM's Executive Directorate established communication with the Secretariats of State Governments⁷² to obtain contact information for municipal leaders. This facilitated work meetings to finalize the notification processes and implement a sensitization and support framework for executing the recommended actions.

The first engagement was held in Mérida, Yucatán, where 27 recommended municipalities were invited, and 18 attended. During the meeting, the report's content was discussed, and it was agreed that the NPM would advocate for budget allocations to help implement the recommendations in full.

Similarly, a work session took place in Cortázar, Guanajuato, with 10 of the 11 recommended municipalities attending, along with state government officials. This

⁷² Areas that have the authority to coordinate and supervise various aspects of public administration at the local level.

meeting facilitated dialogue across different levels of government to communicate the NPM's work and follow up on the recommendations for implementing policy actions at State Municipal Detention Centers.

a) **Protection of persons deprived of liberty**

Issue

During the NPM's *on-site* visits, staff frequently encountered testimonies of possible ill-treatment or torture, collecting the corresponding complaints. However, processing these complaints took significant time between the initial report, processing, and submission to the relevant prosecutors and human rights commissions.

b) **Actions Taken to Address the Issue**

To improve inter-agency coordination, periodic meetings were held with OAD officials. These discussions created better conditions for dialogue with CEFERESO authorities, allowing for immediate intervention when visiting staff learned of potential ill-treatment. Thus, preventing irreparable harm to human rights.

Additionally, these periodic work meetings enabled the NPM to process 300 requests from PDLs interviewed at CEFERESOs in 2020, most of which were for medical, legal, and social work matters. This strategy allows the NPM to address risk factors related to ill-treatment and torture in the short term without waiting for finding processing and the issuance of reports.

To further strengthen protection mechanisms, the NPM established direct communication with state human rights commissions. This ensured that commission staff could physically accompany supervision visits, allowing immediate attention when an individual reported a problem. When local commission staff were unavailable, communication channels were set up to forward cases immediately, expediting attention without waiting for the team that received the on-site complaint to return to Mexico City.

Regarding complaint case referral processes, the NPM maintains a follow-up record through its Coordination. Monthly updates are requested from the competent authorities and institutions regarding the status of investigations, with the possibility of issuing recommendations. To date, 20 Prosecutors' Offices and 20 State Human Rights Commissions have been followed up on for referred cases.

Moreover, the NPM holds monthly meetings with the Attorney General's Office to coordinate the submission and monitoring of torture cases. This collaboration has led to improved information sharing and better case handling. Thus, follow-up has been given to 25 cases filed in 2022 and 21 cases referred so far in 2023.



NPM staff during a visit to the facilities of the National Migration Institute in Monterrey, Nuevo Leon.

This strategy of coordinating and following up on complaints and reports with prosecutors' offices and human rights commissions has strengthened the processes of indirect prevention and helped identify areas where the NPM's intervention is necessary, aiming to facilitate access to justice for potential victims.

c) Example of good practice implementation

As part of the actions aimed at addressing the needs of priority attention groups, in 2023, the NPM became aware of a case involving a transgender woman in a Social Reintegration Center in the State of Puebla who was receiving differential treatment that could be considered discriminatory. This treatment potentially violated her right to personal development, as she lacked a secure living space, was denied the hormone treatment she had been receiving before her detention, was asked to cut her hair, and was prohibited from wearing earrings.

In response, NPM staff formulated precautionary measures to the prison authorities to safeguard her rights, emphasizing a gender-sensitive, differential, and specialized approach. Additionally, a visit to the center was conducted to verify the implementation of these measures, and communication with the prison authorities was established to raise awareness and ensure compliance.

The following results were achieved: 1) The authorities assigned a separate space, away from the general population, where the transgender woman could stay overnight. 2) The hormone treatment she had been receiving prior to detention was reinstated. 3) The requirement for her to cut her hair was suspended, pending a proportionality test. To assist in this process, the NPM provided relevant international standards, national regulations, and rulings from the Supreme Court of Mexico, which the authorities were required to consider when determining appropriate measures.

This example demonstrates that the strategy adopted by the NPM—utilizing formal channels such as reports and precautionary measures, direct communication with authorities, and on-site visits—has led to quicker interventions that effectively address specific issues and contribute to improved practices in the prevention of torture and mistreatment.

d) Cooperation and Constructive Dialogue

Issue

The General Law to Prevent, Investigate, and Punish Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment was published on June 26, 2017. In accordance with its Third Transitional Article, each federal entity's congress was mandated to harmonize their legal frameworks with the General Law within 180 days. Additionally, both the federal government and the federal entities were required to establish and operate specialized prosecutor's offices dedicated to investigating the crime of torture.

However, as highlighted in the Legislative Harmonization Diagnostic Report conducted by the NPM, out of the 32 federal entities, only 18 have passed specific anti-torture laws, with just 5 of these enacted after the publication of the General Law. Of those, only one has demonstrated a high level of harmonization with the General Law.

Moreover, only 16 out of the 32 federal entities have established the specialized prosecutor's offices mandated by the General Law.

4. ACTIONS TAKEN TO ADDRESS THE ISSUE

In 2023, the NPM published the Diagnostic Report on the Status of Legislative Harmonization in Matters of Prevention, Investigation, and Sanctioning of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Among the key recommendations, the NPM urged Congress to amend Article 24 of the General Law on Torture to include the specific intent behind the crime of torture, notably "to obtain information or a confession from a person or a third party."

In addition to releasing the report, the NPM engaged with various recommended authorities. As a result, some states have begun taking actions to align with the recommendations. Positive developments include:

- The Technical Secretariat of the Senate's Board of Directors informed that the Human Rights Commission is analyzing a legislative reform initiative to amend Article 24 of the General Law on Torture. This initiative, introduced by a legislator from a political party, seeks to explicitly include "obtaining information or a confession from a person or a third party" as a specific purpose of torture.

- The General Secretary of the Legislative Power of Aguascalientes and the Secretary of Government of the Legislative Power of Guanajuato confirmed that a proposed state law, introduced by their respective Congresses, is under review and analysis.
- The Congress of Chiapas committed to coordinating with government branches, human rights organizations, academic institutions, and civil society to conduct studies and diagnostics to meet the obligations under the General Law on Torture.
- The Attorney General's Office of Chihuahua, through its Specialized Prosecutor's Office for Human Rights Violations and Forced Disappearance, pledged to develop a comprehensive diagnosis to assess the feasibility of creating a specialized prosecutor's office for torture investigations.
- The Attorney General's Office of Guerrero reported progress in establishing the Specialized Agency for the Prevention and Punishment of Torture.
- The President of the Board of Directors of the Congress of Sinaloa announced the passing of Decree 498 on May 25, 2023, which enacted the Law for the Prevention, Investigation, and Sanctioning of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.



NPM staff at a follow-up forum to the Legislative Harmonization Report in Tijuana, Baja California.

a) Example of Good Practice Implementation

In February 2023, three reports were issued concerning the detention conditions of individuals in human mobility situations. The NPM expressed concerns primarily about the security conditions of the facilities and the lack of adequate training for public servants on these matters.

The NPM also recommended that the Chamber of Representatives and the Senate comply with transitory article eighth of the National Detentions Registry Law⁷³ by reforming the Migration Law to create a registry for detained migrants. This registry would need to provide the same procedural guarantees, protections, and security as outlined in the National Detentions Registry Law.

In response to these recommendations, the President of the Migratory Affairs Commission of the LXV Legislature of the Chamber of Representatives informed the NPM about the approval of the Commission's ruling on initiatives to reform Articles 3, 81, 105, 109, and 111 of the Migration Law. These reforms recognize the role of the "Legal Advisor," who would provide free legal advice from the filing to the resolution of migration procedures. Additionally, the reforms set a maximum period of 36 hours to resolve the migrant's status.

We also engaged with the Citizen Council of the National Institute of Migration (INM, in Spanish)⁷⁴ to foster collaboration in promoting, protecting, and defending migrants' human rights, particularly in the prevention of torture and ill-treatment by addressing the risk factors identified during supervision visits.

One of the Council's powers is to propose specific actions to promote, protect, and defend migrants' human rights, with the goal of presenting these proposals to the Consultative Council on Migration Policy.

As a result, actions were proposed to enhance cooperation, coordination, and civil society oversight of the INM's activities. This initiative has facilitated the integration of the NPM's report recommendations into the agendas of migration and legislative authorities.

a) Global Torture Prevention System

Issue

Although the National Preventive Mechanism is not a newly created entity, some civil society organizations dedicated to human rights advocacy, such as victim collectives, are unaware of the NPM's mandate. As a result, their approaches have often been based on assumptions and expectations that could not be met due to incompatibilities with the NPM's legal faculties, such as requests for case

⁷³ LNRD. Transitory Article Eight: "The Congress of the Union shall have a period of 180 days from the entry into force of this Decree to carry out the necessary reforms to the Migration Law in order to create a registry of detained migrants that includes the same procedural guarantees, protections, and security as those provided in this Law."

⁷⁴ On October 26, 2012, the Agreement defining the structure, organization, and operation of the Citizens' Council of the National Institute of Migration was published in the Official Gazette of the Federation, establishing that the Council is composed of 13 Councilors. Notably, the Commissioner of the National Institute of Migration serves as the Technical Secretary, and the Undersecretary of Population, Migration, and Religious Affairs, along with the Head of the Migration Policy Unit, participate as permanent guests.

investigations.

b) Actions Taken to Address the Issue

To resolve this issue, the NPM's Executive Directorate has sought to strengthen communication with civil society organizations to clarify the powers held by the NPM. From there, strategies for exchanging information and experiences have been developed to foster coordination with CSOs. The goal is to identify areas for intervention based on data provided by the organizations and, in turn, to carry out strategic actions the results of which can be replicated by civil society in their own advocacy efforts.

In 2023, in collaboration with the civil society organization Documenta A.C. and the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Mexico, the NPM launched the Permanent Dialogue with Civil Society Initiative.

The main objective is to listen to both direct victims of torture and ill-treatment and their relatives (indirect victims) to understand their needs. Additionally, the NPM aims to ensure that victims and organizations understand its powers, particularly those related to the comprehensive prevention of torture and other cruel, inhuman, or degrading treatment or punishment.

As part of this initiative, the NPM held two online events. The first event, titled "Creating a Permanent Dialogue with Social Organizations," took place on June 22. The goal was to introduce the project and begin discussions on preventive policies for this issue. This event was attended by 48 people.

The second, more targeted event was held on August 1, with six participants. The initiative seeks to provide a direct communication channel with civil society, enabling the NPM to meet its legal obligations—especially the collection of relevant information for analyzing patterns and methods of torture, its root causes, and the legislative or practical factors that encourage or heighten the risk of its occurrence⁷⁵.

⁷⁵ LGT, article 78, section VIII. The National Preventive Mechanism will have the following powers: to receive information from persons deprived of liberty, their relatives, civil society organizations, or any other individual, in which facts constituting torture and other cruel, inhuman, or degrading treatment or punishment are reported; or where relevant data are provided for the analysis of patterns and methods of the occurrence of torture and other cruel, inhuman, or degrading treatment or punishment, as well as its structural causes or factors in legislation or practice that favor or increase the risk of its occurrence.



NPM Staff in the Permanent Dialogue with Civil Society initiative in conjunction with the Office of the United Nations High Commissioner for Human Rights in Mexico. Mexico City and the Documenta Organization

Additionally, the NPM has received cases of probable torture or ill-treatment identified by the Legal Assistance for Human Rights Association (AsiLegal.) The NPM intervened in these cases to ensure the physical and psychological integrity of the detained individuals, issuing precautionary measures, presenting complaints, and conducting follow-up visits to verify the implementation of the requested measures. These actions have led to the cessation of mistreatment and the initiation of investigations.

PANAMA

Ombudsman's Office of the Republic of Panama

National Preventive Mechanism for the Prevention of
Torture and Other Cruel, Inhuman or Degrading Treatment
or Punishment



INTRODUCTION

1. CRITERION: TRANSPARENCY CULTURE IN PLACES OF DETENTION

a. Good Practice: Process of Visits to Shelters for Children, Adolescents, and Care Homes for Older Persons

In compliance with Law 6 of February 22, 2017, which established the National Preventive Mechanism for the Prevention of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment as a department within the Ombudsperson's Office of the Republic of Panama, the NPM began implementing its mandate in 2018.

This mandate includes conducting visits to state-run facilities where individuals are deprived of their liberty.

As outlined in Article 4 of Law 6, the concept of deprivation of liberty is broadly defined, as it includes:

"Any public, private, or mixed space under jurisdiction, control, or supervision, where people may be or are deprived of liberty, whether detained, arrested, apprehended, under custody or protection that prevents them from leaving such space, by judicial or administrative order or any other authority, or by their instigation or with their explicit or implicit consent, or by parents, legal representatives, or caregivers in the case of minors or persons with disabilities."

In this context, since 2018, the NPM has conducted nationwide visits to:

1. Male and female detention centers.
2. Juvenile detention and compliance centers
3. National Police substations
4. Shelters for children and adolescents
5. Centers and homes for older persons
6. Male and Female National Migration Service shelters
7. Transitory detention centers of the National Police and the Judicial Investigation Directorate
8. Migratory reception stations
9. National Institute of Mental Health; among others

b. Issue:

In general, the Ombudsperson's Office – NPM has successfully fulfilled its mandate to visit centers under state custody without facing any major issues, gaining unrestricted access to most of the locations visited, as well as to the records and files of individuals deprived of liberty housed within them.

In 2021, in the context of the COVID-19 pandemic, the Ombudsperson's Office of Panama, through its NPM and in collaboration with the Directorate of Specialized Units, organized two national processes of joint visits: one to shelters for children and adolescents and another to senior care homes. These visits were conducted again in 2022.

Unlike the state-run centers previously visited, the shelters for children and adolescents and senior care homes are mostly private institutions. Accessing these facilities, although part of the NPM's mandate, required a dissemination and awareness process. This was carried out with the cooperation of departments such as the National Secretariat for Children, Adolescents, and Family (SENNIAF, in Spanish) and the Older Persons Coordination Office of the Ministry of Social Development.

These departments informed the respective centers about the NPM's mandate and the joint visit process alongside the Directorate of Specialized Units from the Ombudsperson's Office.

Furthermore, a formal letter signed by the Ombudsperson of the Republic of Panama, outlining the NPM's authority to visit private centers where individuals are under state custody, helped ensure unrestricted access to both the facilities and the necessary

documentation.

During the visits, meetings were also held with the administration, staff, and, depending on the centers, with the older persons, children, and adolescents residing in these institutions.

c. Impact generated:

A significant achievement for the Ombudsperson's Office-NPM in conducting this joint exercise between the NPM and the Directorate of Specialized Units was that, even during the COVID-19 pandemic, there were no issues with gaining unrestricted access to centers under state custody, including shelters for children and adolescents, as well as senior care homes, both public and private.

Another important achievement was the approach with the authorities in charge of their thematic areas who recognize the functions of the National Human Rights Institution and the NPM.

2. CRITERION: PROTECTION OF PERSONS DEPRIVED OF LIBERTY EXAMPLES OF POSITIVE CHANGES ACHIEVED DURING THE WORK OF THE OMBUDSPERSON'S OFFICE - NPM:

a. Treatment of persons deprived of liberty

Good Practice: Mediation in strike of persons deprived of liberty

In 2020, following visits by the NPM to the La Joya Prison Complex, deficiencies in access to drinking water were identified within the La Joya and La Joyita detention centers. These facilities faced a lack of water service due to heavy rains, debris buildup, and the explosion of the water pump that supplied the system. This situation led individuals deprived of liberty to declare a hunger strike and halt labor activities inside the prison.

As a result of the NPM's previous visits, the director of La Joya Detention Center requested the Ombudsperson's Office, through the NPM, to mediate in response to the hunger strike announced by the inmates. The lack of water in the prisons was affecting essential rights, such as health, personal hygiene, sanitation, and access to food, among other concerns.

b. Issue

Access to drinking water in the La Joya and La Joyita detention centers was irregular and deficient due to the previously mentioned circumstances, resulting in the deprivation of the aforementioned basic rights of inmates.

The General Prison System Directorate attempted to address the water shortage by providing water through a tanker truck, but this solution proved inadequate, as not all persons deprived of liberty received water. This ongoing issue led to a hunger strike, where prisoners refused food in protest.

c. Actions Taken

An initial meeting was held with leaders from various wings of the detention center, where the issue of water access was discussed, along with other concerns such as the need for alternative measures to imprisonment. These issues were subsequently addressed in discussions with the director of the detention center.

In discussions with the prison director, it was communicated that the hunger strike had been suspended, and the concerns about implementing alternative measures to imprisonment, along with other requests from the prison population, were conveyed.

Discussion and a tour with personnel from the Infrastructure and Maintenance Office of the Ministry of Government, in which the water supply problem was observed and the commitment of the aforementioned office to solve this situation was noted.

It was noted that the water pump had malfunctioned due to an electrical overload, having previously been damaged by heavy rains, further exacerbating the water service disruption.

d. Impact of the Actions

As a result of the intervention by the Ombudsperson's Office through the NPM, the following outcomes were achieved:

1. Suspension of the hunger strike.
2. Improved communication between the persons deprived of liberty and the prison administration.
3. Installation of transformers by the Ministry of Government's Infrastructure and Maintenance Office, along with the simultaneous cleaning of the water treatment plant.
4. The prison administration, in collaboration with the Infrastructure and Maintenance Office, undertook efforts to restore potable water supply to the detention complex.
5. Additionally, this mediation effort enabled the compilation of a list of persons deprived of liberty eligible for supervised release and early release, with the goal of reducing overcrowding through sentence commutation, which was later facilitated by the National Directorate of Human Rights for Persons Deprived of

Liberty under the Ombudsperson's Office.

3. DETENTION CONDITIONS. GOOD PRACTICE: CLOSURE OF LA CHUTRA AT LA JOYA DETENTION CENTER

In 2021, following a visit to La Joya Prison, during which the NPM team accompanied the Ombudsperson, the inhumane conditions of the external area known as La Chutra were observed. This area did not meet minimum infrastructure and service access standards.

a. Issue

Despite the poor conditions of La Chutra, individuals were kept there under inhumane conditions of deprivation of liberty. The following issues were identified:

1. The space was intended for a single person, yet the cell was shared by 4 people, 3 of whom were sleeping on the floor, covered only by sheets laid on cardboard.
2. Inmates mentioned that when it rains, water enters the cell through the roof and the front iron door, leaving the floor soaked. As a result, the sheets and cardboard they slept on were also wet, creating a humid environment unsuitable for PDLs, specially for individuals suffering from respiratory conditions such as asthma.
3. The individuals deprived of liberty reported suffering from asthma and other health conditions. They mentioned that they were unable to obtain necessary medications because the Virgen de La Merced Clinic did not have the required medicines in stock.
4. They mentioned that they only had access to water for 15 to 20 minutes once a day, during which they had to fill five tanks. This water was used for drinking, sanitation, and cleaning the area.
5. The bathroom and shower remained unsanitary due to the water shortage, exacerbating the already difficult living conditions.
6. They stated that they had no access to outdoor patio time since being placed in La Chutra, while they waited to be transferred elsewhere.
7. The area lacked electricity, leaving the inmates in complete darkness at night, exposing them to the risk of animals entering through the iron door.
8. Both the prison guard accompanying the NPM and Ombudsperson's Office team, as well as the inmates themselves, confirmed that there was no security or assigned prison guard in the La Chutra area, leaving the cell completely unprotected from animals, weather conditions, or potential harm from others

during the day or night.

9. The PDLs reported that since being placed in La Chutra, they had not been able to communicate with their families.

b. Actions Taken

Following the NPM's visit, the Ombudsperson's Office prepared a communication and a formal letter to inform the Minister of Government about the situation of the persons deprived of liberty in La Chutra.

c. Impact

As a result of these actions, La Chutra was closed, and the individuals who had been housed there were relocated to areas that met minimum standards of habitability and access to services.

4. EXAMPLE OF HOW THE WORK OF THE OMBUDSPERSON'S OFFICE (NPM) HAS INCREASED PROTECTION FOR VULNERABLE PERSONS DEPRIVED OF LIBERTY:

a. Situation of Women Deprived of Liberty with Additional Vulnerabilities

Under a differentiated approach based on a gender perspective, the NPM, in collaboration with the National Directorate for the Protection of Women's Rights, the National Directorate for Persons Deprived of Liberty, and the Regional Directorates of the Ombudsperson's Office, sought to highlight the situation of women in detention centers who face additional vulnerabilities.

The focus of these visits was on women aged 60 and older, those with chronic or acute illnesses, physical or psychosocial disabilities, or who were pregnant—situations that place them in a more vulnerable position.

The purpose of these visits was to identify risk factors and areas of concern related to healthcare services provided to these women, who face additional challenges that put them at a disadvantage compared to other inmates.

As a result, two rounds of visits (2021 and 2022) were conducted in women's prisons nationwide, acknowledging the unique characteristics and complexities of each facility through specific visits and monitoring processes.

The primary goal of these visits was to gather information that would allow for the identification and monitoring of issues related to this population, which faces double or even triple vulnerabilities, in order to present feasible recommendations to the State.

This group of women raised concerns due to deficiencies in areas such as living

conditions, medical care, nutrition, participation in reintegration programs, and the lack of accommodations for women with disabilities. These challenges not only directly impact this population but also affect the overall well-being of all inmates in these centers.

b. Issue

The follow-up focused on living conditions, access to basic services, infrastructure, and the treatment of women deprived of liberty.

For those inmates with additional vulnerabilities, the provision of medical care presented significant obstacles in the Prison System. These challenges include restricted medical operating hours, difficulties in accessing specialists and medications, and the precarious state of medical equipment.

These shortcomings directly affect the health of vulnerable women, which could be considered a form of mistreatment. It was also noted that most women deprived of liberty over the age of 60 reported not participating in activities or programs that would allow them to engage in social reintegration processes or potentially commute their sentences.

It is important not to lose sight of the fact that the deprivation of liberty, combined with the precarious conditions of the prisons, can generate or exacerbate illnesses, making it necessary for the State to develop specific initiatives to ensure dignified living conditions for people with additional vulnerabilities.

c. Recommendations and actions

As a result of this effort, it was recommended to the Ministry of Health to promote the creation of an inter-agency space specifically designed to address the mental health needs of persons deprived of liberty, particularly those suffering from mental or psychosocial disabilities.

It was recommended that the Ministry of Health evaluate mechanisms to prioritize and guarantee specialized care for women with additional vulnerabilities. These recommendations align with the State's obligation to comprehensively protect and guarantee the health of those in its custody.

Additionally, it was recommended that mechanisms for data systematization be strengthened in each facility to maintain updated information on women deprived of liberty with additional vulnerabilities. This would enable the design of specific actions based on their unique needs.

Furthermore, the Ombudsperson's Office advised the General Directorate of the Prison System and the Ministry of Government, in collaboration with the Ministry of Health, to create an inventory of the needs and conditions of prison clinics in women's detention

centers nationwide, taking into account the specific needs of this population.

In view of the above, it is recommended for a plan to be developed to address equipment, supplies, and other requirements based on budgetary possibilities.

d. Impact

As a result of the national evaluation of the situation of women deprived of liberty with additional vulnerabilities, the Ministry of Health, responsible for ensuring access to comprehensive care for the entire population through public health services—and specifically within the country's detention centers through the Directorate of Prison Health and other relevant actors—issued a booklet committing to develop a specific action plan for each region where these prisons are located.

Additionally, this evaluation enabled health officials in various penitentiary centers to establish an intervention plan with set goals to address all the issues identified in the final report. It was further agreed to establish inter-agency working group meetings to address the most urgent health concerns highlighted in the report.

5. CRITERION: COOPERATION AND CONSTRUCTIVE DIALOGUE

Good Practice: Training for aspiring prison guards at the Prison Training Academy.

One of the primary functions of the NPM is to carry out preventive actions. During visits to detention centers, the need for training prison guards was identified, starting from their education at the Prison Training Academy, to reduce the risk of torture and ill-treatment.

In response, the NPM approached the academy in 2018 as part of a project with UNDP. This included a module on torture prevention in a Diploma program organized by the Ministry of Government, the University of Istmo, and UNDP.

Participants included individuals from various institutions, including the Ministry of Government, National Police, and NPM staff.

a. Issue

During the Ombudsperson's Office-NPM's visits to detention centers, situations were observed where guards and National Police agents used excessive force. These incidents were sometimes exacerbated by poor working conditions, potentially leading to ill-treatment or torture.

Given that prison guards play a direct role in the prevention of torture, raising their awareness about their preventive responsibilities can significantly reduce the risk of torture and ill-treatment in detention centers. This, in turn, improves the quality of life for individuals deprived of liberty in terms of treatment and access to their rights.

Therefore, engaging with the academy to include a series of training sessions on the prevention of torture and the functions of the NPM within its curriculum was a significant step. Alongside other crucial topics such as human rights and the proper use of force, these training sessions ensure that aspiring guards are equipped to perform their duties with a strong human rights-based approach.

b. Current impact

As part of these efforts, it was established that every cohort of prison guards must receive training from Ombudsperson's Office personnel, through the NPM, on human rights, torture prevention, and proper treatment in line with international standards for persons deprived of liberty under state custody.

Since 2020, regular training sessions have been held for candidates of the Prison Training Academy.

During the first half of 2023, four workshops were conducted over two working days, training 157 students divided into four groups: three groups of 40 students each (Groups A, B, and C) and one group of 37 students (Group D). These workshops aimed to:

1. Sensitize and educate participants on human rights and the prevention of torture and other cruel, inhuman, or degrading treatment.
2. Raise awareness among authorities about the importance of allowing the NPM to exercise its mandate in state-run detention centers.

The workshop utilized a participatory education approach, including pre-tests and post-tests to measure knowledge gained. The sessions featured dynamic presentations, generative questions, a short documentary screening, and case studies to help participants identify situations involving torture and ill-treatment.

Throughout the workshop, participants showed significant interest, asking questions and sharing comments, which allowed for clarification of doubts about the subject matter.

Results from the pre-tests and post-tests showed that many students were unfamiliar with some key topics at the start. However, by the end of the workshops, most had gained a clearer understanding of torture prevention concepts and relevant legislation, such as the February 6, 2017 law and other legal instruments protecting human rights.

In accordance with the above, it is important to emphasize the importance of training all students and personnel responsible for working in state-run detention centers to mitigate risks of torture and ill-treatment.

For the last quarter of 2023, specifically in October, three more training workshops are scheduled for aspiring prison guards, aiming to train approximately 85 individuals.

4. GLOBAL TORTURE PREVENTION SYSTEM

a. Please provide an example of how cooperation with the TPS, along with the fact that the NPM's mandate derives from an international treaty, has positively impacted your institution's efforts to prevent torture and other ill-treatment

One of the recommendations made by the SPT to the Republic of Panama in 2017 was to expedite the selection process for the NPM's director and deputy director and, consequently, implement the mandate of the NPM, which had been pending since its creation through Law 6 of February 22, 2017. Following the SPT visit, the Panamanian State took the following actions:

1. Training of National Police officers and judges on the mandate of torture prevention.
2. Training of Ministry of Health personnel on the Istanbul Protocol.
3. Closure of certain National Police substations that did not meet minimum standards of habitability or access to services.

Once the NPM was established, continuous communication with the SPT has been maintained, with annual meetings facilitating regional dialogue on key issues. These meetings have helped raise awareness of problems observed by the mechanisms and allowed for the exchange of best practices in the development of their operations.

b. Please provide an example of how cooperation with other NPMs has had a positive impact on the work of your institution.

Since its implementation in 2018, Panama's NPM has engaged in two exchanges with regional mechanisms: one with Uruguay and another with Costa Rica. These exchanges allowed us to learn about best practices shared by these mechanisms, particularly regarding their mandates.

These experiences have helped us in several ways, including understanding the process of NPM implementation in those countries, learning about good practices in report writing, making recommendations, and following up on them. We also gained insights into how visits are conducted in other countries.

Additionally, through the facilitation of the Association for the Prevention of Torture (APT), we have participated in regional meetings with other NPMs that focused on critical areas such as the first hours of detention and incorporating gender considerations. These discussions have provided us with additional tools to identify and address vulnerabilities in deprivation of liberty contexts, especially during the first hours of detention.

PERU

Ombudsman's Office of Peru

National Preventive Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment



INTRODUCTION

1. CONDITIONS OF DETENTION OF LGBTIQ+ PERSONS IN 23 PRISONS IN PERU

The social rejection and exclusion experienced by LGBTIQ+ individuals are intensified to critical levels within the context of confinement, particularly in prison environments, which are often marked by informality, overcrowding, neglect, and a lack of resources.

In detention facilities, exclusion becomes especially evident for LGBTIQ+ individuals because the system is built on a binary and cisgender male/female model that assumes, by default, an exact alignment between “sex,” “gender,” and “sexuality” for all people. Additionally, the technical regulations governing aspects of prison life largely prioritize security over a rights-based approach. Furthermore, the same homophobic and transphobic stereotypes and prejudices prevalent outside are reproduced within the detention centers, in a context of clear asymmetry between the forces of the state and those deprived of liberty.

2. PREVENTIVE ACTION TAKEN

Faced with this reality, the National Preventive Mechanism for the Prevention of Torture of Peru conducted an exploratory investigation⁷⁶ to gain an understanding of the reality experienced by people with diverse sexual orientations and gender identities in detention facilities. Based on this information, the NPM made a series of recommendations to the

⁷⁶ Special Report Series N° 10-2023-DP-DMNPT www.defensoria.gob.pe/wp-content/uploads/2023/04/CONDICIONES-DE-INTERNAMIENTO-DE-LAS-PERSONAS-LGBTI-EN-23-C%C3%81RCELES-DEL-PER%C3%9A.pdf

National Prison Institute and the Ministry of Justice, aiming to reverse the situations that constitute risk factors or, in themselves, forms of torture and cruel, inhuman, or degrading treatment for LGBTIQ+ individuals deprived of their liberty. The data collection period spanned from September 2021 to October 2022.

3. FINDINGS

a. Registration, location, and separation of LGBTIQ+ individuals

All the detention facilities consulted responded that they do not have regulations that consider gender identity or sexual orientation as criteria for classifying the prison population. This procedure is solely governed by the directive on the matter and is managed by the Classification Technical Board of each prison.

Except for the detention facility in Pucallpa, all the prisons consulted reported that the consent of LGBTIQ+ individuals is not requested before their placement in the corresponding ward, and they specified that they do not have exclusive wards for the accommodation of individuals with diverse sexual orientations and/or gender identities.

During the visits, we found that detention facilities lack detailed records of the LGBTIQ+ individuals they house, and there are no physical spaces designated exclusively for this population. All prisons segregate physical spaces solely based on the biological sex of individuals, following a traditional binary model that only recognizes men and women. Neither sexual orientation nor gender identity are considered by the relevant authorities when determining the specific risk situations these individuals might face when assessing their classification.

The placement of an LGBTIQ+ individual, especially transgender individuals, can provide an initial framework of protection against potential conflict situations that could lead to violence and abuse. Ensuring their integrity and personal security may, in certain cases, require placing the person in an exclusive physical space for those who share the same sexual orientation or gender identity, without implying inferior treatment compared to other individuals deprived of liberty, or exclusion from the activities carried out in the prison⁷⁷.

b. Clothing and gender expression

The internal practices of each detention facility vary according to the discretion of the prison staff, which leads to arbitrariness and abuse by the prison staff. Although the Directive for the "Comprehensive Care and Specialized Detention Treatment for Persons Deprived of Liberty and Intramural Prison Population of Special Protection" authorizes

⁷⁷ OC 29/22 of the Inter-American Court of Human Rights, Differential Approaches Applicable to LGBTI persons deprived of their liberty, para. 244

the use of clothing and accessories that express the gender identity of transgender individuals, this has not been reconciled with current security regulations. In fact, prison authorities argue that the restrictions on bringing in certain clothing or using accessories are based on security concerns, assuming that such clothing could be used to facilitate an escape.

Except in the prisons of Chimbote and Ica, in all other cases, prison staff refer to transgender individuals by the names and surnames listed on their personal documents, not by their social names. It has also been recorded that transgender individuals who arrive for visits are forced to wear clothing consistent with the sex indicated on their identity documents in order to be allowed entry.

Several of the discrimination and ill-treatment situations mentioned by the transgender individuals surveyed are framed in expressions of transphobia, such as verbal violence, prohibiting transgender women from having long hair, threatening to cut it, or preventing a transgender man from cutting his hair, forcing him to keep it long for several months.

Other testimonies collected during the interviews refer to restrictions imposed by security technicians in authorizing the entry of clothing deemed inappropriate under heteronormative standards, particularly underwear such as men's boxer shorts in women's prisons or bras in men's prisons. The same applies to accessories like makeup.

c. Body searches for LGBTIQ+ PDLs and visitors

This issue is particularly relevant for individuals with transgender identities, gay men, and those who self-identify as non-binary, as the agents responsible for conducting body searches are often of the same sex as the person being searched. This rule fails to consider that for LGBTIQ+ individuals, there is not always a match between sex and gender.

Prison authorities do not have a protocol or special provisions for conducting body searches of transgender and non-binary individuals, as indicated by international standards.

It is common practice inside prisons to conduct strip searches publicly in front of other inmates. Additionally, transgender women visiting detention facilities are subjected to invasive searches (including anal cavity searches), strip searches, and verbal violence. These situations constitute humiliating and degrading treatment for transgender individuals.

No specific measures have been implemented to address the particular needs of transgender individuals or gay men, who are more exposed to degrading treatment during body searches. Additionally, when transgender individuals are asked whether they prefer a male or female officer to conduct the body search, responses have varied, highlighting the importance of consulting them.

d. Right to conjugal visits

The NPM is concerned that LGBTIQ+ individuals deprived of liberty in prisons, particularly lesbian women, bisexual women with female partners, and transgender men, face significant limitations in accessing conjugal visits on an equal footing with the rest of the prison population.

Only the prisons in Ica, Huaraz, Iquitos, Tacna, and Tarapoto reported allowing conjugal visits for LGBTIQ+ individuals. However, when asked about the frequency of such visits, Huaraz and Tacna indicated that they never occur, and Tarapoto noted that they happen only rarely. In the remaining 13 detention facilities, responses varied.

The absence of experience in implementing conjugal visits for LGBTIQ+ individuals was confirmed by the responses from the individuals surveyed.

Of the 43 individuals surveyed, the vast majority, 38, indicated that they had never requested a conjugal visit during their time in custody. Reasons for this include a lack of interest (because they do not have a partner outside the prison), lack of knowledge, and difficulty in meeting the requirements, among other factors.

While it might be assumed that LGBTIQ+ couples within the prison system have secured the right to intimacy, the information gathered shows important nuances. Testimonies from transgender women and gay men in men's detention facilities reveal that there is little interest in learning how to access the benefit of conjugal visitation, apparently because they do not feel the need.

This is not the case for lesbian inmates and transgender men in women's prisons, where, despite having a partner within the prison, they are not allowed to maintain any intimacy with them.

e. Access to healthcare services

The information gathered regarding access to healthcare services for LGBTIQ+ individuals reveals challenges and deficiencies typical of prison healthcare services in general, such as a shortage of medical professionals, psychologists, and psychiatrists, and a lack of medications, among others. However, there are also instances of ill-treatment and discrimination.

The available services are neither sufficient nor specialized to address the specific needs of LGBTIQ+ individuals in prison. For example, no detention facility reported offering hormone therapy or gender-affirming treatment for transgender individuals who wish to undergo it.

Additionally, the situation of lesbian inmates is concerning, as they frequently face questioning and reproach regarding their sexual orientation from prison officers and

healthcare staff, including the psychologists responsible for their treatment. This form of discrimination is especially serious because it occurs during individual psychological therapy sessions, when the person is particularly vulnerable, and it can constitute a form of torture in itself.

Some of the LGBTIQ+ individuals surveyed explicitly mentioned feeling discriminated against due to their gender identity and sexual orientation. A transgender woman in the Lurigancho detention facility described the ill-treatment as: *"they don't touch you, they don't check your body."* Another testimony from the Huancayo prison states: *"There was a doctor who treated me with disdain. I felt like she was homophobic, like she did her job out of obligation."*

In the Arequipa Women's Prison, lesbian inmates reported that they are constantly questioned by the psychologists, even during individual therapy sessions. One inmate stated: *"They tell me the usual—that I have to be okay... but I can't even mention if I have problems with my partner because they judge me. They tell me I'm a woman and shouldn't 'be like that' (referring to her lesbian orientation)."*

f. Application of disciplinary measures against LGBTIQ+ individuals

Gender expression and sexual orientation can be grounds for punishment by prison staff under vaguely defined and subjective terms such as "engaging in acts contrary to morality" or "hindering the treatment of other women inmates."

These practices are discriminatory and a form of violence based on prejudice. Moreover, the application of these sanctions can be accompanied by verbal violence and new threats to intimidate the individual and prevent them from reporting the abuse.

The responses obtained indicate that simply expressing gender through clothing, speech, or mannerisms in transgender individuals is considered a violation of internal security regulations in some prisons.

Six prison directors reported that displays of affection between same-sex couples are considered infractions of the disciplinary rules outlined in the Criminal Code and its Regulations. Two directors stated that gender expression is also considered a violation, while five mentioned that having a same-sex partner is considered an infraction.

Some instances of aggression against another inmate or prison authority were reportedly in response to harassment based on the individual's gender identity or sexual orientation. Similarly, one individual who was punished for "hindering the treatment of other women inmates" clarified that the real reason for the punishment was giving their partner a kiss on the forehead.

g. Ill-treatment or aggression against LGBTIQ+ PDLs

More than half of the survey respondents reported experiencing some form of ill-treatment during their imprisonment. The aggressors were mainly other inmates and prison staff.

The most common types of aggression against LGBTIQ+ individuals were verbal and physical violence, followed by extortion or threats, and sexual violence. Disrespect towards their gender identity and sexual orientation, manifesting as transphobia and homophobia, is a form of aggression commonly practiced in places of detention.

In describing these ill-treatment situations, individuals detailed multiple forms of aggression or combinations of several modalities.

"They pulled my hair and said: we're going to cut your hair. You can't have it long here." Transgender woman, aggression by prison staff.

"When I first arrived, a prison guard hit me with a stick." Transgender woman.

"There's an inmate who's always high, and he harasses me, he bothers me. He provokes my husband to hit him so that he gets punished and sent to solitary confinement, leaving me alone... The guards shout and insult me if I dress like a woman." Transgender woman.

"I had short hair when I arrived at the prison, and they didn't let me cut it. They forced me to keep my hair long for over two years. My partner was also harassed. They made it a condition that I dress as a woman to be allowed to stay close to my partner." Transgender man.

4. MAIN RECOMMENDATIONS

To the National Prison Institute

- a. Establish a Registry of Violence Against LGBTIQ+ Persons in Detention Facilities, which systematically documents the types, prevalence, trends, and patterns of violence and discrimination faced by LGBTIQ+ individuals. The registry will also capture detailed information on the alleged perpetrators and the characteristics of the victims.*
- b. Adapt Directive Nº 004-2019-INPE-DTP, which regulates the classification of processed and sentenced inmates in detention facilities, to the classification and placement criteria for LGBTIQ persons established by DI 004-2022-INPE-DTP.*
- c. Adapt regulations to ensure that inmates have the right to wear clothing and use accessories that express their gender identity, as long as these items do not pose a risk to the safety or integrity of others.*
- d. Ensure that LGBTIQ+ individuals deprived of liberty, particularly those with*

partners within the same correctional facility, have access to intimate visits under the same conditions as other inmates, without discrimination based on sexual orientation, gender identity, or expression. This is in accordance with Article 68 of the Single Orderly Text (TUO, in Spanish) of the Criminal Enforcement Code (CEP, in Spanish) and Article 205 of the CEP Regulations, as approved by Supreme Decree N° 015-2003-JUS and amended by Supreme Decree N° 015-2010-JUS.

e. Establish a mandatory protocol for all prison staff that regulates the registration and admission procedures for LGBTIQ+ individuals visiting correctional facilities. This protocol must respect the dignity and integrity of the person, as well as their gender identity and expression, and must strictly prohibit any humiliating or degrading acts.

f. Ensure that search personnel of both genders are present in each detention facility housing LGBTIQ+ individuals.

To the Ministry of Justice and Human Rights

a. Submit to Congress a bill to amend the Unified Text of the Criminal Code, approved by Supreme Decree N° 003-2021-JUS and its Regulations, in the following terms: Recognize access to conjugal visits as a right, which must be exercised without discrimination based on sex, sexual orientation, gender identity, or expression, or any other grounds.

5. FOLLOW-UP ON RECOMMENDATIONS

A public presentation of the report was made, and official letters with the recommendations were sent to the entities mentioned above. During the presentation of the report, the National Penitentiary Institute (INPE, in Spanish) committed to implementing the recommendations made by the NPM, stating their agreement with them.

A meeting with INPE's President is still pending to understand the implementation plan for the recommendations and the projected timelines. We are currently in the follow-up phase, but merely bringing to light, from a prevention perspective, situations that violate the rights of LGBTIQ+ individuals in prisons is already a significant step, as it allows us to engage in dialogue with the authorities about strategies for improvement, especially when the findings and recommendations are accepted.

6. PREVENTION OF TORTURE AND USE OF FORCE IN THE CONTEXT OF SOCIAL PROTESTS

The social protests in Peru, which began on December 7, 2022, created a crisis scenario that prompted the National Preventive Mechanism for the Prevention of Torture to intervene and issue repeated statements.

The dignity, integrity, and even the lives of individuals were put at risk as state institutions, particularly the National Police and, in some cases, the Armed Forces, used excessive force to restore public order. While the state has the legal tools to exercise legitimate force, including the reasons and legal justifications for depriving individuals of their liberty, as established in the Political Constitution of Peru and the Criminal Procedural Code, oversight actions carried out by the Ombudsperson's Office, and especially by the National Preventive Mechanism for the Prevention of Torture (NPM), have identified actions that exceed these legal boundaries, resulting in illegal and arbitrary detentions .

This environment has been conducive to numerous complaints across the country (in Puno, Cusco, Apurímac, Lima, among others), reaching the Ombudsperson's Office regarding cruel, inhuman, or degrading treatment, including torture, expressed through physical and psychological violence against those deprived of liberty. These actions constitute unlawful behavior that must be individually investigated and sanctioned.

7. PREVENTIVE ACTION TAKEN

The human rights violations described were detailed in an investigation⁷⁸ carried out by the National Preventive Mechanism for the Prevention of Torture during interventions initiated ex officio and at the request of others, to verify the situation of individuals who had been detained, either for flagrante delicto or for other reasons or forms of deprivation of liberty associated with social protests. The conditions of detention of these individuals were also monitored when they were transferred to police facilities. Our interventions have been documented in public statements, which are available on the institutional website.

8. FINDINGS

a. Alleged human rights violations in the context of protests

In the context of the social protests that began on December 7, 2022, the NPM has received information regarding several incidents and complaints alleging the excessive use of force by National Police and Armed Forces personnel during actions taken to maintain public order in the country.

According to data from the Ombudsperson's Office, 48 civilians have been reported dead, and more than 1,200 people have been injured due to police and military repression in areas where protests and demonstrations occurred. Additionally, 11 civilians lost their lives in traffic accidents and incidents related to roadblocks by protesters, while a police officer was killed during the conflict. Media sources and

⁷⁸ Special Report N° 9-DP-DMNPT Legal figures of deprivation of liberty used by the National Police in the context of social protests and violation of rights [LEGAL FIGURES OF DEPRIVATION OF LIBERTY USED BY THE NATIONAL POLICE IN THE CONTEXT OF SOCIAL PROTESTS AND VIOLATION OF RIGHTS.](#)

audiovisual records also document physical and verbal attacks on journalists, photojournalists, and volunteer brigades attending to the injured during the protests. Medical certificates in the prosecutor's files reveal that many of the injuries sustained by the deceased and injured are consistent with those caused by gunshot wounds or tear gas canisters fired directly at their bodies.

- Irregular use of the concept of "identity checks" and arbitrary detentions

In Lima, particularly, but also in other regions, personnel from the Ombudsperson's Office and the NPM have observed the irregular use of "identity checks" as a way to discourage protests. On at least two occasions, hundreds of peaceful demonstrators exercising their right to protest were forced into police vehicles and taken to police stations without being informed of the reason or purpose. Once at the police station, they were subjected to "identity checks," which involved checking their identity documents and verifying any outstanding warrants.

The interventions were violent and included minors who were accompanying their parents at the protests.

Those detained reported to NPM officials that they were beaten, had their cell phones and other belongings confiscated—complaints that were brought to the attention of representatives from the Public Prosecutor's Office who were present.

This conduct by the National Police did not follow the protocol outlined in the Criminal Procedural Code for identity checks and thus, constitutes an illegal form of deprivation of liberty and a form of intimidation toward protesters.

b. Human rights violations during deprivation of liberty

Various human rights violations have been reported by individuals who were taken to police stations as detainees or for identification purposes during the protests. The following incidents are highlighted due to their severity:

- Ill-treatment (cruel, inhuman, or degrading treatment), which may even constitute torture.

On December 12, 2022, eight people were detained in Apurímac. They reported physical and verbal abuse during the arrests and while in the police station. On January 11, 2023, 43 people were detained in Cusco and taken to the Río Police Station. After three days without being provided with food or access to drinking water, they were released.

Upon release, they reported being beaten and subjected to physical and verbal abuse, including being kicked and punched against the door of the cell where they were held. Among the detainees were two women, one Peruvian and one Colombian, but all detainees were confined to the same room. They also reported that the food their families

brought them was consumed by soldiers and police officers. On January 19 and 20, 2023, 12 people were detained in Ilave, Puno, and reported being mistreated while in custody.

On January 21, 2023, the National Police (PNP, in Spanish) conducted an operation at the National University of San Marcos (UNMSM, in Spanish) without the presence or knowledge of the Public Ministry, resulting in the arrest of 192 people—including Quechua- and Aymara-speaking citizens from rural communities and university students—on charges of usurpation in flagrante delicto. The arrests were carried out violently, both physically and verbally.

Police officers used offensive language and discriminatory phrases referring to the indigenous and rural origins of the detainees. Students residing in the university's dormitories reported to the Ombudsman's Office that police personnel, mostly male, violently entered the facilities (both the men's and women's dormitories), breaking doors and locks, searching their belongings, and forcing them to lie prone on the ground while being threatened with firearms aimed at their heads.

Furthermore, a pregnant woman accompanied by her 7-year-old daughter was arrested during this operation and taken to the premises of the Directorate Against Terrorism (DIRCOTE, in Spanish).

On January 25, 2023, 600 National Police officers carried out an operation to clear the roadblock on the South Pan-American Highway at kilometer 235, in Ica.

As part of these actions, they entered the Expansión Urbana community, where they, along with individuals not wearing police uniforms or identifiable as law enforcement, detained residents of this and neighboring communities. During a visit to the "Cristo Rey" de Cachiche Detention Facility, the Ombudsperson's Office observed that the detainees had visible injuries on their bodies.

On January 28, 2023, Luciano Balbin was detained by police officers and taken to the Cotabambas Police Station along with other detainees, as mentioned earlier. He reported that the police officers who arrested him beat him in various parts of his body, especially his ribs, face, and legs. He also stated that while in the police station, a police officer threatened him twice, saying: "Shut up because later I'll make you scream, I'll make you cry."

On February 10, 2023, Fermina Pandia Laura and Constantino Orihuela Mayta were detained near the Bronco Gas Station in Alto Puno. Personnel from the Ombudsperson's Office in the region visited the State Security Division, where the detainees were taken, and confirmed that Mrs. Fermina Pandia Laura had visible signs of being beaten, including an open wound on her forehead that was still bleeding. She provided video footage of the incident, showing the violent manner in which she was detained and the moment when a police officer struck her in the face with an object, despite having been

subdued on the ground. The corresponding medical certificate indicated that Mrs. Pandia Laura had a 4-cm open wound with swollen edges on her left frontal region, requiring two days of medical care and seven days of legal health impairment.

- Non-compliance with safeguards (warranties)

Between January 12 and 13, 2023, seven student and social leaders from Ayacucho were detained and taken to the Los Cabitos Military Barracks and the State Security Office in the city and were subsequently transferred to the Lima Directorate Against Terrorism in a small aircraft after midnight. They were not informed of the reason for their detention nor allowed to contact their lawyers or families in the early moments of their detention. Personal searches conducted on the detainees at the National University of San Marcos were carried out without informing the Public Ministry. Body searches were conducted publicly, even on women, without allowing them to communicate with family or lawyers. Lawyers were not allowed to enter during the detention and personal or home searches in San Marcos, nor during the time the detainees were held in police facilities. It was evident that protocols or practices for attending to the needs of vulnerable individuals inside the UNMSM, such as children (1), pregnant women (2), people with pre-existing medical conditions (Parkinson's and hypertension), older persons (8), persons with disabilities, and members of indigenous communities who speak Quechua and Aymara as their first languages, were not followed.

MAIN RECOMMENDATIONS

To the Attorney General's Office

Instruct prosecutors nationwide to immediately, and with the necessary resources, begin investigating the irregularities identified in this report and any other similar incidents that come to their attention, in order to establish the corresponding responsibilities.

- a. Remind prosecutors that investigations into cases where torture or cruel, inhuman, or degrading treatment are suspected must apply the Istanbul Protocol and be conducted by the specialized human rights bodies.

To the Minister of the Interior

- a. *Instruct all civil and police personnel nationwide to facilitate the work of the Ombudsperson's Office, in compliance with the duty of cooperation established in Article 161 of the Political Constitution of Peru. To the Commander General of the National Police of Peru*
- b. *Remind police personnel to ensure that all use of force during their interventions is in accordance with the principles of legality, necessity, and proportionality, respecting the human rights of individuals from an intersectional approach, considering the special protection needs of groups such as minors,*

pregnant women, and members of indigenous and native communities.

- c. *Communicate and reinforce to police personnel the limits established for the different forms of deprivation of liberty, with the aim of preventing procedural violations and ensuring the greatest possible safeguards for individuals in police custody.*
- d. *Investigate the incidents mentioned in this report and any others that come to their attention to establish the corresponding functional responsibilities.*
- e. *Instruct all police personnel nationwide to facilitate the work of the Ombudsperson's Office, in compliance with the duty of cooperation established in Article 161 of the Political Constitution of Peru.*
- f. *Remind police personnel that during police interventions and detentions involving indigenous individuals, their dignity and linguistic rights must be respected, in accordance with the law, respecting their native language and traditions, with a 10 intercultural approach. This also implies incorporating questions of ethnic self-identification and native language in police intervention records, such as personal search records, seizure records, and other administrative records of the National Police.*
- g. *Promote training sessions for National Police of Peru (PNP, in Spanish) personnel on interculturality and gender from a human rights perspective, with the aim of developing the best skills in service provision and eradicating discriminatory and ethnic-racial expressions that have been used against the indigenous population.*

FOLLOW-UP ON RECOMMENDATIONS

Since becoming aware of the irregularities mentioned in the report, public statements were issued, official communications were sent to the Ministers of the Interior and Defense, the Public Ministry, the Ministry of Women and Vulnerable Populations, and the Ministry of Culture. Meetings were also held with the Ministers of Justice and Human Rights, Interior, and Defense. These interventions had an effect, as the latest protests in February and March 2023 in Lima did not have the same levels of violence as those seen in the regions earlier in the year. There was one fatality and several injuries, but the intensity of the use of force by law enforcement was not the same as during the early months of 2023.

When protests resumed in July 2023, greater care was observed in police interventions during the protests and detentions, with no deaths or mass detentions, and while there were injuries and complaints of excessive use of force, they were not as severe as in the early months of 2023. We believe that our interventions helped improve the state's response to protests. Similarly, we continue to monitor the progress of investigations into

the deaths and injuries cases.

DATA GENERATION. FIRST NPM REPORT ON CASES OF TORTURE AND ILL-TREATMENT, 2021-2022, AND THE 2023 PROTESTS

One of the NPM's major concerns is data generation. To that end, the thirteen special reports published so far aim to shed light on the specific problems faced by particularly vulnerable populations.

At the NPM, we are convinced that situations that affect the integrity, dignity, and even the lives of individuals, potentially constituting torture or ill-treatment, have become normalized in the country. Data and references on the matter are scattered and not adequately organized. This has resulted in obscuring the magnitude of torture and ill-treatment, and normalizing situations of rights violations.

For this reason, we consider it necessary to organize and systematize all possible data to generate reliable information. By building this information, we will generate the knowledge necessary to make decisions that improve the actions of the NPM and other entities involved in the prevention of torture in our country.

PREVENTIVE ACTION TAKEN

Given that the Ombudsperson's Office has a case registration system (complaints, petitions, and consultations) through its forty decentralized offices nationwide, we decided to review the complaints related to dignity, integrity, and life violations, and to select from there the cases related to acts of torture and ill-treatment.

Based on this registry, we generated information collected from 2021 to 2022, identifying the number of cases, regions where complaints were registered, entities where most complaints were filed, types of aggression, classification of potential perpetrators, among other factors. A comparison was made between the data for 2021 and 2022. This information was systematized in the first report⁷⁹ published by the NPM in the first quarter of 2023. An additional aspect covered is the complaints of torture and ill-treatment during the political crisis that began on December 7, 2022, and continued until mid-March 2023.

This information goes beyond the stated figures, providing a comprehensive overview of the country and indicating where we should focus our interventions and what actions need to be taken to fulfill our mandate. It serves as a baseline that will allow us to make decisions about our work, as well as to compare, semester by semester and year by year, whether the Peruvian state is making the efforts it committed to before the UN to

⁷⁹ Report N°1 : Cases of alleged torture and other cruel, inhuman or degrading treatment or punishment known by the NPM [REPORT N° 1 CASES OF ALLEGED TORTURE AND OTHER CRUEL, INHUMANE OR HUMANE TREATMENT OR PUNISHMENT](#)

prevent and combat torture in the country.

FINDINGS

1. Complaints registered by year and region

Number by year

From January to December 2021, 309 complaints were registered regarding incidents that could constitute torture or other cruel, inhuman, or degrading treatment. In 2022, 357 complaints were registered, indicating 48 more complaints compared to the previous year, representing a 15.5% increase.

Number by region

According to the systematized complaints, alleged acts of torture and other cruel, inhuman, or degrading treatment were identified in the 24 regions of the country, as well as in the constitutional province of Callao.

In 2021, only Amazonas did not record any complaints related to torture or mistreatment. In 2022, however, every region recorded at least one complaint related to acts of torture or ill-treatment.

Number of complaints registered related to torture and ill-treatment by region (2021): 309. Lima (64), Cajamarca (32), Ica (26), Áncash (25), and Cusco (19) were the top five regions with the highest number of registered complaints.

Number of complaints registered related to torture and ill-treatment by region (2022): 357. Lima (70), Ica (30), Huánuco (30), Cusco (19), and Áncash (18) were the top five regions with the highest number of registered complaints.

2. Regarding alleged victims

Data related to alleged victims

Sex of alleged victims: Of the total number of alleged victims in 2021 (327), 78.9% were male, and 16.5% were female; a percentage (4.6%) did not specify their sex.

In 2022, of the total number of alleged victims (389), 78.9% were male, 16.7% were female, and 4.4% did not have this information available.

Country of origin of the alleged victims

Anyone, regardless of nationality, can be a victim of torture or other cruel, inhuman, or degrading treatment. In 2021, alleged victims were identified as Peruvian (285), Venezuelan (4), Colombian (4), and Argentine (1), while for 33, no information was

available. In 2022, alleged victims were identified as Peruvian (332), Colombian (6), Venezuelan (4), Ecuadorian (2), Cuban (1), and Brazilian (1), with no information available for 43 individuals.

Vulnerability of the alleged victims

Age, sex, nationality, gender identity and sexual orientation, disability status, or belonging to an indigenous population, among other factors, place individuals in situations of vulnerability and defenselessness.

In both years, alleged victims with multiple vulnerabilities were identified, as they belonged to more than one vulnerable group. For example, women deprived of liberty, adolescents deprived of liberty, LGBTIQ+ individuals deprived of liberty, children and adolescents with disabilities, migrant women, and others were identified.

3. Alleged perpetrators, involved entities, and location of the incidents

-Status of alleged perpetrators: public officials or private individuals

In 2021, out of 289 alleged perpetrators identified in the reviewed complaints, 159 were public officials, while 130 were private individuals who allegedly committed acts of torture or ill-treatment with the instigation, knowledge, or acquiescence of a public official.

-Location of the incidents

Torture and other cruel, inhuman, or degrading treatment can occur anywhere. However, it is particularly prevalent in places of detention, which are characterized by isolation from the rest of society.

In 2021, the top five locations where alleged incidents of torture and ill-treatment occurred were detention facilities (223 cases), police stations (34 cases), public spaces (15 cases), military barracks (15 cases), and residential care centers for children and adolescents (13 cases).

In 2022, the top five locations where alleged incidents of torture and ill-treatment occurred were detention facilities (264 cases), police stations (35 cases), public spaces (18 cases), military barracks (13 cases)—12 in Army barracks and 1 in a Navy barrack—and residential care centers for children and adolescents (13 cases).

-Complaints according to the entities managing the locations where the incidents occurred

In 2021, based on the locations where acts of torture and mistreatment were reported, the most complained-about entities were, in first place, the National Prison Institute (INPE, in Spanish), with 223 complaints, followed by the National Police of Peru (PNP, on Spanish), with 40 complaints, and the Peruvian Army (EP, in Spanish), with 16

complaints. Other entities also formed part of the list, as detailed in the following chart.

In 2022, the most complained-about entities were, in first place, INPE, with 264 complaints, followed by the PNP, with 42 complaints, the Armed Forces, with 14 complaints—13 directed at the Peruvian Army and 1 at the Peruvian Navy—and local governments, with 14 complaints

Other entities were also subject to complaints, albeit in smaller numbers, as detailed in the following chart.

4. Modalities

Modalities of torture and ill-treatment (physical, psychological, and sexual violence)

In 2021, of the 309 complaints registered for alleged torture and/or ill-treatment, 196 cases involved physical aggression, 94 cases involved psychological aggression, and 15 cases involved sexual aggression. The aggression may have occurred successively or simultaneously, and in some cases, repeatedly.

In 2022, the alleged victims reported physical aggression (216), psychological aggression (112), and/or sexual aggression (16), either successively or simultaneously. In some cases, these aggressions occurred repeatedly.

5. Comparison of figures obtained during 2021 and 2022

In 2022, more complaints were registered compared to 2021, with an increase of 15.5%. The months with the highest and lowest number of complaints registered in 2021 were January and December, with 38 and 17 cases, respectively. In 2022, July and November recorded the highest number of alleged acts of torture and ill-treatment, with 41 complaints each, while only 20 complaints were registered in March, making it the month with the fewest cases. Finally, an analysis of the number of complaints registered in both years shows that at least 17 complaints related to torture and mistreatment are registered each month.

6. Incidents during the December 2022-March 2023 conflict

-Complaints registered from December 7, 2022, to March 15, 2023

From December 7, 2022, to March 15, 2023, 22 complaints were registered in the Comprehensive Complaint System (SID, in Spanish) regarding incidents that could constitute cruel, inhuman, or degrading treatment, or even torture. These incidents are related to the excessive use of force by police and military personnel during public order control in protests and during detentions.

136 During the reporting period, the reported incidents took place in the regions of Puno (9 complaints), Lima (7 complaints), Cusco (4 complaints), Apurímac (1 complaint), and

Ayacucho (1 complaint).

-Circumstances in which the incidents occurred

The alleged incidents of torture and other cruel, inhuman, or degrading treatment occurred primarily in three situations:

1. During the exercise of the right to protest,
2. During detention or deprivation of liberty, and
3. During the detainees' stay at police stations following their detention.

Additionally, extraordinary situations occurred that constituted cruel, inhuman, or degrading treatment, or even torture, such as the police intervention at the National University of San Marcos (UNMSM, in Spanish) on Saturday, January 21, 2023.

Of the 22 registered complaints, 13 relate to alleged incidents of torture and ill-treatment that occurred during protests, 4 occurred during detention or deprivation of liberty, and 3 took place while the individuals were in police custody.

-Modalities of the alleged acts of torture and ill-treatment

The reviewed complaints revealed the following modalities of torture or ill-treatment: 1) the excessive use of force, 2) the failure to ensure the exercise of essential rights during deprivation of liberty, and 3) the humiliating treatment of detained individuals.

MAIN RECOMMENDATIONS AND FOLLOW-UP

Although the nature of the report does not allow us to make direct recommendations, the systematized information will enable the relevant authorities to focus their efforts on improving the conditions of individuals deprived of liberty.

The entities where the most complaints of torture and ill-treatment were registered, the regions with the highest number of cases, the modalities, and the most vulnerable sectors should be key aspects to consider.

Regarding the NPM, this will allow us to focus our work on the prison system, particularly on vulnerable sectors and regions where a greater institutional presence is needed. Undoubtedly, these elements will help improve intervention efforts.

URUGUAY

National Human Rights Institution and Ombudsperson's Office of Uruguay

National Preventive Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment



INTRODUCTION

1. TRANSPARENCY CULTURE IN PLACES OF DETENTION

a. Overcoming barriers to access places detention.

On March 13, 2020, Uruguay declared a national health emergency due to the emergence of COVID-19, following the identification of the first cases in the country. Approximately a month after the declaration, the National Human Rights Institution and Ombudsperson's Office (NHRI), acting as the National Preventive Mechanism (NPM), called for urgent measures, particularly recommending special attention to the most vulnerable sectors⁸⁰.

The importance of monitoring detention spaces by independent bodies was reinforced. The Subcommittee on Prevention of Torture (SPT) called on National Preventive Mechanisms "to continue exercising their preventive mandate during the pandemic, including visiting places of detention whenever possible, considering the legitimate restrictions on social contact and the principle of 'do no harm.'"⁸¹ Furthermore, the importance of continuing in-person visits was emphasized, given that "the potential exposure to risks of ill-treatment faced by people in detention could increase as a

⁸⁰ NHRI urges to take urgent measures for persons deprived of liberty with higher health risk, April 15, 2020. https://www.gub.uy/institucion-nacional-derechos-humanos-uruguay/sites/institucion-nacional-derechos-humanos-uruguay/files/documentos/noticias/Declaracio%CC%81n%20INDH%20MNPT%20sistema%20carcela-rio_150420.pdf

⁸¹ Statement of the United Nations Subcommittee on Prevention of Torture (SPT), March 30, 2020. Available at: [Iran sanctions are unjust and harmful, says UN expert warning against generalised economic war | OHCHR](#).

consequence of public health measures adopted⁸²."

In Uruguay, several national protocols and recommendations were implemented to reduce movement without enforcing a national quarantine or mandatory confinement. However, no national protocols were established regarding the situation of persons deprived of liberty⁸³, except for the "Measures and Recommendations for Visits and Departures from Long-Term Care Facilities for Older Persons."

Instead, protocols, guidelines, and institutional recommendations were implemented by each institution where persons deprived of their liberty remain. Particularly in reference to the National Rehabilitation Institute (INR)⁸⁴, individual protocols were formulated, along with joint protocols with healthcare providers responsible for the medical care of persons deprived of liberty.

1. Issue:

In both 2021 and 2022, there were two situations where the NPM team was prevented from entering detention facilities due to them being in confinement because of individuals who had tested positive for COVID-19.

In the first instance, on April 21, 2021, the NPM received information about the transfer of women deprived of liberty along with their children to a specific sector within the unit intended for COVID-positive individuals.

According to the information provided, the area was still under construction, and the minimum conditions for accommodation were not met. For this reason, the team visited the unit to verify the detention conditions. Upon arrival, the team identified themselves with the corresponding identification cards and explained the purpose of the visit. However, the officer at the entrance indicated that entry was not allowed, which was confirmed by the unit director.

In February 2022, the NPM received a complaint about the conditions of detention faced by some women at Prison Unit N° 5⁸⁵. The complaint specifically mentioned inadequate conditions due to isolation protocols for women who had tested positive for COVID-19, poor food quality, lack of access to healthcare, poor hygiene conditions, and other

⁸² Recommendations of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms related to the Coronavirus pandemic (adopted March 25, 2020). Available at [http:// www.MNPT-opt.gob.gt/covid-19](http://www.MNPT-opt.gob.gt/covid-19)

⁸³ Uruguay's NPM focuses its monitoring on the following detention systems: the juvenile criminal system (INISA, in Spanish), the 24-hour special protection system for children and adolescents (INAU, in Spanish), the adult prison system, police units (police stations and Specialized Units on Domestic and Gender Violence), psychiatric institutions, and drug treatment centers.

⁸⁴ In the process of implementing the Law for the Humanization and Modernization of the Prison System (September 2005), Law N° 18.719 was approved, which established the National Rehabilitation Institute (INR), replacing the "National Directorate of Prisons, Correctional, and Recovery Centers." As part of this transition, the INR gradually assumed responsibility for the administration of all prisons in the country, a process completed on December 27, 2010.

⁸⁵ Unit N° 5 is the main prison unit for housing women deprived of liberty, located on the outskirts of Montevideo, the country's capital, with a total capacity of XX women. At the time of the complaint, there were XXX.

violations.

In this case, the NPM team was able to enter the unit, informing the staff that the purpose of the visit was to inspect the confinement sector to assess the situation of the women affected by the disease.

The team requested that a space be provided where they could put on personal protective equipment before entering the confinement sector, but this request was not fully understood, and they arrived at the sector without the necessary protective gear. Faced with this situation, the NPM team decided to leave the area without completing the visit during this first instance.

2. Actions taken by the NHRI-NPM:

In both instances, the NPM team left the facilities with plans to return the following day to carry out the visits as planned. It is important to note that in both cases, the approach to the visits was organized by the NPM's interdisciplinary team, where objectives were established, the route and stay in the unit were determined, and strict protective measures were applied.

Special attention was given to the necessary preventive measures to reduce the risk of infection and virus transmission, creating a guideline based on existing international and national instruments and protocols at the time. "In summary, the visit planning focused on the following points:

1. Prior information about the situation of the unit; b) Advice from a medical professional
2. Characteristics of the protective equipment and procedures used
3. Team size and visit duration⁸⁶."

Specifically, in the first situation in 2021, the team requested direct communication with the unit director, where the legal powers of the NPM were explained, and the coordinated procedure and protective measures (in addition to those already in use) were described. However, the director confirmed the decision not to allow entry, stating that Unit N° 9 was in a "sanitary bubble" as ordered by higher authorities⁸⁷. At the request of the NPM professionals, a document was issued certifying the denial of entry and the reasons for it.

⁸⁶ Report N°125/MNPT-SA/2021, visit to Unit N°9. Published on 05/25/2021. Available at: [Report N°125/ MNPT- SA/2021- Visit to Unit N° 9 : National Human Rights Institution and Ombudsperson's Office.](#)

⁸⁷ This measure, implemented due to the inability to isolate specific areas, entails the suspension of access for all individuals not directly involved with the unit, as well as the cessation of external activities. It is important to highlight that, in fulfilling its legal mandate, the NPM adhered to the "do no harm" principle, ensuring a proactive role in both collaboration and prevention. This approach aligns with the overarching principle and objective outlined in Article 1 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (OPCAT).

In the second instance, the team chose to communicate with the unit staff to clearly explain the NPM's requests, ensuring the necessary guarantees for access to the confinement sector for the women with COVID-19, those who were not infected, the unit's staff, and the NPM monitoring team members.

3. Recommendations:

The inability to carry out the planned visit by the NPM on April 26, 2021, due to the health emergency, led the NPM to engage with authorities from the Ministry of the Interior, the National Rehabilitation Institute, and the Support and Assistance to Persons Deprived of Liberty (SAI-PPL, in Spanish.) During these discussions, the monitoring powers of the NPM and its legitimacy to conduct visits, even in emergency situations, were explained.

The specific recommendations from this first visit related to: "a) The need for the first floor of Unit N° 9 to be used in a temporary and limited capacity due to the pandemic; b) Providing adequate conditions for the individuals housed there, especially as winter approached; c) Ensuring access to the necessary materials to protect the unit's staff of the unit. The report also highlighted the need for inter-agency dialogue (INR-NPM) to clarify the legal powers of the NPM and facilitate awareness of these powers among INR and SAI-PPL⁸⁸ staff."

4. State Response (Achievement and Impact):

In both instances, after discussions with the authorities, the NPM's powers and methodological approach were presented, and the visits were conducted as planned. The dialogues generated during this process are significant and merit the establishment of inter-agency agreements that set pre-established guidelines in a timely and appropriate manner. These efforts also create precedents for future instances.

5. Good Practice in Overcoming Barriers: Incorporating the Monitoring of Long-Term Care Facilities for Older Persons (ELEAM, in Spanish)

The NHRI received several complaints about the situation of older persons in these types of facilities, highlighting living conditions that could imply rights violations. Among the complaints received by the NHRI's Ombudsperson's Office, issues such as the inability of individuals to enter voluntarily, lack of contact with family members, inadequate building conditions, and poor treatment were raised. The NPM had been discussing, in parallel with the receipt of these complaints, the scope of the concept of deprivation of liberty, considering the possibility of monitoring these places. In fact, the NPM actively contributed to a document prepared by the SPT, providing input on the chapter regarding the scope of the definition of places, and participated in a virtual meeting on the subject

⁸⁸ Report N°125/MNPT-SA/2021, visit to Unit N°9. Published on 05/25/2021. Available at: [Report N°125/ MNPT- SA/2021- Visit to Unit N° 9 : National Human Rights Institution and Ombudsperson's Office.](#)

on June 4, 2023. These actions paved the way to begin firmly incorporating this topic.

1. Issue:

Up until that point, the main challenge was the lack of clarity, at least for the NPM and the stakeholders involved, regarding whether the stay of individuals in Long-Term Care Facilities (ELEPE, in Spanish) fell within the scope of Article 4 of OPCAT. This ambiguity stemmed from the fact that many individuals initially entered these facilities voluntarily or at the behest of their families. However, over time, their ability to enter voluntarily often diminished, at least in practice. Another debated aspect was whether the NPM had the authority to enter private institutions that function as ELEPE.

Actions Taken by the NPM: The NPM began working in coordination with the recently created Older Persons Unit within the NHRI, to respond to urgent situations received by the complaints teams that reported mistreatment of individuals in some long-term care centers.

Additionally, the NPM worked on mapping formally registered centers before the relevant authorities, conducting a series of exploratory visits to at least one of the most significant national centers, and planning for 2024 to gather more accurate data on the reality of this population in Uruguay.

Among the centers visited in an exploratory capacity was the Dr. Luis Piñeyro del Campo Geriatric Hospital, a public institution, and, derived from the Ombudsperson's Office, the "Hogar Italiano," a private institution. The visits aimed to examine the conditions of deprivation of liberty, care, and treatment of the institutionalized individuals.

2. Recommendations:

Urgent recommendations were made regarding situations of potential rights violations in the private institution, leading to constructive dialogue with the relevant authorities.

3. State Response (Achievement and Impact):

First, it should be noted that both centers allowed the entry of the teams, and they were able to freely interview individuals and take photographs, which were later included in the reports sent to the authorities. The recommendations were also forwarded to the regulatory body responsible for inspecting these facilities, the General Directorate of Health Surveillance of the Ministry of Public Health, which shared its own reports. From this exchange, instances of analysis and follow-up were generated, where the NPM, in its proactive role, proposed alternatives from a human rights perspective to address the rights violations.

2. PROTECTION OF PERSONS DEPRIVED OF LIBERTY

a. The Creation of the NPM within an NHRI Framework.

In Uruguay, the NPM has operated since 2013 under the authority of the National Human Rights Institution and Ombudsperson's Office (NHRI), as established by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (OPCAT) and Article 83 of Law 18.446, on the creation of the NHRI⁸⁹.

It was established as a state institution with broad powers and responsibilities for the defense, promotion, and protection of human rights, as recognized by the Constitution of the Republic and International Law (Articles 1, 4, and 35 of the law).

The NPM is structured as an autonomous and independent oversight and collaboration body, with a mandate to prevent and protect individuals deprived of liberty from torture and other ill-treatment through the periodic and independent monitoring of places where individuals are deprived of liberty.

An NPM created within an NHRI has both positive and negative aspects. For example, a negative point, which has been noted by the SPT⁹⁰ in the case of Uruguay, is the lack of an independent budget for the NPM's work.

However, there are also positive aspects, such as the ability to implement measures and exercise powers through the NHRI. Specifically, Article 4(c) of Law N° 18.446 grants the NHRI the authority to "promote the adoption of measures it deems appropriate to ensure that the legal framework and institutional and administrative practices align with international human rights instruments to which the State is a party." Furthermore, Article 35(e) of the same law grants the NHRI the power to "file criminal complaints and submit habeas corpus or injunctions, without prejudice to requesting other judicial precautionary measures it deems appropriate."

Within this context, since its inception, the NPM has employed three different legal resources through Uruguay's NHRI. These include: a habeas corpus for a teenager in a juvenile detention center, an injunction for children and adolescents who remained hospitalized in acute mental health care centers despite being medically discharged, and a series of amicus curiae during the health emergency to support the public defender's office for persons deprived of liberty.

1. Issue:

⁸⁹ Article 83 of Law N° 18446 states: "The NHRI shall carry out, in coordination with the Ministry of Foreign Affairs, the functions of the national preventive mechanism as outlined in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, an international treaty to which the Republic is a party. For this purpose, the NHRI shall meet the requirements established by the Protocol for the national preventive mechanism, within its competencies and powers."

⁹⁰ Report of the SPT visit to Uruguay, United Nations, CAT/OP/URY/1 (March, 2018), para.16.

In April 2018, a habeas corpus was filed regarding the situation of a teenager in one of the centers of the National Institute for Adolescent Social Inclusion (INISA, in Spanish).

The case involved a teenager who, after being hospitalized for multiple gunshot wounds and a traffic accident, was discharged to a detention center. An expert opinion conducted by a forensic doctor from the Forensic Technical Institute concluded that the young man could remain in a detention center, provided that sanitary measures were in place to ensure proper management of his colostomy, along with adherence to medical instructions, regular check-ups, and treatment. The NPM sent a team of doctors from the Department of Legal Medicine of the School of Medicine to assess the detention conditions in which the teenager was held.

Upon evaluation, it was found that the teenager was confined to a small space, which was not a proper cell but an adapted medical office. However, it was not suitable for long-term accommodation as it lacked proper sanitation facilities, among other elements that constituted rights violations.

In the case of the Writ of Amparo filed in March 2019, periodic NPM monitoring of acute mental health care centers revealed violations of a series of constitutionally and legally protected rights, which made the use of this action appropriate.

The clearly unlawful situation arose from NPM findings at two clinics operating under agreements, where children and adolescents under the care of the National Institute for Children and Adolescents (INAU, in Spanish) were found to be staying after being medically discharged. That is, they remained hospitalized for mental health reasons, even after being declared fit to leave, due to a lack of suitable places in specialized care or 24-hour protection centers. This violated their rights to education, family contact, recreation, health, and more.

Thirdly, reference is made to the submission of amicus curiae during the health emergency. During the health emergency, in its recommendations and in alignment with the guidelines set forth by major international organizations, the NPM urged the exploration of mechanisms to reduce the number of persons deprived of liberty through the "use of alternative measures to detention as a means to mitigate the effects of COVID-19 in prisons⁹¹."

In this regard, the NPM, in coordination with the Public Defender's Office, submitted over forty amicus curiae to judicial courts in Montevideo and across the country. The briefs reaffirmed the need to take urgent preventive measures to ensure the right to health and life of persons deprived of liberty who are at particular risk, offering insights from international human rights law.

⁹¹ NHRI urges to take urgent measures for persons deprived of liberty with higher health risk, April 15, 2020. [NHRI urges to take urgent measures for persons deprived of liberty with higher health risk.](#)

2. Recommendations:

In the *habeas corpus* case, the immediate provision of measures to end the violations of the teenager's rights was requested, as well as ensuring adequate medical care and health services according to his needs.

The Writ of Amparo recommended that "immediate and urgent precautionary measures be implemented to stop the severe rights violations, ordering INAU to relocate children and adolescents with medical discharge, who are housed in acute crisis clinics, to appropriate places as per the medical discharge instructions." Furthermore, it recommended that INAU design "appropriate mechanisms to monitor and support children and adolescents who are admitted to acute crisis centers, ensuring their rights and planning timely and adequate transfers to the appropriate care programs for each child or adolescent⁹²."

3. Actions taken by the NHRI-NPM:

Amparo actions, *habeas corpus*, and *amicus curiae* are legal tools that the NPM has employed at various times. Each has certain distinctions, as in most legal systems. For example, the Writ of Amparo was recognized even before being codified into law, grounded in constitutional provisions derived from Articles 7, 72, and 332 of the National Constitution, which enshrine the constituent's intent to protect the exercise of fundamental rights, as well as the enjoyment of all human rights recognized in international instruments and those implicitly contained in their texts. This aligns with the concept of the "constitutional block⁹³."

However, legal regulation such as Law 16.011 is also necessary. This law outlines important features: a) Amparos are residual measures, meaning they are applicable only when no other judicial or administrative means are available to achieve the same result; b) they can be filed by any natural or legal person against acts, omissions, or actions by state or para-state authorities, or private individuals, that in an actual or imminent manner, in their view, violate, restrict, alter, or threaten any of their rights or freedoms recognized explicitly or implicitly by the Constitution (Article 72,) except in cases where the filing of *habeas corpus* is appropriate; c) Amparos do not apply against jurisdictional acts, acts of the Electoral Court, or laws or decrees issued by departmental governments; and d) they must be filed within thirty days from the date the act, omission, or action occurred.

Uruguayan law also provides for a specific type of Amparo action related to childhood issues, as outlined in Article 195 of the Childhood and Adolescence Code.

⁹² Petition established in the writ of amparo filed by the NHRI.

⁹³ [The Writ of Amparo in Uruguay. Investigation complement](#)

Regarding habeas corpus, it is enshrined in Article 17 of the Constitution, which specifically states: "In cases of improper detention, the affected person or anyone on their behalf may file a habeas corpus petition before the competent judge to immediately require the detaining authority to explain and justify the legal grounds for the detention, pending the judge's decision on the matter."

Furthermore, Article 351 of the Criminal Procedural Code regulates habeas corpus by stating that "The habeas corpus action is a safeguard for personal freedom of movement against any arbitrary act by any administrative authority that deprives, restricts, limits, or threatens such freedom, and serves to protect individuals deprived of liberty against torture, other cruel treatment, or detention conditions that violate the dignity of the human person."

Finally, *amicus curiae* can be defined literally as "friends of the court." Although not specifically codified as a legal action or remedy in Uruguayan law, *amicus curiae* allows individuals or entities with expertise or interest in a case to present documents, opinions, or requests to the relevant judicial authorities. It is the voice of someone who is not a party to the case but who can provide relevant information to help the court make better decisions. This institution is widely recognized and applied in the Anglo-Saxon legal system and has gradually been adopted in the region and in Uruguay.

4. State Response:

Both the habeas corpus petition and the writ of amparo filed by the NHRI were granted by the judiciary. In the first case, the court ordered the immediate transfer of the teenager to a healthcare center. In the second case, the financial penalties imposed on INAU continue to this day whenever a child or adolescent remains in an acute mental healthcare clinic despite having been medically discharged.

Regarding the *amicus curiae* and the situation of individuals deprived of liberty during the health emergency, a significant number of home detentions were not initially ordered, making it necessary to reiterate the urgency of implementing effective mechanisms to address the situation of persons deprived of liberty who are at special risk.

3. COOPERATION AND CONSTRUCTIVE DIALOGUE

a. Compliance with Recommendations and Dialogue Strengthening Dialogue

In Uruguay, the governing body for childhood policies is the Institute of Children and Adolescents of Uruguay (INAU, in Spanish), which offers various care modalities for the protection of children and adolescents, including community-based programs, part-time, and full-time care options.

146 Since 2014, the NPM has been monitoring the protection system for children and adolescents, a project supported by UNICEF Uruguay within the framework of a

cooperation agreement between the NHRI and UNICEF.

These integral care centers include residential facilities for babies, children, and adolescents, as well as for persons with disabilities, those with problematic substance addiction, adolescent mothers, and psychiatric clinics, among others.

The monitoring of these protection centers continues to this day. The main critical issues identified from the beginning, and which in some cases persist, are related to mental health and the confinement of children and adolescents, institutional violence, rights violations in "entry point"⁹⁴ centers, among others.

The NPM has produced numerous reports and interventions addressing these issues, such as the report titled "The Childhood We Don't Want to See: Confinement and Mental Health of Children and Adolescents"⁹⁵, which reveals the rights violations experienced by children and adolescents residing in mental health centers under agreement with INAU.

The collaboration with the Advisory Council of Adolescents (CAC, in Spanish), composed of adolescents aged 13 to 17 representing each Department of the country, involves workshops and dialogue sessions where the adolescents contribute their perspectives on the findings from monitoring activities.

In addition, an important milestone has been reached regarding the 24-hour child protection system's recognition of institutional violence as a problem, and the implementation of measures to address it.

1. Issue:

Regarding full-time care homes for children and adolescents, it is the State's responsibility to establish strategies that, on the one hand, recognize the exercise of rights by children and adolescents as subjects of rights, and on the other, create conditions that promote their development.

Monitoring conducted during 2015 highlighted ongoing problems that had been previously identified in the 2014 Annual Report. These problems included difficulties in timely access to treatment and follow-up care for mental health and addiction issues, a lack of reparative strategies for children and adolescents who had suffered severe rights violations, challenges in managing unapproved exits from adolescent centers, and a lack of specialized training, among other issues.

Uruguay's child protection system expressed concern over the breakdown of family ties

⁹⁴ "Entry points" are understood to be spaces for the temporary stay of children and adolescents who enter the 24-hour protection system, after the family separation order established by the Judiciary.

⁹⁵ Available at: [The Childhood we don't want to see | NHRI](#)

for children and adolescents, in line with international guidelines on the child's right to live in a family. This led to a process of institutional transformation aimed at structural adjustments in the system and improvements in support for families to promote family integration and the training of technical resources, among other initiatives.

While strategies were being implemented to address the critical issues identified by the NPM, one central issue emerged: the problematization and recognition of institutional violence as a systemic issue.

2. Recommendations:

One of the recommendations made to INAU was to establish a mechanism for addressing institutional violence, where specific complaints from children and adolescents could be received, framed outside of INAU itself.

3. Actions taken by the NHRI-NPM:

The NPM promotes collective work with the relevant authorities. This becomes particularly important when working on advocacy, as in Uruguay, the NPM's recommendations are not binding.

Additionally, inter-agency dialogue spaces are promoted with authorities from various sectors, with the goal of informing them about the findings from monitoring visits, discussing the status of compliance with the NPM's recommendations, and working towards achieving that compliance.

4. State Response:

In 2015, INAU created a mechanism through resolution 2194/15 for joint work between INAU and the NHRI, aimed at analyzing institutional situations that presented greater vulnerability.

The following year, INAU requested a consultancy from UNICEF to analyze situations that could be categorized as institutional violence. The consultancy recommended the creation of a "working team that should function permanently, with full dedication, and be capable of addressing situations of institutional violence while generating recommendations for the Board of Directors to evaluate and adjust institutional policies⁹⁶."

Finally, in 2017, the Mechanism for Reception and Approach to Situations of Institutional Violence e (MERAVI, in Spanish) was established through resolution 2366/17. However, it wasn't until 2019 that its functions and competencies were defined. The team is

composed of professionals from legal, psychological, and social fields, and reports to the Board of Directors.

To date, the mechanism has not played a specific role in receiving complaints from children and adolescents; instead, it mainly receives complaints from the NHRI. Through these complaints, it has been able to address more structural issues of institutional violence. The mechanism remains small, which limits its ability to respond.

Another good practice related to the strengthening of the NPM, though not derived from a specific recommendation, is the implementation of the project "Cycle of Dialogues, Workshops, and Photographic Exhibition on Mental Health and Institutional Confinement in Uruguay from a Human Rights Perspective." This initiative was developed in collaboration with the School of Information and Communication (FIC, in Spanish,) the School of Social Science (FCS,) the Apex Cerro Program of the University of the Republic, and the NPM.

The project's main goal was to raise awareness about the living conditions of individuals deprived of liberty due to mental health reasons, while also supporting the closure of isolation monovalent institutions by 2025, in compliance with Law 19,529 on Mental Health.

The project consisted of a traveling photographic exhibition accompanied by a series of three discussion panels. In 2021, as part of the fourth anniversary of the Law on Mental Health (dated August 24), the open-air photo exhibition was inaugurated at the Cerro bus terminal in partnership with the Municipality of Montevideo. In September, the exhibition was moved to the Civic Center of Ciudad de la Costa, and in October, it was displayed at the NHRI's headquarters during visits to the former Defense Information Service Memory Site, as part of the Heritage Day activities.

In that same month, coinciding with World Mental Health Day on October 10, the exhibition was transferred to the Faculty of Psychology. Finally, in December, it was displayed in the hall of the Faculty of Social Sciences, accompanying the presentation of the book "Normative Changes and Health Policy for the Mental Health Field in Uruguay in the 21st Century: Tensions and Emphasis in Socio-sanitary Management." In 2022, the "Photo Gallery: Mental Health and Deprivation of Liberty" was displayed at the Faculties of Psychology and Information and Communication of the University of the Republic. The project also co-organized the discussion panel on Mental Health and Institutional Confinement, held at the FIC in commemoration of the five-year anniversary of the Law on Mental Health. Throughout 2022, the photo gallery on "Mental Health and Deprivation of Liberty" remained on display at the Cerro Bus Station.

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