

San José, 4 de noviembre de 2008  
Oficio  
Pág. 1

## 1. Introduction.

With the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, on November 11, 1993, Costa Rica committed itself to take effective measures to prevent acts of torture, cruel, inhuman or degrading treatment or punishment in all its territory (articles 2 and 16).

On the other hand, the Costa Rican Government played an important part facilitating and negotiation of the Optional Protocol to the Convention before the different bodies of the United Nations since 1980, presiding over its negotiation in the international level for ten years until its approval in the United Nations on December 18, 2002.

It is thus that on February 4, 2003, Costa Rica signed the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and on November 25, 2005 published Act N° 8549, called "*Approval of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*".

Since then, and in order to comply with article 17 of the abovementioned protocol, the country established, designated and maintained the National Prevention Mechanism against Torture, whose objective is to establish a system of periodic preventive visits to detention centers without previous Government consent. This is done in support of the task of the Sub-Committee on Prevention of Torture. The regularity of these visits will permit the evaluation of the improvements or deterioration of detention conditions, thus protecting the rights and interests of detainees. On the other hand, the Mechanism has worked, along with the competent authorities, as an effective means of communication through which a constructive dialogue with both the detainee population and the personnel that works in the detention centers.

Given the independence shown by the Defensoría de los Habitantes in its visits to detention centers since its creation, the Ministry of Foreign Relations and Worship submitted for its consideration the possibility of being designated as National Prevention Mechanism, which the Institution accepted.

It was on February 19, 2007, the Defensoría was appointed as National Prevention Mechanism against Torture by Executive Decree N° 33568-RE-MSP-G-J, which stated:

*Article 1.- The Defensoría de los Habitantes de la República is recognized as the mechanism and national body in charge of making the visits for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, required within the framework of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.*

San José, 4 de noviembre de 2008  
Oficio  
Pág. 2

*Article 2.- The function of the Defensoría de los Habitantes as National Prevention Mechanism, is provisionally framed -until the respective Act is passed- within the inspections regularly performed by this Institution in the different penitentiary, detention or administrative apprehension centers.*

*Article 3.- The visits made by the National Prevention Mechanism will comprise the detention centers attached to the Ministry of Justice and Grace and the Ministry of Public Safety, the Interior and Police, which will provide all necessary support to the Defensoría de los Habitantes in the fulfillment of its duties as national mechanism.*

The act by which the Defensoría de los Habitantes de la República was appointed or designated National Prevention Mechanism is the abovementioned Decree, since its competences are in the International Instrument of Human Rights duly ratified by Costa Rica, which is the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The Protocol clearly establishes the monitoring and related reports that must be prepared regarding every administrative, hospital, judicial or criminal detention place.<sup>1</sup>

In accordance with the rank of the regulations quoted above, it is clear the Executive Decree cannot limit what was precisely recognized before the United Nations International Human Rights System, since it would derive in partial compliance by the country, if interpreted restrictively, that the Defensoría de los Habitantes de la República, as National Prevention Mechanism, could only make visits as such, to detention centers attached to the Ministry of Justice and Grace (penitentiary centers), the Ministry of Public Safety (Police cells) and the Detention Center for Foreigners in an Irregular Migratory Situation (General Immigration Directorate).

As previously stated, in accordance with the principles of reasonability and proportionality, it is not possible to think of an isolated interpretation of the Executive Decree, nor that it can establish or limit competence of the National Prevention Mechanism, but the establishment or designation of the body, since the mandate would translate into non-compliance of the commitment acquired when the Protocol was approved.

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<sup>1</sup> A non-exhaustive list of detention centers would include: police stations, preventive detention centers and preventive prisons, reclusion centers for convicts, detention centers for young adults and adolescents, border police installations and transit zones in border crossings, international ports and airports, immigrant and asylum seeker internment centers, psychiatric institutions, installations of security and intelligence services, administrative detention centers and means of transport for prisoner transfer. In this regard, see Guide to the Establishment and Designation of National Prevention Mechanisms, Geneva, 2006, pp. 18-19.

San José, 4 de noviembre de 2008  
Oficio  
Pág. 3

Even if this restrictive interpretation should apply, the Defensoría de los Habitantes de la República would not be affected, since as the national Human Rights institution, the Act that created it allows it to comply with the obligations entrusted by the to the National Prevention Mechanism by the Optional Protocol. The only difference being that the Government would not always know of its analysis, since they would be sent directly to the United Nations International System of Human Rights.

Thus, the Defensoría de los Habitantes, as the Institution in charge of the protection and defense of the rights and interests of the inhabitants, and based on the attributions given by article 1º of Act N° 7319, the Defensoría de los Habitantes Act, can perform control activities in any detention center. Additionally, if the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol are instruments with a rank superior to the Law, the National Prevention Mechanism would be empowered to enter any detention center in the country. Its independent nature, attached to the Legislative Power and in accordance with the Right of the Constitution, authorizes it to interact with the United Nations protection bodies without having to report to internal structures. What is required is to harmonize the existing regulations and to give it the rank of Law that would reinforce the country's commitment, by presenting and passing a bill in Congress reaffirming the designation of the Defensoría de los Habitantes as National Prevention Mechanism, considering it is functionally independent body attached to the Legislative Power, whose regulations shall establish the requirements included in the International Instrument already added to our legal system.

On the other hand, with the approval of the Protocol and the subsequent designation of the Defensoría de los Habitantes as National Prevention Mechanism, the Government was committed to provide the necessary budget resources for its operation (Article 18, Subsection. 3), which has not happened to date.

Provisionally, the Defensoría de los Habitantes, incorporated within the framework of its usual functions the perspective of the Protocol in the visits made regularly to detention centers during 2008.

## **2. In relation to the compliance of the articles of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**

### **a. Compliance of article 18**

In relation to the functional independence of the Defensoría de los Habitantes as National Prevention Mechanism, it must be stated that since the Institution opened its

San José, 4 de noviembre de 2008  
Oficio  
Pág. 4

doors, one of its attributions has been to perform its duties with functional, administrative and criterion independence<sup>2</sup>. In this sense, the personnel that work in the Institution and that which will fulfill the mandate of the Mechanism will continue to comply with said article. Likewise, the draft bill written to complete the mandate of the Mechanism also includes its functional independence.

On the other hand, regarding the expertise of the Mechanism's personnel, their appointment was made and will continue to be made according to a series of parameters, including, for example, knowledge of or experience in Human Rights, Criminal Law, Refugee and Asylum Law, Penitentiary or Psychiatric Institutions Administration and Process Policies; experience in visits to detention centers and activities involving vulnerable groups (migrants, women, disabled persons, ethnic minorities); to perform its functions independently, and; to be a person of high moral standards.

Regarding the resources necessary to the operation of the National Prevention Mechanism, the Defensoría was not approved the required resources, despite being requested in the 2008 Annual Budget project. As a consequence, during 2008 the Institution asked the Ministry of Foreign Relations and the Ministry of the Treasury for the necessary resources to fulfill its mandate as Mechanism (even with the support of the Association for the Prevention of Torture), resources which were included in the 2009 budget.

It was thus that the Permanent Commission on Treasury Issues of the Legislative Assembly approved Bill N° 17.149, Ordinary and Extraordinary Budget of the Republic for the year 2009, in Extraordinary Session number 044 of October 20, 2008. It included three positions for professionals to work in the Unit that will be formed in the Defensoría de los Habitantes to comply with the National Prevention Mechanism mandate.

#### **b. Compliance of article 19**

Regarding compliance of this article, during 2008 and while the Institution didn't have the required positions to create the National Prevention Mechanism Unit, prevention visits to detention centers were made and, when necessary, the respective recommendations issued.

In relation to the visits made, the respective list is included in the text as follows:

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<sup>2</sup> Article 2 of Act N° 7319, the Defensoría de los Habitantes Act.

San José, 4 de noviembre de 2008  
Oficio  
Pág. 5

Visits to penitentiary centers that house a male population:

<b>DATE</b>	<b>PENITENCIARY CENTER</b>
January 16, 2008	Young Adult Institutional Program Center (penitentiary population: 80)
January 29, 2008	Cartago Institutional Program Center (penitentiary population: 358)
February 1, 2008	La Reforma Clinic in La Reforma Institutional Program Center (penitentiary population: variable)
March 12, 2008	Gerardo Rodríguez Echeverría Institutional Program Center (penitentiary population: 1100)
April 3, 2008	B Wing of La Reforma Institutional Program Center (penitentiary population: 1100)
April 30, 2008	Senior Adult (65+ yrs old) Institutional Program Center (penitentiary population: 149)
May 8, 2008	San Rafael Institutional Program Center (penitentiary population: 625)
June 18, 2008	Liberia Institutional Program Center (penitentiary population: 467)
June 19, 2008	Puntarenas Institutional Program Center (penitentiary population: 422)
July 30, 2008	San Ramón Institutional Program Center (penitentiary population: 73)
August 26, 2008	Industrial Workshops Unit of La Reforma Institutional Program Center (penitentiary population: 300)
September 25, 2008	C Wing of La Reforma Institutional Program Center (penitentiary population: 408)
November 18, 2008	Ámbito F del Centro de Programa Institucional La Reforma (44 privados de

San José, 4 de noviembre de 2008  
Oficio  
Pág. 6

	libertad)
December 15, 2008	Centro de Programa Institucional Pococí (464 privados de libertad)
December 16, 2008	Centro de Programa Institucional Limón (400 privados de libertad)

Visits to penitentiary centers that house a female population (approx. population 465):

Thursday February 8, 2008	Atención a mujer indígena privada de libertad, con asistencia de intérprete
Monday February 19, 2008	Grabación de Video de ciertas áreas del centro penitenciario. Se reciben denuncias
Monday May 5, 2008	Se recibieron denuncias de dos mujeres extranjeras
May 23, 2008	Revisión de expedientes de mujeres privadas de libertad en el centro regional de Liberia.
June 13, 2008	Inspección de la cocina en el Centro de Programa Institucional Buen Pastor
August 1, 2008	Inspección en el Área de Salud del Centro de Programa Institucional Buen Pastor
November 10, 2008	Inspección en el Centro de Programa Institucional Buen Pastor

Visits to penitentiary centers that house the adolescent population (approximate population 47):

January 24, 2008
February 22, 2008
March 31, 2008
April 30, 2008
May 28, 2008
June 30, 2008
July 29, 2008

San José, 4 de noviembre de 2008  
Oficio  
Pág. 7

August 22, 2008
October 24, 2008
November 25, 2008

Visits to the Detention Center for Foreigners in an Irregular Migratory Situation  
(approximate population from 30 to 50 detainees)

April 16, 2008
May 7, 2008
June 10, 2008
July 16, 2008
July 24, 2008
August 26, 2008

Visits to Psychiatric Hospitals:

June 10, 2008 National Psychiatric Hospital
August 12, 2008 Chacón Paut Hospital

**c. Compliance of article 20**

Since the Defensoría de los Habitantes opened its doors in 1993, it has performed preventive and reactive work regarding the protection of the rights of persons deprived of their liberty in detention centers. The preventive work has always been focused on making unannounced visits to these centers, while the reactive work has consisted in processing the complaints presented by persons deprived of their liberty.

In that respect, the personnel of the Defensoría de los Habitantes follow a visiting protocol when entering a detention center. The visit is made unannounced by a team of at least two professionals.

San José, 4 de noviembre de 2008  
Oficio  
Pág. 8

The visit starts with a conversation with the center's Director, to whom the objective of the visit is explained, as well as what happened in the previous inspection and what is the route to be covered. Also, information is collected about the infrastructural needs and those of the technical and/or security personnel. Finally, the Director is told that once the visit is over, a return is made of the visit's findings.

The tour includes both the general areas of the detention centers (health, education, workshops, kitchen, recreational, etc.), and the dormitories of the persons deprived of their liberty and the security personnel.

Furthermore, the persons deprived of their liberty are interviewed and a meeting held with the organizations composed by this population, in order to listen to their opinion of living conditions in the center.

At the end of the visit, another meeting is held with the center's Director in which a verbal account of the findings is given and he/she is told that a written report will be sent to him/her. A response to this report must be sent to the Defensoría.

Throughout the work developed by the Defensoría in this field, solid channels of communication have been established with the personnel of the different institutions in charge of the detention centers. This has allowed the Defensoría to present them the problems that have been detected and to solve them by means of dialogue and a timely coordination.

On the other hand, the reactive work developed by the Defensoría consists of processing and investigating the complaints presented by persons deprived of their liberty and their family members or acquaintances, either in person or over the phone. A file is constituted for each complaint and, afterwards, a resolution is issued which determines whether the Administration affected or not the rights or interests of the persons deprived of their liberty.

Hence, the Defensoría de los Habitantes assuming the mandate as National Prevention Mechanism did not imply anything other than to continue fulfilling the functions it had already been performing since 1993, but through a specific Unit dedicated to making regular preventive visits, in compliance of the mandate stated in the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

The Defensoría de los Habitantes is clear that the National Prevention Mechanism will not deal with the complaints received during the visits. To deal with these complaints there will be a tight coordination with the Institutions Areas of Defense, in order to investigate the different situations detected during the visits, protecting in this way the rights and interests of the population of persons deprived of their liberty.

San José, 4 de noviembre de 2008  
Oficio  
Pág. 9

With the nine new positions included in the 2009 budget of the Defensoría, the Institution can comply with the required interdisciplinary nature of the team; however it must not be left out that the Institution has professionals from different fields who can support the National Prevention Mechanism if necessary, such as for example, the assistance of a professional physician.

Provisionally, until the mandate of the National Prevention Mechanism is completed by the passing of the respective Act, the visits to the detention centers not included in the Executive Decree will be made in compliance of the obligations established in the Defensoría de los Habitantes Act, Act N° 7319, as the comptroller of the government's administrative activity.

Also, directives are being prepared for the human team that will be in charge of the functions of the National Prevention Mechanism to prepare a Procedure Manual to define the way in which it will operate, in accordance with the Optional Protocol. Likewise, it will be in charge of collecting all the rules and regulations concerning detention centers, as well as coordinating with the different organizations of persons deprived of their liberty with which the Mechanism will be in contact.

### **3. Preparation of a Bill of Law to regulate the competence of the Defensoría de los Habitantes as National Prevention Mechanism**

The passing of an Act to regulate the competence of the Defensoría de los Habitantes as National Prevention Mechanism would have to contemplate the following situations:

- To widen the field of action of the Defensoría de los Habitantes as National Prevention Mechanism, extending it to all existing administrative or judicial detention centers in Costa Rican territory<sup>3</sup>.
- To restructure the internal organization of the Defensoría de los Habitantes to fulfill the mandate of the National Prevention Mechanism<sup>4</sup>.

<sup>3</sup> The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment clearly establishes that deprivation of liberty *"means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority."* (Art. 4).

<sup>4</sup> It must be considered that if it is one institution alone working both receiving individual complaints and as National Prevention Mechanism, then a clear internal division of functions is necessary to guarantee that the preventive work established in the Protocol is not placed at risk because of another mandate. This includes, for example, a formal division of the administrative structure, physically independent offices, different personnel, separate file systems, etc. Also, the visiting team acting as Mechanism must have adequate training and a defined work methodology to guarantee effective preventive visits. This is justified by the

San José, 4 de noviembre de 2008  
Oficio  
Pág. 10

- To provide the Defensoría de los Habitantes with the human, logistical and financial resources to assume its mandate as National Prevention Mechanism<sup>5</sup>.

The Defensoría de los Habitantes already has a draft of the bill that has the objective of completing the mandate conferred upon as National Prevention Mechanism. It will be presented to the Members of Congress to be introduced in the legislative agenda for its discussion and approval.

#### **4. Human, logistical and financial resources provided to the Defensoría de los Habitantes as National Prevention Mechanism**

As was mentioned above, the Ordinary Budget of the State of Costa Rica was approved by the Permanent Commission of Treasury Issues in the month of October, 2008.

This means the budget approved for the Defensoría de los Habitantes includes three new positions for 2009 that will be used to create the Unit in charge of fulfilling the mandate as National Prevention Mechanism.

As for the logistical resources, the Defensoría has the necessary infrastructure to provide the National Prevention Mechanism with an independent office; and the Mechanism will also have a vehicle to make the respective visits.

**Patricia Montero Villalobos**  
**Coordinator**  
**National Prevention Mechanism**

**Esteban Vargas Ramírez**  
**Official**

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workload and urgency individual complaints have, which can overload the team of the Defensoría and reduce its capacity to maintain a parallel active and rigorous program of visits.

<sup>5</sup> In accordance with article 1° of the Defensoría de los Habitantes Act, N° 7319, even though the Defensoría de los Habitantes has an extremely wide mandate to fulfill its duties, it does not have enough financial and human resources to properly carry out the system of preventive visits established by the Optional Protocol. This is why additional resources must be assigned to fulfill its duties as National Prevention Mechanism, since the Costa Rican Government has the obligation of providing them, as established in article 18 of the Protocol.

San José, 4 de noviembre de 2008  
Oficio  
Pág. 11

**National Prevention Mechanism**

**José Pablo Rodríguez Alpízar**  
Official  
National Prevention Mechanism

**Daniel Soley Gutiérrez**  
Defensor Adjunto de los Habitantes de la República de Costa Rica