



Human Rights Implementation Centre

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*Human Rights Implementation Centre, University of Bristol- individual UPR submission-
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1. The Human Rights Implementation Centre (HRIC) is a research Centre of the Law School of University of Bristol, established in 2009. It provides an international focus for developing expertise, advice and scholarship on the role of institutions, whether those are at the national, regional or international levels, in the implementation of human rights. These institutions include national governments and non-governmental organisations, but also statutory and constitutional bodies such as national human rights institutions, as well as regional bodies, such as the African Commission on Human and Peoples' Rights, the Council of Europe, the Organisation on Security and Co-operation in Europe, as well as those under the UN, both treaty bodies, the Special Procedures and the OHCHR. The Centre has developed particular expertise *inter alia* in torture prevention and the implementation of the Optional Protocol to the UN Convention against Torture (OPCAT) which is the basis of the present submission.
2. The present document is the individual submission of the HRIC for the second cycle of the Universal Periodic Review of Costa Rica and concerns specifically the obligations of the country under OPCAT.
3. The central obligation of a State party to OPCAT is the designation of a National Preventive Mechanism (NPM) which must take place within one year of the

ratification or of the entry into force of the instrument.¹ Costa Rica ratified OPCAT on 01 December 2005 which was prior to its entry into force. OPCAT came into force on 22 June 2006 and so the deadline for establishment of Costa Rican NPM was 22 June 2007. The Presidential Decree designating the *Defensoría de los Habitantes* as an NPM for the country was officially published on 19 February 2007.² While this seemingly meets the obligations Costa Rica undertook when it ratified OPCAT, the Decree in Article 2 states that this designation is only a temporary measure, until legislation is passed to reinforce the designation. Despite this issue being raised during the first UPR review of Costa Rica,³ to the date of the present submission no such legislation has been passed.

4. Such situation continues to pose certain difficulties for Costa Rica's compliance with the provisions of OPCAT. Article 18 (1) of OPCAT requires the States parties to guarantee the functional independence of their respective NPMs. Designation of an NPM through an instrument which is an act of executive poses at least a theoretical threat to the independence of the NPM since such acts are entirely dependent upon the will of the executive and are not subjected to the normal scrutiny of the legislature. The latter however provides guarantees of a democratic and normally public review process, elements which are traditionally absent when acts of executive are reviewed.
5. Moreover, the Subcommittee on the Prevention of Torture (SPT) which is a treaty body established pursuant to the provisions of OPCAT, has expressly recommended in its Preliminary Guidelines for the on-going Development of NPMs⁴ as well as in its Revised Guidelines,⁵ that the mandate and powers of the NPM should be clearly and specifically established in the national *legislation* as a constitutional or legislative text (emphasis added).
6. Similarly, the *Defensoría de los Habitantes* as the NPM for the country has issued a recommendation to the same effect itself.⁶ The NPM also took a proactive step by preparing a draft law on the *Creation of the National Preventive Mechanism against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment* (draft NPM law) in 2011. This draft law was tabled before the legislature of Costa Rica and on 22 August 2012 it received unanimous approval by its Human Rights Commission⁷ thus passing the first step in the legislative process of Costa Rica.⁸

¹ OPCAT, art 17.

² See: Executive Decree No 33568-RE-MSP-G-J.

³ Office of the High Commissioner for Human Rights, 'Summary Prepared By The Office Of The High Commissioner For Human Rights, In Accordance With Paragraph 15 (C) Of The Annex To Human Rights Council Resolution 5/1. Costa Rica' (UN Doc A/HRC/WG.6/6/CRI/3, 2009) paras 2-3.

⁴ Subcommittee on Prevention of Torture, 'Preliminary guidelines for the ongoing development of national preventive mechanisms' in 'First Annual Report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (UN Doc CAT/C/40/2, 2008) para 28(a).

⁵ Subcommittee on Prevention of Torture 'Guidelines on National Preventive Mechanisms' (UN Doc CAT/OP/12/5, 2010) para 7.

⁶ *Defensoría de los Habitantes* as NPM, 'Primer Informe Anual' (2008) 9.

⁷ Legislative Assembly of Costa Rica, 'Detalle del proyecto de ley'

<http://www.asamblea.go.cr/Centro_de_Informacion/Consultas_SIL/Pginas/Detalle%20Proyectos%20de%20Ley.aspx?Numero_Proyecto=18273> accessed 28 August 2013.

⁸ Regulation of Legislative Assembly, last modified 27 February 2012, Third Part, Title I, Chapter III.

7. On 1 October 2012 the draft law was listed on the parliamentary agenda as item No 73⁹ but since then there has been no progress on the discussion of this draft law. It must be noted that according to the legislative procedure in Costa Rica, a draft law for which no final vote takes place in one session may pass to the following one and remain in the legislative process for maximum of four years.¹⁰ This means that the draft NPM law will ‘expire’ on 05 October 2015.¹¹ The Costa Rican NPM has repeatedly called for this requisite legal basis for the NPM to be adopted in its Annual Reports for 2011¹² and 2012¹³ but to the date of the present submission there has been no progress made.
8. It is crucial that in order to meet its obligations under OPCAT Costa Rica ensures that its NPM has the requisite legislative basis and to this end, it is important that the consideration of the draft NPM law by the legislature of Costa Rica is revived.
9. Moreover, Article 18(3) of OPCAT obliges State parties to make available the necessary resources for the functioning of its NPM. The SPT has further specified that NPMs must be provided with the necessary resources to enable ‘*effective* operation of the NPM in accordance with the requirements of the Optional Protocol’ (emphasis added).¹⁴
10. During the first UPR review of Costa Rica this was a matter raised among the recommendations with the Czech Republic recommending that Costa Rica should ‘[E]nsure sufficient resources for effective functioning of its national preventive mechanism provided for in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT).¹⁵ Costa Rica, in turn, listed this recommendation among those which have been already implemented or are in the process of being implemented.¹⁶
11. Unfortunately and despite the above assertion by Costa Rica, the NPM in its Annual Reports for 2011 and 2012 has continually reported lack of resources, noting that it still has only three staff members which also means that the current staff members spend too much time on administrative tasks or driving vehicles as opposed to engaging with the NPM mandate properly.¹⁷
12. Furthermore it must be emphasized here that the SPT has also requested that the NPMs enjoy complete financial and operational autonomy when carrying out their

⁹ Mecanismo Nacional de Prevención, ‘Informe Anual 2012’ (2012) 1.

¹⁰ Regulation of Legislative Assembly, last modified 27 February 2012, art 119.

¹¹ Legislative Assembly of Costa Rica, ‘Detalle del proyecto de ley’ <http://www.asamblea.go.cr/Centro_de_Informacion/Consultas_SIL/Pginas/Detalle%20Proyectos%20de%20Ley.aspx?Numero_Proyecto=18273> accessed 28 August 2013.

¹² Mecanismo Nacional de Prevención, ‘Informe Anual 2011’ (2011) 59.

¹³ Mecanismo Nacional de Prevención, ‘Informe Anual 2012’ (2012) 2 and Defensoría de los Habitantes, ‘Informe Anual de Labores 2012-2013’ (2013) 358.

¹⁴ Subcommittee on Prevention of Torture, ‘Guidelines on National Preventive Mechanisms’ (UN Doc CAT/OP/12/5, 2010) para 11.

¹⁵ Human Rights Council, ‘Report of the Working Group on the Universal Periodic Review. Costa Rica’ (UN Doc A/HRC/13/15, 2010) para 89 (20).

¹⁶ Ibid, para 90.

¹⁷ Mecanismo Nacional de Prevención, ‘Informe Anual 2011’ (2011) 6 and Mecanismo Nacional de Prevención ‘Informe Anual 2012’ (2012) 1.

functions under OPCAT.¹⁸ The Costa Rican NPM however in its 2012 Annual report noted that one of the fundamental conditions for the NPM to carry on its work is to have access to the budget, which should include salaries, transport and equipment, an aspect currently lacking.¹⁹

13. It is therefore of paramount importance that in order to meet its obligations under OPCAT Costa Rica ensures sufficient funding for its NPM as well as secures its financial autonomy over its own budget.
14. Finally, Article 4 of OPCAT obliges States parties to allow its NPM unimpeded access to all places of deprivation of liberty. It must be emphasized that the definition of ‘deprivation of liberty’ in Article 4 is set out in very broad terms and encompasses not only such ‘traditional’ places as prisons and police cells, but also ‘less traditional’ ones like refugee centres, psychiatric institutions, immigration centres, etc.
15. The Presidential Decree which designated the Costa Rican NPM however limits the mandate of the NPM to only those institutions that are under the authority of the Ministry of Justice and the Ministry of Public Security, Interior and the Police.
16. The Costa Rican NPM so far has used the text of OPCAT as determining legal document to define the scope of its mandate, arguing that these stipulations in the Presidential Decree are overridden by the provisions of the OPCAT, which constitute a legal norm of a higher hierarchy in the domestic legal system as the Presidential Decree.²⁰ However the NPM itself has noted that the national legislation must provide for the scope of the term ‘deprivation of liberty’ clearly.²¹
17. Thus the act establishing NPM in Costa Rica does not fully reflect the stipulations of OPCAT in respect of the notion of ‘places of deprivation of liberty’.

Consequently, the HRIC would like to raise the following three issues for the consideration by the UPR:

1. The lack of proper legislative basis for the designation of the *Defensoría de los Habitantes* as the NPM in Costa Rica under the provisions of OPCAT;
2. The failure to provide the NPM with sufficient funding to enable it to carry out its mandate under the provisions of OPCAT effectively and the failure to ensure the NPM enjoys complete financial autonomy over its own budget;

¹⁸ Subcommittee on Prevention of Torture, ‘Guidelines on National Preventive Mechanisms’ (UN Doc CAT/OP/12/5, 2010) para 12.

¹⁹ Mecanismo Nacional de Prevención ‘Informe Anual 2012’ (2012) 44.

²⁰ *Defensoría de los Habitantes* as NPM, ‘Primer Informe Anual’ (2008) 2.

²¹ *Ibid*, 9.

3. The failure to reflect the wide definition of ‘places of deprivation of liberty’ as per Article 4 of the OPCAT in the national legislation on the designation of the NPM.

Sincerely yours,

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