



**UN Human Rights Committee**  
**137th Session (27 February - 24 March 2023)**  
**Consideration of the 4<sup>th</sup> periodic report of Panama**  
**Association for the Prevention of Torture**  
**Geneva, January 2023**

The Association for the Prevention of Torture is an independent international NGO based in Geneva working for societies without torture. The APT was at the origin of the Optional Protocol to the UN Convention against Torture (OPCAT) and so it has contributed to increased transparency and independent oversight of places of detention. It is now supporting its effective implementation as well as working worldwide to reduce the risks of torture and other forms of ill-treatment, including during the first hours of deprivation of liberty.

The APT welcomes the possibility to submit background information and suggested recommendation to support the Human Rights Committee in its review of the fourth periodic report of Panama. This submission relates to para. 10-11 of the Committee's previous Concluding Observations (CCPR/C/PAN/CO/3) as it focuses on torture prevention, in particular:

1. The situation of the National Preventive Mechanism (NPM).
2. First moments of detention and implementation of safeguards (arts. 2,6,7,9 and 14 ICCPR).
3. Detention conditions in the prison system (art. 6,7,9,10, 14 and 26 ICCPR).

### **Background information**

- Panama has the **7th highest prison population rate in the world** (478 persons in prison per 100,000 inhabitants).<sup>1</sup>
- As of August 2022, in Panama there were **13 687 persons deprived of their liberty in the prison system**, of which **54.2%** were in **pre-trial detention** and **45.7%** were **sentenced**.<sup>2</sup>
- In August of 2022, there were **massive demonstrations** that began when teachers' unions mobilized to protest against the increasing cost of living. The protest escalated into the largest national protests since 1989.
- During protests there were clashes between demonstrators and police units that endangered the integrity of persons not taking part in the protests, including older persons, children, and adolescents. During protests, it was documented that 56 people, including both civilians and police officers, needed outpatient medical care.<sup>3</sup>

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<sup>1</sup> World Prison Brief, Highest to Lowest - Prison Population Rate.

<sup>2</sup> Ministerio de Gobierno, Estadística Población Penitenciaria de Agosto de 2022. Available here: <https://www.mingob.gob.pa/poblacion-penitenciaria/>

<sup>3</sup> Inter-American Commission of Human Rights, Protests in Panama: IACHR and its RELE call to establish an effective and inclusive dialogue, press release, July 27, 2022. Available here: [https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media\\_center/PReleases/2022/168.asp](https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2022/168.asp)

## 1. National Preventive Mechanism (NPM)

**In its previous Concluding Observations (para.10(c)), the Committee noted with satisfaction that Panama was considering ratification of the OPCAT.**

- **Panama ratified the OPCAT on 2 June 2011.**
- The National Preventive Mechanism (NPM) was established within the Ombudsman's Office by Law N° 6 of 22 February 2017 in force since 2018.
- The Law establishes that the NPM is composed of a National Director, a Deputy Director and a technical team.
- However, since 2020 the NPM does not have a Deputy Director who, according to the NPM Law,<sup>4</sup> should collaborate with the Director in the functions entrusted to him/her and is the replacement in case of absences of the National Director.
- Although the NPM is active in its functions, has conducted regular visits to places of deprivation of liberty- including joint visits with the Ombudsman's Office, has published visit reports and annual reports, shown budget allocation, as mandated by the NPM Law.<sup>5</sup>

### **Suggested recommendation**

*Strengthen the National Preventive Mechanism with the necessary structure and resources in compliance with the provisions of the Law on the National Preventive Mechanism and as required by Article 18.3 of the OPCAT.*

## 2. First moments of detention and implementation of safeguards (arts. 2,6,7,9 and 14 ICCPR)

**In its previous Concluding Observations (para. 10(a)), the Committee urged Panama to take immediate and effective measures to put an end to abusive treatment of prisoners by law enforcement officers, especially in prisons but also at the time of arrest by the police and to monitor, investigate and, where appropriate, bring to justice and punish members of law enforcement bodies who commit abuses.**

- In Panama, during 2021, more than 66,000 people were detained by the National Police.<sup>6</sup> The majority of these arrests are concentrated in the province of Panama, with 38,090 persons detained.

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<sup>4</sup> Article 19 of the NPM Law states: *Deputy National Director. The deputy national director shall collaborate with the national director, assuming the functions entrusted or delegated to him/her and shall replace him/her in his/her temporary absences. In the event of permanent absence due to resignation, death or any other cause, the deputy national director shall occupy this position until the national director is appointed. (Own translation)*

<sup>5</sup> Articles 43 and 44 of the NPM Law states (*own translation*): Article 43 Annual budget: The National Preventive Mechanism shall draw up its annual budget, which shall be presented and substantiated in coordination with the budget of the Ombudsman's Office. The technical and financial resources, both operational and investment, allocated to the National Preventive Mechanism shall be used exclusively for the exercise of its powers and functions. Article 44 Budget allocation.: The Executive Branch shall allocate the necessary budget items to guarantee the functioning of the National Preventive Mechanism.

<sup>6</sup> Contraloría General República de Panamá, Volumen I Estadísticas de Detenciones: Año 2021. Available at: [https://www.inec.gob.pa/publicaciones/Default3.aspx?ID\\_PUBLICACION=1160&ID\\_CATEGORIA=7&ID\\_SUBCATEGORIA=43](https://www.inec.gob.pa/publicaciones/Default3.aspx?ID_PUBLICACION=1160&ID_CATEGORIA=7&ID_SUBCATEGORIA=43)

- The main offences for which people are detained include drug-related offences, non-compliance with sanitary measures in the context of COVID-19, non-payment of alimony, among others.
- Although Panama's Code of Criminal Procedure **establishes that detained persons are entitled to procedural safeguards** such as: to know the reasons for detention, to be assisted by a lawyer, to have immediate communication with a third person to inform about detention, there is no sufficient and accurate information on the implementation of these fundamental safeguards from the very outset of deprivation of liberty.<sup>7</sup>
- Emphasis should thus be placed on ensuring that all detainees actually have access to procedural safeguards, in particular on **recognising by law their right to access to a medical examination** by qualified and independent personnel during detention.
- There is also a lack of reliable statistical data on interrogation practices during the investigation of crimes, particularly on whether fundamental safeguards are currently guaranteed.
- In addition, particularly concerning is the high **rate of arrests and the use of force directed at people of African descents**. A majority of people from these communities have been detained without a court order and without being informed of the reasons for their arrest. There have been also allegations of excessive use of force during arrest and detention.
- Concerns have been raised about institutionalized stereotypes and excessive policing in areas inhabited by people of African descent including racial profiling by law enforcement officials, using "pele police".<sup>8</sup> This results in an **overrepresentation of people of African descent in places of detention**, both in centres of pretrial detention and among the convicted prison population. Also, it has been reported that profiling is a systemic practice, widely used as a selective and discretionary mechanism for carrying out detentions and investigations. On this issue, during the 2020 UPR review, Panama received recommendations to "guarantee the rights of people of African descent, notably against racial profiling from the police".<sup>9</sup>

### **Suggested recommendations**

- *Take the necessary measures to ensure the prohibition in law and practice of racial and ethnic profiling based on appearance, skin tone, national or ethnic origin, by law enforcement officials.*
- *Intensify the efforts to implement legal safeguards at the very outset of detention and during interrogations and provide training to central and local law enforcement officials, judges and prosecutors on national provisions and international human rights standards on the right to liberty and security of persons, including on the Principles on*

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<sup>7</sup> See: Article 93 of the Criminal Procedural Code of Panama. Available here: <https://ministeriopublico.gob.pa/wp-content/uploads/2018/08/CODIGO-PROCESAL-PENAL-Comentado-COMPLETO-20-AGO-2018.pdf>

<sup>8</sup> Pele police are handheld electronic devices used by law enforcement officers to undertake verification and identification checks of individuals, usually on the streets.

<sup>9</sup> Report of the Working Group on the Universal Periodic Review on Panama, UN Doc A/HRC/46/8, 21 December 2020, recommendation: 104.5. Available here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/351/90/PDF/G2035190.pdf?OpenElement>

*Effective Interviewing for Investigations and Information Gathering (Méndez Principles).*<sup>10</sup>

### 3. Detention conditions in the prison system (art. 6,7,9,10, 14 and 26 CCPR)

**In its previous Concluding Observations (para.11), the Committee recommended that Panama take steps to put an end to overcrowding in detention facilities and to ensure compliance with the requirements established in art. 10 ICCPR.**

#### a. Access to healthcare

- Often people with **chronic illnesses** and/or those who are **injured** during in-prison violence do not receive timely and adequate medical attention. For example, in January 2023, several relatives of persons deprived of their liberty have reported ill persons in the "Mega Joya" (maximum security prison in Panama).<sup>11</sup>
- In some cases, these situations have resulted in **deaths in custody**. In 2022, 8 persons died in Panama's prison system related to the lack of medical care.<sup>12</sup>

#### b. Civil Security vs National Police Security in prisons

- The Panamanian National Police continues to provide external security for the prisons. In some cases, some police barracks have been used as prisons. In this regard, in 2019, the Committee against Torture (CAT), recommended that Panama "gradually withdraw police personnel by recruiting and providing appropriate training to a sufficient number of prison officers and by developing strategies to reduce violence among inmates".<sup>13</sup> In addition, the Subcommittee for the Prevention of Torture (SPT) has recommended that Panama "expedite implementation of the Prison Service Act and ensure that there are enough qualified prison staff to manage the prisons appropriately".<sup>14</sup> Over time there have been intentions to substitute police security with civilian security, however this issue is still pending.

#### c. Overcrowding

- According to official information as of August 2022 the level of overcrowding in the prison system was **145%** (with 6,522 persons in excess of the official capacity of the

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<sup>10</sup> The Mendez Principles aim to modify police practices by replacing coercive interrogations with rapport-based interviews. Based on science, law and ethics, the Principles propose a concrete alternative to interrogation methods that rely on coercion to extract confessions. They improve the results of investigations, fully respect human rights and enhance trust in the State. See more: <https://www.apr.ch/en/mendez-principles-effective-interviewing>

<sup>11</sup> El Siglo Panamá, Presos de la Mega Joya se encuentran enfermos necesitan atención médica ¿será covid?, publicado el 11 de enero de 2023. Available at: <http://elsiglo.com.pa/cronica-roja/presos-mega-joya-encuentran-enfermos-necesitan-atencion-medica/24217600>

<sup>12</sup> Panamá América, Ocho detenidos perdieron la vida en las cárceles, published on December 23, 2022. Available here: <https://www.panamaamerica.com.pa/judicial/ocho-detenidos-perdieron-la-vida-en-las-carceles-este-ano-1216329>

<sup>13</sup> UN CAT, Concluding observations on the fourth periodic report of Panama, UN Doc CAT/C/PAN/CO/4, 28 August 2017, par. 16 and 17.

<sup>14</sup> UN, Subcommittee on Prevention of Torture visit to Panama undertaken from 20 to 26 August 2017: observations and recommendations addressed to the State party, CAT/OP/PAN/1, 31 July 2018. Available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FOP%2FPAN%2F1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FOP%2FPAN%2F1&Lang=en)

penitentiary system). In some facilities this percentage is as high as **490%**. For example, a prison in the province of Coclé (Aguadulce Prison) was built to hold only 40 people and holds 156.<sup>15</sup>

- This is compounded by the **lack of adequate administrative procedures and case file management for persons in prison** by the judiciary aimed at identifying pre-release measures and alternatives to detention.

d. Sentencing Enforcement Judges and their judicial independence (arts 2 and 4 CCPR)

- Panama has sentencing enforcement judges (*jueces de cumplimiento*) who are responsible for the **execution of sentences** and guaranteeing the rights of the sentenced.<sup>16</sup>
- The **sentencing enforcement judges** may **visit prisons**, when necessary, to monitor and control the situation within the facilities. They may also order **measures to correct** and **prevent** any shortcomings in the functioning of the prison system and order the authorities to adopt corrective measures to address the issues observed.<sup>17</sup> For example, in December 2022 a **sentencing enforcement judge** ordered the National Police to carry out medical transfers so that persons in prison receive timely medical attention and ordered coordination efforts between the authorities involved.<sup>18</sup>
- However, the **judicial independence and protection against reprisals** for sentencing enforcement judges is important so that they can issue rulings that contribute to improving detention conditions. In addition, to proper training based on the rights of persons deprived of liberty, including from a gender perspective.

e. Women and LGBTI+ persons in prison

- As of August 2022, there were **1 106 women deprived of their liberty** in Panama. Of these, 835 were sentenced and 271 were under pre-trial detention.
- Women detainees represent **5.2% of the total detained population**. The majority of women deprived of liberty are under the age of 40 (73%), are detained mostly for drug offences (65%), and come from situations of poverty and are often single mothers (65%). There is no systematic policy of providing mothers with alternatives to detention.
- Women detainees face **poor material and living conditions**, which are exacerbated by overcrowding. They suffer from **lack of access to quality medical services** and drinking water, inadequate leisure, educational and vocational activities, lack of basic hygiene products and medical care, including gynecological and other specialized care, and lack of conjugal visits.

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<sup>15</sup> Ministerio de Gobierno, Estadística Población Penitenciaria de Agosto de 2022. Available here: <https://www.mingob.gob.pa/poblacion-penitenciaria/>

<sup>16</sup> See: article 46 of the Criminal Procedural Code of Panama.

<sup>17</sup> See: article 509 of the Criminal Procedural Code of Panama.

<sup>18</sup> La Estrella de Panamá, Órgano Judicial le llama la atención a la Policía Nacional, por violentar derecho al traslado de recluso a citas médicas, published December 12, 2022. Available here: <https://www.laestrella.com.pa/nacional/221225/organo-judicial-le-llama-atencion-policia-violentar-derecho-traslado-recluso-citas-medicas>

- There is no maternity unit allowing women to keep their young children with them and breastfeed. Furthermore, social and psychological assistance is limited, and it is difficult to follow up on the situation of their children with the relevant institutions.
- Regarding women deprived of their liberty, a thematic report <sup>19</sup> carried out in 2021 by the NPM, identified **overcrowding and very precarious material conditions** in the country's prisons. It formulated several recommendations, including:
  - Improving the quality of water so that it was drinkable, of good quality and permanently supplied to women deprived of liberty.
  - Ensuring medical personnel who could attend to the situation of women deprived of their liberty.
  - Recording information related to women deprived of liberty in a data system up to date.
  - Paying attention to the situation of **women with psychosocial disabilities** in prison, particularly regarding the **overuse of solitary confinement**.
- There is a **lack of information on LGBTIQ+ persons in prison**. Gathering information and data on LGBTIQ+ persons is a challenge in Panama, as LGBTIQ+ persons are not recognised officially.
- In its report on its 2017 visit to Panama, SPT expressed concern about the discrimination and segregation of LGBTIQ+ persons in prison and lack of equal access to medical services.
- Furthermore, during its 2020 Universal Periodic Review, Panama received recommendations on the need to combat the arbitrary treatment and discrimination in society, as well as physical and psychological violence against LGBTI people.<sup>20</sup>

### **Suggested recommendations**

- *Ensure that sentencing enforcement judges regularly visit prisons to verify the situation of prisoners and receive proper training on the international human rights standards.*
- *Take the necessary measures to increase the use of alternatives to imprisonment with a gender perspective in line with Rules 60 and 61 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).*
- *Ensure, in law and in practice, that the use of solitary confinement in cases of persons with psychosocial or intellectual disabilities in prison is prohibited in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).<sup>21</sup>*

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<sup>19</sup> Informe Temático Evaluación nacional de la situación de las mujeres privadas de libertad con condiciones adicionales de vulnerabilidad (2021). Available at: <https://www.defensoria.gob.pa/wp-content/uploads/2021/06/Evaluacion-nacional-de-la-situacion-de-las-mujeres-privadas-de-libertad-con-condiciones-adicionales-de-vulnerabilidad.pdf>

<sup>20</sup> Report of the Working Group on the Universal Periodic Review on Panama, UN Doc A/HRC/46/8, 21 December 2020, recommendations: 104.30-104.45. Available here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/351/90/PDF/G2035190.pdf?OpenElement>

<sup>21</sup> Rule 45.2. states that: *the imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice.*

- *Foster efforts to eradicate all forms of discrimination, harassment and violence on the basis of gender identity, gender expression and sexual orientation within the criminal justice system.*