



Right of access to a lawyer

June 2018

"1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.

2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay."

Principle 17 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Introduction.....	1
1. When should the detainee be provided access to a lawyer?	4
2. How does the lawyer is chosen?	6
3. Under what conditions must the right be provided?	8
4. Persons in situation of vulnerability.....	10
5. Challenges identified and next steps for implementation.....	12
Annexes.....	13

Introduction

A recent study¹ commissioned by the Association for the Prevention of Torture (APT) demonstrated that one of the most effective measures to prevent torture and other ill-treatment is to ensure that all persons in custody have effective access to safeguards during the first few hours of custody.²

¹ In 2012 the APT commissioned an independent academic global research to address the question: does torture prevention work? In 2016, Dr. Richard Carver and Dr Lisa Handley published the results of their research. The book *Does torture prevention work?* includes 14 chapters analysing the impact of preventive measures in 16 countries.

² For the purposes of the series, "custody" is understood to span from the moment of the suspect's apprehension to the time he or she is brought before a judge or released.

According to the analysis, four safeguards in particular have proved to be the most effective in preventing torture and ill-treatment:

- the right to notify third parties of the fact of deprivation of liberty—which, according to the study, is the most effective safeguard against torture;
- the right to an independent medical examination upon request;
- the right to have access to a lawyer; and
- the right to information about rights.

This document is the second in a four part series on the implementation of safeguards in 10 Latin American countries during the first hours of police custody. It was drafted on the basis of responses to a questionnaire by 16 National and Local Mechanisms for the Prevention of Torture (NPM and LPM)³ and other institutions in Latin America. Information was also obtained from discussions held during a workshop in Panama in November 2017.⁴ The series seeks to summarise provisions in national legislation that govern the above-mentioned safeguards and to address challenges in their practical implementation. This document provides an overview of the right of persons in police custody to have access to a lawyer, including to legal aid.

Why is the implementation of this safeguard important?

From a preventive perspective, access to a lawyer constitutes an important safeguard against, and reduces the risks of torture and ill-treatment, conferring protections beyond those pertaining to the preparation of a detainee's legal defense.⁵ The implementation of this safeguard can help to:

- Ensure that detaining authorities respect the human dignity and physical and mental integrity of the person in custody, in full compliance with human rights standards.
- Discourage authorities from abusing their powers and resorting to abuse against the detainee in order to obtain information.
- Ensure that the person in custody is aware of his or her rights and is able to exercise them effectively, and has an understanding of technical procedures pertaining to detention and the criminal justice process.
- Prevent arbitrary and unlawful detention, and coerced confessions.
- Facilitate access to complaints mechanisms for reporting any instance of torture and ill-treatment.
- Protect the welfare of and safeguard the other rights of detainees in practice.

³ 7 NPMs (Bolivia, Costa Rica, Ecuador, Mexico, Paraguay, Peru and Uruguay), 7 LPMs (Argentina: Mendoza, Misiones, Salta, Chaco; Brazil: Rio Janeiro and Pernambuco), the National Human Rights Institute in Chile (INDH), and the National Prisons Ombudsman (PPN) in Argentina responded to the questionnaire.

⁴ Members of NPMs in Argentina, Brazil, Bolivia, Costa Rica, Ecuador, Mexico, Paraguay, Peru and Uruguay, and representatives of LPMs in Misiones and Mendoza Provinces in Argentina, and Rio de Janeiro Brazil, and from the National Prisons Ombudsman (PPN) in Argentina attended the workshop.

⁵ SPT, Report on the visit of the SPT to Benin, (2011), UN Doc CAT/OP/BEN/1, §85; SPT, Report on the visit of the SPT to Brazil, (2012), §67.

Beyond strictly preparing a legal defence and representing detainees in court, lawyers also have an important role in safeguarding other rights, such as the access to medical care or nutrition. The presence of a lawyer in a place of detention, and the lawyer's ability to meet with detainees in private in places of detention, can also foster greater transparency within these institutions.

Essential elements for torture prevention



- Access to a lawyer – whether of one's choice or in the context of free legal aid – should be granted promptly, during the initial stages of the custody or within a few hours of arrest, at most.
- The detainee should be able to meet with his or her lawyer in private, and their communications must be confidential.
- The lawyer should be present during any questioning of, and when statements are taken from the detainee as part of the investigation.
- The detainee and his or her lawyer should be given access to the information and files on the case.

1. When should the detainee be provided access to a lawyer?

<p>What do international standards specify?</p>	<p>According to international standards, access to a lawyer must be guaranteed from the outset of the custody⁶, or at most within a few hours of arrest. The UN Special Rapporteur on Torture has noted that access to counsel must be provided immediately after the moment of deprivation of liberty and unequivocally before any questioning by authorities.⁷</p> <p>The UN Human Rights Committee has observed that the right to communicate with counsel requires that the accused be guaranteed prompt access to a lawyer.⁸ For its part, the Inter-American Court of Human Rights (IACtHR) has stated that access to a lawyer should also be provided at the time that the statement of the person in custody is taken.⁹</p>
<p>What does the legislation in Latin American countries state?</p>	<p>In Latin American jurisdictions, laws state that access to a lawyer must be provided at the following times:</p> <ul style="list-style-type: none"> • From the moment proceedings are initiated (Chile)¹⁰ or from the preliminary investigation stage (Ecuador).¹¹ • From the moment of detention (Bolivia)¹², or before the person's statement is taken by the Public Prosecutor's Office (Honduras, Mexico)¹³, or once the person has been summoned by the detention authority (Peru).¹⁴ • After the expiry of a maximum set period of six hours following the arrest (Paraguay).¹⁵ • During the first 24 hours after the arrest (during the preliminary inquiry and from the first contact with the Public Prosecutor's Office) (Uruguay).¹⁶ • At the first opportunity, prior to the defendant's statement before the judge or within 24 hours of the arrest (Chaco Province in Argentina).¹⁷

⁶ UN, Resolution adopted by the Human Rights Council on 24 March 2016, (2016), UN Doc A/HRC/RES/31/31, §7.

⁷ UN, Interim report of the Special Rapporteur on torture Juan E. Méndez, (2016), UN Doc A/71/298, §69.

⁸ UN, General Comment No. 32 of the Human Rights Committee, §34.

⁹ IACHR, Case of Cabrera García and Montiel Flores v. Mexico, (2010), Series C No. 220, §155.

¹⁰ Chile, Code of Criminal Procedure, Article 8. According to Article 7 of the Code of Criminal Procedure, proceedings will be deemed to have started once any formality or administrative measure, whether investigative, precautionary or other, takes place before a court with jurisdiction in criminal matters, the public prosecutor's office or the police, in which a person is held responsible for a punishable act.

¹¹ Ecuador, Comprehensive Organic Criminal Code, Articles 451 and 452.

¹² Bolivia, Code of Criminal Procedure, Article 9. Article 5 of Bolivia's CCP states that the first act in the proceedings is understood to be any charge brought in a judicial or administrative body against an individual presumed to have committed an offence.

¹³ Bolivia, Bolivian Code of Criminal Procedure, Article 9; Honduras, Honduras Code of Criminal Procedure, Article 101. Mexico, National Code of Criminal Procedure, Article 113 and the Political Constitution of the United States of Mexico, Article 20 (B) (VIII).

¹⁴ Peru, Code of Criminal Procedure, Article IX (1).

¹⁵ Paraguay, Code of Criminal Procedure, Articles 6 and 75.

¹⁶ Uruguay, Law No. 19293 Code of Criminal Procedure, Articles 7, 64 (b) and 262 (1).

¹⁷ Argentina, Chaco Province, Code of Criminal Procedure, Articles 117, 303 and 304.

If the lawyer is absent. If the detained person's statement contains a confession, but was not made in the presence of the lawyer (and prosecutor), it will be null and void and cannot be used in the proceedings (Bolivia).¹⁸

What happens in practice?¹⁹

In practice, access to a lawyer occurs at the following times:

- During the early hours of the first working day following the detention (Salta Province in Argentina).
- Sometime between 24 and 72 hours after the arrest (Chaco Province in Argentina).
- At the time the person is brought before the Prosecutor's Office (Mendoza Province in Argentina).
- The first contact with the public defender's office takes place just prior to the first hearings before the judge or during the deposition in the prosecutor's office. This means 24 or 48 hours after the detention. Communication with a private lawyer takes place from the onset of police custody (Paraguay).

¹⁸ Bolivia, Code of Criminal Procedure, Article 92.

¹⁹The information provided in this section was obtained from the response to the APT questionnaire and during the NPM and LPM working meeting held in Panama from 21 to 23 November 2017.

2. How does the lawyer is chosen?

<p>What do international standards specify?</p>	<p>International and Inter-American human rights standards state that access to a lawyer should be guaranteed to all persons deprived of their liberty.²⁰ A lawyer may be retained directly/privately by the detainee or his or her family.²¹ In cases where the detainee lacks sufficient means to pay for the cost of hiring a private lawyer, the State has a duty to provide free legal aid.²²</p>
<p>What does the legislation in Latin American countries state?</p>	<p>All Latin American jurisdictions recognise the right of persons in custody to seek and obtain the assistance of a lawyer independently. When detainees are unable to do so in certain circumstances, States are obliged to assign them a public lawyer. This can be the case when:</p> <ul style="list-style-type: none"> • The detainee does not have a private lawyer (Chile, Honduras, Paraguay, Mexico),²³ or the private lawyer does not immediately accept the case (Argentina, Bolivia, Costa Rica, Ecuador, Uruguay).²⁴ • The lawyer chosen by the detained person is absent (Ecuador).²⁵ • There is a dereliction of duty, removal, death, resignation or withdrawal from the case by the lawyer (Panama).²⁶ • The detained person does not have the financial resources to pay for a private lawyer (Peru).²⁷ <p>Some national legislation recognises that a third party may appoint a lawyer for the person who is in custody. For example:</p> <ul style="list-style-type: none"> • If the accused is deprived of liberty and does not have a previously appointed lawyer, any family member or close relative may propose a specific defence counsel (Chile, Uruguay).²⁸ • Any person who has a kin-relationship or friendship with the person deprived of liberty may present him or herself to the police and suggest a lawyer (Chaco and Mendoza Provinces in Argentina).²⁹

²⁰UN, International Convention for the Protection of All Persons from Enforced Disappearance, Article 17 2. (d).

²¹OAS, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle V on the due process of law.

²²UN, General comment No. 32 of the Human Rights Committee on the Right to equality before courts and tribunals and to a fair trial, (2007), §10 and 38. Rule 119 of the Nelson Mandela Rules

²³Chile, Code of Criminal Procedure, Article 102; Honduras, Code of Criminal Procedure, Article 103; Mexico, National Code of Criminal Procedure, Article 115; Paraguay, Code of Criminal Procedure, Article 6.

²⁴Argentina, National Code of Procedure, Article 104; Bolivia, Code of Criminal Procedure, Article 9; Costa Rica, Code of Criminal Procedure, Article 13; Uruguay, Code of Criminal Procedure, Articles 64 (b) and 72.2.

²⁵Ecuador, Comprehensive Organic Criminal Code, Article 9.

²⁶Panama, Code of Criminal Procedure, Article 9.

²⁷Peru, Code of Criminal Procedure, Article 80.

²⁸Chile, Code of Criminal Procedure, Article 102; Uruguay, Law No. 19293 Code of Criminal Procedure (2017), Article 65 (c).

²⁹Argentina, Chaco Province Code of Criminal Procedure, Article 117; Mendoza Province Code of Criminal Procedure, Article 131. It should be noted that the nominated defence will have to be confirmed by the accused.

	<ul style="list-style-type: none"> • A spouse, partner or relative up to the fourth degree by blood or adoption, or second degree by marriage may appoint the lawyer (Paraguay).³⁰ • The lawyer may be appointed by the relatives or group to which the arrest was reported (Costa Rica).³¹
What happens in practice? ³²	<p>In most cases, persons in custody are unable to afford a private lawyer and the State assigns them a public defender. In practice, the institutions in charge of providing free legal aid (Public Defenders' Offices) are overburdened and do not have sufficient human resources to provide legal assistance during the early stages of police custody.</p>

³⁰Paraguay, Code of Criminal Procedure, Article 75 (4).

³¹Costa Rica, Code of Criminal Procedure, Article 82.

³²The information in this section was obtained from the response to the APT questionnaire and during the NPM and LPM working meeting held in Panama from 21 to 23 November 2017.

3. Under what conditions must the right be provided?

<p>What do international standards specify?</p>	<p>International instruments and human rights mechanisms identify some essential elements that characterise the right to access to a lawyer in practice. These include:</p> <ul style="list-style-type: none"> • Direct and physical contact. Detainees must be allowed to establish direct contact with their lawyers, and to meet with them in person. • Confidential and uncensored communications. Detained persons and their lawyers must be able to meet and consult without interference or censorship, in conditions of full confidentiality.³³ Consultation may be visually supervised in some cases, but must not be overheard. • Adequate time and means to consult a lawyer. The person in custody should be provided with the time and means, including facilities, required to make the necessary inquiries to his or her lawyer.³⁴ <p>The Nelson Mandela Rules state that authorities should provide individuals with adequate opportunity, time and facilities to be visited by a legal adviser of their own choice or a legal aid provider.³⁵</p>
<p>What does the legislation in Latin American countries state?</p>	<p>Some national laws identify the conditions under which access to and communication with a lawyer must be provided. For example:</p> <ul style="list-style-type: none"> • The detainee, even whilst in police custody, will have the right to have a private meeting with his or her defence lawyer immediately upon arrest (Costa Rica, Uruguay).³⁶ • The detainee has the right to communicate freely and confidentially with his or her lawyer (Salta Province in Argentina, Panama).³⁷ • Before a statement is taken, the person in custody has a right to speak to a lawyer in private and to meet or speak to the lawyer in strict confidence (Mexico).³⁸ • The detainee has the right to be granted a reasonable period of time for the preparation of his or her defence, and lawyers have the right to enter detention facilities (Peru).³⁹

³³Basic Principles on the Role of Lawyers, Principle 8; OAS Principles and Nelson Mandela Rules 61.1.

³⁴General Comment No. 32 of the Human Rights Committee states that “adequate facilities” include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court, §33.

³⁵The Nelson Mandela Rules contain a section on detainees awaiting trial, which apply to persons imprisoned in a police station or prison, Rule 61.1.

³⁶Costa Rica, Code of Criminal Procedure, Article 109; Uruguay, Code of Criminal Procedure, Article 65 (h).

³⁷Argentina, Salta Province, Provincial Code of Procedure, Article 88; Panama, Code of Criminal Procedure, Art. 9.

³⁸Mexico, National Code of Criminal Procedure, Article 113 (IV).

³⁹Peru, Code of Criminal Procedure, Article IX and Article 84.

What happens in practice?⁴⁰

In practice, the conditions under which access to a lawyer is provided vary from country to country. For example:

In police stations, meetings between the lawyer and detainees sometimes take place in the presence of police officers (Salta Province in Argentina). Meetings with public lawyers sometimes take place only moments before the beginning of judicial hearings, and are very short in duration (Chile).

In some cases, communication with the lawyer takes place via telephone, confidentially (Mendoza Province in Argentina, Costa Rica), and in appropriate facilities (Rio de Janeiro State in Brazil). In other cases, the manner in which the communication takes place depends on whether the lawyer is a public defender or private lawyer. For instance, if the lawyer is a public defender, communications with the detainee take place when he or she comes before the judge, in the absence of confidentiality; if the lawyer is a private counsel, communications are confidential and take place beforehand, when the detainee is in the police station (Paraguay).

⁴⁰The information in this section was obtained from the response to the APT questionnaire and during the NPM and LPM working meeting held in Panama from 21 to 23 November 2017.

4. Persons in situation of vulnerability

What does international standards state?

According to the United Nations Principles and Guidelines on Access to Legal Aid, states should adopt specific measures to ensure effective access to legal aid.⁴¹ These measures should take the special needs of persons in situations of vulnerability into account, and be appropriate to the gender and age of the persons concerned. Some international standards clearly specify additional requirements that must be guaranteed in order to meaningfully implement the right of access to a lawyer for certain groups of persons:



Foreigners. Minimum guarantees for foreign detainees are identified as having the time and suitable means to prepare their defence, to communicate with the defence counsel of their choosing and to be informed, if they do not have a defence counsel, of the right to have one. If required in the interests of justice, a public defence counsel will be assigned to them free of charge if they do not have the means to pay.⁴²



Children. Minors require special protection.⁴³ The assistance they receive should be appropriate and free of charge.⁴⁴ Lawyer or other support, parents or other legal representatives must be present at the proceedings.⁴⁵



*Persons belonging to indigenous groups.*⁴⁶ Guaranteeing rights effectively requires the provision of free assistance from legal counsels and interpreters, as well as support services, legal advice and interpretation.⁴⁷ The *United Nations Principles and Guidelines on Access to Legal Aid* specify that the States must also ensure that legal aid is provided to persons living in rural, remote and economically and socially disadvantaged areas.

⁴¹United Nations Principles and Guidelines on Access to Legal Aid, Principle 10.

⁴²UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Articles 16 to 18. See also the 1963 Vienna Convention on Consular Relations, Article 36 §1.

⁴³Article 40. 2. (b) (ii) of the Convention on the Rights of the Child establishes that the States will guarantee that the child has legal or other appropriate assistance in the preparation and presentation of his or her defence. See also Principle 11 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems and Principle 15 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules").

⁴⁴General Comment No. 32 on juvenile persons §42.

⁴⁵UN, UN Doc CRC/C/GC/10, General Comment No. 10 of the Committee on the Rights of the Child, (2007), §§52-53.

⁴⁶UN Doc A/HRC/EMRIP/2013/2, Study on access to justice in the promotion and protection of the rights of indigenous peoples of the United Nations Expert Mechanism on the Rights of Indigenous Peoples.

⁴⁷ UN, General Recommendation No. XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, §30.

<p>What does the legislation in Latin American countries state?</p>	<p> <i>Children.</i> Some legislation provides that when an adolescent is arrested, the police must ensure he or she is aware of his or her right to appoint a defence counsel (Uruguay).⁴⁸</p> <p>With regard to the lawyer's specialisation, the legislation states that every adolescent has the right to be assisted by a lawyer specialised in the juvenile justice system, at all stages of the process, including detention (Mexico).⁴⁹</p> <p>It is also recognised that if the adolescent is indigenous, a foreigner, has a disability, or does not know how to read or write, he or she will have the right to receive assistance from a defence lawyer who understands his or her language, dialect, and culture, and, if necessary, the defence lawyer will be assisted by a translator or interpreter (Mexico).⁵⁰</p>
<p>What happens in practice?⁵¹</p>	<p>In practice, only a few countries take steps to address the specific needs of persons in situations of vulnerability. For example:</p> <p> <i>Children.</i> It is sometimes the case that juvenile criminal lawyers visit police stations to provide assistance (Chile). In other cases, once it is noted that a detainee is a minor, the procedure for appointing a lawyer (Mendoza Province, Argentina) begins immediately.</p> <p> <i>Persons belonging to indigenous groups.</i> In the case of indigenous persons, public defenders are sometimes specifically trained to deal with indigenous persons who are detained (Costa Rica).</p>

⁴⁸Uruguay, Law No. 17823, Code for Children and Adolescents, Article 76.

⁴⁹Mexico, National Law on the Comprehensive Criminal Justice System for Adolescents Article 41.

⁵⁰*Ibid.*

⁵¹The information provided in this section was obtained from the response to the APT questionnaire and during the NPM and LPM working meeting held in Panama from 21 to 23 November 2017.

5. Challenges identified and next steps for implementation

a. Challenges identified in practice

- Detainees are unaware of their right to access a lawyer during the early stages of custody.
- Access to a lawyer takes place after the first few hours of custody. For example, access can be delayed until a statement is made by the detainee before the Public Prosecutor's Office, or is granted only minutes prior to the first hearing before the judge.
- There are inequalities in access to private lawyers and public defenders. For example, if the person in custody can afford a private lawyer, the first meeting with the detainee takes place at the police station, whereas communication between a detainee and his or her public defender begins only when the detainee is before the judge.
- There is a shortage of public defenders, who face an excessive workload, often making it unfeasible for them to be available to detainees during the early stages of the detention. In some instances, public defenders have an average load of 700 cases at a time.⁵²
- In some countries, public defenders cannot easily access places of custody to meet the detained person under conditions of confidentiality.
- Custody facilities lack the appropriate infrastructure needed to ensure that communication between the lawyer and the detainee is direct and confidential.

b. Steps to be taken to implement the safeguard

- Establish in the national legislation that access to a lawyer, including free legal aid, will be provided during the early stages of the detention.
- Inform the detainee about his or her right to access a lawyer and provide information on how to exercise this right.
- Ensure that public defenders are available for consultations with detainees during the early stages of police custody.
- Set up free telephone lines at police stations to facilitate communication between persons in custody and Public Defenders' Offices.
- Set up training programmes for public defenders on the specific needs of persons in situations of vulnerability, who are at heightened risk in police custody.
- Adapt facilities in places of detention so as to enable private and confidential communication between the detained person and his or her lawyer, for instance by setting-up interview rooms.
- Establish a group of public defenders who will be specifically available to serve detainees during the early stages of police custody (i.e. a shift system).

⁵² SPT, Report on the visit of the SPT to Honduras, (2010), UN Doc CAT/OP/HND/1, §101.

Practical examples for implementation	
Autonomous City of Buenos Aires, Argentina	In 2007, the Public Defence Service in the Autonomous City of Buenos Aires created the <i>Office for the Accused Deprived of Liberty</i> , which provides a 24-hour, year-round service. The Office's role is to immediately inform a public defender about arrests, so that legal aid can be provided promptly. The Office is also responsible for notifying the fact of deprivation of liberty to the detainee's family.

Annexes

A. International and regional human rights standards:

- [Article 17.2. \(d\)](#), UN International Convention for the Protection of All Persons from Enforced Disappearance.
- [Article 37 \(d\)](#), Convention on the Rights of the Child.
- [Article 16 to 18](#), UN International Convention on the Protection of the rights of all Migrant workers and members of their families.
- [Guideline 11](#), UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- [Principle 3](#), UN Principles and Guidelines on Access to Legal Aid in Criminal Justice System
- [Paragraphs 1-8](#), UN Basic Principles on the Role of Lawyers.
- [Rule 61](#), UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).
- [Guideline 20.C](#), Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa.
- [Article 4](#), Guidelines on the Conditions of arrest, police custody and pre-trial detention in Africa (Luanda Guidelines) .
- UN Human Rights Council Resolution 31/31 on safeguards to prevent torture during police custody, 2016, [A/HRC/RES/31/31](#), §12 (d).
- Human Rights Committee [General Comment N° 32](#), §34.

UN Subcommittee on Prevention of Torture reports:

- Argentina, [CAT/OP/ARG/1](#), §93 (d)
- Benin, [CAT/OP/BEN/1](#), §83-88
- Chile, [CAT/OP/CHL/1](#), §28 (a)
- Mexico, [CAT/OP/MEX/1](#), §79
- Paraguay, [CAT/OP/PRY/1](#), §52

See also:

- APT, [Monitoring Police Custody a practical guide](#), p. 133-136.
- APT, [Outcome Report](#) of the Symposium on Procedural Safeguards in the first hours of police custody 2017, p. 9.
- Amnesty International, [Fair Trial Manual Second Edition](#), 2014, p. 43-49.
- Fair Trials, [Roadmap practitioner tool Access to a Lawyer Directive](#).
- UNODC, [Early access to legal aid in criminal justice processes](#), 2014.

B. National legislation

- **Constitutions**

State	Regulations	Text
Argentina	Constitution of the Argentine Nation	Section 18. The defense by trial of persons and rights may not be violated.
Salta Province in Argentina	Constitution of Salta Province	Article 18. Inviolability of the defence. The defence of individuals and their rights in judicial, administrative and private law entities is inviolable. The law provides for free legal aid to persons of modest means. Article 19. (...) The State guarantees the accused person legal assistance in police and judicial proceedings, and ex officio assistance if no private defence counsel is appointed.
Brazil	Constitution of the Republic of Brazil	Article 5. 63. the arrested person shall be informed of his rights, among which the right to... assistance by his family and a lawyer; (...).
Chile	Constitution of Chile	Article 19.- The Constitution assures to all persons: 3. Equal protection of the law in the exercise of their rights. All persons have the right to a judicial defense in the form that the law specifies and no authority or individual can impede, restrict or disturb the due intervention of an attorney, if it is required. Any person accused of a crime has the irrenounceable right to be assisted by a suitable defending attorney by the State if one cannot be appointed in the modality established by the law.
Ecuador	Constitution of the Republic of Ecuador, 2008	Article 77 (4). At the time of detention, the agent shall inform the arrested person of his/her right to remain silent, to request the assistance of an attorney or court-appointed defense attorney in the event he/she is unable to designate one by himself/herself , and to communicate with a relative or any other persons indicated by him/her.
Honduras	Public Constitution of Honduras	Article 83. The State shall appoint counsel to defend the poor and to protect the persons and interests of minors and the incompetent. They shall give legal assistance to them and represent them judicially in defense of their personal liberty and other rights.
Mexico	Political Constitution of the United Mexican States	Article 20. Criminal proceedings will be accusatory and oral. It shall be ruled by the principles of open trial, contradiction, concentration, continuity and contiguity. B. Defendant's rights VIII. Defendant has the right to a lawyer, whom he shall freely choose even from the moment of his arrest. If he does not want a lawyer or cannot appoint one, the judge shall appoint a public defender. Defendant's lawyer is obliged to appear in all the acts related to defendant's proceeding and is obliged to do so as many times as is required, and (...).

Paraguay	Constitution of the Republic of Paraguay	Article 12. All detained persons have the right: 1. to be informed, at the moment of the act [hecho], of the cause that motivates [the arrest], of their right to remain silent and to be assisted by a defender of their confidence.
Panama	Political Constitution of the Republic of Panama	Article 22. (...) Persons accused of committing a crime have the right (...) to legal counsel in all police and judiciary proceedings.
Peru	Political Constitution of Peru	Article 139. Principles and rights of the jurisdictional function are the following: (...) 14. "The principle that no person shall be deprived of the right to defense at any stage of the proceedings. (...) he has the right to communicate in person with and be advised by the legal counsel of his choice upon being summoned or arrested by any authority. "
Uruguay	Constitution of Uruguay	Article 16. In both cases in the preceding article, it is incumbent on the judge to take the accused's statement within twenty-four hours, and begin the summary process within a maximum of forty-eight hours. The accused's statement must be taken in the presence of his or her defence counsel. The latter shall also have the right to attend all summary hearings.

- **Codes of Criminal Procedure**

State	Regulations	Text
Argentina	Argentina Code of Criminal Procedure	Article 104. - The accused has the right to be defended by a practising lawyer that he or she trusts or by an officially assigned defence counsel; he or she may also defend him or herself in person, provided that this does not impair the effectiveness of the defence or obstruct the normal course of the proceedings. In this case, the court will order him or her to choose the defence counsel within three (3) days, otherwise an officially assigned defence counsel will automatically be appointed. Article 197. The judge will invite the accused to choose their defence counsel at the earliest opportunity, including during the preventive detention but in any event before the inquest (...).
Chaco Province in Argentina	Chaco Code of Criminal Procedure	Article 303. Defence counsel and domicile. At the earliest opportunity, but in any event before the accused's statement, he or she will be invited to choose a defence counsel, if he or she does not do so or the lawyer does not accept the charge, he or she will proceed in accordance with Article 120. Failure to comply with this provision shall render the acts referred to in Article 306 null and void. Article 120. Public defence. If the accused fails to choose a defence counsel in a timely manner, the Prosecutor for Investigations or the Court shall appoint the official counsel in that capacity, unless it authorises the accused to conduct his or her own defence. Article 117. Rights of the accused. The accused shall have the right to be defended by lawyers that he or she trusts or by the public defender, who shall be made known to him or her by the police

State	Regulations	Text
		or judicial authority that is involved first.
Salta Province in Argentina	Salta Province Code of Criminal Procedure	Article 88. Information on the minimum guarantees. The accused shall enjoy the following minimum guarantees: (...) (b) To communicate freely and confidentially with a legal counsel of his or her choice, and who has the right to be assisted and to communicate with the public defender; (c) to appoint a defence counsel whom he or she trusts or the public defender.
Mendoza Province in Argentina	Mendoza Province Code of Criminal Procedure	Article 131. The accused shall have the right to be defended by a lawyer that he or she trusts or by the public defender, who shall be made known to him or her by the police or judicial authority that is involved first.
Brazil	Code of Criminal Procedure	Article. 289. If the accused is on Brazilian territory, outside the trial judge's jurisdiction, a prison sentence will be invoked, and the court writ should include the entire content of the warrant. Para. 4 The prisoner shall be informed of his or her rights, in accordance with Article 5 paragraph LXIII of the Federal Constitution and, if the defendant does not provide his or her lawyer's name, it shall be sent to the Public Defender's Office.
Bolivia	Code of Criminal Procedure	Article 9. Technical defence. Every defendant has the right to a lawyer's assistance and defence from the first step in the criminal proceedings until the judgment is enforced. This right cannot be waived. The defence counsel shall be appointed without delay or formality from the time of the detention, arrest or before the defendant's statement. If, having consulted the defendant, he or she does not appoint him or her or the chosen counsel does not accept the appointment, a defence counsel shall automatically be appointed.
Chile	Code of Criminal Procedure, 2000	Article 8. Scope of the defence. The accused shall have the right to be defended by a legal counsel from the early stages in the proceedings against him or her. Any defendant who does not have a lawyer shall have an inalienable right to have one provided by the State. The judge shall appoint the lawyer before the first judicial proceedings that require the presence of the said defendant have started. Article 93. Rights and guarantees enjoyed by the accused. Any defendant may, until the end of the proceedings, exercise the rights and guarantees vested in him or her by law. In particular, he or she will be entitled to: b) Be assisted by a lawyer from the start of the investigation;
Costa Rica	Code of Criminal Procedure	Article 12. – Inviolability of the defence. The defence of either party to the proceedings is inviolable. With the exceptions provided for in this Code, the accused shall have the right to be involved in the procedural steps that entail evidence and to make any requests and observations he or she deems appropriate, notwithstanding the exercise of disciplinary power by the corresponding authority if the normal course of proceedings is undermined. If the accused is deprived of liberty, the person responsible for keeping him in custody shall send the court any requests or observations that he or she may make within 12 hours and shall

State	Regulations	Text
		<p>facilitate communication with the defence counsel.</p> <p>Article 13. – Technical Defence</p> <p>The accused shall have the right to legal assistance and legal counsel from the first step in the criminal proceedings until the sentence is pronounced. To this end, he or she may choose a defence lawyer that he or she trusts, failing which he or she will be assigned a public defender.</p> <p>The first step in the proceedings shall be understood to mean any judicial or police action, which points to a person as a possible perpetrator or participant in a punishable act.</p> <p>c) To be assisted, from the first step in the proceedings, by the defence counsel appointed by him or her, his or her relatives or the group to which his or her arrest was notified and, failing that, by a public defender.</p>
Ecuador	Comprehensive Organic Criminal Code	<p>Article 452. Need for a defence lawyer. The defence of any person shall be provided by a lawyer of his or her choice, notwithstanding his or her right to legal defence or to the appointment of a public defender. If the defence lawyer who is chosen is absent, a public defence lawyer who has been notified in advance will be used from the moment proceedings are initiated.</p> <p>Article 533. Information on the rights. The detained person shall be informed of his or her right to request that a public or private defence counsel be present.</p>
Honduras	Code of Criminal Procedure	<p>Article 101.3. Any person who is charged shall be guaranteed a defence. He or she shall therefore have the right to be assisted, if he or she is arrested or summoned to testify, by a legal professional who may be designated by the detainee or his or her spouse or domestic partner or by a relative up to the fourth degree by blood or second degree by marriage. If the above-mentioned persons do not appoint a defence counsel, the public defender appointed by the court shall perform this function and, if there is none in the area, this shall be carried out by the assigned public defence counsel who shall also designate the court.</p>
Mexico	National Code of Criminal Procedure	<p>Article 17. Right to specific and immediate legal defence and advice. Defence is a fundamental and inalienable right of every accused person. However, this right must always be exercised with the assistance of or through a defence lawyer. The defence counsel must have a law degree or be a qualified practising lawyer.</p> <p>A technical defence is understood to mean that which must be conducted by the private defender freely chosen by the accused or by the public defender appointed for him or her to assist him or her from the moment of his or her detention and throughout the proceedings, notwithstanding the legal defence the accused person may perform him or herself.</p> <p>Article 113. The accused shall have the following rights:</p> <p>IV. To be assisted by his or her defence lawyer when making his or her statement, as well as in any other proceedings, and to have a private meeting with him or her beforehand;</p> <p>XII. To be assisted free of charge by a translator or interpreter if he or she does not understand or speak Spanish. If the accused belongs</p>

State	Regulations	Text
		<p>to an indigenous people or community, the defence counsel must have knowledge of their language and culture and, if this is not possible, must act with the assistance of an interpreter of the culture and language in question;</p> <p>Article 115. Appointment of the defence lawyer. The accused may appoint the defence lawyer from the moment he or she is detained. He or she must be a qualified or practising lawyer. In the absence thereof or if he or she is not appointed, a public defender shall be appointed for him or her.</p> <p>Article 125. Meeting with the detainee. An accused person who is detained for any reason shall have the right before making a statement to a prompt and private meeting with his or her defence lawyer, if he or she should request it, and at a location designated for this purpose. The authority in question has the obligation to implement everything needed to ensure this right is freely exercised.</p> <p>Article 152. The rights of the detainee.</p> <p>II. The right to consult his or her defence counsel in private;</p>
Paraguay	Paraguay Code of Criminal Procedure	<p>Article 6. Inviolability of the defence. The defence of the accused and the exercise of his or her rights shall be inviolable. With regard to procedural rights, the first step in the proceedings shall be understood to mean any action taken by the prosecutor or any act or step taken after the six-hour time limit has expired.⁵³</p> <p>The accused may defend him or herself or choose a lawyer for the defence that he or she trusts, at his or her own expense.</p> <p>If he or she does not appoint a defence counsel, the criminal judge, irrespective of the defendant's wishes, shall automatically appoint a public defender.</p> <p>The right to defence is inalienable and its violation shall render the proceedings completely null and void from the moment this occurs.</p> <p>Article 75. The rights of the accused</p> <p>4) to be assisted from the very start of the proceedings by the defence counsel appointed by him or her, his or her spouse, partner or relative up to the fourth degree by blood or by adoption or second degree by marriage and, in the absence of this defence counsel, by a public defender;</p> <p>Article 297. Powers. The National Police shall have the following powers:</p> <p>The accused and his or her defence counsel may be involved in the work carried out by the National Police and shall have access to all investigations conducted in accordance with the provisions in this Code, save where these are subject to reservations (...).</p>

⁵³Article 239 of Paraguay's Code of Criminal Procedure establishes a period of six hours for the National Police to communicate any arrest or detention to the relevant Public Prosecutor's Office and the Juvenile Criminal Court.

State	Regulations	Text
Panama	Code of Criminal Procedure	<p>Article 9. Right to defence.</p> <p>Everyone has the right to appoint a suitable defence lawyer of his or her choice with whom he or she can immediately communicate freely and privately from the start of the investigation to the end of the process. If he or she fails to do so, the State shall appoint a public defender.</p>
Peru	Code of Criminal Procedure	<p>Article IX. Right of Defence. 1. Everyone has the inviolable and unrestricted right to be informed of his or her rights, to be notified immediately and in detail of the charges brought against him or her and to be assisted by a defence counsel of his or her choice or, where appropriate, by a public defence lawyer if he or she has been summoned or detained by the authority.</p> <p>Article 71. Rights of the accused. (c) to be assisted from the outset by a defence lawyer.</p>
Uruguay	Law No. 19293 Code of Criminal Procedure	<p>Article 7. (Technical defence). Technical defence is a guarantee of due process and therefore a person's inviolable right. The accused has the right to be assisted by counsel from the beginning of the preliminary investigation.⁵⁴</p> <p>Article 64. (Rights and guarantees of the accused). Every accused person shall have the right to: b) appoint a free defence lawyer that he or she trusts from the time of the first steps taken by the Public Prosecutor's Office until the sentence is delivered. Failing that, he or she shall be assisted by a public defender as stated in the legislation.</p> <p>Article 65. (Defendant deprived of liberty). c) that if he or she has not already appointed a defence counsel, any relative or related person may nominate a specific defence lawyer for him or her, notwithstanding the provisions in Article 64 b) of this Code.</p> <p>(h) to meet his or her defence lawyer privately.</p> <p>Article 71. (Rights and duties of the defence lawyer).</p> <p>71.1 The defence lawyer may exercise all the rights and powers granted by law to the accused, unless the latter expressly reserves for him or herself the exclusive exercise thereof.</p> <p>71.4 The defence lawyer has the right to be informed of all the steps in the proceedings, from the preliminary inquiry, ensuring equality of arms with the Public Prosecutor's Office.</p> <p>71.5 Every lawyer has the right to require the official in charge of any place of detention to inform him or her, in writing and immediately, whether or not a person is detained in that place of detention.</p> <p>Article 72. (Initial appointment and acceptance of the position).</p> <p>72.1 The defence counsel shall be appointed before any investigative procedure, except in urgent cases. Only those qualified</p>

⁵⁴ In Uruguay, the preliminary enquiry with a detainee takes place in the 24 hours following the arrest and prior to the request for a preliminary hearing before the judge.

State	Regulations	Text
		to practise law in the country may be defence lawyers. Article 75. (Impact of the absence of the defence lawyer). The absence of the defence lawyer from any action in which the law expressly requires his or her participation shall result in it being invalidated.

- **Organic and procedural laws of police institutions**

State	Regulations	Text
Argentina, Mendoza Province	Provincial Law No. 6722 Organic Law of the Police of Mendoza	Article 12. All persons deprived of liberty shall be informed of their rights by the police personnel responsible for the detention: (...) 4. To appoint a lawyer and to request his or her immediate presence to assist in the relevant police or judicial proceedings.
Uruguay	Law 18315 on Police Procedure	Article 64. (The defence's involvement in a police unit) - The defence's involvement in a police unit shall be governed by the provisions in the Code of Criminal Procedure. Counsel shall always be informed of the time and grounds for the arrest, and of the time the competent judge was notified of the arrest.
Paraguay	Law 1562/00 Organic Law of the Public Prosecutor's Office	Article 22. Police report. The police notification of the start of a preliminary questioning or the receipt of a complaint must contain the following minimum information: 3) the identity or description of the accused, his or her domicile and the name of the defence counsel if he or she has already been appointed or nominated.
Peru	Human Rights Manual for Police Officers (Ministerial Resolution No. 1452-2006-IN)	Page 17, paragraph 2 (b). Rights of the detainee: <ul style="list-style-type: none"> • To a lawyer of his or her choice. • To express him or herself in his or her language and, if necessary, via an interpreter.

- **Other laws**

State	Regulations	Text
Mendoza Province in Argentina	Law 6354 on protecting minors	Article 132. The accused minor shall be entitled to a private defence counsel . Until the appointment is made, the defence counsel for minors shall act as a defence lawyer of his or her rights and shall be involved not only in litigation but also in proceedings before the judicial police or a body performing its role. Art. 133 – If the minor is deprived of his or her liberty, he or she may use any means to appoint a defence counsel . In these cases, any person who is a relative or a friend may present him or herself to the corresponding police or judicial authority and nominate a defence lawyer.
Mexico	National Law on the Comprehensive Criminal Justice System for	Article 41. Specialised technical defence Every adolescent has the right to be assisted at all stages in the proceedings by a qualified practising lawyer who is specialised in the System, from the time of his or her arrest until the sentence that has been imposed has been enforced.

State	Regulations	Text
	Adolescents	<p>If the adolescent is indigenous, foreign, disabled or unable to read or write, he or she shall be assisted in all procedural steps by an officially appointed defence counsel who fully understands his or her language, dialect and culture; or, if necessary, his or her defence counsel shall be assisted by a translator or interpreter assigned by the corresponding authority or appointed by the adolescent person him or herself.</p>
Ecuador	Code on Children and Adolescents	<p>Article 312. The adolescent under investigation has the right to be informed of his or her right to request that a lawyer be present (...).</p>
Uruguay	Law No. 17823 Code on Children and Adolescents	<p>Article 74. (Guiding principles).</p> <p>(F) Principle of inviolability of the defence. He or she has the right to ongoing legal assistance, free of charge, either public or private, from the time of the detention, during the proceedings and until the measures are fully implemented.</p> <p>Article 76. (Procedure). The arresting authority shall be entirely responsible for: (...)</p> <p>(c) Ensuring the adolescent is aware of the reasons for his or her detention and his or her rights, especially the right to appoint a defence counsel.</p>