

Torture

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Implementation of recommendations from the previous period

During the previous period, Germany, Brazil, Chile, Slovenia, Spain, Sri Lanka, and Tunisia called on the Colombian State to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Colombia is one of the few countries in Latin America that has not ratified this instrument. The Colombian State expressed its willingness to ratify this treaty in 2023, and is currently working with the Congress of the Republic to incorporate it into Colombian legislation. The correct implementation of this instrument requires the State to establish, operate, and sustain a National Prevention Mechanism, as well as ensuring civil society participation throughout this process.

In addition, Algeria, Austria, Peru, Thailand, Turkey, Venezuela, and Zambia recommended that the Colombian State take measures to reduce overcrowding and improve prison conditions. Despite this call to action, some of the overcrowding in Ordinary National Prison Establishments (ERON) has been shifted to Transitory Detention Centers (CDT), where the situation continues to worsen. (1)

At the beginning of 2023, the government presented a bill that sought to establish alternative penal procedures with the aim of reducing prison overcrowding. However, this bill was shelved due to a lack of debate. (2)

Current status

The crimes of torture and cruel and inhuman treatment have been increasing in Colombia. A total of 391 cases of torture were documented between 2017 and 2022, with at least 31 of these women victims, along with 4 minors. In cases where the alleged perpetrator is known, 58% were attributed to Colombian State agents, 15.6% of the crimes were committed by paramilitary groups and 5.6% by guerrilla groups. (3) Between 2017 and 2022 there were 1,183 criminal proceedings for the crime of torture: 75% of the cases are in the inquiry stage, 8.19% in the investigation stage, 9.89% of torture case are in the trial stage, and just 54 proceedings, representing 4.56% of all cases, reached the sentencing stage. (4)

During 2019, 2020, and 2021, torture was used as a means to repress protests. There were 134 deaths resulting from the arbitrary use of force, 80 cases of torture committed during administrative detentions or for the purpose of prosecution, 2,683 injuries caused by the arbitrary and excessive use of force, and 150 ocular traumas. (5)

(1) For example, in November 2022 there were 27 CDTs with an occupancy rate of over 1000%, and by April 2023 that number had increased to 34 facilities. Almost 25% of the people detained in these centers have been in pretrial detention for more than 12 months, and even without conviction, they spend over a year locked up in cells with a level of overcrowding never seen before. See CSST-388-Intervención-tutela-CDTs. Available at: <https://bit.ly/3JL3AL7>

(2) Presidency of the Republic of Colombia. El Gobierno Nacional enriquece proyecto de ley sobre humanización en las cárceles para presentarlo nuevamente en la próxima legislatura. 23 June 2023. Available at: <https://petro.presidencia.gov.co/prensa/Paginas/El-Gobierno-Nacional-enriquece-proyecto-de-ley-sobre-humanizacion-en-las-ca-230623.aspx>

(3) In 2017, 53 torture cases were documented; 2018 saw 66 documented; 2019, 85; 2020, 80; 2021, 82 and the first semester of 2022, 25. Information systematized and analyzed by the Comisión Colombiana de Juristas, source: Noche y Niebla magazines numbers: 56, 58, 60, 62, 64 and 65. Available at: https://www.nocheyniebla.org/?page_id=399.

(4) Office of the Attorney General of Colombia, Directorate of Policy and Strategy (20.12.2022). Response to the Information Request presented by the Comisión Colombiana de Juristas, with file number 20221400005171, official letter No. DPE-10200.

(5) CDLAT. Torturar y castigar a quien protesta, p.8. Available at: <https://adobe.ly/44u4xPN>

Many of the practices constituting torture and cruel and inhuman treatment occurred in temporary detention centers (Police Stations, Police Substations, CAI, URI). The victims were transferred to these locations in accordance with the legal mechanism known as a "protective transfer." Paradoxically, Article 155 of Law 1801 of 2016 defines this type of transfer as to be used by uniformed officers of the National Police to safeguard the lives and wellbeing of individuals who are at risk or danger.

Torture continues to be used as a **way to subjugate the prison population**. Dynamics such as arbitrary and excessive use of force, prolonged isolation, sexual violence, and torture or cruel, inhuman, or degrading treatment of a psychological nature are used in the Colombian prison system.

These practices are often justified as a "necessary evil" to safeguard internal order and protect prison facilities. There is insufficient training for medical staff who provide assistance to persons deprived of their liberty. There are also not sufficient mandatory training programs for judges and prosecutors to help them detect cases of mistreatment and torture, both physical and psychological.

Torture is also a form of aggression that is used **to silence the voices of those who defend rights and lead social causes in Colombia**. Judicial investigations of these crimes advance slowly and do not take into account the use of torture and mistreatment as a form of social control that sows terror in communities. It is clear that the State has not objectively nor efficiently responded to the recommendations made regarding the investigation and punishment of these crimes. It has also neglected its duty to protect the physical safety and ensure dignified treatment of human rights defenders and social leaders.

Finally, **international standards related to competent jurisdiction** are not consistently applied with all justice bodies. The military criminal justice system is still responsible for prosecuting alleged human rights violations committed by members of the country's state security forces. In addition, torture is not investigated in Colombia as an independent crime, but is incorporated into the investigation of other actions.

Recommendations

1. Fully implement the Optional Protocol to the Convention against Torture (OPCAT) following its ratification, which requires the establishment, operation, and sustainability of the National Prevention Mechanism and ensuring civil society participation throughout this process.
2. Investigar, juzgar y sancionar a los responsables de torturas en contextos de protesta, así como a los responsables de represalias y actos de intimidación en contra de las víctimas y familiares que interponen denuncias sobre casos de tortura durante protestas.
3. Intensify efforts to prevent cases involving excessive use of force, arbitrary detention, torture and other cruel, inhuman, or degrading treatment or punishment of persons deprived of their liberty.
4. Investigate, through the ordinary justice system, acts torture and cruel, inhuman, or degrading treatment or punishment independently of other criminal acts, so that these are not incorporated into acts with higher levels of criminalization, and can be investigated independently from other crimes, which will make it possible to highlight the seriousness of this violation and identify the contexts in which it most commonly occurs.