

Torture and cruel, inhuman or degrading treatment or punishment in Colombia

2009-2014

Shadow report
presented to the un
committee against torture

EXECUTIVE SUMMARY



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SHADOW REPORT PRESENTED TO THE UN COMMITTEE
AGAINST TORTURE

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In collaboration with:

Acción Colectiva de Objetores y Objetoras de Conciencia –ACOOC–
Asociación para la Promoción Social Alternativa –MINGA–
Coalición Contra la Vinculación de Niños, Niñas y Jóvenes
al Conflicto Armado en Colombia –COALICO–
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INTRODUCTION

Torture and cruel, inhuman or degrading treatment or punishment is a systematic and widespread practice in Colombia and, despite its absolute prohibition under international human rights law, it is not effectively investigated or sanctioned by the courts.

As part of the review of Colombia's 5th periodic report to the Committee against Torture, the Colombian Coalition against Torture (*Coalición Colombiana Contra la Tortura - CCCT*), in collaboration with other organisations, is presenting a Shadow Report on torture and cruel, inhuman or degrading treatment or punishment, for the period 2009-2014. This report sets out the circumstances in which these violations are carried out in the country and shows that they represent a breach of the provisions of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and the recommendations of the Committee against Torture (CAT).

This Report also presents a general overview of torture and ill-treatment, including considerations regarding the patterns in which these violations occur and the relevant legal framework; a look at historically disadvantaged groups who suffer torture and ill-treatment in different scenarios, such as women, children, adolescents, the LGBTI population, disabled people and human rights defenders; the torture and ill-treatment of persons deprived of liberty in Colombia; other situations in which people are victimised by torture and ill-treatment, abuse of authority in social protest, social control in militarised areas, enforced disappearances, arbitrary arrests and extrajudicial executions; the status of and challenges for the investigation and punishment of torture, and the psychosocial impact suffered by victims.



1. Overview of torture and cruel, inhuman or degrading treatment or punishment in Colombia: 2009-2014 (*arts. 1 and 4 CAT*)

Acts of torture and cruel, inhuman or degrading treatment or punishment have been recorded in Colombia during social protests, to repress the work of human rights defenders, and have targeted vulnerable and discriminated-against populations to exercise social control and have been reported in prisons. The Centre for Grassroots Research and Education (*Centro de Investigación y Educación Popular - CINEP*) and the Inter-Church Justice and Peace Commission (*Comisión Intereclesial de Justicia y Paz*) have recorded cases of physical torture during the period covered in this Report totalling 349 victims, with the highest figures in 2013 with 96 victims.

These events occurred in 25 of the 32 departments in Colombia, with the highest rates in Nariño, Caquetá and Norte de Santander. Men aged between 18-25 years old were the main victims of physical torture (without taking into account sexual violence or threats) and indigenous, Afro-Colombian and small farming populations and socially excluded persons are the sectors who bear brunt of this victimisation. Finally, the security forces are registered as the main perpetrators of these acts, followed by post-demobilisation paramilitary groups.

Similarly, the contexts in which torture and cruel, inhuman or degrading treatment or punishment occurs and the social groups that it is usually directed against, leads to the conclusion that torture is used as a form of discrimination, as political persecution, submission of the prison population, repression of social protest and as a mechanism for social control. This is true to the extent that these victimising acts are especially directed against women, children, adolescents, the LGBTI population, ethnic groups, disabled people, human rights defenders and prisoners, and occur in contexts of social protest and State militarisation in which different kinds of social control are used.

1.1. The exclusion of lawful sanctions from being classified as torture (*art. 2 CAT*)

The crime of torture is defined by Articles 137 and 178 of the Colombian Penal Code as any actions inflicted on a person causing pain or physical or mental suffering, used to obtain information or a confession from the victim or a third person, to punish them for an act they have committed or are suspected of having committed, or to intimidate or coerce them for reasons based on discrimination of any kind. Article 178 further establishes in its final paragraph that: "torture shall not be understood as pain or suffering arising from lawful sanctions or as a normal or inherent consequence of such sanctions". The constitutionality of this subsection is being reviewed by the Constitutional Court, and member organisations of the CCCT have recommended that the paragraph should be interpreted with the understanding that lawful punishment cannot be excluded from classification as torture just because it is provided for by law, but rather that such sanctions must instead respond to legitimate practices and respect for human rights standards.

1.2. The classification of cruel, inhuman or degrading treatment

In the Colombian legal system, cruel, inhuman or degrading treatment or punishment is only classified as criminal in situations of armed conflict (Article 146 of the Penal Code) and as aggravating circumstances in the offence of enforced disappearance (Article 166 of the Penal Code) and forced displacement (Article 181 of the Penal Code). However, it is not generally defined as a crime in non-conflict circumstances, ignoring the absolute prohibition of such acts established in the UNCAT and recommendations made by the CAT in similar cases that the crime of cruel, inhuman or degrading treatment or punishment should be included in the legislation of States Parties.

2. Torture and cruel, inhuman or degrading treatment or punishment against historically discriminated-against groups (art. 2 CAT, LOIPR question 9)

2.1. Sexual violence against women

Sexual violence is one of the main forms of torture against women and girls in Colombia. According to figures from the years 2010-2013, from the Colombian National Institute of Legal Medicine and Forensic Sciences, analysed and presented by Sisma Mujer,¹ one woman suffers sexual violence every 30 minutes, and women are five times more likely to suffer this crime than men. The highest rates of sexual violence against women occur in Bogotá, Antioquia and Valle del Cauca. The main perpetrators are, according to a report by Angela Maria Robledo in 2013, presented in a debate in Congress,² firstly, the military and police, followed by guerrilla groups and criminal gangs, private security corps and intelligence services.

2.2. Sexual violence against children and adolescents in the context of the armed conflict

Civil society reported in the campaign entitled "Rape and Other Violence: Leave my Body out of the War"³ at least 48,915 cases of sexual violence against children and adolescents between 2008 and 2012 in the context of the armed conflict. For the year 2013, the United Nations Secretary General recorded 22 incidents of sexual violence against children and adolescents

¹ Sisma Mujer, "Violencia en contra de las mujeres". Boletín #6, July 17, 2014. Available at: <http://www.sismamujer.org/wp-content/uploads/2014/08/Bolet%C3%ADn-6-2014-Violencias-en-contra-de-las-mujeres-2010-2013-17-07-2014.pdf> (In Spanish)

² Colombian Congress, "Ampliación del fuero militar borraría justicia a víctimas de violencia sexual". Fecha de publicación: November 18, 2011. Available at: <http://www.camara.gov.co/portal2011/noticias/3871-ampliacion-del-fuero-militar-borraria-justicia-a-victimas-de-violencia-sexual> (In Spanish)

³ Campaña Violaciones y Otras Violencias. Saquen mi cuerpo de la guerra; "Stop hunting children! Report on sexual violence committed against children and adolescents in the armed conflict in Colombia". Bogotá, March 2014. Available at: <https://saquenmicuerpodelaguerra.files.wordpress.com/2014/05/stophuntingchildren.pdf>



in the context of the armed conflict, while the Unit for the Attention and Comprehensive Reparation of Victims reported 31 cases.

Despite the existence of this data, acts of sexual violence against minors continue to be poorly recorded, in terms of the facts, the victims and the investigations conducted against the perpetrators. This prevents effective monitoring of the physical and psychosocial healthcare received by the victims, and of progress in investigating, prosecuting and punishing the perpetrators.

2.3. Attacks with chemical agents

According to the CAT, the risk of gender victimisation, especially for women, includes acts of violence committed in communities by private individuals. One example of these acts are attacks with chemical agents such as acids, alkalis, corrosive substances, chemicals, adhesives and pepper spray, especially directed against women. In the period between 2010 and 2012, the National Institute of Legal Medicine and Forensic Sciences recorded 295 attacks with chemical agents, one of the highest rates in the world, and the National Institute of Health reported that, according to their records, 83.8% of the victims of this crime are women.

It has also been found that despite the high number of attacks of this type, women do not have access to the justice system. Furthermore, although the government has promoted a bill aimed at the prevention, protection and care of victims of acid crimes, there are no guarantees of non-repetition for the victims.

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2.4. Torture and ill-treatment against the LGBTI population

Acts of torture against the LGBTI population include killings, police violence, actions in the context of the armed conflict and lack of health care provision. In this regard, *Diverse Colombia (Colombia Diversa)* has reported 730 homicides against the LGBTI population between 2006 and 2014. The killings follow, in some cases, patterns of cruel treatment and torture against the victims with LGBTI human rights defenders particularly targeted. Meanwhile, police abuse is characterised by excessive use of force, including physical violence, arrests, head shaving, verbal aggression, imposition of sexual favours and expulsion from public spaces.⁴ Likewise, in the context of armed conflict, the LGBTI population suffers especially from forced displacement, threats and crimes against their sexual freedom, integrity and orientation.

LGBTI people face a number of challenges related to healthcare. On the one hand, they experience discrimination in the provision of the service; to the extent that healthcare has been denied to some people. Similarly, transgender women and men do not have access to secure healthcare for the transformation of their bodies and for many this is indispensable for their lives. Therefore, transgender people are forced to try to transform through risky procedures, which often endanger their lives.

⁴ For further information, see: Colombia Diversa, "Informe de derechos humanos: cuando el perjuicio mata", Chapter 1, 2012 (*In Spanish*)

2.5. Sterilisation as a form of torture against disabled persons

In Colombia, the enforced and involuntary sterilisation of people with disabilities is an established practice that ignores the recommendations of the United Nations Special Rapporteur against torture and other cruel, inhuman or degrading treatment or punishment, who has acknowledged that any medical treatment of an intrusive and irreversible nature may constitute torture or ill-treatment when administered without the free and informed consent of the person concerned. Colombian law allows for this sterilisation, as it establishes a system of full guardianship of persons with intellectual or psychosocial disabilities, who are legally classified as having “absolute mental disability” (arts. 1503 and 1504 of the Colombian Civil Code and Law 1306 of 2009). The decision-maker in these cases is the guardian or legal representative, regardless of the consent or knowledge of the affected person.

2.6. Persecution of human rights defenders (*art. 15 CAT, LOIPR questions 42 and 43*)

Human rights defenders in Colombia are clear targets of different forms of violence, such as threats, assassinations, attacks, arbitrary arrests and arbitrary use of criminal justice, information theft, disappearance, sexual violence and personal injury. According to the We are Defenders Program (*Programa Somos Defensores*), between January 2010 and September 2014 a total of 1,762 human rights leaders and defenders were victims of individual attacks. Threats constitute the main assault on human rights defenders, and are mainly carried out by post-demobilisation paramilitary groups and disseminated primarily through pamphlets.

To address this situation, in 2009 the National Guarantees Roundtable was created to take measures to protect human rights defenders. However, neither the efforts made by this forum or the creation of the National Protection Unit have been satisfactory, given that attacks on defenders have increased in recent years.

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3. Torture and cruel, inhuman or degrading treatment or punishment against persons deprived of liberty (*art. 2, a, b and c and art. 10 CAT, LOIPR questions 18, 19, 22, 23 a, b, c and d and 24*)

3.1. Overcrowding in prisons and abuse of preventive detention

Over the past five years, figures related to overcrowding in Colombia have increased from 27.8% to 58.5%. This is due to the absence of a comprehensive government policy on prison and criminal matters; abuse of preventive detention and imprisonment, due to laws imposing greater punishments; the lack of definition of the legal status of the accused once the six months established for legal preventive imprisonment are over, provided for by Law 906 of 2005; and the exclusion of benefits and disregard for the principle of leniency in cases which meet



these requirements. The overcrowding affecting the prison population exposes them to living conditions that threaten their dignity and deny them access to basic services.

3.2. Lack of healthcare provision for the prison population

Healthcare coverage for the prison population is insufficient. Prisons do not have the sufficient staff or provisions to ensure medical care or prescribed health treatments, and services often depend on the goodwill of members of the custodial and supervision body in the prison. The company in charge of providing this service has not organised the appropriate prevention and health promotion campaigns, serious diseases are not adequately treated, and alternatives to imprisonment are not offered to the sufferers.

3.3. Poor conditions in prisons

In addition to overcrowding and lack of health provision, a number of prisons do not have the necessary infrastructure to provide basic services to the prison population. Many prisoners have limited access to water and ventilation, are subjected to prolonged periods of isolation in unsuitable areas, do not have proper toilet facilities, and suffer from failures in the prison telephone service. Moreover, there is no effective control over food services. These conditions also increase the risks for prisoners during emergency situations, as shown by the recent fires in prisons, in which a number of prisoners were killed.

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3.4. Torture and ill-treatment related to abuse of authority in prisons (art. 10 CAT, LOIPR questions 25 and 26)

The National Institute of Legal Medicine and Forensic Sciences reported that between 2010 and part of 2014, 2,425 incarcerated persons suffered personal injury, including 187 women and seven belonging to the LGBTI community. In addition to physical attacks, which have been reported by a number of prisoners, prolonged isolation as a punishment or safety measure are still practiced in prisons in Colombia.

3.5. Torture and cruel, inhuman or degrading treatment or punishment against LGBTI people in prisons

Overcrowding, repression of demonstrations of affection and physical and psychological violence, are just some of the ways that abuse and torture against LGBTI people materialises in prisons. It is important to note that overcrowding increases the risks of attack against LGBTI people. There is also a systematic attempt on the part of the guards to prevent LGBTI couples from forming and expressing affection. Furthermore, none of these acts of discrimination are investigated or sanctioned by the competent authorities.

3.6. Institutionalisation of people with disabilities (art. 10 CAT, LOIPR question 27)

The United Nations Special Rapporteur on torture and cruel, inhuman or degrading treatment or punishment, has noted that isolation and the confinement of people with disabilities in

psychiatric institutions for long terms, may constitute torture or ill-treatment. The Colombian Institute of Family Welfare has reported that, in November 2011, 2,631 people were confined in institutions for people with disabilities and 1,303 in residential facilities for people with psychosocial disabilities,⁵ a practice supported by the restraint regime currently in force in Colombia. This not only violates the right to liberty and integrity of persons with disabilities, it also constitutes torture and ill-treatment.

3.7. Colombia's refusal to ratify the OPCAT and the ineffectiveness of internal mechanisms (art. 10 CAT, LOIPR question 21; arts. 12 and 13 CAT, LOIPR question 34, and others, question 46)

The Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is an international instrument which aims to “establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment”.

Colombia's refusal to ratify said instrument is unjustified, since the internal mechanisms at the disposal of the prison system to prevent torture, such as the Human Rights Committees, lack independence and impartiality as they are under the direct supervision of the National Penitentiary and Prisons Institute. In addition, participants in these committees are usually punished or placed in isolation for carrying out this work.

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4. Torture and cruel, inhuman or degrading treatment or punishment in relation to other human rights violations

4.1. Abuse by the security forces during social protest (art. 2 CAT, LOIPR question 4)

New criminal offences have been approved in order to suppress social protest. Examples of this are the “Law on Citizen Security” which penalises offences such as the obstruction of public roads, and establishes the practice of “detention for protection” under which the police can make arrests without warrant for up to 24 hours, and authorises the use of non-lethal weapons. Because of this, there have been a number of cases of abuse of authority during social protests, especially during the agricultural strike in 2013 and 2014, in which cases of imprisonment affecting personal integrity, and even loss of life were reported.

⁵ Inclusión internacional, *Explorando alternativas a la Institucionalización en Colombia*. Steven Eidelman, Connie Laurin-Bowie, Clemencia Castillo, María Covadonga Fentanes, María Victoria Orozco e Inés Elvira de Escallón. November 2012 (*In Spanish*)



4.2. Torture and cruel, inhuman or degrading treatment or punishment as a mechanism for social control in militarised areas (*art. 2 CAT, LOIPR question 4*)

The policy of territorial consolidation, implemented by the government since 2011 and aimed at neutralising the presence of armed groups in specific land areas, has meant in practice the increased militarisation of the areas targeted by the policy. As a result, the inhabitants of these areas have been exposed to bombings and gunfire, illegal detentions, smear campaigns and stigmatisation, and practices used to cause terror, all constituting torture and ill-treatment. This had had a number of different impacts, especially in relation to mental health.

4.3. Enforced Disappearances (*art. 2 CAT, LOIPR questions 5, 6 and 7*)

Enforced disappearances are also a crime frequently linked with torture or ill-treatment, as reflected in the case of the so-called “chop houses” (*casas de pique*) in Buenaventura. These houses are used to carry out acts of physical and mental torture and the bodies of the victims are dismembered and spread around different parts of the city, causing terror among the local community. The investigation and punishment of enforced disappearances are unsatisfactory, particularly those that also involve torture, as shown by the lack of identification and punishment of those responsible for creating and maintaining the “chop houses”.

4.4. Arbitrary arrests for recruitment purposes (*art. 10 CAT, LOIPR question 20*)

In Colombia, military service is compulsory for men and from 2001 to July 2014, there has been a significant increase in the police ranks, with numbers rising from 300,000 to 449,151 men. This increase is due, among other reasons, to the indiscriminate and illegal recruitment of young men, via a practice known colloquially as “raids” (*batidas*). Although the Constitutional Court⁶ has prohibited this form of recruitment, it continues to occur and is often accompanied by episodes of physical and psychological torture or ill-treatment. Young men are victims of verbal abuse, beatings, physical punishment, retaliation, threats, isolation and constant denigration related to their ethnicity, religion or political ideology. Besides this, in recent months it has been noted that the police and military authorities have been working together to carry out this kind of operation, and the Army has publicly stated that the raids will continue, as they believe that they have a legal right to perform them.

4.5. Extrajudicial executions (*arts. 12 and 13 CAT, LOIPR question 31*)

Between 2000 and 2010, 5,763 cases of extrajudicial executions were recorded, a phenomenon publicly known as “false positives”. In many cases, the bodies were found to bear signs of torture, apparently linked to an interest in obtaining information or to inflict punishment. Torture occurring in the context of this kind of victimisation is not usually investigated or punished. Likewise, the lack of investigation in cases of extrajudicial execution and the lack of effective

⁶ Constitutional Court. Sentences C-879/11 - T-455/14. “ORDERS the Chief of Army Recruitment to hereinafter refrain from advancing, authorising, directing or allowing indiscriminate raids aimed at identifying citizens who have not resolved their military situation and in order to lead them to a military unit or other concentration site in order to be quartered for military service.” (*Unofficial translation*)

sanctioning of the perpetrators is a subtle and invisible form of psychological torture for the victims' families.

5. Investigation and sanction of torture in the colombian justice system (*arts. 12 and 13 CAT, LOIPR questions 28, 29 and 30*)

Torture and ill-treatment are still not satisfactorily investigated and punished by the justice system in Colombia. Impunity for these acts is facilitated by the fact that they are invisible or are subsumed by other more "serious" offences, due to a lack of criminal investigation and a preference for disciplinary sanctions; a lack of a timely referral of the victim to a physician for legal assessment, aggravated by the failure to implement the Istanbul and Minnesota protocols; the lack of timely and effective protection measures in cases where the victim or witnesses are being held in the custody of the alleged perpetrator and poor information about investigations.

The Public Prosecutor's Office has reported via some of its regional branches, progress in the investigation of torture. For example, the National Special Counter-Terrorism Prosecutor reported that for the period between 2010 and 2014, 28 complaints were received related to the crime of torture. For its part, the Prosecutor before the Supreme Court of Justice recorded a total of five cases which had been investigated, from 1 January 2010 to November 2014. The National Office on Public Safety recorded a total of 115 active and inactive cases for the same offence and in the case of torture against protected persons, the Directorate recorded a total of ten active and inactive cases between 2010 and 2014. Finally, the National Directorate for Context Analysis noted that for the period in question one case of torture was prioritised.

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5.1. Deficiencies in the application of the Istanbul and Minnesota protocols (*art. 10 CAT, LOIPR question 19*)

Despite the progress reported in implementing the Istanbul Protocol, which shows that the number of examinations increased from 141 in 2010 to 1,606 in 2013, some difficulties persist in implementing the protocol. These include limitations in medico-legal examinations and inspections of the cadavers of people who may have been victims of torture. This occurs as injuries are only described as personal injury, and because of the resistance of prosecutors to refer victims for further examinations in line with the application of the protocol. The lack of implementation of the Istanbul and Minnesota protocols results in impunity in the investigation of torture.

5.2. Reforms to the military criminal justice system (*arts. 12 and 13 CAT, LOIPR question 31*)

In recent years, the national government has proposed extending the jurisdiction of military courts, indeed four such legislative initiatives are currently under discussion. These are Bills



085 of 2013 (Senate), 210 of 2014 (Congress) and 129 of 2014, and Bills 010 of 2014 and 022 of 2014, which seek to broaden the scope of the military criminal justice system to include the prosecution of human rights violations and breaches of international humanitarian law.

5.3. Refusal to accept the jurisdiction of CAT to consider individual communications (LOIPR others, question 45)

Although Colombia has ratified the UNCAT, it has not made the declaration referred to in Article 22 to recognise the competence of the CAT to study individual communications, alleging that there are sufficient national and international instruments to investigate acts of torture and ill-treatment. This refusal is unfounded, since Colombia does not have a complete criminal classification for cruel, inhuman or degrading treatment or punishment, and as such there is a risk that torture and ill-treatment will be investigated by the military criminal justice system in biased courts, and that torture and ill-treatment will not be included among the priority issues for investigation by the Public Prosecutor's Office.

5.4. Peace negotiations and the Legal Framework for Peace

The Colombian government is currently engaged in peace talks with the FARC-EP guerrillas. Within the context of this dialogue, the Legal Framework for Peace was approved, with the aim of balancing the governmental aims of achieving peace and satisfying justice. This Framework was declared to be constitutionally valid, and as such has endorsed the partial waiver of criminal prosecution, which would now be subject to selection and prioritisation criteria and the criminal investigation of those most responsible for crimes against humanity, genocide and war crimes committed systematically. This implies a latent risk that international instruments will be ignored, which establish the duty to investigate, prosecute and punish serious violations of human rights and international humanitarian law.

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6. Psychosocial impact on the victims of torture and cruel, inhuman and degrading treatment or punishment (art. 14 CAT, LOIPR question 40)

6.1. Impacts on the social fabric

Forced displacement in response to violence, and the control of territories where people have limited freedom of movement and access to resources, causes a breakdown in the social fabric of communities. This situation also damages people's sense of personal identity and leads to feelings of sadness, fear, anger, helplessness, insecurity, loss of confidence in the future, anxiety, restlessness, uncertainty, pessimism and, in general, affects the overall health of the community.

6.2. Psychological impacts at the individual level

People who have been exposed to events in which their physical integrity and lives have been in real danger may experience PTSD, persistent flashbacks of traumatic events, evasive behaviour to stimuli accompanied by numbness in responsiveness, persistent symptoms, emotional instability and psychosomatic and physiological reactions. In addition, a lack of treatment for these effects can produce a dissociative effect which could lead to the feeling that the traumatic event is happening again.

6.3. Psychosocial care under the Victims' Law

Article 164 of Decree 4800 of 2011 establishes the creation of a Program of Attention for Psychosocial Care and the Integrated Health of Victims (*Programa de Atención Psicosocial y Salud Integral a Víctimas - PAPSIVI*), aimed at providing psychosocial and comprehensive healthcare for victims of the armed conflict. The implementation of this program requires structural changes in the health system in which victims' care must be prioritised based on the recognition of the impacts generated by the armed conflict, recruitment requirements should be revised in order to employ professionals who can develop processes in the medium and long term, and training processes should be developed for healthcare professionals.

6.4. Psychosocial care for victims of the El Salado massacres

The Constitutional Court, through Judgment T-045, 2010, resolved the situation of four women victims of the massacres which took place in the village of El Salado, Bolívar Department in 1997 and 2000. These women had attempted to access the health system to get treatment for the effects on their mental and physical health as a result of the massacres, but they did not receive proper care, and so they presented a writ for constitutional protection (*tutela*). In the case, the Court ordered specific actions for the women, as well as the implementation of "the necessary health care protocols, programs and policies to meet the particular needs of victims of armed conflict, their families and communities, particularly in relation to recovery from psychosocial impacts (...)". However, four years after the Court decision, the enforcement of the sentence has been partial and the problems identified continue for the population of El Salado.

6.5. Compliance with IACHR judgments related to psychosocial care

The Colombian government has been sentenced 15 times by the IACHR for their role in a number of human rights violations and in several of these sentences the IACHR has ordered Colombia to provide specialised, adequate and effective medical and psychological treatment to victims and their families, when mental health damages have been recognised. Despite some progress in the fulfilment of these orders by the State, this implementation faces challenges such as guarantees of free treatments for the victims, the provision of the treatment at the national rather than the regional level, and failures in the current health and social security system.





CONCLUSIONS

Torture and cruel, inhuman or degrading treatment or punishment continues to be widespread and systematic in Colombia, leading to profound psychosocial damages. In addition to occurring independently, torture also takes place in conjunction with other victimisations such as abuse of authority in social protests, social control in militarised areas, enforced disappearances, arbitrary arrests and extrajudicial executions. In addition to men, who suffer the most acts of physical torture, groups such as women, children, adolescents, LGBTI people, disabled people and human rights defenders are particularly vulnerable to torture and ill-treatment. Finally, torture and ill-treatment in Colombia remain unpunished, because the investigation and punishment of the perpetrators does not progress in a timely and appropriate manner.

RECOMMENDATIONS

I. In relation to the overall situation of torture and cruel, inhuman or degrading treatment or punishment and its classification in the Colombian legal system:

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1.1. Ask the State to criminalise cruel, inhuman or degrading treatment or punishment outside of the armed conflict, in line with the absolute prohibition of these acts.

1.2. Recommend to the Government that it conditions the interpretation of the final paragraph of Article 178 of the Penal Code, on the understanding that the suffering caused by lawful sanctions shall not be considered to be torture as long as these sanctions conform to human rights standards.

1.3. Urge the State to establish a single register to systematise and unify the institutional information on cases of torture (in all its forms, including sexual violence, and including acts committed within prisons) and to include the documentation, investigation and criminal and disciplinary sanction of such acts, allowing access to information disaggregated by geographic location and alleged perpetrator, as well as by differential data on the victims (by age, sex, social status, disability status, sexual identity or orientation and ethnic characteristics).

II. Regarding torture and cruel, inhuman or degrading treatment or punishment against historically discriminated-against groups:

2.1. Ask the State to give an effective response to acts of torture and cruel, inhuman or degrading treatment or punishment, in terms of prevention, investigation and punishment, taking into account differential approaches.

2.2. Urge the State to promote, raise awareness on and make available throughout its territory, legal instruments aimed at preventing, investigating and punishing crimes against sexual freedom, integrity and orientation, in order to make these legal instruments effective.

2.3. Ask the State to guarantee that survivors of crimes against sexual freedom, integrity and orientation can participate in the working groups which monitor relevant legislation to prevent, investigate and punish these crimes, so that progress and setbacks can be tracked.

2.4. Recommend to the government that it promotes the construction of historical memory and the demands of victims of crimes against sexual freedom, integrity and orientation.

2.5. Urge the State to review protocols for reporting crimes of sexual violence committed by members of the military, in order to ensure comprehensive support to the victims of these crimes.

2.6. Ask the State to adopt effective measures to prevent and punish sexual violence against children and adolescents, in line with international standards.

2.7. Ask the State to take steps to ensure that victims of attacks with chemical agents are guaranteed the non-repetition of these acts, and that access to comprehensive care for victims of these attacks is free and prompt. Also ask the State to ensure the reliable documentation and registration of cases, so that the victims can regain the highest standard of living in their community and to take effective action to investigate and punish those responsible.

2.8. Ask the State to adopt effective measures to eliminate practices that constitute torture or cruel, inhuman or degrading treatment or punishment against the LGBTI population, particularly those people who are engaged in sex work, such as holding them in detention under zoning laws, detaining them in mixed cells and forced nudity.

2.9. Urge the State to take effective and appropriate measures to remove barriers for people with a non-mainstream gender identity to access medical treatment, including barriers related to attitudes and administrative obstacles, where there is a lack of unified or official criteria to access treatments and body transformation processes.

2.10. Ask the State to adopt effective measures to eliminate all practices of forced psychiatry including diagnosing transgender identities as mental illness, and the institutionalisation and forced medication of persons, both minors and adults, including those with psychosocial disabilities.

2.11. Ask the State to reform the legal framework related to legal capacity which prevents people with disabilities from making decisions for themselves, particularly with regards to interventions such as sterilisation without direct consent, and replace this framework with a decision-support model, while also implementing effective measures to document, investigate and eliminate this practice.

2.12. Urge the State to prevent acts of disqualification and stigmatisation of the work of human rights defenders, strengthen mechanisms to protect human rights defenders and adjust these measures to their needs and contexts, investigate threats and attacks against human rights defenders in Colombia quickly and effectively and investigate the causes of such attacks.

2.13. Ask the State to purge intelligence files in which information on human rights defenders, activists and social leaders are recorded, wrongly linking them to guerrilla groups.



III. Regarding torture and cruel, inhuman or degrading treatment or punishment against persons deprived of liberty:

3.1. Urge the State to refrain from enacting laws that increase criminal sanctions and review existing laws, until they achieve prison occupancy levels that ensure decent conditions of detention for all persons deprived of their liberty. Similarly, ask the State to adjust its criminal policy so that it favours freedom, uses preventive detention as a last resort for only the most serious crimes and establishes alternatives to the deprivation of liberty.

3.2. Urge the State to implement the health system ordered by Law 1709 of 2014 and to grant the necessary resources to guarantee prevention, promotion and comprehensive health care for prisoners.

3.3. Ask the State to ensure the continuity of treatment and uninterrupted supply of medicine, especially for patients with serious illnesses such as cancer or AIDS, and to allow these people unrestricted access to detention in hospital or house arrest. Also, take measures to ensure that the prison population receiving medical treatment or awaiting specialist medical procedures can be transferred, unless the detainee expressly requests otherwise.

3.4. Recommend to the State that it adopt an effective judicial mechanism that allows inmates to be released, where it is shown that the conditions in which they are detained threatens their human dignity or physical or psychological integrity, due to inadequate facilities, lack of access to basic services or poor health care, among other aspects.

3.5. Ask the State to eliminate detention in solitary confinement in excess of 72 hours and to establish a clear protocol or regulation under which this measure can only be imposed by order of the highest authority in the detention centre, under strict medical supervision and complying with due process and the right to defence.

3.6. Urge the State to adopt, with the participation of recognised organisations for the defence of human rights in prisons, mechanisms to ensure the independence of the prison Human Rights Committees, and the direct popular election of their representatives, and to provide safeguards so that they may not be subjected to punishment or transfers during or after they have completed their mandate.

3.7. Call upon the State once again to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and to establish an independent national preventive mechanism against torture.

3.8. Urge the State to provide real guarantees to organisations that promote, raise awareness and defend human rights within prisons.

IV. Regarding torture and cruel, inhuman or degrading treatment or punishment related to other human rights violations:

4.1. Recommend that the State respect the right to freedom of assembly as a constitutional guarantee and that the limitations to this right are strictly regulated and reduced to situations

verified as constituting public disorder, according to constitutional interpretations on the matter. Consequently, ask the State to modify those rules that enable the commission of torture and cruel, inhuman or degrading treatment or punishment by members of the security forces during demonstrations and urge the State to adopt mechanisms to ensure that these protests can be carried out in conditions of safety. Also, ask the State to establish effective controls on the use of “non-lethal weapons”, in order to prevent abuse by the State security forces during social protests.

4.2. Urge the State to establish, in coordination with civil society organisations, a protocol to be used during social protests, which contains limits and procedures to be used by the State security forces.

4.3. Urge the State to investigate and punish members of the security forces responsible for acts of torture or cruel, inhuman or degrading treatment or punishment demonstrated by the abuse of force in contexts of social mobilisation.

4.4. Ask the State to review and modify the policy of territorial consolidation, so that it is not based on the militarisation of prioritised areas, but instead on the presence of civil authorities, ensuring the rights of citizens and their access to State services.

4.5. Urge the State to effectively control the actions of members of the security forces, especially in areas of territorial consolidation in order to prevent attacks on civilians. Similarly, urge the State to investigate and properly punish those responsible for these attacks, and to ensure that victims of torture and cruel, inhuman or degrading treatment or punishment in areas of territorial consolidation are provided with support and specialist psychosocial treatment, in order to mitigate the individual and collective effects of militarisation.

4.6. Urge the State to investigate and punish torture and cruel, inhuman or degrading treatment or punishment in cases of enforced disappearances, in order to ensure that this crime does not go unpunished.

4.7. Ask the State and its military forces to comply with the orders of the Constitutional Court by refraining from “raids” in which young men are arbitrarily arrested with the purposes of recruiting them, as this practice constitutes physical and psychological torture and cruel, inhuman or degrading treatment or punishment for the young men in question. Urge the State to investigate properly and punish members of the security forces who order or continue to carry out arbitrary arrests for recruitment purposes, otherwise known as “raids”.

4.8. Urge the State to monitor and prevent undue delay in the prosecution of members of the security forces involved in the commission of extrajudicial executions, given that continued delays in these processes lead to the revictimisation of the victims’ relatives, as well as impunity.

V. Regarding the investigation of torture and cruel, inhuman or degrading treatment or punishment:

5.1. Ask the State to make progress in the investigation of torture and cruel, inhuman or degrading treatment or punishment as a systematic and widespread crime.



5.2. Recommend to the State that the investigation of torture and cruel, inhuman or degrading treatment or punishment be conducted alongside other crimes, so that this crime does not become subsumed by crimes with greater sanctions and can be investigated independently from other offences, allowing awareness to be raised on the seriousness of these violations and the contexts in which they take place.

5.3. Ask the State to grant the necessary resources to ensure a permanent interdisciplinary team in all regions, qualified to assess potential victims of torture through the implementation of the Istanbul and Minnesota protocols.

5.4. Urge the State to ensure that during all criminal and disciplinary investigations where torture is alleged, the Istanbul Protocol is applied to the surviving victim.

5.5. Ask the State and its relevant institutions to use the Minnesota Protocol to ensure the proper investigation of cases of extrajudicial executions or murder of protected persons, and the identification of possible acts of torture committed against the victims of these violations.

5.6. Urge the State to ensure that the investigation of torture and cruel, inhuman or degrading treatment or punishment occurring both within and outside of the armed conflict, falls under the exclusive jurisdiction of civil judicial authorities and not the military courts.

5.7. Ask the State to prevent, investigate and punish the sponsorship, acquiescence or tolerance by State officials of torture or cruel, inhuman or degrading treatment or punishment committed by paramilitary groups.

5.8. Urge the State to adopt effective measures against impunity in the prosecution and investigation of cases of torture and cruel, inhuman or degrading treatment or punishment, especially in cases where law enforcement officers are alleged to be the perpetrators of this crime against civilians.

5.9. Urge the State to recognise the competence of the Committee against Torture to receive and consider communications from individuals claiming to be victims of torture or cruel, inhuman or degrading treatment or punishment within the national territory of Colombia, in accordance with Article 22 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

5.10. Ask the State to comply with the Constitutional Court's recommendations that the Statutory Law on the legal framework for peace and any transitional justice mechanism which is adopted in light of the negotiations with the FARC, respects international obligations regarding the investigation and punishment of those responsible for acts of torture and cruel, inhuman or degrading treatment or punishment and that cases not prioritised or not selected will not be left unpunished.

VI. Regarding the psychosocial impact on victims of torture and cruel, inhuman or degrading treatment or punishment:

6.1. Ask the State to ensure that the institutions responsible for public policy on reparations allocate the sufficient financial and human resources to make possible the implementation of the Program for Comprehensive Health and Psychosocial Care for Victims (PAPSIVI), within the Ministry of Health and Social Protection, and other measures for psychosocial reparation implemented by the Unit for the Attention and Reparation of Victims.

6.2. Ask the State to guarantee that psychosocial care is adequate, available and quickly accessible, without discrimination, for victims of torture and cruel, inhuman or degrading treatment or punishment, thereby ensuring rehabilitation processes that integrate psychological and medical care with legal and social assistance.

6.3. Ask the State to ensure that programs established under the public policy for reparation clearly detail the full and complete reparation established for victims of torture and cruel, inhuman or degrading treatment or punishment, and that specialist services are available, particularly in those geographical locations where victims have been unable to access care.





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