



**Input to a report of the UN Special Rapporteur on Torture**  
**“The duty to investigate crimes of torture in national law and practice”**

Association for the Prevention of Torture

6 December 2022

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

The APT welcomes the possibility to contribute to the Special Rapporteur’s first thematic report devoted to the duty to investigate crimes of torture at the national level. It particularly welcomes the fact that the report will look at the whole process of investigation as a continuum from complaints to prosecution and sanctions. The APT approaches this topic from the torture prevention perspective - impunity contributes to the persistence of torture.

**Prosecutions.** As research shows, there is a correlation between prosecutions of perpetrators and reduction of the incidence of torture. Effective investigations and prosecutions have the effect of reducing torture.<sup>1</sup> Existence of anti-torture legislation is the first step.<sup>2</sup> However, laws criminalizing torture are necessary but not sufficient as the reality shows that there are only few prosecutions, even when torture is a specific offence under the domestic criminal law. For instance, in the Philippines, where the Anti-Torture Law was adopted in 2009, there has been just one prosecution so far.<sup>3</sup>

**Complaints.** The key reason for the low number of prosecution lies in low number of complaints submitted. In fact, in many instances, investigation can only be triggered by a complaint. Hence, complaint mechanisms are the entry point of the investigation process. Yet, in practice, only few victims proceed with filing a complaint of torture or ill-treatment and it seems ‘that the system very often breaks down before it even begins to investigate.’<sup>4</sup> It is therefore crucial that the report looks not only at the legislation or the existence of mechanisms but at the details of the operationalisation of the complaints mechanisms. As clearly demonstrated by a research on police violence published by ACAT France, the system may create ‘invisible’ obstacles at all stages of the complaining process, from refusal of registering the complaint, to dissuasion to filing, to threats.

Also, the European Committee for the Prevention of Torture (CPT) observed during its visits that complaints mechanisms for persons deprived of their liberty often suffered from several

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<sup>1</sup> Richard Carver and Lisa Handley, *Does Torture Prevention Work?*, 2016, p. 81-84.  
<https://www.apt.ch/en/what-we-do/achievements/torture-prevention-works>

<sup>2</sup> APT and CTI, *Guide on anti-torture legislation*, 2016,  
<https://www.apt.ch/en/resources/publications/guide-anti-torture-legislation-2016>

<sup>3</sup> Shazeera Zawawi/APT, *The Philippines’ Anti-Torture Law: Ten years on, what now?*, 2019,  
<https://www.apt.ch/en/blog/philippines-anti-torture-law-ten-years-what-now>

<sup>4</sup> Richard Carver and Lisa Handley, *Does Torture Prevention Work?*, 2016, p. 84.

shortcomings, including lack of independence, lack of adequate information about the complaint procedure, and insufficient protection against intimidation or reprisals. People in detention often do not trust that their complaint would be examined in a fair manner or they fear reprisals.<sup>5</sup> In order for the complaint mechanism to act as a safeguard against torture and ill-treatment in detention, it needs to fulfil a series of criteria: availability, accessibility, confidentiality/safety and effectiveness.<sup>6</sup>

In this regard, when persons are deprived of liberty, the issue of accessibility and confidentiality is crucial (e.g. APT has been told in one country, complaints in a prison need to be made in a specific form kept by the guards) as the risk of reprisals is high. Hence confidential access to a complaint mechanism must be ensured (for instance by placing locked complaint boxes in places easily and confidentially accessible and not monitored by CCTV cameras).<sup>7</sup> They should be opened by the complaint bodies directly.

Complaint mechanisms also need to be accessible to persons in situation of vulnerability, especially juveniles, persons with disabilities, and persons having problems with communicating in the language used by authorities.<sup>8</sup>

Even when complaints are eventually filed, the difficulties for the complainant remain, with practice such as counter-complaint made by the police against the complainant.<sup>9</sup> Indeed, victims risk facing prosecution for 'false denunciation' if their complaint fails to lead to the conviction of the alleged perpetrator.<sup>10</sup> According to the CPT, regardless of the outcome of the complaint, it should be guaranteed that complainants are not subjected to any financial or legal sanctions.<sup>11</sup>

Another challenge in bringing up a complaint of torture or ill-treatment is high evidentiary burden of proof for victims. However, in line with the jurisprudence of the European Court of Human Rights, when it comes to complaints against conditions of detention under Article 3 of the European Convention on Human Rights, the burden of proof imposed on the claimant should not be excessive. While detainees may be required to adduce such evidence as is readily accessible, such as a detailed description of the impugned conditions or witness' statements, it then falls to the authorities to refute the allegations.<sup>12</sup> The APT supports a shift in the burden of proof from the complainant to the authorities.

Another way to increase the number of investigations into torture and ill-treatment is to start them ex officio. Even without a complaint, where prosecution authorities come across evidence of torture, they should be bound to start investigations on their own initiative. As recommended by the CPT, even in the absence of a formal complaint, prosecutorial authorities and other complaints bodies should be bound to initiate investigation whenever they receive

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<sup>5</sup> CPT, Complaint mechanisms, 2018, <https://rm.coe.int/16807bc668>, p. 1.

<sup>6</sup> CPT, Complaint mechanisms, 2018, <https://rm.coe.int/16807bc668>, p. 1.

<sup>7</sup> OSCE/ODIHR and Fair Trials, Eliminating Incentives for Torture in the OSCE Region: Baseline Study and Practical Guidance, 2020, <https://www.osce.org/files/f/documents/2/a/467172.pdf>, p. 54.

<sup>8</sup> CPT, Complaint mechanisms, 2018, <https://rm.coe.int/16807bc668>, p. 4.

<sup>9</sup> ACAT France, L'ordre et la force, 2016, [https://www.acatfrance.fr/public/rapport\\_violences\\_policieres\\_acat.pdf](https://www.acatfrance.fr/public/rapport_violences_policieres_acat.pdf) p. 88-89.

<sup>10</sup> OSCE/ODIHR and Fair Trials, Eliminating Incentives for Torture in the OSCE Region: Baseline Study and Practical Guidance, 2020, <https://www.osce.org/files/f/documents/2/a/467172.pdf>, p. 53.

<sup>11</sup> CPT, Complaint mechanisms, 2018, <https://rm.coe.int/16807bc668>, p. 5.

<sup>12</sup> European Court of Human Rights, Neshkov and Others v. Bulgaria, para. 184.

credible allegation, from any source, of ill-treatment of persons deprived of their liberty.<sup>13</sup>

In order for investigative bodies to have knowledge of presumed torture or ill-treatment, there should be a system in place to automatically report such cases. Automatic reporting of deaths in custody can serve as inspiration. In India, for instance, the National Human Rights Commission requests that head of police or district magistrate report to it every custodial death within 24 hours. The report should also include video-recording of an autopsy or post-mortem examination. This automatic reporting is meant to ensure investigation into every death in custody.<sup>14</sup> In APT's view, custodial authorities and prison officers should be formally required to report to investigative bodies any case of use of fire arms, death in custody or use of force.

**Investigations.** Finally, complaints must be investigated by an entity independent from the authorities subjected to the investigation (Méndez Principles, para. 199). The complaint body should be independent from custodial authorities and police as well as the prosecution services.

The appended annex provides domestic examples relating to registration of cases of torture and data regarding prosecution in seven countries in Latin America. APT stands ready to provide more information, should it be helpful for the report.

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<sup>13</sup> CPT, Complaint mechanisms, 2018, <https://rm.coe.int/16807bc668>, p. 4; CPT, Combating impunity, 2004, <https://rm.coe.int/16806cd08c>, p. 2.

<sup>14</sup> APT, Preventing Torture: An Operational Guide for National Human Rights Institutions (2010), <https://www.apr.ch/en/resources/publications/preventing-torture-operational-guide-national-human-rights-institutions-2010>, Richard Carver and Lisa Handley, Does Torture Prevention Work?, 2016, p. 529-31.

## ANNEX

### Investigating the Crime of Torture - Examples of registering complaints in Latin America

#### 1. Argentina

The official register of torture cases<sup>15</sup> is kept by the Procuraduría Penitenciaria de la Nación (PPN). In 2019, the number of recorded cases of torture and/or cruel, inhuman or degrading treatment or punishment was 439 in 2019 and 469 in 2018.

In Argentina, a national survey is also carried out on judicial cases initiated for institutional violence, with the aim of improving and expanding the available information. The database is coordinated by the National Directorate of Criminal Policy on Justice and Criminal Legislation of the Ministry of Justice and Human Rights and the National Directorate of Policies against Institutional Violence of the Secretariat of Human Rights.

In 2011, the Public Prosecutor's Office also created the Unit for the Registration, Systematisation and Monitoring of Acts of Torture, which operates within the Programme against Institutional Violence,<sup>16</sup> whose function is to register and systematise all situations of police violence in the areas of deprivation of liberty or on public roads. In 2017, 201 cases were judicially reported, compared to 182 were not judicially reported.<sup>17</sup>

#### 2. Brazil

The culture of generating data on the law enforcement and criminal justice system is a recent practice in Brazil. Although the National Committee to Prevent and Combat Torture is responsible for creating and maintaining a register of complaints, grievances and judicial decisions, the only data available on the subject are from Departamento Penitenciario Nacional (National Penitentiary Department, DEPEN) and indicated that in June 2016 there were 174 men and 55 women detained for the practice of torture in the country.<sup>18</sup>

#### 3. Ecuador

The Department of Anti-crime Intelligence of the National Directorate of the Judicial Police and Investigations of the National Police has reported that from November 2016 to 12 April 2020, 47 complaints related to crimes against humanity, extrajudicial executions, extra-judicial executions, extra-limitations in the execution of an act of service and torture have been registered. According to the files of the Judicial Police on detained persons, 14 detainees are registered for crimes of Extralegal Executions and Torture, with resolutions of the competent authority.

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<sup>15</sup> PPN, National Register of Torture Cases, available at:

<https://www.ppn.gov.ar/documentos/publicaciones/registro-nacional-de-casos-de-tortura>.

<sup>16</sup> Programme against Institutional Violence. Available at:

[https://www.mpd.gov.ar/index.php/publicaciones-violencia-institucional/5201-informe-anual-2019#\\_ftnref1](https://www.mpd.gov.ar/index.php/publicaciones-violencia-institucional/5201-informe-anual-2019#_ftnref1)

<sup>17</sup> See Report of the Public Ministry of Defence presented during the visit of the Special Rapporteur against Torture. Available at:

<https://www.mpd.gov.ar/pdf/violenciainstitucional/Informe%20a%20Relator%20contra%20a%20Tortura%20visita%20Abril%20de%202018.pdf>

<sup>18</sup> UN, Second periodic report of Brazil due in 2002 under Article 19 of the Convention under the simplified reporting procedure.

In 2018, two persons were found guilty of the crime of torture with sentences of 10 years (direct perpetrator).<sup>19</sup> In other cases, torture was reclassified as a misdemeanour, such as injury.

#### 4. Honduras

In 2015, some data submitted by the State on the prosecution and punishment of torture and ill-treatment in Honduras during the period 2009-2013 was recorded, indicating a total of 65 prosecutorial requests and 4 convictions for torture and ill-treatment reported by the State in the report. Unfortunately, the absence of a public register of torture complaints prevents an analysis of these figures, as it is not possible to track the number of cases that lead to criminal investigations and convictions. However, other sources of reference can be used. For example, complaints registered by the National Human Rights Institution (CONADEH) in 2015 concerning torture and cruel, inhuman or degrading treatment amounted to 118.<sup>20</sup> Meanwhile, according to a Centro de Prevencion, Tratamiento y Rehabilitacion de Victimas de la Tortura y sus Familiares (Centre for Prevention, Treatment and Rehabilitation of Victims of Torture and their Families, CPTRT) study carried out in the cities of Tegucigalpa and San Pedro Sula, between December 2013 and October 2014, six out of ten detainees were reportedly subjected to torture or cruel, inhuman or degrading treatment, either during arrest, transfer or at the police station.

#### 5. Mexico

The 2016 General Law to Prevent, Investigate and Punish Torture provides for the establishment of Specialised Prosecutor's Offices with full technical and operational autonomy to investigate and prosecute crimes of torture and cruel, inhuman or degrading treatment or punishment. It is foreseen that the Public Prosecutor's Offices will have police, expert and specialised technical services, and will have human, financial and material resources for their effective operation (Article 55 of the General Law).

Each state should create its own specialised prosecutor's office to investigate the crime of torture. As of November 2022, 20 states out of 32 states have specialised prosecutors' offices for the investigation of the crime of torture.<sup>21</sup> The federal public defender's office has initiated litigation against states which have not yet established these specialised prosecutors' offices at the local level.<sup>22</sup> The Specialised Prosecutor's Offices have the following powers, according to Article 59:

- Initiate and develop the investigation and prosecution of criminal acts related to crimes of torture and ill-treatment.
- Seek medical, psychological and legal care for victims of torture.
- Execute the Standardized Protocol for the investigation of the crime of torture.

Mexico also has a Standardised Protocol for the Investigation of the Crime of Torture available at: [DOF - Diario Oficial de la Federación](#)

For its part, the National Mechanism for the Prevention of Torture has the power to submit complaints to the National Human Rights Commission when it detects any situation that could

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<sup>19</sup> INREDH, Graves violations Angelo Ayol. Available: <https://inredh.org/angelo-ayol-2/>

<sup>20</sup> Sum of complaints counted as 1) torture, 2) torture in penitentiary institutions, 3) torture by private individuals 4) torture, inhuman treatment 5) cruel, inhuman or degrading treatment 6) inhuman or degrading treatment in penitentiary institutions. Cases amount to more than 150 if complaints of disproportionate use of force are included. See CONADEH, Annual Report 2015, pp. 34-35.

<sup>21</sup> See Indicator Creation of specialised bodies for the investigation of the crime of torture: [Observatory against Torture \(sintortura.org\)](#)

<sup>22</sup> See: [Morelos Congress must create specialised prosecutor's office against torture, court orders JusticeTV](#)

possibly constitute torture and ill-treatment (Article 78, section IX of the General Law on Torture).

A relevant safeguard provided by the General Torture Law in Article 30 is that it provides for offences of omission linked to the crime of torture, for example, when:

*A public servant who, without being a guarantor and having knowledge of the commission of conduct constituting torture, refrains from immediately denouncing the same, shall be sentenced to three to six years imprisonment and a fine of two hundred and fifty to five hundred days' imprisonment.*

In 2021, at the federal level, specialised prosecutors' offices registered 1851 initiations of investigations into the crime of torture.<sup>23</sup>

## 6. Panama

In 2017 the Committee against Torture noted that, according to information provided by the State party, four convictions for acts of torture had been handed down between 1995 and 2016, and that the appeal against the judgement of 11 January 2016 in the case of the Tocumen Juvenile Detention Centre was still pending. The Committee mentioned that the State party did not provide precise data on the number of judicial and disciplinary proceedings instituted for acts of torture or ill-treatment since the consideration of the previous periodic report. Nor did it indicate the reasons for the temporary dismissal of six criminal investigations into crimes of torture and ill-treatment, or the number of ex officio investigations opened into alleged acts of torture or ill-treatment.

## 7. Peru

In Peru, the National Mechanism for the Prevention of Torture (MNPT) has pointed out that the existence of a national register of cases is an aspiration and a task still pending. The register is part of an initiative that has been promoted by the National Human Rights Plan and, in particular, by the roundtable for the Strengthening of the MNPT. This register, which requires the allocation of resources for its implementation, will contribute to being a national benchmark, which will integrate various sectors of the State linked to the reporting and investigation of cases of torture and ill-treatment.

In this regard, the non-governmental organisation COMISEDH registered 144 victims of torture in 23 regions of the country. The cases identified that the perpetrators of such acts were mainly members of the National Police (66.17 per cent) and the armed forces (20.60 per cent).<sup>24</sup>

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<sup>23</sup> See: [Observatory against Torture \(sintortura.org\)](http://sintortura.org)

<sup>24</sup> In this regard, the Ombudsman's Office has issued several reports. For example, *Ombudsman's Report No. 91*, "Afectaciones a la Vida y Presuntas Torturas, Tratos Crueles, Inhumanos o Degradantes Atribuidas a Efectivos de la Policía Nacional", in which mention is made of 434 cases of violations of life and alleged torture, cruel, inhuman or degrading treatment, attributed to members of the National Police, recorded between March 1998 and August 2004. Similarly, *Ombudsman's Report No. 42*: "El Derecho a la Vida y a la Integridad Personal en el Marco de la Prestación del Servicio Militar en el Perú" (The Right to Life and Personal Integrity in the Framework of Military Service in Peru), in which a total of 174 cases are reported, of which 56 correspond to deaths occurring inside military units and 118 to alleged torture and cruel, inhuman or degrading treatment recorded in the period from April 1998 to August 2002. Likewise, *Ombudsman's Report No. 112* of December 2006 "The difficult road to reconciliation, justice and reparation for the victims of violence", which covers the period from September 2004 to July 2006, in which the Ombudsman's Office investigated 113 cases of alleged torture, cruel, inhuman or degrading treatment attributed to members of the Peruvian National Police. Likewise, between September 2002 and July 2006, the Ombudsman's Office received 72 cases of alleged torture and cruel, inhuman or degrading treatment

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attributed to members of the Armed Forces. Also, we have the *Ombudsman's Report N° 128* (December 2007) "El Estado frente a las víctimas de la violencia Hacia dónde vamos en políticas de reparación y justicia?", document which states that the Ombudsman's Office has registered 139 cases of alleged torture, cruel, degrading treatment attributed to members of the police and the Armed Forces, of which 106 correspond to the National Police (76%) while 33 were attributed to the Armed Forces (24%). Likewise, *Ombudsman's Report No. 139* (December 2008), which refers to having received 530 complaints of alleged torture and ill-treatment between 2003 and 2008. Finally, there is *Letter N° 016-2012-DP/ADHPD* of 15 March 2012, addressed to the National Human Rights Coordinator, which refers to cases registered in the Ombudsman's Office in the periods 2009-20010 and 2011.