



## CTI REGIONAL SEMINAR

### Implementing the UN Convention against Torture in Latin America and the Caribbean: Sharing experiences of national legislative and institutional frameworks

5-6 April 2017, Santiago, Chile

#### Background

1. As part of its [Strategy for Implementation and Ratification 2016-2017](#), the Convention against Torture Initiative (CTI) held a Regional Seminar on 5-6 April 2017 in Santiago, Chile, for States from Latin America and the Caribbean to exchange good practices and experiences on implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). The Regional Seminar was hosted by the Government of Chile as a core member of the CTI, and was organized in partnership with the Association for the Prevention of Torture (APT). The [opening speech](#) of the Regional Seminar was given by President of Chile, H.E. Michelle Bachelet, who encouraged “participants to keep working with a lot of energy to end torture in all its dimensions and to share experience and to learn from each other”.<sup>1</sup>
2. The seminar gathered more than 60 participants – including Vice-Ministers – from relevant government agencies such as: departments of justice/Attorney General, interior, human rights, and foreign affairs. Twenty-two States from the region were represented: Antigua and Barbuda, Argentina, Bahamas, Belize, Brazil, Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, Suriname, Saint Vincent and the Grenadines, Saint Lucia and Uruguay. In addition, CTI core member States of Denmark, Indonesia and Morocco were represented at the seminar.
3. The seminar benefitted from the participation of a number of international and regional experts, including the Vice-Chair of the UN Committee against Torture (CAT), the Office of the High Commissioner for Human Rights, the Inter-American Commission on Human Rights, the Inter-American Institute of Human Rights, and the International Committee of the Red Cross. Lastly, experts from other sectors, including the Chilean National Institute of Human Rights, the National Preventive Mechanism of Paraguay, Corporación Humanas (Chile) and the Latin American Institute for Mental Health and Human Rights shared their expertise throughout the seminar.

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<sup>1</sup> Inaugural address of H.E. President Michelle Bachelet at the opening ceremony of the Convention against Torture Initiative (CTI) Regional Seminar, is available at : <https://prensa.presidencia.cl/discurso.aspx?id=51331> and <http://www.cti2024.org/en/news/latin-american-and-caribbean-states-discuss-torture-prevention-at-cti-event-in-chile/>

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4. The seminar was conducted under the Chatham House Rule of non-attribution, which encouraged and fostered meaningful exchanges. The seminar was informed by the [APT-CTI anti-torture law guide](#) published in March 2016 and by a background paper prepared by APT for the seminar, providing an overview of the region's different laws and institutional frameworks on the prohibition of torture and ill-treatment.
5. A follow-on meeting was held on 7 April 2017 with Caribbean States where possible steps towards UNCAT ratification were discussed.

## **Objectives**

6. The objectives of the seminar were to:
  - stimulate discussion amongst States on the adoption of comprehensive anti-torture legislation in accordance with UNCAT and related regional instruments;
  - discuss the elements that are needed to construct comprehensive anti-torture legislation;
  - promote dialogue and cooperation among States in Latin America and the Caribbean on legislative and institutional frameworks for the implementation of UNCAT and other international and regional anti-torture instruments.

## **International and regional legal frameworks on torture and ill-treatment**

7. UNCAT asks States to take legislative, administrative, judicial and other measures to prohibit and prevent torture. Criminalising torture in national legislation and investigating and prosecuting allegations of torture are key components of an effective anti-torture framework, alongside legislative provisions that exclude statements acquired through torture from all proceedings, and mechanisms to provide victims of torture with redress and rehabilitation.
8. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) also assists States to prevent torture and other forms of ill-treatment, by requiring States parties to establish or designate a national system of regular visits to places of detention by National Preventive Mechanisms (NPMs). NPMs should also be capacitated to review domestic legislation.
9. In addition to UNCAT and OPCAT, Latin America and Caribbean States are supported by a robust regional anti-torture framework. The American Convention on Human Rights (ACHR) expressly prohibits torture and cruel, inhuman or degrading treatment or punishment, while the American Declaration on the Rights and Duties of Man protects generally against threats to life, liberty and personal security. The Inter-American Convention to Prevent and Punish Torture (IACPPT) is a significant regional instrument on torture, and has been ratified by 20 Latin American and Caribbean States. Article 4(c), (d) and (e) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, ratified by 32 States, recognises the rights of women to be free from torture and have their personal liberty and dignity protected.

## **National approaches to developing anti-torture legislation**

10. A discussion of the different approaches to prohibiting and preventing torture through enacting national anti-torture legislation took place. Participating States were at different stages in terms of criminalising torture. While some had already criminalised torture in their national legislation, others were still in the process. In some States torture is not explicitly criminalised but instead embedded in both the constitution and in other relevant laws.
11. For some participating States the decision to either amend or to draft a specific law had been influenced by different factors such as legal, social and political traditions. One State recounted that they had opted to amend existing legislation due to a need to improve an existing definition of torture. Another State shared that they had decided to adopt a specific anti-torture law to respond to particular or emblematic cases of torture and to respond to situations from the past. States that had adopted specific anti-torture laws considered a wide range of issues such as the definition of torture, right to a remedy and reparation, modes of liability, and the exclusion of evidence obtained under torture.
12. Alongside legislative processes, across the region, States had been undertaking judicial reforms aimed at reducing the risk of torture by inter alia ensuring physical presence of a judge during hearings involving defendants, and by reinforcing due process. Several States in the region have introduced “detention hearings” which gives the defendants the right upon arrest to be brought before a judge who must evaluate the legality of the arrest and assess whether there is any evidence of abuse or torture during detention (Argentina, Chile, Brazil, Ecuador, Mexico and Peru).
13. There was general agreement among participating States that there was a need to reinforce efforts to prevent excessive use of force during detention (e.g. police detention), prevent the overuse of prison as a way of punishment and counter the prevalence of structural and societal violence. Participants explored concrete ways to overcome these challenges and mentioned UNCAT ratification as a first step followed by reviewing national legal frameworks. Participating States also pointed to a need to strengthen the role of the judiciary to invoke or apply international treaties related to the prohibition of torture and ill-treatment.

## **Defining torture in national laws**

14. UNCAT provides a definition of torture (article 1), containing a set of minimum elements. Most participating States that have criminalized torture have incorporated the definition of torture in line with UNCAT article 1 or IACPPT article 2, with some modifications.
15. Participants highlighted the importance of having a clear definition of torture in national law and of avoiding the use of vague and/or restrictive definitions. Having a clear definition would, for example, minimize the risk of sentencing for lesser offences such as “injuries” or “abuse” instead of torture.
16. With their power to interpret constitutions, it was noted that Supreme Courts in some participating States, particularly in common law States, play a key role in defining torture and ill-treatment (Bahamas, Belize).

17. A discussion on the link between torture and ill-treatment and the enjoyment of economic, social and cultural rights took place, with a request from a few States for further reflections on this linkage.

Further discussions revolved around the following:

#### *Non-State actors*

18. When defining torture in national legislation, some States have recognized that torture could be committed by non-State or private actors (Argentina, Brazil, Honduras, Peru).<sup>2</sup> On the other hand, other States have chosen only to include acts or omissions by public officials or quasi-State actors as possible perpetrators in the definition (Chile, Paraguay).
19. While noting that it is for each State to decide on the best approach suitable to their national context, a number of States expressed the view that if the definition of torture covers acts committed by private or non-State actors, there is a risk that it could remove the focus from the State's duty to protect and assume responsibility for human rights violations. The challenge of identifying which non-State or private actors was highlighted as another concern when deciding whether or not to include them in national definitions of torture.

#### *Penalties*

20. Penalties for torture crimes vary considerably from State to State within the region from 18 months up to 30 years of imprisonment with some States accepting that both mitigating and aggravating circumstances can influence the length of the sentence. Penalties for torture in some other States could amount to life imprisonment in case of aggravating circumstances such as the death of the victim or if the victim was raped.
21. One State informed that they were undertaking a revision of their Criminal Code and would introduce in the definition of torture omissions causing severe pain or suffering which would be considered an aggravating circumstance. It was also noted that it was planned to increase penalties in that country from 20 years to 30 years of imprisonment.

#### **Gender perspectives on torture**

22. Participants recognized particular forms of torture targeting women and girls (such as rape), the distinct needs of women deprived of liberty, and the particular ways in which women are affected due to the impact of entrenched gender discrimination and socialized gender stereotypes. The importance of ensuring that national anti-torture legislation and policies recognize certain forms of gender-based violence was highlighted. Some States explained that they had included specific gender references in their national anti-torture legislation upon recommendations from women's rights organisations that had argued that sexual suffering could amount to torture as well as in light of past dictatorship-related torture cases that had had directly impacted women.

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<sup>2</sup> [APT-CTI anti-torture law guide](#), p. 24

23. While the important evolution of the Inter-American framework on violence against women was mentioned and relevant cases from the Inter-American Commission of Human Rights were presented (IACHR), one expert explained that rape is an extremely traumatic experience with severe consequences, and is at times inflicted with the purpose of intimidating, humiliating, degrading or punishing the victim. It was emphasized that gender intersects with other characteristics or status of the person, such as race, nationality, sexual orientation, family relationships, politics, and age. Taking into account such characteristics would allow for a better understanding of the causes of gender-based violence and the particular reasons why women are at increased risk of being subjected to torture and other ill-treatment.<sup>3</sup>
24. Some good practices on combatting gender-based violence were put forward, including implementing institutional measures such as undertaking trainings designed to sensitize relevant stakeholders to overcome gender stereotypes, and introducing programmes to prevent the re-victimisation of women. In cases related specifically to sexual violence, it was noted that the IACHR had recommended States not only to incorporate a gender perspective into its national legislation but also to harmonize forensic and investigation protocols with the highest international standards. The necessity to integrate a gender dimension into public programming as well as training programmes for police and law enforcement on gender perspectives were emphasised.
25. The situation of women in prison was another area of concern flagged by some participating States, as women are in some countries the fastest growing segment of the prison population, in particular for drug offences. Some States had established legal and policy frameworks to reduce the use of prison in cases related to women, including through application of alternatives (such as release on bail or surety) other than pretrial detention. One State informed that they had redesigned their prison management models to reduce overcrowding and to improve prison conditions (Ecuador).
26. Attention was also given to the use of sexual violence against women as a form of torture by State and non-State actors in the context of armed conflict. Mention was made of groundbreaking cases from the region,<sup>4</sup> as well as Security Council resolution 1325,<sup>5</sup> which recognises the impact of armed conflict on women and girls and recommends action by governments in this area.
27. There was a general call among participating States to strengthen cooperation in the region in order to share their various approaches to incorporating gender perspectives in torture prevention legislative and institutional frameworks.

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<sup>3</sup> UN Committee against Torture General Comment N° 2, UN Doc CAT/C/GC/2, (24 January 2008) § 22

<sup>4</sup> Cases within the Inter-American system that have concluded or referred that rape is a form of torture: *Inés Fernández Ortega and Valentina Rosendo Cantú v. Mexico* (Sentence of 31 August 2010) and *Mariana Selvas Gomez et al. v. Mexico* (Merits Report IACHR 28 October 2015).

<sup>5</sup> UN Security Council Resolution 1325: Women as Active Agents in Peace and Security (2000)

## Exclusion of torture-tainted evidence

28. The obligation to ensure that any statement made as a result of torture shall not be invoked as evidence in any proceedings is found in UNCAT article 15. Likewise IACPPT article 10 provides that no statement obtained through torture shall be admissible as evidence in a legal proceeding. Most participating States have provisions in their national legislation (e.g. constitutions, evidence acts, and criminal procedure codes, or for some, through the common law) excluding evidence obtained by force, oppression or torture from any legal proceedings, except those proceedings dealing with allegations of torture.
29. This so-called “exclusionary rule” is an important element in national anti-torture legislation, and one that directly addresses impunity. Participants identified the following obstacles and key observations related to the exclusion of evidence obtained through torture:
- The existence of a public discourse that supports the use of torture and does not recognize human rights of the accused person;
  - Police abuse goes unchecked in the absence of an independent body to investigate complaints;
  - The existence in some States of a rule or practice where the burden of proof is placed on the victim to demonstrate that the confession was made under torture;
  - The legal system bases convictions mainly on statements made by the accused (confession as a “queen of evidence”), which may lead to the use of torture and ill-treatment in order to obtain a confession;
  - The lack of capacity to investigate crimes;
  - The need to ensure a robust and independent judiciary and strong institutions, such that the judiciary adopts and applies clear guidelines on how to assess the admissibility of evidence.
30. Some States mentioned that in their jurisdictions, the applicability of the exclusionary rule extends not only to confessions obtained under torture but also to other types of evidence that could be obtained through legal means, but which originated from an act of torture (Argentina).
31. Good practices on how to enforce the exclusionary rule were shared among participants including by using electronic recording of interviews; strengthening the right to have prompt and regular access to doctors and lawyers; reducing reliance on confessions as primary evidence by developing other investigative techniques and investing in forensic science; and providing adequate training on the judicial evaluation of evidence. One State mentioned that they had created an [Independent Commission on Investigations](#) which has the power to investigate complaints of abuse and ill-treatment by members of the security forces and other State agents (Jamaica).

## **Statutes of limitations**

32. Given historical occurrences of torture in the region, as well as the fact that some victims may delay coming forward to make complaints because of the egregious nature of the violence or for fear of retribution from the authorities, it is recommended that the crime of torture not be limited by time. Some participating States have removed statutes of limitations from their legislation allowing for the investigation of allegations of torture, for uncovering the truth, and for providing redress to victims of torture (El Salvador, Argentina). In other States, it is included in either the constitution (Paraguay) or in anti-torture legislation that the crime of torture is not subject to statutes of limitation.

## **Accountability**

33. Participating States highlighted measures taken to punish any act of torture, including adopting internal regulations and specific legislation; undertaking administrative investigations and judicial proceedings; and establishing specific departments/offices to lead investigations and prosecute crimes involving the use of institutional violence (Argentina, Honduras).
34. The existence of discrepancies between the number of complaints submitted for torture and the number of investigations opened, the sentencing of torture as a lesser offence (such as injuries or abuse of authority), and the lack of independent bodies to carry out impartial investigations (e.g. independent forensic services) were mentioned as challenges.

## **Redress**

35. Participants identified a number of different measures States can take in order to secure redress for victims of torture including through legislative frameworks (Ecuador, Mexico), creating truth commissions (Argentina, Chile, El Salvador, Guatemala, Uruguay, Peru), granting financial reparation (Brazil), and formulating policies recognizing the right to reparation (Guatemala).
36. In general, it was recommended to adopt a holistic approach when it comes to providing redress for torture victims which may include social, psychological and medical care, and legal assistance to provide effective rehabilitation. Participants agreed that some of the measures of rehabilitation, such as restitution, are not enough to secure adequate redress to victims.
37. In some participating States, non-governmental organizations are the main providers of redress and rehabilitation programmes for victims of torture. However, it was highlighted that these face serious difficulties when it comes to securing funds and human resources.

## **The role of important actors in legislative reform processes**

38. It was noted that relevant actors, such as National Preventive Mechanisms (NPMs), were mandated to provide input to and comment on existing and draft legislation.<sup>6</sup> Some States informed that their NPMs had been involved in reviewing their national anti-torture legislation (Paraguay), and had commented on legislation related to detention (Honduras).

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<sup>6</sup> The Optional Protocol to the Convention against Torture (OPCAT) establishes in article 19 (c) that NPMs could “*submit proposals and observations concerning existing or draft legislation*”.

39. In some States, civil society organisations were also directly involved in national legislative reform processes. Their participation in these processes is in some States regulated by law, while in other States, civil society organisations may act on their own volition or upon invitation by parliamentarians. One State described the positive engagement of a civil society organisation in the process of introducing the definition of torture in the Criminal Code (Chile). Another State's approach to undertake a multi-stakeholder public consultation process when developing its national anti-torture legislation was highlighted as a good practice (Mexico).

### **Conclusions and key observations**

40. Whatever the approach chosen regarding the development of anti-torture legislation – whether through amendments to existing laws or adopting a stand-alone law – the social, legal and political contexts are relevant considerations, noting that no one size fits all.
41. In drafting legislation, States should strive to adopt a clear definition to minimize legal loopholes, the prosecution for lesser offences or the imposition of lesser sentences. Adapting the definition of torture to the context and demands from society is absolutely key – such as taking into consideration gender in the definition.
42. States are encouraged to engage in multi-stakeholder processes and consultations when designing their national anti-torture legislative and institutional frameworks. Multi-stakeholder processes bring transparency and increase the engagement of stakeholders, including during the implementation phases.
43. In recognizing that adopting national legislation against torture is an important step, it is equally essential to develop effective institutional frameworks and to adopt practical measures to prevent and eradicate torture and other ill-treatment. The seminar acknowledged that the gap between law and practice remains one of the major challenges in the region.

### **Possible next steps**

44. Despite different legal traditions (common law and civil law), discussions amongst participants demonstrated that they face similar challenges in their efforts to prevent torture and other abuses. On that basis, some requests for follow-up actions were made:
- Organise sub-regional meetings and workshops to a) provide more information about processes for drafting anti-torture legislation ; b) strengthen knowledge on specific issues such as gender approaches to torture; and c) facilitate further information exchanges on the benefits and added value of ratifying UNCAT;
  - Include in follow-up events victims' perspectives, as well as issues relating to migration/asylum and armed conflict; as well as perspectives from police officers, penitentiary and military authorities;
  - Explore further the interaction between the international and regional anti-torture instruments;
  - Share further experiences regarding trainings, and sensitisation and awareness campaigns;
  - Facilitate exchanges on the handling of investigations of torture and ill-treatment committed by law enforcement personnel.



45. All seminar participants were invited to join the CTI Group of Friends for further dialogue and experience sharing. Interest in joining the CTI Group of Friends can be indicated to the CTI Secretariat based in Geneva by contacting Dr. Alice Edwards, Head of CTI Secretariat, [aedwards@cti2024.org](mailto:aedwards@cti2024.org) and Ms. Signe Lind, Projects Adviser, [slind@cti2024.org](mailto:slind@cti2024.org).

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