



association pour la prévention de la torture
asociación para la prevención de la tortura
association for the prevention of torture

UN Committee Against Torture 54th Session (20 April - 15 May 2015)

APT submission on Colombia

2 April 2015

Alternative report from the Association for the Prevention of Torture (APT) to the Committee against Torture providing background information and suggested recommendations on torture prevention and the Optional Protocol to the Convention against Torture (OPCAT) for **Colombia**, whose fifth periodic report will be considered by the Committee during its 54th session in Geneva.

The Association for the Prevention of Torture (APT) is an independent NGO based in Geneva. We work for a world free from torture, where the rights and dignity of all persons deprived of liberty are respected.

To achieve this vision we:

- **Promote transparency and monitoring of places of detention** to reduce the risk of torture and ill-treatment of persons deprived of their liberty.
- **Advocate for legal and policy frameworks** so that torture and other forms of ill-treatment are criminalized and prevented in law and practice.
- **Strengthen capacities of torture prevention actors and facilitate exchanges** to foster the identification and replication of good practices in detention issues.
- **Contribute to informed public policy debates** so torture can be universally rejected.

1. Key facts

- UNCAT ratification on 8 December 1987
- The Colombian Government has stated to the Committee at its 2009 review that it does not intend to ratify the OPCAT, as Colombia's existing institutions provide sufficient mechanisms to protect the rights of detainees. This position has been reiterated since (including at the UPR in 2013).

2. Background

- In its 2009 Concluding Observations, the Committee against Torture (the Committee) recommended Colombia to "[R]atify the Optional Protocol to the Convention as soon as possible, to better prevent violations of the Convention."¹
- The Human Rights Committee also recommended OPCAT ratification in 2010.²
- Several States made similar calls during the second Universal Periodic Review of Colombia in May 2013.³
- The Inter-American Commission on Human Rights also recommended, based on its findings during a visit to Colombia in December 2012, that Colombia ratify the OPCAT, as it is "convinced that the most effective means to prevent torture is to open all places of deprivation of liberty to public scrutiny and independent monitoring".⁴
- Finally, the UN High Commissioner for Human Rights, in his last report on the human rights situation in Colombia, also recommended that the State should: "[R]atify the OPCAT and establish a national torture preventive mechanism as stipulated therein, as a step towards addressing the penitentiary crisis".⁵

In response, the Colombian Government has claimed, in multiple instances, that it does not need to ratify the OPCAT as it already possesses adequate mechanisms to prevent torture.

¹ UN Committee Against Torture (CAT), Concluding Observations: Colombia, UN Doc CAT/C/COL/CO/4, 2009, 4 May 2010, ¶ 22.

² UN Human Rights Committee, Concluding Observations: Colombia, UN Doc CCPR/C/COL/CO/6, 4 August 2010, ¶ 21.

³ Costa Rica, Peru, Slovenia, Philippines, Mexico, Turkey, Montenegro, Uruguay, Guatemala, Tunisia and the Czech Republic recommended OPCAT ratification. Costa Rica and the Czech Republic recommended, in addition, the establishment of an NPM. See Human Rights Council, Report of the UPR Working Group, Colombia, A/HRC/24/6, ¶¶ 188.2 a 188.6.

⁴ IACHR, *Verdad, Justicia y Reparación: Cuarto informe sobre la situación de derechos humanos en Colombia*, OEA/Ser.L/V/II. Doc.49/13, 31 December 2013, <http://www.oas.org/es/cidh/docs/pdfs/Justicia-Verdad-Reparacion-es.pdf>. (Unofficial translation).

⁵ UN Human Rights Council, Report of the High Commissioner for Human Rights on the situation of human rights in Colombia, UN Doc A/HRC/28/3/Add.3, 23 January 2015, ¶ 78 k). See also Reports of the High Commissioner for Human Rights on the situation of human rights in Colombia for the years 2009 (A/HRC/13/72, 4 March 2010, ¶ 52), 2010 (A/HRC/16/22, 3 February 2011, ¶ 93) and 2011 (A/HRC/19/21/Add.3, 31 January 2012, ¶ 118 d).

Responding to the specific question posed by the Committee in the recent List of Issues prior to Reporting, on whether the State party intends to ratify the OPCAT and, if so, the status of the ratification process,⁶ Colombia reiterated that it *"has a wide-ranging legal framework on the prevention and punishment of torture, beginning with article 12 of the Constitution"*, and that *"Government institutions have been implementing a series of measures and actions aimed at preventing torture, including the publication of various National Prisons Institute guidelines, the establishment of human rights committees, the creation of the office of Human Rights Ambassador, and the hosting of visits by oversight bodies and international organizations such as the ICRC (...)"*⁷

In 2009, the Committee expressed concern at the fact that the above mentioned national human rights committees created within Colombian detention centres *"do not constitute an independent preventive mechanism as provided for by the Optional Protocol"*.⁸

The UN Human Rights Committee, although welcoming the creation of these committees, also expressed concern regarding the lack of independence of such committees which are, in most cases, established under the direct supervision of the penitentiaries' administration (National Penitentiary Institute - INPEC).⁹

During missions to Colombia in 2012 to explore the possibilities of OPCAT ratification, the APT met with officials of the Ministries of Foreign Affairs, Justice, Defence and Interior as well as with senior officials of the Penitentiary system (Director of INPEC), the National Police, the Ombudsman, the President of the Constitutional Court, Members of Congress and NGOs. The response was in general positive and most interlocutors, including the then Minister of Justice, the Ombudsman (*Defensor del Pueblo*), the representative from the *Procuraduría General de la Nación*, and the Director General of the INPEC were open to a possible ratification of the OPCAT.

3. Conditions and treatment in detention

The prison population in Colombia has increased dramatically over the last decade (according to the Ombudsman's Office, it nearly doubled).¹⁰ Statistics of the INPEC as of October 2014 indicated a number of 116,449 persons detained in establishments designed for only 78,022.¹¹ This represents 49.3 per cent overcrowding in Colombian prisons.

⁶ List of issues prior to reporting, UN Doc CAT/C/COL/Q/5, 11 July 2012, ¶ 46.

⁷ CAT, Fifth Periodic Report of Colombia, UN Doc CAT/C/COL/5, 23 May 2014, ¶ 198.

⁸ CAT, Concluding Observations: Colombia, 4 May 2010, ¶ 22.

⁹ See UN Human Rights Committee, Concluding Observations: Colombia, UN Doc CCPR/C/COL/CO/6, 4 August 2010, ¶ 21.

¹⁰ See Ombudsman's Office, press release of 30 March 2015, *Fuga de "El desalmado" de la cárcel Las Heliconias de Florencia evidencia otra cara de la crisis carcelaria*, <http://www.defensoria.gov.co/es/nube/noticias/3399/Fuga-de-%27El-desalmado%E2%80%99-de-la-c%C3%A1rcel-Las-Heliconias-de-Florencia-evidencia-otra-cara-de-la-crisis-carcelaria-crisis-carcelaria-Caquet%C3%A1-violencia-contra-los-ni%C3%B1os-C%C3%A1rcel-Las-Heliconias-Hacinamiento-carcelario-Crisis-carcelaria.htm>.

¹¹ See INPEC, Informe estadístico octubre 2014, www.inpec.gov.co/portal/page/portal/INPEC_CONTENTIDO/NOTICIAS%20Y%20NORMATIVIDAD/ESTADISTICAS/INFORMES_ESTADISTICOS/INFORME%20OCTUBRE%202014.pdf.

The Constitutional Court has been addressing the crisis of the penitentiary system since 1998, when it declared a "state of unconstitutional affairs"¹² (*estado de cosas inconstitucional*) due to the high level of overcrowding and the very poor prison conditions. 17 years later, a Constitutional Court judgement, announced on 24 March 2015, found that conditions of detention prevailing in six of the country's prisons (Tramacúa in Valledupar, Modelo in Bogota, Bellavista in Medellin, San Isidro in Popayan, prison of Barrancabermeja and prison of Cúcuta), and the levels of overcrowding in those facilities, are as alarming today as in 1998.¹³

In addition to the high level of increase of prison population and overcrowding, another major issue in Colombia's prisons highlighted by the Court is the deficiencies in the provision of basic services, including access to clean drinking water and healthcare services. As a consequence of the latter, this resulted in a serious lack of medical attention which, in several cases, led to the death of the detainees.¹⁴ This situation is illustrated by a case brought before the Inter-American Commission on Human Rights, in which the Commission requested the adoption of precautionary measures in January 2015 to protect the life and personal integrity of the detainees.¹⁵

Despite measures taken by the authorities so far to address the crisis, these have been mainly centred in building new centres and have not solved the crisis. In that regard, the Court stated that: *"The problems in the prisons cannot be solved with money and building of new infrastructure. Everything indicates that, what prevails in the country is a criminal law conception focused on the prison. As long as this is the case, there will never be enough space in prisons."*¹⁶ The Court therefore ordered some measures to the Government (Ministry of Justice and Ministry of Finances), the Penitentiary administration (INPEC) and the directors of the 6 centres, to overcome the extreme levels of overcrowding. These include the creation of "legal brigades" to accelerate the consideration, by the judicial authorities, of requests by detainees to be freed. If, in 3 years' time, these measures have not been taken to remedy those structural problems, the Court will order the centres to be closed.

At the international level, several bodies have also drawn attention to the persisting penitentiary crisis. The High Commissioner, in his last report on Colombia, stated that his Office *"continued to observe the penitentiary system situation, where inmates live with unacceptable levels of overcrowding and inadequate health care. (...) The Ombudsperson called*

¹² Constitutional Court, Judgment T- 153/98, <http://www.corteconstitucional.gov.co/relatoria/1998/t-153-98.htm>.

¹³ The full text of the judgment is not available yet online as of 1 April 2015. See news reports related to the judgment: El Espectador, *La sentencia contra el hacinamiento carcelario*, 24 March 2015, <http://www.elespectador.com/noticias/judicial/sentencia-contra-el-hacinamiento-carcelario-articulo-551211>; *El plan de la Corte contra el hacinamiento carcelario*, 25 March 2015, http://www.elespectador.com/noticias/judicial/el-plan-de-corte-contra-el-hacinamiento-carcelario-articulo-551194?cx_tag=sctx#cxrecs_s.

¹⁴ See IACHR, *Verdad, Justicia y Reparación: Cuarto informe sobre la situación de derechos humanos en Colombia* p. 437.

¹⁵ See IACHR, Precautionary Measures N° 363/11, <http://www.oas.org/es/cidh/decisiones/pdf/2015/MC363-11-ES.pdf>.

¹⁶ See *La sentencia contra el hacinamiento carcelario*, 24 March 2015, <http://www.elespectador.com/noticias/judicial/sentencia-contra-el-hacinamiento-carcelario-articulo-551211>. (Unofficial translation).

for urgent structural measures to prevent the reoccurrence of such episodes.”¹⁷ The Inter-American Commission on Human Rights, in the report of its 2012 visit to Colombia, also addressed in details the situation of persons deprived of their liberty and made important recommendations to guide the State in designing sustainable criminal public policies aimed at guaranteeing the rights of persons deprived of their liberty.

4. Need for preventive oversight mechanisms

A key safeguard to reduce risks of torture and other forms of ill-treatment in detention is independent monitoring. It is clear that Colombia possesses a range of important mechanisms and institutions (in particular the Ombudsman’s Office and the *Procuraduría General de la Nación*) to respond to human rights violations, including torture and other ill-treatment in places of deprivation of liberty. However, these institutions have been insufficient to address the penitentiary crisis that has prevailed for years and that has, as illustrated above, worsened significantly. Also, such institutions do not have the mandate to conduct preventive visits to the broad range of places of deprivation of liberty (which include not only penitentiaries but also, among others, police stations, psychiatric hospitals, juvenile detention centres,...) contemplated in article 4 of the OPCAT.

By ratifying the OPCAT, Colombia would be obliged to establish an independent National Preventive Mechanism (NPM) which could build on the existing mechanisms mentioned above but would require the adoption of a holistic and coherent national torture prevention strategy that would identify root causes and take measures to reduce the risks of torture and other ill-treatment. Furthermore, by doing so, Colombia would join the emerging international system of torture prevention, which would enable them to share experiences with other States parties and the UN Subcommittee on Prevention of Torture (SPT).

The APT is convinced that an effective Colombian NPM, with its preventive approach to a serious human rights situation, would be able to identify constructive solutions to many of the issues raised by the State itself in its report to the Committee, and would therefore significantly contribute to the improved protection of persons deprived of their liberty.

¹⁷ UN Human Rights Council, Report of the UN High Commissioner for Human Rights on the situation of human rights in Colombia, UN Doc A/HRC/28/3/Add.3, 23 January 2015, ¶ 74.

5. Suggested questions and recommendations

In light of the above information, the APT proposes that the Committee against Torture make the following questions and recommendations during the review of Colombia's fifth periodic report:

Articles 2, 11 and 16

Suggested questions

- Please provide information on the measures that the State party intends to take to implement the recent Constitutional Court judgment as a way to reduce overcrowding and improve conditions of detention and indicate a timeline for the adoption of such measures.
- Please provide information on actions taken by the State party to ensure effective and independent preventive monitoring, not only of prisons but also of other places of deprivation of liberty, including by national non-governmental organisations.

Suggested recommendations

- The Colombian Government should adopt policies to address the causes of the high levels of imprisonment and revert the tendency to increase overcrowding, and urgently take measures to implement the Constitutional Court judgments;
- The Colombian Government should initiate an open, transparent and inclusive consultation process – including with non-governmental organisations - on a comprehensive, OPCAT-compliant detention monitoring framework;
- The Colombian Government should take the necessary steps to ratify the OPCAT as a key measure to prevent torture and other ill-treatment in all places of deprivation of liberty.