

Torture and ill-treatment in Bolivia

Stakeholder report to the 3rd Cycle of the UN Human Rights
Council's Universal Periodic Review (UPR)

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About ITEI

The Institute for Research and Therapy of the Consequences of Torture and State Violence (ITEI) is the only independent institution that provides medical and psychological attention and rehabilitation services to victims of torture and state violence in Bolivia. ITEI seeks to contribute to the prevention of torture and state violence related-disorders by providing psychotherapeutic, medical, social and legal assistance to victims, their immediate families and their local communities. In this context it provides a range of services to victims of torture, including those being held in prisons and detention centres, survivors of massacres, victims of political repression, political prisoners, political refugees, former exiles, relatives of individuals who have been detained, killed or who have disappeared, and their immediate families and communities.

By providing training, undertaking research and distributing reports and pronouncements on the topic, ITEI strives to raise awareness surrounding the psychosocial consequences of these practices and the importance of their eradication. The organisation equally offers medical and psychological interventions, in addition to providing expert evidence in the context of emblematic legal cases featuring acts of torture.

Introduction

Torture and other forms of ill-treatment continue to be frequently practiced in Bolivia. During the period 2016 to 2018, ITEI has supported 225 victims (136 males, 88 females, 1 intersex) and systematically collected data on their experiences. These experiences provide an indication of what are the main trends of torture in Bolivia and how these may be addressed.

The following report is based on analysis of this data combined with ITEI's context knowledge and addresses the following five issues central to eradicating torture and ill-treatment in Bolivia:

1. Accountability for perpetrators and access to justice for torture victims
2. Access to reparation and rehabilitation
3. Truth Commission
4. Detention conditions and monitoring
5. Denial of due process

1. Accountability for perpetrators and access to justice for torture victims.

Previous UPR recommendations:

1. During the first UPR cycle, the UN member states addressed a series of recommendations to the Bolivian State requiring the inclusion of the prohibition of torture in Criminal Law and that those responsible for such abuses be brought to justice.

General information

2. ITEI's data shows that torture is committed by a diverse group of perpetrators including police, prison officials and military officers, it primarily takes place in public locations and registered places of detention and in many cases the methods used leave visible marks on the victim (103 of the 225 victims were exposed to beatings). Despite this fact that the practice should be highly visible to the authorities, ITEI is not aware of a single case that has been successfully investigated and prosecuted. Even in cases, such as the Juan Bascope case, where ITEI provided highly credible forensic evidence collected by national and international experts, there has been no further investigation or prosecution by the Bolivian State.
3. This situation persists because there are serious obstacles for torture victims to access justice both relating to the legal framework and its implementation. Whilst the Bolivian Penal Code contains a prohibition on torture and other forms of ill-treatment, it continues to lack important elements required by the Convention against Torture. The relevant sanctions are disproportionate to the severity of the crime and the provision prohibiting torture is very broadly defined and the potential perpetrators are solely limited to public officials acting within their functions. In 2010, ITEI presented concrete recommendations for legal amendments to the President of the Human Rights Commission of the Plurinational Assembly but no action was taken.
4. More importantly, the authorities responsible for investigation and prosecution lack the necessary independence, the institutions suffer from corruption and do not have the necessary skills to document torture allegations. For example, the Institute of Forensic Investigation (IDIF) is subordinate to the Attorney General's Office, which makes it impossible to conduct independent investigations of torture committed by the police, who were responsible for 86 of 225 cases documented by ITEI. It also lacks a forensic team duly trained in accordance with the international standards in the UN Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol), which means that even if independent investigations were possible, they cannot be done with sufficient quality.

Recommendations

5. Adopt a comprehensive law on torture establishing a definition and the obligation to investigate, prosecute and provide reparation for torture in conformity with the international standards in the UN Convention against Torture.
6. Establish a structurally and financially independent and technically competent mechanism to investigate allegations of torture and other human rights violations against state officials promptly, impartially and in accordance with the standards in the Istanbul Protocol.

2. Access to reparation and rehabilitation for torture victims

Previous UPR recommendations

7. No recommendations were made relating to reparation and rehabilitation during the first and second UPR cycles.

General information

8. There is a significant number of victims of torture and ill-treatment in Bolivia, suffered during periods of military dictatorship and democracy, who have been left with serious physical and psychological impacts. Many victims find it difficult to reintegrate into society and lead a normal and fulfilling life. 31% of victims supported by ITEI still suffer from physical pains and other medical complications while 74% present serious emotional issues which come to shape their everyday lives. This has deep personal and socio-economic consequences on the affected individuals, their families and their local communities.
9. In order to be able to recover and resume their normal lives, torture victims require access to comprehensive rehabilitation services and other forms of reparation. This is a State obligation by virtue of Article 14 of the UN Convention against Torture and its General Observation N ° 3. However, the Government has not established or otherwise supported rehabilitation programmes or services for torture victims, nor are there initiatives to train professionals in providing adequate services. This increases the victims' mistrust in the government, which discourages them for seeking out support from the general health system. At present, the sole provider of comprehensive rehabilitation services in Bolivia is ITEI. Other non-governmental organisations offer legal advice yet lack the duly trained staff and financial resources to offer medical and psychological attention to the large number of victims who request it.

Recommendations

10. The Government of Bolivia should put in places the relevant law and policies to ensure that all victims of torture have access to reparations including State funded rehabilitation services.
11. The Government of Bolivia must ensure that all professionals, such as doctors, psychologists, social workers and lawyers, that come into contact with torture victims are trained in offering rehabilitation services to victims of torture and mistreatment.

3. The Commission of Truth and reparations for victims of the dictatorships

Previous UPR recommendations

12. During the second cycle of the UPR, Bolivia received and accepted recommendations to investigate, prosecution and provide reparations for human rights violations committed between 1964 and 1982 (113.26) and to create an independent and autonomous truth commission in accordance with international standards (114.70)

General information

13. In 2017, the Truth Commission was created (by Law No. 879 of 2016) alongside its technical secretariat which is subordinate to the Ministry of Justice. The body entered into operation in 2018 with the purpose of investigating serious human rights violations carried out during the dictatorships, which were in power from 4 November 1964 until 10 October 1982. It was created to shed light on the killings, forced disappearances, torture, arbitrary detention and sexual violence carried out with political and ideological motives. Approximately 150 people disappeared, extrajudicial executions took place, roughly 200 people were killed and many were deported or sent into exile (approximately 20,000 individuals).

14. However, the powers of this commission, which was supposed to simultaneously be the Commission for Reparation, have been restricted in such a way that it is unable to produce recommendations relating to issues of reparation, including the monetary damages which the State would be obliged to pay.
15. At present, the Commission does not coordinate with all of the organisations of victims of dictatorships in its investigative activities and collection of testimonies. No advances have been made in its efforts to declassify the archives of the Armed Forces and the investigations required to find the remains of the numerous victims of forced disappearance and murder have not been carried out.

Recommendations

16. The Truth Commission should provide public reports relating to its work and the results thereof, coordinate and facilitate the participation of victims and their family members without discrimination and declassify the archives of the Armed Forces.
17. The State must provide the Commission of the Truth with sufficient resources for the fulfilment of its functions and guarantee its independence so that it can investigate human rights violations in conformity with international norms.
18. The State must provide victims with timely and just compensation, including physical and psychological rehabilitation.
19. The State should guarantee unrestricted access to the civil and military archives for those involved in the investigation and for the victims themselves.

4. Detention conditions and monitoring

Previous UPR recommendations

20. During the previous UPR, Bolivia received and accepted various recommendations aimed at improving detention conditions in the country's prisons: 113.14 - 113.15 - 113.16 - 113.17 - 113.18 - 113.23 - 113.25 - 114.42 - 114.43 - 114.47 - 114.56 - 114.63 - 114.69 - 114.114.

General information

21. Torture and other forms of ill-treatment, alongside general detention conditions, form part of a concerning reality in Bolivia. Through their work in male, female and juvenile detention centres, ITEI continuously deals with cases of torture, ill-treatment and inadequate detention conditions, featuring overcrowding, squalor and limited access to basic services. Among the 255 victims supported by ITEI, 130 were tortured in prison and 42 of them also report the conditions of detention as reaching a level that constitute torture or ill-treatment. Torture and other forms of ill-treatment continue to be used as an instrument for punishment and intimidation against prisoners with 62% percent of ITEI's clients reporting this as the purpose of the torture they suffered. In recent years there has been large-scale punitive actions against prisoners in the prisons of Villa Bush, in the department of Pando on 19 June 2016 and in the prison of Palmasola in the city of Santa Cruz on 13 March 2018. The heads of the Catholic Church denounced the events in Palmasola as "denying human dignity". In both cases, ITEI visited the prisons and found that prisoners had been subjected to kicking, punching, beatings with blunt objects, electric shocks, tear gas to induce asphyxia and verbal humiliation. The documented cases only reflect the individuals who dared to report these experiences and therefore is believed to represent only a small proportion of the total number of victims.

22. One major problem is the frequent use is made of pretrial detention, which results in overcrowding and exacerbates the impact of poor detention conditions. The Government reported that 70% of the total prison populationⁱ is currently being held in pretrial detention and in September 2018, 19,159 persons were being held in detention compared with an installed capacity of 5,805 across 51 prison complexes (330% overcrowding). The economic, psychosocial and social impacts thereof on entire families are serious, and in many cases irreversible. Five presidential pardons and amnesties have been issued to decrease the prison population, with the latest appearing in April 2018 but no actions have been taken to improve the living conditions of the prison population, which do not meet the United Nations Standard Minimum Rules or the Bangkok Rules.
23. The Service for the Prevention of Torture (SEPRET) was created in 2016ⁱⁱ but is unable to act independently from the Ministry of Justice. Despite some positive results, this severely limits its ability to conduct credible continuous monitoring and oversight over places of detention.

Recommendations

24. Modify Law N°474 providing the Service for the Prevention of Torture with the necessary independence in line with international standards, with the full participation of the civil society.
25. Guarantee free and unhindered access for human rights and mental health organisations within detention centres in order to allow them to supervise the services provided to detainees.
26. Carry out a reform of the Bolivian prison system on the basis of the Mandela and Bangkok Rules which include effective policies for social reinsertion, inmate classification and specific procedures for the treatment of LGBTI and disabled individuals, in addition to the provision of an adequate budget and the necessary infrastructure.
27. Reduce the use of pre-trial detention to cases where it is strictly necessary.

5. Due process rights

Previous UPR recommendations

28. During the first and second UPR cycles, numerous recommendations were made in reference to the administration of justice: 113.20 – 113.21 – 113.22- 113.24 –114.44- 114.45- 114.57 - 114.58 – 114.59 – 114.60 – 114.61 – 114.62 – 114.63 - 114.64 - 114.65 y 114.66.

General information

29. In its work with victims of torture, ITEI has documented the widespread denial of due process rights as a major problem for its clients. ITEI has analysed data from 52 cases and identified a number of reoccurring issues, which combined with poor detention conditions and fear of torture are used to extract a confession from the detainee. These include delays of justice (48 cases), extension of pretrial detention beyond a period of 6 months (44 cases) and 3 years (10 cases), forced entry into private property without a search warrant (15 cases), and threats directed at defense lawyers (12 cases). All of these factors have a severe negative effect on the victims' possibility of having a fair trial including by being presumed innocent.
30. The lack of independence of the judiciary and its procedural dysfunctionality have become the object of criticism in Bolivia: arbitrary detention, procedural delays, the lack of effective

responses and cases of individuals who are detained and convicted despite being innocentⁱⁱⁱ have had a negative impact on the credibility of the judicial system.

Proposed recommendations

31. Ensure the independence of the judiciary and allocate sufficient resources for it to function effectively and expeditiously.
32. Create an obligatory postgraduate qualification for all judges and public prosecutors relating to the provision of due process rights.
33. Terminate the use of interim appointments in the judicial and prosecution career paths.
34. Increase the effectiveness of prosecution and punishment for corruption offences.
35. Provide reparation and rehabilitation to individuals who are convicted despite being innocent

ⁱ La Aplicación de La Detención Preventiva en Los Departamentos de Cochabamba y La Paz, Oficina Alto Comisionado De Las Naciones Unidas Para Los Derechos Humanos, 2016, pág.18

ⁱⁱService for the Prevention of Torture – SEPRET – Report from 1 July 2016 to 31 December 2016. La Paz, 2016.

ⁱⁱⁱ Reynaldo Ramirez, was sentenced in 2015 to 30 years of prison for the crime of femicide; in 2017 his innocent was proved as a result of a police report:<https://www.eldeber.com.bo/santacruz/La-historia-El-calvario-de-un-hombre-inocente-20170705-0041.html>

In March 2018, the Tenth Criminal Tribunal of the City of La Paz, sentenced the doctor Jhiery Fernández to 20 years of prison for the rape of the “baby Alexander” which supposedly led to his death in 2014. This sentence came about in spite of the various contradictions which existed amongst the evidence. During the month of September 2018, an audio recording was leaked to the media in which one of the judges of the tribunal supposedly admitted the innocence of Fernández and the fact that the sentence was brought about due to external pressures. More information: <https://www.noticiasfides.com/nacional/seguridad/sentencian-a-20-anos-de-prision-a-medico-fernandez-por-caso-bebe-alexander-386777>