

HONDURAS

Written contribution of the World Organization Against Torture (OMCT) and the Center for Prevention, Treatment and Rehabilitation of Victims of Torture and their Families (CPTRT) ahead of the 3rd Cycle of the Universal Periodic Review (UPR) of Honduras (May 2020)

I. Introduction

1. In this written contribution, the World Organization Against Torture (OMCT) and the Center for the Prevention, Treatment and Rehabilitation of Victims of Torture (CPTRT) draw attention to the situation with regards to torture and other cruel, inhuman or degrading treatment or punishment (CIDTP) in Honduras since the last universal periodic review (UPR) in 2015. A series of recommendations are also suggested. More extensive information on the issues raised throughout the submission can be found in the [submission](#) to the Committee against Torture (CAT), ahead of the adoption of the LOIPR, presented in January 2019 by several organizations, the joint alternative [report](#) to the CAT, presented in August 2016, and the reports of the CPTRT and the National Committee for the Prevention against Torture (MNP-CONAPREV).

II. General overview

2. Honduras has not firmly and effectively addressed the multiple challenges and shortcomings that perpetuate levels of violence which remain alarming, coupled with widespread impunity and the recurrence of patterns of abuse and human rights violations.

3. This situation worsened with the post-electoral crisis of November-December 2017. The reaction to protests staged to denounce electoral fraud was characterized by a repressive, heavy-handed approach, in which the use of force and firearms was the rule instead of the exception, in particular by the Public Order Military Police (PMOP). As of today, the steps to identify and punish the perpetrators of violations of the right to life and personal integrity committed in that context have not yet led to arrests or convictions.

4. The same pattern of disproportionate use of force, including lethal force, was repeated again between April and August 2019, when several people lost their lives and were injured in the context of mass demonstrations and rallies to reject the reforms promoted by the government, considering that they impaired the population's access to health and education.

5. In this context, torture and other ill-treatment continue to be used regularly by the security forces. Multiple and coincident reports indicate that torture is a very present reality and affects particularly groups in a situation of greater vulnerability. CPTRT received 95 complaints of torture and other ill-treatment, mostly of persons deprived of liberty, between January 2017 and May 2018. Our

organizations are deeply concerned about the almost total absence of statistical and qualitative data on the incidence of torture in the country, despite the recommendations made by the CAT in this regard and requests made during recent OMCT visits to the country. This situation shows unsatisfactory levels of transparency and lack of willingness on the part of the State to identify, keep record and monitor acts or omissions amounting to torture and ill-treatment by public servants.

6. Against this backdrop, victims very seldom file complaints due to fear of reprisals; the public defense and prosecutors do not have the capacity nor the interest to detect the commission of acts of torture, and in a few cases in which victims report, the vast majority of complaints are discontinued. When investigations proceed, the perception of defense lawyers is that judges are very reluctant and unlikely to press charges for torture.

III. Legal framework and definition of torture

7. Honduras has ratified the main regional and international instruments to prevent, prohibit and eradicate torture. However, Honduras has not made the declaration that allows the examination of individual communications by the CAT under article 22 of the Convention against Torture.

8. At the domestic level, the definition of torture in the new Criminal Code of Honduras (2019) does not meet the requirements of article 1 of the Convention against Torture, since it limits the active subject to the “employee or public official who in the exercise of his position”, excluding individuals acting at the instigation or with the consent or acquiescence of a public official or other person in the exercise of public functions.

IV. Militarization of basic state functions, including the penitentiary system

9. In Honduras the militarization of the most basic functions of the State persists. Despite the fact that the government has publicly committed, in international fora, to demilitarize key sectors such as the penitentiary system, such promises have not been fulfilled; on the contrary, the armed forces control or are heavily involved in very sensitive functions of the State.

10. While the Committee against Torture in its last review in 2016 ([CAT/C/HND/CO/2](#), August 26, 2016) urged Honduras “to prioritize handing over the management of prisons to the National Prison Institute. The State party should end the practice of detaining persons accused of ordinary crimes in military facilities” (para. 16), in 2019 three military facilities are still used to hold persons deprived of liberty - First Infantry Battalion, Second Tactical Infantry Battalion, Third Infantry Battalion -, with 70 persons detained as of July 2019. Likewise, the Los Cobras Preventive Center, also a military installation, is being used as a detention center for juvenile offenders.

11. It is worth noting that the administration and custody of persons deprived of liberty by the military not only occurs in these military facilities, but since 2014 there has also been a growing militarization in several prisons in the country, including maximum security prisons: Ilama, in Santa Bárbara (“Pozo I”) and Morocelí, El Paraíso (“La Tolva” or “Pozo II”). These prisons are not only managed by members of the armed forces, also guard and custody functions are carried out by the military.

12. In the National Penitentiary Center of Támara, which holds the largest number of prisoners, a wave of deaths in custody has been observed recently. In September 2019 alone, several inmates were found dead with signs of violence¹ and there was a riot in June 2019 that left deaths and injuries.

13. This pattern has been verified by the Inter-American Commission on Human Rights (IACHR) in its preliminary report of the visit to Honduras between July and August 2018: “Despite the fact that the legislation in force prohibits the presence of military forces within the penitentiary system, and despite the state’s claim that it is transforming this into a civil institution, it is still marked by noticeable involvement on the part of the armed forces”².

14. The progressive use of the armed forces in the penitentiary and criminal justice system has also led to hearings being held before judges within the same military facilities. This practice occurred in several cases of detainees who participated in the mentioned protests.

V. Conditions of detention

15. The Criminal Procedure Code continues to establish twenty-one crimes for which pre-trial detention is mandatory (see article 184, amended by Decree 56-2013, of May 17, 2013), rendering impossible the decrease of pretrial detainees, which exceeds the percentage of persons condemned and has a direct impact on the overcrowding of prisons.

16. The prison population continues to grow worryingly. According to official data, in July 2019 there were 21,610 persons deprived of liberty in 28 detention centers nationwide, including military facilities. Of the total national prison population, 11,798 are pre-trial detainees and 9,598 convicted.

17. In January 2017, the prison population was 18,601, which represents an increase of more than 15% in a year and a half. Regarding overcrowding, the capacity of the prisons did not reach 11,000 in 2018, which indicates that the prison population almost doubles the capacity with the ensuing severe and widespread overcrowding. In extreme cases such as La Esperanza prison, Department of Intibucá, overcrowding reaches 587%.

18. In the new prisons (Ilama, Morocelí, Porvenir), the so-called “megacárceles”, where persons deprived of liberty have been transferred from the most overcrowded prisons, such as the prison of San Pedro Sula, closed in 2017, a deterioration of basic aspects of life in custody has been reported, in particular due to increased isolation (with barely any access to the outside world, lack of natural light and permanent enclosure in modules), a harsher treatment by guards (military), among others. It is also common for prison guards to employ toxic gases to spray inmates, e.g. on March 8, 2018 at El Porvenir prison and more recent episodes denounced by persons arrested in the context of the 2019 protests.

¹ 21 de septiembre de 2019 (<https://www.latribuna.hn/2019/09/21/hallan-ahorcado-a-reo-en-carcel-de-tamara/>), 3 de septiembre de 2019 (<https://www.latribuna.hn/2019/09/03/reo-es-encontrado-muerto-en-carcel-de-tamara/>), 5 de septiembre de 2019 (<https://confidencialhn.com/honduras-matan-a-golpes-a-supuesto-violador-de-nina-en-san-lorenzo/>)

² CIDH, Observaciones Preliminares de la visita de la CIDH a Honduras, p.18, *visita in loco* del 30 de julio al 3 de agosto de 2018. Disponible en <http://www.oas.org/es/cidh/prensa/comunicados/2018/ObsPrelHnd.pdf>

19. This situation has got worse with the application of the Regulation Governing Prison Visits (Agreement 001-2016, published on October 27, 2016 (Official Gazette No.34,171)), which has led to a de facto abolition of the right to receive visits for around 8,600 persons deprived of liberty, who cannot bear the cost and administrative procedures required by this regulation.

20. Ultimately, the concerns raised by the CAT in 2016 remain valid: “The Committee is nevertheless concerned about the provisions governing the treatment of prisoners considered to be highly dangerous and aggressive, as in practice they are subjected to a regime of prolonged isolation for the period of their sentence” (para. 21).

21. It is also a matter of serious concern that persons deprived of liberty report that no medical examination is carried out upon arrest or detention, even though many of them show signs of torture or ill-treatment committed during detention and transfer. Concerns have also been raised over the fact that CONAPREV commissioners and civil society organisations requesting access to detention centers are increasingly subject to restrictions, which has been aggravated by the deployment of the Prison Control Forces since November 2018 (*Fuerzas de Control Penitenciario*).

VI. National Preventive Mechanism

22. In the CAT [follow-up report](#), CONAPREV pointed out that the institution had an approved budget for 2017 of L.9,000,000.00 (USD 391,000), which was insufficient to fulfil its mandate in a rigorous and effective manner, ensuring the hiring of a minimum team of the necessary technical experts. CONAPREV stressed that only 7% of the budget was allocated to conduct prison monitoring visits, which was insufficient.

23. This budget remained low, in particular as the NPM ceased to have direct support from external donors. The budget allocation has been increased in the 2019 national budget, however, concerns remain as CONAPREV does not have financial autonomy, it depends on the Governance Cabinet (after adoption of the Decree of March 23, 2018, article 2.12) , which has the power to limit or control the budgetary provision to cover the operations of CONAPREV.

24. The mentioned [decree](#) provides that CONAPREV is subordinated, at the management and planning level, to the Governance Cabinet, a situation that has been perceived as a threat to its independence, a cornerstone for the fulfillment of its mandate.

25. CONAPREV also sees the scope of its independent monitoring work limited because of the lack of access to protection measures assigned to its commissioners, who have been threatened and risk suffering attacks against their life and personal integrity. Also, CONAPREV has denounced that on many occasions they have been denied direct and confidential access to detainees, a situation that is getting worse with the progressive presence of military personnel in prison facilities.

VII. Excessive use of force, arbitrary detentions and allegations of torture and ill-treatment in the framework of the exercise of the rights to freedom of assembly, association and expression

26. During the protests that broke out after the elections of November 26, 2017, the OHCHR [concluded](#) that, between November 29 and December 22, 2017, at least 23 people had been killed, including 22 civilians and 1 police officer. According to the OHCHR, at least 16 of the victims, including 2 women and 2 children, lost their lives due to gunshot wounds due to the action of the security forces while dispersing the protests. At least 12 of the 13 dead, as well as most of the injured, are attributed to military forces, and 1 to the National Police. Civil society organizations count 232 people injured between November 29 and December 31, 2017.

27. More than 1,350 people were arrested for violating the curfew between December 1 and 5, 2017, and at least 114 people have faced criminal charges for their alleged involvement in crimes committed during the protests, of which four continue in pretrial detention. During the dispersion of protests, law enforcement officers also made indiscriminate use of tear gas, including in closed spaces as private homes. During the arrest and detention, many people reported acts that could constitute torture or ill-treatment.

28. CONAPREV, in a specific report published, detailed acts of torture and ill-treatment against 34 persons detained in the 105 Brigade (Army Battalion) in San Pedro Sula, which, after 3 days, were transferred to the Ilima prison, where the ill-treatment continued.

29. As noted earlier, numerous demonstrations and protests took place in Honduras between April and August 2019. Our organizations received consistent reports indicating the violent repression exerted by police, military and armed civilian groups against demonstrators. As of June 27, the repression had left at least six dead, including a minor, in various departments of the country (Francisco Morazán, Cortés, La Paz, Intibucá), due to the impact of firearms, as well as the tear gas inhalation. Information was also received that indicated the murder of several people, including student leaders, such as the case of Lesbian Daniel Ávila Caballero (18), who had participated in the protests, by armed civilians.

30. Among the injured persons, there are several students who were hit by live ammunition when, on June 24, 2019, a squad of the Military Police of the Public Order (PMOP) entered, armed with rifles, inside the facilities of the National Autonomous University of Honduras (UNAH).

31. In the framework of the last visit to the country, in June 2018, a delegation of OMCT experts [concluded](#), regarding crowd management in protests, and in light of the lack of progress in the investigation of human rights violations occurred in the framework of the protests at the end of 2017, that the Honduran authorities “still did not respect the principles of legality, necessity, proportionality and precaution, (...)”, pointing out that there was a “need to adopt a law on the use of force, increase the training of law enforcement officials and exclude the armed forces from tasks related to public order”.

VIII. Selected recommendations

- ✓ ☐ Make the declaration under article 22 of the Convention against Torture to allow the reception and consideration of individual communications by the CAT;
- ✓ ☐ End the detention of persons accused of ordinary crimes in military facilities and withdraw the armed forces from the prisons (hand over to civil management and custody);
- ✓ ☐ Take urgent measures to comply with the basic safeguard of carrying out a medical examination during the first hours of arrest, detention or imprisonment;
- ✓ ☐ Establish independent, confidential and safe complaint mechanisms available to persons deprived of liberty;
- ✓ ☐ Ensure that CONAPREV has sufficient resources, unrestricted access to detention centers and protection schemes to develop its mandate effectively and independently, and that its members are chosen by transparent and merit-based selection criteria;
- ✓ ☐ Adopt a legal framework regulating the use of force, guaranteeing the participation of civil society organizations in the elaboration process.