

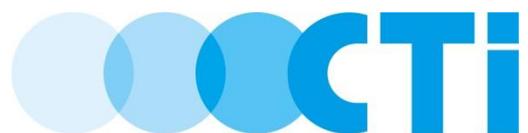


1977-2017

Together,  
we can  
prevent  
torture.

# Overview of anti-torture legislation in Latin America and the Caribbean

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CONVENTION AGAINST TORTURE INITIATIVE  
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<sup>1</sup> The content of this document does not necessarily reflect the CTI's Core Group's views.

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## Introduction

In April 2017, the Convention against Torture Initiative (CTI) convened a Regional Seminar, “Implementing the UN Convention against Torture in Latin America<sup>3</sup> and the Caribbean<sup>4</sup>: Sharing experiences of national legislative and institutional frameworks” in Santiago de Chile. During the seminar, twenty-two States from Latin America and the Caribbean gathered, to exchange information and experiences on the adoption of comprehensive anti-torture legislation in accordance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and related regional instruments.

An earlier version of this document was drafted for the Convention against Torture Initiative (CTI) by the Association for the Prevention of Torture (APT) and aimed to inform discussions during the seminar. It has been updated in October 2017 in order to reflect new developments in the region, in particular the entry into force of the Mexican Anti-torture law in June 2017.

The document provides a structured overview of legislation, and different institutional frameworks, regarding the prohibition against torture and ill-treatment as implemented in 31 States<sup>5</sup>. This research covers 14 Caribbean States and 17 Latin American States that have different legal systems (civil and *common law*). It hopes to provide to States, and other stakeholders including National Human Rights Institutions, National Preventive Mechanisms and civil society some valuable examples of legislative and institutional frameworks in Latin American and the Caribbean. The topics cover the prohibition against torture, as well as, the definition of the crime of torture, modes of liability, the non-admission of evidence obtained through torture and the right to reparation.

The document has been organized according to the themes raised according to the [Seminar’s agenda](#).

### Scope of the research

This paper is grounded in the provisions contained in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and the Inter-American Convention to Prevent and Punish Torture (IACPPT). These international and regional human rights treaties specify certain elements to be included in national legislation. These elements are described in the *APT/CTI Guide on Anti-Torture*

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<sup>3</sup> Argentina, Brazil, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru, and Uruguay.

<sup>4</sup> Antigua and Barbuda, Bahamas, Belize, Dominican Republic, Guyana, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, and Suriname.

<sup>5</sup> Antigua & Barbuda, Argentina, Bahamas, Barbados, Belice, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Lucia, Saint Vincent and the Grenadines, Suriname, The Bahamas, Trinidad and Tobago, Uruguay and Venezuela.

*legislation*,<sup>6</sup> which is the main reference document of this paper, and aims to assist lawmakers in drafting anti-torture legislation or in revising existing domestic laws. This document is based on some of the elements included in the *APT/CTI Guide on Anti-Torture legislation*. It is highly recommended to read this document in conjunction with the Guide. The present research provides an overview of the national approaches concerning the criminalization of torture based on some of the primary, recommended, and optional elements.

## **Methodology**

This research is based on a comparative analysis and survey of country specific information. Primary sources of information are: Constitutions, Criminal Codes and Criminal Procedure Codes. Also, relevant information has been obtained from country reports submitted to the United Nations Committee against Torture (CAT), reports of the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), and reports of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment of the United Nations (UN, Rapporteur on Torture).

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<sup>6</sup> APT/CTI Guide on anti-torture legislation, (2016), available at: [http://www.apr.ch/content/files\\_res/anti-torture-guide-en.pdf](http://www.apr.ch/content/files_res/anti-torture-guide-en.pdf) . The Guide is available in English, French, Spanish and Portuguese.

## I. Status of ratification of human right treaties regarding the prohibition of torture and ill-treatment

Torture is a severe violation of human rights. It is absolutely prohibited as a peremptory norm of international law, and reinforced by, inter alia, the International Covenant on Civil and Political Rights; UNCAT; the American Convention on Human Rights; the Inter-American Convention to Prevent and Punish Torture (IACPPT) and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará). This section presents the extent of ratification of the international and regional treaties on torture and ill-treatment. For more detailed information, please refer to the status of ratification provided in Annex 1.

### a. Latin American States

All Latin American States (17) covered by this research have ratified the UNCAT, and with the exception of **Colombia**, **El Salvador** and **Venezuela**, they have all ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Moreover, 16 of them have ratified the IACPPT. Honduras has signed the IACPPT but has not ratified it yet. All 17 States have ratified the Convention of Belém do Pará.

### b. Caribbean States

This research focuses on 14 States from the Caribbean. Amongst them, 6<sup>7</sup> have ratified the UNCAT. The **Bahamas** has signed the treaty but has not yet ratified it. A number have committed, through the Universal Periodic Review (UPR), to ratify the UNCAT; and several have started to work closely with the CTI to make this happen. From the 14 States studied, 2 of them have ratified the IACPPT (**Dominican Republic** and **Suriname**)<sup>8</sup>. 13 out of 14 States covered by this research have ratified the Convention of Belém do Pará.

## II. The prohibition of torture in the national legislation

This section focuses on States varying approaches to ensuring that the prohibition against torture is incorporated into their national system: some States possess a constitutional prohibition, while other States have criminalised torture, either through a specific anti-torture legislation, or through amendments to existing laws. Regardless of which of the latter two legislative approaches is adopted, a review of related laws is ordinarily still required to avoid overlap or uncertainty as to the applicability of particular laws.

The following map provides an overview of national approaches that Latin American and Caribbean countries have taken to prohibit and criminalise torture and ill-treatment.

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<sup>7</sup> Antigua and Barbuda, Belize, Cuba, Dominican Republic, Guyana, and Saint Vincent and the Grenadines.

<sup>8</sup> IACHR, Annual Report (2015), available at: <http://www.oas.org/en/iachr/docs/annual/2015/doc-en/InformeAnual2015-introduccion-EN.pdf>

**Figure 1. Overview of the national approaches regarding the prohibition of torture**



**a. Constitutional prohibition**

- Caribbean States

In the Caribbean 12 out of 14 States expressly prohibit torture and ill-treatment in their national constitutions. In most, this is an explicit constitutional prohibition against torture, whereas **Cuba** and **Trinidad and Tobago** refer to the right of detainees and prisoners to personal integrity. **Trinidad and Tobago** establishes the right to life, liberty and security,<sup>9</sup> and its constitution imposes an obligation on Parliament to not execute or authorize the imposition of cruel and unusual treatment or punishment.<sup>10</sup>

<sup>9</sup>Constitution of Trinidad and Tobago, Article 4 section a) and b).

<sup>10</sup>Ibid.

- Latin American States

Ten Latin American States guarantee the right to freedom from torture and ill-treatment in their national Constitutions.<sup>11</sup> Other constitutions provide different approaches, for example:

- In **Chile**<sup>12</sup> and **El Salvador**<sup>13</sup> the constitutions refer to the right to enjoy life and human integrity.
- In **Guatemala**, **Panama** and **Uruguay**, the constitutions refer to the prohibition of moral and physical torture inside prison system.<sup>14</sup>
- The Constitution of **Argentina** prohibits all forms of torture and whipping.<sup>15</sup>
- In **Costa Rica** the Constitution expressly contains a prohibition against ill-treatment, yet there is no provision that expressly prohibits torture in the constitution.<sup>16</sup>

### b. Specific anti-torture legislation

In Latin America and the Caribbean, 5 States have enacted specific anti-torture laws:

- **Antigua and Barbuda** (Suppression of Torture Act, 1993).
- **Brazil** (Law N° 9 455, 1997).<sup>17</sup>
- **Mexico** (General Law to Prevent, Investigate and Punish Torture, 2017).
- **Uruguay** (Act N° 18 026 of Cooperation with the International Criminal Court to combat genocide, war crimes and crimes against humanity, 2006).
- **Venezuela** (Special Law to Prevent and Punish Torture and Other Cruel, Inhuman or Degrading Treatment, 2013).

### c. Incorporation into existing legislation

In the Americas, a number of States (14) have incorporated provisions into their existing legislation to make torture a crime. In Latin America, 13 States that include torture as a specific crime have amended their Criminal Codes to do so. **Chile**<sup>18</sup> criminalised torture through the 2016 amendment to the Criminal Code. In 2017, the Criminal Code of **Peru** was amended to increase the penalties and to include in the definition of torture that the act must be inflicted with the intention to undermine the personality.<sup>19</sup>

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<sup>11</sup> Bolivia, Brazil, Colombia, Ecuador, Honduras, Mexico, Nicaragua, Paraguay, Peru and Venezuela.

<sup>12</sup> Constitution of Chile, Article 19.1.

<sup>13</sup> Constitution of El Salvador, Article 2.

<sup>14</sup> Constitution of Guatemala, Article 19; Constitution of Panama, Article 28; Constitution of Uruguay, Article 26.

<sup>15</sup> Constitution of Argentina, Article 18. The Spanish version of the Constitution refers to “tormentos” and “azotes”.

<sup>16</sup> Constitution of Costa Rica, Article 40.

<sup>17</sup> The Law on Torture is applicable to the whole territory of Brazil, however, the crime of torture is not a federal crime and, accordingly, each State is responsible for applying the law and enforcing judicial sentences. (Report of the Special Rapporteur on torture on his mission to Brazil (26 January 2014).

<sup>18</sup> National Congress of Chile, Law N° 20.968, (November 2016), available here:

<https://www.leychile.cl/Navegar?idNorma=1096847>

<sup>19</sup> Bicentennial Official Journal, legislative decree N° 1351, (January 2017), available here:

<http://busquedas.elperuano.com.pe/normaslegales/decreto-legislativo-que-modifica-el-codigo-penal-a-fin-de-fo-decreto-legislativo-n-1351-1471551-3/>

In the Caribbean, the **Dominican Republic** included the crime of torture in its Criminal Code. The following chart provides an overview of the States in Latin America and the Caribbean that have incorporated the crime of torture in their Criminal Codes and the dates of those amendments.

**Figure 2. Progress of laws related to the criminalisation of torture in the region**

N°	Country	UNCAT Ratification (R)/Accession (A)	Law/article/year	Last amendments to the provisions of torture
1	Argentina	R- 1986	Criminal Code, Article 144 (1958)	Criminal Code, Article 144 ter (1984)
2	Bolivia	R-1999	Criminal Code, Article 295 (1973)	Pending <sup>20</sup>
3	Chile	R-1988	Criminal Code, Article 150 (1998)	Criminal Code, Article 150 A (2016)
4	Colombia	R-1987	Criminal Code, Article 279 (1980)	Article 178 introduced a new definition of torture (2000)
5	Costa Rica	R-1993	Criminal Code, Article 123 bis (crime of torture added in 2001)	-
6	Dominican Republic	R-2012	Criminal Code, Article 303 (crime of torture added in 1997) <sup>21</sup>	New Criminal Code in discussion
7	Ecuador	R-1988	New Comprehensive Criminal Code <sup>22</sup> Article 151 and 119 (2014)	-
8	El Salvador	A-1996	Criminal Code, Article 297 (1996)	Criminal Code, Article 366-A (2011) <sup>23</sup>
9	Guatemala	A-1990	Criminal Code, Articles 210 bis and 425 (1993)	-
10	Honduras	A-1996	Criminal Code, Article 209 A (1985)	Criminal Code, Article 209 A (1997)
11	Nicaragua	R-2005	New Criminal Code, Article 486 (2008) <sup>24</sup>	-
12	Panama	R-1987	Criminal Code, Article (1982)	Criminal Code, Article 156 -A (2011) <sup>25</sup>
13	Paraguay	R-1990	Criminal Code, Article 309 (1997)	Criminal Code, Article 309 <sup>26</sup> (2012)
14	Peru	R-1988	Criminal Code, Article 321 (crime of torture added in 1998)	Criminal Code article 321 (2017)

<sup>20</sup> In 2013, the CAT noted of the existence of a draft bill that would amend article 295 (ill-treatment and torture) of the Criminal Code.

<sup>21</sup> In 1998 the crime of torture was included through Law N° 24-97, available at:

<http://pdba.georgetown.edu/Security/citizenssecurity/domrep/Leyes/ley24.html>

<sup>22</sup> In 2014, Ecuador published the Comprehensive Criminal Code, available here: [http://www.justicia.gob.ec/wp-content/uploads/2014/05/c%C3%B3digo\\_org%C3%A1nico\\_integral\\_penal\\_-\\_coip\\_ed.\\_sdn-mjdhc.pdf](http://www.justicia.gob.ec/wp-content/uploads/2014/05/c%C3%B3digo_org%C3%A1nico_integral_penal_-_coip_ed._sdn-mjdhc.pdf)

<sup>23</sup> Congress of El Salvador, Decree N° 575 available here: [http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/declarase-notable-artista-de-el-salvador-al-senor-miguel-angel-ramirez/archivo\\_documento\\_legislativo](http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/declarase-notable-artista-de-el-salvador-al-senor-miguel-angel-ramirez/archivo_documento_legislativo)

<sup>24</sup> CAT, Concluding observations of the Committee against Torture (10 June 2009), UN Doc CAT/C/NIC/CO/1 § 10

<sup>25</sup> Panama, Law N° 1 January 2011. Available at: <http://bit.ly/2AT59RD>

<sup>26</sup> Paraguay, Law N° 4614 brought the definition of enforced disappearance and torture under criminal law. Available at: [http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/PRY/INT\\_CED\\_ADR\\_PRY\\_16937\\_S.pdf](http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/PRY/INT_CED_ADR_PRY_16937_S.pdf)

### III. The definition of torture

#### Article 1 of the UNCAT

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

This section provides an overview of the definition of torture as it has been incorporated into national laws, in the region.

#### a. Elements of the definition of torture

States should ensure that acts, which fall within the definition of torture in article 1 of the UNCAT, are offences within their national legal systems. 19 out of 31 have a specific offence of torture yet they may have adopted different definitions. The purpose of this section is to provide an overview of some of the ways in which States have defined torture. The overview follows the four elements contained in article 1 of the UNCAT.

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#### Primary element

The definition of torture in national law is to encompass, at a minimum the elements contained in the Article 1 definition of the UNCAT.

- Severe mental or physical suffering

In Latin America and the Caribbean, laws from 17 States (**Antigua and Barbuda**<sup>27</sup>, **Argentina**<sup>28</sup>, **Brazil**<sup>29</sup>, **Chile**<sup>30</sup>, **Colombia**<sup>31</sup>, **Costa Rica**<sup>32</sup>, **Dominican Republic**<sup>33</sup>, **Ecuador**<sup>34</sup>,

<sup>27</sup> Antigua and Barbuda, Suppression of Torture Act (1992), Article 3, available at: <http://laws.gov.ag/acts/1993/a1993-15.pdf> (last accessed February 2017).

<sup>28</sup> Argentina, Criminal Code, (1984) Article 144, available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16546/texact.htm> (last accessed in December 2016).

<sup>29</sup> Brazil, Law N° 9 455 op. cit. 21, Article 1 (I). (last accessed December 2016).

<sup>30</sup> Chile, Criminal Code, ( modified in 2016 ) Article 150 A, available at: <https://www.leychile.cl/Navegar?idNorma=1096847> (last accessed in February 2017).

<sup>31</sup> Colombia, Criminal Code, (2000), Article 178, available at: [http://perso.unifr.ch/derechopenal/assets/files/legislacion/I\\_20160208\\_02.pdf](http://perso.unifr.ch/derechopenal/assets/files/legislacion/I_20160208_02.pdf) (last accessed in February 2017).

<sup>32</sup> Costa Rica, Criminal Code (18 December 2001), Article 123 Bis, available at: [https://www.oas.org/dil/esp/Codigo\\_Penal\\_Costa\\_Rica.pdf](https://www.oas.org/dil/esp/Codigo_Penal_Costa_Rica.pdf) (last accessed in December 2016).

<sup>33</sup> Dominican Republic, Criminal Code (2014), Article 115, available at: <http://oig.cepal.org/sites/default/files/251865974-ley-no-550-14-que-establece-el-codigo-penal-de-la-republica-dominicana.pdf> (last accessed in January 2017).

**El Salvador**<sup>35</sup>, **Guatemala**<sup>36</sup>, **Honduras**<sup>37</sup>, **Mexico**<sup>38</sup>, **Nicaragua**<sup>39</sup>, **Panama**<sup>40</sup>, **Paraguay**<sup>41</sup>, **Peru**<sup>42</sup> and **Venezuela**<sup>43</sup>) include in their definition of torture “*mental or physical suffering*”. In **Uruguay**, the Law 18.026<sup>44</sup> added “*moral suffering*” to the torture definition. In **Chile** the legislation includes the element of “*sexual suffering*”<sup>45</sup> as torture.

- Act or omission must be inflicted intentionally

The UNCAT establishes that the act or omission of torture must be inflicted intentionally. The Criminal Codes of **Chile**, **Ecuador**, **El Salvador** and **Nicaragua** expressly mention that torture must be inflicted with intention. On the other hand, the CAT has recommended to include in the definition both “*acts and omissions*” and 6 States have decided to include in the definition an offence by omission.<sup>46</sup>

- For specific purpose

The definition of torture in Article 1 of the UNCAT lists the most common purposes behind torture: obtaining confessions and information; the infliction of punishment; intimidation; or reasons based on discrimination. Nevertheless, these purposes are not exhaustive and the UNCAT includes the phrase “*such purposes as*” allowing States to add any other purposes in their national laws, or to recognize such other purposes in case law.

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<sup>34</sup> Ecuador, Criminal Code, Article 151, available at: [http://www.justicia.gob.ec/wp-content/uploads/2014/05/c%C3%B3digo\\_org%C3%A1nico\\_integral\\_penal\\_-\\_coip\\_ed.\\_sdn-mjdhc.pdf](http://www.justicia.gob.ec/wp-content/uploads/2014/05/c%C3%B3digo_org%C3%A1nico_integral_penal_-_coip_ed._sdn-mjdhc.pdf) (last accessed in January 2017).

<sup>35</sup> El Salvador, Criminal Code, (1997) Article 366-A, available at: <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/codigo%20penal> (last accessed in December 2016).

<sup>36</sup> Guatemala, Criminal Code, Article 201 Bis, available at: <https://www.iberred.org/sites/default/files/codigo-penal-de-guatemala.pdf> (last accessed in November 2016).

<sup>37</sup> Honduras, Criminal Code, (1997) Article 209-A, available at: <https://www.ccit.hn/wp-content/uploads/2013/12/Codigo-Pena-Honduras.pdf> (last accessed in December 2016).

<sup>38</sup> Mexico, General Law to Prevent, Investigate and Punish Torture, (2017), Article 24, available at: [http://www.diputados.gob.mx/LeyesBiblio/pdf/LGPIST\\_260617.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGPIST_260617.pdf) (last accessed in September 2017).

<sup>39</sup> Nicaragua, Criminal Code, Article 486, (2008) available at: <http://www.wipo.int/edocs/lexdocs/laws/es/ni/ni031es.pdf> (last accessed in January 2017).

<sup>40</sup> Panama, Criminal Code, Article 156, (modified in January 2011) available at: [http://www.oas.org/juridico/PDFs/mesicic5\\_pan\\_res\\_ane\\_act\\_corr\\_2.pdf](http://www.oas.org/juridico/PDFs/mesicic5_pan_res_ane_act_corr_2.pdf) (last accessed in December 2016)

<sup>41</sup> Paraguay, Criminal Code, Article 309, (2012) available at: [https://www.unodc.org/res/cld/document/pry/1997/codigo-procesal-penal-de-la-republica-del-paraguay\\_html/Codigo\\_procesal\\_penal\\_Paraguay.pdf](https://www.unodc.org/res/cld/document/pry/1997/codigo-procesal-penal-de-la-republica-del-paraguay_html/Codigo_procesal_penal_Paraguay.pdf) (last accessed in February 2017).

<sup>42</sup> Peru, Criminal Code, Article 321, (modified in January 2017), available at: <http://busquedas.elperuano.com.pe/normaslegales/decreto-legislativo-que-modifica-el-codigo-penal-a-fin-de-fo-decreto-legislativo-n-1351-1471551-3/> (last accessed in February 2017).

<sup>43</sup> Venezuela, Special Law to Prevent and Punish Torture and Other Cruel, Inhuman or Degrading Treatment, Article 5, (2013) available at: [http://www.mp.gob.ve/LEYES/LEY\\_ESPECIAL\\_PARA\\_PREVENIR\\_Y\\_SANCIONAR\\_LA\\_TORTURA/LEY%20PARA%20SANCIONAR%20LA%20TORTURA.htm](http://www.mp.gob.ve/LEYES/LEY_ESPECIAL_PARA_PREVENIR_Y_SANCIONAR_LA_TORTURA/LEY%20PARA%20SANCIONAR%20LA%20TORTURA.htm) (last accessed in February 2017).

<sup>44</sup> Uruguay, Act 18 026, Article 22, (2006) available at: <https://legislativo.parlamento.gub.uy/temporales/leytemp9482377.htm> (last accesses in January 2017).

<sup>45</sup> Chile, Law N° 20 968 (Criminal Code amendment), Article 150 A, available at: <https://www.leychile.cl/Navegar?idNorma=1096847> (last accessed in February 2017).

<sup>46</sup> Antigua and Barbuda, Argentina, Brazil, Dominican Republic, Ecuador and Venezuela.

The definition of torture in the IACCPT makes a reference to “*any other purpose*” rather than “*such purposes as*” (as in the UNCAT), and includes expressly methods intended to obliterate the personality of the victim or diminishing his/her capacities.<sup>47</sup> It also includes in the definition of torture its use as a method of “*criminal investigation*”, and as a “*preventive measure*”.

**Dominican Republic, Mexico, Nicaragua**, and **Panama** have opted to include the IACCPT “*any other purpose*” in their definitions of torture; while **Brazil, Dominican Republic, Mexico** and **Nicaragua** include the following as additional explicit purposes for the infliction of torture: its use as a “*preventive measure*” and for “*criminal investigation*”.

In addition, 7 States<sup>48</sup> have added specific grounds for discrimination, be that on the basis of: ideology, political opinion and social group, sex, sexual orientation, race, religion, gender, disability, or another protected characteristic.

**Article 1 of the IACCPT**

*For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish. The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.*

- The lawful sanction clause

The UNCAT provides that pain or suffering connected to lawful sanctions is not within the definition of torture. 5 States have not included in their definition of torture, pain or suffering arising from lawful sanctions.<sup>49</sup>

**Article 1 of the UNCAT**

*Definition of torture*

1. (...) *It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.*

<sup>47</sup> APT and CEJIL, “Torture in International Law: A guide to Jurisprudence” (2008), p.96.

<sup>48</sup> Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico and Venezuela.

<sup>49</sup> Chile, Colombia, El Salvador, Nicaragua and Uruguay.

## b. Gendered approaches to the criminalization of torture<sup>50</sup>

Women and girls are at risk of torture and ill-treatment in three main ways: by perpetrators acting in an official capacity, by private or non-State actors for which the State may be held accountable, or by private actors without the nexus to State accountability. Torture and ill-treatment against women and girls might take the form of custodial violence, which can include rape, forced nudity, and other forms of sexual abuse or deprivations.<sup>51</sup> The Inter-American Court and the Inter-American Commission on Human Rights have established that rape can amount to torture<sup>52</sup>, due to the severe suffering of the victim. The Inter-American Court has also confirmed the failure to investigate the sexually related disappearances and murders of several women violated their rights to life, humane treatment and to personal liberty.<sup>53</sup> Within the family and the community sphere, violence can amount to torture and ill-treatment<sup>54</sup>, if the State fails to exercise due diligence to prevent, investigate, prosecute and/or punish torture. The CAT has clarified that:

*"Where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts."<sup>55</sup>*

The CAT has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking. To reinforce the protection of women and girls from torture and ill-treatment, a number of laws include different approaches for instance:

- **Costa Rica** and **Chile's** Criminal Codes include gender discrimination as a motive to become a punishable act of torture.
- In its Article 150 A, the Criminal Code of **Chile** expands the definition of torture by incorporating "*sexual suffering*".<sup>56</sup>
- **Ecuador** recognizes sexual assault as an aggravated form of torture when it is committed for the purpose of intimidation, exploitation, degradation, humiliation, discrimination, revenge or punishment.<sup>57</sup>

<sup>50</sup> In this paper the gendered approach to the definition of torture will be focused on women and girls, although it is recognized that there are other aspects to a gendered approach.

<sup>51</sup> See, Inter-American Court of Human Rights, *Miguel Castro-Castro Prison v. Peru* (2006).

<sup>52</sup> See, Inter-American Court of Human Rights, *Martí de Mejía v Peru* (1996), *Loayza-Tamayo v. Peru* (1997) and *Ortega et al v Mexico* (2010).

<sup>53</sup> See, *Gonzalez et al ('Cotton Field') v. Mexico* (2009).

<sup>54</sup> UN Committee against Torture, General Comment No. 2: Implementation of article 2 by States parties, UN Doc. CAT/C/GC/2 (24 January 2008); UN Special Rapporteur on torture, Report to the Human Rights Council, UN Doc. A/HRC/7/3 (15 January 2008), § 44; see UN Special Rapporteur on torture, UN Doc. A/HRC/31/57, (5 January 2016) § 55.

<sup>55</sup> UN Committee against Torture, General Comment No. 2: Implementation of article 2 by States parties, UN Doc. CAT/C/GC/2 (24 January 2008), para. 18.

<sup>56</sup> The Congress of Chile incorporated the real concurrence of offences when the accused of torture commits homicide, sexual violence, aggravated sexual assault, mutilation, etcetera incrementing the penalties. History of the Law N°20.968 Typifies the crimes of torture, and other cruel, human or degrading treatment or punishment, (December, 2016), p.11

- In **Mexico**, the anti-torture law provides that in cases of sexual violence against women, the examination will be done by a female or male gynecologist according to the victim's choice.<sup>58</sup>

In addition to those States that have criminalised violent acts by private or non-State actors as torture or ill-treatment as detailed in c) below, States have taken explicit actions to overcome specific forms of gendered violence that may amount to torture in specific circumstances, such as domestic violence<sup>59</sup>, through specific legislation. For instance, in 2010, **Grenada** adopted the Domestic Violence Act and the National Domestic Violence and Sexual Abuse Protocol in 2011.<sup>60</sup> Also in 2010, **Guyana** enacted the Sexual Offences Act and launched a national policy on domestic violence.<sup>61</sup>

### c. Non-state and private actors

As already noted, UNCAT's definition of torture contains a nexus between the pain or suffering and State or quasi-State authorities. However, some States when criminalising torture have recognized that the crime of torture may be committed by non-state or private actors, without a nexus to a State or quasi-State entities.<sup>62</sup> Examples from the region that recognize the responsibility of private individuals and non-state actors include:

- **Argentina**<sup>63</sup>, **Brazil**<sup>64</sup>, **Honduras**<sup>65</sup>, **Mexico**<sup>66</sup> and **Venezuela** criminalise torture committed by private actors.
- The Criminal Code of **Guatemala** criminalises torture committed by members of organized groups or gangs having terrorist, insurgent or subversive purposes or any other criminal purpose.

### d. Modes of liability

In order to combat impunity for acts of torture, or that permit torture, national laws must include modes of liability beyond the direct commission of the offence.<sup>67</sup> In articles 1 and 4 of the UNCAT, responsibility for torture includes infliction, instigation, consent,

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<sup>57</sup> Ecuador, Criminal Code, Article 48, available at: [http://www.justicia.gob.ec/wp-content/uploads/2014/05/c%C3%B3digo\\_org%C3%A1nico\\_integral\\_penal\\_-\\_coip\\_ed.\\_sdn-mjdhc.pdf](http://www.justicia.gob.ec/wp-content/uploads/2014/05/c%C3%B3digo_org%C3%A1nico_integral_penal_-_coip_ed._sdn-mjdhc.pdf) (last accessed in January 2017).

<sup>58</sup> Article 41, General Law to Prevent, Investigate and Punish Torture (2017).

<sup>59</sup> UN, Report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, Manfred Nowak, UN DOC A/HRC/7/3 § 73.

<sup>60</sup> CEDAW, Concluding observations of the Committee on the Elimination of Discrimination against Women Grenada, Doc CEDAW/C/GRD/CO/1-5 (23 March 2012), § 23.

<sup>61</sup> CEDAW, Concluding observations of the Committee on the Elimination of Discrimination against Women Guyana, Doc CEDAW/C/GUY/CO/7-8 (July 2012).

<sup>62</sup> APT-CTI Anti torture guide, p. 24.

<sup>63</sup> Argentina, Article 144 (3) (1) Criminal Code of Argentina.

<sup>64</sup> Brazil, Law N° 9 455, 1997.

<sup>65</sup> Honduras, Article 209-A Criminal Code of Honduras (1983).

<sup>66</sup> Mexico, Article 25, General Law to Prevent, Investigate and Punish Torture (2017).

<sup>67</sup> APT/CTI, op cit, p. 32.

acquiescence, attempt, complicity and other forms of participation. The following table provides some examples of the different modes of liability that States have included in their definition of torture and laws:

**Figure 3. Modes of liability**

Modes of liability	Commission of torture	Attempt to commit torture	Complicity in torture	Instigation of torture;	Incitement to torture	Public officials who acquiesce or consent to torture
State						
Antigua and Barbuda	X			X		X
Argentina	X	X <sup>68</sup>				
Bolivia	X					X
Brazil	X					
Chile	X	X <sup>69</sup>		X	X	X
Colombia	X	X <sup>70</sup>				X
Costa Rica	X	X <sup>71</sup>				
Dominican Republic	X		X			
Ecuador	X			X		
El Salvador	X		X <sup>72</sup>	X	X	X
Guatemala	X					X
Honduras	X					
Mexico	X	X	X	X	X	X
Nicaragua	X					
Panama	X	X <sup>73</sup>				
Paraguay	X					X
Peru	X					X
Uruguay	X					X
Venezuela	X		X	X		X

**e. Penalties**

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**Recommended element**

In order for the penalty for the crime of torture to be commensurate with the gravity of the crime, a minimum penalty of six years is to be imposed.

The UNCAT, in its article 4 provides that States Parties will define appropriate penalties and recognize the unique gravity of the crime of torture. The CAT has recommended penalties of between six to twenty years to commensurate sentences for torture with the gravity of the offence.<sup>74</sup>

**Argentina** and **Guatemala** are two States with the highest penalties in Latin America, being 25 and 30 years respectively. In **Colombia**<sup>75</sup>, **El Salvador** and **Mexico**, the

Criminal Code adds other sanctions to imprisonment such as fine and suspension of public duties. Below is a regional overview of the years of imprisonment for committing the crime of torture.

<sup>68</sup> Attempt and complicity are foreseen for any crime in Article 42 of the Criminal Code.

<sup>69</sup> Attempt is foreseen for any crime in Article 52 of the Criminal Code.

<sup>70</sup> Attempt is foreseen for any crime in Article 27 of the Criminal Code.

<sup>71</sup> Attempt is foreseen for any crime in Article 24 of the Criminal Code.

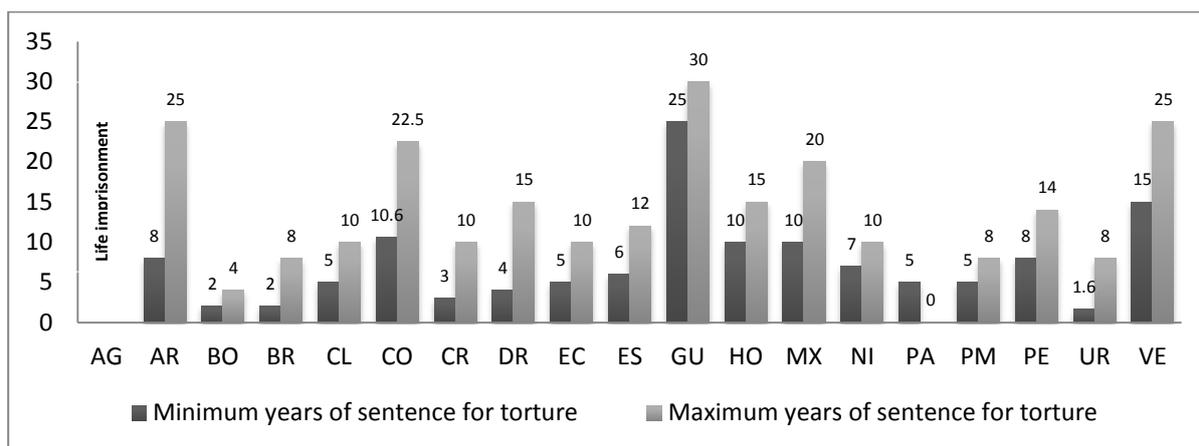
<sup>72</sup> The Article 99 of the Criminal Code foreseen that private individuals acting at instigation of public official shall be liable as co-participants.

<sup>73</sup> Panama, attempt is foreseen for any crime in Articles 14, 48 and 83; and complicity is foreseen in Articles 45, 46, 80 and 81 of the Criminal Code.

<sup>74</sup> APT/CTI, Guide on anti-torture legislation, (2016), p. 28.

<sup>75</sup> Torture is punishable by imprisonment for a term ranging from 8 to 15 years, a fine of from 800 to 2,000 times the minimum legal wage (SMLV) and disqualification from the exercise of public rights and duties for the same time.

**Figure 4. Penalties for committing the crime of torture (years of imprisonment)**



The chart below illustrates that harsher penalties for torture could be imposed under the following aggravating factors: if the victim is found to be vulnerable, if torture inflicts serious, permanent injuries, or when the crime resulted in the death of the victim.

**Figure 5. Penalties for aggravating factors**

Country	Aggravating factor	Minimum and maximum sentence for torture with aggravating factors	Minimum and maximum sentence for torture
Bolivia	Injuries	2 years - 6 years	2 years- 4 years
	Victim's death	10 years	
Brazil	Omissions	1 year – 4 years	2 years – 8 years
	Death	8 years – 16 years	
Chile	Death (Homicide)	Qualified life imprisonment <sup>76</sup>	5 years and 1 day – 10 years
	Rape	15 years- life imprisonment	5 years and 1 day – 10 years
Costa Rica	Public officer	5 years – 12 years	3 years- 10 years
Colombia	Public officer	The penalty will increase by 1/3	10.6 years-22.5 years
	Vulnerability (disability, age, pregnancy)		
	When committed against journalist, human rights defenders, public officials (...)		
Ecuador	Public officer	10 years to 13 years	7 years – 10 years
	Intention to modify gender or gender identity		
	Vulnerability ( age, disability, pregnancy)		
	Omission	5 years – 7 years	

Some States have varied penalties whether the direct commission of the crime was by a public official, or through failures in due diligence. For instance:

- In **Brazil**, the penalty increases when the offender is a public actor.
- The Criminal Code of **Honduras** contains a mitigating factor when the responsible offender is a private actor.

<sup>76</sup>Qualified life imprisonment refers to life imprisonment for life in which the inmate does not have access to conditional release, pardon or amnesty.

- In **Mexico**, the new anti-torture law (2017) foresees different penalties ranging from 10 years to 20 years if the offender is a public actor and between 6 years to 12 years if the offender is a private actor.

**f. The criminalization of cruel, inhuman, or degrading treatment or punishment (CIDTP)**

States are free to criminalise CIDTP as a separate crime. However, if opting to do so, it is often recommended to keep the definition separate from the notion of torture<sup>77</sup>. The following examples illustrate the different approaches States have taken to criminalizing CIDTP:

- **Chile** recognizes unlawful coercion and ill-treatment as offences under article 150 D of the Criminal Code. This article stipulates that ill-treatment and unlawful coercion should be understood as those acts that would not necessarily fall within the concept of torture. Penalties are foreseen up to 3 years.
- In **Colombia**, the Criminal Code does not provide for a definition of CIDTP. Nevertheless, article 146 of the Criminal Code imposes penalties (up to 15 years of imprisonment) for the commission of CIDTP during armed conflict. In addition, article 166 includes CIDTP as an aggravating circumstance in the crime of enforced disappearance and enforced displacement.
- In **Uruguay**, Article 22.2 of Law N° 18 026 stipulates that CIDTP are acts of torture.
- In **Ecuador** the infliction of CIDTP is limited to circumstances under armed conflict. The penalty is imprisonment up to 16 years.
- In **Mexico**, the new anti-torture law provides that if any public official in the exercise of his/her functions, and as a measure of intimidation, punishment or for reasons based on discrimination, abuses, humiliates, degrades, or insults a person, the public official shall be punished with imprisonment. The crime of CIDTP bears a penalty of between 3 months to 3 years.<sup>78</sup>

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**Optional element**

National legislation criminalises cruel, inhuman or degrading treatment or punishment.

<sup>77</sup> APT/CTI, Guide on anti-torture legislation, (2016), p. 26.

<sup>78</sup> Article 29, General Law to Prevent, Investigate and Punish Torture (2017).

#### IV. The Exclusionary Rule in criminal procedure

The exclusionary rule is provided by Article 15 of the UNCAT and Article 10 of the IACCPT. The principle establishes that States may not use information obtained by torture.<sup>79</sup> In the region, the States with civil law legal systems have provisions regarding the exclusion of evidence obtained as a result of torture in criminal proceedings. The source for the exclusionary rule in countries from common law traditions is mixed. The Caribbean States' approaches to the exclusionary rule vary between constitutional guarantees through case law, and/or through national legislation such as Evidence Acts. In the common law, there is a general rule that torture-tainted evidence is to be excluded.<sup>80</sup> In **Barbados**, the Evidence Act provides that evidence will not be admitted unless the court is satisfied that the admissions, and the making of the admission, were not influenced by violent, oppressive, inhuman or degrading conduct.

The Constitution of **Argentina** entitles that every defendant has the right against self-incrimination.<sup>81</sup> According to the Constitution, this right excludes the possibility that confessions are extracted under coercion. In addition, the Supreme Court has stated that "giving probative value to a crime and base it in a judicial sentence not only is contradictory, it jeopardizes the proper administration of justice".<sup>82</sup>

The **Bolivian** Criminal Procedure Code expressly states that evidence obtained through torture, ill-treatment, abuse, coercion, threats, or violation of fundamental rights, lacks probative value.<sup>83</sup> In **Brazil**, the Constitution of 1988 provides that evidence obtained under torture is unacceptable during criminal proceedings.<sup>84</sup> In 2001, the CAT showed concern due to the absence in Brazilian legislation of an explicit prohibition on any statement obtained through torture being accepted as evidence in judicial proceedings.<sup>85</sup> Article 156, of the Act N° 11,690 incorporated into the Criminal Procedure Code 2008,<sup>86</sup> the inadmissibility of illegal evidence obtained through constitutional rights violations. The Brazilian Criminal Procedure Code also recognizes two exclusionary rule exceptions: the attenuation and the independent source exceptions.<sup>87</sup>

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#### Primary elements

National legislation is to exclude explicitly evidence obtained by torture in all proceedings.

National legislation is to reflect that the exclusionary rule applies to all forms of evidence.

<sup>79</sup> Rome Statute of the International Criminal Court, Article 55 (1)(b).

<sup>80</sup> Another rule of evidence in the common law is that judges have discretion to exclude evidence where its probative value is outweighed by its prejudicial effect.

<sup>81</sup> Article 18 Constitution of Argentina.

<sup>82</sup> Supreme Court of Argentina, "Montenegro, Luciano Bernardino" (10 December 1981).

<sup>83</sup> Article 13 Legality of Obtaining Evidence and Article 172 (Exclusionary), Criminal Procedure Code of Bolivia (1999)

<sup>84</sup> Article 5 (55) Constitution of Brazil (1988).

<sup>85</sup> CAT, Report of the Committee against Torture, UN Doc A/56/44 (2001)

<sup>86</sup> Presidência da República, Article 156, Lei N° 11.690, de Junho de 2008, available at: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2007-2010/2008/lei/l11690.htm](http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2008/lei/l11690.htm).

<sup>87</sup> The independent source doctrine is an exception to the exclusionary rule. The doctrine applies to evidence initially discovered during, or as a consequence of, an unlawful search. The attenuation exception permits the use of evidence

The Criminal Procedure Codes from **Chile** and **Colombia** provide that evidence obtained by violating fundamental guarantees shall be legally null, including derivative evidence. In Chile, evidence obtained from acts that have been declared null must be excluded by the judge in trial.<sup>88</sup> Article 455 of the Colombian Criminal Procedure Code includes the criteria that judges should consider regarding the nullity of derivative evidence (namely, attenuation principle, independent source).<sup>89</sup>

In **Costa Rica** and **Dominican Republic**<sup>90</sup>, laws stipulate that evidence can only be used if it was obtained through lawful means. However, in **Costa Rica** the Criminal Procedure Code also mentions that information extracted under torture, ill treatment and other means of coercion can be used during the proceedings if it benefits the defendant.<sup>91</sup> In **Ecuador**, the Criminal Procedure Code provides that evidence cannot be admissible if they were obtained under torture or by any other means that undermines the will of the person. The Comprehensive Criminal Code of Ecuador also includes the principle of exclusion which establishes that evidence obtained through violation of the human rights contained in the Constitution, and customary international law, shall be dismissed.<sup>92</sup>

In **El Salvador**, Article 93 of the Criminal Procedure Code specifies the prohibition of the use of torture and ill-treatment as way to extract information from a person. Also, in Article 175 the Code provides that only evidence obtained legally is admissible. It also prohibits any ill-treatment, coercion, or measures that undermine the will of a person.<sup>93</sup>

In **Guatemala**<sup>94</sup>, **Panama**<sup>95</sup>, and **Venezuela**<sup>96</sup>, the criminal procedure codes provide that evidence cannot be admitted if it was obtained under torture, threat or through human rights violations. The inadmissibility of derivative evidence is also included in Article 17 of the Criminal Procedure Code of **Panama**.<sup>97</sup> The inadmissibility of evidence obtained through human rights violations is enshrined in the Criminal Procedure Code of **Honduras**<sup>98</sup>, **Paraguay**<sup>99</sup> and **Mexico**.<sup>100</sup> Article 8 of the Criminal Procedure Code of **Peru** provides that evidence can be admissible if it is obtained through legal proceeding. It also provides that judges shall not use evidence obtained directly or indirectly from human rights violations.<sup>101</sup> In **Mexico**, according to the General Law to Prevent, Investigate and Punish Torture (2017),

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discovered through misconduct if the connection between the misconduct and the discovery of the evidence is sufficiently weak.

<sup>88</sup> Article 276 Criminal Procedure Code of Chile (2000).

<sup>89</sup> See footnote 74 above.

<sup>90</sup> Article 26 Criminal Procedure Code of Dominican Republic (2007).

<sup>91</sup> Article 181, Criminal Procedure Code (1996).

<sup>92</sup> Article 454 (6), Comprehensive Criminal Code of Ecuador (2014).

<sup>93</sup> Article 175 Criminal Procedure Code of El Salvador (2001).

<sup>94</sup> Article 183 Criminal Procedural Code of Guatemala (1992).

<sup>95</sup> Article 17 Criminal Procedural Code of Panama (2008).

<sup>96</sup> Article 197 Criminal Procedure Organic Code (1998).

<sup>97</sup> Article 17 Criminal Procedure Code of Panama (2008).

<sup>98</sup> Article 200 Criminal Procedure Code of Honduras (2000).

<sup>99</sup> Article 174 Criminal Procedure Code of Paraguay (1998).

<sup>100</sup> Article 264 National Code of Criminal Procedure (2014).

<sup>101</sup> Article 8 of the Criminal Code of Peru.

if the judge identifies that evidence was obtained under torture he/she must file a complaint to the prosecutor's office.<sup>102</sup>

## V. Accountability and remedies

### a. Redress

#### Article 14 of the UNCAT

*1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.*

*2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.*

The constitutions, criminal codes and relevant legislation of all the Latin American States covered by this research contain one or more provisions on redress. It is worth mentioning that some of these provisions are not torture specific but they nonetheless benefit victims of torture to receive appropriate redress. Even though States shall provide for all forms of reparation in legislation, these forms vary from one State to another.

Most Caribbean States provide for remedies for human rights violations in their national constitutions, which would also be applicable to victims of torture in those States that contain a constitutional provision against torture. In addition, **Antigua and Barbuda**, in copying the entirety of the UNCAT into the schedule to its Suppression of Torture Act, has also incorporated article 14.

The Criminal Code of **Argentina** provides that condemnatory sentence may order for restitution, compensation for moral damage and the payment of litigations costs for victims of crime.<sup>103</sup> Victims and their families could pursue criminal prosecutions for human rights abuses through the initiation of a criminal procedure.<sup>104</sup> The Civil Code of **Argentina** provides that the perpetration of any crime gives rise to an obligation to repair the damages caused to

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##### Primary elements

The right to redress for victims of torture is to be included in national legislation.

Forms of reparation in national legislation are to encompass restitution, compensation, rehabilitation, satisfaction and guarantee of non-repetition.

The term victim is to encompass not only the immediate victim, but also his or her family and dependents.

<sup>102</sup> Article 53 of the General Law to Prevent, Investigate and Punish Torture (2017).

<sup>103</sup> Article 29 Criminal Code of Argentina (article included in 1999 through Act N° 25. 188) available at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/60847/texact.htm>.

<sup>104</sup> Article 174 Criminal Procedure Code of Argentina.

the direct victim and to any other person who may have suffered as a consequence.<sup>105</sup> A number of other laws in **Argentina** have supported the right of persons to a remedy.<sup>106</sup>

In **Bolivia**, Article 113 of the Constitution stipulates the right to reparation and the right to compensation. In 2004, Bolivia enacted Act N° 2640 which provided special compensation for victims of political violence during periods of unconstitutional government. In 2013, Bolivia enacted Act N° 464 to create the plurinational service for the assistance of victims of crime.<sup>107</sup> In 2016, a bill was promulgated creating a commission of truth to investigate cases of enforced disappearance, torture, arbitrary detentions and sexual violence committed in Bolivia during the period 1964-1982.<sup>108</sup>

In **Brazil**, the main laws regarding reparations are Act N° 9.140 /1995; this act was modified by the Act N° 10.559 /2002 and Act N° 10.875/2004. In 1995, Brazil enacted Act N° 9.140 in which it recognized its responsibility for acts of torture that took place during the time of the military regime. This Act also created the Special Commission on Political Deaths and Disappearances which published its final report in 2007.<sup>109</sup> The Federal Act N° 10.559/2002, known as the Legal Regime of Politically Amnestied contained two procedural steps to comply with the constitutional reparation mandate: first the declaration of political amnesty contingent on an examination of the facts and provisions in cases of persecution. The second step was the granting of financial reparation.<sup>110</sup> The reparation commissions were created between 1995 and 2002, for instance the Amnesty Commission, which was formed in 2001, aimed to offer reparation to victims by the acts of exception for instance, torture.<sup>111</sup>

In **Chile**, every offence is followed up by a criminal proceeding in order to investigate the punishable act and punish the person responsible for it, as well as civil proceedings to provide redress for the civil consequences of the offence.<sup>112</sup> In practice, the Code of Criminal Procedure provides that the prosecutor might promote, during the criminal proceeding, mechanisms which facilitate redress for victims.<sup>113</sup> This duty is separate from the civil claim that the victim may bring against the perpetrators. The Code also allows the victim to file a civil action for restitution.<sup>114</sup>

In 1992, Law No. 19.123 created the Chilean National Corporation for Reparation and Reconciliation. Its role was to coordinate, implement and promote the actions necessary to comply with the recommendations contained in the report of the National Commission of

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<sup>105</sup> Article 1.079 Civil Code of Argentina.

<sup>106</sup> Law 23,466 provided pensions for families of persons disappeared; Law 24,043 provided compensatory damages for persons who were arrested on orders from the National Executive Power.

<sup>107</sup> Act N° 464 (19 December 2013) available at: <http://sepdavi.justicia.gob.bo/arc/Ley%20464.pdf>.

<sup>108</sup> Act N° 879 Law of the Commission of Truth (23 December 2016).

<sup>109</sup> IACHR, Report N° 80/12 Petition P 859-09 Vladimir Herzog et al Admissibility Brazil (8 November, 2012)

<sup>110</sup> Abrao, Paulo and D. Torelly, *Brazil's Persistent Amnesty and its Alternatives for Truth and Justice*, Cambridge University Press (2012) p.155.

<sup>111</sup> Ibid.

<sup>112</sup> ICRC, Customary IHL Chile, available at: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2\\_cou\\_cl\\_rule150](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_cou_cl_rule150).

<sup>113</sup> Article 6 Code of Criminal Procedure of Chile.

<sup>114</sup> Article 59 Code of Criminal Procedure of Chile.

Truth and Reconciliation.<sup>115</sup> In 2004, Law No. 19.992 was passed, which established an administrative reparation program for victims listed in the Valech Commission. The reparation measures include “a monthly pension or a one-time bonus payment if the person is already the beneficiary of other reparations, access to health services for the victim and his or her next of kin and, access to education or for one of their grandchildren to apply for a special scholarship”.<sup>116</sup>

In 2007, the CAT highlighted the establishment of the National Commission on Political Prisoners and Torture in **Chile**. One of the main duties of the Commission was to propose to the President of the Republic forms and modes of reparation that could be granted to torture victims.<sup>117</sup>

In 2013, **Ecuador** adopted the Act on Victims Redress and the Prosecution of Grave Human Rights Violations and Crimes against Humanity that Occurred in Ecuador between 4 October 1983 and 31 December 2008.

In 2003, **Guatemala** approved the Executive Decree 258-2003, which created the National Reparations Program, as an agency responsible for providing redress to the victims of the armed conflict. In 2014, the State reported to the IACHR through this program Guatemala has spent approximately USD 94 million, mainly in economic compensation.<sup>118</sup>

In the Criminal Procedure Code of **Honduras**, civil action for compensation is independent from criminal procedure.<sup>119</sup> In Article 432 the Code allows the victim and his/her successors to demand restitution and compensation.<sup>120</sup> As at 2016, a bill on comprehensive compensation for victims of human rights violations in **Honduras** is pending. This bill was submitted to the Congress first on 26 May 2010 and later, in December 2013 by the Ministry of Human Rights, Justice.<sup>121</sup>

The Constitution of **Mexico** provides that in criminal proceedings, the prosecutor will have the obligation to request reparation. The victim and the defendant are able to demand reparations directly. In 2013, **Mexico** enacted the General Victims Act (amended in January 2017), which guarantees the right to redress of victims of human rights violations, including torture and ill-treatment. The Act created the National Victims Assistance System.<sup>122</sup>

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<sup>115</sup> Shelton, *Dina Remedies in International Human Rights Law*, Oxford (2015) p. 125.

<sup>116</sup> Chile, Act N° 19.992, (1992).

<sup>117</sup> CAT, Addendum of the fifth periodic reports of States parties due in 2005 Chile, UN DOC CAT/C/CHL/5 § 71-72.

<sup>118</sup> IACHR, Situation of Human Rights in Guatemala (31 December 2015) § 446.

<sup>119</sup> Article 25 Criminal Procedure Code of Honduras.

<sup>120</sup> Article 432 Criminal Procedure Code of Honduras.

<sup>121</sup> CAT, Concluding observations on the second periodic report of Honduras, UN DOC CAT/C/HND/CO/2 §41.

<sup>122</sup> HRC, Report of the Special Rapporteur on torture Addendum Mission to Mexico, UN DOC A/HRC/28/68/Add 3 ( 29 December 2014).

**b. Amnesties, and statutes of limitation**

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**Primary elements**

National legislation on amnesties and immunities are to preclude torture.

National legislation is not to extend statute of limitations to the crime of torture.

Amnesties are generally considered incompatible with the duty of States to investigate acts of torture. The CAT has stated: *"In order to ensure that perpetrator of torture do not enjoy impunity, (States parties must) ensure the investigation and, where appropriate, the prosecution of those accused of having committed the crime of torture, and ensure that amnesty laws exclude torture from their reach"*.<sup>123</sup> The constitutions of **Ecuador** and **Brazil** expressly provide that amnesties will not be considered for the crime of torture. In **Mexico** the anti-torture law stipulates that amnesties are not possible for the crime of torture.<sup>124</sup>

In relation to statutes of limitations, likewise the CAT has stated that no statutes of limitations should be available for the crime of torture, taking into account the extreme gravity of the crime and that many victims do not come forward until much later. The Criminal Code of **El Salvador** provides that the crime of torture shall not have statutes of limitations; while the Constitutions of **Bolivia**<sup>125</sup> and **Paraguay**<sup>126</sup> include that torture bears no statute of limitations.

<sup>123</sup> CAT, Concluding Observations on Azerbaijan, UN Doc. A/55/44, 1999, §69(c). See also CAT, Concluding Observations on Senegal, UN Doc. A/51/44, 1996, §117.

<sup>124</sup> Article 17, General Law to Prevent, Investigate and Punish Torture

<sup>125</sup> Article 111 Constitution of Bolivia (2009).

<sup>126</sup> Article 5, Constitution of Paraguay (1992).

**Annex 1.** Latin American and Caribbean status of ratification Universal Human Rights Treaties<sup>127</sup>

<b>Latin American Countries</b>					
<b>N°</b>	<b>Country</b>	<b>CCPR<sup>128</sup></b>	<b>UNCAT<sup>129</sup></b>	<b>OPCAT<sup>130</sup></b>	<b>CEDAW<sup>131</sup></b>
1	Argentina	R/A1968	R/A 1986	R-2004	R-1985
2	Bolivia	R/A1982	R/A 1999	R-2006	R-1990
3	Brazil	R/A1992	R/A 1989	R-2007	R-1984
4	Chile	R/A1972	R/A1988	R-2008	R-1989
5	Colombia	R/A1969	R/A1987		R-1982
6	Costa Rica	R/A1968	R-1993	R-2005	R-1986
7	Ecuador	R/A1969	R-1988	R-2010	R-1981
8	El Salvador	R/A1979	R-1996		R-1981
9	Guatemala	R/A1992	R-1990	R-2008	R-1982
10	Honduras	R/A1997	R-1996	R-2006	R-1983
11	Mexico	R/A1981	R-1986	R-2005	R-1981
12	Nicaragua	R/A1980	R/A2005	R/A2009	R/A1981
13	Panama	R/A1977	R-1987	R-2011	R-1981
14	Paraguay	R/A1992	R-1990	R-2005	R-1987
15	Peru	R/A1978	R-1988	R-2006	R-1982
16	Uruguay	R/A1970	R-1986	R-2005	R-1981
17	Venezuela	R/A1978	R-1991		R-1983

<b>Caribbean Countries</b>					
<b>N°</b>	<b>Country</b>	<b>CCPR</b>	<b>UNCAT</b>	<b>OPCAT</b>	<b>CEDAW</b>
1	Antigua and Barbuda		R-1993		R-1989
2	Bahamas	R-2008	S-2008		R-1993
3	Barbados	R-1973			R-1980
4	Belize	R-1996	R-1986	R-2015	R-1990
5	Cuba	S-2008	R-1995		R-1980
6	Dominica	R-1993			R-1980
7	Dominican Republic	R-1978	R-2012		R-1982
8	Grenada	R-1991			R-1990
9	Guyana	R-1977	R-1988		R-1980
10	Jamaica	R-1975			R-1984
11	Saint Lucia	S-2011			R-1982
12	Saint Vincent and the Grenadines	R-1981	R-2001		R-1981
13	Suriname	R-1976			R-1993
14	Trinidad and Tobago	R-1978			R-1990

R/A ratification/accession

S- signature

Latin American and Caribbean status of ratification Inter-American Human Rights Treaties<sup>132</sup>

<sup>127</sup> UN, Status of ratification interactive dashboard, (last accessed November 2016).

<sup>128</sup> International Covenant on Civil and Political Rights.

<sup>129</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>130</sup> Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

<sup>131</sup> Convention on the Elimination of All Forms of Discrimination against Women.

<sup>132</sup> IACHR, Annual Report 2015, p.3 (last accessed November 2016).

## Overview of anti-torture legislation in Latin America and the Caribbean

<b>Latin American States</b>					
N°	Country	ACHR <sup>133</sup> R/A	IACPPT <sup>134</sup> R/A	Convention Belem do Para <sup>135</sup> R/A	Acceptance of Jurisdiction of the Court
1	Argentina	1984	1988	1996	1984
2	Bolivia	1979	1996	1994	1993
3	Brazil	1992	1989	1995	1998
4	Chile	1990	1988	1996	1990
5	Colombia	1973	1998	1996	1985
6	Costa Rica	1970	1999	1995	1980
7	Ecuador	1977	1999	1995	1984
8	El Salvador	1978	1994	1995	1995
9	Guatemala	1978	1986	1995	1987
10	Honduras	1977		1995	1981
11	Mexico	1981	1987	1998	1998
12	Nicaragua	1979	2009	1995	1991
13	Panama	1978	1991	1995	1990
14	Paraguay	1989	1990	1995	1993
15	Peru	1978	1990	1996	1981
16	Uruguay	1985	1992	1996	1985
17	Venezuela <sup>136</sup>	1977	1991	1995	1977

<b>Caribbean States</b>					
N°	Country	AC R/A	IACPPT R/A	Convention Belem do Para R/A	Acceptance of Jurisdiction of the Court
1	Antigua and Barbuda			1998	
2	Bahamas			1995	
3	Barbados	1981		1995	2000
4	Belize			1996	
5	Cuba				
6	Dominica	1993		1995	
7	Dominican Republic	1978	1986	1996	1999
8	Grenada	1978		2000	
9	Guyana			1996	
10	Jamaica	1978		2005	
11	Saint Lucia			1995	
12	Saint Vincent and the Grenadines			1996	
13	Suriname	1987	1987	1992	1997
14	Trinidad and Tobago <sup>137</sup>	1991		1996	1991

<sup>133</sup> American Convention.

<sup>134</sup> Inter-American Convention to Prevent and Punish Torture.

<sup>135</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

<sup>136</sup> Denunciation submitted in September 2012.

<sup>137</sup> Denunciation submitted in May 1998.

**Annex 2.** Latin American and Caribbean legislation approaches to the legal prohibition against torture and ill-treatment

<b>N°</b>	<b>Country</b>	<b>Constitutional Prohibition of torture (article)</b>	<b>Specific Anti-Torture Law (article/year)</b>	<b>Criminal Code (article)</b>	
1	Antigua and Barbuda	Article 7	Suppression of Torture Act (1993)		
2	Argentina	Article 18		Article 144	
3	Bahamas	Article 17 (1)			
4	Barbados	Article 15 (1)			
5	Belize	Article 7		Article 287	
6	Bolivia	Article 15 and Article 114		Article 295	
7	Brazil	Article 5 (III)		Law N° 9 455 (1997)	
8	Chile	Article 19 (1)		Article 150	
9	Colombia	Article 12		Article 178	
10	Costa Rica	Article 40		Article 123 bis	
11	Cuba	Article 58 and 59			
12	Dominica	Article 5			
13	Dominican Republic	Article 42 (1)	Article 105		
14	Ecuador	Article 66	Article 151		
15	El Salvador	Article 2	Article 366		
16	Grenada	Article 6 (1) (i) <sup>138</sup>			
17	Guatemala	Article 19	Article 210 bis		
18	Guyana	Article 141 (1)			
19	Honduras	Article 68	Article 209-A		
20	Jamaica	Article 1			
21	Mexico	Article 24	General Law to Prevent, Investigate and Punish Torture (2017)		
22	Panama	Article 28		Article 156-A	
23	Paraguay	Article 5		Article 309	
24	Peru	Article 2		Article 321	
26	Saint Lucia	Article 5			
27	Saint Vincent and the Grenadines	Article 5			
27	Suriname	Article 9			
28	Trinidad and Tobago	Article 4 (a) and 5 (b)			
29	Uruguay	Article 26	Act N° 18 026 (2006)		
30	Venezuela	Article 46	Special Law to Prevent and Punish Torture and inhuman or degrading treatment or punishment (2013)		

<sup>138</sup> A constitutional referendum was held in on 24 November 2016. All seven proposals were rejected by voters, including a proposal to expand the list of fundamental rights and freedoms.