

# Ill-treatment<sup>1</sup> in the Chilean prison system – an analysis of reports presented by the National Institute of Human Rights (INDH) and their handling by the legal actors

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## Abstract<sup>1</sup>

*Introduction:* Prisons in Latin America are often described as violent and lawless places. This article analyses the Chilean case. We want to find out how complaints of ill-treatment are investigated if the victim is in prison. Our hypothesis is that the response to the phenomenon, both in the prosecution of the perpetrators and in the protection of its victims, does not take into consideration the guidelines established in international standards, especially those contained in the Istanbul Protocol. *Methods:* We analysed a total of 124 complaints of ill-treatment filed by the Chilean National Human Rights Institute (INDH). *Results:* An excessive amount of time elapses between the alleged ill treatment, the filing of complaints, the use of protective measures, and the termination of the cases. There are serious deficiencies in the investigations carried out by the Public Prosecutor's Office, and therefore, most of the complaints are not clarified and end up being shelved. We conclude that, through both the actions of the judges and the prosecutors in the processing of the complaints, when it comes to investigating acts of ill-treatment inside Chilean prisons, the standards of the Istanbul Protocol are not met.

**Keywords:** torture; ill-treatment in prison; Istanbul Protocol

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## Introduction

The Chilean civil-military dictatorship (1973-1990) showed that the border of the prohibition of torture was movable. The dignity of those who held power was worth more than the dignity of those who were deprived of it. We find evidence of this in the report of the National Commission on Political Prisoners and Torture - also known as the "Valech Commission"<sup>2</sup> (hereinafter Valech Report). The report contains a detailed analy-

sis of the different forms of torture used during the last Chilean dictatorship.

Even though this authoritarian period ended more than 30 years ago, its ramifications can still be felt. As the United Nations Special Rapporteur on Torture Alice Jill Edwards put it: "*The period of Pinochet and the torture that was perpetrated left deep imprints on the bodies and minds of all Chileans, even though many of them are now born since the dictatorship and have no living memory of it*" (United Nations, 2023, p. 14).

The transition to a government ruled by democratic principles did not mean that automatically all forms of ill-treatment

2 In honour of Bishop Sergio Valech (1927-2010) who chaired the Commission.

disappeared. Chile is still struggling to move towards a modern state based on solidarity and democratic rule of law. This requires overcoming the traces of institutional culture that still today allow the practices of ill-treatment to be protected in various State institutions.

In this context, prisons<sup>3</sup> are the place where the state deploys its maximum intensity of power and resorts to force in its most diverse expressions. A central element of protection is the absolute prohibition of torture or other forms of cruel, inhuman, or degrading treatment. It is the duty of the state and its agents to guarantee security inside prisons. In addition, the prison system must be prevented from aggravating the “inherent suffering” of imprisonment (Nelson Mandela Rules, 2015, Rule 3). Nevertheless, prison conditions in Chile are seriously lacking in infrastructure, health care, social reinsertion, among others (INDH, 2017, 2018; UDP, 2015; CPT, 2022, p. 15; United Nations, 2023). In some prisons, and according to the United Nations Special Rapporteur on Torture Alice Jill Edwards, the lack of adequate outdoor space and over-crowded dormitory rooms, can be considered inhuman or degrading treatment. (United Nations, 2023, p. 19).

One of the most serious problems is the victimization rates registered inside the penal precincts. Studies indicate that 38.7% of inmates report having suffered physical abuse by prison guards, 44.4% psychological abuse, and 1.2% report having been victims of sexual abuse by an official (Espinoza et al., 2014, p. 265-270). On a comparative level, a prison survey (2013) in six Latin American countries showed that Chile is the country where most prisoners report being beaten inside their prison (around 26%). Of these, 66% claim that prison staff was responsible for the beatings (Sánchez & Piñol, 2015, p. 33). The National Institute of Human Rights (INDH) found in 2017 that 17.5% of prisons had inmates injured by prison staff and 37.5% had complaints of ill-treatment (INDH, 2018, p. 125).

If ill-treatment occurs, states have an obligation to investigate and punish it.<sup>4</sup> There is no exception for the prison system.<sup>5</sup> Persons deprived of their liberty are considered to be a

particularly vulnerable group requiring special protection.<sup>6</sup> Therefore the investigation of allegations of ill-treatment must be prompt, effective, and impartial.<sup>7</sup> The Istanbul Protocol<sup>8</sup> indicates as fundamental principles for any such investigation, competence, independence, adequate resources, promptness, thoroughness, sensitivity to gender, age, disability and similar recognised characteristics, participation of victims, and public scrutiny (Istanbul Protocol, 2022, para. 184). Chile has passed a law criminalising torture and has also set up the National Mechanism for the Prevention of Torture (created by Law No. 21.154 of 25 April 2019).

In our study we want to know how complaints of ill-treatment of persons deprived of their liberty are dealt with in Chile. We are interested in finding out whether the investigations contribute to these acts being punished.

The material of our study consists of 124 complaints filed by the Chilean INDH denouncing acts of ill-treatment in the prison environment. All events occurred between 2018 and 2022. With this information we created a database that allows us to carry out a quantitative analysis. We also tracked the progress of these cases with documents that are publicly accessible on the Chilean judiciary’s website. These electronic files are the basis for our qualitative analysis.<sup>9</sup>

The INDH is an autonomous corporation under public law created for the promotion and protection of human rights in Chile.<sup>10</sup> It assumes functions that in other countries are performed by the Ombudsman.<sup>11</sup> The National Mechanism for the Prevention of Torture (in Chile: CPT or Committee for the Prevention of Torture<sup>12</sup>) acts as a functionally autonomous entity within the INDH.<sup>13</sup> A specific and exclusive function of

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*of the detainee or prisoner, nor the insecurity of the prison or penitentiary establishment can justify torture”.*

3 In the text we refer to prison as encompassing different types of detention centres, such as Preventive Detention Centres (C.D.P.), Female Penitentiary Centres (C.P.F.), Penitentiary Compliance Centres (C.C.P.) (including Education and Work Centres (C.E.T.)), Open Centres, Agricultural Centres, Penitentiary Complexes (C.P.) and High Security Special Units (U.E.A.S.), all of which are under the control of the Chilean Prison Service (Gendarmería de Chile).

4 Arts. 1 and 6 of the Inter-American Convention to Prevent and Punish Torture; Convention against Torture, arts. 4, 12 and 16.

5 Art. 5 para. 2 of the Inter-American Convention to Prevent and Punish Torture expressly states that “[n]either *the dangerousness*

6 See Brasilia Rules, numeral 22. Also: Stippel, J., & Medina, G., P. (2022b, p. 88).

7 United Nations Committee against Torture (2012). *General Comment No. 3*, para. 18.

8 On the changes introduced in the 2022 version See: Pérez-Sales (2022). Available at: <https://tidsskrift.dk/torture-journal/article/view/133932/181392>

9 Information last updated on 31 October 2023.

10 Art. 1 and 2 of Law no. 20.405 of 10 December 2009.

11 Although its creation was proposed as one of the conclusions of the National Truth and Reconciliation Commission (Rettig Report, 1991), it only began to operate in July 2010. Report of the National Truth and Reconciliation Commission: volume 1, volume 2, p. 855. Available here: <https://www.memoriachilena.gob.cl/602/w3-article-94640.html>

12 Created by Law no. 21.154 of 25.04.2019. See: <https://mnpt.cl/>

13 Art. 1 and 5 of Law no. 21.154.

the INDH is to file complaints in respect of acts of torture.<sup>14</sup> This is relevant, because a complaint allows the victim to take a more active role: both during the investigation and in the subsequent criminal proceedings (Barrios, M., 2023, p. 202). The complaint grants the power to qualify the facts or the participation of the accused in a different way than the prosecution. It also allows for proposing additional investigative measures, such as requesting forensic medical examinations or protective measures for the victim.<sup>15</sup>

In our study, we assume that allegations of ill-treatment are not investigated promptly and effectively when the victim is detained in a prison. We think that in practice the standards contained in the Istanbul Protocol are not met when investigating any act of ill-treatment committed inside a prison.

### Methods

We use the term ill treatment as a broad term in the sense given by it by the International Committee of the Red Cross. It uses the term to cover both torture and other methods of abuse prohibited by international law, including inhuman, cruel, humiliating, and degrading treatment, outrages upon personal dignity and physical or moral coercion. See: <https://www.icrc.org/en/document/torture-and-other-forms-ill-treatment-de%EF%AC%81nitions-used-icrc>

We use the analysis of complaints because they provide an account of the facts as perceived by the victim. In addition, the INDH has protocols<sup>16</sup> that ensure a diligent collection of background information on each case. It is stipulated that, before a decision to file a complaint is taken, the respective unit should gather as much information as possible. To this end, officials of the INDH visit the prisons. Here they talk to the victim and ask them to recount the alleged acts of violence suffered. At the same time, the INDH officials are asked to obtain the necessary evidence to support this account. They collect medical records, meet with witnesses, and look for other elements to evaluate the possibility of filing a complaint. Then, they analyse whether the background information indicates a crime within the competence of the INDH. Based on this, the Institute's director must approve the filing of the complaint. This decision will be reported to the Council of the INDH for its knowledge. Following this decision, the lawyers of the respective unit must contact the victims, visit them, and accompany them dur-

ing the entire period of the legal action (Barrios, María, 2023, p. 198-202).

When analysing the complaints, we cannot claim that each affirmation reflects the truth. However, the story is the basis on which criminal prosecution bodies must act. Thus, the diligence of the proceedings can be observed without supposing the truth.

We analysed all the case information available on the web portal of the Virtual Judicial Office.<sup>17</sup> Our research begins with the identification of the case identification number (RIT) to access the virtual file and from there we read the pleadings, applications, resolutions, and precautionary measures online. Subsequently, the information was parameterised according to formal criteria such as the status and procedural situation of the complainant at the time of the alleged facts and behavioural descriptors extracted from them. The quantitative data presented below show the respective results.

Our statistics cannot be taken as representative of the overall dealing with torture and ill treatment cases in Chile. They provide a snapshot of a random sample. This allows us to identify recurrent problems. We can then argue that the cases are not necessarily isolated events but rather show general patterns. The qualitative analysis is then meant to illustrate those patterns. We analysed some of the 124 cases in the light of international norms and jurisprudence. The selection criterion is their representativeness in view of the quantitative results.

### Findings

#### *Quantitative:*

Most of the complaints allege deliberate physical violence (60%). Cases of "violation of dignity" represent about 25%. Table 1 illustrates this result.

There are several cases where both physical violence and violation of dignity were denounced, in one example, we registered the case only in the category that in our opinion represented the main reason for the complaint. The data indicated that the INDH intervenes mostly in cases where acts of physical violence are the main cause of complaints of prisoners.

From a procedural perspective, we found that of the total number of cases analysed, 58% are still pending. Some 31% ended with a decision not to pursue<sup>18</sup>. 2% ended in a conditional suspension of proceedings, oral trial, and in a definitive

<sup>14</sup> Art. 3 no. 5 of Law no. 20.405.

<sup>15</sup> Arts. 111° to 121° and 261 of the Code of Criminal Procedure. Law no. 19.696 of 2000.

<sup>16</sup> Formal instruments through which general instructions for action are given within the INDH.

<sup>17</sup> See: <https://oficinajudicialvirtual.pjud.cl/indexN.php>

<sup>18</sup> When the Public Prosecutor's Office decides to discontinue an investigation (*decisión de no perseverar*), it notifies the judge of its decision not to pursue the proceedings because it has not been able to gather sufficient evidence for a prosecution (art. 248 a. of the Criminal Procedure Act).

**Table 1.** *Description of cases*

Criteria	N	%
Deliberate physical violence	74	60%
Violation of dignity	31	25%
Inhuman and degrading treatment	8	6%
Discrimination	6	5%
Sexual violence	4	2 %
Dark alley	1	1 %
Total	TOTAL 124 CASES	100,00%*

\* The sum after the decimal point has been rounded. Therefore, the total sum is not equal to one hundred.

**Table 2.** *Procedural status/completion form (2018 to 2022)*

Types of termination forms	N	%
Pending* (considers reopening's)	72	58 %
Decision not to pursue	39	31 %
Sentence	5	4 %
Definitive Dismissal	3	2%
Oral Trial at TOP	2	2%
Conditional suspension of proceedings	2	2%
Settlement agreement	1	1%
Total	124	100,00%

dismissal. In one case a reparatory agreement was signed. Table 2 shows this result.

If we analyse these figures in relation to all cases, we find that almost a third of them are archived (31%). This figure is even more worrying if we look at it in relation to the total number of completed cases. In that case, we would have to conclude that about 75% of the closed cases ended in some form of shelving.

In our study the alleged lack of evidence is therefore the main reason hindering prosecution to take place. But the absence of evidence is not evidence of absence. That is precisely the reason why the Istanbul Protocol sets out standards on how

effective legal and clinical investigation and documentation into allegations of torture or ill-treatment should be carried out. Hence the result is particularly worrying. This is true as well in view of the possible outcome of the pending cases. Other research shows similar results.

María Carolina Barrios found that 69% of the complaints filed and closed by the INDH against the prison administration (years 2011-2021) ended up being shelved (Barrios, 2023, p. 215). Drawing on statistical data provided by the Public Prosecutor's Office, we can back this result. According to this information, of all the complaints of ill-treatment investigated by the Public Prosecutor's Office in 2020 in the prison system

(299 in total), more than three quarters (75.91%) were closed due to a lack of evidence. 143 cases (47.83%) using the provisional closure in an early stage of the proceedings; and 84 cases (28.09%) applying the decision not to pursue (Stippel & Medina, 2022b, p. 99).

The latest figures show that almost half of the complaints of ill-treatment (47.83%), did not even come to the attention of a judge. They are closed at an earlier stage applying a discretionary measure (provisional closure) by the prosecutors. Such a procedural shelving in an early stage applies only in the absence of a complaint. From this we could deduce the practical usefulness of the intervention of the INDH. At least it would have the effect that the prosecution does not close the case at the outset. But this positive outcome for the work of the INDH would be worrying for the prosecution and the rule of law. It would imply that only at the insistence of a third party, the prosecution takes some time to investigate crimes committed within the prison system (Stippel & Medina, 2022a). Or in a more colloquial sense, if nobody watches, those cases are closed at once.

This interpretation can be underpinned by the findings of other researchers. Luis Pasará analysed several cases of serious injuries that were closed without further investigation. The alleged crimes did not happen in the context of the prison system. Still Pasará notes that the initiative of the victim seemed to play a decisive role in the prosecution of the case. He considered that when the victim did not insist with the prosecutor's office, the case was destined to be closed, even if it was a crime that did not require action by the party. He finds that the lack of investigative activity in some cases simply showed a lack of interest. (Pasará, 2015, p. 123-125).

The qualitative analysis of several cases in our study will allow us to add nuance. It seems that even the victim's insistence is of little relevance if the case is not of interest to the prosecution. Here, the complaints only delay the decision to close a case without necessarily making the investigations more diligent. Let us return to this issue.

If we analyse the time that elapses between the facts denounced in the complaint and the decision not to pursue, we find that such a measure is adopted on average after 704 days. Table 3 shows this result.

Why does it take, on average, almost two years to interview witnesses, collect video footage from prisons, conduct expert examinations, to mention a few examples? Or from another perspective, if there is no additional work to be done, why is it that prosecutors do not close the case earlier?

**Table 3.** *Time between events and decision not to pursue (n=39).*

Shorter: 161 days (RIT O-770-2019 JG Colina)  
 Longest: 1407 days (RIT O-3476-2020 JG Talca)  
 Average time: 704 days.

It could be argued that there is an undue delay in the conduct of the proceedings (see: Sánchez, 2020), especially if we consider the average duration of other cases. According to the data contained in the Annual Statistical Bulletin of the Chilean Public Prosecutor's Office for 2022, the average case that comes to court was closed after 388 days. If an investigation is closed earlier and without the participation of the judiciary, the average time spent on the investigation was 148 days. Nevertheless, the same source shows that this year an average investigation into torture or ill-treatment with a judicial ending took about 971 days. If the case was closed without a judge, torture, and ill-treatment investigations lasted 634 days. In comparison with all other groups of criminal offences, torture and ill-treatment investigations lasted the longest (Fiscalía, 2023, p. 41).

The long time investigated proofs not necessarily that these cases were the most complex. As well, it might indicate a lack of human resources or qualified knowledge on how to efficiently prove claims of torture and ill-treatment. At least some recent government initiatives and the results of other investigations back the last interpretation. The Ministry of Justice announced (2021) a plan to spend a considerable amount of money on strengthening the implementation of the Istanbul Protocol.<sup>19</sup> Other research finds that the range of forensic medical examination offered does not reflect the extent of current requirements in relation to the need for an assessment using the Istanbul Protocol to establish physical and psychological damage caused by torture (Rosentreter, 2020, p. 51). If this is true, there could also be an issue of priorities. If there are complaints of ill treatment suffered by victims outside prison, these could be of prime importance. This would again be in accordance with our other research on legal practice in Chile (Stippel & Medina, 2022a). The qualitative analysis will provide additional elements to find out whether this apparent delay in the proceedings is proportionate to the complexity of the cases.

In our study we also found that a considerable amount of time elapses between the facts reported and the time when the complaint is filed. The average is 89 days, with 2 days being the

<sup>19</sup> See: <https://www.minjusticia.gob.cl/protocolo-de-estambul-ministerio-de-justicia-anuncia-inyeccion-de-513-millones-al-sml-para-acelerar-los-peritajes-en-causas-de-derechos-humanos/>

**Table 4.** Average time (event and filing of complaint) filtered by descriptors

Type of ill-treatment or torture	Average time spend between the facts and the filing of the complaint (days)
Violation of dignity	130
Deliberate physical violence	81
Sexual violence	78
Inhuman and degrading treatment	69
Discrimination	43
Dark alley	8
Total average time between facts and filing of complaint (in days)	89

shortest<sup>20</sup>, and 765 days<sup>21</sup> being the longest delay. Table 4 shows this result differentiated by descriptor of the facts reported:

The time delay can be explained by both internal and external factors. The process of checking the facts in accordance with the INDH internal protocol takes time. It is necessary to visit the alleged victim in the respective detention centre. In addition, any complaint must be approved by the management of the INDH. It should also be considered that persons deprived of their liberty must first be able to contact the INDH. As a complaint of ill-treatment or torture directly involves the prison administration, victims may be subject to reprisals. Out of fear, they may decide not to report the violence they suffered or, alternatively, they report it belatedly when they feel confident that they can do so (see Stippel, Pérez & Barría, 023). The qualitative analysis of the causes will show some of the difficulties that prisoners may face when reporting acts of torture and ill-treatment in prison.

#### Qualitative analysis

##### *Cases of deliberate physical violence:*

A case of physical abuse is denounced in a complaint filed on 10 July 2019 before the Court of Guarantee<sup>22</sup> of Colina.<sup>23</sup> It contains the following facts:

“On 25 March 2019, Mr. VM was sent by other inmates to look for a “pelotazo” (throwing of drugs from the outside to the inside of the prison unit), which he did not pick up because the prison’s security camera focused on it. In this context, a prison official appeared [...] who took him to an isolated office, forced him into a punishment position, and began to assault him, whipping him with an iron - part of a bed frame - at least 30 times, on his waist, back and arms, bleeding profusely, while saying “maldito culiao” (dam asshole), “te metiste con el equivocado” (you messed with the wrong one). The beating lasted approximately 10 minutes, leaving the victim lying on the floor, and then transferring him to the prison infirmary, claiming that the inmate had assaulted him, a claim that is false.

[...] For his part, the victim remained in the infirmary of the prison unit for seven days in “isolation”, being prevented from contacting his lawyer and even denied the possibility of speaking to the judge when he visited the prison. [...]”

20 For example, in Case RIT 646-2021 of the Court of Letters and Guarantee of Aysén.

21 Case RIT 7954-2022 of the Juzgado de Garantía de Concepción. It is still in the judicial process.

22 The Courts of Guarantee (*juzgados de garantía*) were introduced at the beginning of the century (2001-2005) as part of the reform of the criminal procedure. They are asked to guarantee the rights of the criminal defendant during the procedure (art. 14 Código Orgánico de Tribunales).

23 Case RIT 3739-2019, Colina Guarantee Court.

The complaint was declared admissible on 15 July 2019. On January 6<sup>th</sup>, 2020, the judge determined the investigation should be concluded in 90 days. The same resolution ordered precautionary measures to be in place. The defendant is banned from approaching the victim and forbidden to leave the country. On the 8<sup>th</sup> of May of 2020, on request of the prosecutor, the judge authorized the investigation to take 60 additional days. The same happened on the 31<sup>st</sup> of July. The judge again authorized an additional 60 days. On the 23<sup>rd</sup> of December 2020, the judge summons the intervenient to come to a court hearing meant to close the investigation. This was going to happen by videoconference. The digital court hearing takes place on the 25<sup>th</sup> of February of 2021. As the case is being closed, the INDH requests for a reopening. They argue that, thus far, no forensic medical examination, following the standards of the Istanbul Protocol, had been realized. This is a standard request in most of the complaints presented by the INDH. The judge rules to discuss the reopening in a videoconference on the 12<sup>th</sup> of April of 2021. This day the prosecutor communicates his decision not to pursue the investigation. The INDH manifests its opposition as several necessary investigative steps have not been undertaken. Then, on 22<sup>nd</sup> of July 2021, the judge decides to call for a new hearing to discuss an extension of the period of investigation. On the 7<sup>th</sup> of September 2021 the prosecutors' request an additional 20 days. Nevertheless, the representative of the INDH opposes this additional time and the judge decides not to grant it. In consequence the prosecutor issues a resolution stating that they decided not to pursue in the investigation. This time the judge invites to a hearing to take place the 25<sup>th</sup> of January 2022. On the 24<sup>th</sup> of January the court issues a resolution that due to a lack of judges, the court hearing will be postponed to the 19<sup>th</sup> of May 2022. On this date, the court accepts the Public Prosecutor's Office's decision not to pursue the investigation. In the same resolution, the precautionary measures against the defendant are lifted. More than two years had elapsed between the alleged facts and the date of closure. The grounds for the decision are not recorded in the minutes uploaded to the Virtual Judicial Office. However, it is surprising that the decision was taken.

The facts described above show a case where violence is apparently used as a form of punishment. The official has intentionally inflicted pain by means of blow ("lashes") with iron to punish the victim for his alleged participation in an illegal act (the "*pelotazo*"). Considering the alleged duration of the beatings and the circumstances in which the victim falls to the ground and must be transported and treated in the infirmary, there can be no doubt that the caused suffering is intentional and illegitimate. Everything indicates that we are dealing with an act

of torture. As the alleged victim was treated in the infirmary, there should be a medical record of the treatment. It can also be assumed that there is video footage that can verify the journey of the person and the officer involved before being placed in isolation. It is difficult to imagine that it would take two years to collect such material and interview possible witnesses. In contrast to investigations outside prison, potential witnesses are either locked up or are public officials whose names should be known. In this context, and despite the seriousness of the complaint, international standards have not been met in the handling of the case (see Istanbul Protocol, 2022, parr. 193). Instead of determining at an early stage that the investigation would be unsuccessful, based on a record gathered without delay, the prosecuting body took years to reach that conclusion. Even more worrisome is that almost two years after the alleged torture, apparently no forensic medical examination had been realized. According to international standards this should have been done immediately (Istanbul Protocol 2022, parr. 196). The complaint by the lawyer of the INDH also shows that after all this time they still did not count on all information relevant to the investigation (Istanbul Protocol 2022, parr. 197). Similar violations to international standards can be observed looking at the precautionary measures ordered by the judge. It took him half a year after becoming aware of the case (15.07.2019) to issue precautionary measures (06.01.2020). This would be more than enough time to expose the victim to adverse consequences of his complaint. As he is still detained in the same prison facility, it would be very easy for the prison officer to threaten the victim and maybe force him to retract his complaint (see Istanbul Protocol 2022, parr. 196).

Despite all this, the decision not to pursue does not even indicate whether the Prosecutor's office, in making the decision, considered bringing a less severe offence, or whether it requested the initiation of disciplinary proceedings against the official involved. This omission also contravenes international guidelines (Istanbul Protocol, 2022, para. 256).

#### *Physical abuse for asking for explanations.*

A complaint filed on 14 July 2020 in the Vallenar Court of Guarantee was handled in a different way. The case concerned the following facts:

"On 3 July 2020 [...] when these medicines were requested, a prison official threw them from "the fence", causing them to fall to the ground, and because of this, he was told of this action and asked why this attitude had occurred. Just for asking for explanations, the victim indicates that he is taken out of his yard, by means of insults from the

same person, and is taken to the Internal Guard sector..., where he is beaten with fists and with the service baton. In various parts of his body, especially on his back, there are blows that leave marks on his body and which are recorded in photographs that are accompanied in a separate part of this presentation. The beating lasted a couple of minutes, but it was not “something quick”, and he was evidently unable to defend himself. After the beating, he was returned to his yard without receiving medical attention. He says that he asked to be taken to check for injuries, which did not happen either, and has not happened at least up to the filing of this action”<sup>24</sup>.

On 21 July 2020, the court decreed protective measures<sup>25</sup> for the victim. It stipulates that the prison official responsible must be prevented from exercising “*direct actions with regard to the surveillance and custody*” of the victim, in addition to the “act that *“he may not take any administrative decision with regard to the aforementioned inmate in the light of his position”*”. On 5 May 2021, the court decreed the definitive dismissal of the complaint. It considers that “*from the dynamics of the facts that have been observed, the court understands that a circumstantial situation will have arisen; that in the end it does not violate the essence of the internal regime of the accused, together with the fact that after the respective hearing of precautionary measures of guarantee, no new incidents or constraints occurred with respect to this person [...]*”<sup>26</sup>.

This case allows us to highlight the role played by the judge in this case. The Istanbul Protocol stipulates that judges must be particularly vigilant in exercising a supervisory role within the scope of their functions to ensure the physical and psychological integrity and well-being of any person deprived of liberty. (Istanbul Protocol, 2022, parr. 258). It can hardly be argued that the judge in this case was “particularly vigilant”. Although the judge takes the decision to order protective measures, he does so only on the sixth day after the case comes to his attention. He then describes what happened as “a circumstantial situation”. As if the blows with fists and batons were a circumstantial part of a custodial sentence. A judgement that demonstrates a perception of the purpose of a custodial sentence that contradicts the parameters of a democratic state governed by the rule of law. The same is true when considering that after the hearing there have been no new incidents or harassment of the victim, implying that the crime of torture and ill-treatment is

only punishable in the case of recidivism. Contrary to this argument, the Inter-American Court of Human Rights presumes that the State is responsible for torture, or cruel, inhuman, or degrading treatment suffered if the authorities have not carried out a serious investigation of the facts. Therefore, the burden of proof is on the State to provide a satisfactory and convincing explanation of what happened and to refute the allegations of its responsibility<sup>27</sup> (Istanbul Protocol, 2022, parr. 71). Such an obligation exists from the first allegation and not only if there are no “further incidents”.

*Physical abuse for failure to comply with orders.*

Another form of physical mistreatment is denounced in the Juzgado de Garantía de Arica on 14 August 2020<sup>28</sup>. The complaint relates the facts as follows:

“JAP, accused on remand detention..., on 10 April 2020, at approximately 8.30 a.m., was taking a shower inside the bathrooms ..., when an altercation broke out in the courtyard between inmates of that unit, which was controlled by ...officers T and G, who removed the protagonists of the fight from the place. However, a few minutes later, a group of officers from the Specialised Services Unit USEP of the prison administration... entered the yard, “shouting “get out, get out, everybody”. JAP was showering naked and when he heard these orders, he put his hands up on his head as a sign of submission and did not come out immediately because he was naked and because there was a female officer at the entrance to the showers. Immediately, Lieutenant JLGM entered the shower area, pointed at him from a distance of approximately three metres with a compressed air gun and fired a tear gas canister directly into his face, hitting him in the left cheekbone, 1 cm from his eye. Lieutenant JLGM then said: “I’ve already collected my money”. JAP was screaming in pain, he could not see well because of the impact, and still naked he went to the line of inmates that the officers had ordered, and from there another officer helped him to get out and took him to the Prison Complex infirmary to have his wound treated. [...] On his return..., he was ordered to remain in the infirmary for a few days and was then returned to “his module”. (emphasis added).

This case was declared admissible on 14 August 2020. Subsequently, there are no other documents in the digital file. On

24 RIT 1831-2020 of the Vallenar Court of Guarantee.

25 The Vallenar Guarantee Court on 21 July 2020, i.e. only 6 days after declaring it admissible.

26 Vallenar Guarantee Court held on 5 May 2021.

27 Inter-American Court of Human Rights (IACHR), *Juan Humberto Sánchez v. Honduras*, Judgment, 7 June 2003, para. 111; and *Baldeón-García v. Peru*, para. 120.

28 Case RIT 7245-2020.



28 July 2023, a hearing was held for the Public Prosecutor's Office to communicate that it was not pursuing the proceedings. However, the Court replies that "[t]he Public Prosecutor's Office communicates the closure of the investigation and the decision not to pursue the proceedings. The Court rejects the Public Prosecutors Office's communication". Thus, to date, the case has not been formally terminated.

However, for the prosecution, the case is closed. According to internal regulations (instruction<sup>29</sup> of the National Prosecutor), the decision not to prosecute does not require judicial approval. The respective resolution is to be understood as a communication of the exclusive decision of the prosecuting body.<sup>30</sup> Therefore, the highest authority of the Prosecutor's office instructs all prosecutors to reopen a case only when there is new information that justifies it and which does not stem from an autonomous investigation by the prosecutor.<sup>31</sup> In other words, the rejection pronounced by judges generally has no practical effect. Only if the complainant (here the INDH) objects to the decision, the case is referred to the superior prosecutor. If the latter reconfirms the decision, which is most likely in view of the internal regulations, the complainant is only left with the task of bringing the accusation before the judge on his own.<sup>32</sup> He would be accusing the possible perpetrator on his own account (Correa Robles, C., 2020, p. 167). This procedural solution is not appropriate in investigations of torture and ill-treatment. The victim is left alone against the same state whose officials allegedly violated his or her rights.

If we look at the facts of the case, we can first note that the definition of torture in the Convention against Torture excludes pain or suffering resulting only from, inherent in, or incidental to lawful sanctions (Istanbul Protocol, 2022, parr. 3). In this context, the Nelson Mandela Rules authorise the use of force under certain conditions. One of these conditions is that the use of the respective instruments must be provided for by law (Nelson Mandela Rules, 2015, rule 47). Moreover, it is only justified if no other form of control is effective and, even then, the least injurious means should be used (Nelson Mandela Rules, 2015, rule 48 No. 1 (a) and (b)). It could be argued that the prisoner failed to comply with an order and therefore force had to be used. However, the use of tear gas in prison is not provided for in any law. There are only regulatory and in-

ternal rules that refer to the rational use of force without referring to the different instruments involved and the situations that would justify their use.<sup>33</sup> Worse still, these internal rules are not public knowledge, let alone auditable. In Chile we are faced with a legal vacuum. However, it would be impossible to justify firing a tear gas canister in the face for failure to comply with an order immediately. There are other less harmful means that could have been used to make a naked person comply with an order, such as asking the female officer to move away from the entrance to the shower. From that perspective, the conduct complained of should be dealt with in accordance with the standards provided by the Istanbul Protocol.

On the other hand, we can highlight the unlawfulness of forcing a prisoner to stand in a line naked, especially if there are persons of the opposite sex present.<sup>34</sup> Such an act constitutes a form of cruel, inhuman or degrading treatment, especially if it is intended to humiliate the victim.<sup>35</sup> The Istanbul Protocol recalls that sexual violence against men highlights the vulnerability and powerlessness of the victim, challenging and conflicting with his ideas of masculinity. From this perspective, it is not understandable why no measures for the protection of the victim are on record. These measures could even have been imposed by the judge himself at the time of taking cognizance of the case through the complaint. However, no actor seems to have perceived the need to protect a victim of sexual violence.

#### *Dark alley*

##### *Collective punishment.*

A complaint filed in the Temuco Guarantee Court<sup>36</sup> on 30 December 2021 denounces a form of illegitimate constraint that has been called "dark alley" (Valech Report 2005, p. 239). According to the facts described in the complaint of 30 December 2021, the following happened:

33 Exempt Resolution no. 9.681. See: (Tapia Silva, M. 2023, p. 144ff).

34 In their study Albano et al. (2023) highlight that sexual abuse has been consistently identified as a high frequency problem in prisons. They define sexual abuse broadly and include mental sexual violence, such as forced nudity, sexual humiliation, sexual threats and forced submission to witness sexual abuse. They find that the prevalence of sexual abuse is high among victims of abuse in prison. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9956078/>

35 Special Rapporteur on Torture (2010), *Report A/HRC/13/39/Add.5*, para. 32. The IACtHR has highlighted that the degrading character is also expressed in actions that seek to "humiliate, degrade and ... break physical and moral resistance". Inter-American Court of Human Rights (1997). *Case of Loayza Tamayo v. Peru*, para. 57.

36 RIT 11449-2021.

29 Oficio FN no. 060/2014 of 23.01.2014. Available here: [http://www.fiscaliadechile.cl/comisionjuridica/docu/inst/of\\_60.pdf](http://www.fiscaliadechile.cl/comisionjuridica/docu/inst/of_60.pdf)

30 Oficio FN no. 060/2014 of 23.01.2014, point 2.3.d.

31 Oficio FN no. 060/2014 of 23.01.2014, point 2.3.e.

32 Art. 258 para. III. and IV. CPC

“The victims state that, on 22 December 2021, at approximately 14:00 hours, a search was carried out [...] 00 hours, a search procedure was carried out [...] They state that the reason for this action by the prison guards was due to the fact that at that time there was an argument with an official who denied them the daily yard time they were entitled to [...]. In this context, the victims say that the alarms of the prison unit immediately went off and approximately 20 prison guards entered their dormitory, proceeded to throw pepper spray in their faces and beat them with their service batons, kicking them and hitting them with their fists on their bodies. Subsequently, they ordered all the inmates to leave the dormitory and to go down the staircase leading to the corridor of the “fifth gate”. On that route, they indicate that the prison guards **formed a tunnel** through which the victims passed, **while they insulted and beat them**, and once they were down the stairs, they threw objects at their faces, including bottles. Once they had all been reduced, in the corridor of the “fifth gate”, they report that officials continued to **throw pepper spray** at them while they were walking among them, even though there was no resistance to the procedure, which had already been completed. Finally, the victims report that during the search procedure **they were forced to pull down their trousers and underwear** to their calves, **while they had to perform squats in front of other inmates and prison guards.**” (emphasis added)

In this case, the Prosecutor’s Office has decided to communicate the decision to close the case (not to pursue). The court therefore set the respective hearing for 19 July of 2023. At this hearing it was finally decided to close the case (not to prosecute). The reasons were not reproduced in the minutes uploaded to the Virtual Judicial Office. However, it should be noted that the Public Prosecutor’s Office took more than a year and a half to reach this decision, despite the existence of multiple victims.

The Prosecutor’s decision not to prosecute is surprising, especially given the international and Chilean experience. This form of unlawful coercion has a long history; very similar facts are described in a case decided by the Inter-American Court of Human Rights. In the case of the *Miguel Castro Castro Prison v. Peru*<sup>37</sup> the “dark alley”<sup>38</sup> is described as a “*method of punishment*

*that consists of forcing the detainee to walk in a double line of prison guards armed with blunt instruments such as sticks, and metal or rubber batons. The prisoner receives multiple blows as he advances, falls to the ground and then stands up again and receives more blows until he reaches the other end of” the alley*”<sup>39</sup>. In that case the court-retained expert found that “*this method of collective punishment, “by its severity and physical and psychological consequences [ , is] consistent with torture*”.<sup>40</sup> In Chile, the Valech Report also describes the so-called “dark alley” under similar conditions. According to this document, this method consisted of “*making the detainees pass between two rows of soldiers who beat them with their feet, fists and butts*” (Valech, 2005, 239). We also have a recent video that shows precisely this type of action by prison guards after a raid.<sup>41</sup>

There are therefore both international precedents, as well as national experiences that allow us to think that what has been denounced is reasonable. However, the Public Prosecutor’s Office, using its exclusive prerogative<sup>42</sup>, decided to close the case. The Istanbul Protocol stipulates that prosecutors must exercise their discretion in a way that fully respects the prohibition of torture in all judicial proceedings. It further stipulates that they should not become complicit in facilitating or committing acts of torture or ill-treatment or in impunity for such acts (Istanbul Protocol, 2022, parr. 255). From this perspective, it seems necessary to make very restrictive use of the power not to pursue an investigation into acts that could constitute torture. On the contrary, we see that 31% of all the cases (in 39 out of 124 cases) that form the basis of our research have been resolved in application of this procedural tool.

#### *Violation of dignity*

##### *Forced position for breaking the “code of silence”.*

Another form of torture or ill-treatment recurrent in the complaints is forced posturing (Istanbul Protocol, 2022, parr. 488). A complaint filed in the Court of Guarantee of Victoria<sup>43</sup> on 2

39 I/A Court H.R. Criminal *Miguel Castro Castro v. Peru*, p. 41.

40 IACHR Criminal Court *Miguel Castro Castro v. Peru*, para. 297. The IACHR Report also describes a similar “welcome” practice in a prison in Peru and El Salvador. This consisted of “*subjecting inmates who entered to beatings with sticks and prods (electric batons), after forcing them to undress and take cold water baths, in order to make them feel their duty to submit to prison discipline*” IACHR Report, para. 391.

41 See the video of 26 October 2022. Available here: <https://www.theclinic.cl/2022/10/27/denuncian-violento-actuar-carcel-puente-alto/>

42 Regarding the discussion on the legal quality of the decision, see: Correa Robles, C., (2020, p. 164).

43 RIT 1083-2021 of the Court of Guarantee of Victoria.

37 Available at: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_160\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_160_esp.pdf)

38 In the US Thomas Murton describes a similar method called “run the gauntlet” (Murton, T., 1976, p. 70).

September 2021 denouncing the crime of torture<sup>44</sup> states the following:

“... between 16 February and 24 April 2021, prison guards shackled him by his right foot to the bed where he slept, according to them as a security measure, to prevent him from escaping, spending approximately 20 hours a day enduring this situation, from 15:30 hours in the afternoon until 12:00 hours the following day, which at the time caused him marks and injuries, in addition to serious psychological effects, indicating that he is currently undergoing mental health treatment for this reason. [...] During this period, his possibilities of movement and mobility were minimal, and he had to remain lying down without interruption, unable to access basic services such as the use of the bathroom when he required it, having to use a container that he kept next to his bed, which he had to clean the next day when he was released. [...] He also states that when he was shackled, the prison guards often referred to him as “**the toad**” and insulted him because he had made complaints in the prison unit from which he came, which, according to him, resulted in administrative proceedings against several officials of the Ancud prison. Furthermore, on the bed where he was shackled, the same prison guards decided to hang a sign with the acronym HIV on it, informing everyone who passed by of his illness, which generated discriminatory comments around him, hiding it whenever possible, but it was put up again by the said officials. On a daily basis, the same officials, when passing by him, referred to him as “*el sidoso*” and to be careful with touching him because he could be contagious.

At the time of writing this article, the case has passed the admissibility stage<sup>45</sup> on 3 September 2021. Nevertheless, it has no conclusive results and is still pending for decision.<sup>46</sup>

In practice, there are prison guards that use body posture as an illegitimate method of force. The particularity here is the apparent punishment for being a “*toad*”. The “code of silence” (García, M. y Quesada, L. 2014, p. 30) is not only char-

acteristic of the prison subculture among the prisoners, but also conditions the prison officers themselves. According to the complaint, the punishment and mistreatment acts as an extra-regulatory sanction against an inmate who, within his rights, has denounced an official for an irregularity (Murton, T., 1976, p. 66-72). We see a combination of humiliation and inhumane treatment whose apparent purpose is intimidation. In this context, the Istanbul Protocol notes that persons deprived of their liberty are at an increased risk of reprisals as a consequence of their cooperation with persecution. It warns that investigators may encounter a “wall of silence”, as persons deprived of their liberty may feel too intimidated to confide in anyone, even when they are offered to speak in private. The Protocol recommends that when an investigation leads to prosecution, the investigator should recommend measures to prevent harm to the alleged victim, such as removing names and other identifying information from public records or offering the person the opportunity to testify through image or voice altering devices or closed circuit television (Istanbul Protocol, 2022, par. 218). The fact that we can consult all the information described in the publicly accessible records of the judiciary makes it clear that these protective measures are far from being the rule in allegations of torture and ill-treatment.

### Conclusion

Our quantitative data, together with the qualitative analysis of the cases reviewed, show that the efforts made by the Chilean State in terms of regulations and institutions to prevent and punish ill-treatment in the prison system have not been effective.

In fact, if we look at the processing of the cases, we find an excessive amount of time that elapsed between when the facts that are reported, the filing of complaints, the use of protection measures, and the termination of the cases. This proves the lack of implementation of the guidelines provided by the Istanbul Protocol.<sup>47</sup> We interpret the work of the INDH in the same sense. Although this institution manages to file complaints in support of the victims of acts of torture and ill-treatment, it does so at a late stage, generally days, weeks, or months after the occurrence of the events. There is therefore a general delay in the possibility for victims to find effective external support. Investigations do not meet the requirement of promptness. Moreover, it is difficult to argue that the results of the court cases show that the problem of torture and ill-treatment denounced in the complaints is not real. Most of the cases have been terminated by decisions not to pursue the investigation.

<sup>44</sup> Art. 150, letter a) of the Penal Code.

<sup>45</sup> On 3 September 2021, i.e. one day after the complaint was filed, the court declared it admissible and referred it to the Public Prosecutor’s Office, after which, on 18 November 2022, the NHRI delegated power of attorney and no further action was pending.

<sup>46</sup> In the same category and facts, we can cite cases of the Valdivia Guarantee Court RIT 4393-2020, 4279-2020, 1403-2022, 1401-2022, 1400-2022 and 1399-2022 and case RIT 790-2022 of the Victoria Guarantee Court.

<sup>47</sup> We discuss some of these shortcomings in: Stippel & Medina (2022b).

This fact indicates that there appear to be serious deficiencies in the investigation of torture and ill-treatment in Chile. We showed how the victims' requests for forensic medical examination are not met. Neither are victims informed about the results of the investigations. If protective measures are ordered, this happens at such a late stage that any adverse effect of the complaint could be a fact already. As a consequence, most of the complaints are not clarified, and sooner or later end up being shelved.<sup>48</sup> In another study, we described the lack of specific guidelines for the criminal prosecution of acts of torture and ill-treatment in the Chilean prison system.<sup>49</sup> There is still no systematic and coordinated effort to eradicate violence and particularly ill-treatment from prisons.<sup>50</sup> In the context of this study, it became evident that investigations into allegations of ill-treatment contravene international guidelines and lack effectiveness. Several of the cases discussed undoubtedly should have been pursued, and the perpetrators sanctioned, at the very least for unjustified excessive use of force and coercion, although not necessarily torture.

The frequency and the fact that these acts can be verified throughout the country in very different prisons leads to the conclusion that they are not isolated examples of individual criminal acts but reflect symptoms of deficiencies in institutional structures. The particular use of violence described in the complaints indicates that it is not coincidental but rather a means of exercising control and guaranteeing the domination over prisoners. This situation is favoured by the deficient processing of the complaints filed in these cases.

### References

- Albano, G. D., Guadagnino, D., Midiri, M., La spina, C., Tullio, V., Argo, A., & Zerbo, S. (2023). Torture and Maltreatment in Prison: A Medico-Legal Perspective. *Healthcare*, 11(4), 576. <https://doi.org/10.3390/healthcare11040576>
- Barrios A., María C. (2023). La acción de querrelante por parte del Instituto Nacional de Derechos Humanos en delitos cometidos al interior de las cárceles chilenas. In: Stippel, J., & González, P. M. (Eds.), *La No Ciudadanía, Sobre la Exclusión Legal y Real de las Personas en el Sistema Carcelario* (pp. 193 - 243). Santiago: Tirant lo Blanch.
- Brasilia Rules on Access to Justice for Persons in Conditions of Vulnerability (2008). XIV Ibero-American Judicial Summit, 14, 53-75.
- Castro M., A., Sanhueza, G. E., Purán, V., & Cortes, J. (2020). Fiscalía Judicial: posibilidades y limitaciones en su rol de inspector de prisiones. *Política criminal*, 15(30), 871-906.
- Centro de Derechos Humanos UDP. (2014). El sistema penitenciario y su impacto en los derechos humanos de las personas privadas de libertad. En Informe sobre Derechos Humanos en Chile (pp. 245-290). Ediciones Universidad Diego Portales. [https://derechoshumanos.udp.cl/cms/wp-content/uploads/2020/12/Informe\\_Anuar\\_DDHH\\_2014\\_Completo.pdf](https://derechoshumanos.udp.cl/cms/wp-content/uploads/2020/12/Informe_Anuar_DDHH_2014_Completo.pdf)
- Correa Robles, C. (2020). Uso y abuso de la decisión de no perseverar en el procedimiento. *Revista Chilena de Derecho*, 47(1), 159-185. <https://dx.doi.org/10.4067/S0718-34372020000100159>
- CPT Chile (2022). Diagnóstico de caracterización y vulneraciones a los derechos humanos en el área penitenciaria. <https://mnpt.cl/wp-content/uploads/2022/03/Resumen-Ejecutivo-Area-Penitenciaria-1.pdf>
- CPT. (2021). A decency threshold for prisons – criteria for assessing conditions of detention. En Council of Europe. Available in: <https://rm.coe.int/1680a3e6a3>
- Espinoza, O., Martínez, F., & Sanhueza, G. (2014). El sistema penitenciario y su impacto en los derechos humanos de las personas privadas de libertad. In Informe sobre Derechos Humanos en Chile (pp. 245–290). Centro de Derechos Humanos. <https://derechoshumanos.udp.cl/informe-anual/informe-anual-sobre-derechos-humanos-en-chile-2014/>
- Fiscalía. (2023). Boletín Estadístico Anual: Enero-Diciembre 2022. Ministerio Público de Chile.
- García, M. y Quesada, L. (2014). Violación sexual e impunidad en el sistema carcelario en Costa Rica. *Revista Humanitas*, 11 (11), pp. 29-46.
- Hereg, J. S. (2020). The silences of torture in Chile. *Revista de Ciencia Política* (Santiago), 40(1), 115-136. <https://doi.org/10.4067/S0718-090X2020000100115>
- INDH (2017). Study of prison conditions in Chile 2014-2015. Seguimiento de recomendaciones y cumplimiento de estándares internacionales sobre el derecho a la integridad personal, Santiago de Chile.
- INDH (2018). Estudio de las condiciones carcelarias en Chile. Diagnosis of compliance with international human rights standards on the right to personal integrity, 2016-2017, Santiago de Chile.
- Istanbul Protocol, (2022) Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Professional Training Series No. 8/Rev. 2. Office of the United Nations High Commissioner for Human Rights. [https://www.ohchr.org/Documents/Publications/Training8Rev2\\_sp.pdf](https://www.ohchr.org/Documents/Publications/Training8Rev2_sp.pdf)
- Jenness, V., & Smyth, M. (2011). The passage and implementation of the prison rape elimination act: legal endogeneity and the uncertain road from symbolic law to instrumental effects. *Stanford Law & Policy Review* (Vol. 22:2), pp. 489- 528.
- Murton, T. (1976). *The dilemma of prison reform*, Holt, Rinehart and Winston.
- Nelson Mandela Rules, (2015). UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): resolution / adopted by the General Assembly*, 8 January 2016, A/RES/70/175, available at: <https://>

48 We analyse this practice in the article: Stippel & Medina, (2022b).

49 Stippel & González, 2022a).

50 There is nothing similar to the process that was driven, for example, by the passage of the Prison Rape Elimination Act (PREA) in the United States. On this experience see: Jenness & Smyth (2011).

- www.refworld.org/docid/5698a3a44.html [accessed 2 October 2023].
- Pásara, L. (2015). La justicia en la región andina. Miradas de cerca a Bolivia, Colombia, Chile, Ecuador y Perú. Lima: Fondo Editorial de la Pontificia Universidad Católica del Perú.
- Pérez Cáceres, D., & Troncoso Zúñiga, C. (2020). Violencia político sexual desde octubre a diciembre de 2019 en Chile: análisis de contexto y prácticas institucionales de agentes del estado. *Estado, Gobierno Y Gestión Pública*, 34, 139–171.
- Pérez-Sales, P. (2022). El nuevo Protocolo de Estambul: Guía de uso y consulta para el trabajador apesurado. *Torture Journal*, 32(3), 3–15. <https://doi.org/10.7146/torture.v32i3.133932>
- Rodríguez-Pinzón, D. & Martin, C. (2006). The prohibition of torture and ill-treatment in the inter-American human rights system: A handbook for victims and their advocates. Boris Wijkstrom.
- Rodríguez-Pinzón, D., & Martin, C. (2014). A handbook for victims and their advocates: The Prohibition of Torture and Ill-Treatment in the Inter-American Human Rights System (2.a ed., Vol. 2). OMCT SOS-Torture Network. [https://www.omct.org/files/2014/11/22956/v2\\_web\\_guide\\_interamericain\\_en\\_omc14.pdf](https://www.omct.org/files/2014/11/22956/v2_web_guide_interamericain_en_omc14.pdf)
- Rosentreter Z., J. (2020). La práctica de la aplicación del protocolo de estambul en la investigación de la tortura en Chile [Tesis para optar al grado de Magíster en Derecho Internacional de los Derechos Humanos]. Universidad Diego Portales.
- Sánchez, J. M. A. (2020). Los problemas de la rapidez o ultraceleridad de las audiencias en los procedimientos penales de “menor importancia” para el sistema de justicia penal. *Revista de derecho*, 27. <https://doi.org/10.22199/issn.0718-9753-2020-0003>
- Sánchez, M., & Piñol, D. (2015). Condiciones de Vida en los centros de privación de libertad en Chile [Life Conditions in carceral centers in Chile]. Centro de Estudios en Seguridad Ciudadana, INAP, Universidad de Chile.
- Stippel, J. & Vergara, L. (2023). Los errores de una política penitenciaria mal enfocada. In Fundación Chile21 (Ed.), Informe Mayo 2023 (pp. 10-17). Fundación Chile21.
- Stippel, J. A., Pérez, P., & Barría, M. (2023). On “epistemic injustice” and victimization in prisons: an empiric exploration into Chilean reality. *Revista Brasileira De Direito Processual Penal*, 9(1). <https://doi.org/10.22197/rbdpp.v9i1.803>
- Stippel, J., & Medina, P. (2022a). Discrimination in criminal prosecution: About the differences between crimes committed inside prison and crimes committed outside prison. *Revista Brasileira de Direito Processual Penal*, 8(3), Article 3. <https://doi.org/10.22197/rbdpp.v8i3.679>
- Stippel, J., & Medina, P. (2022b). Due diligence in prison crime investigations and access to criminal justice for persons deprived of liberty in Chile. In: Justicia Y Legitimidad En América. Judicial spaces for vulnerable groups of special protection; Bélanger, P. G., Argente Villarreal, A., & Sandoval Mesa J. A., (cords.); Comisión de Derechos Humanos del Estado de México; Mexico 2023. 79-115.
- Tapia Silva, M. (2023). *Manual Derecho Penitenciario Chileno*, Editorial Tirant lo Blanch ISBN: 9788411309158. First edition, March 2023.
- United Nations (2010). Handbook for Prison Leaders: A Basic Training Tool and Curriculum for Prison Managers Based on International Standards (Revised edition). United Nations.
- United Nations (2023). Preliminary observations of the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dr. Alice Jill Edwards, at the conclusion of her visit to Chile. <https://www.ohchr.org/sites/default/files/documents/issues/torture/sr/preliminary-observations-srt-mission-chile-25102023.pdf>
- United Nations. (2017). Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 5th periodic reports of States parties due in 2015. Belarus. <https://digitallibrary.un.org/record/835372?ln=en&cv=pdf>
- Vío Vargas, J. (Ed.). (2023). Estudio sobre los fallecimientos en las cárceles chilenas desde enero del año 2019 hasta diciembre del año 2022. Panorama, diagnóstico y propuestas. Morir en prisión. Estudios sobre fallecimientos en cárceles, 1-97.

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