

Debateⁱ

Related to 'A comparative study of the use of Istanbul Protocol amongst civil society organizations in low-income countries' by Kelly et al. (pages 60 to 73)

Comment I: Istanbul Protocol in low-income countries – A reply

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In an article in this issue by Kelly et al. on the use of the Istanbul Protocol amongst civil society organizations in low-income countries, the authors conclude that the significance of the Istanbul Protocol is “limited to a very small – albeit important - number of legal cases” and largely does not apply to low-income countries based on issues such as fear of reprisals, the lack of trained health professionals, and the duration and expense of comprehensive forensic medical evaluations. As clinicians who have participated in the development of the Istanbul Protocol and implementation of Istanbul Protocol standards in many contexts and countries, including low-income countries, we are concerned that the conclusions in the article are not well founded.

During the development of the Istanbul Protocol, the authors were acutely aware of variations in country conditions including the threat of reprisals and limited financial and human resources. While the Istanbul Protocol contains detailed guidelines for the effective legal and medical investigation of torture and ill treatment, it clearly states that

these guidelines are not fixed. The only component of the Istanbul Protocol that is considered universal is the principles on which the Istanbul Protocol is based, namely, the “Istanbul Protocol principles” which are contained in Annex I. Kelly et al. acknowledge in their article that the Istanbul Protocol principles represent minimum standards for the effective legal and medical investigation and documentation of torture and ill treatment. Indeed, the Istanbul Protocol principles for medical evaluations were developed to address the issues of universal application. These are brief, less than half a page, and can be summarized as follows:

- Medical evaluators should behave in conformity with the highest ethical standards and obtain informed consent before any examination is conducted.
- Medical evaluations must:
 - conform to established standards of medical practice;
 - be under the control of medical experts, not security personnel; and,
 - be conducted promptly.
- Written reports must be accurate and include the following:

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- identification of the alleged victim and conditions of the evaluation;
- a detailed account of allegations including torture methods and physical and psychological symptoms;
- a record of physical and psychological findings;
- an interpretation of all findings, an opinion on the possibility of torture and/or ill-treatment, and clinical recommendations; and,
- identification and the signature of the medical expert(s).

These principles were intended to apply to all medical evaluations regarding alleged torture and ill-treatment, not only comprehensive forensic, medical legal contexts, and this is clearly stated in the introduction of the Istanbul Protocol. Most clinicians who use the Istanbul Protocol understand that brief medical evaluations can be conducted in accordance with the Istanbul Protocol principles for many different purposes, for example, in human rights investigations, human rights monitoring, prevention, and advocacy activities, as well as clinical encounters with alleged victims that are not intended to be comprehensive forensic evaluations. The presumption that the Istanbul Protocol requires comprehensive forensic evaluations in all circumstances is, unfortunately, not consistent with the content of the Istanbul Protocol or actual practices.

The reason for this presumption in the article is not clear; the authors did not assess awareness of the Istanbul Protocol or the potential relationship between awareness and attitudes to and opinions on the Istanbul Protocol. It is therefore possible that attitudes and opinions in the article were not consistently based on actual knowledge of the Istanbul Protocol. The authors acknowledged

that in one country, Bangladesh, none of the participants reported having any Istanbul Protocol training. In addition, the inclusion of attitudes to and opinions on medical evaluations by non-clinicians, such as journalists, attorneys and human rights advocates, may also account for the misperception that the Istanbul Protocol requires comprehensive forensic evaluations in all circumstances. Istanbul Protocol principles and guidelines for medical investigation and documentation of torture and ill-treatment apply to qualified clinicians as medical knowledge is necessary to make a valid interpretation of the consistency between specific allegations of torture and physical and psychological evidence on evaluation. The Istanbul Protocol principles for medical evaluations are not intended for investigation and documentation by journalists and non-clinicians who interview and investigate torture.

Although the authors are careful to state that their methodology does not permit generalization of their findings, they appear to suggest that the concerns expressed by participants are related to low-income status in the three countries included in the study. Since there were no participants from middle- or high-income countries, this causal inference seems unjustified. In our experience, issues such as fear of reprisal by alleged victims, the availability of qualified health professionals, and the duration and expense of comprehensive medical legal evaluations are not unique to low-income countries. The threat of reprisal, for example, is a common concern throughout the world and is more likely a function of impunity than the economic status of a country.

As mentioned previously, the Istanbul Protocol does not require all medical evaluations to follow the guidelines for comprehensive forensic assessments of physical and psychological evidence. Brief

medical evaluations can be conducted by qualified medical personnel in a timely, efficient and cost-effective manner. While we agree that comprehensive forensic evaluations require additional expertise and may be time-consuming and expensive, this is not a deficiency of the Istanbul Protocol, but rather the nature of rigorous medical evaluations in legal contexts. In our experience, these very important and practical issues can and should be addressed to enable the conditions for effective investigation and documentation in accordance with Istanbul Protocol principles and guidelines.