

# An important step for prevention of torture

*The Istanbul protocol and challenges*

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## Introduction

Torture has been consistently prohibited by human rights and humanitarian law for more than half a century. This prohibition is so absolute that no exceptions, including public emergency and times of war, might be accepted. There is no ground for legitimization of torture and other forms of ill treatment.

Torture and other forms of ill treatment, however, continue to occur in more than half of all countries in the world, despite a plethora of reports and declarations issued by non governmental and intergovernmental organizations, human rights and humanitarian instruments (conventions, regulations, recommendations, rules) declared and adopted both universally and regionally by intergovernmental organizations, and decisions and judgments by regional and international bodies. Following the incidents of September 11, states' unwillingness to abide by the prohibition of torture and other

forms of ill treatment, within the concept on "war on terror", is perilous for detainees that are under the protection of humanitarian and human rights law.

"The striking disparity between the absolute prohibition of torture and its prevalence in the world today demonstrates the need for States to identify and implement effective measures to protect individuals from torture and ill treatment. The Istanbul Protocol, (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) was developed to enable states to address one of the most fundamental concerns in protecting individuals from torture and other forms of ill treatment: investigation and effective documentation."<sup>1</sup> The effective investigation and reporting of psychological and physical findings is a *sin qua non* in preventing torture, penalizing perpetrators and redressing grievances.

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1) Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Istanbul Protocol (IP), Professional Training Series No.8/Rev.1, UNHCHR, 2004, Introduction.

“International law requires States to investigate allegations of torture and to punish those responsible. It also requires that victims of acts of torture obtain reparation and have an enforceable remedy to fair and adequate compensation, restitution of their rights and as full rehabilitation as possible. The Istanbul Protocol is a manual on *how* to make investigations and documentations of torture *effective* in order to punish those responsible, to afford adequate reparation to the victims and more generally, to prevent future acts of torture.”<sup>2</sup>

During the past two decades, much has been learned about torture and its consequences, but no international guidelines for documentation were available prior to the preparation of this manual.<sup>3</sup> The Istanbul Protocol is intended to serve as international guidelines for the assessment of persons who allege torture and ill treatment, for investigating cases of alleged torture and for reporting findings to the judiciary or any other investigative bodies.

### 1. What is the Istanbul Protocol.

The Istanbul Protocol is the first set of international guidelines for the effective psychological, physical and legal investigation and documentation of allegations of torture and ill treatment based upon the needs of daily life. The Protocol provides comprehensive and practical guidelines that describe in detail the steps to be taken by states, investigators, legal and medical experts to ensure the prompt and impartial investigation and

documentation of complaints and reports of torture.<sup>4</sup> It gives details of procedure to be followed in the medical and psychological examination of alleged victims.<sup>5</sup>

The Protocol also provides “The Principles for the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Principles)” as an annex. The Principles reflects prominent aspects of the Protocol as well as minimum standards for States to carry out effective, impartial investigations and documentation of torture allegations. However, the guidelines contained in the Manual are not presented as a fixed protocol. Rather, they represent an elaboration of the minimum standards contained in the Principles and should be applied in accordance with a reasonable assessment of available resources.<sup>6</sup>

Laws evolve and so do the rules on investigation, which become more refined in response to the needs revealed by the cases brought before the international courts.<sup>7</sup> Since the Protocol and its Principles are not narrow and stagnant there might have already been practical and creative additions to the existing provisions of the Protocol and the Principles. The Protocol is certainly open to any kind of contribution because it was developed to be used for the daily needs of practitioners.

### 2. The development of the Istanbul Protocol

The Istanbul Protocol was drafted by more

2) Istanbul Protocol training material; “Action against Torture- A Practical Guide to the Istanbul Protocol”, REDRESS, August 2004, p. 3.

3) See footnote 1.

4) Combating torture-UN fact sheet no4/rev1.

5) Combating Torture: a manual for action; Amnesty International, p.179.

6) IP Introduction, last para.

7) Thanks to Anna-Lena Svensson McCarthy for the formulation.

than 75 experts in law, health and human rights through three years of common efforts. The initial steps to work on a manual for effective investigation and documentation of torture and other forms of ill treatment were taken during an international meeting organized by the Turkish Medical Association (TMA) in 1996. All organizing efforts were initiated and coordinated by Human Rights Foundation of Turkey (HRFT) and Physicians for Human Rights USA (PHR USA).

The conceptualization and preparation of the manual was the collaborative effort of forensic scientists, physicians, psychologists, human rights monitors and lawyers working in different countries with the involvement of more than 40 organizations.<sup>8</sup> The organizations involved from the outset of the preparation of the manual approached the work from starting points which emerged from their own practical needs or targets. The HRFT and Society of Forensic Medicine Specialists (SFMS) in Turkey were inspired by the desire to give meaning to the tragic death of Baki Erdoğan in custody.

The development of the Istanbul Protocol began with a volunteer group of lawyers, doctors and human rights activists who got together and implemented any related guidance of the Minnesota Protocol<sup>9</sup> at every level. This led the working group to a real achievement at national and international levels.<sup>10</sup>

These were the years when torture and other forms of ill treatment and extrajudicial killings were very much a part of the daily lives and agendas of human rights activists, law and health professionals who sought ef-

fective instruments to struggle against these human rights violations. Being effective at every single step motivated the group and the related organizations (HRFT, TMA, SFMS) to question the need for a manual. The international meeting, organized by the TMA in 1996, was a perfect opportunity to share this concern and perspectives with participants of other organizations from different countries.

That is to say that the Istanbul Protocol was inspired by the Minnesota Protocol and derived from the needs of daily practices from the perspective of the contributors from Turkey.

### 3. The content of the Protocol

The Istanbul Protocol is composed of six chapters and four annexes:

- Relevant International Legal Standards
  - Relevant Ethical Codes
  - Legal Investigation of Torture
  - General Considerations for Interviews
  - Physical Evidence of Torture
  - Psychological Evidence of Torture
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- Annex 1: “Istanbul Principles”
  - Annex 2: Diagnostic Tests
  - Annex 3: Anatomical drawings
  - Annex 4: Guidelines for the medical evaluation

The chapters of “International Legal Standards”, “Legal Investigation of Torture” and “Ethical Codes” are important for the law professionals; the “General Considerations for Interview” is of special importance.

8) See footnote 1.

9) Minnesota Protocol-United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

10) Aydin (1st) Assize Court, 19994/69 E (2000/18E.), European Court of Human Rights; Erdoğan v. Turkey, 26337/95, <http://cmiskp.echr.coe.int/tkp197/view>.

It is clearly stressed in the Protocol that "...general considerations apply to all persons carrying out interviews, whether they are lawyers, medical doctors, psychologists or psychiatrists, human rights monitors or members of any other profession."<sup>11</sup> Interviews can be made for judicial or medical purposes as well as documentation, however, the "broad purpose of the investigation is to establish the facts related to alleged incidents of torture".<sup>12</sup>

Although some content was written in relation to the medical investigation that might provide useful evidence for legal processes, the general results of any interview held by any related professionals is also listed:

- “1) Identifying the perpetrators responsible for torture and bringing them to justice;
- 2) Support of political asylum applications;
- 3) Establishing conditions under which false confessions may have been obtained by State officials; and
- 4) Establishing regional practices of torture. Medical evaluations also may be used to identify the therapeutic needs of survivors, and as testimony in human rights investigations.”

It would not be appropriate to understand the content above as indicating that “only interviews for medical purposes provide evidence for legal procedures”, since interviews at the legal level also provide various findings for the medical area. It is possible for legal professionals to have contact with and to interview alleged victims in custody more than once to help and provide information. The intervention of medical and legal professionals in the process provides opportunities for interaction and mutual support. This interaction is also taken into consideration when the section “General Considerations

of Interview” takes up a “common ground” and attempts to put it into different contexts that may arise when investigating torture and interviewing victims of torture.<sup>13</sup>

All the experts from related professions are determined to pay special attention to the following issues during interviews: “Techniques of Questioning”, “Taking the History”, “Psychosocial History, Pre-arrest”, “Summary of Detention(s) and Abuse”, “Circumstances of Detention(s)”, “Prison/ Detention Place Conditions”, “Methods of Torture and Ill Treatment”, “Assessment of the History”, “Review of Torture Methods”, “Risk of Retraumatization of the Interviewer”, “Use of Interpreters”, and “Gender Issues”.<sup>14</sup> The other important issue concerning legal matters is “Procedural safeguards with respect to detainees” under “General Considerations for Interview”.

At first sight, the safeguards undertaken in this topic seem medical. Professionals involved, however, are not only health professionals but also public prosecutors and other relevant officials, (i.e. law enforcement officials, police, soldiers, prison officers). The issues of concern include: transportation of a detainee, authorization of requests, requests for medical evaluations, evidence seeking, documentation of torture and ill treatment incidents, supervision of responsible officers, physical conditions of medical examination, falsification of a report, transmission of a report, requesting a medical report, access to a lawyer and access to a doctor.

11) IP, para. 120.

12) IP, para. 121.

13) See footnote 11.

14) IP, para. 136-156.

#### 4. The Istanbul Protocol in the UN system

The Istanbul Protocol was submitted to the UN High Commissioner for Human Rights on 9 August 1999 after the above mentioned processes.

Both the General Assembly and the Commission on Human Rights adopted the Principles as annexes to their resolutions on 4 December 2000,<sup>15</sup> following the recommendation of the Special Rapporteur during the fifty sixth session, 2 February 2000, of the UNHCR.<sup>16</sup>

Publishing and disseminating the Protocol was also discussed during the same session. It was finally published in UN-OHCHR's Professionals Training Series in April, 2001 in the six official languages of the UN.

The Special Rapporteur on Torture stressed once more the importance of the Istanbul Principles within the context of establishing independent national authorities for investigation; promptness and independence of investigations; independence of forensic medical services from governmental investigatory bodies; obtaining forensic evidence in his General Recommendations<sup>17</sup> (see also the box).

Subsequently, the United Nations Commission on Human Rights, in its resolution on human rights and forensic science, drew the attention of governments to these Principles and strongly encouraged them to reflect upon the Principles as a useful tool in combating torture (on 23 April 2003).<sup>18</sup> This would be accomplished by establishing thorough, prompt and impartial procedures of investigation and documentation (on 19 April 2005).<sup>19</sup>

The UNHCR resolution on the competency of national investigative authorities in preventing torture also stresses the Istanbul Principles as a useful tool in efforts to combat torture.<sup>20</sup> Supervening the UNHCR

#### General Recommendations of the Special Rapporteur on torture

... Independent national authorities, such as a national commission or ombudsman with investigatory and/or prosecutorial powers, should be established to receive and to investigate complaints. Complaints about torture should be dealt with immediately and should be investigated by an independent authority with no connection to that which is investigating or prosecuting the case against the alleged victim. Furthermore, the forensic medical services should be under judicial or another independent authority, not under the same governmental authority as the police and the penitentiary system. Public forensic medical services should not have a monopoly on expert forensic evidence for judicial purposes. In that context, countries should be guided by the Principles on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment (the Istanbul Principles) as a useful tool in the effort to combat torture.

15) General Assembly Resolution 55/89, 4 December 2000; UNCHR Resolution 2000/43, 20 April 2000.

16) E/CN.4/2000/9, 2 February 2000.

17) E/CN.4/2003/68, para. 26.

18) Human Rights Resolution 2003/33, 57th meeting, 23 April 2003 [E/CN.4/2003/L.11/Add.4].

19) Human Rights Resolution 2005/26, 56th meeting, 19 April 2005 [Adopted without a vote. See chap. XI, E/CN.4/2005/L.10/Add.11.

20) Human Rights Resolution 2005/39.

meeting, the General Assembly adopted this UNHCR resolution on torture.<sup>21</sup>

### 5. International recognition of the Istanbul Protocol

In addition to the UN some regional bodies also adopted the Protocol.

The African Commission on Human and Peoples' Rights deliberated on the importance of the Istanbul Protocol during its 32nd ordinary session and concluded that investigations into all allegations of torture or ill treatment shall be conducted promptly, impartially and effectively, guided by the Istanbul Principles.<sup>22</sup>

The European Union elaborated on the Protocol and referred in the "Guidelines to EU Policy towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" adopted by the General Affairs Council<sup>23</sup> (see the box). Other institutions and organizations reiterated the recommendations of the UN and other regional bodies in their reports, statements, comments, etc.

These references could be summarized in three categories:

- a useful tool in the efforts to combat torture where governments are strongly encouraged to reflect upon the principles in the Istanbul Protocol;
- the recommendation that investigations and documentation of torture allegations should be conducted promptly, impartially and effectively, guided by the Istanbul Principles;
- the recommendation that states should establish and operate effective domestic procedures in accordance with the Protocol.

Apart from this generalization, some other documents refer to the Istanbul Principles in

the context of power of investigative authority, the content and public character of the reports and the obligation of the State to reply to the report and declare which steps have been taken.<sup>24</sup>

**"Guidelines to EU Policy towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" adopted by the General Affairs Council**

...

- conduct prompt, impartial and effective investigations of all allegations of torture in accordance with the Istanbul Rules annexed to CHR resolution 2000/43
- Allow domestic procedures for complaints and reports of torture and illtreatment
- establish and operate effective domestic procedures for responding to and investigating complaints and reports of torture and ill treatment in accordance with the Istanbul Rules

21) General Assembly (A/Res/59/182), (A/Res/60/148).

22) Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, The African Commission on Human and Peoples' Rights, meeting at its 32nd ordinary session, Banjul, The Gambia, from 17th to 23rd October 2002.

23) General Affairs Council – Luxembourg, 09/04/01.

24) e.g. see; Advisory Council of Jurists, The Asia Pacific Forum of National Human Rights Institutions, Reference on Torture, Final Report, Ulaanbaatar, Mongolia, 24 – 26 August 2005.

## 6. The practical value

The Istanbul Protocol is not a binding document and does not include any sanctions.

However

- International law obliges governments to investigate and document incidents of torture and other forms of ill treatment and punish those who are responsible comprehensively, effectively, promptly and impartially.
- The Istanbul Protocol demonstrates international standards for implementing such investigations and documentations.
- States that are against torture and ill treatment must follow the standards set out in the Protocol for effective prevention. To achieve credibility for the claim of being against and being in an effort to prevent torture and ill treatment effectively, states must follow the standards set out in the Protocol.
- All medical examinations, evaluations and reports concerning allegations of torture and ill treatment should be in accordance with the principles and the standards in the Protocol.

In order to reach these goals, and for the legal investigation to be “effective”, the Istanbul Protocol obligates states to fulfill minimum requirements:

- to seek to obtain statements from the victims of alleged torture;
- to recover and preserve evidence, including medical evidence, related to the alleged torture which will aid in any potential prosecution of those responsible;
- to identify possible witnesses and obtain statements from them concerning the alleged torture;
- to determine how, when and where the alleged incidents of torture occurred as

well as any pattern or practice that may have been observed about torture.

The Protocol sets the purposes of an effective legal investigation and documentation of torture and other forms of ill treatment<sup>25</sup> as:

- Clarification of facts and establishment and acknowledgement of individual and state responsibility for victims and their families;
- Identification of measures needed to prevent recurrence;
- Facilitation of prosecution or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible, and demonstrating the need for full reparation and redress from the state, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.

Although the Protocol itself does not lay out a supervisory mechanism to ensure state engagements, other mechanisms and bodies fulfill supervisory function on the state applications in their decisions, reports, recommendations, and the like.

The area of application for the Istanbul Protocol is not restricted to medico-legal investigation and documentation of torture. It can be broadened to the investigation and documentation of other violations of human rights and monitoring such as: cases of asylum seekers, cases of forced “confession” via torture, identification of therapeutic needs of victims, and the need for reparation and redress by the state. In the case of health professionals who are coerced into neglect, misrepresentation or falsification of evidence

25) IP, para 78.

of torture, this manual also provides an international point of reference for health professionals and adjudicators alike.<sup>26</sup>

### 7. The Istanbul Protocol in judgments

The Istanbul Protocol and its Principles have started to be taken into consideration by regional courts and commissions. In the general outset of judgments, the states found to have inadequacies on the conduct of medical and legal investigations and documentation are named. They are then urged to follow the Principles in the Protocol during the investigations and documentations of torture and other forms of ill treatment. Another issue which is common in the decisions is the inadequacy of government practices in implementing the Istanbul Protocol.

#### A. *The European Court of Human Rights*

The first judgment of the Court that elaborated on the Protocol and the Principles, is the case of *Bati and others v. Turkey*, June 2004. The Court has subsequently referred to the case of *Bati and others* in plenty of following judgments.<sup>27</sup>

##### a. *Case of Bati and others v. Turkey*<sup>28</sup>

The case is about fifteen people detained (some were also arrested) in February 1996. All the persons complained that they were tortured and one had a miscarriage as a result of torture during their period in custody. All detainees, except two, had various med-

ical reports supporting their allegations of torture and ill treatment.<sup>29</sup>

The incriminated police officers remained on duty during the whole pre trial investigation and court proceedings. Although some of the applicants formally identified the police officers during one of the hearings, the court rejected the applicants' request to remand the police officers.<sup>30</sup>

The investigatory procedure had begun in March 1996 and the applicants' representatives asked the domestic court to speed up the proceedings, as there was a danger that the prosecution of the offences would become statute-barred in October 2002. The demands of the applicants were not taken into account. Thus, the defendants, except for one, could not be sentenced due to the statute of limitations that had expired in February 2003.

The Court (ECHR), having adopted the standards derived from the European Convention on Human Rights and the Istanbul Protocol, concluded that the criminal investigation conducted by the Turkish authorities was ineffective since the decision of the domestic court was taken in the absence of two of the defendants, one of whom was sentenced to two years of imprisonment.<sup>31</sup>

One of the main bases of the Court's judgment is the Istanbul Protocol. The Court concluded that the Protocol contains full practical instructions for assessing persons who claim to have been victims of torture or ill treatment, for investigating suspected cases of torture and for reporting

26) IP, Introduction.

27) e.g.; *Case of Karayigi v. Turkey*, 63181/00; *Case of Yavuz v. Turkey* 67137/01; *Case of Celik and Imret v. Turkey* 44093/98.

28) *Case of Bati and Others v. Turkey*, 33097/96 and 57834/00, 3 June 2004, <http://cmiskp.echr.coe.int/tkp197/view.asp?item=>

[1&portal=hbk&action=html&highlight=33097/96&sessionid=8353642&skin=hudoc-en](http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbk&action=html&highlight=33097/96&sessionid=8353642&skin=hudoc-en).

29) *Bati*, para. 10-65.

30) *Bati*, para. 73, 80 and 145.

31) *Bati*, para. 73, 92 and 145.

the investigation's findings to relevant authorities.<sup>32</sup>

The Court stressed the purposes of an effective investigation and documentation of torture and other forms of ill treatment:<sup>33</sup>

State obligation to conduct prompt and effective investigation; the obligation to undertake an investigation even at times of lack of a complaint where appropriate; independence and power and obligations of investigators; the requirement of removal from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation of the potentially implicated officers in torture and other forms of ill treatment; the right to receive and access to information relevant to the investigation and present evidence.

Since the domestic court neglected the failure of the doctors' order for further forensic examination with regards to some of the applicants, the ECHR referred to the standards on medical investigation and documentation from the Protocol.<sup>34</sup>

The Protocol requires the prompt preparation of a written medical report, with details of examination (time, date, location, circumstances, place and other relevant factors); detailed story of the person; physical and

psychological findings (appropriate diagnostic tests, coloured photographs); interpretation of probable relationship of the physical and psychological findings to possible torture and ill treatment and recommendation for any necessary treatment; and identity of the person who carried out the examination and a signature.

The Court also commented on the substantial delay of the investigation and the court proceedings which was ended by statute of limitations for four of the defendants.

Therefore, the Court found *inter alia* that "the Turkish authorities cannot be considered to have acted with sufficient promptness or with reasonable diligence, with the result that the main perpetrators of acts of violence have enjoyed virtual impunity, despite the existence of incontrovertible evidence against them."<sup>35</sup>

b. Case of Mehmet Emin Yüksel v. Turkey<sup>36</sup>  
Mehmet Emin Yüksel, a medical student at the time of the events, complained of ill treatment while in custody. He was then taken to a state hospital and received a medical report stating that the applicant had "an oedema and an ecchymosed lesion as a result of trauma identified on the nose" after being examined by a doctor.<sup>37</sup>

The Government had argued that the applicant's injuries occurred when, due to lack of sleep, he inadvertently fell and hit his

32) Batu, para. 100.

33) Batu, Para .100, and also see in Istanbul Protocol, Annex 1, para. 1.

34) See footnote 33.

35) Batu, para. 147,148.

36) Case of Mehmet Emin Yüksel v. Turkey, 40154/98 20 July 2004, <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Mehmet%20%7C%20Emin%20%7C%20Y%FCksel&sessionid=8353642&skin=hudoc-en>.

37) Yüksel, para. 12, 27.

nose on a sink. The medical report did not indicate the cause of the injuries.<sup>38</sup>

However the Court (ECHR) referred to the Istanbul Protocol (and the case of *Bati v. Turkey*) which states that “an opinion by medical experts on a possible relationship between physical findings and ill treatment is a requirement for the effective investigation of ill treatment.”<sup>39</sup>

The Court, *inter alia*, found the State responsible, on the basis of the evidence deduced in the present case, under Article 3 of the Convention for the ill treatment suffered by the applicant in police custody.<sup>40</sup>

#### *B. Inter-American Court of Human Rights (IACHR)*

##### a. Case of *Tibi v. Ecuador*<sup>41</sup>

Daniel Tibi was arrested for drug trafficking and was struck, burned and suffocated several times by police officers in the period of custody in 1995. In the conclusion of the Tibi case the Court expressed a requirement of a training campaign for prison, police, and judicial officials, as well as for doctors and psychologists, on how to prevent torture and document allegations of torture. For this purpose the Court cited provisions set out in the Istanbul Protocol.

The Court also assessed the need for the establishment of a committee to define and conduct the training programmes on human rights and treatment of detainees.

##### b. Case of *Gutierrez Soler v. Colombia*<sup>42</sup>

Gutierrez Soler was detained and tortured by a private individual as well as police officers in 1994. One issue in this case is the forensic medical examinations of Soler conducted during his period of custody.

The medical expert whom the Court summoned found the report insufficient, since no photographs were taken and no anal examination was carried out. Medical examination was limited to external physical description of anatomical areas. The wounds, which would be significant for the courts’ assessment during judicial proceedings, were not explained in detail in one of the reports.<sup>43</sup>

It was also discussed that some torture methods hardly leave signs and are hard to detect. With respect to relevant incidents, such as anal sexual abuse, the Court states that detained persons should periodically be submitted to physical examinations. The doctor should not be limited with the complaints of the person because many times s/he may be aware of the correlation between her/his sufferings and the causes.<sup>44</sup>

The medical expert before the IACHR emphasized the importance of the Istanbul Protocol concerning the conduct of medical examination and preparation of medical reports. She suggests these standards be followed to avoid insufficient examination and impunity.<sup>45</sup>

38) Yüksel, para. 30.

39) Yüksel, para 29.

40) Yüksel, para 38.

41) Case of *Tibi v. Ecuador*, 7 September 2004; [http://www.cidh.org/migrantes/tibiseriec\\_114\\_esp.doc](http://www.cidh.org/migrantes/tibiseriec_114_esp.doc).

42) Case of *Gutierrez Soler v. Colombia*, Sep.

2005; Case 12.291, Report No. 76/01, OEA/Ser./L/V/II.114 Doc. 5 rev. at 155 (2001), [www.corteidh.or.cr/docs/casos/articulos/seriec\\_132\\_esp.doc](http://www.corteidh.or.cr/docs/casos/articulos/seriec_132_esp.doc).

43) Soler, para. 109.

44) Soler, para. 44, in *Peritajes*.

45) Soler, para. 109.

Finally, the IACHR concluded that states are under the obligation to investigate, to identify, and to judge the responsible persons of torture and other forms of ill treatment and should follow international norms of human rights law and standards set in the Istanbul Protocol throughout these processes.<sup>46</sup>

The IACHR also reached a conclusion that the State should establish a programme for the doctors that carries out its functions in the official detention centers and to the officials of the National Institute of Legal Medicine and Forensic Sciences, as well as to the public prosecutors and judges responsible for the investigation. The dissemination and implementation of the standards established in the Istanbul Protocol can contribute efficiently to the protection of the right to personal integrity in Colombia as a measure of prevention of repetition of the facts in this case.<sup>47</sup>

*C. The Inter-American Commission of Human Rights*

*Case of Perez v. Mexico*<sup>48</sup>

The discussion of the case was on medical reports prepared in accordance with the standards set out in the Istanbul Protocol but ignored by the Mexican authorities because of an unreasonable and arbitrary decision on the case of three sisters who were raped by military personnel in 1994. The doctor showed sufficient effort to receive the applicants' informed consent giving detailed explanation of what the check would entail.

The medical report provides a detailed description of the medical examination done on the three sisters, as well as of the circumstances surrounding the case.<sup>49</sup>

The IACHR found the conduct of the medical examination in accordance with the Istanbul Principles. According to the prin-

ciples, the conduct of doctors should, at all times, be in line with "the strictest ethical guidelines" and the consent of the person to be examined should be obtained. Examinations shall take place in accordance with medical practices, and "never in the presence of security agents or other government officials." The "reliable report" should be prepared immediately by medical experts.

A reliable report should include, at a minimum:<sup>50</sup>

- Circumstances of the interview;
- History, including detailed story, alleged methods and times of torture or ill treatment, all complaints of physical and psychological symptoms;
- Physical and psychological examination including findings from the clinical examination with appropriate diagnostic tests and, where possible, color photographs of all injuries;
- Opinion on the probable relationship of the physical and psychological findings to possible torture or ill treatment and a recommendation for any necessary medical and psychological treatment and/or further examination should be given;
- Identity of those carrying out the examination must be clear and the report should be signed.

46) Soler, para. 100.

47) Soler, para 110.

48) Case of Perez v. Mexico, Report no:53/01, <http://www.cidh.org/annualrep/2000eng/chapteriii/merits/mexico11.565.htm>.

49) Perez, para. 33.

50) Perez, para. 39 and also see in IP para. 83.

The Commission found that the reports contained detailed information of in-depth professional examination, the circumstances of interviews were determined, the data given was precise and consistent, professional opinions as well as recommendations on possible treatment were also given and that the reports were authorized by the doctors who conducted the medical examinations. All these points provide the minimum basis for a reliable medical report.<sup>51</sup>

The Commission concluded on the basis of these reports that Perez sisters were, *inter alia*, subjected to physical abuse and rape. The Commission also reached an assessment that the Mexican authorities did not fulfill the requirement of conducting effective and prompt investigation of torture and other ill treatment allegations by independent, competent and impartial investigators as it has been stated in the Istanbul Principles.<sup>52</sup>

### 8. Examples from Turkey

The Istanbul Protocol is quite well known in Turkey since the problem of torture and other forms of ill treatment is still widespread and the struggle against such unlawful behavior by public officers is fairly strong. The solidarity among some bar associations, Contemporary Lawyers Association,<sup>53</sup> the Group for Prevention of Torture,<sup>54</sup> medical chambers, human rights organizations and individual experts have

brought some serious achievements including the implementation of the standards in the Istanbul Protocol.

The positive changes in the conduct of lawyers, especially those who work in the Group for Prevention of Torture, have also forced and created some changes among the investigatory authorities such as:

- Witness statements/interviews were received in a more detailed way and with more care to try to reduce the risk of re-traumatization, in accordance with the standards in the Istanbul Protocol. This helped perpetrators to be identified;<sup>55</sup>
- Interference, notification, persuasion and insistence for medical examinations should be fulfilled in accordance with the provisions of the Istanbul Protocol;<sup>56</sup>
- Elaboration on the official forensic reports and whether they meet with the standards in the Istanbul Protocol; sending these incomplete and deficient reports to the medical centers, having facilities to make comprehensive evaluation during prosecution and court proceedings;<sup>57</sup>
- Accompaniment of the victim in order to urge medical doctors to conduct a comprehensive examination and prepare their reports in accordance with the Istanbul Protocol standards as well as the preparation and signing of written records

51) Perez, para. 33 and 38.

52) Perez, para. 78.

53) Contemporary Lawyers Association, a volunteer organisation for the establishment of rule of law and human rights in Turkey.

54) Izmir Bar Association Group for Prevention of Torture was a volunteer group of lawyers established in 2001, nevertheless, abolished by the Izmir Bar Association Board of Directors in

2004. The lawyers, although not as a formal group anymore, still follow and intervene in the cases of torture and ill treatment cases voluntarily.

55) Izmir 6th Assize Court, 2002/398 E; and Izmir 6th Assize Court, 2003/224 E.

56) Izmir 7th Assize Court, 2003/79 E.

57) Menemen Criminal Court of First Instance, 2002/132 E

when the conditions of examination are inappropriate (e.g. applicant handcuffed; police inside). The lodging of relevant criminal and disciplinary complaints about doctors (and/or the police officer on duty) or the submission of these records to the court proceedings when the doctor spends inadequate time for the examination;<sup>58</sup>

- The lodging of complaints and the submission of other proceedings against doctors and related institutions when the official forensic reports and the conduct are incomplete and deficient;<sup>59</sup>
- The provision of the transfers of persons for required expert examinations where the persons had no access to an appropriate medical examination at a medical center, by the use of the previously provided case history during interviews and other findings;<sup>60</sup> Transference of detainees to a place other than the place of detention if the forensic medical examination supports allegations of torture.<sup>61</sup>

### **9. A critical challenge: implementation of the Istanbul Protocol**

In spite of its international standing, awareness on the Istanbul Protocol is still relatively limited to the relevant bodies, legal,

58) Kusadasi Criminal Court of 1st First Instance, 2004/494 E.

59) Menemen Criminal Court of First Instance, 2003/199 E. and, Menemen Criminal Court of First Instance, 2003/199 E., and, Documentation of the Izmir Bar Association Group for Prevention of Torture , file no.113 (2003)

60) Izmir Criminal Court of 8th First Instance , 2005/463 E.

61) see the footnote 56- 2002/398 E; and, Documentation of the Izmir Bar Association Group for Prevention of Torture , file no.180 (2003).

health and human rights experts. Those who know about the Protocol likely consider it a manual for health professionals, not a manual for multidisciplinary purposes in the prevention and investigation and documentation of torture and other forms of ill treatment.

Although the Protocol is closely related with the conduct of health and law professionals, as has been widely established by the Inter-American Court of Human Rights in the aforementioned decisions, the Istanbul Protocol is known and used by only a limited number of professionals in daily practices in a few countries. For these reasons, Protocol trainings are being organized around the world. So far the Protocol has been endorsed by various international bodies including the World Medical Association, World Psychiatry Association, PHR USA and International Rehabilitation Center for Torture Victims.

#### *A. Trainings in Turkey*

It is health professionals and legal experts who will put the Istanbul Protocol into practice. It is extremely critical that health professionals and legal experts know the Protocol, use it in daily practice and demand its' utilization. Therefore, a two dimensional effort has been accomplished through awareness raising and training programmes. All aspects were, and are, carried out in coordination by the joint Istanbul Protocol team of the TMA, SFMS and the HRFT.

#### *a. Training activities*

After the completion of the Istanbul Protocol and its adoption by the UN, the focus shifted to the organization of trainings. A training module targeting health professionals and legal experts was formed in 2001. One objective was to launch trainings that prompt an effective implementation in

practice. It was aimed to create a motivation for a change of attitude and conduct, next to the accumulation of knowledge and sensibility. The trainings were designed with the intention to create interactive trainings in accordance with mentioned aims.

A training series of joint and concurrent trainings aiming to increase the interaction and cooperation between health professionals and legal experts was adopted, based on the experience that the struggle against torture can only be effective with the cooperation of health professionals and legal experts. The training programme was structured in parallel and plenary sections in order to facilitate the discussion of specific professional problems as well as common problems. Pilot trainings were carried out between November 2001 and April 2002, targeting health professionals and legal experts in five provinces, with the training module and material created for their context.

The training module and materials were revised based on the provided experiences. Later further trainings were offered in various provinces:

- A series of seminars were conducted by the TMA, HRFT and SFMS upon the request of the provincial directorate of the Ministry of Health between December 2002 and June 2003. The training group consisted of general practitioners who were officially issuing forensic medical reports. The second training in the series was discontinued when security forces interrupted it and started an investigation against the organizers and trainers of the training.
- SFMS organized trainings for forensic medicine specialists.
- Trainings targeting lawyers were conducted in cooperation with the bar

associations and the Association of Contemporary Jurists. These trainings were enriched by contributions from the Protocol and forensic reporting. The trainings organized by the Group for the Prevention of Torture in Izmir constitute an important example. Approximately four hundred lawyers were trained on the Protocol with the training module, which was developed in cooperation with the physicians.

- The Istanbul Protocol became part of the curriculum in some medical faculties such as the Istanbul University Faculty of Medicine, the 9th September University Faculty of Medicine, and Cukurova University Faculty of Medicine. It was included in the curriculum of the forensic medicine, psychiatry and ethics departments.

#### b. Awareness raising activities

There are continuous efforts to extend and spread the following activities:

- Seminars, conferences and panels for various groups on IP.
- Presentations in programmes where human rights, torture and medical ethics are discussed.
- Presentations on the Protocol in scientific symposiums.
- Distribution of the Turkish translation of the Protocol to members of related professions.
- Introduction of the Protocol and the full translation in Turkish on the websites of the TMA and HRFT.
- Publishing articles in periodicals and newspapers.
- Organizing activities where the Protocol is introduced on special occasions such as “Human Rights Day” and “Day in Support of Victims of Torture”.

*B. International programmes on trainings and awareness rising*

Many health and legal professionals have little or no training in the investigation and documentation of torture, which requires specific technical skills and knowledge of both medical and legal procedures in order to be conducted effectively. Two international training projects have been launched.

a. The Istanbul Protocol Implementation Project This Project, which aims to increase awareness, national endorsement and tangible implementation in five countries (Sri Lanka, Georgia, Uganda, Morocco and Mexico), was implemented between 2003 and 2005. The target groups of training seminars were health and legal professionals. The Project was funded by the European Commission (EC). The proposal was submitted by IRCT and WMA and the project was coordinated by IRCT, WMA, HRFT and PHR USA.

The goal of the project was to establish a framework for the universal implementation of the Istanbul Protocol, and to begin the implementation process in five selected countries.

The objectives of the project were as follows:

- To develop training methodology and materials, including a torture detection format for health and legal professionals, reflecting consensus among all national and international partners to the project.
- To train a total of 250 health and 125 legal professionals in the five countries selected and equip participants with the necessary knowledge and tools to implement the Istanbul Protocol and promote the capacity for future trainers.
- To develop awareness on torture in general and on the Istanbul Protocol, the

existing monitoring tools and reporting mechanisms in particular.

- To evaluate the impact of project activities in each of the five countries and to provide a set of final recommendations to the relevant national and international authorities.

b. Prevention through documentation project This Project was prepared with the aim of engaging health and legal professionals and mobilizing knowledge in torture rehabilitation centers for efficient prevention of torture. This was accomplished through the implementation of the Istanbul Protocol through systematized and high quality documentation of torture by IRCT. The Project is funded by EC for the period of 2005-2007. WMA, PHR USA, REDRESS and HRFT are the contributing partners of the Project. HRFT is responsible for the coordination of the trainings.

The programme embraces a range of activities in ten target countries, two in each of the following five regions: 1) Central and Eastern Europe and New Independent States (Georgia and Serbia), 2) Middle East and North Africa (Morocco and Egypt), 3) Sub-Saharan Africa (Uganda and Kenya), 4) Asia (Sri Lanka and the Philippines), and 5) Latin America (Mexico and Ecuador).

The Project embraces a range of activities concerning training/capacity-building and advocacy targeted at health and legal professionals, staff at rehabilitation centers, journalists and human rights organizations in ten target countries. It also has a strong training-of-trainers component and focuses on regional collaboration, which will ensure a significant multiplier effect within the programme period and facilitate replication and extension beyond the three-year programme period:

- Increased and improved investigation, documentation and reporting on torture;
- Increased general awareness about torture, documentation and the Istanbul Protocol;
- Assessment of the potential impact of effective documentation in the prevention of torture.

Activities could be summarized as follows:

- Health professionals and legal experts in ten target countries apply international standards on investigation and documentation of torture and increasing collaboration is taking place between the two professions;
- Involved rehabilitation centers/programmes in ten target countries systematically document, analyze and report on cases of torture (taking into consideration any security concerns);
- Rehabilitation centers/programmes and human rights organizations collaborate and exchange information on cases of torture in ten target countries and examples of good practices have been compiled relating to how rehabilitation may add to prevention;
- Relevant decision-makers in ten target countries have a focus on torture and knowledge of the related international obligations and instruments;
- Increased public debate on the prevalence of torture and the relevant legal rights in ten target countries;
- Overview of the Istanbul Protocol as a practical prevention tool (with a special focus on ten target countries).

### Conclusion

The Istanbul Protocol is a very important, useful and effective document. But even the most precious standards, protocols, docu-

ments are only written on paper, unless the people, the communities, the governments show determination, to implement them. Participation and/or support of health and legal professionals are of crucial importance for the abolition of torture and other forms of ill treatment. Therefore, health and legal professionals and their professional organizations bear an important responsibility in the efforts of prevention. To show a collaborative effort, taking this responsibility into consideration, is a prerequisite for the elimination of torture.

A multidisciplinary approach, in terms of collaboration of health and legal professions, is also vital for the prevention and elimination of torture and other forms of ill treatment. It is important to enhance the collaboration between these professions for the purpose of prevention and elimination. There is a lot to do for the implementation of the Istanbul Protocol on national and international levels, including, but not only, international trainings and efforts on awareness rising. It is necessary to join forces to be effective in this task.