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IRCT position paper on the Proposal for an Asylum Procedures Regulation (July 2016)

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INTRODUCTION

With a network of 157 independent torture rehabilitation centres in 76 countries, the IRCT is the world's largest membership-based civil society organisation working in the field of torture rehabilitation and prevention. There are currently 33 IRCT member centres in 16 EU Member States that all offer a range of holistic rehabilitation services for asylum seekers and refugees. These services include medical, psychological, legal and social support to asylum seekers and refugees.

This paper presents the IRCT's position on the European Commission's proposal for establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU[1].

The impact of torture on victims

Torture is reported in more than 140 countries around the world, on men, women and children. It occurs in prisons, police stations, army barracks, on the streets, in hospitals, in secret detention facilities, in schools, and even in their homes, to name but a few locations. Among a seemingly endless cavalcade of torture methods perpetrated are beatings, electric shocks, burns, cuts, simulated drowning, threats to kill family members, deprivation of food, sleep and medicine, mutilation, rape and mock executions.

Torture seeks to destroy all aspects of the person; to rupture their sense of identity and sever their links to family and community. It can result in permanent physical impairment and is psychologically scarring, leaving victims with long-lasting illnesses. The effects of torture reach far beyond the victims. It spreads to their children and family who suffer similar symptoms with devastating impact on their lives.

Trauma resulting from gender-based harm, torture, rape or other serious forms of psychological, physical or sexual violence frequently leads to mental health problems such as post-traumatic stress disorder (PTSD), anxiety and depression disorders, leading to issues such as severe headaches, insomnia, suicidal ideation, flashbacks, avoidance and panic attacks, making it extremely difficult to perform basic day-to-day tasks.

Research has also shown that dissociation and avoidance are common reactions for torture victims suffering from PTSD[2], which may make it impossible for them to disclose all relevant details or indeed cause them to offer incomplete or inconsistent accounts of their narratives. Dissociation and avoidance occur when certain situations, such as external reminders, trigger distressing memories or thoughts. Reminders of torture (such as being interviewed by a law enforcement official or having to recall violent events) can often induce significant anxiety and even panic attacks. Most of the time, these manifestations cannot be controlled,

[1] European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, COM(2016) 467 final, 13 July 2016, hereinafter 'the Regulation'.

[2] Finkelstein M. and Solomon Z. (2009). "Cumulative Trauma, PTSD and Dissociation Among Ethiopian Refugees in Israel", *Journal of Trauma & Dissociation*, 10:1.

The IRCT enjoys consultative status with the UN Economic and Social Council and participatory status with the Council of Europe.

leading the victim to unintentionally negate or overlook traumatic events of their past. The purpose is not to be uncooperative, but is in fact just a way for the torture victim to cope with their trauma[3].

> *"One of our clients would faint every time he had a meeting with the Director of the reception centre he was staying at. We discovered that he had been tortured badly over a number of years by the Director of a police department in his country of origin. During the period of torture, he would be lead upstairs by armed guards. In the reception centre, he also had to walk up the stairs to meet with the Director of the reception centre. The Director of the reception centre symbolised the same position of authority that had tortured him in his home country, causing him to panic and faint."*

The main symptoms of dissociation are dissociative amnesia, depersonalisation disorder and dissociative identity disorder. This is characterised by momentary and involuntary disruptions in memory, awareness, identity and awareness whereby people forget important information about their personal identity or feel a sense of detachment from their actions, feelings and thoughts. The applicant may seem to be daydreaming, look visibly disinterested or appear disengaged from the current activity. At a practical level, many IRCT member centres report that their clients can frequently miss appointments or reporting duties because they experience episodes of avoidance and disassociation.

SUMMARY OF VIEWS

Special procedural guarantees: an earlier identification scheme is needed

The IRCT welcomes the introduction of more detailed instructions on the identification of torture victims through a needs assessment for special procedural guarantees. In particular, the IRCT is pleased to see that the needs assessment must be systematic and conducted as soon as an application is made. Furthermore, the option of integrating the assessments in the recast Reception Conditions Directive and the Asylum Procedures Regulation will help streamline identification of torture victims and avoid re-traumatisation through multiple assessments.

However, it is crucial that effective and systematic screening mechanisms to identify torture victims are in place before the determining authority has taken a decision on the type of procedure, the admissibility of the claim or the entry to the territory. Otherwise, torture victims will not benefit from the special procedural guarantees to which they are entitled and their application may be unfairly and wrongly dismissed.

The need to exempt torture victims from special procedures

The IRCT is, however, concerned that provisions allowing authorities to use special procedures (accelerated and border procedures) for torture victims remain in the Regulation. There are two main problems with special procedures for torture victims. In practice, IRCT member centres have noted that they do not have access to medico-legal reports (MLRs) to medically substantiate their allegations of torture in accelerated and border procedures, which can lead to non-refoulement violations. Second, shortened procedures are irreconcilable with the concept of adequate support and do not provide torture victims with an effective opportunity to present all relevant elements at their disposal to the determining authorities. In order for torture victims to meaningfully engage in the asylum procedure, they need the appropriate amount of time for their rehabilitation process to have an effect.

A testimony from IRCT member centre bzfo in Germany exemplifies this:

[3] As recognised in *The United States v. Rasmieh Odeh* in the US Court of Appeals, Sixth Circuit.

"An applicant's claim was rejected after an interview at the airport in Dusseldorf under the accelerated procedure. Soon after, the applicant tried to take his own life. The ensuing medical and psychological examination showed the applicant had been tortured for years in his home country. He had not disclosed that fact in his asylum interview because he had been too nervous and afraid. The MLR showed scarring caused by torture as well as evidence of severe post-traumatic stress disorder".

The negative effect of sanctions for non-compliance

The IRCT is particularly concerned about the use of sanctions for alleged "non-compliance" with obligations in the Regulation. The use of such sanctions can have a detrimental impact on the mental health of torture victims as it needlessly adds to existing anxiety and uncertainty, potentially even re-traumatising the victim.

Torture trauma has an impact on all areas of day-to-day life. For victims, offering incomplete accounts of their stories, missing appointments and deadlines or seeming disengaged, is an extremely common reaction to the trauma they have suffered. However, this behaviour might be interpreted as non-compliance and the measures taken in response to non-compliance in effect penalise torture victims for exhibiting basic symptoms associated with torture trauma. Torture victims might have their applications unfairly and summarily rejected without due consideration of the merits of their case, which risks violating the principle of non-refoulement.

Medical examinations

The provisions on medical examinations (Article 23) should reflect international obligations with respect to investigations into allegations of torture. Where relevant to the outcome of an application for international protection, determining authorities should not take a negative decision on the application where there are allegations or signs indicating torture or ill-treatment without first having conducted and effective investigation including a medical examination[4]. These medical examinations should be carried out according to the international standards and principles set out in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (commonly referred to as the 'Istanbul Protocol')[5] and should be paid for out of public funds.

Use of safe countries concept

The IRCT is deeply concerned about the use of the safe country concepts as it may lead to non-refoulement violations for torture victims. Specifically, the presumption of safety unduly increases the burden of proof on the applicant, which is especially problematic for torture victims, as such applications are taken through an accelerated procedure.

This risk is exacerbated by the fact that applications from safe countries are dismissed as non-admissible. Whereas in principle there are ways for applicants to challenge the inadmissibility of their claim based on the first country of asylum and safe third country concept, in practice, this legal safeguard is rendered void. In the experience of many IRCT members, applicants do not have sufficient knowledge of the legal process this early in the procedure (even when authorities purport to have communicated it to them) to effectively challenge

[4] UN Convention against Torture, Article 12; UN Committee against Torture (2012). *General comment no. 3. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Implementation of article 14 by States parties.* Available here; European Court of Human Rights, *R.C. v. Sweden*, Application no. 41827/07, 9 March 2010.

[5] Office of the United Nations High Commissioner for Human Rights (2004). Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - Istanbul Protocol, United Nations, New York and Geneva. Available here.

this. The IRCT therefore calls for none of the safe countries concepts to be used as grounds for non-admissibility.

Furthermore, any assessment of the concept of 'sufficient protection' in a first country of asylum or safe third country must include practical access to holistic rehabilitation services according to international standards in that country[6]. Torture victims should not be returned to a country where they do not have access to such services. In some circumstances, returning a torture victim to a State where they are unable to access medical treatment and thus secure their right to rehabilitation may amount to a breach in Article 3 of the European Convention on Human Rights[7]. The IRCT therefore advocates that "appropriate access to the labour market, reception facilities, healthcare and education" within the meaning of Article 44(2)(f) should include the availability of rehabilitation services in the safe third country or the first country of asylum.

MAIN RECOMMENDATIONS

Special procedures

- Torture victims should systematically be excluded from the accelerated and border procedures regardless of availability of adequate support.
- In cases of subsequent applications and withdrawal procedures, a new special needs assessment should be conducted.

Medical examination

- Where relevant to the outcome of an application for international protection, determining authorities should not take a negative decision on the application where there are allegations or signs indicating torture or ill-treatment without first having consulted a medical examination in accordance with the standards and principles of the Istanbul Protocol.
- The applicant's consent to undergo such an examination should be protected.

Safe countries concept

- Safe countries concepts should not be used as grounds for non-admissibility
- Victims should not be returned to a country where they do not have access to rehabilitation services.

Procedural rules

- Special procedural guarantees should be detailed and reinforced in order for special needs to be effectively addressed.
- Sufficient time should be provided to victims of torture to present the merits of their case. The asylum procedure duration should, to a reasonable extent, integrate the time needed for the medical or psychological treatment to have an effect
- All personnel, including interpreters, doctors, psychologists and legal representatives, should be adequately trained.
- All references to implicit rejections of applications in cases of non-compliance should be scrapped.

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[6] Smith, E., Patel N. and MacMillan L. (2010). *A Remedy for Torture Survivors in International Law: Interpreting Rehabilitation*. Medical Foundation for the Care of Victims of Torture (now, Freedom From Torture).

[7] See *D v. UK* (1997) 24 EHRR 423; *BB v. France*, 9 March 1998, RJD 1998-VI, p.2596*; Karara v. Finland*, Application No. 40900/98, 29 May 1998; *MM v. Switzerland*, Application No. 43348/98, 14 September 1998; *SCC v. Sweden*, Application No. 46553/00, 15 February 2000; *Henao v. Netherlands*, Application No. 13669/03.