

THE ISTANBUL PROTOCOL



Justice for torture survivors is rarely done, despite its huge potential for healing individuals and communities. The Istanbul Protocol is a device that is helping to improve the situation, as Miriam Wernicke, Dr Jose Quiroga and Felicitas Treue discussed at last year's conference organised by the International Society for Health and Human Rights.

SAMIRA HASSAN and SEJLA TUKELIJA report.

Bringing the perpetrators of torture to justice is crucial not only for ensuring reparation to the victims, but for ending the impunity of the torturers. A United Nations document, the Istanbul Protocol, also known as the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is a set of international

guidelines for the investigation and documentation of torture.

Since its inception in 1999, it has become a crucial instrument in the global effort to end the impunity of perpetrators. Medical experts use it to gather relevant and reliable evidence, to assess the consistency between allegations and the medical findings and so produce high-quality medical reports.

Legal experts also use the Protocol to obtain reliable statements from torture victims and witnesses, recover and preserve evidence related to the alleged torture and to determine how, when and where the alleged torture occurred.

Seventy-five experts from 15 different countries created the Protocol, partly in response to the death of Baki Ergodan in a Turkish prison in 1996. The official forensic report stated that Ergodan had died of acute pulmonary oedema as a result of a ten-day hunger strike. But when the Turkish Medical Association carried out an independent investigation they reported the official finding was false and determined the cause of death to be Adult Respiratory Distress Syndrome (ARDS), a result of the use of torture.

Dr Quiroga, a torture survivor himself and Director of Medical Services at the Program for Torture Victims said: "When the Protocol was being developed seventy-five percent of the countries in the world were systematically practising torture, in spite of having signed the Convention Against Torture. This means many democratic countries were also practising torture, for example, Mexico."

The Istanbul Protocol can also be used to evaluate claims for asylum. It provides guidelines for interviewing an alleged victim of torture and for performing medical examinations. This can help to assess the consistency between the medical findings and the account of torture, ill-treatment or trauma made by the asylum seeker in his claim for protection.

Unfortunately, awareness of the Protocol is still relatively limited. In many

cases, health and legal professionals have little or no training in the examination and treatment of torture victims, or in the investigation of torture. Often they have no knowledge of the guidelines set out by the Protocol, which makes it difficult for them to implement it.

As Miriam Wernicke says, "The challenge is to produce documentation that can be used as evidence and to do that by independent experts, as well as establishing collaboration between health experts and legal experts. States do have an obligation to conduct thorough investigations into torture allegations; however, we unfortunately see in many states that this is not done."

Felicitas Treue elaborates, "You can document the medical, the physical and the psychological, but the issues are the impact of torture. So one of the challenges is to get lawyers, doctors and psychologists working together to make the Protocol really work."

"One of the challenges we have seen in practice is what can we do so that states who adopt the Istanbul Protocol really respect the three aspects. I say that because the Mexican experience has shown us that the State and authorities were quite willing to adopt the Istanbul Protocol and they implemented it in their country."

"But the problem is they only implemented the medical and psychological [aspects] and they did not respect in any way the basic principle of independence of the experts. So what they have done, which is a really risky thing in the documentation of torture, they have the same doctors and psychologists that belong to the same institution as the police who tortured people. They have no respect

at all for the principles of independence and impartiality. This is one of the really big challenges of implementation."

Training is also an issue, which the International Rehabilitation Council for Torture Victims (IRCT) aims to overcome by developing materials and conducting training in ten diverse countries.

When asked about the future of the Protocol, Dr Quiroga said, "We have to implement it more worldwide ... so people know about that and we train more people in those places where there is torture. And apply [it] more...for example in the immigration courts in the United States."

"Our group has been involved for example in ten cases [that] we have brought to the International Human-Rights Court in Latin America. And in these ten cases we have been using the Istanbul Protocol. The last one was a case against the Peruvian government. That was the Castro Castro case. We examined victims of this situation and we used the Istanbul Protocol."

Perhaps the power of the Protocol is best expressed by a person for whom it has finally bought justice. Monica Feria, a lawyer and torture survivor of the 1992 massacre in the Castro Castro Prison, fought for 14 years on behalf of herself and others from the prison. Peru has finally acknowledged that the authorities were responsible for the bloody atrocities.

"It helped me to argue the case I represented. It highlighted the facts I was analysing and made me understand them better. As a consequence I opted for the right legal approach", says Monica Feria. ■

