



Awareness Raising and Training Measures for the Istanbul Protocol in Europe

The fight against impunity or: why documenting torture and ill-treatment in (Western-) Europe?

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TABLE OF CONTENT

1.	The Istanbul Protocol's thrust to documenting legal evidence.....	6
2.	Why a thorough documentation of legal evidence is necessary in (Western-)	
	Europe	7
2.1	It protects traumatised persons from being returned to their countries of origin	8
2.2	It acknowledges the suffering of the victims	9
2.3	It clearly points to human rights violations in countries of origin	9
2.4	It provides victims with the means to prosecute perpetrators in national courts in their home countries	10
2.5	It possibly allows prosecution of perpetrators by international courts or courts of third countries.....	10
2.6	It broadens the knowledge about torture and other forms of ill-treatment.....	11
2.7	It is by far easier in safe and resourceful countries	11
2.8	It calls attention to the fact that torture or ill-treatment might still exist in 'developed' countries.....	12
3.	Literature	13


1. The Istanbul Protocol's thrust to documenting legal evidence

This whole training series is designed to serve as a practical guideline on the proper application of the “Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (hereafter: Istanbul Protocol). Therefore, the training builds upon and is oriented on the structure and aims of the Istanbul Protocol.⁽¹⁾ The main purpose of the Protocol is to illustrate how to gather evidence of alleged incidents of torture in a manner that this evidence will be valid before court. In the same way the Art-IP Training Material is designed to enable physicians, psychologists, psychiatrists, law people and any other person working in the field of human rights to thoroughly document alleged cases of torture as well as to show the necessity of such documentation.

The Istanbul Protocol commences with listing and commenting on all “relevant international legal standards” regarding the prohibition of torture that were in force at the time of its drafting as well as naming “relevant ethical codes”. In chapter 3 general guidelines to stick to when conducting an effective and professional “legal investigation into torture” are outlined, namely how to set up an effective and professional investigative commission.

Furthermore, the Istanbul Protocol offers “general considerations for interviews” in order to assist in gathering evidence by interviewing victims in a way that will neither put them at risk of reprisals if they are still in custody, nor lead to a re-traumatisation by confronting them with past experiences. The most comprehensive chapters of the Istanbul Protocol deal with the gathering of medical evidence, i. e. “physical evidence of torture” and “psychological evidence of torture”. These chapters are crucial insofar as the presenting of thoroughly recorded medical evidence in a broad sense might be decisive within a range of legal procedures dealing with cases of alleged torture and ill-treatment. The Istanbul Protocol is completed by three annexes, two of which are also intended to directly support medical examinations of torture victims.

The Istanbul Protocol's preoccupation with gathering evidence that could be used in court is closely connected to the history of its drafting. The initial cause that led to the manual's development was the case of Baki Erdoğan, a Turkish citizen of the city of Aydın. Accused of being a member of a forbidden party, on 10 August 1993 he was first abducted by the police and then brought to hospital ten days later, in a state of coma he never recovered from. Whereas the official medical report stated a “natural” cause of death (from hunger strike), Baki Erdoğan's relatives discovered severe bruising and other signs of torture when preparing the corpse for funeral. Supported by

 Have a look at the outline of the Istanbul Protocol! (1)


photographs taken directly at the funeral, the Turkish Medical Association submitted an alternative report, naming acute respiratory failure caused by multiple traumas, especially electrical shock and torture by hanging, as causes of death. This evidence collected in accordance with the so-called Minnesota Protocol, an already existing “Manual on the effective prevention and investigation of extra-legal, arbitrary and summary executions”(2), ultimately led to the conviction of the perpetrators. As the Turkish Medical Association held an international symposium on the topic of “Medicine and Human Rights” in Istanbul a few years later, in March 1996, the Human Rights Foundation of Turkey (HRFT) together with the Physicians for Human Rights (PHR) as well as the Medical Association took the initiative of putting together guidelines to be used in the investigation of cases of torture on victims still alive. While these three organisations coordinated and organised the project, ultimately more than 75 experts representing over 40 organisations from fifteen countries and such professions as forensics specialists, physicians, psychologists, human rights observers and lawyers were involved in its production.


Three years later, in 1999, the work on the Istanbul Protocol was finished and it was presented to the United Nations. Soon thereafter, on the 4th of December 2000, it was adopted by the General Assembly as well as by the Commission on Human Rights. (3, 4)

2. Why a thorough documentation of legal evidence is necessary in (Western-) Europe

Its historical evolution indicates that the Istanbul Protocol was created out of the needs of a country in which torture still exists – despite all officially pronounced commitments to an absolute ban of this practice. Now, one could ask why we should make an effort thoroughly documenting incidents of torture in countries, where this practice presumably does not take place anymore. It is a widely held belief that after the Second World War and with signing such documents as the UN Convention against torture (UNCAT), all forms of State-caused gross ill-treatment were abolished in (Western-) European countries.

Notwithstanding the fact that indeed torture has become a rare exception in the countries in question themselves, there are many very good reasons for spending the necessary resources to effectively document and record allegations of torture and ill-treatment, which are raised, for example, by asylum seekers. Although the evidence gathered with the methods described in the Istanbul Protocol could also be used for other purposes (asylum procedures is one among several others), its main objective remains to bring perpetrators before a court. With this commitment it recognises the

 To get an overview of the history and content of, as well as previous trainings for the IP, read the article by Furtmayr / Frewer (5).

 Also watch the movie “Signs of Torture”.


vital importance of the fight against impunity in cases of torture and ill-treatment. Only when perpetrators are scared of being tried for their crimes, they will eventually change their behaviour. In this way, successful legal documentation that leads to prosecution and conviction is ultimately a means of preventing torture and ill-treatment.

Thus, besides psycho-social support for the victims a thorough and effective documentation of torture and ill-treatment is a second pillar to cope with such acts. But it also works the other way round. As it has been shown, the fight against impunity is also an important means to support the psycho-social healing of victims. (6) This opens a whole range of reasons for gathering evidence of torture in all countries. The following list intends to outline the most prominent ones but is not necessarily conclusive.

A thorough and effective documentation of evidence of torture and ill-treatment is necessary, because:

2.1 It protects traumatised persons from being returned to their countries of origin

Asylum must be granted to everybody facing persecution on grounds of race, religion, nationality, membership in a particular social group or because of a particular political opinion, i. e. fearing human rights violations. Being subjected to torture and ill-treatment constitutes such a gross violation of human rights. Unfortunately, the possibility to prove one's torture experience in asylum procedures is usually rather limited – because of the formal layout of the process, which asks of victims to tell their traumatising experience in a setting probably similar to interrogations, or because of the unwillingness of authorities to really uncover the truth. A thorough documentation that leads to a grant of asylum might literally be life-saving in cases in which victims have to face repressions in their country of origin upon return. Moreover, as it has been pointed out by German psychologist David Becker (see citation (6) for an overview of his theory as well further reference), a safe and stable environment is one of the unquestioned preconditions for the victims' recovery. An uncertain status of residence and the possibility of having to return into the arms of the perpetrators will most possibly worsen psychological symptoms and inhibit recovering. Therefore the documentation of trauma from torture and ill-treatment contributes as well to prevent asylum seekers from being returned and to grant a legal status according to humanitarian and human rights regulations taking into account the individual (mental) health status.

 Read more about the necessity of the fight against impunity in: Rauchfuss/ Schmolze (6).

✓ Documentation of torture is valuable even if not directly used for bringing perpetrators before court.

2.2 It acknowledges the suffering of the victims

One of the main characteristics of torture and ill-treatment is that in countries where they are widely practiced, they become a sort of open secret: everybody knows that it happens, but nobody dares to speak about it. This pushes torture victims even further into isolation than they are already in by having gone through an experience that is beyond normal communication.


Usually the trust and confidence in others is completely destroyed by having been subjected to a “man-made disaster” like torture. But even if a victim wants to share his or her experience and speak out, this might not be easily feasible due to this secretive attitude of the population. As a result, torture victims are denied the truth, which instead becomes the official history established by the perpetrators. Thus victims might often become completely isolated, even after torture has ceased, living a continuous re-traumatisation.


The unwillingness to uncover the full truth, for example within asylum procedures, is - as hard as this statement may seem – in this sense a continuation of the deeds of the actual torturers by disregarding the experiences of the victims. Also, a thorough evidence gathering means an acknowledgment of the survivor’s experiences and at least a partial restoration of trust in justice. Even when perpetrators are not brought before court, this can already be a first step towards “healing by justice”. (6)


2.3 It clearly points to human rights violations in countries of origin

Most countries in the world have signed and ratified documents like the UN Covenant on Civil and Political Rights (ICCPR) or the UN Convention against Torture (UNCAT). Although these documents are legally binding and absolutely prohibit the use of torture whatever the circumstances, the reality regarding their factual implementation is different. Despite official commitments to completely ban torture and ill-treatment, they still are practiced in most countries, sometimes even systematically.

However, no country, even the ones practicing torture in a widespread manner, will acknowledge and revendicate its use anymore. A thorough and effective documentation of allegations of torture and ill-treatment, which produces legal evidence, therefore allows to clearly point at countries in which a pattern of torture and ill-treatment still occurs. This is especially the case when a large number of asylum seekers bring forward allegations of torture concerning one specific State, which can be substantiated by careful examination and documentation. Besides “waving the moral index finger”, the documented evidence might also trigger United Nations or regional monitoring mechanisms to closely observe or inquire into incidents of tor-

 *Have in mind what you learned about Becker’s concept of psychosocial trauma in Rauchfuss / Schmolze (2008) (6).*

 *See also the Power-Point Presentation by Knut Rauchfuss held at the IALMH conference 2011.*

 *See the ‘Atlas of Torture’ website of the Boltzmann Institute of Human Rights in Vienna for an update of cases of torture and ill-treatment in the world, as well as the webpage of the OMCT:*

<http://www.atlas-of-torture.org/>

<http://www.omct.org/>

ture, as acts of torture are in clear breach of legal international and regional commitments.

2.4 It provides victims with the means to prosecute perpetrators in national courts in their home countries

Documenting allegations of torture in (Western-) European countries will more often than not mean documenting the allegations brought forward by refugees. This means that for the time being and also for the time of the investigation into possible allegations, victims will generally not be able to claim justice in their home countries. Nevertheless, for several reasons (installment of a new Government, democratic changes, etc.) the situation might change over time and a climate might develop which supports the recognition that a new and stable order cannot be built upon denying the dark past.

For example, several States in South America have put an end to impunity for torture acts committed under dictatorships. Once the legal situation in countries of origin changes and allows for a trial, former victims might wish (and should be encouraged) to seek justice before courts in their home countries. It is crucial to then be able to bring evidence of torture in a documented and precise way.

The effort of documenting torture allegations, knowing there should be no prescription for the crime of torture, also empowers victims to pursue the restitution of justice by themselves.

2.5 It possibly allows prosecution of perpetrators by international courts or courts of third countries

The last years have seen an unprecedented triumph of international criminal law. Since the establishment of the International Criminal Court (ICC), gross violators of human rights might be brought to justice, regardless of their former position and political influence, as well as – if the case is referred by the UN Security Council - of the place where these violations have taken place. But not only has criminal law become international; a number of countries have implemented laws according to universal jurisdiction that allow for prosecution and trial of human rights violations that were committed elsewhere and by persons who are not citizens of these countries.

These developments offer new chances for the prosecution of human rights violations and for the fight against impunity of perpetrators. These criminal procedures rely very much on evidence, and function with high standards. A thorough documentation of allegations of torture and the gathering of evi-

✓ *Though not obvious at first sight, eventually the gathered evidence might be used in trials.*

🔗 *For more info on the ICC, see the unit on relevant international legal standards.*

dence therefore are of utmost importance.

2.6 It broadens the knowledge about torture and other forms of ill-treatment

Human “creativity” does not stop when it comes to the question of torture and ill-treatment. A review of the history of torture and ill-treatment as well as their methods gives a clear hint at the suffering many human beings have been enduring, until today.

With torture being prohibited in an absolute and inderogable manner in all countries of the world, perpetrators fear now more than ever to be held responsible for acts of torture. More refined torture methods have therefore been developed, that leave less visible marks. One such example is the application of electric shocks. When diagnostic methods were developed to clearly identify, for example, electrical burn scars to the skin, even months after the incident had happened, torturers started to use fluids and gel before applying an electric shock. This is on the one hand more painful and on the other hand prevents detectable electric burns by enlarging the entrance point of the current (see (1) p. 40-41). Another development has been the shift from physical to psychological forms of torture, as it has been observed in the United States’ ‘War on Terror’ for instance. Since an effective documentation will always comprise a thorough medical as well as psychological evaluation of the victims, including the effects they suffer from, knowledge about torture will automatically grow in a steady way. This increasing knowledge will be useful at every level in the fight against torture, from treatment of survivors to monitoring human rights violations, developing new and refined diagnostic methods, and criminal prosecution.

2.7 It is by far easier in safe and resourceful countries

While it is clear that the focus in the fight against torture and impunity has to be on monitoring, prosecuting and eventually abolishing this practice in countries where it is still practiced, there are in the meantime also certain advantages of documenting torture in host countries.

First of all, in safe countries, victims usually do not have to fear reprisals when bringing forward allegations of torture and ill-treatment, unlike in a country that still displays a pattern of torture and where State bodies are involved in such acts.

Moreover, documentation in safe host countries also alleviates an ethical dilemma medical personnel can face in the country where torture has been committed: when uncovering unmistakable evidence that a patient has been subjected to torture, the question arises whether it is better to keep

☐ For more information on torture and ill-treatment in the ‘War on Terror’, see the UN Joint Study on Secret Detention, UN Docs, A/HRC/13/42, June 2010 (8)

✓ Standardised and effective documentation is absolutely essential!

✓ Pragmatic reasons may also speak for an effective documentation in safe host countries.

these findings secret, for fear of reprisals against the victim, relatives, or the medical staff themselves; or if, notwithstanding, the case should be made public in the hope to eventually contribute the abolition of the practice (see (1) p. 15 and (7) p. XXIV). This dilemma usually will not arise within countries where torture is a rare exception and where the justice system is functioning.

The availability of resources in (Western-) European countries is another reason for documenting torture and ill-treatment. This of course includes the generally better financial situation in industrial and democratic countries; but it also means professional resources with regard to medical and psychological education and personnel as well as diagnostic devices. High-tech (and therefore expensive) diagnostic methods like MRT or CT will not regularly be available (and even less for mostly poor torture victims) in many countries of origin. Nevertheless, these radiological methods are often essential for an exact diagnosis of lesions and for establishing irrefutable evidence that torture has taken place.

2.8 It calls attention to the fact that torture or ill-treatment might still exist in ‘developed’ countries

It is a commonly shared belief that torture and ill-treatment do no longer take place in Western European countries. Since the age of enlightenment this practice has been discredited and abolished step by step, with setbacks before and during the Second World War in Germany and other countries, or in the context of the French reaction to the fight for independence in Algeria for instance. However, in recent years, torture has slowly disappeared in these countries, to rare exceptions. There are, indeed, still a number of instances of severe ill-treatment and sometimes torture happening.

As expressly stated in the articles 2 and 16 of the UNCAT, as well as in the Istanbul Protocol, other forms of cruel, inhuman or degrading treatment or punishment are equally absolutely prohibited under any circumstances. Situations, however, in which severe ill-treatment takes place, are often in the course of forced deportations of asylum seekers whose application has been denied for example. Also, the UNSRT and his team witnessed conditions of detention of asylum seekers in Greece in 2010, whether in police custody, migrant detention centres or prisons, that clearly constituted inhuman treatment.

🔗 *For more info on the obligations deriving from the UNCAT, see the unit on relevant international legal standards.*

🔗 *See the report of the UNSRT mission to Greece, UN Docs, April 2011, A/HRC/16/52/Add.4*

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