United Nations CAT/C/SR.956

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
9 November 2010

Original: English

Committee against Torture
Forty-fifth session

Summary record of the first part (public)* of the 956th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 2 November 2010, at 10 a.m.

Chairperson: Mr. Grossman

Contents

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.956/Add.1.

The meeting was called to order at 10.10 a.m.

Briefing by the International Rehabilitation Council for Torture Victims on the Istanbul Protocol

1. **The Chairperson** welcomed the representatives of the International Rehabilitation Council for Torture Victims (IRCT), who would brief the Committee on the United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol). The guidelines set forth in the Protocol were highly authoritative and many experts considered that they had acquired normative status. They had been interpreted and quoted by legal bodies and applied by domestic authorities. The Protocol also helped doctors, lawyers and judges to identify and assist torture victims. It was important to know how best to interact with victims and to obtain information without inflicting renewed suffering.

2. The idea of inviting IRCT representatives to brief the Committee had originated with Ms. Sveaass, who was an indefatigable advocate of the Istanbul Protocol and a supporter of IRCT. He thanked her on behalf of the Committee.

3. **Ms. Sveaass** said that the briefing afforded an opportunity to Committee members to learn more about the Istanbul Protocol and its relevance to their work and their interaction with States parties to the Convention. Experts on the Protocol were placing more emphasis on how psychologists, physicians and legal professionals could use it to best effect.

4. **Mr. Kjaerum** (International Rehabilitation Council for Torture Victims) said that he was a legal officer with IRCT. The Council was very pleased to have the opportunity to brief the Committee on the Istanbul Protocol. As the main United Nations body mandated to work for the eradication of torture, the Committee could play an important role in promoting the wider and more effective use of the Protocol.

5. **Mr. Őzkalipçi** (International Rehabilitation Council for Torture Victims), making a PowerPoint presentation, said that the Istanbul Protocol had been drafted by 40 international human rights organizations and 75 forensic and other experts from 15 different countries. It was the first compilation of international guidelines and standards relating to torture.

6. A case that had occurred in Turkey in 1992 illustrated the importance of such standards. The death of a person in detention had been attributed in the official report to a hunger strike. During the burial ceremony, however, the family of the deceased had noticed and taken photographs of marks on his armpits and shoulders. They had then applied to the Turkish Medical Association and the Human Rights Foundation of Turkey for a reassessment of the case. On examining the medical files from the forensic medicine department, the Turkish Medical Association had concluded that the detainee's death had been due to torture. At the time, however, human rights organizations had been regarded as supporters of the country's enemies, separatists and even terrorists. The organizations had therefore sought international assistance for the institution of legal proceedings and their attention had been drawn to the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the Minnesota Protocol). A well-documented report based on the Manual had been submitted to a Turkish court, which had eventually admitted that the person concerned had died as a result of torture.

7. A team of experts on the Minnesota Protocol had noted at a meeting in 1996 that there was no manual applicable to survivors of torture. To remedy the omission, Vincent Iacopino of the United States branch of Physicians for Human Rights had written the first draft of the Istanbul Protocol. The drafting process had culminated at a meeting in Istanbul

in March 1999 and the final version had been submitted to the then High Commissioner for Human Rights, Mary Robinson, in August 1999.

8. The Istanbul Protocol was a United Nations document and the principles set forth in annex I had been adopted by the Commission on Human Rights in 2000. Two United Nations special rapporteurs on torture, Sir Nigel Rodley and Manfred Nowak, had recommended in their reports to the General Assembly that States should hold training courses on the Protocol. The Committee against Torture had made similar recommendations to a large number of States parties to the Convention. The Protocol had so far been translated into 15 languages.

9. The Istanbul Protocol had been cited in decisions by the European Court of Human Rights, the Inter-American Court of Human Rights, and domestic courts in Mexico, the Netherlands, the Philippines and Turkey.

10. In 2007 the World Medical Association had encouraged national medical associations to organize training courses on the Protocol. Several universities had included it in their syllabuses relating to public health, forensic medicine and law. A number of countries had also produced manuals on the Istanbul Protocol to be applied in the context of asylum procedures.

11. It was essential to write a detailed forensic account of the allegations made by survivors of torture. The account should include the survivor's psychosocial, medical and psychological history, focusing on any trauma history and symptoms. Forensic experts should enquire about the conditions of detention and the circumstances surrounding alleged abuse. They should also seek additional sources of information. A full physical examination was essential. For instance, a mere slap could result in eardrum perforation of which the survivor was unaware. The Istanbul Protocol also emphasized the importance of conducting a psychological assessment of every torture survivor.

12. There had been several court decisions in Europe on marital rape. For instance, in one case a husband and wife had been living separately for some time. The wife alleged that her husband had entered her home one day and raped her. The husband had denied the allegation, stating that the sexual encounter had been consensual and that his wife had been merely jealous of his affairs with other women. A psychological report had borne out the wife's allegation and led to a court ruling against her husband. The case demonstrated the power of forensic psychiatry.

13. Torture might be conducted in a manner that left no physical marks. Annex IV to the Istanbul Protocol contained guidelines for the medical evaluation of torture and ill-treatment. It encouraged all forensic medical departments to prepare templates based on the annex for the purpose of providing detailed information to the investigating authority.

14. Laboratory examinations were essential, since evidence of torture could sometimes be found 10 or 12 years after its occurrence. He drew attention to drawings showing detainees at the Bagram and Guantánamo detention centres and a photograph of a "sally port" used to hold detainees before their transfer to cage cells. The Istanbul Protocol emphasized the importance of routine photography of torture survivors in accordance with forensic rules. Referring to a photograph of a chest lesion, he said that the victim claimed to have been shot at close range with a gas canister. Fortunately a gas canister with the exact measurements and characteristics of the lesion had been found at the site of the incident.

15. **Ms. Treue** (Colectivo Contra la Tortura y la Impunidad, Mexico) said that torture sought to destroy people's will and identity, to manipulate their feelings and actions, and to inflict profound damage on individuals and their social network. The extremely painful and threatening character of torture provoked a fear of death, immediate reactions of panic and horror, and extreme levels of psychophysical activation. Being tortured signified loss of

control and vulnerability, leading to feelings of helplessness, confusion and frustration. The experience of being subjected to unimaginable cruelty by another person deeply affected a person's capacity to relate to other human beings and destroyed his or her basic trust in them.

16. Whatever method of torture was applied, whether physical, psychological or both, the "perverse interaction" threatened the victim's psychological integrity. The great majority of survivors of such traumatic experiences suffered chronic psychological symptoms that affected their functioning, their ability to establish and enjoy relationships, their expectations and their self-esteem. They suffered from nightmares, intrusive memories of torture and permanent anxiety. The sound of a banging door, an ambulance siren, a certain tone of voice, a uniform, a doctor's white coat, a film scene or the anniversary of detention or giving testimony could cause them to re-experience the horrors of torture. Survivors tended to isolate themselves, overwhelmed by feelings of shame and guilt, and had difficulty trusting even their families and friends. Depression, anxiety and fear were very common, and reliance on alcohol, drugs and medication to deal with such intense emotions led in many cases to addiction. Survivors' personal history was divided into the period before and after torture, and they realized that they would never be the same again.

17. Psychological assessments were therefore essential in cases of alleged torture or ill-treatment. The Istanbul Protocol regarded such assessments as an indispensable component of the investigation and documentation. Many torture methods left no physical evidence or else the injuries healed relatively fast. Torturers tended to apply methods that left no visible injuries or used psychological torture, which produced the maximum impact while leaving minimal physical evidence.

18. A young man in Mexico had been psychologically tortured by police officers in 2009. They had threatened to asphyxiate him, placing a plastic bag in front of him, to have him "disappeared" and to rape his girlfriend. He was convinced by the threats because many of his friends had suffered torture and one had been subjected to sexual torture. Although there was no physical evidence, the psychological impact had been devastating. For many months he had been unwilling to leave home or to go anywhere on his own. He had suffered from general anxiety and a sense of persecution, and continued to have serious sleep problems even one year later.

19. Many victims were not examined until the first crucial weeks had passed. Yet the psychological impact of torture was very strong and frequently chronic, leaving scars and open wounds for years. Although psychological evidence was very strong and should always be taken into account when documenting allegations of torture and ill-treatment, national legislation and judges often failed to take it into account or to accord it the same importance as physical evidence.

20. The purposes of the psychological evaluation were: to assess the consistency of the survivor's testimony with the psychological impact; to assess the need for psychological treatment and rehabilitation; to identify the need for effective reparation; and to provide recommendations for treatment or avoidance of retraumatization. Ten hours or more were required on average for a psychological examination in order to establish the facts and identify the psychological symptoms. According to the Istanbul Protocol, the examination should consist of the following elements: the victim's testimony regarding torture or ill-treatment; psychological symptoms; psychosocial history before and after torture; psychiatric history; history of possible use of alcohol or drugs; evaluation of social functioning; psychological tests; and clinical impression. The professionals who conducted the examination therefore required special training.

21. The results of the psychological examination provided valuable evidentiary support for the victim's allegations against the perpetrators. They could often help lawyers and judges to understand apparent contradictions or gaps in the testimony and to see them as a reflection of the psychological impact of abuse rather than as a false statement. Victims of torture often found it difficult to deliver a coherent statement so that their torture claims were rejected. In addition to their fear and mistrust of the authorities, many survivors had serious memory problems that prevented them from providing complete testimony. The suffering provoked by retelling their story also rendered it impossible for many victims to mention all the details, so that judges concluded that they were lying or exaggerating. A complete psychological evaluation carried out by trained and experienced professionals was therefore indispensable in all investigations of alleged torture.

22. She stressed the difference between the Istanbul Protocol requirements and the routine psychological examinations conducted by forensic experts in many countries. The forensic reports usually focused on personality profiles, criminal profiles or the psychopathology of the alleged offender. Such tasks obviously required a different methodology and instruments, and it should not be assumed that every trained forensic expert was capable of correctly applying the Istanbul Protocol.

23. The psychological evaluation also called for a major effort on the part of torture victims to overcome their fear and mistrust of strangers. As they were at risk of re-experiencing the torture situation, every effort should be made to prevent retraumatization. Victims should be assured that the examining doctor or psychologist was impartial and independent.

24. National legislation should ensure that independent expert reports were given the same legal value in court as official reports and that the victims were entitled to present the results of examinations carried out by experts they had chosen themselves.

25. It was important to assess the impact of training courses on the Istanbul Protocol in order to be sure that the experts really applied what they had learned, especially if they worked for institutions that might be responsible for torture. Transparency of the evaluation process should be guaranteed but the confidentiality of the data obtained should also be protected. Her own organization in Mexico had considerable experience of the abuse of the Istanbul Protocol when the basic principles of independence and impartiality of the health experts and investigating bodies were not observed. The Mexican Government had adopted the Protocol but it was applied by professionals who were dependent on authorities that had allegedly committed torture. As a result, all the evaluations were biased.

26. If the high ethical standards set by the Istanbul Protocol were observed by health professionals, they could both assist in delivering strong evidence in support of torture allegations and exert a therapeutic effect, since survivors could tell their story in a safe environment and could be confident of being heard and of taking action to achieve justice. On the other hand, if medical experts were unwilling to document the evidence due to fear or orders from their superiors, there was a high risk of abuse of the Protocol to disqualify victims alleging torture.

27. It was very important for international bodies such as the Committee against Torture not only to call for the implementation of the Istanbul Protocol and to bring pressure to bear to that end, but also to monitor its effective implementation and respect for its guiding principles, especially the independence, impartiality and competence of medical and psychological experts, protection for survivors and their families, and the obligation to inform the public about the process.

28. **Ms. Reventlow** (International Rehabilitation Council for Torture Victims) outlined five main lessons that IRCT had learned through its experience with implementation of the Istanbul Protocol. The first was that targeted training programmes were needed on a

continuous and long-term basis for all individuals involved in investigations of torture allegations. Awareness also needed to be raised on a broader level, sensitizing all stakeholders from the administration, law enforcement, judiciary and health-care services to the rights of torture victims and the need for proper documentation.

29. Secondly, while NGOs often had the necessary specialized knowledge, they did not have the access and resources to carry out the relevant activities. Collaboration between Governments and NGOs was therefore essential.

30. The third lesson was that a conducive environment was necessary for health and legal professionals to carry out examinations and use medical and psychological documentation of torture. Developing countries were often plagued by a lack of financial and staffing resources, which made it unrealistic to expect the few doctors and psychologists in those countries to be experts in the Istanbul Protocol. Also, involvement in training and documentation sometimes put health and legal professionals at risk and under pressure.

31. Fourthly, collaboration between health and legal professionals should be furthered, which was difficult because the two groups had different frames of reference, working ethics and terminology. Upholding the rule of law was essential for lawyers, judges and prosecutors, while doctors always aimed to ensure the best interest of the patient.

32. Lastly, Istanbul Protocol reports did make a difference in legal cases. Evidence of torture was difficult to obtain, so full reports were essential to strengthen the evidentiary basis of the victim's case. There was a large array of case law where medical and psychological reports had provided facts and insight that had been decisive in the court's decision. While many courts were still reluctant to take psychological evaluations into consideration, they were often decisive in supporting the victim's claim.

33. She wished to elaborate on certain key areas where IRCT saw opportunities for the Committee to encourage developments in the use of the Istanbul Protocol. Firstly, she suggested that the Committee might place increased focus on institutionalizing the Istanbul Protocol as a torture documentation tool. Governments needed to provide training on the Protocol for all professionals who were directly involved in documenting and investigating torture, and she encouraged the Committee to place increasing emphasis in its recommendations on effective training and monitoring.

34. It was also essential to ensure the independence of the health professionals who documented torture. The risk in that process was that States might attempt to abuse such institutionalization efforts by implementing accreditation systems that favoured government-friendly doctors or by prosecuting alleged victims for slander when allegations could not be proven by Istanbul Protocol examinations. IRCT welcomed input from the Committee on how to make recommendations on creating effective and independent government structures.

35. Very few countries provided alleged torture victims with prompt, effective and independent forensic medical and psychological examinations as an obligatory part of the investigation. IRCT would therefore encourage the Committee to include references to Istanbul Protocol examinations in its recommendations regarding prompt, effective, independent and impartial investigations.

36. While IRCT recognized that findings based on the Istanbul Protocol could not always be taken as conclusive proof that torture had or had not taken place, experience had shown that judges found it very difficult to determine the quality of medical evidence, and often the evaluation did not have any basis in objective criteria. IRCT invited the Committee to engage in dialogue on how the Committee could make recommendations on the use of the Istanbul Protocol as a standard for evaluating medical evidence of torture and

how it could promote such use in its own decisions under the individual communications procedure.

37. While it was not the primary purpose of Istanbul Protocol examinations to assess appropriate reparations for victims, they could indicate the scope of the harm suffered and rehabilitation support needed. In many cases compensation for torture was so minimal that it did not even cover basic physical rehabilitation.

38. Lastly, one of the main obstacles for persons claiming asylum as victims of torture was to prove that they had actually been exposed to torture in the past. The Istanbul Protocol was very seldom used to document cases in domestic asylum procedures, and IRCT therefore encouraged the Committee to include recommendations on streamlining such use when it addressed issues under article 3 of the Convention.

39. **Mr. Mariño Menéndez** asked if IRCT considered that the Istanbul Protocol could be applied in cases of cruel, inhuman or degrading treatment that did not qualify as torture. He wondered how psychological torture might be distinguished from degrading treatment since there was no physical evidence in such cases. In cases of domestic violence, he asked if IRCT believed that the examining doctor should recommend measures to prevent the recurrence of such violence, such as marital separation. In cases of post-traumatic stress disorder, he wondered how reliable Istanbul Protocol examinations were in determining whether or not the disorder was due to torture. Lastly, he noted that the Protocol was 10 years old and asked whether any amendments were envisaged to take account of changes in medical knowledge or technological advances. He agreed that the Committee should recommend the use of the Protocol in the framework of article 3, which was the basis for 80 per cent of the Committee's decisions on individual communications.

40. **Ms. Kleopas** said that the IRCT delegation had explained brilliantly in practical terms the purpose of the Istanbul Protocol. Most of the Committee's recommendations concerning the Protocol were to the effect that the State party should ensure that personnel involved in the treatment of detainees were trained on how to identify signs of torture. She recognized that those personnel were usually government officials and were therefore not independent. Another recommendation said the State party should guarantee the right of a person deprived of liberty to be seen by an independent doctor at the outset of the detention, but she believed that the Committee should also recommend that persons deprived of their liberty should have access at any time to an independent doctor. She asked whether IRCT thought the wording of the Committee's recommendation on training on the Istanbul Protocol for all personnel involved in the investigation and identification of cases of torture adequately expressed the State party's broad responsibility to train forensic and legal professionals.

41. **The Chairperson** said that his experience with government-appointed doctors was mostly negative, and he believed the current wording of the recommendation regarding independent doctors was a political compromise that carried little meaning. He believed that the Committee should recommend that persons deprived of their liberty were given access to a doctor of their own choosing, and he asked for the delegation's opinion on that matter.

42. **Ms. Sveaass** said she was pleased by the focus the IRCT had placed on psychological examinations. The Committee needed to find a solution to the Scylla and Charybdis of making medical examinations a State obligation while ensuring the independence of the medical professionals performing those examinations. She asked the delegation for guidance on how to do that and suggested one solution might be for medical teams to be linked to national human rights institutions. She also emphasized the need for training on and awareness of the Istanbul Protocol among health professionals.

43. **Ms. Belmir** said that in order to be effective the Istanbul Protocol needed to be implemented as soon as possible at the first sign of torture. In most States, the right to be examined by a doctor was included in the Code of Criminal Procedure, but the key issue was at what point that examination took place. In many cases, victims of torture did not have the financial resources to pay for such medical care, and she asked for the delegation's opinion on that issue.

44. **Ms. Gaer** noted that the Minnesota Protocol had been a point of reference in the establishment of the Istanbul Protocol and wondered whether the Committee should refer to it more often, as it rarely did so at present. She asked the delegation to comment on the sensitivity of the Istanbul Protocol to gender-based violence. She also wished to know which countries used the Istanbul Protocol in asylum procedures. She asked the delegation to compare and contrast the quest for an independent medical team with the quest for independent legal counsel. She questioned whether national human rights institutions would be the right framework for an independent medical team, since most of them did not have any true independent authority.

45. Article 14 of the Convention stipulated that each State party should ensure that the victim of an act of torture had an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. She asked how the delegation interpreted the phrase "as full rehabilitation as possible" and whether it applied only to nationals of the State party or to any victim of torture.

46. **Mr. Bruni** asked how measures could be taken to ensure the impartiality and independence of doctors who visited detainees in prisons, police stations and anti-terrorism departments. Most doctors working in those environments were dependent on national ministries, usually those of the interior, justice or, at best, health.

47. It would be useful to know whether IRCT took account of psychological torture methods, such as water or sleep deprivation or deprivation of cigarettes for smokers or drugs for addicts, and if so, how it combated such methods.

48. He wished to know whether efforts could be made with local legal and medical professionals to develop national standards in accordance with the Istanbul Protocol, adapted to the local context and national realities.

49. **Mr. Gallegos Chiriboga** said that in many cases asylum was a projection of persecution, and asylum-seekers often suffered physical or psychological torture. Cooperation with UNHCR should be undertaken to set minimum standards for asylum-seekers, as an extension of the Istanbul Protocol.

50. In the current era of the criminalization of migration, the barriers preventing migrants entering some States constituted both psychological and physical torture in cases where migrants were manhandled at border crossings, particularly in developed countries. Moreover, the use of torture in the context of terrorism constituted a State-induced policy of violence in some parts of the world. He requested more information on the Ecuadorian case to which Ms. Reventlow had referred.

51. There was a need to expand on the standards set in the Istanbul Protocol in order to develop an international norm on the issues concerned; the Committee could consider writing a commentary on the Protocol. The issues clearly required handling from a legal as well as a medical perspective; the independence of judges and lawyers played a significant role in dealing with those issues.

52. **The Chairperson** asked whether IRCT had studied the models developed by the legal profession to uphold the principle of the right to choose one's legal counsel. He also wished to know whether the Council had taken any measures to establish the liability of, and fight impunity for, doctors who violated their duties by colluding in acts of torture.

53. He invited representatives of NGOs to take the floor.

54. **Ms. Rojas** (Corporación de Promoción y Defensa de los Derechos del Pueblo) said that her work with torture victims in Chile had demonstrated that doctors must work in a multidisciplinary fashion. In her experience, they worked most effectively with lawyers, sociologists and psychologists in order to be able to identify and treat victims of torture. Many of the doctors involved in that work had taught lawyers how to interpret the psychological signs of torture in order to establish whether individuals had been subjected to torture. In a recent publication, her organization had concluded that forced disappearance constituted a form of serious and permanent psychological torture for both family members of victims and society at large.

55. **Mr. Őzkalipçi** (International Rehabilitation Council for Torture Victims), replying to the Committee's questions, said that the Council had conducted training on the Istanbul Protocol in over 32 countries. However, only 12 of those countries had sent trainees from both the legal and health professions. The Council encouraged interaction between State partners and NGOs and underlined the need for teamwork, which increased the quality of the medical reports produced.

56. He agreed that all potential victims of torture should have the right to be examined by the doctor of their own choice. While it was not easy to carry out effective investigations in some countries, the Council stressed the importance of challenging the systems that were in place. That approach had proved effective in many cases, and after training on the Protocol, several States had increased spending on forensic medicine, bought X-ray equipment for autopsy departments, and ultimately developed better standards for identifying and documenting torture.

57. He urged the Committee to refer to the Istanbul Protocol in its concluding observations. While the Protocol was in need of amendment, it was still very relevant to many countries and should be much more widely disseminated.

58. **Ms. Treue** (Colectivo Contra la Tortura y la Impunidad, Mexico) said that the Istanbul Protocol was relevant in investigations carried out both immediately after torture and many years later. The detailed psychological examination specified in the Protocol could reach strong conclusions and was capable of establishing whether post-traumatic stress syndrome was the effect of torture or of other factors.

59. The Istanbul Protocol could not be applied by doctors visiting detainees who were still in prison or other detention facilities as it required too much time. Nonetheless, when documenting the physical or psychological evidence of injuries, it was imperative that prison doctors and doctors in police stations should make reference to the possible origin of those injuries.

60. **Ms. Reventlow** (International Rehabilitation Council for Torture Victims) said that some countries already applied the Istanbul Protocol in their asylum procedures or used it as guidance. The European Union was examining how the Protocol could be applied in the development of a common European asylum system.

61. The Council strove to adapt its training sessions to each national context. In its work with colleagues in specific countries, it suggested that a large range of professionals should be involved. It would be useful to conduct a comprehensive review of the structures currently available in each country in order to ascertain where the shortfalls were and where the systems required improvement.

62. **Mr. Kjaerum** (International Rehabilitation Council for Torture Victims) said that there was often a link between the independence of doctors and that of the legal system and torture investigations in general. He encouraged the Committee to include reference to the

Istanbul Protocol as the medical component when it made recommendations on prompt, effective and impartial investigations.

The public part of the meeting rose at 12.10 p.m.