

INVESTIGATION OF TORTURE IN MEXICO

JOINT REPORT

CODIGODH
Comité de Defensa Integral
de Derechos Humanos
Gobixha



Contents

Alba Cruz Ramos
Patricia Cruz Ramos
Laura Melchor Díaz

Care Edition

Sara Méndez Morales

Translation

Anne Lorenz
Julia Ulrich

Design

Signar

Photography

Mario Martínez
Felipe Martínez
Citlali López

Comité de Defensa Integral de Derechos Humanos Gobixha A.C.

Presa Chicoasén 109, Fracc. Presa San Felipe
Oaxaca, México
Tel. Office Oaxaca (01 951) 5160802
contacto@codigodh.org
Tel. Office San Pedro Amuzgos (01 954) 1043082
amuzgos@codigodh.org

www.codigodh.org

Facebook: Codigo DH Gobixha AC

Twitter: @CodigoDH

Colectivo contra la Tortura y la Impunidad

Pitagoras 1210 - 18 Col. Del Valle, C.P. 03100
Tel. y fax: (55) 5604-5642
Office DF: colectivo@contralatortura.org.
Office Guerrero: cctigro@gmail.com

www.contralatortura.org/

Facebook: Colectivo contra la Tortura y la Impunidad

Twitter: @CctiColectivo

*We appreciate the support for the publication of this document to the
German Embassy in Mexico, Pan para el Mundo
and **Medico Internacional Suiza.***

The contents are the responsibility of the authors.

CONTENTS

1. Deficiencias in the Implementation of the Istanbul Protocol in Mexico	9
2. Obstacles in the Legislation on Torture in Mexico	17
The Legislation and its Obstacles	17
Investigation of Torture and its Obstacles	19
Recommendations	23
Appendix. Recommendations of International Instruments about Istanbul Protocol	27
Appendix. International Instruments Regarding Torture	31

Introduction

This document is part of the cooperation between the Human Rights Integral Defense Committee (Comité de Defensa Integral de Derechos Humanos Gobixha, CODIGO-DH) and the Collective Against Torture and Impunity (Colectivo contra la Tortura y la Impunidad, CCTI) which illustrates the situation of torture in Mexico, focusing the difficulties with the implementation of the Istanbul Protocol, fundamental for the documentation of torture.

The Istanbul Protocol provides a set of international guidelines for the medical and psychological assessment of persons who allege torture or other ill-treatment. Its application requires a full examination of the context of incidents, in other words carrying out a psychosocial evaluation because every case of torture is different. This manual, adopted by the Office of the United Nations High Commissioner for Human Rights in 2000, provides guidelines for the effective documentation of torture so this documentation may serve as valid evidence in court against alleged perpetrators.

This analysis shows several pending issues and obstacles that should be worked on by different authorities in Mexico to promote the adequate application of the Istanbul Protocol, particularly the General Attorney's Offices and other public human rights bodies.

On the other side, the culture of impunity is a fundamental aspect in this field, which is why the second chapter focuses on the legal obstacles and the urgency to bring national law into line with international standards in this field.

Comité de Defensa Integral de Derechos Humanos Gobixha

Colectivo Contra la Tortura y la Impunidad

December 2014



"In places where there is no light,
where there is no public access,
where things occur behind closed doors
that is where extremely brutal violations of
human rights continue to be committed"

Americo Incalcaterra

1.

Deficiencies in the Implementation of the Istanbul Protocol in Mexico

Regardless an endless list of recommendations from international organisms in the field of torture that the Mexican State has received, and also considering the fact that Mexico has also ratified and signed the main instruments to prevent and combat torture¹, it is still a constant instrument used by security forces. This situation has become worse within the “war on drugs” during Calderon’s term of office because of the participation of the military in detention, retention and interrogation of civilians. It is unacceptable to obtain evidence throughout confessions which are based on torture or coercion.

It is hard to find exact numbers about torture in the country, nevertheless there has been an increase of 600% in the last ten years, according to Amnesty International.² In 2006, the SEDENA was pointed out before the CNDH as the main responsible for human rights violations (torture, forced disappearances, extrajudicial executions, warrants and arbitrary detentions) in 182 cases in comparison to 1,164 complaints in the first half of the year 2012. National organizations have detected a modus operandi in the use of torture which is being applied in the same way in all regions of the country.

¹ Instruments of the United Nations Organization’s (UN) human rights protection system, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR, ratified in 1981) and its Facultative Protocol (ratified in 2002), the Covenant against torture and other cruel, inhuman or degrading treatment or punishment (ratified in 1986) and its Facultative Protocol (OPCAT, ratified in 2005), the International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED, ratified in 2008) and the Rome Statute of the International Criminal Court (CPI, ratified in 2005).

² <http://amnistia.org.mx/nuevo/2014/09/04/mexico-las-autoridades-guardan-silencio-ante-el-aumento-alarmanete-de-las-denuncias-de-tortura-y-malos-tratos/?o=n>

Detentions are carried out without any arrest warrant and with excessive use of violence. Torture (insulting, humiliation, threatening, beating, forced positions etc.) starts in the moment of detention and during transfer. Lots of the detained persons are brought to clandestine places where torture continues until the victim declares itself guilty of whatever he/she is accused of in order to put an end to his/her torture. The victims are presented as responsible before the media, even though there hasn't been realized any investigation of the incident neither the responsibility has been defined. In the majority of the cases, persons who have been arrested have in fact no connection at all with what they are accused of.

In this context, the application of the Istanbul Protocol plays an important role as a tool of documentation of torture and also as a tool used within the investigation of incidents of torture.

The Istanbul Protocol is a manual for the efficient investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment. It consists of international guidelines, the principles related to the investigation and efficient documentation of torture. These principles establish the minimum regulations for the states to assure an efficient documentation of torture. The manual and the principles are the result of three years of analysis, research and edition of 75 experts in the field of law, health and human rights who represented 40 organizations and institutions from 15 countries. The conceptualization and preparation of the manual is product of the collaboration of forensic, medical, psychological and legal experts as well as human rights observers.³

³ The Istanbul Protocol provides some guidelines for its application, among others: 1) General case information: Date of exam, if there are any restrictions for its application, if the person agrees or not to its application (informed consent). 2) Clinician's qualifications: medical education and clinical training, experience in documenting evidence of torture. 3) Psychosocial history pre-arrest: personal and family background. 4) Allegations of torture and ill-treatment: Summary of detention and abuse, circumstances of detention, places and conditions, chronology, narrative account of ill-treatment or torture, review of torture methods. 5) Physical examination: head, face, ears, nose, throat, eyes, oral cavity and teeth, chest and abdomen, genito-urinary system, musculoskeletal system, central and peripheral nervous system etc. To verify the person's state of health there should be carried out several specialized medical examinations. 6) History/ psychological examination: This part includes the post and pre-torture psychological history, mental status examination, assessment of social functioning, consequences of the traumatic event etc.

Since 2006, Mexico has initiated a process lead by the Office of the Attorney-General of the Republic (PGR) in order to implement the Istanbul Protocol. In 2003 the Attorney-General of the Republic in office issued an agreement to establish the institutional regulations for the application of the medical-psychological evaluation report. According to the agreement, the official experts recognized by the Office of the Attorney-General of the Republic will be in charge of the reports. It also states that the medical-psychological evaluation report should be applied quickly (shortly after the claimed incident) and in an exhaustive, impartial and independent way.

We have been observing inconsistencies in the application and the interpretation of the Istanbul Protocol during the years of its implementation.

On one hand we are facing a difficulty to apply the Protocol shortly after the claimed incident due to the fact that lots of persons who report torture are imprisoned in different facilities and the procedures of issuing the necessary permissions to enter a facility take a lot of time due to the rigid bureaucracy and the little availability of the authorities to document the facts.

Additionally there are difficulties with the transportation of independent experts to different penitential facilities throughout the country. Furthermore there are plenty of obstacles for the experts to enter the facilities and to get access to the material they need for their investigation. In many occasions the study is carried out years later, when the majority of the evidence of physical torture disappeared, meanwhile the psychological consequences persist. Therefore, it is necessary to apply the Protocol quickly in order to testify the physical injuries which normally disappear quickly depending on the grade of the injury.

Regarding the exhaustiveness of the investigation there are also irregularities. Persons, who have been interviewed by the Office of the Attorney-General of the Republic in the frame of the Protocol, relate that the investigation was carried out in short time and that in general projective tests were applied (e.g. НТР, Bender, person in the rain, incomplete sentences, among others). These tests do not contribute to prove a person's exposure to torture, but they are intended to blame the victim

for the suffered torture. A victimologist, a physician and a psychologist receive the official testimony.

The little or inexistent impartiality and independence of the official professionals who apply the Protocol is disturbing considering the fact that these experts are part of the Office of the Attorney-General of the Republic (PGR) or the Office of the Attorney-General of the State (PGJE), institutions being accused as responsible for acts of torture during arrests, safe-keeping and the practice of arraigo. It is the same institution that tortures and investigates; judge and accused are one.

It is absolutely irregular that the only official expert evaluation reports considered evidence of torture are issued by the PGR or PGJE. There is no restriction of legal character for independent expert evaluation reports. The Federal Code of Penal Proceedings does not establish any limitations for expert evaluation reports used as evidence. They are not exclusively assigned to one governmental institution and therefore independent expert evaluation reports should be recognized as equal. Nevertheless this is not happening in practice and independent expert evaluation reports are only given a documentary value.

It is worth stressing that public human rights organisms also apply the Istanbul Protocol. Nevertheless their official status isn't recognized either and they are only taken into consideration as documentation.

The Istanbul Protocol is not limited to its documentary function. It is also a tool to investigate the reported incidents. In Mexico, we are still far away from having investigations about cases of torture and even more of having a punishment for the persons that are responsible for acts of torture. So far, there isn't a single case of torture in our country judged by a national court. There are only three cases which were judged by the Inter-American Court; the cases of the ecologists Montiel and Cabrera, the sexual torture of Inés and Valentina as well as the case of Campo Algodonero.

The impunity of almost all cases of torture is due to several structural factors starting with the lack of investigation and in particular the lack of an appropriate application of the Istanbul Protocol. The Committee Against Torture (CAT) stated: "the use of the named Protocol is still inappropriate and in many cases exceptional", adding based on the

analyzed information: "official experts omit or diminish the importance of observed physical or psychological signs of torture or ill-treatment". Furthermore it recommends that the investigation of complaints of acts of torture committed by the security institutions should be carried out by "an independent organ not subordinated to the executive power".

In other words, the CAT encountered such a high level of complicity, lack of good will or ability to investigate the cases of torture by the existing strategies, that it stated the need to establish an alternative independent system in order to realize that task. It also emphasizes the lack of effective access for immediate and exhaustive examination and investigation as well as the lack of independence and supervision.

Persons who claim having suffered torture also complain about the way they were treated during the investigation by the health personnel that belongs to the PGR. They tell that they were blamed for what happened to them. For example, in the case of one of the women who survived sexual tortured in Atenco, she was constantly questioned about "what she was doing there" and told that she was responsible for what happened. Furthermore, these women weren't offered any snack or beverage during long periods of interrogation.

Marcelino Coache, a worker's union member, declares that he was subjected to an interrogation of more than 12 hours without receiving either food or water in the frame of the application of the Istanbul Protocol by experts of the PGR. In another case, Ramsés Villareal who claimed having suffered psychological torture, he was asked to undress by the experts of the PGR in order to take photographs of his body, even though he never claimed physical torture which makes such kind of evidence completely unnecessary. All these practices performed by the experts of the PGR only revictimize the persons that are object of the investigation.

The official experts state that if there are no visible physical signs then it is not a case of torture. They nullify the testimony and any kind of correlation between torture and psychological and social symptomology as well as its negative effects on work and family life of the victims.

Within the "Colectivo Contra la Tortura y la Impunidad" (Collective Against Torture and Impunity) we consider necessary and urgent the in-

dependence of the application of expert's evidence reports from the PGR in order to determine torture and to value independent expert evidence reports which are carried out by several civil and human rights organizations. Additionally, we see an urgent need to assure better conditions for the application of expert evidence reports within penitential facilities; in other words, to accelerate the procedures to enter penitential facilities, to allow the entry with the necessary equipment for investigation, to provide an appropriate private space for the realization of the investigation and finally to have sufficient time to carry out the study.

Moreover, we consider that the eradication of torture and impunity is an obligation of Mexico and therefore the government should take action to prevent, investigate and penalize torture.

In this regard, the program (Diplomado) with the title "Investigation on torture: Application of the Istanbul Protocol" we realized in Oaxaca is a contribution coming from civil society in order to intervene the problem of torture through professional preparation for health personnel; physicians and psychologists as well as legal professionals. This goal was meant to be achieved throughout knowledge of theoretical-methodological tools which permit the documentation and investigation of torture from a holistic approach.

With satisfaction we noted a broad interest in the professional preparation and in the knowledge about the application of the Istanbul Protocol. We are convinced that the commitment of the participants is not just a professional interest, it is rather a commitment to human rights and to justice in this country. We hope that this Diplomado has contributed to the professional preparation and the commitment of the participants to the topic. We from the CCTI invite you to join the fight against torture and impunity, the prevention of both, attention-rehabilitation and defense of the survivors of torture.



2.

Obstacles in the Legislation on Torture in México

Even though international conventions of Human Rights⁴ have been signed and the internal legislation in regards to torture crimes exists; torture and other cruel, inhuman or degrading treatment or punishment are a persistent practice in the Mexican State. It is clear that the sole existence of laws in a country is no guarantee of a real strategy for the eradication of an aberrant problematic such as Torture; since between legality and reality exists an abysmal distance.

Undeniably, it is also one of the transgressions of biggest concern for the Human Rights. This practice leaves serious consequences that harm human dignity, since it not only devastates the individual that suffers it but seriously harms the society as a whole; its existence disrupts all juridical order being also the most crude way of dehumanization.

The Legislation and its obstacles

Analyzing the Mexican juridical framework we find in the General Constitution of the Republic⁵ three provisions linked to the subject:

1. Article 19

Any ill-treatment during arrest or confinement, any annoyance without legal justification; any exaction or contribution levied in prison are abuses which shall be punishable by law and repressed by the authorities.

⁴ View attached Legislation.

⁵ Current Political Constitution of the United Mexican States, Articles 19, 20 and 22.

2. Article 20

He has the right to declare or remain silent. All forms of intimidation, torture and lack of communication are forbidden and shall be punished by law. Any confession made without the assistance of a counselor shall have no weight as evidence.

3. Article 22

Punishment by mutilation and infamy, branding, flogging, beating with sticks, torture of any kind, excessive fines, confiscation of property and any other unusual or extreme penalties are prohibited.

As shown, the Mexican Constitution expressly refers to torture in Article 20, without defining it. The other alluded provisions make reference to acts that can be considered torture.

Despite the existence of a legal framework, which expressly prohibits this practice in the General Constitution of the Republic, the problem exists and worse, it has intensified in recent years in our country, rising to high levels. Although more cases are documented, Mexican authorities refuse to acknowledge its existence; the serious part is the way in which investigations are brought upon, which are handled as charges of abuse of authority, serious injury, or other different legal forms distinct to torture.

From the analysis of the legal framework in regard to torture, we realize that it is limited and in some instances contradictory between domestic laws and international treaties, resulting in a lack of harmonization of the domestic legal framework with the international legal framework, allowing confusion and derogation. The existence of two legal frameworks becomes a serious obstacle for access to justice in concrete cases.

Mexico has signed four international treaties with regard to torture.⁶ Treaties and conventions that substantially are not of self-executing character, i.e., a specific legislation is needed for implementation. Inter-

⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Inter-American Convention to Prevent and Punish Torture and the Universal Declaration of Human Rights which explicitly mentions torture.

national treaties do not establish penalties for public officials who commit such acts, it is noteworthy that within elementary principles of law a judge cannot apply more than those penalties that are enacted by a rule exactly applicable to the criminal behavior at hand and with penalties proportionate to the seriousness of the act.

It is essential therefore that the applicable legal framework is harmonized and stop being contradictory. This should include international human rights standards to strengthen the existing regulations, the Mexican state would have to ratify relevant international treaties of human rights that have yet to ratify, incorporating them into national legislation and encouraging processes of legislative harmonization, with which they are already of mandatory observance.

Internally, in the State of Oaxaca is necessary to adopt provisions that explicitly criminalize torture, properly aligned with the definition contained in the Inter-American Convention to Prevent and Punish Torture, since it is the most advanced.

The legal concept in the local criminal law should provide appropriate sentences to punish the crime of torture, as the current legislation (State Law to Prevent and Punish Torture) contains a definition outside the international standard that contradicts treaties and provisions in constitutional Article 1st in force in the country, where constitutional status has been given to international treaties.

The investigation of torture and its obstacles

In the same way as current applicable laws, in regard to the implementation of such legislation we found a number of obstacles within the investigations that prevents the victims of this perverse crime against humanity access to justice, and allow the crime of torture to remain almost completely unpunished, making it a systematic practice.

The state is bound to guarantee the right of everyone complaining of torture to a prompt and effective investigation, including a review by independent experts. Although the obligation exists, in the Attorney's of-

fice and even in the Attorney General's Office, great obstacles are present for the compliance, such as:

- That experts that work at the prosecutor's office do not have independence, i.e. cannot be impartial in cases investigated by torture, since they occupationally depend on these bodies of law enforcement.
- Investigating authorities' ignorance of the existence of tools and their importance in the investigation of torture.
- The refusal of the Public Prosecutor's office to conduct the documentation based on the Istanbul Protocol due to the lack of knowledge of international standards for the investigation of torture.
- Lack of certified and/or trained experts in regards to documenting torture.
- The lack of a unified definition of torture that allows experts and agents of the Public Ministry the documentation in the same direction.
- Lack of adequate conditions of time and place for complete documentation.
- The re-victimization of the complainants due to the lack of care and safety of victims.
- The superficial and inadequate physical/medical test and abuse of psychometric tests, which have nothing to do with the experienced trauma.
- The lack of comprehensive analysis of the information collected, allowing the absence of objectivity in the test.
- The application of rules established by the Attorney General of the Republic, through a circular letter that compacts the rules of the Istanbul Protocol, without following the multidisciplinary and comprehensiveness of the test.
- Lack of recognition and probative value to medical-psychological opinions made by a public body or human rights trained independent expert in the application of the Protocol.

Viewed from the documentation of all these obstacles, systematized in multiple reports on the subject, and placed under the scope of one of the mechanisms of control derived from the international human rights

system, as it is the Universal Periodic Review of the UN Security Council, these obstacles and problems among others were made known to the relevant bodies able to conduct examinations and make recommendations regarding the State's legal framework and its application; reflected in the final report issued by the UN Security Council in March 2014.⁷

Within the 10 recommendations issued in regards to torture there are two concerning investigations and training of forensic experts, said recommendations are:

148.49. Implement the recommendations from CAT, as well as promote the use of the Istanbul protocol to determine cases of torture and to educate forensic experts (Sweden);

148.50. (Ensure) that investigations of alleged torture are not carried out by the same authority accused of committing acts of torture (Sweden).

Concerned that in our daily tasks on access to justice for victims of torture, and in view of the above mentioned recommendations, supported by international authorities I consider that being able to have expert help will help take a step against impunity in the subject.

Create the possibility of the application of an instrument to document signs of torture such as the Istanbul Protocol in specific cases, is a way to contribute from civil society to help eradicate torture.

Having judgments where experts are respectful of the rules in which to base the interview, physical and psychological examination as well as adhere to all further studies deemed necessary for better documentation. But above all, such surveys should have the dignity of the victim as a fundamental base.

Our commitment to train and professionalize people interested and sensitized on the subject in the Program "Research on torture: Handling of the Istanbul Protocol" comes from all those reasons. The professional participants now have new tools from the perspective of survivors of torture, which should be the focus in implementing the Istanbul Protocol,

⁷ More information at <https://epumexico.wordpress.com/> (English automatic translation at: https://translate.google.com/translate?sl=es&tl=en&js=y&prev=_t&hl=en&ie=UTF-8&u=https%3A%2F%2Fepumexico.wordpress.com%2F&edit-text=&act=url).

and which from their daily tasks contribute a grain of sand in the fight to eradicate torture.

Impunity has many ways to cover, the obstacles listed are part of it, that is why we need to take actions that contribute to strengthening the independence of the judicial system, to require expeditiously and effective investigation of allegations of torture or cruel treatments where the punishment to those who commit such crimes is ensured and, to form experts in the field has been a bet with this project, quitting would be contributing to the persistence of impunity.

Recommendations

- 1.** When applying the Istanbul Protocol, the experts should be trained to follow the guidelines of this document, realizing exhaustive investigations and avoiding a re-victimization and re-traumatization of the victims and/or survivors of torture.
- 2.** The forensic physicians assigned to the Prosecutor's Office must immediately conduct medical examinations of all persons in custody or those who have been transferred to a detention centre to prevent any form of torture or other ill-treatment. The absence of physical evidence of torture in the medical examination should not be interpreted automatically as meaning that no torture took place.
- 3.** The authorities should admit that the reports that have been carried out independently have the same evidentiary value as the the reports issued by their personnel.
- 4.** A copy of the reports must be provided to all persons who have been examined according to the guidelines of the Istanbul Protocol.
- 5.** Strengthen the independence of the judiciary, so that in cases of allegation of torture or other ill-treatment, an investigation will be carried out expeditiously, effectively and impartially.
- 6.** Separate the forensic services from the public prosecution services to ensure their independence and impartiality.

APPENDIX

RECOMMENDATIONS OF INTERNATIONAL INSTRUMENTS ABOUT ISTANBUL PROTOCOL

In 2012, the Committee Against Torture (CAT) issued a series of recommendations regarding the emitted reports of Mexico on Torture and Other Ill-treatment. The Universal Periodic Review reiterated in 2013 the same recommendations due to the very little progress of the Mexican State in this area. The latest report on this topic was issued by the special Rapporteur on torture in which is highlighted again that torture is still a generalized and systematic practice in Mexico.

I. COMMITTEE AGAINST TORTURE (CAT) | Concluding observations on the combined fifth and sixth periodic reports of Mexico as adopted by the Committee at its forty-ninth session (29 October–23 November 2012)

Confessions obtained under duress

Ensure that an independent medical examination is performed whenever a suspect requests the court to order such an examination and that a prompt and impartial investigation is undertaken whenever there are reasonable grounds for believing that an act of torture has been committed, particularly when the only evidence against the defendant is a confession. In such cases, the burden of proof must not be borne by the alleged victim;

Impunity for acts of torture and ill-treatment

a. Reinforce the monitoring and oversight of the State party's security forces and agencies by, in particular, setting up an effective, independent

and accessible system for receiving complaints and for investigating reports of torture or ill-treatment promptly, thoroughly and impartially. Such investigations should be carried out by an independent agency that is not subordinate to the executive branch. Any alleged corruption in this connection should be immediately investigated and, if grounds for it are found to exist, those responsible should be prosecuted;

b. Ensure that complaints are made in writing and are properly investigated and that alleged victims are examined immediately by a forensic physician;

Application of the Istanbul Protocol in investigations of torture and ill-treatment

The State party should adopt all measures necessary to ensure that all persons taken into custody undergo thorough, impartial medical examinations. In order to ensure the quality and accuracy of forensic evaluations, the State party should:

- a) Ensure that examinations are conducted in such a way as to uphold the principles of confidentiality and privacy;
- b) Ensure that medical experts use forms that are in line with annex IV of the Istanbul Protocol when preparing their evaluations and that they include their interpretation of their findings;
- c) Set up a system that permits official medical experts to anonymously request that a more thorough medical examination be performed;
- d) Adopt the legislative amendments required in order to accord full evidentiary value to the reports of independent medical experts so as to place them on an equal footing with the reports of official experts designated by attorneys generals' offices;
- e) Ensure that all persons who are arrested and ask to be examined by an independent physician or an official expert receive copies of their request and the medical report or expert opinion (see the Istanbul Protocol, annex I, paragraph 6 (c)).

II. UNIVERSAL PERIODIC REVIEW UN (UPR) | 2013

148.49. Implement the recommendations from CAT, as well as promote the use of the Istanbul protocol to determine cases of torture and to educate forensic experts (Sweden).

III. REPORT OF THE SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, JUAN E. MÉNDEZ | 2014

82. With regard to investigations:

- a) Guarantee that medical examinations are carried out promptly and in accordance with the Istanbul Protocol by independent staff trained in the standards governing its application, provide a copy of examinations once they are completed and ensure that the absence of physical evidence in the medical examination is not interpreted automatically as meaning that no torture took place;
- b) Guarantee the separation of forensic services from public prosecution services to ensure their independence and impartiality;
- c) Ensure that forensic investigations by private individuals are admitted into evidence and given the same weight as official investigations.

83. With regard to preventive measures:

Ensure the immediate and comprehensive recording of detention, followed by a thorough medical examination that records any evidence or allegation of torture or ill-treatment, and the immediate notification of a person of the detainee's choosing, and establish penalties for non-compliance;

85. With regard to the conditions of detention of adults and minors:

Urgently improve the provision of medical, dental and psychological care to inmates, with increased human resources, more medicines and better infrastructure; ensure that detainees undergo a comprehensive medical examination on entry or transfer, including the documenting of possible torture;

Guarantee appropriate medical and psychological care for women prisoners, paying special attention to gynaecological and reproductive needs, pregnant women and mothers whose children are living with them.

APPENDIX

INSTRUMENTS ON THE SUBJECT OF TORTURE

International treaties, declarations and commitments that determine standards of the human right to be protected from torture and inhuman or degrading treatment

UNITED NATIONS

Universal Declaration of Human Rights (1948) [Article 5]

This UN document on human rights says “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

International Covenant on Civil and Political Rights (1966) [Article 7]

In this treaty torture is prohibited under Article 7, which states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation”. This provision shall not be suspended or limited even in emergencies.

Declaration on the Protection of All Persons against Torture (1975)

This declaration was adopted by the General Assembly in December 1975. It contains 12 Articles and a definition of torture.

United Nations Convention against Torture (1984)

This is the main UN treaty on torture. It was adopted by the UN General Assembly and entered into force in June 1987. It consists of 33 Articles covering the concerned rights and mechanisms to enforce them.

The treaty established a Committee against Torture under Article 17. The committee consists of ten experts who are elected for four years. The committee reviews regular reports from the Member States of the Convention. They have the ability to urge the UN agencies, regional organizations and non-governmental organizations to submit information.

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002)

Under Article 2 of the Optional Protocol an expert body is created, a Sub-Committee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture, to carry out auditing visits to places of detention and to submit confidential reports to the competent authorities on how to prevent torture and maltreatment. The Protocol also requires States to establish national bodies to make similar visits to places of detention.

Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982)

These principles, adopted by the General Assembly in December 1982, oblige health personnel to protect the physical and mental health of detainees and secondly, prohibit their active or passive participation in torture or inhuman or degrading treatment.

Convention on the Rights of the Child (1989) (Article 37)

Article 37 of the UN Convention on the Rights of the Child states that “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.” and violations have to be registered with the UN Committee on the Rights of the Child.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The Declaration on the Elimination of Discrimination against Women, adopted by the General Assembly in December 1993,

explicitly refers to a woman’s right not to be subjected to torture or other cruel, inhuman or degrading punishment (Article 3).

International Convention on the Elimination of All Forms of Racial Discrimination speaks of torture and may be referred to the **Committee on the Elimination of Racial Discrimination**, which monitors the implementation of the convention.

Standard Minimum Rules for the Treatment of Prisoners were adopted by the first UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955.

Rome Statute of the International Criminal Court (1998) (Articles 7, 8)

The Rome Statute specifically prohibits torture under various provisions, giving the International Criminal Court jurisdiction in such cases. If torture, defined as “intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;” (article 7e) “For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:” (article 7). “Torture or inhuman treatment, including biological experiments;” (article 8.2.a.ii) constitute “war crimes” (article 8).

ORGANIZATION OF AMERICAN STATES (OAS)

American Convention on Human Rights (1978) (Article 5)

The American Convention stipulates that “No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.” (Article 5.2).

Inter-American Convention to Prevent and Punish Torture (1985)

This treaty entered into force in February 1987. It elaborates the obligations of States regarding torture and details provisions similar to those contained in the UN Convention against Torture.

OTHER INSTRUMENTS

Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

(Office of the UN High Commissioner for Human Rights)

This manual is intended to serve as international guidelines for the assessment of persons who allege torture and ill-treatment, to investigate cases of alleged torture and for reporting findings to the judiciary or other investigative body. The documentation methods contained in this manual can also be applied to other contexts, including research and monitoring of human rights, political asylum evaluations and the defense of individuals who “confess” to crimes during torture and the assessment of needs for the care of victims of torture. The manual includes annexes with principles of effective investigation and documentation; diagnostic tests, anatomical drawings for the documentation of torture and ill-treatment; and guidelines for the medical evaluation of torture and ill-treatment.

Optional Protocol to the UN Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment - A Manual for Prevention (IIDH / APT)

This manual introduces the Optional Protocol, emphasizing the need for this innovative instrument within the framework of existing rules and mechanisms. It includes the history of the Optional Protocol, from its initial conception, through the negotiation process to its final historic adoption by the UN General Assembly. A legal comment illustrates in more detail the relevance and circumstances of some key provisions. The manual also illustrates the potential of a system of regular monitor-

ing of detention, describing the two main bodies that will conduct this work at international and domestic levels. Finally, concrete actions and specific strategies for major players in the campaigns of ratification and implementation are suggested.

HUMAN RIGHTS AND PRISONS: Manual on Human Rights Training for Prison Officials (United Nations)

This manual is part of the four-part publication about Human Rights and Prisons - a package of human rights training for prison officials. The four components are designed to complement each other, and together, provide all necessary elements to conduct training programs on human rights for prison officials, under the training approach developed by the Office of the High Commissioner of the United Nations for Human Rights. This manual (first component of the package) provides extensive information on sources, systems and standards of human rights in relation to the work of prison officials, practical recommendations and topics for discussion, case studies and checklists.

