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International Rehabilitation Council
for Torture Victims (IRCT)
Borgergade 13 • PO Box 9049
DK-1022 Copenhagen K
Phone: +45 33 76 06 00 • Fax: +45 33 76 05 00
Email: irct@irct.org • <http://www.irct.org>

**IRCT STATEMENT TO WORKING SESSION No.9 – RULE OF LAW II
PREVENTION OF TORTURE
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Cases of torture are being reported on a daily basis from countries worldwide. Not even the OSCE region is free from crimes of torture and other cruel, inhuman or degrading treatment or punishment. These crimes are committed against all populations, even the most vulnerable among us, such as women and children.

It is appalling that such heinous crimes are still perpetrated in our so-called civilised world. States are ultimately responsible to prevent torture and they have to take all necessary measures—legal, administrative, judicial or otherwise—to fulfil this obligation. More committed action has to be taken if we are striving for an OSCE region where all perpetrators are brought before a court, tried and punished accordingly; where victims are entitled to effective and full reparation; and where refugees and asylum seekers are not expelled, returned or extradited to another State where there is the danger that they might be subjected to torture.

Although all of the OSCE States are party to the UN Convention against Torture (the Convention) there is often a gap between their engagements on paper and the actual steps taken to comply with their obligations.

One crucial element to prevent torture is to criminalise acts of torture in national legislation according to Articles 1 and 4 of the Convention. However, the definition of torture as a criminal offence is often absent in national legislation. This lack of a proper legal basis hampers victims' access to justice. Judges may invoke this absence as a reason for refraining from trying alleged perpetrators. Instead of applying international law, cases are dismissed and the perpetrators go unpunished.

Furthermore, a timely and comprehensive investigation is crucial to gather evidence about cases of torture. Under international law States have an obligation to undertake prompt, thorough, independent and impartial investigations into serious violations of human rights, including torture. This obligation has been reaffirmed by the Convention (Art. 12), the European Convention of Human Rights (Art. 13), the Basic Principles and Guidelines on the Right to a Remedy (Principle III. 4) and the European Court of Human Rights. However, it has been frequently reported that States are reluctant to carry out proper and effective investigations into allegations of torture.

In facilitating effective investigation, medical doctors and forensic experts play a crucial role. The International Rehabilitation Council for Torture Victims (IRCT), as an international independent health professional organisation comprising more than 130 member torture rehabilitation centres and programmes worldwide, has been promoting medical documentation of torture and the close collaboration of legal and medical experts in fighting impunity and preventing torture from occurring.

The IRCT notices with satisfaction that in general the role of medical and forensic experts is increasingly recognised. More systematic use is being made of their expertise in fact finding and investigations, be it by the Committee for the Prevention of Torture or the UN human rights monitoring procedures, like the Committee Against Torture (CAT) or the Special Rapporteur on Torture.



The role of medical and forensic experts in the prevention of torture

Gathering evidence to substantiate allegations of torture is a major challenge. Therefore medical (be it physical or psychological) and forensic expertise can be decisive to assess the veracity of allegations. Medical professionals can provide critical documentation of torture and ill-treatment. Furthermore, they can determine how the injuries might have been inflicted on the person. A medical evaluation should be considered an expert opinion on the degree to which medical findings correlate with the victim's allegation of abuse. It can provide the causal link.

Documentation of torture, however, requires special skills and training. Many practitioners have little knowledge about signs and symptoms of torture and especially of their responsibility to report their findings. A particular challenge in documenting torture is that often methods are selected for maximum psychological impact and minimum detectable physical signs. Moreover victims are often detained by the authorities incommunicado until the majority of their injuries have healed.

To enhance awareness and knowledge among legal and medical professionals on these issues, IRCT has since 2003, in close collaboration with national authorities, focused on specialised training through capacity building, information and advocacy activities. The main project is the ongoing *Prevention through Documentation* project (www.preventingtorture.org) conducted in 10 pilot countries in different regions, including Georgia and Serbia. The specific focus of the project lies on disseminating and promoting the implementation of "The Istanbul Protocol" (the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, endorsed by the UN). The Istanbul Protocol is the leading international instrument for the effective investigation and documentation of torture. It contains guidelines for practitioners on the investigation and documentation of alleged cases of torture and ill-treatment and for reporting findings to relevant authorities, and provides minimum standards for a State's compliance to guarantee the effective documentation of torture.

The collaboration between doctors and lawyers is essential to ensure that the documentation produced is admissible as evidence in court. Therefore, it is crucial for victims of torture to have access to medical and legal support in order to substantiate their allegations. Unhindered access to information and to the crime scene must be granted to all independent medical and legal personnel investigating torture allegations in order to secure evidence. However, as reported by the Special Rapporteur on Torture in his interim report to the UN General Assembly, access to medical examination and forensic expertise is often limited either due to lack of availability of independent specialists or due to obstruction by official authorities. Yet authoritative documentation on the prevalence and practice of torture is necessary to put pressure on governments to take action to punish the perpetrators of torture.

The role of medical and forensic experts in visiting places of detention

The IRCT wants to emphasise the Optional Protocol to the Convention against Torture (OPCAT), which is the first international instrument providing for the establishment of a preventive system of regular visits to places of detention in order to protect people deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment.



In order for the National Preventive Mechanisms to fulfil their mandate under the OPCAT, it is important that they make use and collaborate with independent health and forensic professionals with the required knowledge and capacity relevant to the treatment of persons deprived of their liberty, to document signs of torture and to treat the victims. The Subcommittee on Prevention (Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture) established by the OPCAT also is expected to include experienced and independent medical and forensic experts in its activities.

Recommendations

In order to effectively fight against impunity and to prevent acts of torture the IRCT calls upon all States of the OSCE region to:

- Fully implement the UN Convention Against Torture, and include the definition of torture as a criminal offence in their domestic law.
- Ensure that prompt, effective and independent investigations into allegations of torture are conducted.
- Ensure that detainees and victims can exercise their right to be examined by an independent medical or forensic expert.
- Encourage the dissemination and the full implementation of the international standards on the investigation and documentation of torture contained in the Istanbul Protocol. This includes providing for adequate training of medical and legal professionals and capacity building of forensic expertise.
- Ensure that medical findings and forensic evaluations gathered in accordance to international standards are admissible as evidence in court proceedings.
- Fully co-operate with the international and regional preventive and monitoring mechanisms, like the UN Special Rapporteur on Torture, the Committee Against Torture as well as with the European Committee for the Prevention of Torture, and provide them relevant information and grant them unhindered access to places of detention and to all persons deprived of their liberty.
- Sign and ratify the OPCAT. In the same line the IRCT congratulates the 35 OSCE member States that have already signed and ratified the OPCAT.
- Ensure that experienced and independent medical and forensic experts will collaborate with the Subcommittee on Prevention established under the OPCAT and will be part of the National Preventive Mechanisms.
- Ensure that local rehabilitation centres are allocated the necessary funds enabling them to provide medical and psychological treatment to torture victims, to restore the dignity of the latter and help them reintegrate into society.

The International Rehabilitation Council for Torture Victims (IRCT) is an independent international health professional organisation, which promotes and supports the rehabilitation of torture victims and works for the prevention of torture worldwide. The IRCT collaborates with nearly two hundred medical rehabilitation centres spread throughout the world committed to eradicate the practice of torture and to assist the victims and their families.