

CAT ALTERNATIVE REPORT: MEXICO

- IMPLEMENTATION OF A NATION WIDE SYSTEM OF TORTURE DOCUMENTATION ACCORDING TO THE ISTANBUL PROTOCOL

INTRODUCTION

In the beginning of the 2000's Mexico became the first country to start a process of building a nation-wide system for medical/psychological documentation of torture and ill-treatment in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol), which had then recently been adopted by the UN General Assembly. The aim was to ensure that all persons who allege or otherwise show indications of having been tortured receive a prompt, effective, thorough, impartial and independent medical/psychological examination in order to document and assess the veracity of the allegations and determine the need for reparations including rehabilitation.

The process was lead by the Office of the Attorney General of Mexico and US based Physicians for Human Rights (PHR). The initial situation analysis indicated that at the time, there was a pro-human rights momentum at least within the Office of the Attorney General of Mexico. While the initiative resulted in initial improvements in access to medical examinations for alleged victims of torture and ill-treatment, concerns soon emerged relating to the quality of the examinations and the independence of the health professionals performing them. These concerns have been addressed in NGO reports and as part of Mexico's ongoing interaction with the Committee Against Torture (the Committee) and the Subcommittee on Prevention of Torture (SPT).

The following report will provide an updated analysis of the main concerns relating to the establishment of an effective torture documentation system in Mexico followed by proposals

for remedying the current situation. Comments in this report specifically pertain to questions 12-14 in the Committee's List of Issues Prior to Reporting but they have wider implications for the broader issue of impunity for torture and lack of prevention in Mexico. The authors of this report would like to send a special thanks to PHR who furnished much of the background information and analysis for this report.

HISTORY OF IMPLEMENTATION OF THE ISTANBUL PROTOCOL

In 2001, Physicians for Human Rights (PHR) started a programme in collaboration with the Mexican Federal Attorney General's Office aimed at capacity building and institutionalisation of the Istanbul Protocol to ensure that alleged torture victims in all the States of the country have access to a quality forensic examination. The programme consisted of 5 elements: (1) an assessment of existing capacity and attitude, (2) development of a standardised forensic evaluation form, (3) a training curriculum, (4) a country specific standardised manual on effective investigation and documentation of torture and ill-treatment, and (5) development of federal legislation establishing the necessary structures and procedures for using and monitoring the evidence. To date this is the most comprehensive programme of Istanbul Protocol implementation executed in a single country.

An assessment of implementation efforts in Mexico, which was published by PHR in 2008 indicates some improvements especially in relation to the use of standardised reporting formats but also to some degree in the quality of documentation.¹ However, the quality generally remained below the Istanbul Protocol standards.² Further, the improvements were greatly overshadowed by more negative findings such as severe deficiencies in the documentation and conclusions of 4 forensic doctors from the same two districts³; worrying numbers of examinations taking place in circumstances that jeopardise the independence of the health professionals⁴; the denial of access for independent doctors from NGOs and the

¹ Forensic Documentation of Torture and Ill-Treatment in Mexico: An Assessment of the Implementation Process of the Istanbul Protocol Standards, p 63

² Ibid, paragraphs 63-71

³ Ibid, paragraphs 68-69.

⁴ Ibid, paragraph 16

CNDH to conduct examinations⁵; and the view by the majority of the forensic physicians that negative findings are proof that torture did not occur⁶ - a position that has resulted in alleged victims being labelled as making false accusations solely based on negative Istanbul Protocol findings⁷.

In 2007, PHR ended its engagement with the Attorney General's office due to its denial of access for PHR to review the investigations of cases of alleged torture or ill-treatment as provided in their collaboration agreement.⁸ In parallel, PHR reports, the mechanism established by the government to monitor and evaluate the quality of forensic reports was only conducting superficial evaluations, which were characterised by statistics gathering rather than analytical quality control.⁹

In combination, these problems are indicative of a system where the health professionals do not have structural nor operational independence. Even qualified health professionals are not able to deliver quality forensic reports at least partly due to their lack of independence and independent health professionals are denied access to document alleged victims.

The problems highlighted by PHR in 2008 have remained since then and there has been no real effort by the government to implement the recommendations from CAT and SPT regarding the Istanbul Protocol implementation. Annex 1 to this report contains a compilation of recommendations made by UN bodies to Mexico regarding the Istanbul Protocol.

KEY ISSUES OF CONCERN IN RELATION TO QUESTIONS 12-14

The following section seeks to provide additional information to what is contained in the PHR report and summarised above. It will concentrate on three main aspects notably: effective access to examinations; promptness and thoroughness of examinations; and independence and monitoring of the examining bodies.

⁵ Ibid, paragraph 77

⁶ Ibid, p paragraph 22

⁷ Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico, CAT/OP/MEX/1(31 May 2010), paragraph 97

⁸ Forensic Documentation of Torture and Ill-Treatment in Mexico: An Assessment of the Implementation Process of the Istanbul Protocol Standards, paragraph 8

⁹ Ibid, paragraphs 72-73

EFFECTIVE ACCESS TO EXAMINATION

While much has been done to extend the possibility of a forensic medical evaluation of torture allegations to all persons in Mexico, there are still significant shortcomings. At the time of writing, only 12 Mexican states have formally adopted the Istanbul Protocol and established the obligation for the investigative bodies (Ministerio Público) to request a medical-psychological examination according to the Istanbul Protocol for all allegations of torture. In these states the medical-psychological examination does not constitute an obligatory element in the investigation of torture. Even in the states that have adopted the Istanbul Protocol, the Public Prosecutors offices frequently do not ask for an Istanbul Protocol examination and hence do not comply with the procedures of torture investigation. This failure to comply with the regular investigation procedures violates the right of the victim to an effective and thorough investigation of torture allegations. Further, the absence of sanctions or disciplinary measures for the investigators in charge of these cases promotes non-compliance.

PROMPT AND THOROUGH EXAMINATION

Lack of prompt execution of forensic medical examinations, is a serious problem in the investigations of torture and ill-treatment since physical symptoms on the victims may degrade fairly rapidly. A recent report by Human Rights Watch states that many investigators of the Public Prosecutors office they interviewed did not even know about the Istanbul Protocol.¹⁰ Even among those that are aware of of the Istanbul Protocol and the obligation to instigate forensic medical examinations, there appear to be a general reluctance to do so. Therefore, examinations are often only ordered if the victim offers an independent examination as evidence.

Jorge Hernández Mora, Mario Ricardo Antonio Almanza Cerriteño, Sergio Rodríguez Rosas, José María Cirilo Ramos Tenorio, Oswaldo Francisco Rodríguez Salvatierra were detained on August 13, 2002, by the State Police of Tlaxcala, accused of kidnapping and tortured in order to obtain a “confession” and sentenced to 60 years of prison. In 2006 the State Commission for Human Rights of Tlaxcala emitted a recommendation urging the authorities to start an investigation, nevertheless the State Public Prosecutor closed the case without having ordered the application of the Istanbul Protocol. With the intervention of CCTI and other NGO’s the case has been reopened, nevertheless up to date the State Public Prosecutor has not ordered the application of the Istanbul Protocol and rejected independent medical-psychological reports.

Many states do not have qualified forensic experts to carry out Istanbul Protocol examinations and have to forward the petition to the federal level. Even when this happens, the Attorney General's Office does not have a sufficient number of forensic experts to fulfil the demand. This leads to a situation where prompt examinations are not possible (resulting in deterioration of physical evidence). This is especially important as many forensic experts and Public Prosecutors still consider the absence of physical injuries as a proof that torture did not take place.

Marcelino Coache, a union activist, was detained and suffered torture on March 4, 2009 in the State of Oaxaca. Due to the lack of forensic experts the State Public Prosecutor from Oaxaca, asked for the intervention of experts from the Federal Public Prosecutor. The exam took place in May 2010, more than one year after the alleged torture. The medical report found no physical evidence of torture, and rejected to consider the medical reports from a public hospital where Marcelino Coache had received emergency care for the serious injuries caused by torture.

Although the government alleges that a great effort was made to train their forensic experts on state and federal level, the technical quality of the examinations is still deficient. Especially, the sections in the forensic medical reports dedicated to documentation and conclusion are often superficial and has significant shortcomings. This indicates that the knowledge and capacities gained through training are not put into practice and do not result in improved quality of the documentation.

In forensic medical examinations carried out by forensic personnel of the Attorney General the examiners behaviour and attitudes establish conditions that are highly retraumatizing for the victims and thus do not lead to reliable conclusions.

Barbara Italia Mendez was detained and sexually tortured on May 4, 2006 in San Salvador Atenco, giving public testimony of the severe torture she and many of the other detained women suffered during detention and transfer to prison. Nevertheless the Istanbul Protocol examination was realized one year after by health personell of the Attorney General. The examination was highly retraumatizing, she was obliged to take off her clothes to take photographs meanwhile she was told “You have nothing!” In this situation she heard voices from a large group of male police officers coming from a room next door where they attended a course on Human Rights. The psychological evaluation included a series of humiliating questions and comments: “Don’t you feel responsible for what happened to you?” “Why were you out in the street?” “You put yourself in danger.”

CCTI health professionals regularly produce Istanbul Protocol examinations that victims try to have submitted to before the courts. A comparison between these reports and those prepared by the Attorney General’s office show a worrying discrepancy in the conclusions. Out of the 15 reports with findings of torture presented by CCTI to a court, only in one case the examination produced by the forensic experts of the Attorney General’s office also found evidence of torture.

INDEPENDENCE AND MONITORING

While many of the deficiencies in the Istanbul Protocol examination reports appear to be linked to a lack of skills with the health professionals in the Attorney General’s office, there are indications that a lack of independence of the health professionals may also be a contributing factor. The study conducted by PHR clearly illustrates that there are serious concerns about the ability of government employed forensic physicians to perform their duties independently and are often exposed to undue pressure from other investigative bodies.¹¹ Such pressure could at least partly explain the lack of quality of the Istanbul Protocol examination reports.

¹¹ Forensic Documentation of Torture and Ill-Treatment in Mexico: An Assessment of the Implementation Process of the Istanbul Protocol Standards, p 69.

The mechanism established by the government to monitor and evaluate the application and quality of forensic reports is presided by the Attorney General, who names the other members of the Committee, all of them belonging to different areas of the Attorney General's Office, leading to a complete lack of operational and structural independence of the Committee. Not only professionals of the same institution that committed torture are in charge of investigating it, the mechanism that should monitor and evaluate the correct application of the IP, is also composed of high rank officials of the same institution. Since the creation of the Committee in 2003, there has been no transparency of the work carried out by the Committee, the public has no access to reports or information regarding the application of the Istanbul Protocol. When established, the monitoring Committee was meant guarantee the quality and independence of the examinations but in its current format this is not possible.

RECOMMENDATIONS

The Government of Mexico should ensure that as part of any torture investigation, all alleged victims of torture and ill-treatment have effective access to a prompt, effective, thorough, independent and impartial forensic medical examination in accordance with the Istanbul Protocol including through:

- a) Formal adoption of the Istanbul Protocol by all Mexican States and elaboration of the necessary procedures for its implementation;
- b) Ensuring sufficient availability of qualified health professionals, implementing basic safeguards for alleged victims to exercise their right to an examination, including the right to see a doctor in the "Miranda" rights read to persons detained, and introducing administrative sanctions for investigational delays;
- c) Ensuring prompt and effective access for independent health professionals to persons in detention, including access with the necessary medical equipment to perform medical exams and take photographs and ensuring that Istanbul Protocol examination reports produced by independent and qualified health professionals are considered on an equal footing with State produced reports in the judicial process.
- d) Training a sufficient number of health professionals in torture documentation in accordance with the Istanbul Protocol.

- e) Establishing structurally and functionally independent forensic services with and independent mechanisms to monitor its performance and take corrective action including the possibility of ordering capacity building and instituting professional accountability or criminal proceedings where relevant. The body must be composed of representatives of all relevant stakeholders and operate with full transparency.

ANNEX 1: PREVIOUS UN RECOMMENDATIONS ON IMPLEMENTATION OF THE ISTANBUL PROTOCOL IN MEXICO

The issues of implementation of the Istanbul Protocol has been the subject of ongoing discussions between the Mexican Government and UN Treaty Bodies since 2003. The following will present a brief overview of recommendations made and replies received.

COMMITTEE AGAINST TORTURE, CONFIDENTIAL INQUIRY PROCEDURE IN 2003

In its report on the confidential inquiry undertaken in relation to Mexico in accordance with Article 20 of UNCAT, the Committee made the following recommendation to Mexico:

Paragraph 220(K): *In all cases in which a person alleges torture, the competent authorities should initiate a prompt, impartial inquiry that includes a medical examination carried out in accordance with the Istanbul Protocol.*

In its response, the Government of Mexico provided the following information:

269. The staff of the Office of the Attorney-General participated actively in drafting the “model procedure for the medical examination of torture and other physical abuse”, together with the International Rehabilitation Council for Torture Victims (IRCT).

270. The Office of the Attorney-General then adapted and improved its “medical report on possible cases of torture and/or ill-treatment”. This process, known as “contextualization”, is governed by the international standards of the Istanbul Protocol, which prescribes universal standards for the medical investigation of torture. To this end, IRCT international experts were formally requested to review the medical report and they agreed to do so. The Office of the United Nations High Commissioner for Refugees also officially requested IRCT to evaluate the report.

271. It should be pointed out that the Office of the Attorney-General requested the technical assistance of the non-governmental organization Physicians for Human Rights (PHR-USA).

272. An ambitious programme which involves the following strategies is thus being implemented:

1. Finalizing the specialized medical report on cases of possible torture and/or ill-treatment;

2. Producing a users' manual for the report. This will give medical experts from the Office of the Attorney-General the necessary technical information to document possible cases of torture and/or ill-treatment on the basis of international standards;

3. Conducting an intensive training programme for medical experts from the Office of the Attorney-General. This is particularly important because criteria for the investigation and reporting of possible cases of torture and/or ill-treatment by Office medical experts will be standardized as a result of the training provided by

PHR-USA experts. The training programme will start in October 2002 on the basis of the following input:

- The first beneficiaries of the programme will be 48 forensic pathologists. Five will come from civil society organizations, national human rights institutions and local public attorneys' offices. The remainder are forensic pathologists from the Office of the Attorney-General of the Republic attached to State branches of the Office throughout the country;*
- There will be 13 internationally recognized lecturers;*
- The beneficiaries will receive working papers consisting of the preliminary version of the specialized medical report on cases of possible torture and/or ill-treatment, the users' manual for the report prepared by the Office of the Attorney-General, selected articles on the topic of torture and a CD-ROM with photographs showing examples of cases of torture;*
- There are plans for the participation of five citizens selected by NGOs who will play the role of victims of torture in order to explain how doctors should conduct interviews and examinations;*
- A set of rules will be adopted that will emphasize the ethical commitment to be made by forensic pathologists when examining cases of possible torture and/or ill-treatment;*
- There will be a panel of legal experts from non-governmental organizations, national human rights organizations, Attorney-Generals' Offices, Departments of State and bar associations who will discuss matters to do with protection from and the eradication of torture from the viewpoint of their specific areas of competence.*

273. The Government of Mexico is working on an official Mexican standard on torture so as to establish a uniform procedure for medical examinations with a view to identifying possible cases of torture in live and dead victims.

COMMITTEE AGAINST TORTURE, STATE REPORTING PROCEDURE, 2006

Paragraph 16(a): *Investigate all allegations of torture as such, in a prompt, effective and impartial manner, and ensure that in all cases a medical examination is carried out by an independent doctor in accordance with the Istanbul Protocol [see also the Committee's recommendation to this effect contained in its report on Mexico in the context of article 20 of the Convention (CAT/C/75, para. 220 (k))];*

(b) Take the necessary steps to provide professional training for medical personnel whose task it is to attend to alleged victims and check their condition, and guarantee the independence of such personnel and extend the implementation of the Istanbul Protocol to all states (see paragraph 8 above);

(c) Ensure that if acts of torture are evidenced by independent medical examinations carried out in accordance with the Istanbul Protocol, these examinations are considered to be unchallengeable in court;

SPT COUNTRY VISIT REPORT, 2008

63. A related issue that the delegation members observed — which may render potential victims even more defenceless — is the absence of independent experts in investigation and documentation of torture, as a result of which government experts become both judge and jury. Public prosecutors have been implementing the Istanbul Protocol,¹² in the context of which they have recognized experts as witnesses, thereby detracting from the independence that should characterize such evidence, which should be purely expert in nature, not opinion evidence.

83. The Subcommittee welcomes the Mexican authorities' implementation of the Istanbul Protocol as part of their efforts to stem impunity. However, in relation to the use of this instrument, and in particular the implications of its mode of application, the Subcommittee wishes to remind the State party that the Istanbul Protocol is intended not just to document cases of torture but also to prevent them. The delegation observed during its visit that most of the Mexican states are in the process of implementing the Istanbul Protocol.

¹² See the section on implementation of the Istanbul Protocol.

However, in most states visited there is little experience or information with respect to this mechanism.

84. During its meetings held with Mexican authorities, the Subcommittee delegation was informed about the efforts being made and the progress in implementing the Istanbul Protocol, with the encouragement and leadership of the Attorney-General's Office. According to information provided by federal authorities, only three states in the country have not yet implemented the Protocol. The Subcommittee believes that effective and comprehensive implementation of the Istanbul Protocol, in addition to being a useful tool for demonstrating whether or not cases of torture are occurring, also helps prevent torture. The Subcommittee, while welcoming the efforts made thus far, therefore encourages the states to take appropriate steps to ensure full implementation of the Protocol.

85. Despite the progress made in this area, the Subcommittee delegation noted that in the states where the Istanbul Protocol is being implemented the objectives for which it was established are not being met.

86. There are several reasons for this lack of effective implementation of the Protocol, including insufficiency of specialized and/or trained personnel. Members of the delegation observed that the professionals involved, despite their willingness to effectively implement the Protocol, often lacked sufficient knowledge of its contents. The Subcommittee is of the opinion that the Istanbul Protocol provides guidelines for effectively investigating and documenting cases of torture and ill-treatment and that if these guidelines are properly followed, the Protocol's standards will help forensic experts to evaluate the correlation between medical findings and allegations of abuse and to communicate their assessment of the situation to the entities responsible for prosecuting criminal offences.

87. The delegation noted that often the Istanbul Protocol was not being used for its true purpose as an instrument for proving torture, and instead was being used as a threat against the very people it was intended to protect: people who make complaints of torture. These people thus end up being accused of making false statements if medical and psychological findings do not indicate that methods of torture were used. This matter is of particular concern to the Subcommittee because of the vulnerable situation in which persons reporting acts of torture generally find themselves, a situation which is exacerbated by victims' fear of reprisals if they lodge a complaint. That is why proof of torture cannot and should not rely solely on these findings. Moreover, many victims show no noticeable physical marks, even in cases of physical torture. The presence of physical symptoms that would prove

that acts of torture have been committed depends on many factors, including the psychological status of the victim. The Subcommittee believes that medical examinations conducted in accordance with the Istanbul Protocol are rarely enough to prove torture. Complaints of torture or other ill-treatment cannot and should not be turned around and used against the complainants, employing forensic medical opinions issued in accordance with the Istanbul Protocol to charge them with making false accusations.

88. During the interviews that the delegation conducted in all the states visited, it noted that there had been no or very few complaints of torture in recent years. The Subcommittee is of the opinion that the number of complaints of torture is not a reliable indicator for evaluating the true extent of the problem. It cannot be argued that cases of torture have decreased simply because there have been few complaints. It must be recognized that both the complexity of the procedure for lodging complaints and the fear of retaliation can dramatically reduce the number of complaints (masking their true number). For example, many victims of torture do not have the mental stamina needed to deal with the bureaucratic red tape or undergo lengthy procedures, including interviews of several days' duration. In addition, lack of confidence in the complaints system also tends to impact negatively on the number of complaints filed. If the medical-psychological examination fails to demonstrate exposure to a situation of torture, the complainant risks being prosecuted for defamation of the accused police or law enforcement officer. The Subcommittee considers such situations, in which the victim is rendered completely defenceless, wholly unacceptable and believes that the State party should ensure that persons who allege that they have been victims of torture or any other form of ill-treatment have complete freedom to report such incidents without fear of subsequent reprisals.

89. The Subcommittee wishes to recall that the principle of the Istanbul Protocol is to assess the degree of consistency between a history of torture or ill-treatment, health status and symptoms during and after the alleged torture or ill-treatment, and the findings of a medical and psychological examination. A case of torture can only rarely be fully documented on the basis of those parameters alone, however.

90. The delegation also wishes to note the importance of distinguishing between physicians working in facilities where people deprived of their liberty are held and the specialized experts who perform examinations in accordance with the Istanbul Protocol.

91. The members of the delegation also wish to express their concern about the confidential testimony received from the medical staff serving one attorney-general's office

where there were persons deprived of their liberty, who stated that often the medical reports did not reflect the truth of the findings of patient examinations. These individuals told the delegation that they frequently had to change the medical reports on express orders from staff of the attorney general's office. The Subcommittee considers such situations totally unacceptable and wishes to remind the State party of its obligation to ensure that medical opinions in such institutions are rendered with a guarantee of complete independence.

92. The Subcommittee urges the State party, first, to promote and distribute widely among the professionals in charge of places of detention the content and information on best practices in the implementation of the Istanbul Protocol. In addition, the Subcommittee urges the State party to review current practice and training programmes with an eye to ensuring that medical and psychological opinions rendered in accordance with the Istanbul Protocol are used only for the purposes originally intended as clearly established under the Protocol itself, and are not used as grounds for asserting that victims have made false statements. The Subcommittee recommends strengthening the implementation of the Istanbul Protocol by ensuring independent, prompt and thorough investigations and by ensuring that the professionals who render medical and psychological opinions belong to forensic medicine institutes with demonstrated independence, and that independent expert testimony be admitted at relevant stages of legal proceedings in accordance with the applicable criteria for judicial examination.

97. Statistics aside, on the basis of the evidence that the delegation heard, the members concluded that the actual number of cases of torture and other cruel, inhuman or degrading treatment does not match the number of complaints submitted to human rights commissions and the Public Prosecutor's Office. Members of the delegation also noted a lack of correlation between complaints submitted for such crimes and the findings of investigations. Possible explanations for this situation include: regulatory, interpretative and practical obstacles to the reception of complaints and the launching of preliminary investigations; incorrect initial classification of the acts reported, which are often defined as injury, abuse of authority or other offences that obscure the reality when it comes to investigating complaints of torture; hidden or uncertain figures on the number of torture cases, which stems from the tendency of victims not to report torture out of fear or because they lack confidence in the justice system; misuse of the medical and psychological opinions issued as part of the implementation of the Istanbul Protocol as evidence of false accusations when the complainant is not successful in proving torture; slow and ineffective investigations

that delay the performance of urgent expert examinations; inadequate methodologies and deficient performance in the rendering of medical and psychological opinions in keeping with the standards of the Istanbul Protocol; and disinclination on the part of public prosecutors to take cognizance of and prosecute ex officio acts of torture.

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3. Office of the Attorney-General and implementation of the Istanbul Protocol

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