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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](mailto:irct@irct.org) • <http://www.irct.org>

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**IRCT STATEMENT TO WORKING SESSION 4 – RULE OF LAW II  
PREVENTION OF TORTURE  
OSCE HUMAN DIMENSION IMPLEMENTATION MEETING  
Warsaw, 1 October 2008**

Detention facilities are frequent sites where torture occurs, especially when there is no system of inspection in place to monitor whether detainees are treated humanely. In this regard, the Optional Protocol to the United Nations Convention against Torture (OPCAT) is an important tool in torture prevention, because it requires that states create mechanisms for systematic monitoring of detention facilities. The Optional Protocol protects persons deprived of their liberty by establishing a two-pillar system of regular visits to detention sites, one at the international level (the Subcommittee on Prevention of Torture of the Committee against Torture) and the other at the national level (National Preventive Mechanisms).

While OPCAT provides the basis for intensive co-operation between international and national monitoring bodies, it also does not limit itself to these formal mechanisms – the Protocol aims to protect the collaboration between any person or organisation providing information to the Subcommittee on Prevention or its delegates.

The IRCT stresses that there is a clear opportunity for torture rehabilitation centres and other NGOs to play a key role in the implementation of the Optional Protocol. Independent health and forensic experts can assist national visiting mechanisms with capacity-building relevant to document signs of torture among detainees and treat victims. In this connection, the IRCT reminds states of the importance of the “Istanbul Protocol” – the Manual on the effective investigation and documentation of torture and other cruel, inhuman and degrading treatment or punishment. The Istanbul Protocol is an instrument recommended by the UN that contains international standards for the effective investigation and documentation of torture.

OPCAT has been ratified by 35 states, including 17 OSCE member states. Nineteen OSCE states have signed but not ratified the Optional Protocol. The IRCT encourages all states to ratify OPCAT and to ensure that experienced health professionals, trained in the Istanbul Protocol, are included as part of the national visiting mechanisms.

### **Criminalising torture**

Effective implementation of the Optional Protocol is only one step in preventing torture – states must make torture a criminal offence in their national legislation. This is a requirement set forth by the UN Convention against Torture, to which all OSCE member states are party. Article 4 of UNCAT specifies: “1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.”

Without a national penal law criminalising torture, victims may be unable to access justice. Judges may invoke an absence of national legislation as a reason for not trying a case and charges against perpetrators may be dismissed, thus creating a climate of impunity. When



torturers are not punished, there is a risk that torture will generate into a widespread or systematic crime perpetrated by many.

The IRCT stresses that national legislation criminalising torture is essential to end impunity. National penal law should criminalise torture according to the same definition articulated in UNCAT and no statute of limitations should be set for the prosecution of torture cases.

### **Training medical and legal professionals**

Impunity can also result from inadequate knowledge of how to investigate and document cases of torture. Training all personnel involved in the custody, interrogation and treatment of persons held in any form of arrest or detention about the absolute prohibition of torture is another positive step toward torture prevention.

For nearly three decades, the IRCT has trained physicians, law enforcement, prison staff, prosecutors and judges around the world in torture prevention and especially in the consequences of torture on its victims. Drawing on our centres' medical knowledge acquired through years of providing rehabilitation to victims, the IRCT targets professionals to raise their awareness about the medical and psychological sequelae of torture.

For example, the IRCT is collaborating with the government of Turkey to train 5,500 medical and legal professionals in documenting torture. This EC-funded training programme will train physicians who are not forensic experts to perform an appropriate examination of possible torture victims using the Istanbul Protocol guidelines. It will also train prosecutors and judges in the Istanbul Protocol to improve their capacity to assess and prosecute torture cases.

The IRCT applauds the Turkish government on its initiative to ensure that physical and psychological evidence of torture is identified, documented and used in legal proceedings, and encourages all states to implement similar trainings for health and legal professionals.

### **RECOMMENDATIONS**

- The IRCT recommends that all states sign and ratify the Optional Protocol to the Convention against Torture and ensure swift implementation of the establishment of independent national visiting mechanisms.
- The IRCT further encourages states to include experienced and independent forensic medical experts with training in the Istanbul Protocol as part of the national preventive mechanisms.
- All states should enact national legislation that ensures torture – as defined according to the UN Convention against Torture – is a criminal offence, with no statute of limitations for prosecuting perpetrators.
- The IRCT encourages all states to ensure professional support and appropriate training on the prohibition against torture for all law enforcement and medical personnel working within the police and penitentiary systems, in order that they can fulfil their responsibilities to prevent torture in accordance with international law and medical ethics.



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*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 rehabilitation centres and programmes throughout the world that are committed to eradicating torture and to assisting victims and their families.*