**Input from the IRCT to report by Special Rapporteur on Torture relating to the duty to investigate crimes of torture**

Comprising 156 independent rehabilitation centers in 76 countries, the International Rehabilitation Council for Torture Victims (IRCT) is one of the world’s leading authorities on torture's physical and psychological effects and ill-treatment and its documentation. IRCT focuses on improving standards for rehabilitation, documentation and investigation of torture and ensuring victims have access to rights including reparation and redress. The response is based on the IRCT membership’s extensive experience with the health-based consequences of torture on victims and will present lessons learned and observations that we believe are globally relevant.

**(i) Challenges, impediments, and obstacles to effective national investigations and prosecutions of acts of torture**:

Before identifying specific challenges to investigating torture allegations, it is important to acknowledge the very difficult conditions under which such investigations take place everywhere in the world. In the experience of the IRCT, States in all regions of the world, regardless of whether torture is systemic or only isolated incidents, are reluctant to investigate and sanction perpetrators because they are State agents. This reluctance of state institutions to investigate their own are at the root cause of most of the more specific technical challenges presented below. It is therefore crucial that solutions are designed with a view to compel state agencies to promptly and effectively investigate.

The IRCT has identified the following key challenges to ensuring that investigations are prompt, impartial and effective.

## 1. Survivors disclose violations with significant delay:

## The IRCT has observed three main reasons why survivors may disclose violations with significant delay: 1) Risks of reprisals from perpetrators; the social stigma surrounding certain violations such as rape; and the psychological effects of torture (avoidance and dissociation), which affects survivors access to memory and therefore ability to remember what has happened to them. None of these are the fault of survivors but the late disclosure can have a very negative impact on investigations.

## Survivors may not disclose in time to meet statutes of limitations in national law, which prevents their cases for moving forward.

## The late disclosure complicates the collection of quality evidence to support their claim because physical signs of torture and crime scene evidence may have disappeared.

## Symptoms of PTSD including avoidance and dissociation makes it very difficult for survivors to tell a complete and coherent story during interviews with investigators, prosecutors and judges. Since most often these actors are not trained in trauma informed interviewing, survivors are often viewed with suspicion and treated as lacking credibility. In our experience, even in the therapeutic setting, it takes many sessions for victims of sexual torture to disclose their experience, yet they may be expected to do so in interviews with investigators or judges, who may interview them only a single time and base charging and judicial decisions based on this sole meeting. Judges often have unrealistic expectations on what details a victim should be able to recall and how they should tell their story. For example, they often find a survivors to present a flat affect, which may signal dissociation, but is perceived as lack of credibility or they may incorrectly assess inconsistencies in minor details as a sign of malingering.

**2. The marginal role played by survivors in criminal investigations**:

In most national jurisdictions where the IRCT has worked, survivors have a very marginal role in criminal investigations of torture allegations. In the IRCT’s experience, this presents three main implications for investigating and prosecuting torture crimes:

* In a situation where the state is asked to investigate itself and at the same time retains full control of the investigation, we experience a consistent pattern of investigations being delayed, dropped or producing false evidence that torture has not taken place.
* When survivors to not have a clear role in the investigation, it consistently fails to collect information on the individual, family and community damage caused by the torture and which must be repaired as part of the criminal process.
* When survivors are not enabled to participate in investigations, the process replicates the disempowerment, which is a central element of the torture experience, and thereby create a high risk of re-traumatisation.

Therefore, survivors must have a formalized role in the criminal process where they are enabled to present evidence (including medical evidence collected by non-state experts), present testimony on their experience and on the damage caused by torture they must be entitled to receive a reasoned explanation in any situation where investigations are closed and to challenge this decision before a competent authority.

## 3. The inadequate implementation of the Istanbul Protocol.

## The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, commonly known as the Istanbul Protocol, outlines international, legal standards on protection against torture and sets out specific guidelines on how effective legal and medical investigations into allegations of torture should be conducted. Furthermore, as observed by former UN Special Rapporteur on Torture, Juan Mendez, the Istanbul Protocol also gives substance to the obligations to investigate and prosecute torture contained in Articles 12 and 13 of the UN Convention against Torture and as such has become part of the legal obligations under the convention (A/69/387 paras 23 and 24). An updated version of the Istanbul Protocol was published in 2022. One of the main features of the updated version is that it addresses key implementation challenged experienced by the IRCT and other organisations involved in the update process. The most important of these are as follows:

* Only very few states have recognised the Istanbul Protocol as the standard for documentation and investigation of torture in its national legal system. This means that responsible state agencies lack clear and authoritative direction on how to document and investigate, which creates an unhelpful discretionary space in which investigations can be weakened or closed.
* While in practice many state forensic services has some guarantees to their independence these guarantees are not designed to withstand the high level of conflict of interest that exist when states are asked to investigate allegations of torture against their own agents. Therefore, in practice this independence is difficult to maintain leading to a high frequency of false findings/conclusions in medico-legal reports.
* Medical evidence, including psychological and forensics assessment, can play a key role in “proving” torture. Because other forms of evidence may be limited and timely access to the crime scene and to document physical trauma is often impossible, psychological examinations are often central to proving torture. Yet, in our experience, psychological evaluations are often not done. And when they are, prosecutors and judges incorrectly consider psychological evidence to be unreliable.
* In many countries state agencies hold a monopoly on the production of medical evidence in torture cases. Evidence from non-state experts is not considered by the prosecution and not admitted by courts. This monopoly makes it possible for states to produce false medico-legal reports rejecting valid claims of torture. To avoid this situation, states must ensure that investigators, prosecutors and judges are able to consider evidence collected by non-state actors. This option for a second opinion is an essential element in compelling the state to conduct prompt and effective and impartial investigations.

## 4. Holding perpetrators liable for torture when the identity of abusers is purposely hidden.

## In many of the cases where the IRCT has been successful in compelling effective investigations, the cases are ultimately closed because the perpetrator cannot be identified. This happens due to three interconnected problems:

## In many of our cases, e.g., in Montenegro, the Philippines, and Belarus, police and security forces wear masks, or they place a hood on the victim to hide their own identities. Because these victims are unable to name specific perpetrators, their complaints cannot be further examined. In one case in the Philippines where the victim could identify the perpetrator on the basis of his voice, this audio identification was rejected by the prosecution.

## In cases where survivors can identify the perpetrator, the responsible state agencies simply deny that the person exist or claim that they have disappeared.

## The first two problems are compounded by a general reluctance to pursue investigations of command responsibility, which could be an effective tool for addressing identification challenges. In almost all individual cases documented by the IRCT there is no consideration of command responsibility for superior officers. This encourages the “bad apple” myth, which suggests that torture is mostly conducted by individuals acting upon their own discretion. In fact, in our experience, individual cases are usually emblematic of systemic violations and supported by structural shortcomings.

## The CPT has acknowledged that the measures to conceal the identity of law enforcement officials by wearing masks when apprehending persons hampers the identification of those responsible if and when instances of ill-treatment arise. The CPT calls for appropriate safeguards to be put in place in order to ensure that the officials concerned are accountable for their actions (e.g. by means of a clearly visible number on the uniform). In particular, it suggests that authorities ensure that “whenever a person is taken or summoned to a police establishment his/her presence is always duly recorded. The records should specify who was brought in or summoned, by whom, upon whose order, at what time, for what reason, in which capacity (suspect, witness, etc.), to whom the person concerned was handed over and when the person left the police premises” (Azerbaijan: Visit 2016 [para. 18]).

**5. Lack of data collection**

In most countries there is no disaggregated data collection on torture allegations and how they are handled. Even when torture is individually criminalised, states still do not separate torture from other cases of violence in their data collection. This makes it impossible to monitor how many complaints are filed and what are the outcomes of investigations and prosecutions.

In the few states where the IRCT is aware of disaggregated data being collected the results show system where almost no allegations make it past the investigation stage and even fewer end in successful prosecution. If states were to collect better disaggregated data, this could be used to document and confront states with their flawed investigation practices and thus become a drive of change.

(ii) **Regulatory frameworks:**

The IRCT is an international organisation and therefore does not have a specific country of expertise from which we can draw examples. However, below are two examples of legal frameworks that we consider good practice.

1. **Criminalization of torture in The Philippines.**

Torture is absolutely prohibited under the Philippine Constitution and the Philippines has ratified the Convention against Torture, the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention against Torture (OPCAT). The Anti-Torture Act or Republic Act 9745 of 2009 (Annex 1) criminalises torture and ill-treatment in accordance with international standards and provides a comprehensive legal framework for accountability and reparation for torture victims. It was completed by the Implementing Rules and Regulations adopted in 2012 (Annex 2). This includes the guidance on protection of victims, detailed instructions on how medico-legal reports should be produce and what their contents should be, a focus on upholding command responsibility and the detailed guidance on the establishment of a nationwide rehabilitation programme for survivors.

1. **Criminalization of Torture in Uganda**.

Torture is prohibited under the Prevention and Prohibition of Torture Act (PPTA) 2012 (Annex 3) and the PPTA Regulations 2017 (annex 4). The PPTA regulation includes Form 4, which is specifically designed to document cases of torture based on the guidance provided by the Istanbul Protocol. Section 21 of PPTA provides for the protection of victims and witnesses.

(iii) **Elements of human rights-compliant investigations and prosecutions:**

* 1. independent and impartial,
  2. prompt,
  3. adequate and effective,

See Section 9 Institutional Protection of Torture Victims and Other Persons Involved (annex 1), Section 3 Declaration of Policy (annex 2), and Section 11 Institution of criminal proceedings (annex 3).

* 1. acessible and safe,

See Section 12 Right to' Physical, Medical and Psychological Examination (annex 1), Section 11 and 22-24 (Annex 2).

* 1. open to public scrutiny and transparent, and

See Section 12 List of detention facilities (Annex 2)

* 1. secure rights and remedies for victims and survivors.

See section 18 Compensation to Victims of Torture (Annex 1), Section 37-40 Rehabilitation programme (annex 2).

(v) **Victim participation and protection:**

In the IRCT’s experience most criminal proceedings do not adequately cater to survivors needs for trauma-informed processes and reparation in order to be able to engage meaningfully. The psychological trauma experienced by torture survivors often manifests in ways that put them at a disadvantage when confronted with standard criminal and administrative procedures and thereby deny them an effective remedy. More specifically:

* 1. trauma has the effect of causing partial or full amnesia, therefore the ability of the brain to order incoming information is also impacted and rather than reflecting a narration of beginning, middle and end, resulting in input and memory being disorganized, lack of time-sequence, illogical, highly fragmented, and disintegrated
  2. cognitive effects of trauma such as dissociation also have extensive interference with memory construction, altering consciousness and causing time segments to be lost as well as other details leading to “dissociative amnesia”: the inability or difficulty remembering details of the event. Due to the difficulties in remembering details, their responses to questions may change from time to time. However, a detailed and consistent account is often required in every stage of legal procedure.
  3. trauma alters the connection between emotions, thoughts, behaviours, and memories, which results in difficulty in identifying emotions and feeling detached. Therefore, survivors of trauma may demonstrate emotional numbness, dissociation, and the appearance of indifference. Particularly, when survivors appear very controlled or emotionless, this is likely due to the numbing effect of trauma. However, judicial actors may misinterpret the meanings as they often base their discretion on expectations of what the “normal” emotional reactions would be like.

Survivors should receive better support in the form of psycho-social support before and after their participation and trauma-informed procedures. This will help judges and prosecutors avoid relying on false assumptions to determine credibility and make fair decisions for survivors of trauma thereby opening safe spaces for survivors to feel protected and acknowledged.

(vi) **Complex investigations:**

(vii) **Evidence collection and innovation:**

The IRCT has developed the following innovative practices:

1. **Remote evaluations guidelines**. As the leading global expert on documenting torture, the IRCT is working with other expert organisations to develop an international standard for conducting remote medico-legal evaluations of torture survivors in a credible and safe way. This has the potential to create ground-breaking changes, ensuring more equal access to evidence and justice for torture survivors and allowing for investigation in countries that will not allow independent investigators to access.
2. **Protest Toolkit**. To address situations where protests end in police brutality that can amount to torture and ill-treatment, the IRCT and the Human Rights Centre, University of California Berkeley Law have produced a [Protest Toolkit to empower protesters](https://irct.org/protesttoolkit/), activists, and human rights defenders to collect high-quality evidence of unlawful violence by security forces.