

The Law on Torture and the Istanbul Protocol*

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Good morning everyone. We would like to thank the College of Medicine of the University of the Philippines, Manila and the International Rehabilitation Council for Torture Victims (Denmark) for sponsoring this training workshop to talk about and popularize the *Istanbul Protocol*. We would like to thank the officers and organizers, especially Dean Alberto Roxas for inviting us. We feel it is most timely that we are having this training workshop this month considering that we are talking about one of the most delicate and controversial issues in human rights.

Today, we shall be discussing one of the most potent human rights document: The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or what is commonly called as the "Istanbul Protocol."¹

* This Keynote Address was delivered before the University of the Philippines, College of Medicine Seminar on IRCT-SMU Training of Users (TOU) "Prevention through Documentation" on Jan. 19, 2008, at the Meralco Management and Leadership Development Center (MMLDC) Foundation, Inc., Sumulong Highway, Antipolo City.

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Cite as 52 ATENEO L.J. 722 (2007).

1. United Nations High Commissioner for Human Rights, Istanbul Protocol, Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. HR/P/PT/8, U.N. Sales No. E.01.XIV.1 (1999) [hereinafter Istanbul Protocol].

The Istanbul Protocol is widely known as the first set of international guidelines regarding the methods of investigation and documentation of torture. It is intended to serve as a set of international guidelines for the assessment of persons who allege torture and ill-treatment, for investigation of cases of alleged torture, and for reporting such findings to the judiciary and any other investigative body.

Torture. That is the subject matter of the Istanbul Protocol. If we are to fully grasp the insights of the guidelines contained in the Protocol, we should first understand and reflect on the subject of torture.

According to the United Nations Convention against Torture:²

"[T]orture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.³

Accordingly, torture is the intentional infliction of severe pain or suffering, whether physical or mental, by or on behalf of a public official (such as the police or security forces) or with their consent. The calculated abuse of an individual's physical and psychological integrity, in a way that is designed specifically to undermine the person's dignity, is horrible in any circumstance. But when this act is perpetrated by or on behalf of a public official (someone with the very responsibility to protect an individual's rights) the crime becomes all the more reprehensible. Torture is, therefore, a criminal act perpetrated or condoned by those officials who are responsible for upholding and enforcing the law.⁴

The central characteristic of the legal concept of torture is that it is an intrinsic part of the narrative of official behavior. It involves state agents, public officials, or other persons acting in an official capacity.

The practice of torture is a powerful institutional expression of statecraft, power, and social control. The official use of torture, even if denied in

2. Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, G.A. Res. 39/46, 1465 U.N.T.S. 85 (Dec. 10, 1984) [hereinafter Convention Against Torture].

3. *Id.* art. 1, ¶ 1.

4. Redress Trust for the Istanbul Protocol Implementation Project, A Practical Guide to the Istanbul Protocol to Lawyers in Uganda, 1 at <http://www.redress.org/publications/National-adaptation-Uganda-legal-material.pdf> (last accessed Mar. 15, 2008).

theory but used in practice, functionally means that the state uses these powers (as critical components of security) to intimidate or sometimes even eliminate its enemies or indeed, non-enemies. When torture becomes routine practice in governance, the state does not represent the moral order of the community, but instead is the repository of authorized violence and impermissible coercion.

Torture may cause physical injury such as broken bones and wounds that heal slowly, or can leave no physical scars. Often torture will lead to psychological scars such as an inability to trust, and a difficulty to relax in case the torture happens again, even in a safe environment. Torture survivors may experience difficulty in getting to sleep or may wake up early, sometimes shouting or with nightmares. They may have difficulties with memory and concentration, experience irritability, persistent feelings of fear and anxiety, depression, and/or an inability to enjoy any aspect of life. Sometimes these symptoms meet the diagnostic criteria for post-traumatic stress disorder (PTSD) and/or major depression. Physical and psychological scars can last a lifetime. To someone who has no experience of torture, these symptoms might appear excessive or illogical, but they can be a normal response to trauma.

The word "torture" will, to most people, invoke images of some of the most horrific forms of physical and psychological suffering — the pulling out of fingernails, electric shocks, mock executions, being forced to watch the torture of parents or children, rape. The variety and severity of the methods of torture and cruel, inhuman, or degrading treatment or punishment may simply defy belief.

Torture is a creative way of eliciting involuntary information. Hence, there is no exhaustive list of acts that constitute torture; torturers continue to invent new ways to brutalize individuals. And there is no limit on who can be victimized — survivors of torture come from all walks of life and from different countries around the world. Even children may be victims. But most frequently, torture survivors are criminal suspects, or victims of discrimination on the grounds of political belief, race, ethnicity, religion, gender or sexual identity.

Torture is a crude but effective way of achieving power or information through brute force. Machiavelli once wrote that the ends justify any means used — but we must remember that when power is maintained by practices of torture and ill treatment, the claim to state legitimacy is undermined.

How so? Because the democratic consensus is that the only purpose by which governments exist is for the well being of the society. "The care of human life and happiness, and not their destruction, is the first and only

object of good government."⁵ And because torture involves state agents, and the individual is obviously powerless against officials, it has become a general concern for humanity.

As the Istanbul Protocol declares in its introductory sections,

Torture is a profound concern of the world community. Its purpose is to destroy deliberately not only the physical and emotional well-being of individuals but also, in some instances, the dignity and will of entire communities. It concerns all members of the human family because it impugns the very meaning of our existence and our hopes for a brighter future.⁶

Torture is among the most despicable acts perpetrated by state agents. Other dubious and deplorable practices used by the state to intimidate or sometimes even eliminate its enemies or non-enemies are the following: (1) extrajudicial executions; (2) forced disappearances; (3) imprisonment of prisoners of conscience; (4) unfair trial; and (5) detention without charge or trial.⁷

Modern human rights law prohibits torture. It is generally recognized today that modern human rights law evolved in response to the atrocities committed during the Second World War and to the effort to provide a moral as well as judicial reckoning and understanding of the legacy of that conflict. The creation of the United Nations Charter⁸ in 1945 represented an effort to specifically prescribe certain obligations on states. These revolutionary obligations related to the matters of aggression, peace and security, and fundamental human rights that implicitly recognized that the idea of state and the idea of sovereignty are not unlimited — that respect for the individual human being is a global concern.

Further developments, especially the Universal Declaration of Human Rights,⁹ recognized rights for the individual that might be exercised against a sovereign state, another milestone achievement.

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5. 16 THE WRITINGS OF THOMAS JEFFERSON 359 (Andrew A. Lipscomb & Albert Ellery Bergh, eds. 1903-04).
 6. Istanbul Protocol, *supra* note 1, at 1 (citing V. Iacopinq., *Treatment of survivors of political torture: Commentary*, 21 *The Journal of Ambulatory Care Management* 5-13 (1998)).
 7. See, Facts and Figures: The work of Amnesty International January to December 2002, at <http://archive.amnesty.org/library/Index/ENGPOL100052003?open&of=ENG-2EU> (last accessed Feb. 2, 2008).
 8. The Charter of the United Nations was signed at the United Nations Conference on International Organization in San Francisco, California, United States on June 26, 1945.
 9. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GOAR, 3d Sess., 1st plen. Mtg., U.N. Doc. A/810 (Dec. 10, 1948).

The 1949 Geneva Conventions¹⁰ and related protocols extended these developments in the field of humanitarian law. Furthermore, the growth of national human rights law reflect a strong and compelling desire on the part of the international community to ground the perspectives and operations envisioned in the Universal Declaration of Human Rights in actual practice.

The most important United Nations' (U.N.) treaty for controlling, regulating, and prohibiting torture and related practices is the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹¹ The drafting of this Convention was commenced by the U.N. Commission on Human Rights in 1978, and the document was adopted by the General Assembly in 1984. In its final form, the Convention Against Torture was based substantially, but not exclusively, on the Declaration Against Torture. The Convention Against Torture stipulates explicitly in Article 2 that, countries under the Convention are obliged to "take effective legislative, administrative, judicial and other measures to prevent acts of torture."¹² This particular provision formally established the specific legal obligation of the state to prevent torture.

Modern constitution-making has tended to draw normative inspiration from the Universal Declaration of Human Rights and allied conventions that protect and promote human rights. Many human rights provisions have found expression in post-war constitutions of newly decolonized states.

Our very own 1987 Constitution is inspired by the Universal Declaration of Human Rights, and more so, by our experience during the dark days of Martial Law. Our Constitution is textually replete with human rights protection language, including a textual prohibition of torture.¹³

10. See, Geneva Convention for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field, 6 U.S.T. 3114, 75 U.N.T.S. 31 (Aug. 12, 1949); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 6 U.S.T. 3217, 75 U.N.T.S. 85 (Aug. 12, 1949); Geneva Convention Relative to the Treatment of Prisoners of War, 6 U.S.T. 3316, 75 U.N.T.S. 135 (Aug. 12, 1949); Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 6 U.S.T. 3516, 75 U.N.T.S. 287 (Aug. 12, 1949).

11. Convention Against Torture, *supra* note 2.

12. *Id.* art 2.

13. PHIL. CONST. art 3, § 12, ¶ 2.

No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against [any person under investigation]. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited. (emphasis supplied)

Although international human rights and international humanitarian law consistently prohibit torture under any circumstance, torture and ill-treatment are practiced in more than half of the world's countries. The striking disparity between the absolute prohibition of torture and its prevalence in the world today demonstrate the need for countries and their governments to identify and implement effective measures to protect individuals from torture and ill-treatment.¹⁴

Aside from addressing a most pressing issue, the Istanbul Protocol should also give us reasons for reflection. Although it was adopted as an official United Nations document in 1999, the Istanbul Protocol began as a work by non-governmental organizations. It was initiated by individual members of the civil society. If you will look at the drafters of this document, you will see that many of them are members of the civil society.¹⁵

The Istanbul Protocol began as a manual, a simple document. It was initiated and coordinated by the Physicians for Human Rights in the United States of America (PHR-USA), and as their name implies, they are doctors and medical professionals who focused and devoted their time to helping alleviate the human rights condition of their country. Many people in the world respect the United States for its liberal approach to government, but even there, human rights abuses have been found present.

Recently, the United States Supreme Court has been besieged by *habeas corpus* petitions regarding the detainees at Guantanamo Bay. Again, we must realize that the problem of human rights abuse is global, and we are all part of the solution. As the physicians realized, we have to be part of the solution if we do not want the problem to remain.

The PHR-USA was joined by the Action for Torture Survivors and the Human Rights Foundation of Turkey (HRFT), and over three years, over 40 other organizations joined in the laudable fray, including the International Rehabilitation Council for Torture Victims (ICRT) and the World Medical Association (WMA).

The European Union took notice of this growing collective action and helped fund the "Istanbul Protocol Implementation Project" between March 2003 and March 2005. It successfully launched the project in five countries in 2006; namely Georgia, Mexico, Morocco, Sri Lanka, and Uganda.

The Istanbul Protocol has been an important instrument in the fight against torture. The effective investigation and documentation of torture

14. See, Facts and Figures: The work of Amnesty International January to December 2002, at <http://archive.amnesty.org/library/Index/ENGPOL100052003?open&of=ENG-2EU> (last accessed Feb. 2, 2008).

15. See generally, Istanbul Protocol, at viii-x.

have helped to expose the problem of torture and to bring those responsible to account. The Principles contained in the Protocol reflect important international standards on the rights of torture survivors and States' obligations to refrain from and prevent torture.

The Istanbul Protocol documentation methodology proves useful in bringing evidence of torture and ill-treatment to light so that perpetrators may be held accountable for their actions and the interests of justice may be served. The documentation methods are also applicable to the more general human rights investigations and monitoring, political asylum evaluations, the defense of individuals who allegedly "confess" to crimes during torture, and the needed assessments for the care of torture victims, among others. The Istanbul Protocol also provides for cases of health professionals who are coerced into neglect, misrepresentation, or falsification of evidence of torture.

Truly, this manual, made by concerned individuals, now provides an international point of reference for health professionals and adjudicators alike worldwide in dealing with the scourge of torture. The Istanbul Protocol was developed to address one of the most fundamental concerns in protecting individuals from torture — effective documentation and the consequent apprehension, prosecution, reparation, retribution, and justice.

The Istanbul Protocol has been proven useful all around the world, and it has been useful even in our jurisdiction. As a matter of fact, the Istanbul Protocol was used by the Supreme Court Committee on Revision of Rules to draft several portions of the Rule on the Writ of *Amparo*¹⁶ especially on the requirements for public officers, and the standards required for investigation. Being new, it just needs popularization. And that is why we are here today.

To end, we would like to say that torture is abhorrent not only for what it does to the tortured, but for what it makes of the torturer and the system that condones it. As the Istanbul Protocol recognizes,

Perpetrators often attempt to justify their acts of torture and ill-treatment by the need to gather information. Such conceptualizations obscure the purpose of torture and its intended consequences By dehumanizing and breaking the will of their victims, torturers set horrific examples for those who later come in contact with the victim. In this way, torture can break or damage the will and coherence of entire communities.¹⁷

Society cannot function properly without justice. Like the air we breathe, justice is an invisible object that fuels the system which gives life to society.

The Istanbul Protocol is an essential tool in the attainment of justice.

Good day to you all!

16. RULE ON THE WRIT OF AMPARO, A.M. No. 07-9-12-SC, Sep. 25, 2007.

17. Istanbul Protocol, at 45.