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Session Four: Institutionalizing Medical Documentation at the National Level

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SESSION FOUR: INSTITUTIONALIZING MEDICAL DOCUMENTATION AT THE NATIONAL LEVEL

Opening Remarks of Victor Madrigal*

Good morning. We are now starting a panel on institutionalizing medical documentation at the national level.

I would like to start by mentioning how glad I am to be here. My first association with the IRCT was over eleven years ago, when I headed a delegation that was working with the Mexican government to attempt to implement the Istanbul Protocol¹ and institute it at a local level. It was by no means a completed exercise, but it left me with one absolute lesson, and that is that no matter how much civil society is engaged, active, capable and outspoken, the elimination and justicability of torture is ultimately the responsibility of the State. There are constant reminders of this fact. The day before yesterday, a fire in a Honduran prison killed 365 inmates who had not been sentenced, were awaiting pretrial detention, and were surviving on an allocated budget of 22 cents per person per day. It is a stark reminder of the fact that while we are listening today to testimonies of survivors, torture, and undue conditions of detention are occurring as we speak, and it is likely, I am sure, that dozens if not hundreds of persons will have been tortured since the start of the session this morning.



At the very root of the notion of state responsibility lies the idea of creating mechanisms to institutionalize the tools to eradicate torture. Joining us in this panel, which will continue through lunch, are five remarkable women that are undertaking these tasks at local level with great ambition and oftentimes under very challenging circumstances. Loraine Dela Cruz from the Balay Rehabilitation Centre in the Philippines and Sebnem Korur Financi, from the Human Rights Foundation in Turkey. After lunch we will be joined by Rusudan Beriashvili, from Tbilisi State Medical University of Georgia, and by Suzanne Jabbour and Sana Hamzeh from RESTART Lebanon. We have agreed with the speakers that they will keep their presentations to a maximum of twenty minutes. We are starting late and therefore it may be that we will not have too much time for discussion now, yet we hope that in the session in the afternoon we will be able to take any questions that are not addressed this morning.

Without further introduction, I would like to give the floor to Loreine Dela Cruz from the Balay Rehabilitation Centre.

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Remarks of Loreine Dela Cruz*

INTRODUCTION

Good morning to everyone. This morning I will tackle the topic of making transformative engagements work in a country like the Philippines. This, despite the continuing challenges we face in torture prevention work. The crucial thing in transformative engagement is to have a mindset vis-a-vis the system that we are working with. We need to have a positive, collaborative framework in order for transformative engagement to work. It may be a long and tedious process but surely success is in sight.

THE PHILIPPINE LEGAL SYSTEM

As a starting point, it is important to understand our very own legal system. There are three important features in the context of the Philippines. First, is the unique blend of the common law and civil law principles in one legal system. The public law is substantially patterned after the common law doctrines, while the private law system follows the civil law tradition of Spain. This can be attributed to our long history of colonization—three centuries from Spain and half a century from the Americans. Second is the separation of powers between branches of government. The current constitution has clear imprints of the U.S. Constitution. This doctrine of separation of powers helps to prevent the tyranny of concentrating all the sovereign powers of the state in one body. As such, for civil society organizations, we can utilize and undertake transformative engagement along the lines of the three branches of government. The third and last, is the power of judicial review and bill of rights in the constitution. Under our present constitution, the certiorari power of the Supreme Court has been expanded to include the determination of whether or not there has been grave abuse of discretion amounting to a lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

As a democratic and republican state, there is an entire article in our constitution devoted to the bill of rights. Examples of



the rights that we can effectively utilize, which are enshrined in our constitution, include: the right to due process; freedom of speech, expression and of the press; right to counsel; right to bail; liberty of abode; etcetera, etcetera. Over the years, our supreme court has taken the lead in making landmark decisions interpreting and expounding the meaning and scope of constitutionally guaranteed rights. It is actually the exercise of its power of judicial review.

Now comes the new law that we have, which is a by-product of transformative engagement. In the long battle toward the enactment of this law, the anti-torture law, or what we call Republic Act 9745 (RA 9745),² there is a notion that torture is a political act of the state authorities to suppress dissent. It has been widely practiced under martial law in our country from 1972 to 1986, until the crucial toppling of the dictatorship by the people power revolution in 1986. The CAT was ratified in that same year, June 18, 1986. Although we can say that our constitution already contains the prohibition of torture, and despite the restoration of democracy, the violent tradition of security forces remained unchanged and, therefore, it is sad to note that impunity still remains. The anti-torture law, which is a by-product of transformative engagement, clearly defines and criminalizes torture; it imposes punishment on torturers or perpetrators, and it prohibits secret detention places. Torture is treated as a separate criminal act; there is no special amnesty to the perpetrator and there is application of command responsibility. This is a result of the long lobby and policy engagement efforts by engaged civil society in the Philippines, primarily by the United Against Torture Coalition (UATC), where the Balay Centre serves as the lead convener. It has achieved this landmark policy decision

* Loreine Dela Cruz is a staunch human rights defender for more than three decades. She, along with fellow human rights defenders in the Philippines battled the dictatorship in the 70's until the People Power Revolution in 1986. She continued with her human rights advocacy and peace building work to date as she still sees lots of areas to work on in terms of changes. These include, legal, policy and judicial reforms; torture rehabilitation and prevention even more, with the enactment of the anti-torture law; access to justice; peace building and humanitarian protection. Aside from human rights and peace building, she is also very much into disaster risk reduction and climate justice because of the Philippines' nature of being prone to disasters. Her other areas of specialization are organizational development, research and program evaluation.

twenty years after ratification of the CAT. On top of it all, there is a comprehensive rehabilitation program for the victims of torture and their families, and a parallel rehabilitation program for the perpetrators. The transformative engagement remains as impunity still remains. There is still a lot of work to do in terms of testing the law.

Part of testing the law is this case, the case of Lenin Salas. We took it as a pilot test in relation to the enforcement of the new law. A torture complaint was filed but dismissed. There was a motion of reconsideration filed with the Department of Justice. It only proves that despite reforms such as this, impunity still remains.

LESSONS LEARNED

So what are the lessons from transformative engagement, which is a product of long years of efforts by civil society in the Philippines? First, reform engagement has a different approach. Its value can only be seen in the long run and not in the immediate, short-term. Reform engagement needs time and flexibility. You cannot readily see what works and what does not. Second, there's a need to creatively invest in justice delivery. Delivery of justice, as said by Victor, is primarily the role and responsibility of the government. Only governments can credibly provide it. It will benefit society as a whole by increasing the citizens' access to institutions that protect their liberties. There is a kind of thinking now in our country that it would be useful to subsidize the delivery of justice rather than subsidizing utilities like water and electricity. Third, ownership of reforms is critical and crucial. Access to justice reforms must result in greater respect for civil liberties. It must likewise have impacts on the ground. Fourth, strong leadership is a key in this kind of work. Reforms are usually painful. Strong leaders in the different branches of government are the key to inspiring individual members in that government. Former Chief Justices Davide and Panganiban in our Supreme Court have displayed leadership and tenacity in setting the stage for judiciary reforms. Fifth is consensus building among government branches: meaningful reforms, even for those in the judiciary, require action from both the executive and legislative branches of the government. The legislature plays an important role in ensuring judicial independence and accountability, as is the case right now where we have the impeachment of our Chief Justice. Many of you may have seen this on the Internet. Sixth, reforms are an ongoing process. There are reforms that will likely address the institutional culture, and there are reforms that contribute to creating new capabilities in the different branches of government. All these reforms necessitate change management. And last, the need for sector-wide approaches to reform. In the past, judicial reform only involved training of judges. We have trained many judges in the Philippines about the existence and phenomenon of torture. In the process, there is a need for police reform, there's a need to train public attorneys, and the importance of creating paralegals to help aid the victims. Now, the need becomes a sector-wide reform or it may become a branch-wide reform. There are wide avenues open for reforms and transformative engagement. It is

up to us to seize every opportunity open to us, as if they are up for grabs.

CHALLENGES AHEAD

Lastly, I will address the continuing challenges despite reform engagement. Despite a more conducive environment provided by reforms, many challenges continue to prime civil-society groups and freedom-from-torture advocates, like all of us here. First is the security sector reform. Security matters to the poor and other vulnerable groups, most especially the women and children. Bad policing, weak justice and penal systems and corrupt military men mean that citizens will be made to suffer disproportionately from crime and insecurity and fear. Security sector reform is a core of government responsibility and vital for the protection of the human rights. It is important for improved governance and a key component for a broader human-security agenda. It relates to the second challenge, which is the rights-focused governance. Working on a rights-focused governance guarantees greater freedom and liberty on the part of the victims and, more so, for the larger citizenry in a country. It is a reflection of the level of development and progress of the state and its citizenry. The third is building the human rights consciousness which is a continuing challenge for human rights defenders and advocates towards engaging the wider citizenry on efforts of civil society. The deeper and wider the human rights consciousness of the citizenry can be attributed to the efforts of civil society. Fourth is the forensic training for purposes of torture documentation toward access to justice that contributes to healing and achieving justice for the victims and their families. On the other hand, such require protection on the part of the professionals engaged in both rehabilitation and prevention of the occurrence of torture. Lastly is the bio-psychosocial support and sanctuary: a good and better understanding of the victim's psychological and social situation facilitates their faster healing process, thus, the significance of bio-psychosocial support that may be provided by both the state and non-state actors. A positive mental state contributes to fast healing and recovery at the same time that victim safety and security are immediately addressed through sanctuaries and safe places to stay. The widest and strongest possible support is needed for the protection of the victims. The broad human rights constituency can contribute to the needed protection of victims at the same time that network building complements the human rights constituency for the victim's protection.

True enough, transformative engagement brings about reforms in various areas and branches of government. It provides relief, some alleviation, and a certain level of justice and reparation for the victims. This coming 21st of February, we are hoping that the OP CAT in our country will be ratified. It's the third reading and hopefully the final, and the majority of senators will really pass it, will ratify it.

CONCLUSION

It's a continuing challenge for all of us. In closing, you are probably aware of some developments in our country on the

last part of last year—our former president was arrested while trying to fly out of the country and we have the impeachment of Corona, our chief justice. Additionally, Palparan the notorious killer and torturer of human rights defenders and justice advocates, is being hounded. All these events have given us hope that things might finally change for us. This is the first time that we

are seeing these happening—righting the wrongs and undoing the mistakes of the past—and hopefully, this paves the way for a better future. I think this is a triumph of vision, a triumph of will, and a triumph of justice. To close, I would just like to share my favorite line from the film *The Shawshank Redemption*: “Hope is a good thing, and a good thing never dies.”

Remarks of Sebnem Korur Fincanci*

INTRODUCTION

Thank you my dear chair. Actually, I want to start with thanking BALAY and Medical Action Group and to express the gratitude and privilege that I feel in working with them. But actually thanks to the minimized staff of IRCT for bringing us together, and for bringing together this huge accumulation of knowledge and experience. And of course thanks to Washington College of Law for collaborating with us to have this whole gathering and being together for two days.

With regards to institutionalization, I’m not sure at all what we could achieve but I will try to describe what the environment is in Turkey, what has changed and what we couldn’t change all together. Of course this large scale of training is a really successful story for us, but it didn’t start with that.



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Many years ago in the middle of the 1990s, the Turkish Medical Association together with Human Rights Foundation of Turkey and the Society of Forensic Medicine Specialist came together because we realized that human rights abuses were pervasive and we could not document them. Without documentation, we could not prevent them. In preventive medicine it is very important to show the severity of the problem, and we worked to figure out how to do this. It was very important to collaborate with general practitioners who usually examined the victims of these human rights violation cases, and we started trainings. Of course we were inexperienced in the beginning—there was much we didn’t know 15 years ago. At the same time we started to write a textbook and for the first time in Turkey there was a chapter in a forensic medicine textbook dedicated to human rights violations. It was really a success for us; even we couldn’t manage to discuss human rights violations in the first days of this project. But from 1996 to 1998, we had the common knowledge, we had the common understanding, we had a chapter on human rights violations. Then, of course we had already started a course for fifth-year medical students in Istanbul Faculty of Medicine and then came the Istanbul Protocol.³ I have to thank Physicians for Human Rights (PHR), because they took the lead in this process, particularly Vincent Iacopino, and

of course someone who is not with us now, Chicago medical examiner Robert Kirschner. To be Bob Kirschner's colleague is the biggest privilege in my life and I just want to remember him once more.

TRAINING PROJECTS

We started our work in 1996, and in 1999 we all came together in the department that I work, and had been the head of the department then. Then of course from within our department the document came to the United Nations and was accepted as a United Nations document in 1999. From then on, our trainings were Istanbul Protocol trainings. Before the Istanbul Protocol, all the trainings were called human rights violations trainings and medical doctors against human rights violations trainings, but immediately after 1999 they became Istanbul Protocol trainings for Human Rights Foundation of Turkey. Throughout 2001-2007 we learned a lot, but we weren't alone of course, we worked together with International Rehabilitation Council for Torture Victims (IRCT). First came the Istanbul Protocol implementation project, then the prevention through documentation project. Throughout 2003 to 2008, we had trainings in 10 countries. But these weren't the only 10 countries—these are only the project countries. There are several other countries that we don't count in this project, but we have worked with all of the members of IRCT. This was a huge project because it didn't just promote these guidelines but rather it promoted a new understanding of human rights violations and a new understanding of documentation. Before this project, we tried to rehabilitate but we couldn't document the violations. We couldn't prove that there was torture at all. Afterward, there were other success stories, for instance in Georgia which will be discussed this afternoon when my colleague Rusudan will present how they implemented a huge curriculum at a university. And then my dear colleagues from Egypt, from Cairo University, they have also implemented a curriculum at the university. This is of course the history of our large-scale training. Without these achievements, without these successful stories, we couldn't have achieved such large-scale training in Turkey.

Before this project in Turkey, the government or the Turkish State would dismiss us as terrorists, and I have been called many different names and claimed to be affiliated with leftist groups. Because of the stigmatization they did not want me as a trainer in the beginning. They refused to work with me and, as a result, they refused the Human Rights Foundation, because I was the chair. They refused to work with the Society of Forensic Medicine because I was the founding member and had been the chair for 10 years.

Despite this, we decided to move forward and we said that we are all Turkish Medical Association members, we are all medical doctors and we can move forward with the Turkish Medical Association. After all, it was a very precious project for us because we could then reach many of our colleagues. You can see the numbers, we had 250 trainers in the project and 5,500 users, including judges, prosecutors, and general practitioners. It

was very similar to the I.P.I.P. and P.T.D. projects and we used all the documents that were prepared for those projects. It was not easy to start, of course, because of all the extensive discussions. We first started in 2005 and for four years we discussed who should be in the project, who should collaborate in this project with the Ministry of Justice and Ministry of Health. At the end of 2008, we could only collaborate with the Ministry of Health, we weren't able to collaborate with the Ministry of Justice, unfortunately.

The project was very important because we would train half of the general practitioners who worked in the emergency departments and who examined individuals who had been detained. This was a very valuable result for all of us. In addition, one quarter of the judges and prosecutors would be trained. Because of the discussions, our time for the training was very limited and we needed to run all over the country. In only 4 months, we had 120 trainings in 30 cities. Sometimes we forget the way to our own homes, all of us. Of course, there were 163 trainers, but we had to accompany the trainers, we had to supervise them and there were only 25-30 of us. We had immense support from IRCT and their experts. Lilla Hardi was with us as a master trainer and international trainer; Rusudan Beriashvili was with us along with many of our colleagues from IRCT. It was a huge support. We had five days to train all of our trainers and the training for our users was three days; of course the only difference was the interactive methodologies imbedded in these trainings.

It was very helpful that these were all adult trainings. Before the trainings took place, we also tested these methodologies through ToT trainings. In these trainings, all the participants were very active and improved a lot throughout the training. For example, during a role-play exercise in an interview session, all our participants were very dedicated and they prepared themselves by practicing at home each night. They prepared themselves to play the role of a torture survivor; they tried to be a torture survivor, a real torture survivor. It was a really a very helpful experience for all of us. We had working groups and cases that we had prepared. Our participants presented and we evaluated their presenting skills to give them feedback so that they could improve their trainings skills.

EFFECTS OF THE TRAININGS

What changed throughout these trainings? Could we see what was the impact of the trainings? We had pre-test and post-tests throughout these trainings and, according to the tests, we began with 30% of general practitioners justifying torture before the training while only 2% doing so after the trainings. The 30% starting point was a shame, but true. We couldn't make it zero, unfortunately, because there were political involvements in a certain sense. This progress is very important for all of us. Only 2/3 of the general practitioners had an understanding of the value of psychological evaluation, but by the end nearly all of them were using psychological evaluation and this was an important result. Many of our colleagues thought of the Turkish

Medical Association as an organization that somehow did not belong to them; an organization that would not support them. But at the end of the training they understood that the Turkish Medical Association exists for general practitioners and all medical doctors who have an ethical medical attitude. I think this was a very successful result.

What was the situation before the training? We tried to understand the situation we were starting from; there were more than 1200 medical-legal reports randomly selected from the reports of one year. We reviewed all the reports and realized that there are no standard forms; there are no diagrams for the reports. Even in the official forensic units they didn't use any standardized forms, they didn't use any diagrams at all. They didn't have any medical history from the cases. Around 99% of the cases didn't have medical history. There were no complaints for 92% of the cases. Given this lack of information, how could they make decisions based on these reports? How could they document the events? What would they document at all? Medical examinations for 82% of the cases were conducted with the clients fully dressed. How could they conduct a full examination of a person when he or she is dressed at all? We didn't understand this methodology. We knew about these situations but we couldn't prove they existed beforehand. To observe the situation, however, was good proof for us. They didn't have any referrals, further tests, or interpretations or comments. Some had vague findings but no comments. This was an example; even they were very tired of these cases. They would produce some stamps, the stamps of reports, but what would they write? There were no complaints documented during detention. We didn't have medical histories, we didn't have documentation of complaints during detention, but we had a stamp. Afterwards, a physical examination while fully-dressed revealed no injuries. This was another stamp. These reports were really incredible; they claimed that everyone was physically fit despite the fact that they were in detention. After the training, one of our participants had just written a report saying that the client was physically fit and then he crumpled up that paper and wrote out a truthful and exact report. It was a success story and afterwards they built a special unit for forensic cases, particularly those cases coming from detention, in the emergency units in hospitals. This was a success of course, to build these kind of units, and they invited us to see. One of our trainees was the head of one of these units at a hospital we visited. It was really great for us to see this success.

The state often condemned the Istanbul Protocol and the Minnesota Autopsy Protocol⁴ in Turkey. "What is Minnesota Autopsy Protocol? What is Istanbul Protocol?" They would ask, and then claim that we didn't need such kinds of protocols. But

immediately, as you may recall there was the Mavi Marmara, the Blue Marmara occasion, and the official institute of forensic medicine stated that all the medical examinations would be conducted according to the Istanbul Protocol and they requested help. Thus, after a long time of exile from the official institute of forensic medicine, I have been invited back to organize the medical examinations.

EXAMINATION AND TRAINING LOGISTICS

How did we organize the medical examinations? We requested help from all the trainees from the field, because there were 400 cases that needed to be examined. We called all the trainees and we hosted a short course for psychiatric professionals who hadn't been a part of the project. We examined all the people. Human Rights Foundation had planned a framework for a world without torture so we started a helpline. Our trainees work shifts on this helpline and the helpline is available 24 hours a day for all the medical doctors who experience a problem with the government authorities or with the police. For instance, if a medical doctor has a problem during their nightshift in the hospital, a police wants to stay in the medical examination room or refuses to take handcuffs off, they can call this hotline to ask whether there is anything that should be done or if there are any questions.

Additionally, we will soon start an e-learning program of which I'm sorry that the trainings are all in Turkish for the time being, but I hope they will be in English in the near future. We have the first trainees, 29 trainees in all, participating in the first phase of the training and of course this is another success story. But is it a true success story? Not at all. There continue to be problems because the health policy has changed in Turkey and most of the trainees that worked for the emergency units of the hospitals are now family doctors. This is a problem of course.

CONCLUSION

We were only a few people working to document torture, now we are many. Now our trainees are having their own trainings in their communities, in the districts where they work. Even though they don't work directly with torture survivors, they train the medical doctors who work for the emergency units. This is a wave, just getting larger throughout the country. As you may remember, we couldn't have the training with the Ministry of Justice then. But it is important that just last week the constitutional court invited me for a lecture on the right to life. And next week, just after I go back to Turkey, I will be there again for a lecture on torture and the Istanbul Protocol so it's changing. We can change the world, I think. We can change it together in solidarity. Thank you all for your attention.

Remarks of Rusudan Beriashvili*

INTRODUCTION

Good Afternoon. Thank you, first of all, to the organizers of this event for giving me a chance to participate in this meeting.

Before continuing to the forensic items, I would like to continue our lunch spirit and introduce Georgia as a country. This is a country situated in the easternmost part of Europe, in between Russia and Turkey. As all Georgians believe, we are the first European people. We know this according to our archaeology excavations, and we know that we are mentioned in mythology, which means Georgia is a very old country. We have our own alphabet, which is among the fourteen main alphabets of the world. And we have grapes and wine, so you are welcome to the wine touring in Georgia. We have good resources, high mountains, we have lakes and the Black Sea. We have old churches and old monuments of Christianity. Our capital city is 1,500 years old and we have old buildings still preserved. Welcome to Georgia. We will show our hospitality to everybody.

THE FORENSIC SYSTEM IN GEORGIA

About the forensic system in Georgia. We believe that our system comes from the European school. Our forensic school once belonged to the former Russian or German school. It is based on Napoleonic law, and many peculiarities of our forensic system stem from this fact. The first and most important reform was performed in the 19th century in 1864, when justice system reform in Georgia resulted in the institutionalization of forensic investigations. Before, it had special physicians working in the



field of forensic medicine. After the ‘Sovietization’ of Georgia, everything changed. It eventually resulted in the creation of the forensic medicine bureau that we have now. In 1921, the real ‘Sovietization’ of Georgia happened, which arose from the Soviet inheritance.

The first department of forensic medicine as an institute was founded in 1941, and in 1952, the Bureau of Forensic Medicalizations within the Ministry of Health was founded. It consisted of three departments according to the main forensic medicine. Until now, ‘forensic medicine’ is that term that we use so we do not substitute forensic pathology and forensic science. But still forensic medicine consists of forensic pathology that consists of the autopsy rooms and the laboratory, the forensic ambulance or clinic that we call for living examination or past examination, and forensic laboratories for evidenced examination, examination of collaborations of evidence. This was the beauty of the first forensic bureau in Georgia, and I can say that in this building, the forensic medical examination bureau was situated until 2004. In 2004, the Bureau of Forensic Medical Examinations moved from the medical system to the justice system and joined to other forensic examinations institutions, so nowadays we have finished the Forensic Bureau which consists of lots of other forensic examinations partly with engineering, computing, chemical analysis, and forensic medicine included. The main structure and system reflected how it worked in Georgia in the past. In 2009, the mission of forensic bureau belonged to the Ministry of Justice and the Ministry of the Interior had some small criminal investigation laboratory, but did not include the forensic medical department. All the forensic medical work was performed under the Ministry of Justice

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during these five years. Most of the orders and official appointment of forensic examination came from prosecutors and from the court. Here I must mention that the first great jump and first great step was the reform of the judiciary and the criminal system in Georgia, in 2001, when the independent forensic examination was elevated. Before 2001, there was no independent forensic examination in Georgia. Now, the national forensic bureau is the outermost agency which in Georgian government means that it does not belong to any ministerial control. It does not belong to the Ministry of Justice or Health, and is only under immediate supervision by the Prime Minister. So formally, this is independent. And it was founded as an independent entity in 2009, starting from the general one.

All the other forensic departments are located in the new building, including biology, DNA, and chemistry. There are fourteen different stops on these two parts of this building, and forensic psychiatry facility and forensic medicine are situated in different buildings. Now, the system works with the president and government-initiated bureau that is an independent legal entity of public law. As such, the orders come from court, ministry of interior, ministry of defense and private bodies. Due to the reform I already mentioned, private orders for forensic examination are possible. In those cases, private bodies mostly request examinations related to sexual cases.

Another part of the forensic system in Georgia includes forensic NGOs that appeared just after the reform I mentioned in 2001. The first NGOs appeared mostly between 2002 and 2004, after the change of criminal law and possibilities on independent alternate forensic reports to the present. One forensic NGO exists in Georgia. This is a victory, though it is of limited capacity. They have just a few rooms, mainly just the cabinet tile rooms and the office tile rooms. This organization is dedicated to document examination and, sometimes, forensic clinical examinations as well. They communicate very fruitfully with other NGOs. So, before it was just forensic medical NGOs doing everything. Now, other forensic organizations have been established, so they can perform forensic engineering examinations as well. In 2005, the Georgina Forensic Medical Association was founded as a continuation of already existing forensic medical associations that existed during the Soviet period. If we add here the university part, we receive the total existence of forensic examination, especially formal forensic examinations in Georgia.

Together, we have four parts. We have the state system, NGOs, universities, and associations. Interrelations between these four exist. Once a year, the scientific practical conference for forensic medical profession is organized. Mostly this is in June because this is the date founding of university department of forensic medicine. And here something happens. Everybody comes and they start to talk about the problems and challenges, try not to blame each other and finish with a big festivities and kissing and drinking wine. We are proud that we have the interrelationships. Officially and non-officially, we discuss many cases. So this is just an example of how many people usually

attend these conferences. In Georgia, the population sits at four million or less, though forensic medical professionals number no more than 150. We think that this is very low number of professionals, especially because these people work in all parts of Georgia.

CHALLENGES FACING THE NGO SECTOR

Challenges we have in the nongovernmental sector. Nongovernmental organizations have a very limited capacity. There is a lack of funding and laboratory access. So, for the most part, they can only perform the evaluation part of the forensic examination. The factual parts are based mostly on the primary examination. They can likewise perform the clinical examination by themselves. They participate in joint commissions with the state system, and what is most important are that are responsibilities, obligations, and possibilities of the NGO are not clearly undermined by domestic legislation. Last year, legislation had been changed so that the control of forensic examination is by the Ministry of Health. The Ministry of Health issued the special regulated document that does recognize any institution as a forensic medical institution, except the state-run one. This of course resulted in a very serious discussion, and now NGOs work for change in this regulation and the association works together in a positive way.

Here, I would like to point out that we are involved in implementing the Istanbul Protocol. Since 2003, fifty physicians and twenty-five legal professionals from this country have been trained in local implementations. 2004 marked the first training of users, and 2007 marked the training of trainers.

Other challenges are the difference between international and national legislation. I cannot say unfortunately that every of this thing is fulfilled now completely, but we work very hard to change the situation. The follow up is guidelines and documentations that were translated into Georgian and issued for the further use. The Georgian Medical Association and the Public Defender's Office contributed significantly in this. I can say very proudly that the Public Defender's Office is really the body that is sometimes the last defense for cases related to torture. In 2005, in our criminal code, the special articles appeared with a definition of torture. Unfortunately, the UN definition is not reflected in our code, but we are working on it. Prohibition of torture was included in Article 17 of the Constitution of Georgia in 2008, and the anti-torture plan of action in Georgia was elaborated. Of course, the plan of action included the implementation of the Istanbul Protocol as well. So, this was a process of discussion.

Then we began the training of trainers, examining how trainers were used in other countries. I have already mentioned that I participated in great projects in Turkey, Egypt, and Uzbekistan. In these countries, it was our first chance to participate and gain information about the Istanbul Protocol and torture. It was very fruitful, a very good meeting. For example, Azerbaijani and Armenian professionals have a tense relationship. In the

beginning, they didn't even want to discuss the same things together, but in the concluding portion of our trainings, they had finally formed common groups to discuss the issues. So, it was a really fruitful meeting. So this is the training.

The next step was preparation of the new Syllabus for a University curriculum, created in 2008 to facilitate a medical university. This is also when it was mentioned today. Undergraduate and past graduate levels and the syllabus was admitted and adopted for Egyptian universities, so I had great honor to work with Cairo University and Adie University people. This is how the process of learning Istanbul Protocol advances. We included the Istanbul Protocol in pre-diploma, post-diploma curricula, not only for forensic medicine but also for psychology as well. Released in 2011, the new textbook in

forensic medicine contains a special chapter on torture and special forms of injury. The practical work in forensic medicine is minimal, but we are working on methodology and science. We release books, guidelines, and protocols. What is important is that we recruit new generations, the new generation of forensic medicine postgraduate students. The challenges for Georgia are the documentation of injuries, the interpretation of damages, and impartial professionalism. There are also problems related to awareness and education, plus some technical problems like the prohibition of cameras in prisons so on. We have interpretation problems, related to the fear held by professionals in interpreting accurately.

All of this is not so easy. It is a step-by-step movement, and we must simply try out best. Thank you very much.

Remarks of Suzanne Jabbour*

I would like to start by thanking the organizer of this event for giving me the chance to be here and to share with you our experience with Restart, which started in 2010 until 2013 in partnership with the International Committee for the Red Cross (ICRC). Before starting this project, we analyzed the legal and forensic system in Lebanon.

Lebanon ratified the UN CAT on October 5, 2000. So now our national civil code can fully adopt its provisions. The UN CAT was ratified 5th of September also 2008. Lebanon does not recognize the right of the individual to submit complaints under any of the international frameworks set forth in UN CAT Article 22. The lack of a national human rights system prevents torture victims in Lebanon from accessing any international judicial remedies. Medical evidence of both a physical and psychological nature is generally accepted in criminal proceedings, but there are no specific guidelines on how to evaluate this type of evidence according to, for example, the Istanbul Protocol.

Incorporation of the provisions of the UN CAT into the domestic law includes: criminalizing all forms of torture within the penal law; establishing independent national preventative mechanism according to the obligation foreseen by the UN CAT; creating a case law and opening up to prosecution allegations of torture; revising the definition of torture and include it into the domestic law, developing more accredited curriculum



for medical experts and forensic evidence, under the responsibility of the ministry of justice; establishing a cooperation mechanism between judges and forensic doctors to allow adequate application of the legal procedures of allegations of torture cases; raising public awareness on torture practices in Lebanese place of deprivation of liberty, and during interrogation; creating groups in support of raising doctor's mandate through civil society advocate network; developing an official accountability system to disseminate disciplinary reports to the public; developing a system to record forensic evidence and issue credibility of doctor's reports defining an ad hoc criteria according to the Istanbul protocol; and legislating for a mandatory medical examination to be executed by official forensic doctors on all detainees.

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The general objective of the FEET project is to fight against torture by advocating the recognition of forensic examination of the legal evidence of torture before Lebanese national and regional courts, as well as human rights institutions, and to give free execution of international standards mechanisms as obligation contracted by Lebanon in the fight against torture.

FEET activities include meetings and round tables with civil society actors, including judges, lawyers, forensic doctors, and human rights activists during 2010, 2011, and 2012; establishing a subcommittee as the responsible body on the advocacy component to follow up on the working mechanism and the implementation of the project.

Several meetings were here held before Restart staff, lawyers, and judges on August 17, 23, and 31, and on September 6 and 16. The meeting recommended developing a concept note for imposing a monitoring mechanism for the detection of torture and the human rights violation perpetrated in places of detention during the course of the investigation; and advocating for the effectiveness of the general prosecution and accountability process irrespective of the rights of the person deprived of liberty.

During the round table held on September 30, 2010, participants adopted the recommendations previously discussed that were drafted by the top committee. On December 15, 2010, participants adopted the concept note as drafted by the subcommittee and started to develop a joint action plan for the year 2011. The plan includes: lobbying for the ratification of OMU before the Ministry of Justice to create a committee of human rights representatives; establishing a hotline system for torture survivors and prisoner victims to report allegation of torture; and establishing a national observatory for human rights violations. The body should be composed in order to receive collect, analyze, investigate, track, and disseminate information. The data collected should be submitted to the general prosecutor. The plan also includes: encouraging judges, lawyers, forensic doctors, and human rights activists to produce written documentation on the human rights violations and to disseminate it among media; launching an international media campaign; introducing a human right curriculum and a forensic medicine curriculum at university level; coordinating with the training institute of the judicial sector to introduce the curriculum of forensic medicine; organizing training on the Istanbul Protocol and implementation of the UN CAT; coordinating with the Ministry of Justice and Ministry of House to organize training about the Istanbul Protocol for judges, lawyers, forensic doctors, internal security forces, and human rights activists; amending the penal code by working with the committee of law; amending the bar association to introduce the definition of torture and having the medical detection impose mandatory forensic consultation; and reactivating the provisions of the Lebanese law concerning the conduction of monthly visits to the prison by judges and by the committee of lawyers as well as the reporting procedures.

On April 6 2011, Restart organized a press conference, attended by representatives from European embassies, the

European commission, judges, lawyers, forensic doctors, human rights activists as well as a number of international organizations and local NGOs involved in the field. The conference ended with a debate on the role played by NGOs in the prevention of torture. Particular attention was drawn on Restart expertise and on evaluating the growing project, including its potential expected impact on its beneficiaries. Many follow-up meetings took place with the concerned parties with the presence of the subcommittee in order to discuss the methodology and to set a work plan.

A study on the judicial system and the forensic investigation and evaluation methods has been developed by lawyer Jeff Tommy, published in the *Journal of Torture*, Volume 3. The study on conforming Lebanese law with international standards has been conducted by Judge Nazir Kehaty. A wide coordination has been established with judges from different districts, lawyers, forensic doctors, ISF members, and human rights activists with the aim to fight against torture and identify a case study. Training sessions on the Istanbul Protocol have been conducted with forensic doctors, legal experts, and human rights activists. With the launch of its course in forensics, Belmont University is collaborating with Restart to target the definition of torture, Istanbul Protocol, physical and psychological evidence of torture, international standards on torture, UN CAT and the Lebanese legal framework, and field studies. The collaboration is also focused on increasing capacity and professional upgrading to include forensic doctors and lawyers, who develop a technical vocabulary and a more effective methodology while addressing torture cases. A booklet on the use of forensic evidence for the prevention of torture has also been published. The sitting committee has appointed a lawyer to monitor cases of torture in Tripoli court, north of Lebanon. Also created is a multidiscipline monitory team composed by independent network of experts who are free to cooperate without the official approval of the institution. A center of physiological and forensic medicine for the prevention of torture has been established in the Palace of Justice to ensure the right to a medical examination for all person during the investigation. A project under consideration with a support of German Embassy in Beirut would detect and document cases of torture, and submit a report for investigation and prosecution. Lebanon must also focus on creating case law that affirms the legal value of forensic evaluation before Lebanese national courts.

Restart's challenges include properly identifying torture cases. Victims have lost confidence in the Lebanese judicial system. They have developed a feeling of fear of potential revenge against themselves and need to be protected. There is no national preventive system and a lack of awareness. We need to raise awareness among individuals to overcome the general denial sense developed by the general judicial system around the presence of torture cases. There must also be governmental awareness. The Lebanese government needs to break away from the governmental stalemate faced while fighting against torture in Lebanon, and produce a more consistent and effective legislation in line with its international obligations.

While creation of a monitoring system is feasible, the main issues remain the protection of the victim, since the domestic law does not provide an effective legal framework for a protection mechanism for during and after trial and judicial sentence.

The working group was an added value for Restart, for it helped us to develop a deeper understanding of the function of forensic evidence in juridical systems and of their weaknesses and challenges. Thank you for your attention.

Remarks of Dr. Sana Hamzeh*

I would like to add a bit about our experience with Belmont University. We had made a lot of training there. Our main objective was to introduce a new curriculum about torture to sensitize the graduate students who later on will be indirectly in contact with victims.

One other objective is to sensitize and to raise awareness among the students on how to deal with torture cases, to both upgrade their professional skills as mental health specialists and guarantee the sustainability of FEAT project. This three-day block course aimed at providing participants with an overview of what torture is and how it could be prevented. Here there are issues addressed by relevant international conventions such as the Istanbul Protocol, including the definition of torture, as well as physical and physiological effects. Physiological and medical components of the Istanbul Protocol were discussed during the first day. The legal parts of the Istanbul Protocol—monitoring, advocacy systems—were tackled during the second day. Forensic medical diagnosis, judicial and legal points of view, and scope were explored during the third day. Tools for investigating and reporting torture were discussed together with the way of monitoring and preventing mechanism. Target groups include high school students, practitioners and professionals in the field of nursing medicine, health promotion, social work, socio-medical work, public health, and development.

Participants developed a basic understanding on what torture is: when, where and how, by whom it is practiced, who are the torturers, who are the victims of torture the physical and psychological evidence of torture, the international legal standards, legal investigation processes, ethical codes relevant to the issue

of torture. Participants also learned about the specific Lebanese context to torture, rehabilitation of victims, and advocacy in prohibiting torture, the different diagnosis passed, and the guidelines for the medical evaluation of torture according to the forensic perspective.

Presence was compulsory for the whole three-day course. Ethical and professional behaviors were expected from participants. The University of Belmont is committed to a policy of honesty in learning the academic course. According to their internal code of conduct, students can be subjected to disciplinary penalties. Moreover, they can also be expelled from the course if guilty of cheating and plagiarism.

When we started approaching the health science faculty of the University of Belmont to propose a course of torture, we did not realize the deep need for developing such knowledge among youth. We could not find the academic justification for the course to be a core course resulting in a fruitful credit for the students. We considered whether it could be an elective course, since at that time the academic year had already started and the different courses were closed. Hence, we decided to offer the course as part of a continuing study program, with graduates of the program receiving a certificate upon completion. The final accreditation through a certificate makes it the equivalent of an elective course for those students who are interested in attending one. As a result, the course was adopted by Belmont University. A partnership will now be developed between Belmont University and the University of Copenhagen's Department of Forensic Medicine with the support of IRCT.

I would now like to end my presentation with a testimonial from one of our students:

“As a Belmont student, I have learned about diseased people, about the poor. However, we have never tackled the issue of torture and victims of torture and the impact of torture on these people. As public health workers, we really need to know this information in order to be empowered and to be able to change later on. This course gave us an opportunity to know more about the subject. Moreover, we talked a lot yesterday about the psychological aspects of torture of victims. It showed us that torture does not stop when the prison time stops, however it can damage victims' whole lives and it is something that is really important, not only concerning Lebanon, but worldwide.”

* Dr. Sana Hamzeh is currently a Doctorate in Counseling of Grief and Trauma at Breyer State University. She holds a B.S. degree in clinical psychology and a masters degree in psychology from the Lebanese University. In 1996, Dr. Hamzeh founded (along with other mental health professionals in Lebanon) the Restart Center for Rehabilitation of Victims of Violence and Torture. She was then nominated to be Head of the Rehabilitation Unit at the center. Dr Hamze holds 17 years of experience as a psychotherapist working with victims of torture. She is considered as a pioneer in introducing the “care for caregivers” concept among mental health and psychosocial associations in Lebanon. Her reputation is also well appreciated on the international level, having been elected to serve as a member of the International Rehabilitation Council for Torture Victims (IRCT).

Follow Up Remarks of Victor Madrigal

At the Inter-American Commission, we deal with many instances where justice has been denied because the judge has not acknowledged or recognized a possible case of torture. I think since about ten years ago, the work around promoting understanding of the Istanbul Protocol is aimed at having legal practitioners understand the boundaries of their knowledge and their competency. And understanding when it is so that medical health professionals and psychologists have to come in and actually assess a situation that may be outside the limits of all pure legal evaluation. I think the great value of understanding the Istanbul Protocol is that it marries, in such a seamless way, medical and legal disciplines and it actually represents a full understanding of a human phenomenon that is not only legal. I think that at least has been our aim in relation to training justice systems in promoting non-repetition.

Let me quickly mention, it is kind of an inspirational note that we are ending on, even though it was very stark in the beginning. And it is so because all of these initiatives show, I think, a great deal of success. And Sebnem you were so introspective in saying this may be looked at as a success, but also that there are things that are left to be done. And yet one cannot deny all of the enormous achievements in all of these initiatives, be it in training, be it insertion in curricula, a full strategic understanding of how to implement it, an understanding of the system and an exercise of law reform.

This trip around the world of implementation was to be completed with the experience of Ecuador, but our dear friend Yadira could not be here. But I think the whole understanding and the panoramic version is actually very complete.

I think three key messages come through and I cannot actually leave this without saying them. One of them is persistence. It is very clear to me that this did not happen overnight. And Sebnem you did a great job, and so did all of you, in signaling

that all of us are standing on the shoulder of giants who came before us and who persevered for years and years in ensuring impact. All of us are working for agencies that are pressured constantly with showing impact within three years. What Sebnem and Loreine are showing to us very clearly, is that these are ten-year scenarios that we are talking about. And it is important I believe that agencies and governmental agencies understand that these are not necessarily the same rhythm as governments that are in place.

Second, there was a great message of sustainability. All of these great capacities are finding themselves entrenched in state institutions. There are progressive pockets within regressive institutions, or there may be progressive institutions within regressive governments. So those are the opportunities that are to be maximized.

Finally, and with this I think the question raised by Asker Kjaerum was quite relevant, is how do you ensure that you maintain independence at all times. We said this morning, and I think this is exactly the case, we are looking and listening to stories of thirty and twenty and ten years ago, and probably stories of five years ago. And we know for a fact that ten years from now we are going to be listening to the stories that happen today. Now the question is whether twenty years from now, we are going to be listening to stories of ten years from now. And I think with initiatives like this maybe we can all learn to try and avoid that.

Thank you very much to all of our speakers for an extremely interesting series of presentations. Sebnem, you also remarked that it is five women that I am surrounded by. I happen to belong to a commission that now has a majority of women for the first time in history, so let us also work for a world where that is not noteworthy and it is just a normal thing. Thank you very much.

ENDNOTES: Session Four: Institutionalizing Medical Documentation at the National Level

¹ U.N. Office of the High Comm'r for Human Rights, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)*, 2004, HR/P/PT/8/Rev.1, available at: <http://www.unhcr.org/refworld/docid/4638aca62.html>.

² An Act Penalizing Torture and Other Cruel, Inhuman, and Degrading Punishment and Prescribing Penalties Therefor, Rep. Act No. 9745 (July 27, 2009), available at http://www.lawphil.net/statutes/repacts/ra2009/ra_9745_2009.html.

³ *Istanbul Protocol*, *supra* note 1, available at: <http://www.unhcr.org/refworld/docid/4638aca62.html>.

⁴ U.N. *Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Minnesota Protocol)*, U.N. Doc. E/ST/CSDHA/.12 (1991), available at <http://www1.umn.edu/humanrts/instree/executioninvestigation-91.html>.