

Work guide for taking testimonies from survivors of torture

PROJECT: "DOMESTIC PROSECUTION AND
TORTURE PREVENTION IN ARGENTINA."

 CELS 
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I. Presentation and Purposes

Below is a work guide that may serve as orientation for judicial operators who are responsible for receiving testimonies from victims of torture, at different points of the determination of a criminal charge.

This document was developed by the work team at CELS, together with survivors of State terrorism who have served as witnesses in different criminal trials for crimes against humanity. Group meetings were initially held in which victims gave an account of the difficulties they faced as witnesses, which helped us organize their experiences in order to draft this document. At a later date, we discussed possible ways of overcoming obstacles and attempted to propose interventions that would benefit the justice process, while thoroughly respecting the fundamental rights to dignity and health of witnesses. Then, we consolidated a first draft of the text with the results of the above mentioned exchanges, to which we added a detailed review of national and international documents on this issue. Finally, we shared the draft version with the witnesses whose valuable contributions have been included in this document. This would not have been possible without the generous help of witnesses who shared their experiences and enthusiastic work.

Creating a work guide of this nature is relevant for a number of reasons. First, because taking testimonies is a complex task, which requires officials to have certain technical expertise. Second, because this technical expertise will inevitably determine the amount and type of information that can be extracted from the testimony. Finally, because all

information gathered must contribute to the reconstruction of what we deem to be a broadened concept of torture that contemplates all the dimensions of witnesses' experiences.¹ Whoever carries out this task must bear in mind that the richness of a testimony lies as much in the will and capacity of the witness² as well as in how the testimony is obtained.

One of the main purposes of this kind of work is to systematize the events that are part of an interaction between witnesses and judicial operators and, therefore, bring to light aspects that require special attention, for the purpose of obtaining from witnesses any details and clarifications required either by the evidence or the History. In this paper, we analyze those issues and suggest ways for approaching them.

II. The Particularities of Torture Events that Affect the Possibility of Testifying on a Judicial Level

In order to obtain a testimony, it is important to bear in mind that the witness in this process either was direct victim or relative of victims.³ This may seem obvious, but requires a particular form of treating and working with witnesses.

The state of being a victim or relative of a victim can condition the possibility of obtaining a sufficiently rich and detailed testimony so as to constitute legal proof in a particular case.

The material conditions under which witnesses testify may facilitate or hinder their testimonies. Each time a victim



of torture or a relative are summoned to recount their experience, there are inherent risks of re-victimization. This must be anticipated in each instance in which witnesses testify in order to avoid reproducing the material or symbolic conditions of the traumatic experience.

a) Interrogation

First, it is important to bear in mind that on many occasions, the events of torture being described by witnesses took place more or less directly in the context of an interrogation. In cases of torture, the interrogator and the party to be interrogated are also torturer and party to be tortured, and as such, relate to each other under brutally asymmetric circumstances. During a session of torture, one of the parties is powerful and has control over the life and death of the other, who, in turn, is in a situation of absolute helplessness.

All survivors of torture will profoundly experience everyday situations and their lives will definitely be modified each time they re-encounter the conditions under which they were tortured.⁴ Therefore, certain inabilities or difficulties are common, such as the inability to circulate near detention centers or kidnapping sites; to carry out formalities that involve identifying oneself before police or State authorities in general; to tolerate certain sounds, silence, darkness, or temporary confinement; to sleep; to speak in front of strangers; as well as a never-ending list based on each individual's personal history. It is safe to say that to victims of torture, the above have ceased to be everyday situations, as they are now more or less directly associated with torture.

b) Issues Involving Physical Space

In order to favor testimonies and minimize the possibility of re-victimization, it is important to bear in mind certain standards related to the physical position of participants and the use of space in places in which testimonies will be given. The physical conditions for testifying in different phases of the justice process may conjure up the conditions in which torture was suffered or could constitute a new experience altogether for the survivor—one that differs from an interrogation.

In that sense, we have basically identified two situations that, if particularly replicated, are difficult to handle, upset witnesses, and hinder the flow of the testimony. These are sensory deprivation and confinement. In clandestine detention centers, it was common for victims of torture to be deprived of their sight. If they disobeyed, they were somehow punished or tortured again. In addition, during a large part of their captivity, victims remained secluded in very confined cells, tubes or "leoneras" [cages], which they could not exit without authorization from their captors.

c) Asymmetry in Roles as a Form of Asymmetry in Power

Each time a civilian is summoned by the Judiciary there is asymmetry in roles and information. Whoever summons a torture survivor to testify must manage different theoretical and technical knowledge that is necessary for carrying out this task with the due social responsibility it entails.⁵

Symbolic violence, defined as that

which naturalizes dominance-based relationships, can easily be reproduced in situations of asymmetry between parties with socially valuable knowledge, as well as between state officials and civilians. Initiating interventions that repair the horrors suffered by survivors of torture requires re-instating equality between witnesses and technical staff and maintaining utmost respect for the law throughout these interactions.

III. Forms of Intervention that Help Overcome these Obstacles

The possibility of testifying in a judicial trial, as well as the pertinence, extension, clarity, richness, and possibility of constituting proof through testimony all depend both on the capacity of the witness as well as the technical skill of the person conducting the interview, examination, or interrogation.

We believe success involves an a priori understanding of the context of the testimony. Context can, in our opinion, facilitate or hinder a testimony, both during the investigational phase before the court as well as during depositions before the parties.

Below is a list of certain aspects that must be taken into account in terms of context.

1) Methods for Summoning Witnesses

The following are recommendable:

» Defining (before summoning a witness) the most adequate method in each case: i.e. by phone or subpoena sent

to the witness' home. In that sense, cooperation from the parties has proven very helpful in terms of finding witnesses and notifying them the reasons why they are being summoned and by whom.

» Gathering the details and location of the address in which the witness can be reached and checking if said address is current or agreed between the witness and the parties. There have been recent cases in which witnesses were subpoenaed in the context of the justice process for crimes of the last military dictatorship at the same address from which they had been kidnapped, despite having offered another for the purpose of the process. This undoubtedly conditions the individual's participation in the trial at hand, but not only because of the material impossibility of actually reaching the individual, but essentially because of how being "sought" once more by the State at the exact location in which the individual was kidnapped may affect that person.

» In the case of summoning a witness by phone, it is essential for the public official to introduce him or herself to the witness and state his or her name, rank, and reason for calling before requesting any sort of information. This is usually not done at all or done in a very confusing way. We are not merely stating basic rules or manners, but highlighting the need to establish a particular way of communicating with victims, which differs in every way from how the traumatic events were perpetrated. Therefore, officials must introduce themselves and explain the reasons for calling before advancing with the purpose of the call in order to effectively communicate with the individual.

» Addressing the victim by name and last

name and using, as the conversation progresses, an appropriate conversation tone for the cultural context shared by both parties so as to guarantee symmetry between them: i.e. formal speech vs. informal speech, referring to each other by name or last name, etc. We know that one form of torture (taking into account the different techniques of subjective devastation endured by victims) is deprivation of identity, which is done by replacing the individual's name with a number (this technique has been used since the time of slavery as a form of achieving submission and subjective destruction); hence, the need to call witnesses by their names (even when the interrogator must check his or her notes to remember the person's name). It is hard to imagine a more asymmetrical situation in the exercise of power than that between the torturer and his or her victim; therefore, anything that materially or symbolically replicates this asymmetry during the justice process, conjures up interrogations in the context of torture.

» Informing witnesses of the purpose for which they are being summoned. It is important to provide information regarding the case for which he or she is being summoned, including case number, docket, and events under investigation. On uncountable occasions, the only information provided to witnesses is that they must appear at a certain place and time, with no mention as to why. The concerns that these types of notifications provoke are quite evident. Individuals who have been victims of torture not only, as most citizens, lack information and have difficulty understanding the mechanisms through which the bureaucratic State works, but have also suffered first-hand

the consequences of the abuse of power committed by the State.

» Ensuring that witnesses adequately appear at each phase for which they were summoned. This means witnesses must be subpoenaed sufficiently in advance so they may make necessary arrangements to appear, decide if they wish to be escorted, and have the opportunity to ask questions regarding the process for which they are being summoned, among others.

2) Conducting the Examination in an Investigation

» Under these circumstances, it is simple but essential to start the examination by presenting the official(s) that will question the witness. The above recommendations must be taken into account in terms of the importance of acknowledging the witness' identity in a way that is symmetric between both participants. In addition to name and last name, it is essential to inform the witness on the capacity under which each official is present in the testimony.

» Facilitating a situation that is respectful of witnesses' privacy is paramount. Testimonies must be given in private areas that ensure that no one other than those who have been identified before the witness can hear and in which other people do not circulate. Interruptions by other people or phone calls must be avoided or minimized and, if this is not possible, the witness should be told why. Pauses or moments of silence must be made if necessary. In addition, privacy is one of the basic conditions for being able to overcome embarrassment and recount the events. Lack of all intimacy

is one of the conditions that are often suffered in events of torture.

» Witnesses must be able to see all interlocutors and, even in small spaces, no one should be placed behind the person that is testifying. Visual control of the room may be reassuring as it opposes the concealment of torturers from their victim's visual field as well as the previously mentioned sensory deprivation.

» Inappropriate conversations and comments by officials must be avoided. It is common for those who work in a shared area to resort to jargon, comments or even gestures that may be misunderstood, or not understood at all, by someone who is not part of those daily dynamics.

» The possibility of providing psychosocial support before, during or after testifying must be considered. In that sense, it is useful for justice system operators to have access to appropriate available information on all government and private agencies and to be able to provide that information to witnesses or facilitate their access to it.

» Witnesses must be able to leave the room in which they are being questioned. The person conducting the examination must offer witnesses the option to leave the room, taking into account that most events of torture took place in rooms in which the victim was locked.

» Particular care must be put into avoiding, by all means, that defendants and witnesses, or witnesses summoned by either of the parties, to run into each other. Therefore, dates must be carefully planned out to prevent those kinds of encounters.

» It is essential for whoever is responsible for conducting the testimonies to clarify any legal terminology used. The use of technical language without any form of explanation is a classic technique experienced by everyone in everyday life of the exercise of disciplinary power and must be avoided to effectively mitigate differences in terms of functions and knowledge between each participant. Any explanation provided to witnesses regarding the issues that are characteristic of the development of the criminal process must be done so with consideration to the generalized lack of knowledge of citizens regarding the judicial system. Consequently, regardless of how common technical terminology may be among judicial officials, it must be described if necessary by ordinary language that is understandable to everyone. The person conducting the examination must worry about being understood by the witness, and he or she would probably replicate this effort.

A key issue is clarifying the difference between the "investigational phase" and the "oral trial phase". It is important for the witness to know what his or her participation entails in each phase. In addition, he or she must be told that any information provided in the investigational phase will have to be repeated during the oral trial phase and that much time can, and usually does, elapse between each phase. Namely, witnesses must thoroughly understand that these are two distinct although complementary instances of testimony giving and –for the purpose of avoiding confusion or surprise before a new summon–witnesses must be told that their participation will be required again, even long after testifying

in the investigational phase.

Witnesses are often asked if they understand the “general stipulations contained in the law.” This phrasing is very abstract and requires explanation with concrete examples.

Another issue is identifying the “label” as the “name” of the case. The former is a term with which most people are familiar, but this should still not be taken for granted.

Meanwhile, witnesses are summoned, among other things, to respond for the “charging” of certain individuals. This term is not always clear and may require clarification as to the fact that defendants are being investigated for their involvement in certain crimes.

» As far as the purpose of the testimony, witnesses are often summoned to testify in cases involving others, and not themselves. It is important to clarify that the events suffered directly by the victim are not the object of the trial and that it is possible that he or she may not be asked about them during the investigational or oral trial phase. It must also be explained that this does not mean there is no interest in the witness’ direct suffering, but that the object of that particular trial is different.

» It is essential when obtaining a statement from a victim to explore in depth all the aspects related to his or her captivity that constitute torture, in a broad sense of the term. Therefore, merely asking the victim if he or she “was tortured,” may lead to a direct association to the use of an electric prod, as a result of lack of clarity. The judicial operator must guide the witness with questions that may account for all the elements

that compose an event of torture: deprivation of sight, lack of intimacy in sanitary contexts, insufficient or lack of food, suppression of identity, lack of communication, in addition to beatings and subjection to electric prod.

» It is important to take gender-related criteria into account when questioning a witness. These criteria will help reach a more complete, thorough, and relevant account of each individual experience. The relevance of the gender perspective consists in facilitating an analysis of the differences in the impact of a practice, trial or institution on men and women, as well as the way in which hierarchical relationships between men and women are legitimized, reinforced, or reverted. In the case of statements issued by victims of torture during their clandestine detention, this perspective provides more precise information on the individual experience and contributes to identifying practices related to sexual violence, which are usually concealed when these issues are not particularly brought up during the examination.

» Providing support for witnesses after testifying has proven to be very useful; this includes everything from simply accompanying them and showing them the exit of a hearing room or court room to ensuring that none of their court appearance-related needs go unmet (for example, being able to use the phone, being offered a hot beverage or snack, or being provided with transportation).

3) Testifying in the Oral Trial Phase

» When being summoned for the oral trial phase, it is common for witnesses who are appearing before the court to

be taken into a room to wait until it is their turn to testify. Therefore, there are certain aspects related to the conditions under which they are to wait that should be taken into account. First, the witness should be asked beforehand if he or she will need the company of a therapist while waiting. Also, court designated personnel must talk to witnesses about their role in the trial, look after their needs, and keep them up-to-date regarding the events on the agenda for that hearing (many hearings are particularly long and witnesses wait for many hours before they are called in to testify). In addition, the room in which witnesses are waiting should not be in the path through which the defendants will pass.

» Witnesses should be told who will be present in the hearing room, who will be able to ask them questions, and where each person is sitting from the witness' location. A sort of "map" of the hearing room can prove very useful for avoiding surprises and confusion. Some places are more uncomfortable than others. Locating witnesses with their backs turned to the person asking the questions has proven to be very intimidating in general, as it reminds witnesses of interrogations under torture, where they were unable to see the person who was interrogating them. Locating them facing the parties has proven to work best in these cases and is, therefore, highly recommendable.

» On the above subject, another key issue is the presence of the defendants. Witnesses are generally very sensitive to their presence and their ability to testify can suffer a negative impact; therefore, all issues pertaining to location and conduct in the hearing room must be

discussed with witnesses beforehand. They need to be told beforehand if they will have to walk by one or more defendants or face them directly from the witness stand. They also need to be told when they can speak, if they can be asked to stay or leave, if they can ask questions, etc., while bearing in mind the right to a fair trial. In the particular case of witness examinations, article 14, paragraph 3 of the International Covenant on Civil and Political Rights⁶ stipulates that: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: [...] e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him." We understand that defendants may want to exercise this right; therefore, witnesses must be notified of the court's decision on this regard.⁷

» Under no circumstances should witnesses be left alone or in a situation in which they are unable to move freely in case of interruptions or delays in the hearing. There have been occasions when which witnesses were left in their designated place for awaiting the hearing while the court was in recess and went for long periods of time without knowing if they were able to leave the room. Delays must be taken into account and witnesses should be informed of any developments that arise.

» The officials overseeing the trial must ensure that witnesses have the necessary information for getting to the court, i.e., that they know where the court is located and in what building they

are expected. In addition, in the case of witnesses who must travel from other Argentine cities or from abroad, officials must be sure to contact these individuals in order to sort out logistical matters involved in traveling to the city.

» It must be clearly established in which cases witnesses are testifying in their own claim or that of someone else. If witnesses are testifying in the framework of other claims, they must be told that whatever they say about their own sufferings will be disregarded. As we stated in the section on the investigational phase, witnesses have to know what part of their contribution will be regarded as proof in the trial.

» Statements from survivors are usually very extensive. The duration of testimonies, combined with the time witnesses wait before testifying, constitute extenuating conditions for every participant in the trial, particularly for witnesses. Therefore, it is important for judicial officials overseeing the interrogation to focus their examination on key evidence-related issues and to avoid, whenever possible, repetitive questions.

» There are situations in which witnesses cannot testify. However, because testifying is a public service obligation, according to procedural law, both parties must agree to a witness' wavering of that duty. In the case of victims of torture, the need to waive the duty to testify is justified under the reliving of the traumatic event (which we will explore in the next section). Therefore, any measures aimed at proving that the waiver is, in itself, a necessity must be taken with the above in mind. In turn, witnesses should not be

forced to face any situation that takes them back to that traumatic event and which can potentially result in emotional, and ultimately even physical, injury. Concretely, the point is essentially to review the evidence offered and evaluate the need for the witness to be present, so as to avoid summoning individuals that are unable to testify in court. If the possibility of waiver was not foreseen when the testimony was offered as evidence, courts should bear in mind the availability and need for these witnesses who are trying to prove their inability to testify.

4) Carrying out Visual Inspections

» The justification of visual inspections lies in that judicial officials in charge of the case should have an on-site perspective connecting the testimonies with the actual place in which the events took place.

» These inspections often involve summoning witnesses who visit the site with the judge overseeing the case and his or her staff. The presence and guidance of survivors have, on uncountable occasions, proven to be of utmost usefulness when visiting sites from which clandestine detention centers were run. This is so not only for officials, who in turn receive information about the site, but also for victims, who return to their detention sites in their capacity as witnesses.

» Without prejudice to the above, officials overseeing the inspection should, nevertheless, not lose sight of the impact that returning to the place where they were held and suffered terrible living conditions may have on

witnesses. It is important to take any necessary measures for supporting witnesses during the inspection and to accompany them when it comes time to abandon the site.

IV. Potential Re-Victimization when Testifying: The Repairing Power of the Justice Process

At this point, for the purpose of effectively examining witnesses and taking into account the particularities that arise in time regarding the traumatic events they suffered, it is important to remember that torture has been found to constitute a traumatic event.

Similarly, it is noteworthy that from the victim's perspective, events of torture are still present. In the framework of the justice process, it is common to find witnesses closing their eyes or making gestures when describing the places in which they were tortured. When asked about this, they have explained that gestures respond to the need to "see" the place or "go" there. This occurs on a different level from that in which we are used to accessing our memory; and the emotional repercussions are evident both in the person recounting the experience as in the person hearing it.

Post-traumatic stress syndrome is a pathology that reveals the traumatic quality of having to retell a traumatic event, particularly in terms of intensity. Individuals who suffer from this syndrome relive the events in the form of intrusive memories, recurring dreams, and feelings of reliving the situation, including measurable physiological reactions. Although not all victims of torture suffer from this condition, it can

result from the aftermath of torture in the subject's recalling. The memories and scars are unique to each person, but always include a certain level of currentness and emotional suffering. All that for which closure was not obtained, any remains of the horrors left untold, are revealed and transmitted. Anything that could not somehow be retold in images or words that carry particular meaning will continue to reemerge, to reveal itself for the option of closure and reparation.

It is safe to assume that when there is a testimony, there are also images and words. However, we know that what characterizes the horror of torture is that it cannot be described and that which is indescribable is revealed through phrasing, pauses, abrupt interruptions, semantic errors, grammatical errors, and even silence. This negativity appears in all that which is not described and must be detected and brought to light by the person conducting the examination, to later be evaluated with the hopes of favoring the inclusion of the witness' statement. A witness' possibility of speaking clearly depends on the ability of the person conducting the examination to listen attentively and respectfully. In order for one person to speak, the other must listen.

Taking into account the indescribable nature of these traumatic experiences, as we have already stated, reconstructing any of the conditions under which said events took place could cause victims to relive their sufferings. In the worst cases, reliving the trauma causes a new injury to the individuals providing their testimonies. Meanwhile, in situations in which witnesses are more mentally stable, it can raise unconscious barriers (i.e.,

unintended by the subject) or conscious barriers, aimed at protecting themselves from the psychological damage that can arise from testifying under conditions that simulate the traumatic experience. That is why, on many occasions, witnesses fail to appear, forget information, provide confusing testimonies, and make abrupt pauses that cause “loopholes” in the grammar or flow of their testimonies.

Just as simulating material and subjective conditions can lead to reliving the traumatic event, the justice process can also prove to have repairing power. When witnesses meet judicial officials and other participants in the context of the trial, a special opportunity arises for reversing and repairing the experience of the serious human rights violations suffered. A key element is for witnesses to reunite with one of the powers of the State as it brings forth the justice process; therefore, victims of State terrorism meet the State under the rule of law and are able to exercise their rights as citizens under said rule. Therefore, as a result of our positive experiences, we are profoundly convinced that, even when facing the particular difficulties of each case, it is well worth ensuring that victims are able to participate and are empowered in each phase stipulated for the trial by the justice system and that their experience in doing so differs in every way from previous experiences. The possibility of accessing the justice process in each phase of the trial uses a concrete experience to make way for the possibility of allotting responsibility for these events under the law and not under personal interpretations; i.e. those who have committed crimes are judged

with all pertinent guarantees and are convicted, if found guilty. The repairing power of the justice process is strongly tied to the exercise of the law as a process to which everyone is subjected. This is why precision and subtlety is required in every technical intervention, which inevitably results in a challenge that is worthy of being honored by every participant.

V. Final Considerations

The particular conditions surrounding events of torture require deep ethical consideration from the entire community, particularly institutions and judicial actors. The possibility of including victims as active subjects of the justice process entails a powerful potential for reparation on an individual and collective level for victims and society as a whole. At the same time, the possibility of allowing victims to participate as witnesses involves a profound risk of new injuries; which must be thoroughly understood by different participants of the justice system in order to respect the essential principles that guide their work.

Each party involved in the filing of a case and, ultimately, in the oral trial phase must enable witness testimonies without harming witnesses. This must be an indispensable responsibility of all participants which, if ignored, threatens the ethics and meaning of the justice process as a whole.

Considering and preventing conditions that could disturb witnesses are determining factors for carrying forth a testimony that meets conditions of legality within the context of the trial, while examining the facts and respecting

the emotional integrity of the witness.

The need for judicial operators to be sensitive to the horrible events being recounted and still display their technical skills while carrying out their work is essential for obtaining effective testimonies that will ultimately constitute proof in the justice process.

During the interrogation or examination that is conducted in the context of the trial, respect for the law –in a way that transcends beyond the individuals involved– makes an incommensurable difference; in addition, it is enormously useful for this to be reflected in the gestures made by judicial officials before witnesses. By respecting the guidelines we are proposing, once known and accepted by both parties, interrogators materially minimize the possibility of repeating the subjugation to dignity that witnesses suffered during the events of torture. What is fundamentally unacceptable as a “collateral effect” of the justice process is subjecting victims to reliving the events which are trying to be repaired.

The construction of an individual as well as collective retelling (in which justice operators play an important role) in a way that can account for the horrors to which one group of individuals subjected another, constitutes a key part in the process for repairing the serious human rights violations committed.

NOTES

1. According to Federal Judge Daniel Rafecas, a broadened notion of the crime of torture must not only take into account events normally considered as such (i.e. beating and applying electroshock to detainees), but also a whole universe of events and situations that are part of the crime of torture, but are often ignored. This includes the material conditions in which the individual is detained, deprivation of identity, conditions that are harmful to his or her physical integrity and health, physical injuries, and psychological suffering and its consequences.

2. Here we will refer to witnesses in generic terms, without reference to gender.

3. Office of the High Commissioner for Human Rights, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," 60/147, December 2005.

4. Life conditions in clandestine detention centers that constitute forms of torture are broadly analyzed in: "Tratamiento penal de las condiciones de detención en los Centros Clandestinos frente al tipo penal del art. 144 ter, CP" by the Attorney General's Office, Fiscal Unit for Coordination and Monitoring Cases of Human Rights Violations that Occurred During State Terrorism, November 2008.

5. Istanbul Protocol, Office of the United Nations High Commissioner for Human Rights, 2001. Section III, paragraphs 87 and 88.

6. Adopted by Resolution 2200 (XXI), of the United Nations General Assembly, approved by Argentina through Law 23,313, published on May 13, 1983, with constitutional power as per article 75, para. 22, of the Argentine Constitution.

7. In this sense, CELS supports the decision of the Federal Oral Court of Tucumán, which in the "Jefatura de Policía" case decided, on February 24 2010, to comply with "the stipulations of the

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the United Nations General Assembly throughout Resolution 40/34, in November, 1985, which requires adapting judicial and administrative procedures to the needs of victims (item 6), by taking measures to minimize any inconveniences, protecting their privacy, and, when necessary, ensuring their safety, and that of their families and witnesses against any act of intimidation or reprisal, (item 6 d), as these principles prevent the 're-victimization' of individuals—including victims of State action—who suffered serious violations to their rights. Article 13 of the Convention against Torture and other Cruel, Inhumane, or Degrading Treatment or Punishment (adopted by the United Nations General Assembly on December 10, 1984, signed by Argentina on February 4, 1985 with constitutional hierarchy as per article 75, para. 22, of the Argentine Constitution)" contains a similar mandate; while article 389 of the Argentine Criminal Procedural Code (ACPC) mandates: "I) Ensuring that in the future, defense attorneys are able to cross-examine witnesses for the defendant in their capacity as legitimate representatives of the rights of the accused; II) Establishing that the power stipulated in article 380 of the ACPC, which recognizes the right of defendants to make any appropriate statements in their own defense, may be exercised once the witnesses who testified have left the hearing room, so as to balance the rights granted to both parties in criminal proceedings."

Annex

Section on Norms and Protocols for the Treatment of Victims and Witnesses

Most of the texts below establish the need for the protection and assistance of victims. Here we include some texts that add material value to the "Work Guide for Receiving Testimonies from Survivors of Torture" as well as specific issues in domestic law, particularly in the resolutions of the Argentine Attorney General (Procuración General de la Nación, in Spanish).

International Norms

1- OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," UN General Assembly, December 2005.

(Items IV, 10). "Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation."

1987 CAT.

(Article 13). Recommends ensuring that "witnesses are protected against all ill-treatment or intimidation"

1999 Istanbul Protocol

The Protocol is a manual for the effective investigation and documentation of torture. It is extensive and detailed; it makes reference to different actors and includes some solid recommendations. It mentions the victim's "devastating sense of powerlessness,"

and recommends that operators "show sensitivity" and "minimize unnecessary repetitions of the person's story." It also states that the primary investigator "should have prior training or experience in documenting torture and in working with victims of trauma, including torture" and when an investigator of such characteristics is not available, "become informed about torture [... and...] have access to international expert advice and assistance" (paragraphs 87, 88 and 90 of Chapter III: Legal Investigation of Torture). In addition, the following sections have shown to be very useful: Official Visits to Detention Centers (paragraph 134), Techniques of Questioning (paragraph 135), Documenting the Background (paragraphs 136 to 141) and Risk of Re-traumatization of the Interviewee (paragraphs 146 to 149).

2- IBEROAMERICAN ASSOCIATION OF PUBLIC PROSECUTOR OFFICES

Santiago Guidelines, of the Iberoamerican Association of Public Prosecutors Offices (PP), 2008.

The guidelines contain a broad definition of the concept of victim, according to which, the PP "approaches victims under the threshold of a principle of positive discrimination, which is founded on the victim's level of vulnerability," for which the PP must "establish simple protocols for informing them of the actions of other interlocutors and of the PP, in order to treat all victims homogeneously." In addition, the PP must train all personnel that "works in its headquarters or offices, and educate them on: the legal system for witness protection,

the support network available, and security issues that extend beyond the institution, as well as on minimum guidelines for treating victims. It recommends the creation of multidisciplinary teams for protection and assistance. It is an interesting document, but it does not provide guidelines as to how to accomplish this.

3- THE INTERNATIONAL CRIMINAL COURT AND INTERNATIONAL CRIMINAL TRIBUNALS

» The International Criminal Tribunal for Rwanda, former Yugoslavia, and Sierra Leone have all created programs for the protection and assistance of witnesses. They enumerate the obligation to assist and protect, but provide no instructions as to how.

» The ICC Rules of Procedure and Evidence provide an extensive definition of the term victim and include special measures for facilitating testimonies (concealing victims' names, modifying their voices, having an attorney, relative or therapist accompany them, protecting their privacy). The ICC Code of Professional Conduct for Counsel includes basic recommendations, such as: to "refrain from intimidating, harassing or humiliating witnesses or victims" or show "particular consideration for victims of torture or of physical, psychological or sexual violence, or children, the elderly or the disabled."

Domestic Norms

1- THE NATIONAL GOVERNMENT AND PROVINCIAL GOVERNMENTS

» **Resolution 03/2007**, creation of the National Plan for the Comprehensive Support and Assistance to Complainants and Witnesses to State Terrorism of the Argentine Human Rights Secretariat.

» **National Executive Decree No. 606/2007**, creating the Truth and Justice Program.

» **In 2009**: The creation of the Current Consequences of State Terrorism Program of the Ministry of Justice and Human Rights; the creation of the Center for Assisting Victims of State Terrorism within the Human Rights Secretariat.

» **Decree 141/2011**, creating the Department for the "Dr. Fernando Ulloa" Center for Assisting Victims of Human Rights Violations, overseen by the Argentine National Department for Assisting Vulnerable Groups of the Sub-secretariat for the Protection of Human Rights of the Argentine National Secretariat of Human Rights.

On a Provincial Level:

» **Decree 2475/2006 of the Government of the Province of Buenos Aires**, creating the Program for the Surveillance and Assistance of Witnesses who are Testifying in Court, aimed at protecting victims of State terrorism. This does not include technical aspects such as handling witness examinations,

Province of Santa Fe, creating the provincial program for the protection and accompaniment of witnesses and complainants, which has a broad scope that includes relatives, close friends, cohabitants, or "anyone else required due to their immediate relationship to the witness." The program stipulates not only their protection but their support and assistance. It is very detailed, but it does not mention proper and effective ways of examining victims.

2- ARGENTINE ATTORNEY GENERAL'S OFFICE (PGN, IN SPANISH)

» **Resolution 174/2008**, incorporates the Santiago Guidelines "as practical norms for providing assistance to victims."

» **Resolution 03/2011**. Approves the "Protocol for the investigation of severities, harassment, mistreatment and torture," which establishes guidelines for interrogating victims and witnesses and suggests adopting different measures of proof while remitting to the Istanbul Protocol. Based on the decision of the Inter-American Court (Bayarri vs. Argentina) on detention conditions, sanctioning the state for failing to carry out an effective legal investigation. In addition, it acknowledges the 1994 constitutional reform and incorporation of international instruments into the constitution (such as the CAT and Inter-American Convention to Prevent and Punish Torture).

» **Decree 1927/2008 of the**

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