

Review Article

Collecting Evidence and Testimonies of Severe Human Rights Violations - The Importance of the Mind

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Received: May 25, 2023; Accepted: May 30, 2023; Published: June 02, 2023

Abstract

Especially since the recent atrocities in Ukraine and Iran, but also in Syria and China, the close interaction between psychological recovery of survivors, and efforts to investigate and prosecute severe human rights violations has become an issue of concern. Investigations and the collection of evidence, especially witness statements, are conducted by national and international authorities, including international courts, but also by NGOs and journalists. While preservation of evidence, that should be guided by the relevant UN/WMA standard, the "Istanbul Protocol" and witness statements, are an important and necessary part of such investigations, the protection of already psychologically distressed or even traumatized victims against suffering and traumatizing interviews or re-traumatization has become a concern in international, such as EU, standards, and is also mentioned in the Istanbul Protocol as reference standard, but without giving sufficient concrete guidance. Mental health is an important part in this process, as outlined in this article. An interdisciplinary working group of the World Psychiatric Association Scientific Section on Psychological Consequences of Persecution and Torture has developed and tested a new standard protocol that is recommended to be used when interviewing survivors of extreme human rights violations to address this concerns, especially in the context of the important global efforts to involve direct and indirect victims such as family members in collecting evidence as important first step in identifying, documenting, investigating and prosecuting such crimes.

Keywords: Human rights, Torture, Genocide, War, Therapeutic justice, Psychology, Victims

Human rights violations, and especially those usual described as "extreme violations" such as torture, war crimes, or genocidal actions, are not only destructive to societies, but also have been demonstrated to have severe, often lifelong impact on the mental health of individuals and communities, including transgenerational trauma transmission [1] and epigenetic sequels [2-4]. They must be seen as the probably at present most severe challenges to public mental health [5,6]. New and usually interdisciplinary strategies and interventions targeting not only individuals but communities and societies at large, might have to be developed and implemented, usually in the context of the general mental health and psychosocial services (MHPSS) approach [7,8] recommended by the UN and WHO. In spite of the development of a number of international legal and humanitarian treaty systems and instruments in humanitarian and human rights law, and of monitoring institutions such as the office of the UN High Commissioner for Human Rights, of International Criminal courts, and of offices of the UN special rapporteurs on subjects like torture, on the rights of women and children, and on genocide, the impunity of perpetrators is still a major challenge so far not sufficiently addressed in an effective way in national or international courts, except in a few exceptional cases. This means not only that the risk of future violations by the same or other perpetrators or countries must be expected to increase, but also that the suffering of victims will continue or even increase [9,10]. New strategies like the application of the legal principle of Universal Jurisdiction [11], that permits countries to prosecute, arrest and put on trial perpetrators of such

extreme violations like torture or other crimes under international law, have been implemented in countries such as Germany, Austria, and France, yielding first results and conviction of some perpetrators. This must be seen as an important tool in the unfortunately common situation, that an efficient investigation and fair legal process is not possible in the country of origin of the victims who are escaping to safer third countries such as EU countries or the United States. Evidence is a strong element necessary in this process [12].

One of the key areas identified in this context, is that of an interdisciplinary approach in the collection of evidence and in the psychological support off survivors and witnesses, who must be expected to suffer by re confrontation with highly traumatic memories during witness statements, medical examination [13], and during the court hearings.

Medical evidence, including especially also psychological evidence, can play an important role in this context, and international standards such as the Minnesota protocol [14] and the recently updated Istanbul protocol (Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) [15,16] have been developed and are supported by the United Nations and other international bodies and organisations to ensure proper procedures in examining victims and survivors. The Istanbul protocol also underlines the importance of protecting survivors during examination and during and after the witnessing and investigation process against undue distress and secondary

victimisation or re-traumatization by the necessary legal interventions. In a similar way, standards by the European Union (mostly framework directives influencing the legal process in all EU countries), such as the reception guidelines for refugees or the “minimum standards on the rights, support and protection of victims of crime”, have initiated a paradigm shift to underline the importance of such psychological support and protection against secondary trauma in the necessary legal procedures besides legal recommendations.

The EU ... states in article 9 of the “crime victims” directive that:

“victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice”.

In this context, a number of projects have demonstrated, that giving testimony about human rights violations in an adequate setting can be as or even more important than established medical treatment models or that giving testimony can improve their impact. A probably first example was the “testimony therapy” approach developed in Latin America [17,18] when a legal fight against impunity was impossible during total social control by local dictatorships. Creating a testimony or witness statement against perpetrators of torture by survivors became a key element of this special form of psychotherapy and has inspired also other new treatment approaches [19]. This is an insight that is also used on the level of communities and societies as part of a transitional justice process, for example in so-called truth and reconciliation commissions in South Africa or Rwanda [20-23], though results appear to be not always satisfactory. The discussion compares here the concepts of “restorative” vs. “punitive” justice, but in any case, impunity of perpetrators must be seen as a major challenge to survivors’ psychological health and wellbeing in whatever setting [9]. The EU Network for investigation and prosecution of genocide, crimes against humanity and war crimes (The Genocide Network), Eurojust and the Office of the Prosecutor of the International Criminal Court published on 21 September 2023 guidelines for civil society organisations, which seek to collect and preserve information to contribute to investigations and prosecutions at national level or before the ICC on “Documenting international crimes and human rights violations for accountability purposes”.

A necessary conclusion in this context is, that giving witness statements and evidence for example in proper medical examination and court testimony can be an important part of recovery and healing for survivors and witnesses [21], in addition to supporting the legal process.

Unfortunately, neither the before mentioned standard examination protocols, nor the support of survivors of extreme violence are sufficiently covered by most medical curricula.

The interdisciplinary team of the World Psychiatric Association Scientific Section on Psychological Consequences of Persecution and Torture have therefore developed a training programme and protocol to improve the psychological aspects of evidence collection and to protect witnesses and survivors during the legal process or investigation.

The protocol was applied, tested, and modified as part of a project supported by the UN Voluntary Fund for the Victims of Torture, with survivors of human rights violations from Syria and to Ukraine, in collaboration with legal NGOs active in this process and with the WPA section since 2018.

We developed a protocol focusing on the specific steps of the medical accompaniment and required psycho-social support in the context of collecting evidence and testimonies of international crimes and severe human rights violations based on our work experiences and research. In the following part of this article, we want to present this protocol for discussion and dissemination in the international medical and legal communities, considering especially the possible use in the recently started process of universal jurisdiction, International Criminal courts and the collection of evidence for example in Syria and the Ukraine. The protocol also underlines and is referring to the aforementioned Istanbul protocol of the United Nations and the World Medical Association, [15,16,24] and is to be seen as supporting, and not replacing this important standard, focusing on the psychological and mental health aspects of examination, witnessing and witness support.

This last aspect is important, but often neglected in forensic settings in the interaction with survivors and witnesses, who can be seen also as indirect victims, probably due to the historical focus of the forensic sciences either on the bodies, or in forensic mental health on evaluation of perpetrators, or on the evaluation of competence.

We see a psychological and/or psychiatric examination as an integral and important part of the above legal process, keeping in mind that this has to consider the stigma against mental health and the possible distress by survivors during re confrontation with traumatic memories, as also culture specific issues such as cultural idioms of distress, that can be part of the evidence [25-27]. We have summarized the key points on the importance of mental health assessment in Table 1.

Table 1: Summary: Relevance of mental health in the examination of witnesses of crimes.

1.	Identification of problems that require immediate treatment, before further steps
2.	Identification of problems that might be a reason for legal challenge of the testimony, such as psychosis or physical illness interfering with memory or orientation, and might require prior treatment or at least consideration
3.	Identification of such problems to be relevant as potential part of the evidence
4.	Identification and recommendations or support to provide for necessary additional medical findings of relevance such as MRT, CAT or EEG or inclusion of (further) medical experts from other fields of medicine
5.	Provision of psychological support by team members or external experts during and after trial
6.	Provision of a first draft treatment and rehabilitation plan by team members or external experts during and after trial, contact with adequate experts and centres
7.	Provide medical expert opinion based on the UN Istanbul protocol
8.	Provision and planning of psychological support for team members (preferably by) external experts during and after trial

Guideline and Protocol

The WPA section therefore recommends the following steps:

(Note: For the following process, we recommend an interdisciplinary approach, and installation of a well experienced and trained team)

1. Preparation of the case. All evidence available should be collected, and translated by lawyers, and for medical findings by the medical team (Medteam). The Medteam will analyse medical data to identify issues as mentioned in attachment I (note: here: Table 1) and familiarize team members with history and experience of the survivor/witness, in order to better prepare for testimony and examination and avoid repetition of details in the examination, to consult with experts knowledgeable of the situation and of transcultural issues, to identify experts or translators to be added to the process. The team leaders will offer legal and psychological training of the legal and medical team, including in the Istanbul Protocol.
2. Preparatory contact with witness, to present the team, build trust and confidence and the approach in the protocol, identify further issues as in table/attachment, agree on procedures with client, reduce stigma anxiety, provide support to locate and bring medical and other documentation, answer questions in regard to treatment and legal framework
3. Conduct "Welcome" meeting with support team on arrival for court hearing, psychological preparation and further rapport and trust building, if necessary or adequate in the process, medical or diagnostic interventions.
4. Offer support during hearings by legal, medical and psychological team members, and if necessary, organize immediate crisis intervention and medical treatment, including interventions to reduce distress. If required they will also provide advice or specific expertise to the court.
5. Debriefing and measures for stress reduction and relieve immediately after testimony will be offered
6. Follow up support including psychosocial support (following the Interagency Standing Committee (IASC) mental health and psychosocial services (MHPSS) model [28,29], provision or organization of medical support, and of further expertise as required by court, team or survivor/witness, including contact with local specialized service institutions.

Summary

Providing for mental health aspects in interacting with witnesses of human rights violations is important not only for supporting evidence collection and aiding investigation and prosecution by lawyers, but also addresses the necessary protection of often psychologically severely traumatized, vulnerable and suffering survivors and witnesses. The guideline/protocol offers concrete advice in protecting witnesses during necessary interviews and examinations, as outlined by the UN Istanbul Protocol. This approach has become even more important in the context of present wide spread violations of international

humanitarian and human rights laws in Ukraine, Syria and other countries.

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Citation:

Wenzel T, Alksiri R, Kizilhan J, Wittek TU (2023) Collecting Evidence and Testimonies of Severe Human Rights Violations - The Importance of the Mind. *ARCH Women Health Care* Volume 6(2): 1-4.