

## SESSION FIVE: EXPERT PANEL ON FIGHTING IMPUNITY

### Opening Remarks of Dr. Jonathan Beynon\*

Just to conclude on the final session, we are very pleased to invite some of the people we have already met over the last two days for a final panel discussion. I will not introduce all of the panelists except to mention that they are here again, but I will introduce the panelists who are new. We are pleased to welcome Professor Diane Orentlicher from the faculty of law here at the Washington College of Law on my far right, who will



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join us. Next to her of course is Suzanne Jabbour, from Lebanon and Vice-Chair of the UN Subcommittee on the Prevention of Torture. Next to her is Victor Madrigal from the Inter-American Commission on Human Rights who we have already met. Next to Victor is Professor Vivienne Nathanson, who is from the British Medical Association in the UK and who very importantly does a lot of work with the World Medical Association, a body that is charged with producing ethical guidance and various other guidance for doctors around the world. And again we have Professor Duarte Nuno from the University of Coimbra in Portugal. Diane would you like to begin?

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## Remarks of Professor Diane F. Orentlicher\*

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### INTRODUCTION

It is an honor to join this distinguished group. While my remarks will focus on key challenges ahead, I want to first mention several relevant considerations that are reflected in the United Nations' Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, which the French jurist Louis Joinet drafted in the 1990s and which I was appointed by the UN Secretary-General to update in 2004.<sup>1</sup> These Principles address, among other subjects, the duty of governments to preserve memory in terms that are highly pertinent to this conference. Principle 3 begins: "A people's knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfillment of the State's duty to preserve archives and other evidence concerning violations of human rights and humanitarian law and to facilitate knowledge of those violations..." Principle 4 separately addresses "the imprescriptible right of victims and their families to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate."

In updating the Principles, I thought it important to make this larger idea of preserving memory very concrete. Of special relevance to this conference, I believed it was important, among other things, to insist that governments, whatever else they do to establish accountability for serious violations, whatever their timetable for addressing those violations, have an inalienable responsibility to *preserve evidence*.

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As the field of transitional justice has matured, we have a better appreciation of the fact that both the capacity and will of societies to address violations of the past may evolve significantly, and in unforeseen ways, over time—sometimes over a long, long period. (One speaker this morning described how he was unable to come to terms with his own torture for 11 years—and then, pursuing justice became critical.) Thus, for example, prosecutions for past violations may not occur in the immediate aftermath of a transition from repression to democratic governance; often they take place after the passage of time, and the resulting breathing room for democratic consolidation, has made it easier to reckon with crimes of the past.

This pattern has brought into sharper focus the critical challenges of reconstructing evidence of crimes, including torture, that may have occurred years earlier.

The other panelists know more than I do about advances in techniques for reconstructing evidence long after violations have taken place. What I would like to highlight is several practical challenges that are also relevant and which I observed in my recent work in what is now called the Office of Global Criminal Justice in the State Department.

### CHALLENGES AHEAD

One challenge that we encountered repeatedly is to ensure the deployment of forensics experts to countries that are prepared to deal with human rights crimes quickly enough for the experts to be able to do an effective job, and this was particularly important with respect to torture. In a number of situations where the U.S.

government was supportive of a country's efforts to document recent instances of torture, the time that it could take to assemble and deploy a team of forensics experts could have a significant impact on how confidently the team could reach conclusions about the occurrence or extent of torture. In some instances with which I am familiar, forensics teams were able to put to rest doubts about whether torture really had occurred, but they were unable to reach as extensive conclusions as they could have if they had been deployed just two months earlier.

A related issue that we encountered in many countries still in a state of armed conflict had to do with context-appropriate forensics capacity. For example, in a country like the Democratic Republic of Congo (DRC), where sexual violence has reached staggering proportions, having context-appropriate rape kits that can be used in a timely way is vitally important. Developing local capacity to use such forensics tools is equally important.

By the same token, sometimes it is important to encourage societies going through significant ruptures to *wait* until qualified forensics experts can arrive on the scene to assist them in documenting crime scenes. I am sure many of you followed—some of you may have been involved in—a situation that led Human Rights Watch to call upon the Transitional National Council in Libya to wait to exhume mass graves in Abu Salim to ensure that evidence of the 1996 massacre there was not destroyed. Again, *preserving* evidence may need to be a priority in a context where it may take time to deploy an expert forensics team, and perhaps even more time before it is possible to use the forensics evidence in court.

I want to make a final point, which I suspect has been made many times today and yesterday: It is critically important in all of these efforts to ensure that whatever technology we deploy, we must use it in a way that fully respects the psychological and social needs of torture survivors. Their welfare has to be front

and center in the way we use our evolving repertoire of tools. One model has evolved out of pressing needs in the Democratic Republic of Congo, where a hospital that specialized in treating survivors of sexual violence developed a legal services program in the hospital. I was curious about this because providing legal services was not a role I would have expected this particular hospital to provide. The doctor who launched the initiative explained that the women whom he treated needed medical attention most urgently following their experience of rape. After their medical needs were addressed, they urgently needed psychological and social support. And once those needs were addressed, they focused intensively on their economic and social situation. Then, the doctor told me, once these rape survivors had gone through those successive cycles of recovery, very often they needed justice. But they were not able to identify that need until their earlier needs had been addressed.

By that time, many of this doctor's former patients had found it difficult to seek justice in a supportive environment *outside* the hospital, but they knew there was a supportive, sensitive environment *in* the hospital. And out of this experience, the hospital decided to create a legal services program that would enable rape survivors to seek justice within a supportive, sensitive environment. Helpfully in terms of preserving evidence of rape so that it would be available when women were ready to seek justice, the doctors who treated these patients had been able to document the nature of the violence the women had endured when they came to the hospital for medical treatment of their injuries.

This example is an extraordinary response to an extraordinary situation, which arose out of the peculiar needs of a war-ravaged society. It would be challenging to replicate this model elsewhere, but I think it is a useful illustration of how one particularly caring, innovative doctor was able to address the particular challenges surrounding rape in a context-specific, sensitive and effective fashion. Thank you.

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## Remarks of Suzanne Jabbour

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I want to raise something now. I put on the hat of the Subcommittee on the Prevention of Torture (SPT). I want to highlight a little bit the Optional Protocol of the UN Convention Against Torture (UN CAT) because it's a big relationship between documentation and the optional protocol as an operational treaty body. This operational treaty body breaks new ground within the UN human rights system, based on two mechanisms: the SPT and the National Preventive Mechanism (NPM). The NPM is composed of experts, forensic doctors, psychiatrics, mental health professionals, judges, and lawyers. We should lobby to have states ratify this protocol because we guarantee a very, very essential mechanism on the national level that can document and detect torture. For this reason, my only concern is really to put in mind when the Optional Protocol

gives a legal framework for a specialist and for a national mechanism to have access to all places of detention, and to interviewing prisoners and to document torture and, through that documentation, to identify whether torture is practiced systematically. For this reason, one of the main recommendations in my opinion is to work in parallel on the Istanbul Protocol and to lobby for the ratification of the Optional Protocol because like this we can guarantee a NPM to follow all these cases. Not only to follow, but to give the recommendations to the national government and report on violations. For this reason, one of my recommendations is to lobby for the ratification of the Optional Protocol, and to keep states parties tied to the requirement of the Optional Protocol. That's what I need to mention in these last few minutes.

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## Remarks of Professor Duarte Nuno Vieira

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### INTRODUCTION

One of the main objectives of this final session is, according to the program, to help to identify the achievements that we have obtained, the shortfalls in the fight against torture, and to identify the efforts that can be directed to achieve a world free of torture. As I only have two minutes, I will focus my attention in my specific area of work, medicine, and specifically in forensic medicine.

### RECENT ACHIEVEMENTS

If we look to the achievements that we have attained we can identify several very significant ones. For example, today we have a very increased medical knowledge and expertise in the assessment and documentation of torture—that's something that no one will contest. We have well defined protocols for the medical assessment and documentation of torture that we didn't have 10 or 20 years ago. We have a wide variety of scientific literature for the assessment and documentation of torture. We have now frequent meetings and training programs, at national and international levels, on human rights and the assessment and documentation of torture and of cruel, inhuman and degrading treatments or punishments. We have the inclusion of scientific sessions in the main international scientific meetings in the area of humanitarian forensic sciences and namely in the area of documentation and assessment of torture. We have a wide and strong recognition of the fundamental role of forensic sciences and forensic medicine in the assessment and documentation of torture. We saw that in the last year one of the main international forensic scientific associations, the international association of



forensic sciences, has created a specific award, an international forensic award, in the field of human rights, to be given to a professional or to an institution or organization that promotes the use of forensic sciences in the protection and promotion of human rights. We now have the first international network of forensic experts in the assessment and documentation of torture, etc. So I think that in recent years we have achieved a large number of things that are really important, and I am sure that the panorama we have today in the area of forensic sciences is totally different from the panorama and from what we had 10-20 years ago.

### CONCLUDING REMARKS

But of course much remains to be done. There is still a lot, I think there will be always a lot to be done. In fact, this is a mission that will never be complete and will never be ended and if I have to choose some things and some efforts that can be directed to help to achieve a world—I don't know if free of torture, but at least with less torture than we have today—I would choose probably these six points:

First, I think that we must increase the teaching at undergraduate level of medicine and human rights, and namely in the identification of signs of torture and other cruel, inhuman and degrading treatments or punishments. That's something that we have to include in the medicine faculties and the law faculties. Second, we have to increase the training on medicine and human rights at the post-graduate level. I think that some training in this area should even be included in the residences of the different medical specialties, from traumatology to dermatology, from

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neurology to general practitioner. In every specialty, I think there is a place to include in the residence program some training in this specific area. Third, I think we should try to create a single international post graduate diploma on human rights and the assessment and documentation of torture, under the umbrella of a some international organization, and involving several universities around the world. That's something that we should create by e-learning, for example, because it would be easy to do it, with practical classes after. Fourth, I think that one of the efforts that we should promote for the future is to consolidate and intensify the role of the expert network that was initiated by the IRCT and that is giving very good results. Fifth, I think also

that we should promote scientific research in this specific field of the assessment and documentation of torture, and especially we should try to convince the international financing institutes for research, to create and to open specific programs for research in the area of the assessment and documentation of torture.

Finally, I would indicate that as efforts that directed towards achieving a world free of torture, the World Medical Association and all the national medical associations in this specific area of the medical profession and, of course, also of the main international associations in the area of forensic sciences, should be more profoundly involved in this area. Thank you.

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## Remarks of Dr. Vivienne Nathanson\*

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**T**hank you very much. That was a great hand over. I'll start off by talking about the world medical association which has now got 100 members from around the world. There are some areas of the world where it is lacking in members, but nevertheless it's 100 members. And it's interested in human rights, it's doing some work on this, fairly basic work, but it's trying. But and, it's a big but, what I can't understand is why of those 100 members I think there are only 4 national medical associations that are really engaged in this work and I'm going to mention them because I think we should be very proud of who they are. This is the Danish Medical Association, the Norwegian Medical Association, the Turkish Medical Association and the British Medical Association. There may be one or two others, but they're doing very little and when I say very little, they don't

even necessarily write letters, say over the Bahrain situation of the imprisonment of doctors, arguably just for treating people on the basis of good ethics. And that leads me on to perhaps my most important issue here: we need passion. This is a group that is passionate about changing the world. What I can't understand is why when I go to meetings of national medical associations in many countries; they're not passionate about changing the world as organizations. So there are many doctors in all their own countries who are passionate as doctors. Why don't they take over their medical associations and say, "you will be involved." So I'm going to start a series of revolutions.

I think this is really important and I say that because there is strength in organization and in numbers. It isn't impossible to attack a medical association, but it is a great deal more difficult than attacking individual doctors. Medical associations tend to be respected because doctors are respected and it's a very good way of organizing. And I think we need to do that. And this need for passion about this issue. Doctors are deeply passionate, nurses are deeply passionate; it's not about the quality of care that people get. And yet this is one of the most basic issues. And let me give you one thing that might actually give us a route in. There is a global movement looking at social determinants of health. The World Health Organization's been involved in it, there's been an international conference, a global summit in Rio last year. It happens to be somebody who is the BMA's president two years ago who wrote the report to various bodies, Michael Marmot. Somebody described him as a quiet revolutionary. I would take away the word 'quiet.' He's just a revolutionary. He wants to change the world and he's quite right. He doesn't want to see poverty; he doesn't want to see people's lives blighted.

But that also relates to what we're talking about here because so often it is the people at the bottom end of the social ladder who are the most likely to be victimized. They're not the only ones, but they're often the people who lack a voice. When I'm lecturing on ethics, which is what I do a lot of my time, I will talk to students about patient centered care. Terrible phrase, but

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you understand that it's about patients at the center. My second question is: how do we make sure that the client, the victim, the survivor, the families, society are at the center of everything we do? Because there's no point in just having wonderful systems, if we don't deal with the fact that what we are as doctors and lawyer is technicians with an expertise to serve people. That technical expertise must be based upon passion and empathy and that doesn't rule out expertise. I think sometimes the difficulty is we can let expertise get in the way of passion and empathy and I wonder if sometimes we are creating an "us and them" situation. We are all together here, we are all trying to work together.

But I'm not dismissing the fantastic developments we've heard about today, I think that's really important. And it seems to me that the other thing that we need to do is to get to the students. I want to go to the World Health Student Assembly and there must be the equivalent for the lawyers and other groups and say: how are you going to learn about this? How are you going to commit at least some part of your professional life to helping in this struggle? So that nobody should qualify in medicine and nursing or any of the other health professions without knowing at least something about torture. They don't need to be the experts, but they need to know when they're doing their normal clinical work enough to recognize what they're seeing

and they need to know who can help, who they can refer to. If as a clinician you see someone with a condition that you can't treat medically, you must know how to send them to someone who can treat. That's what we're looking for, being able to make a possible diagnosis and to be able to refer on, and to do that empathically. So let's get in early.

Jack Wild, who I know has left asked what we should do to train judges? I'd like judges to know something about the reality of people's lives. There's a big joke in England that judges, who are fantastic and very interesting a lot of the time, will occasionally say something like "but who is this person?" They'll hear about somebody who has been stalking a superstar and they'll go "who is Paul McCartney or Mick Jagger or whoever?" And you're all going "what?!" They need to get real. But more basic than that, they need to understand. They need to understand something about the emotional and societal problems of the people they're dealing with. And that's particularly true of immigration law. If they live comfortably in London, how much do they really know about the person seeking to become an immigrant, an asylum seeker, who's coming from another part of the world? And they need to understand that. I'll leave it to that because of time but to me the center of this is "let's make sure we always inject passion and passion to make a difference." Thank you.

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## Remarks of Victor Madrigal

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I agree with everything Vivian said. Done. But I do, actually. And it's not only said very rightly, but also very beautifully. I thought I would choose a number of points that are based upon my experience.

### PAST SUCCESSES

I started my career in a place, the Inter-American Court of Human Rights, where the victim was a romantic idea, far away, somebody that all of us were very passionately working for, but who was never there. The Inter-American System was born a system of States, but I think one of the things that has been done greatly over the last ten, fifteen, twenty years is that the victim has come into the center of the process. And from a situation when I remember, six or seven years after I started working at the court, that the first victim that was alive came to testify at a case, and we really didn't know what to do procedure-wise because we'd never had that situation. We do now, when the voice of the victim has not only been acknowledged as the motor behind the process but also all the different perspectives of support, empowerment, and acknowledgement have to reside around the victim. There are many people around this room whose faces I see, who have now been part of that process. When twelve years ago, it was said to a number of judges and lawyers who worked at the court that we would have to actually deal with psychologists



being with the witnesses, a number of us were quite scandalized that the monopoly had been taken from us in terms of righteousness. It turns out that that's exactly what needed to happen. And I think that has been a very right development. Although I

acknowledge that a lot has to be done still to ensure that there is not a phenomenon of “otherness” (i.e. this is something that happens to others, rather than to me as a human).

The second thing that I wanted to touch upon is the Istanbul Protocol. I mentioned that I was part of an experience which was under a lot of challenges for twelve years and which was an unfinished exercise that we must finish at some stage. That’s not the case right now. We have heard today of great experiences of implementation and I don’t think by any means this is a foreign word to anybody who is in the field of human rights. We did our bit by litigating the case of Gutiérrez Soler, in which the Colombian government accepted to include this protocol in its curricula of training. And then we realized that that wasn’t enough. Not only training, but procedures and manuals and enforceability have to be developed.

The third thing that has been done right, and it hasn’t been done right by me, but by others in this room, is perseverance. I think it’s very important, it must be realized that these are not processes that run over three years. Just to give you an example, we are receiving claims today of justiciability of dictatorships in Argentina and Chile which regained democracy a number of years ago and what people are saying is that they do not have access to civil reparation commissions because the crimes have expired. Statutes of limitations are operating and they are saying that these are crimes of human rights violations and we need to deal with that. These are not five-year cycles, they are more than ten-year cycles.

### FUTURE CHALLENGES

What remains to do and what we have done wrong – clearly there’s still impunity; we have only scratched the surface. And again, every coin has its counterface. We have, I think, victims at the center of many processes. But there are others who have less voice, the ones who have a lesser voice of all the people who have less voice. People deprived of liberty: I gave a terrible example this morning about this 360 persons dying in a fire in a jail in Honduras, and this comes a month before we have a meeting with Honduras concerning a fire in a jail where 118 persons died several years ago. So it is repeating itself. Migrants: we know that all of the corridors for migrants are having enormous instances of torture and not much is done in relation to that. Trans people, lesbians, and gays are being victimized every day, and they are also quite invisible and quite voiceless.

Second thing where we need to work in the next ten years is more associations of survivors setting the agenda for this work. A lot of us are working in the medical field, in the legal field, but I find there is a lack of associations of survivors in policy making initiatives and I think that is something that we need to nurture, allow them their spaces if they want to occupy them and, if that is the case, then also know how to and when to retreat.

One the last things that I think we are doing ludicrously wrong is I cannot understand why a lot of the centers in the

IRCT struggle for their finances and that is something that should disgust each and every one of us. I think we need to look for new means of accountability. We know that a number of these instances are being paid for with donor countries, well, we also need to look to countries that produced victims of survivors twenty and 25 years ago and say “okay, Brazil, Argentina and Chile now have democratic governments that produced refugees 25 years ago that were rehabilitated with funds from Sweden, why not rehabilitate people in Africa with funds from Argentina now.” It’s a concept of burden sharing; we need to start thinking in these terms. It is not decent that centers of rehabilitation of torture victims should actually be needing for funds.

### ON THE INTER-AMERICAN SYSTEM

I was saying before in the previous panel that sometimes change relies on progressive individuals within regressive institutions. Sometimes there are progressive institutions within regressive governments. Governments are conservative by nature because you’re not necessarily in the business of changing things. But a number of these dynamics actually trigger change that is significant.

And we have a number of examples in the Inter-American system that are very encouraging. I can provide a few, some of them are not necessarily linked to torture, but they are very much related to the phenomenon of ending impunity. One of them relates to the dismantling of amnesty legislation throughout the Americas. Which was a pervasive phenomenon after the dictatorships, a sort of blanket self-pardoning that was effectuated. And little by little, with many actions from many concerted actors and to the great credit of civil society that brought the cases, litigated them, persevered and utilized the mechanism at national and regional level, we have the dismantling of legislation of amnesty in Peru and Argentina, and military codes and military legislations that have been dismantled as well. Reopening of processes is another example. When you have a situation that international, regional pronouncements can lead to reopening of processes, that’s another example. And there will be moments in which the system is operating under a mechanic that allows them to break through. Dean Claudio Grossman and Professor Juan Mendez are here—they’re the great strategists that have thought about how the system is going to behave for the last twenty years. And it depends on strategizing around how to use different mechanisms and how to see opportunities. And there are people who came and thought about the same end and kept a lot of dynamism in how to use opportunities and openings.

I insist on the issue of accountability, not only of states, but of individuals as well. And the Commission and the Court are in the business of adjudicating the responsibility of states. But local courts or other mechanisms are talking about individuals. In the Philippines, I was very motivated to hear a few years ago that there were a great number of mechanisms that were trying to get a very high amount—hundreds of millions—from the Marcos millions that were distributed in different places and had

been frozen. And this is part of a movement of accountability that is very important. So, I think all of these dynamics are the ones that help to end impunity.

When the question is raised as to the duration of proceedings, right now, if you present a complaint to the Inter-American system today, my team will provide you with an initial answer three and a half years from now and that is because we have 7,000 petitions, and my team has four lawyers to examine those petitions. So, when I was speaking of my outrage before, you might as well say that that is an outrage that I also feel toward the financing of the Inter-American system. And yes, it is absolutely unacceptable that we should last what we last in the examination. Having said that, three points that I would very quickly like to reference: in relation to the different types of reparation and whether there are alternatives to legal reparation, I understand that what is being asked is if there are other things other than justice that actually, in our experience, bring this idea of returning the person as much to a whole as they will be.

I have the privilege of having worked with a person who was a victim of torture in the Inter-American system, and he has encouraged me to use his story in venues like this. His name is Luis Alberto Cantoral Benavides; he is a survivor of torture from Peru. The judgment of the Inter-American court entered into a very wide range of reparations in his case. It was encouraged that he should be provided not only legal rehabilitation but also an educational fund that he used to become a lawyer. After becoming a lawyer, he came and worked at the Inter-American Commission of Human Rights, examining petitions for people who are claiming to have the same type of violations against

them that he had. I think, in doing that, he finalized a fantastic virtue cycle that, of course, had taken many years to start. I am not the owner of his story, but I understand, the way that he presents it, as a very successful process of reparation. Very quickly, in relation to the bias: I think the bias is directly related to the fact that it's the voiceless persons, the powerless persons that are the most frequent victims of torture. When one has the notion that somebody who is labeled a terrorist or a trans person who comes out at night to do sex work or a person that is in the fringes of society, as we understand it, in one or another way, there is always that little bit of a social understanding that maybe people deserved it. I think, twenty years before, it would have been the kind of thinking that said if a woman wears a too-short skirt, she deserved it. And now, we are thinking this about certain types of persons, including those that we think are terrorists or those that we consider to be on the fringe.

I think, one of the things that outrages me the most (I happen to also be the link of the Commission with the political organs of the organization, something that gives me great pleasure), and I happen to go very often to the Committee on Juridical and Political Matters, and I hear states' representatives talking about how victims are now coming to the system to make money and how they are making these indescribable amounts of money and creating gain out of the Inter-American System of Human Rights. I think that mentality has to be combated in every corner, and people have to be taken to task when they say such a thing. So yes, the bias exists; I think it exists because of people being invisible. The more we make them visible and, again, give them spaces that they can occupy, then we will see that bias will make us understand that it's not happening to others.

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## Concluding Remarks of Dr. Jonathan Beynon

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I think we've got many issues that have been thrown out there for the audience perhaps starting with the idea of a people's right to know, and the right to understand past human rights violation and perhaps, as mentioned by Diane, avoiding the rush to justice. The rush to justice example being given was the rush to exhume bodies that we saw, for example in Iraq [after Saddam Hussein was deposed]. In many situations, where mass graves that had been known to be there for years but had not been touched, but following the collapse of a regime, they were simply dug up, often by hand, people identifying what they thought was a relative killed ten or fifteen years before, but in fact often wrongly identified simply because of the passion and heat of the moment. But the need to deploy experts in such situations in a rapid response is still fraught with problems after decades. I think even the UN Office of the High Commissioner for Human Rights has had a list of forensic experts for many, many years, but there is still a problem with rapid deployment of such teams.

We also heard from Victor on the need to have, perhaps, a more victim centered approach, but also actually involve victims themselves in setting the agenda and priorities for the future. Perhaps part of that we can discuss later under the difficulty in access to justice for many individuals.

Suzanne has mentioned, when it comes to the prevention of torture the importance, of preventive visits. And I think a landmark step forward in the last five or six years is the coming into force of the OPCAT; many states have therefore been under an obligation to set up a national preventive mechanism and to have regular visits to their places of detention by both their own preventive mechanism and the international mechanism, the Subcommittee on Prevention of Torture. The importance of this is not to simply document cases post event, but by having a regular presence to prevent torture.

We heard this morning from Carlos Maurice from El Salvador who very poignantly mentioned that when he was



brought up from the cellar of the central police station in El Salvador, one of the reasons he thinks he survived was because he was met by the Red Cross, who probably would have registered Carlos, taken his name and all his details, and given him a specific identification number, so that the next time they come to visit they ask “we want to see Carlos, where is he?” And if he’s been transferred to another police station or another prison, they’ll say: “Okay, we’ll go to that police station or prison, and try to find him and if he’s not there, we’ll be asking further about his whereabouts.” Clearly this is another preventive mechanism that perhaps in your case, Carlos, if it’s not too much to say, may have saved your life. As well as a lot of luck in other respects perhaps.

And also from Professor Duarte Nuno we heard about the important steps that have been made in terms of the documentation of torture. I’ve been in this field for 18 years now, and there’s definitely been a massive leap forward in the availability of access to proper documentation. One side effect of this is that, although the Istanbul Protocol weighs heavily upon psychological evidence, perhaps more emphasis has been given to the documentation of physical evidence, while there is less emphasis given to the documentation of the psychological. One consequence may be the increased use of psychological methods of torture or let’s say the resurgence of psychological torture. I

say the resurgence because it has been around since the Middle Ages and has just been resurrected. The idea being that while professionals can readily document physical symptoms and signs, mental scars, psychological trauma is possible to document but let’s say more difficult to prove. And for many states we understand that they interpret that if there are no physical marks then torture cannot have happened. So that is perhaps one negative effect of our increased competence in documenting physical signs.

We also heard from Prof. Vivienne Nathanson about the role of doctors. Perhaps we can return later to their obligations and duties when it comes to being confronted by acts of violence, torture, cruel, inhumane and degrading treatment. And we heard in one of the sessions yesterday about doctors, turning a blind eye to cases where clearly somebody’s been tortured and effectively falsifying or omitting facts from their reports. There are many such cases, some of which came before the European Court of Human Rights, cases in Turkey for example, where victims were standing in front of the court in Turkey, unable to use their arms from being suspended for many days by their arms, and yet even the judge did nothing to request an examination and it was only in the European Court where that the facts actually came to light. Clearly, there can be failings not just of the medical system, but also of the legal system.

## **ENDNOTES: Session Five: Expert Panel on Fighting Impunity**

<sup>1</sup> Comm. on Human Rights, *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, E/CN.4/2005/102/Add.1 (Feb. 8, 2005).