DIGNITY MANUAL

COLLABORATION BETWEEN MEDICAL DOCTORS AND LAWYERS WHEN DOCUMENTING TORTURE IN NORTH AFRICA

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DIGNITY
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INTRODUCTION

This Manual, which has been prepared by DIGNITY – Danish Institute against Torture, and some of its NGO partners in North Africa, focuses on documentation undertaken by health and legal professionals who act independently of the state and to whom torture survivors may turn for treatment or legal advice. Torture is traumatic for survivors who often suffer from serious health consequences immediately after the event and in worst cases even experience long-lasting physical and/or psychological complications. This may negatively affect family members – children for example whose father or mother can no longer fulfil their parental role. Torture may also affect the broader community and society negatively.

In North Africa, torture and other forms of ill-treatment unfortunately continue to be used by authorities in a variety of places and situations, e.g. to extract a confession, to extract information from suspects and to discriminate and intimidate certain groups of persons. Torture has also been a common feature of armed conflicts in the region. Torture – as an crime prohibited in absolute and fundamental terms – triggers legal questions of injustice and legal entitlements for the survivors who may for example request reparation from the national authorities during a court trial.

Collective efforts in the region to document torture is an important endeavor for several reasons: For the survivor telling the story to a professional can have positive empowering effects and it is an essential part of any efforts to seek justice. For human rights organizations fighting torture, as those behind this Manual, documentation is closely linked to advocacy and any attempt to hold perpetrators accountable, as well as to long-term objectives of preventing torture. However, documentation is a difficult exercise for many reasons, as described in this Manual, and it presupposes most importantly reaching out to survivors who are willing to tell their story.

The purpose of the Manual

The Manual aims to assist medical doctors[1] and lawyers in ensuring the best documentation of torture. Optimizing documentation requires not only specific knowledge, but also the right attitude and strong technical skills of each profession, as well as good cooperation between the professionals.

The purpose of the Manual is also to ensure that victims who have engaged in an interview with a health or legal professional are better placed to make an informed choice about next steps – whether it would be to seek treatment, legal advice or not to pursue the matter further.

The broader normative objective of the Manual is to reach out to a large group of professionals who may meet torture survivors whose stories have not traditionally been told and documented, and to encourage the professionals to continue joint efforts to document and combat torture.

Target audience

The Manual is written for doctors and lawyers in North Africa who would like to gain a better understanding of the topic and who work independently and without influence of governmental or semi-governmental institutions.

The Manual builds upon the same recognition as the Istanbul Protocol, namely that it is important for lawyers working with torture survivors to know how torture can be medically documented and how to recognize the physical and psychological symptoms of torture and that it is important for non-specialized doctors to know how torture is legally defined and how to act when the suspicion of torture is triggered during an interview with a survivor.

Professionals may meet survivors who turn to them for treatment or legal advice related to torture, but they may also identify the survivors during their ordinary job function, for example, when a torture survivor seeks medical assistance from a doctor for a depression not knowing that it was caused by previously experienced ill-treatment.

The Manual is designed as the basis for documentation training regarding knowledge, attitudes and technical skills for this specific target group of doctors and lawyers.

It is worth noting that forensic doctors and psychologists documenting torture will need more specialized knowledge than what is presented in this Manual whose main target audience among the health professionals is doctors working as clinicians and not as forensic experts.

1 The term “doctor” is used throughout this Manual meaning “medical doctor”.

Content of the Manual

The Manual is based on the general approach to documentation set out in the Istanbul Protocol and it contains many references to the Istanbul Protocol. The aim has been to develop a manual that contains examples and explanations relevant to the North African context and to put particular emphasis on the collaboration between doctors and lawyers. Reading the Manual should be followed up by training and practice of the skills described.

The Manual consists of ten chapters. Chapter 1 illustrates the advantages and challenges of collaboration between professional groups. Chapter 2 explains professional ethical standards. Chapter 3 discusses important considerations regarding how to ensure the security of the survivors. Chapter 4 introduces the legal framework relevant for torture documentation – including the international legal definition of torture. Chapter 5 discusses common torture methods and various medical and social consequences for survivors. Chapter 6 relates to the first interview between the professional and the survivor whereas Chapter 7 presents methods on how to write the story. Chapters 8 and 9 discuss how further detailed examination could be undertaken by doctors and how lawyers could best collect evidence to promote accountability. Finally, the Manual is wrapped up in Chapter 10 with some final remarks.

Each chapter lists the specific learning objectives in terms of:

- Knowledge (you should know)
- Attitude (you should acknowledge)
- Skills (you should be able to)

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KEY ABBREVIATIONS

CAT | UN Committee Against Torture

CEDAW | UN Convention on the Elimination of All Forms of Discrimination Against Women

CRC | UN Convention on the Rights of the Child

CRPD | UN Convention on the Rights of Persons with Disabilities

ICCPR | International Covenant on Civil and Political Rights

OPCAT | UN Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

PTSD | Post-Traumatic Stress Disorder

SRT | Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

UNCAT | UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CHAPTER 1: COLLABORATION BETWEEN LAWYERS AND DOCTORS

Torture is a profound concern of the world community… It concerns all members of the human family because it impugns the very meaning of our existence and our hopes for a brighter future.[2]

Introduction

1.1 Advantages of collaboration

1.2 Challenges of collaboration

1.3 Additional challenges when documenting torture

Introduction

Survivors of torture may have different needs and wishes in relation to their situation, and many types of professionals may become involved along the way. It is of utmost importance that these professionals are able to collaborate with each other, both because the results will be better for the victim and because lack of collaboration might eventually make the victim's situation worse. For example, if documentation is not done properly, the chances of success in a court case may diminish.

Also, torture is a very complex phenomenon touching upon many different aspects of human life as well as of society. When looking at the consequences of torture, these may be be physical, psychological and social in nature, and adding to that, torture in society may be seen as being linked to both broader structural issues.

Interdisciplinary collaboration may sound easy but is at times challenging, and it requires particular attention and skills from the professionals involved.

By the end of this chapter, you should:

- Acknowledge the values of inter-disciplinary collaboration in the documentation of torture
- Acknowledge that own values, language and other characteristics may be different from those pertaining to other professions
- Be able to identify the values, language and other characteristics pertaining to own profession
- Be able to identify the possibilities and challenges in inter-disciplinary collaboration between doctors and lawyers

2 Istanbul Protocol: Introduction.

- Be able to take differences, possibilities, and challenges into account when collaborating with other professionals.

1.1 ADVANTAGES OF COLLABORATION

At a theoretical level, one can argue that see the world through different glasses and therefore pay attention to different things. A famous anecdote can illustrate this point:

> *Six blind men came across an elephant. One felt the side of the elephant and described it as being a wall, one thought that the leg was a trunk, one felt the tusk and thought it was a spear, one discovered the trunk and immediately stepped back for fear of having met a snake, one thought an ear was actually a fan, and finally one thought that the tail was a rope.*[3]

This may be considered just a nice story, but it actually has some important points:

Each person starts with his own experience and interprets what he sees in light of this. This influences not only what he actually "sees" but also how he reacts to it. One man "sees"' a snake and immediately shies away. But if that same man had come from a country with no poisonous snakes, he might have reacted differently.

According to one version of the anecdote, the men do not reach a consensus on what they have experienced, and they leave the elephant firmly believing that they have "seen" a wall, a leg, a spear, a snake, a fan and a rope. None of them seem to believe that what each of them has individually experienced is part of a big animal that is actually an entity in itself.

So, what this anecdote teaches us is that what each of us experiences may be part of a bigger picture – and that when we know that bigger picture, we may interpret what we have seen in an entirely different and more correct way. The anecdote also points out to us that if we collaborate and communicate about our individual experiences, we might be able to understand this big picture better.

When documenting a case of torture, typically at least two types of professionals may become involved, lawyers and doctors. The importance of both professionals in relation to documenting a case is acknowledged in the Istanbul Protocol and by the commonly used term "medico-legal documentation".

Both lawyers and doctors are trained at asking questions and at interpreting and documenting what they see and hear. However, the types of questions they ask are often different. For example, a lawyer may want to know who the perpetrator was and where a particular incident happened, whereas the doctor may be more interested in knowing about the symptoms that a person experienced after the torture happened. Asking these kinds of questions, observing, and

3 Blind men and an elephant - Wikipedia https://en.wikipedia.org/wiki/Blind_men_and_an_elephant.

shedding light on the case require professional skills that are different for the two professions. Therefore, to get the full picture both types of professionals need to be involved if possible, and they need to collaborate to be able to interpret and corroborate the story, and to provide the victim with the best possible assistance.

Often there is an overlap between the information that a lawyer and a doctor will collect. Since victims of torture run the risk of re-traumatization when having to talk about what happened to them, it is important to try to minimize the number of times the story needs to be told. This is another important reason for collaboration between the two professionals.

1.2 CHALLENGES OF COLLABORATION

Inter-disciplinary collaboration may not always be easy. But being aware of and acknowledging the differences between the professions may make it easier.

From very early on in the training, professionals are socialized into a specific profession – often to a degree that they do not even realize themselves. They learn to see the world as it is seen by their profession, to pay attention to some things and to ignore others, i.e., a narrative specific for their profession is developed. A few factors often giving rise to challenges and dilemmas in inter-disciplinary collaboration are the following:

Focus: Professionals have a specific focus on their work. By way of example, a lawyer sees a client whereas a doctor sees a patient. And it is not just a question of words. For example, a lawyer seeking justice for his/her client may want as much information about a particular incident as possible – to make sure that the case is described in as much detail as possible and subsequently has a greater chance to succeed in court. On the other hand, a doctor may see a vulnerable patient with a high risk of re-traumatization if he/she needs to recount in great detail what happened to him/her.

Language: Each profession has its own professional language, and sometimes these languages are so technical that they can hardly be understood by people outside the profession itself. Both lawyers and doctors have their own professional languages that include many technical terms. Not only does this mean that the two professions may have a hard time actually understanding each other, it may also mean that due to this lack of understanding they may end up doing things that are detrimental to what they are both trying to achieve. One example is the use of medical reports in court. Sometimes these are written in a highly technical medical language understood only by fellow medical practitioners and not by judges and lawyers. Worst case scenario is that the information from the reports is not taken into account, simply because it is not properly understood. Likewise, a medical report may have a completely wrong focus because the lawyer has not been able to convey in an understandable language what the report should be used for, and important information may be lacking in the report simply because the doctor did not realize that this particular piece of information was important. Finally, one should be aware that

sometimes the same words are used by both professions but may have different meanings, making the communication between professionals even more complicated.

Methodology: Each profession has its own methodologies and its own scientific traditions. Both lawyers and doctors put a strong emphasis on the interview, but interview questions may be different, and the ways in which the two professions gather further information are also very different. If time or resources are limited, this may give rise to conflicts on how to prioritize what to do, e.g., visit the place where the torture took place or make a full physical examination of the victim.

Ethics: International standards exist for both doctors and lawyers, laying the foundation for their work, and the abovementioned is to some extent also reflected in the different ethical standards (Chapter 2). However, for both professional groups ethical standards exist that require the professionals to promote and protect human rights and fundamental freedoms. Therefore, documentation of torture may actually be seen as an ethical obligation for both lawyers and doctors.

However, the fundamental principles of medical ethics, the duty to provide compassionate care, do-no-harm, and respect of patients' rights may at times challenge the legal profession, e.g., when the do-no-harm-principle requires the doctor to not ask additional questions because of the risk of re-traumatizing the patient, or when health professionals are pressured or required by law to disclose information about a patient without consent, thus breaching medical confidentiality.

1.3 ADDITIONAL CHALLENGES WHEN DOCUMENTING TORTURE

In addition to the general challenges for collaboration between doctors and lawyers, there are some specific challenges related to the documentation context.

BOX 1.1

PROFESSIONAL LANGUAGE

One very practical challenge to collaboration in some of the North African countries is the language. In some countries, doctors communicate primarily in French whereas lawyers communicate primarily in Arabic. Thus, inaccuracies in translation may influence e.g. the assessment of the credibility of the victim. To mitigate this situation, an overview of French and Arabic terms has been developed in Tunisia.[4]

It is also worth mentioning that the lack of independence of some clinical doctors is a problem in institutional settings, in which the doctors are part of a hierarchy and have contractual obligations to the authorities. By way of example that could be the case for a prison doctor or for a doctor working in an emergency room.

4 Guide medico-legal. Ministère de la Justice, Ministère de la Santé, DCAF, Tunisia 2018.

Moreover, within a medical institution, junior doctors may be familiar with the Istanbul Protocol and keen on engaging in proper documentation of torture cases. However, they remain under the control and oversight of senior doctors who are not necessarily trained in the Istanbul Protocol and other international standards and aware of the obligations of documentation. Further, doctors in the public service may be working under pressure and at times even be subjected to harassment and retaliation. This risk will not be present for freelance doctors to the same extent, e.g., general practitioners, who are often operating with more autonomy than doctors in the public administration.

Forensic institutions may be lacking resources and are in a particularly difficult position in some countries being linked very closely with the authorities and thereby having special obligations and running particular risks of being put under pressure.

In some countries, the national legislation may well permit the lawyer to be present during the medical examination of a victim of torture who has filed an official complaint if the victim so allows, but this is not put into practice.

In some countries, as the lawyers are not sufficiently aware of the importance of rehabilitation of survivors of torture, they rarely refer survivors to rehabilitation centers, and thereby no collaboration with the doctors emerges. Sadly, the same may be said about some doctors who are not aware of the treatment opportunities that exist at rehabilitation centers.

It is the experience of practitioners that when collaboration between the two professional groups emerges, it is either facilitated by a human rights NGO whom the survivor has contacted, or it is based purely on random personal contacts and does not reflect a broader institutional recognition of the importance of collaboration. Thus, there is still work to be done to make Medical and Legal Associations aware of their roles in the anti-torture work, and to make them aware of the need for and advantages of inter-disciplinary collaboration. The roles of the professional associations need to be discussed further and could include stepping up their supervisory authority, drafting joint codes of conduct, and issuing lists of professionals who have the skills and knowledge to document torture.

BOX 1.2

EXAMPLES OF COLLABORATION BETWEEN DOCTORS AND LAWYERS

El Nadeem Centre for Rehabilitation of Victims of Violence in Egypt provides psychological management and rehabilitation to victims of torture. Together with other NGOs and individuals it also provides social support and refers to legal aid resources. Thus, referrals and counter-referrals between doctors and lawyers may take place according to the victims' needs.

In 2014, Centre Nebras de réhabilitation et de réintégration des survivants de la torture opened in Tunisia with the support of DIGNITY. The center receives a high number of victims annually and publishes regular newsletters, see further NEBRAS' website: www.nebrastunisie.org[5]

In Tunisia, the rehabilitation centre NEBRAS and the human rights organization OCTT refer cases to each other.

In conclusion, victims of torture may need the assistance from both doctors and lawyers, and to ease their way through the system, it is important that doctors and lawyers are aware of the strengths and limitations of their own professions. The more professionals know about each other's language, ethics, techniques etc. the easier it will be to work together. Collaboration requires communication, understanding, openness and respect from both sides. But when it succeeds, synergy will emerge, and working together and understanding each other is a prerequisite for doing good medico-legal documentation.

5 Example provided by Tunisian partner.

CHAPTER 2:
ETHICAL STANDARDS

All professions work within ethical codes, which provide a statement of the shared values and acknowledged duties of professionals and set moral standards with which they are expected to comply .. These obligations reflect and complement the rights to which all people are entitled under international instruments.[6]

Introduction

Both doctors and lawyers work within specific ethical principles and codes that are a fundamental part of their professions' shared values and duties. Doctors and lawyers should be aware that working in accordance with their specific professional ethical codes will inevitably benefit the survivors of torture and in addition in most cases facilitate their cooperation (Chapter 1). The ethical codes are stipulated in international instruments and in national or international professional codes adopted by the international professional associations themselves.

This chapter will discuss the ethical codes for doctors and lawyers with a specific view to how these may influence the work with torture survivors. Some topics will be further elaborated in Chapter 6 that discusses additional ethical principles regarding confidentiality and informed consent and the practical implementation of the do-no-harm principle during an interview with a torture survivor.

Doctors and lawyers share several values, such as the respect for a client's/patient's decision; doing good and no-harm; treating persons equally (non-discrimination) and generally promoting human rights.

Ethical codes do not, however, provide a set standard to solve all possible dilemmas but rather serve as guiding principles. It is therefore of utmost importance that the professionals discuss and thoroughly reflect on any ethical dilemmas that arise during the documentation of torture.

By the end of this chapter, you should:

- Know the ethical codes for your own profession

6 Istanbul Protocol: Chapter 2, para 48.

- Know about the ethical codes for lawyers if you are a doctor, and those for doctors if you are a lawyer
- Acknowledge that documentation of torture may be considered an ethical obligation for both lawyers and doctors
- Be able to apply professional ethical principles in work routines when documenting torture.

2.1 ETHICAL CODES FOR DOCTORS

Doctors have ethical obligations towards their patients, but they also have ethical obligations towards society. It is therefore of utmost importance that doctors are aware of all the ethical principles guiding their work so that based on sufficient information they are able to act according to the principles and to weigh them against each other in case of conflicting interests. One aspect that in some countries should also be part of the equation is security and safety, not only for the patient but also for the doctor and his/her family (Chapter 3). Lawyers should know the principles guiding the medical profession to understand what doctors can do, and sometimes what they should not be asked to do.

Medical ethics is fundamentally based on four guiding principles:

Respect for autonomy: The doctor's obligation to let the individual make his/her own independent decisions, and the obligation for the doctor to provide information on which the individual can make the decision.

Distributive justice: The doctor's obligation to treat all patients equally and fairly.

Beneficence: The doctor's obligation to promote the best interest, the health and well-being of the patient.

Non-maleficence: The doctor's obligation to do-no-harm and to protect others from harm.

These principles are set out in different oaths and declarations of which the Geneva Declaration, first issued by the World Medical Association in 1948 and adopted by doctors from all over the world, is a notable example.[7] The text of the declaration is as follows:

At the time of being admitted as a member of the medical profession:

I solemnly pledge to dedicate my life to the service of humanity;

The health and well-being of my patient will be my first consideration;

I will respect the autonomy and dignity of my patient;

I will maintain the utmost respect for human life;

7 World Medical Association | *WMA Declaration of Geneva*, 2018.

I will not permit considerations of age, disease or disability, creed, ethnic origin, gender, nationality, political affiliation, race, sexual orientation, social standing or any other factor to intervene between my duty and my patient;

- I will respect the secrets that are confided in me, even after the patient has died;
- I will practice my profession with conscience and dignity and in accordance with good medical practice;
- I will foster the honor and noble traditions of the medical profession;
- I will give to my teachers, colleagues, and students the respect and gratitude that is their due;
- I will share my medical knowledge for the benefit of the patient and the advancement of health care;
- I will attend to my own health, well-being, and abilities in order to provide care of the highest standard;
- I will not use my medical knowledge to violate human rights and civil liberties, even under threat;
- I make these promises solemnly, freely and upon my honor.

BOX 2.1

DOCTOR'S OATH FROM THE DECLARATION OF KUWAIT

In some Muslim countries, e.g., Egypt, the Doctor's Oath from the Declaration of Kuwait adopted at the International Conference on Islamic Medicine in 1981, is used:[8]

I swear by God…The Great

To regard God in carrying out my profession

To protect human life in all stages and under all circumstances, doing my utmost to rescue it from death, malady, pain and anxiety…

To keep people's dignity, cover their privacies and lock up their secrets…

To be, all the way, an instrument of God's mercy, extending my medical care to near and far, virtuous and sinner and friend and enemy…

To strive in the pursuit of knowledge and harnessing it for the benefit but not the harm of Mankind…

To revere my teacher, teach my junior, and be brother to members of the Medical Profession joined in piety and charity…

To live my Faith in private and in public, avoiding whatever blemishes me in the eyes of God, His apostle and my fellow Faithful.

And may God be witness to this Oath.

Doctors have several clear ethical obligations in relation to the fight against torture. One set of obligations is set out in the Principles of Medical Ethics relevant to the Role of Health Personnel,

8 Encyclopedia | *Islamic Code of Medical Ethics Kuwait Document*, 1981.

particularly Physicians, in the *Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*[9] that was adopted by the *General Assembly of the United Nations* in 1982. It states that doctors charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained. It also states that doctors should not use their knowledge and skills in a manner that may adversely affect the physical or mental health of a prisoner or detainee. A similar set of obligations has been adopted by the *World Medical Association in The Declaration of Tokyo*[10] which also clearly stresses the prohibition of any form of medical participation or medical presence in torture or ill-treatment in relation to detention and imprisonment.

The Human Rights Council Resolution 10/24[11] and the *World Medical Association Resolution on the Responsibility of Physicians* in the *Documentation and Denunciation of Acts of Torture or Cruel, Inhuman or Degrading Treatment*[12] both note the duty of medical and other health personnel to report or denounce acts of torture and other forms of ill-treatment to relevant authorities as appropriate under and consistent with their respective professional codes of ethics.

BOX 2.2

EXAMPLE OF CODE OF CONDUCT FOR DOCTORS

In Egypt, the professional code of conduct for doctors is set out by decision no. 238 of 2003 by the Minister of Health and Population. The following articles may be relevant for doctors working with the documentation of torture:

Article 20: The doctor is not allowed to issue a medical report or to provide a testimony beyond the limits of his/her specialization or in a way that negate the conclusions and facts he/she reached through the physical examination of the patient

Article 34: The doctor shall notify the competent authorities about the injuries and ascendants that might have criminal implications… in addition to drafting a detailed medical report concerning the case at the time of his/her examination. He/she may request the participation of another colleague(s) in examining the case and drafting the report.[13]

2.2 ETHICAL CODES FOR LAWYERS

Lawyers play key roles in protecting and advancing human rights — and in protecting vulnerable groups and individuals from gross violations of their rights. In other words, lawyers carry an ethical responsibility to use skills and abilities not only towards clients, but also towards the

9 UN Human Rights | *Principles of Medical Ethics relevant to the Role of Health*, 1982.

10 World Medical Association | *WMA Declaration of Tokyo - Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment*, 2020.

11 Human Rights Council | Tenth Session – Resolution 10/24.

12 World Medical Association: *WMA Resolution on the Responsibility of Physicians in the Documentation and Denunciation of Acts of Torture or Cruel or Inhuman or Degrading Treatment*, 2020.

13 Decision no. 283 of 2003 by the Minister of Health and Population.

broader society. By documenting allegations of torture against powerful and protected state officials, lawyers serve justice on several levels:

- Respect the interests of the victim whose well-being and empowerment is the ultimate goal;
- Assist in improving the justice system; and
- Set an example for fellow lawyers to rise above complicit silence and utilize their profession to actively protect harmed individuals and prosecuted groups.

In a torture case, it is the professional obligation of lawyers to maintain the honor and dignity of the legal profession, and to assist the survivor of torture while upholding the principles of justice and protecting human rights, as stated in the UN Basic Principles on the Role of Lawyers.

The UN Basic Principles on the Role of Lawyers stipulate:

The duties of lawyers towards their clients shall include:
(a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in, so far as it is relevant to, the legal rights and obligations of the clients;
(b) Assisting clients in every appropriate way, and taking legal action to protect their interests;
(c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.

Lawyers, in protecting the rights of their clients, and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

Lawyers shall always loyally respect the interests of their clients.[14]

Although international law calls for the protection of lawyers and victims and witnesses,[15] reality is often different, and includes risks for all groups involved in the case. Therefore, the general principle of duty to the community, regarding protection of human rights, may have to be balanced against other concerns – for example, concerns for safety (Chapter 3).

Professional ethical codes also exist for legal professionals who directly have responsibilities pursuant to UNCAT, including judges[16] and prosecutors.[17] The Human Rights Council has underlined towards states the role and responsibilities of judges, prosecutors and lawyers and urged them to protect these professional groups for example by "taking effective measures so that no unlawful interference of any kind occurs, such as threats, harassment, intimidation and assaults".[18]

14 The UN Basic Principles on the Role of Lawyers (1990), para 16-22.

15 Article 13 UNCAT.

16 United Nations Basic Principles on the Independence of the Judiciary. See further Istanbul Protocol, para 49.

17 United Nations Guidelines on the Role of Prosecutors. See further Istanbul Protocol, para 49.

18 Resolution 13/19: Torture and other cruel, inhuman or degrading treatment or punishment: the role and responsibilities of judges, prosecutors and lawyers (2010), A/HRC/RES/13/19.

CHAPTER 3: SECURITY CONCERNS, RISKS AND MITIGATING MEASURES

Documentation should not continue if it is too dangerous for any person involved (the victim, the witness, family members and also interviewers, translators, lawyers and other professionals associated with the case), even if this affects the ability to prepare a successful case or report.[19]

Introduction

3.1 Risks and security

3.2 Risk analysis and mitigating measures

3.3 Balancing risks and benefits

Introduction

Victims and witnesses of torture may be unlikely and unwilling to report torture or ill-treatment out of fear of reprisals against themselves or against family members.[20][21] It is a troubling thought that telling the story may actually lead to being subjected to abuse again. Those documenting a case clearly have a strong responsibility to ensure the safety of those involved and to act in ways that minimize the risk of reprisals.

In relation to security concerns, the general ethical principles of do-no-harm and autonomy entail for lawyers and doctors an obligation to identify such concerns in each case; to consider and apply relevant mitigation measures; to respect confidentiality; to discuss the security concerns and available responses with the survivor (or witnesses or others interviewed); and to leave it to him/her to make his/her own choice about which risks to accept and whether to move ahead with the documentation.

This chapter addresses the key question of how to identify risks associated with documentation, and which mitigating measures lawyers and doctors could take to minimize these risks. Finally, the chapter also briefly addresses the state's duty to provide protection to victims of torture. Although international law calls for such protection as primarily being provided by the state, unfortunately reality is often different.

By the end of this chapter, you should:

19 C. Giffard & P. Tepina, Torture Reporting Handbook, 2015, p. 56.

20 REDRESS | *Ending Threats and Reprisals against Victims of Torture and Related International Crimes: A Call to Action, 2009.*

21 S. Jensen, T. Kelly, M. K. Andersen, C. Christiansen and J. R. Sharma, *Torture and Ill-Treatment Under Perceived: Human Rights Documentation and the Poor*, Human Rights Quarterly, Vol. 39, No. 2, May 2017, p. 393-415.

- Know the general security concerns associated with documentation of torture
- Acknowledge the implications of the principle of do-no-harm and the ensuing obligations for you when you document torture
- Be able to identify potential risks in relation to the victim, yourself and others involved in the documentation of an individual case of torture
- Be able to take steps to mitigate any risks in relation to documenting torture.

3.1 RISKS AND SECURITY

Risks while the victim is still detained

Detainees are in a vulnerable position because they are under the power of the authorities and therefore at risk of reprisals at any time. Therefore, the interviewer will need to pay close attention to any risks both before, during, and after a documentation interview.

The types of risks can range from relatively minor ones, such as unfriendly behavior by the prison staff, to very serious ones, such as further psychological or physical ill-treatment or even in worst cases torture.

It is not only the prison staff that may use reprisals; victims may also face reprisals from other inmates or from the prison management.

A non-exhaustive list of the types of reprisals that may be experienced by detainees includes:

- Harassment, humiliation and unfriendly treatment
- Threats
- Physical assault and other ill-treatment
- Restriction of rights, including to visits and correspondence with family
- Withdrawal of support for (early) release
- Fabrication of accusations and subsequent disciplinary measures
- Placement in a less favorable regime
- Transfer to another institution with a stricter regime
- Threats and other restrictions or assaults on family members outside the prison

Risks to victims outside of detention

Victims outside of detention are at risk of largely the same types of reprisals as those in detention. However, often the probability of sanctions actually happening will be relatively small in comparison to the risk for detainees, because the authorities would have less of a chance of knowing about the interview. However, in some contexts, the risk to victims outside of detention is more tangible, e.g. in case they are being followed by security agents, and in some contexts newly released torture victims may be asked to report frequently to the nearest police station,

which aside from being a constant reminder of what took place, maybe even in the same locality, might also increase the risk of reprisals happening.

Risks to witnesses, family members and others close to the victim

The threats and reprisals against witnesses and persons close to the victim are no different from those targeting the victims themselves. However, in relation to witnesses who may testify in a court case, other examples of reprisals include:

- Inability to lodge a personal case if he/she is testifying in a related case
- Charging them with perjury if the case is not won by the victim
- Charging them with complicity in the same criminal case as the suspect.

Risks to professionals

Professionals dealing with documentation of torture including translators may experience some of the same risks as mentioned above, although again generally not to the same extent as persons in the custody of the authorities. Threats may be directed towards the professionals themselves and even their families, and examples exist of offices being broken into and of family members being harassed, threatened, or even assaulted.

Adding to the general risks, professionals also run a risk of reprisals directly linked with their profession. For lawyers, these include defamation and restrictions at work that can sometimes reach aggression, and it may even include disbarment. For doctors, they risk that their work will be distorted, being forced to not report their findings, or even losing their medical license or authorization. Thus, reprisals may in the end affect a professional career and the prospect of promotion, and it may also compromise their relationship with fellow colleagues.

At the international level, much attention has been paid to the issue of reprisals against human rights defenders, and those engaging with UN treaty bodies and special procedures. This is evidenced by the adoption of the San Jose Guidelines against Intimidation and Reprisals and the existence of rapporteurs on reprisals within the UN treaty bodies.

BOX 3.1

EXAMPLES OF RISKS FOR PROFESSIONALS WORKING WITH DOCUMENTATION

In Morocco, lawyers have been accused of submitting false allegations of torture.

In Egypt, there are examples of doctors being forced not to properly document signs of torture.[22]

22 Examples provided by North African partners.

3.2 RISK ANALYSIS AND MITIGATING MEASURES

All professionals have an ethical obligation to shape their working practice in ways that minimize the risks for those involved. Thus, a thorough analysis of the risk of reprisals towards the victim and others should be made prior to, and also during and after, a documentation interview. Such an analysis should take, as point of departure, the potential risks mentioned above, but it should also draw on a thorough understanding of the specific context in which the documentation work is carried out. This includes drawing on one's own experience but also, when possible, information obtained from others including the victim him/herself, and specific knowledge about the place of detention, in question if the victim is still detained.

When making a risk assessment, two factors are important: 1) The likelihood that a certain risk will materialize and 2) The potential impact of this risk. If a certain risk is both very likely/probability, and the potential impact on the victim or others is severe, the risk is high and therefore needs to be analyzed very carefully and mitigating actions taken – and if the mitigating actions are not likely to change the level of risk, the documentation may need to be suspended. On the other hand, a risk which is unlikely to materialize with a low impact is a low risk and may not call for any mitigating measures.

Mitigating measures are the actions that may be taken to minimize the impact or the probability of a risk, and it will of course depend on the context in question. Keeping information confidential is one of the most important mitigating actions available, and this should be adhered to at all times and in all contexts unless otherwise agreed with the victim.

It is important that the interview is approached in a way where the victim's assessment of the risks is taken into account, and where he/she gets a chance to discuss, not only the risks foreseen by the interviewer, but also those perceived and imagined by the victim him/herself.

In a detention setting, the act of carrying out an interview may, in and of itself, put the victim at risk, because staff and co-detainees may witness what is taking place. Even in that setting, however, mitigating measures can be taken including choosing a place that affords maximum privacy, and as a minimum is out of hearing and if possible, also out of sight of staff and co-detainees. Since the detainee being interviewed probably knows the place better than the interviewer, he/she should of course be consulted in order for him/her to suggest the actions to take that may best protect him/her.

Outside of the detention setting, the issue of confidentiality is still one of the most important mitigating actions to take. This may include carrying out the interview in a neutral setting, where it is not obvious that the victim is there to have his/her case documented but might as well come for other reasons, e.g. a doctor's consultation room. If an interview is carried out in a secret place, the use of mobile phones may be particularly problematic, since they may be tracked and thereby might reveal to outsiders the location of the interview.

During the documentation interview, the interviewer should continuously be alert to signs that there may be a risk of reprisals, and he/she should be ready to end the interview immediately if required due to security risks.

Reprisals typically only take place after the documentation interview is finalized, and it is therefore important that the interviewer keeps in touch with the interviewee (victim or otherwise) to follow up on any reprisals experienced or – even better – to continuously assess the risk that reprisals may occur and take actions to prevent them from actually happening, if there are indications that they may.

An important part of the measures to address security concerns, is the way in which information collected during the documentation process is stored and used later on. Primary sources (notes from the documentation interview, files, photographs etc.) need to be stored in a secure place. If documents and files are stored electronically, proper back-ups need to be taken, and all electronic files need to be stored and handled in secure ways including using passwords known only to the interviewer and encryption of electronic documents, to avoid them being read by others.

BOX 3.2

EXAMPLES OF REPRISALS

The fear of reprisals from perpetrators still in power continues to exist in the countries in North Africa – although of varying degree of seriousness reflecting the political, security and social developments in the countries. Victims have even reported that they feared for their life if they dared to tell their story to others. By way of example, the risk of reprisals for lawyers documenting torture in Tunisia has largely disappeared after the revolution in 2011 whereas in contrast, the situation in Egypt has deteriorated to the point where, at the time of writing, many human rights activists have been arrested and subjected to torture after speaking out against the authorities' human rights violations.[23] [24]

3.3 BALANCING RISKS AND BENEFITS

It is important to bear in mind that not all risks can be mitigated to the extent where they no longer exist. It is therefore an important part of documenting torture to make a thorough assessment of the risks and benefits that the process is likely to entail, and to try to balance those up against each other, to reach a conclusion about if and how to proceed. It is at the core of this process to provide the victim with sufficient information for him/her to make an informed consent before deciding to proceed or not.

Sometimes, the situation in a country is tense when a victim first seeks help to get his/her case documented. In those situations, part of balancing risks and benefits may entail considering whether it is the right moment to document the case and to what extent. Maybe some initial

23 Examples provided by partners.

24 Amnesty | Egypt: *Generation Jail: Egypt's youth go from protest to prison*, 2015.

evidence may be preserved without it being too risky for the victim, whereas the more detailed documentation interview will need to wait until the situation has calmed down. The same may apply, if a detainee is going to be released shortly and the chance to speak with him/her in private may be improved greatly upon release.

As a guiding principle, the important thing is to remember that compromises regarding the completeness of information are acceptable, whereas compromising the safety of the victim and others should be avoided.[25]

3.4 RIGHT TO PROTECTION

The primary obligation to provide protection for the groups mentioned above rests with the state. When the state does not fulfil this obligation, the victim can in theory make a legal claim and submit it to the courts.

Specifically, when it comes to submitting complaints about torture, the UN Convention Against Torture provides in Article 13 for the state's obligation to take security measures in relation to legal proceedings:

> *Steps shall be taken to ensure that the complainant and witnesses are protected against ill-treatment or intimidation as a consequence of his complaint or any evidence given.* [26]

As stated in the wording of the provision, this obligation is "limited" to a situation in which the survivor has submitted a torture complaint. However, by including this obligation in the UN Convention against Torture, the drafters of the Convention recognized the importance of protecting victims and witnesses, and it is important to note that in the context of submitting a torture complaint, protection is a right in and of itself. [27]

There is a peculiar contradiction in the fact that protection should be provided by the same entity that has been responsible for the torture in the first place, i.e. the state. This may very well explain why few victims want to file complaints and have their case documented. In recent years, there has been a call for state-funded but independent protection for victims and witnesses. [28]

25 C. Giffard & P. Tepina, *Torture Reporting Handbook*, 2015, p. 99.

26 UNCAT art. 13.

27 REDRESS | *Ending Threats and Reprisals against Victims of Torture and Related International Crimes: A Call to Action*, 2009.

28 UN High Commissioner for Human Rights | *Introductory Remarks by Navanethem Pillay at the OHCHR Expert meeting on witness protection for successful investigation and prosecution of gross human rights violations and international crimes*, 2009.

BOX 3.3

PROTECTION OF SURVIVORS IN NORTH AFRICA

In practice, states in North Africa rarely take steps to protect the survivors who complain to the authorities about torture.

The UN Committee against Torture has in its Concluding Observations to Morocco highlighted this concern, as victims of torture in Morocco are being met with counter claims by the perpetrator who has been acquitted. This also happens in Algeria due to article 300 in the Penal Code.

In Tunisia, article 14 of Law No. 43 (2013) and article 101 (3) of the Penal Code may be evoked, and in Algeria, the Penal Code amended on 23 July 2015 (Decree no. 02/15) includes in Chapter 6 mechanisms for the protection of witnesses and experts – however, it still seems that it is not fully implemented in practice. [29] [30]

29 DIGNITY | *Briefing Paper to the UN Committee Against Torture - The Need for Independence in the Protection of Victims and Witnesses under Article 13 of the UNCAT*, 2016.

30 Concluding Observations of the UN Committee against Torture to Morocco, 21 December 2011, para 16 (CAT/C/MAR/CO/4).

CHAPTER 4: TORTURE AND OTHER FORMS OF ILL-TREATMENT

It is important to remember that when submitting an allegation to a human rights mechanism, an NGO is seeking to show that the facts constitute torture or ill-treatment in a legal sense, not merely in its opinion.[31]

Introduction

The main purpose of this chapter is to present the international legal definition of torture, as stipulated in Article 1 of the UN Convention against Torture and Other forms of Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), and the concept of "other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture", as regulated in Article 16 of the UNCAT. These two fundamental legal concepts, which have been and continue to be developed in international, regional and national practice, should guide any interview with a view to document and collect evidence of torture. The chapter will finally point to the need to be aware of a person's vulnerability. Other relevant legal issues are discussed in Chapter 9, such as victims' right to reparation.[32]

By the end of this chapter, you should:

- Acknowledge the importance of collecting facts to document torture and ill-treatment
- Know the legal definition of torture, and be able to let the four elements of this definition guide your documentation work

31 C. Giffard & P. Tepina, *Torture Reporting Handbook*, 2015, p. 17.

32 The chapter does not address the issue of torture committed during armed conflict and the specific international treaties governing international and internal armed conflicts (i.e., international humanitarian law). Reference is made to the Istanbul Protocol: Chapter I A and to relevant commentary on the four Geneva Conventions of 1949 and the additional Protocols I and II. Moreover, the chapter does not address the issue of torture as a crime under international criminal law (reference is made to the Istanbul Protocol: Chapter I D, the Rome Statute of the International Criminal Court, and decisions by the International Criminal Court) and the issue of international refugee law (e.g., how torture can be a reason for being granted asylum and how asylum seekers and refugees are protected from deportation to a country where they risk facing torture).

- Know that in legal terms there is a distinction between torture and "cruel, inhuman and degrading treatment" and that both forms of ill-treatment are prohibited at all times under international law
- Know that it is your role to present convincing facts but that ultimately it is up to the adjudicator to decide whether torture and ill-treatment took place
- Acknowledge the vulnerability of certain groups to torture and other forms of ill-treatment and be able to apply the legal concepts to such groups.

4.1 INTERNATIONAL AND REGIONAL HUMAN RIGHTS FRAMEWORK

By way of introduction, the chapter will begin with a brief explanation of the international and regional human rights framework. Human rights as such are a universal concept that gives the states several legal obligations – such as to refrain from using torture. Protection against torture is ensured through international and regional treaties/conventions (agreements between states) that have been ratified by states who – as a consequence – are bound by the legal obligations created by and stipulated in the conventions.[33] Ratified conventions are binding upon state parties and must be "performed by them in good faith" (the "pacta sunt servanda" principle)[34], and state parties "may not invoke the provisions of its internal law as justification for its failure to perform a treaty".[35] A state, which has ratified the UNCAT, but which acts in violation with the convention's provisions would, according to the legal theory, be obliged to cease the violation, and provide reparation to the victims that should cover all the harms suffered (Chapter 9).

BOX 4.1

INTERNATIONAL CONVENTIONS AS A SOURCE OF LAW IN NORTH AFRICA

In all five countries in North Africa, UNCAT and the International Covenant on Civil and Political Rights (ICCPR) are automatically after ratification and publication in the national Official Journal a source of law and can be invoked before national courts. However, in practice in most countries, it is rare to see national judgements referring to the two conventions.[36]

33 The prohibition of torture is also ensured through common practice accepted by states and recognized tacitly as legally binding so-called customary law. Customary law entails that the prohibition of torture would be considered a legal obligation for countries that have not yet ratified the UNCAT. Moreover, the prohibition of torture in customary law is even a strong prohibition of a higher nature than ordinary norms and, hence, it will likely exist for all times (so-called peremptory jus cogens norm). See further: N. S. Rodley, *The Treatment of Prisoners under International Law*, 2009.

34 Vienna Convention on the Treaties of Law, article 26.

35 Vienna Convention on the Treaties of Law, article 27.

36 In Tunisia, section 20 of the Constitution states clearly that: "The treaties approved by the Parliament and ratified shall have supremacy over the national laws and shall be on a lower level to the constitution". Morocco adopts a similar approach as the preamble of the Constitution seems to give primacy to international treaties over legislation. In Egypt, the Constitution provides for international treaties for having the status of national legislation (Article 145 in the 2012 Constitution).

BOX 4.2

RATIFICATION OF CORE HUMAN RIGHTS TREATIES IN NORTH AFRICA

States in North Africa have strongly supported the ratification of the core human rights treaties. All five countries have ratified the two international treaties that generally protect against acts of torture and ill-treatment (UNCAT and ICCPR). None of the countries have made any reservations to the treaties that could be of relevance for the topic of documentation.

The five countries have also ratified the Convention on the Rights of the Child (CRC), which includes provisions regarding protection of specifically children against torture (article 37 CRC), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) that provides standards to combat gender-based discrimination.

Victims of torture may also, depending upon the special circumstances, be considered as persons with disabilities and, hence, entitled to protection under the Convention on the Rights of Persons with Disabilities (CRPD) that has been ratified by all countries in North Africa.

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) provides additional protection to detainees by requiring states to establish national preventive mechanisms (NPM), which would monitor places of detention, and to allow the UN Sub-Committee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) to visit places of detention. In 2016, Tunisia became the first country in the region to establish a NPM whereas Morocco designated its National Human Rights Council as the NPM in 2018.

Ratification of the six main international conventions protecting against ill-treatment happened as follows:[37]

	CAT	ICCPR	CRC	CEDAW	CRPD	OPCAT
Algeria	12 Sep. 1989	4 Dec. 2009	16 April 1993	22 May 1996	4 Dec. 2009	NOT
Egypt	25 June 1986	14 April 2008	6 July 1990	18 Sep.1981	14 April 2008	NOT
Libya	16 May 1989	15 May 1970	15 April 1993	16 May 1989	13 Feb. 2018	NOT
Morocco	21 June 1993	8 April 2009	21 June 1993	21 June 1993	8 April 2009	24 Nov. 2011
Tunisia	23 Sep. 1988	2 April 2008	20 June 1992	20 Sep. 1985	2 April 2008	29 June 2011

37 See UN Treaty Collection. In addition, The Convention on the Protection of All Persons from Enforced Disappearance (CPED), which has been ratified by Morocco and Tunisia, would grant protection against the risk of disappearances and would grant families of persons missing various rights. The Convention on the Protection of the Rights of All Migrant Workers and Members of Their families (ICRMW) includes specific rights for migrants, including to be free from torture and ill-treatment (article 10). It has been ratified by all North African countries, except Tunisia.

BOX 4.3

REGIONAL HUMAN RIGHTS TREATIES IN NORTH AFRICA

Two regional human rights treaties are also applicable in North Africa:

- African Charter on Human and Peoples' Rights – to which all five North African countries are state parties – provides in Article 5: "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited".
- Arab Charter on Human Rights has only been ratified by Algeria and Libya among the five. Article 8 provides:

  1. No one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment.

  2. Each State party shall protect every individual subject to its jurisdiction from such practices and shall take effective measures to prevent them. The commission of, or participation in, such acts shall be regarded as crimes that are punishable by law and not subject to any statute of limitations. Each State party shall guarantee in its legal system redress for any victim of torture and the right to rehabilitation and compensation.

4.2 LEGAL DEFINITION AND PROHIBITION OF TORTURE

The UNCAT distinguishes between acts which amount to torture (Article 1) and other acts which qualify as cruel, inhuman or degrading treatment or punishment (Article 16, also referred to as "other forms of ill-treatment").

Both categories of acts are always prohibited. This means that even under exceptional circumstances in a country, such as a state of war, armed conflict, terrorism or other public emergency, the authorities are not allowed to suspend the prohibition of torture. In other words, nothing whatsoever can ever justify the use of torture or other forms of ill-treatment.[38]

It is clear from the debate during the drafting process of the UNCAT[39] that torture was considered an extreme and severe form of ill-treatment and carried as such a particular stigma. Another essential feature was that the act had to have been carried out for a specific purpose *(dolus specialis*). Article 1 of the UNCAT stipulated for the first time a precise international definition of torture:[40]

> *Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based*

38 See also General Comment No. 2 by the UN Committee against Torture and Article 4(2) of ICCPR.

39 M. Nowak, M. Birk and G. Monina, *The United Nations Convention against Torture: A Commentary*, 2019 (hereinafter *Commentary*), p. 29 - 51.

40 Nowak, *Commentary*, p. 28 for a discussion of the history and drafting of Article 1. Other similar definitions can be found in the 1975 Declaration (Article 1), the 1985 Inter-American Convention to Prevent and Punish Torture (Article 2), and the Rome Statute (Article 7(2)(e).

on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.[41]

Thus, for documentation purposes, "torture" refers to the legal qualification – in accordance with the above-mentioned definition – of certain acts/treatment/behavior/punishment. Most often in practice, torture situations involve a multitude of acts; for example, during a police interrogation, the detainee is subjected to beatings, the use of stress positions, threats and insults. However, the legal definition refers, at the same time, to a single act and to a combination of acts, and both situations can constitute torture if the definition is fulfilled.

The legal provision stipulates that torture contains the following four constitutive elements:[42]

1) **Infliction of "severe pain or suffering, whether physical or mental":** This refers to the act itself (or an omission), and in particular to its impact, as causing severe physical or mental pain or suffering to the victim;

2) **"Such purposes":** The act was performed for a specific purpose (e.g., eliciting a confession, punishing or intimidating or acting with a discriminatory motive);

3) **"Public official or other person acting in an official capacity":** Thus, there is a requirement of public involvement; and

4) **"Intentionally":** The act (i.e., causing severe pain or suffering) and the purpose to be achieved by such conduct was intentional.

Guidance on how to interpret the four elements can be found in international jurisprudence. Some key elements should be mentioned:

Severity of the act

- Relates to both physical and psychological pain or suffering. Note that physical and mental impact are being mentioned equally in the definition. [43]
- An act does not impact in the same way on any individual. The assessment of severity therefore depends on the specific facts and circumstances of the case in the following way:
  - Who? Victim: Age, gender, health, cultural and religious background etc.
  - How? Method(s): Intensity, duration

41 UN Committee Against Torture excludes from this definition: "Pain or suffering arising only from, inherent in or incidental to lawful sanctions" (Article 1 (1), last sentence). This controversial "lawful sanction" clause has "no scope of application and must simply be ignored" (Nowak, Commentary, p. 84). As noted in OMCT Handbook, Vol. 4: "…Its role seems to be solely to clarify that "torture" does not include mental anguish resulting from the fact of incarceration", p. 227.

42 See also Nowak, Commentary, p. 29 and C. Giffard & P. Tepina, *Torture Reporting Handbook*, 2015, p. 20.

43 Nowak, *Commentary*, p. 50. UN Special Rapporteur on Torture noted the use of psychological torture methods in Tunisia in his Follow-up report 2014, para 82: Tunisia: "Le Rapporteur spécial est préoccupé par les informations que certaines formes de torture et de mauvais traitements qui laissent peu de traces physiques, par exemple forcer les victimes à s'agenouiller devant un mur sans bouger pendant de longues périodes, soient également utilisés".

- What? Consequences of the act: Physical and mental effect, vulnerability
- Where? Context.

Some examples illustrate the above:

- Solitary confinement used for a few days would likely have less psychological impact than when used for months
- In Abu Ghraib, prison guards threatened male detainees with rape, forced detainees into certain sexually explicit poses and told them to masturbate […]. The prisoners had no other option than to comply with the acts that caused them deep shame, and which aimed to impose submission, and destroy their personal integrity, self-esteem and pride. Prisoners were forced to feel deep shame and degradation, especially as they came from a culture in which public nudity and sexuality are highly stigmatized"[44]
- In Guantanamo, many prisoners described being naked in front of soldiers as among the worst treatments – and worse than physical cruelty.[45]

Specific purpose:

- The purpose element, which requires that the act(s) is/are inflicted for a particular purpose, is broadly defined in the UNCAT as:
  - Obtaining from him or a third person information or a confession
  - Punishing him for an act he or a third person has committed or is suspected of having committed
  - Intimidating or coercing him or a third person
  - Discrimination of any kind.
- The list is not exhaustive and should be interpreted as not every purpose is sufficient but only a purpose which has "something in common with the purpose expressly listed[46]
- The existence of one or several purposes in a detention context is often easy to document by the circumstances
- Discrimination is one of the purposes – as when sexual minorities are targeted (see below). Discrimination for the reason of religion would also fall within the definition. The UN Committee against Torture has highlighted that: "The discriminatory use of mental or physical violence or abuse is an important factor in determining whether an act constitutes torture".[47]

44 P. P. Sales, *Psychological Torture: Definition, Evaluation and Measurement*, 2018, p. 86.

45 A. Koenig, The 'Worst': *A closer look at cruel, inhuman and degrading treatment*, 2013.

46 Nowak, *Commentary*, p. 55. See also E. Cakal, *"For Such Purposes As": Towards an embedded and embodied understanding of torture's purpose*, 2021, p. 152 - 168.

47 General Comment No. 2, Implementation of Article 2 by State parties (2018), para 20.

Involvement of a public official:

- The term "public official" should be understood in the broad sense[48] and would include e.g., law enforcement officials (such as police officials, prison and other custodial officials); public officials involved in the custody of individuals e.g., prison doctors and civilian prison staff, such as social workers, and members of the armed forces. Thus, the category "public official" is broad
- The term "other person acting in an official capacity" is wider than public official. It relates to de facto authorities (e.g., guerrilla or insurgent groups) who exercise de facto authority in certain regions in so-called "failing states"[47]
- The form of liability for both groups is broad and includes:
  - Direct
  - Instigation
  - Consent
  - Acquiescence
- The form of liability related to "acquiescence" is based on knowledge and passivity, e.g., officials who had knowledge about the act, or who ought to have known about it, but did not attempt to prevent it. The Committee against Torture has clarified that states bear responsibility when:
  - State authorities know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-state officials or private actors; and
  - they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-state officials or private actors consistently with the Convention.[49]
- The UNCAT goes beyond the traditional concept of state responsibility and extends to situations, in which the state should act with due diligence to prevent acts of torture committed by private persons and non-state actors
- The official, who gave the order to others to undertake the act, can be held accountable, as well as the official who received the order and acted accordingly. An order from a superior or a public authority may not be invoked as a justification of torture (UNCAT Article 2(3)). Examples of officials who could be held accountable:
  - Those who directly contributed to the performance of the act one way or another, including officials who actively inflicted "pain or suffering" on a victim, and those who assisted
  - Those who instigated or incited others to be involved (e.g., by giving orders to a lower-ranking officer)

48 Nowak, *Commentary*, p. 60.

49 Ibid.

- Those who provided simply consent, to such acts being perpetrated by others (e.g., outsourcing of interrogation to private security companies, when the public official should have known that the private contractor may resort to torture)
- Prison officials who knew, or should have known that inter-prisoner violence was inflected, and did nothing to protect the victim prisoner from the perpetrator
- Officials who did not prevent or protect victims from gender-based violence, including rape, trafficking and domestic violence.[50]

Intention:

- Intention to cause pain must also be established, as well as the purpose to be achieved by such conduct was intentional
- Reckless conduct would satisfy this condition
- Pure negligent conduct can never be considered as torture. [51] By way of example, if a prison doctor forgets to provide vital medication to a prisoner who, as a result, becomes seriously ill or even dies, such a neglect would not qualify as torture – but could qualify as ill-treatment. If the situation was different and the doctor deliberately denied the prisoner such medication – for example for a discriminatory purpose – then the act may qualify as torture, if the other two elements are fulfilled, and if not then as ill-treatment
- Some other situations would likewise not fulfil the intent requirement. By way of example, abhorrent prison conditions are not likely to have been established with the intention of causing pain, and it would therefore not fulfil this requirement
- From a documentation perspective, it is worth underlining that proving intent does "not involve a subjective inquiry into the motivation of the perpetrators, but there must rather be "objective determinations under the circumstances". This means that the facts and circumstances of the case can demonstrate the required intent. By way of example, detention as such and being in the hands of the authorities would be sufficient to demonstrate that a treatment inflicted was intentional. [52]

If the circumstances of a case do not fulfil one, or all, of the four elements in the definition, it may still be possible to document and argue for "ill-treatment" within the scope of Article 16 UNCAT and thus be prohibited under international law (see below).

Note that the definition does not contain other elements than the four mentioned above. Thus, by way of example, the definition does not relate to specific victims, and a specific location is not a requirement. Torture can occur during deprivation of liberty, interrogation, demonstrations

50 Ibid.

51 Nowak, *Commentary*, p. 53.

52 UN Committee against Torture, EN v Burundi, No 578/2013, 2018.

or even at home. Torture is also prohibited during arrest or when occurring in non-custodial settings.[53]

In conclusion, the above means that when conducting an interview with a victim of torture, the interviewer should ask questions about all four elements of the definition and focus on what the definition means in practical terms – i.e., how can these four elements be supported by facts for the purpose of documentation, and which facts are relevant to identify. Some of the four elements are easier to document than others, whereas especially the impact element may require requesting additional documentation from health professionals.

Jurisprudence regarding torture

BOX 4.4

MOROCCO

Ali Aarrass (AA), a dual national of Belgium and Morocco, born on 4 March 1962 in Farjana, Morocco. AA was charged with involvement in terror actions. On 14 December 2010, Spain extradited AA to Morocco. Immediately on arrival in Casablanca, AA was placed in police custody in a location that he could not identify, because he was taken there blindfolded. AA was then subjected to repeated sessions of torture, for between four and five days, during which time he was struck with truncheons and slapped by several people, electrocuted, and choked while his head was held in a bucket of water until he fainted, as well as being deprived of sleep, food and water, threatened with rape and undergoing actual rape with a glass bottle. He was allegedly given injections on several occasions, after which he experienced bouts of dementia and unconsciousness. On two occasions, he was driven to a forest in the vicinity of Nador, threatened with death and subjected to a mock execution by shooting.[54]

53 By way of example, the UN Special Rapporteur on Torture has highlighted that torture and ill-treatment may also be committed online (cyber torture) if with the involvement of authorities (UN General Assembly, *Torture and other cruel, inhuman or degrading treatment or punishment. Report of the Special Rapporteur*, A/HRC/43/49), 2020. See also UN Human Rights Council | *Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective*, A/HRC/38/47, 2018. A final example was provided by the European Court of Human Rights that concluded in *Bartesaghi Gallo and Others v. Italy* (2017) that in the context of the G8 meeting in Genoa in 2008, Italian police officers subjected demonstrators, who were located at a school, to torture (i.e., demonstrators were struck in a violent manner; most were beaten with truncheons, kicked and punched, and some had had furniture thrown at them.

54 UN Committee Against Torture, A. Aarrass v. Morocco, 19 May 2014 (CAT/C/52/D/477/2011), see specifically para 2.2. In April 2017, the Committee requested Morocco to improve the detention conditions of Ali Aarasss who had been subjected to solitary confinement for six months. On 2 January 2020, the UN Committee Against Torture issued a decision and concluded that Morocco had violated article 16 with regards to the use of solitary confinement in this case (CAT/C/68/D/817/2017). On 2 April 2020, AA was released and repatriated to Belgium.

BOX 4.5

TUNISIA (BEFORE THE REVOLUTION IN 2011)

Taoufik Elaïba (TE) was a dual Tunisian and Canadian national: During questioning by the police in September 2009, TE was slapped very hard on both sides of the jaw by officers who completely undressed him and lay him on his back with the calves of his legs resting on the seat of the chair. While TE was in this position, they hit him very hard on the soles of his feet with a rubber stick for about five minutes, until the blood had drained from his feet (falaqa). Then the officers put his feet in a bucket of cold water and ordered him to walk. They put a motorcycle helmet on his head and beat him on the head with a baseball bat for about 15 minutes. As a result, TE to this day suffers from tinnitus. For the next five days TE was tortured. On the first day, officers tied him by the wrists and ankles to a large wheel fixed to the wall and spun the wheel very fast in one direction and then the other until he fainted. On the second day, officers sprayed his genitals with a gas and again tortured him by falaqa. On the following days, TE was also given electric shocks from a device attached to his body by two electric wires. He was also repeatedly beaten on the fingers with various implements. One evening, one of the officers ripped out the nail from one of his big toes with a pair of pincers.[55]

BOX 4.6

ALGERIA

Case of Hachemi Boukhalfa (HB) who died a few hours after having been released from detention in 2005: During interrogation in 2001, HB was accused of terrorism, the killing of three people and possession of a Kalashnikov. He denied all these charges. He was then tortured for eight days by several officers who acted overtly. The methods of torture included the use of a cloth soaked with water, soap and other cleaning agents, blows to the face and beating of the buttocks with sticks. HB was also compelled to crawl on a wet floor, causing injury to his knees. For several days, he was kept handcuffed, lying on his back, naked and suffering from the cold. HB was also forced to eat human excrement. During the periods of detention between 2001 and 2005, HB was beaten repeatedly, subjected to the "rag technique", given electric shocks, hung from the ceiling by his left foot, had his leg violently twisted until it broke, had his right foot pierced through, and had a bar inserted in his anus.[56]

BOX 4.7

LIBYA

Case of N.S. Nenova and others (all Bulgarian nurses who worked in Libya) who were subjected to frequent electric shocks to legs, feet, hands, chests and private parts while the women were tied naked to an iron bed. The methods used during two months also included beatings on the soles of the feet; being suspended by the hands and arms; suffocation; strangulation; being threatened with death; being threatened that family members would be harmed; being threatened, while blindfolded that they would be attacked by dogs; beatings; being dragged across the ground by the hair; being burned with cigarettes; having biting insects placed on their bodies; injection of drugs; sleep deprivation; sensory isolation; being exposed to flames and ice-cold showers; being held in overcrowded and dirty cells; and being exposed to blinding lights. Some of the women were also raped.[57]

55 UN Committee Against Torture, T. Elaïba v. Tunisia, 6 May 2016, CAT/C/57/D/551/2013, see specifically para 2.2.

56 UN Committee Against Torture, H.B. v. Algeria, 21 September 2015, CAT/C/55/D/494/2012, especially para 2.3.

57 HRC, Nenova et al. v. Libya, 2 May 2012, CCPR/C/104/1880/2009, see para 2.3 and 7.5 – 7.6.

BOX 4.8

EGYPT

SSI (the State Security Intelligence) agents subjected three persons, who were accused of involvement in the Taba bombing in 2004, to repeated electrical shocks, beatings, prolonged hanging by the leg, binding and blindfolding aimed at their complete disorientation.[58]

4.3 PROHIBITION OF CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT

While "cruel, inhuman or degrading treatment or punishment", which does not amount to torture, is also absolutely prohibited under international law, it is not defined in any international treaty. It is possible that the term was left open to interpretation to capture a wide array of actions and to extend the widest possible protection against abuses.

It is crucial to underline that both torture and cruel, inhuman, or degrading treatment are prohibited under international law, so the state would bear responsibility whether or not the act(s) qualify as one or the other by an adjudicating judge or body.

UNCAT Article 16(1) stipulates the following:

> *Each State party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity…*

The wording of this provision stipulates that cruel, inhuman, and degrading treatment also presupposes some involvement of a public official along the same lines as the definition of torture (directly or by acquiescence).[59] However, the other three elements of the definition of torture (severity, intention, and purpose) are not mentioned in the wording and are not required for an act to fall within the scope of Article 16.

As with torture, acts that fall within the scope of Article 16 may relate to a situation of custody or outside custody of the authorities. Within the first category, ill-treatment may relate directly to an act inflicted upon the person or more generally to the detention conditions.

58 Egyptian Initiative for Personal Rights and Interrights v. Arab Republic of Egypt, Decision of the African Commission on Human and Peoples Rights (ACHPR) 1 March 2011 Communication 334/06.

59 Nowak, *Commentary*, p. 444.

Despite no clear definition, it is possible based on jurisprudence to distinguish between "cruel or inhuman" and "degrading" in the below way – while bearing in mind that sometimes the distinction is not made by the adjudicating bodies.[60]

Cruel or inhuman treatment

In keeping with much of the jurisprudence, there is no distinction between "cruel" and "inhuman".

Cruel/inhuman treatment describes forms of ill-treatment which are committed with public involvement, but which do not meet one or several of the three other criteria of torture (as defined above). Thus, by way of example, harsh detention conditions caused by lack of resources would constitute cruel/inhuman treatment, rather than torture. Other examples relate to a prisoner subjected to violence and ill-treatment by his/her cellmates and prison staff not intervening.

Degrading treatment

Treatment that causes, or is able to cause, the feeling of fear, anxiety, or worthlessness, and enables humiliating or break down of the victim. It is an act that contains a particularly "humiliating element".[61]

Jurisprudence

BOX 4.9

EGYPT

Incommunicado detention: In the absence of information to the contrary, the Special Rapporteur on Torture concludes that there is substance in the allegations presented in the initial communication, and thus that the Government of Egypt, by failing to protect the physical and psychological integrity of Hossam Bahgat, including by subjecting him to incommunicado detention, has violated his right to be free from cruel, inhuman and degrading treatment.[62]

BOX 4.10

TUNISIA AND EGYPT

Forced anal examination during detention was considered inhuman and degrading treatment.[63]

60 The line between ill-treatment and torture may be unclear, as noted by the UN Committee against Torture in General Comment No. 2, para 3.

61 Nowak, *Commentary*, p. 444.

62 Report of the *Special Rapporteur on Torture*, 24 February 2016 (A/HRC/31/57/Add.1), Case No. EGY 16/2015, para 143.

63 Ibid. para 118 (Egypt) and 576 (Tunisia).

4.4 VULNERABILITY

While all human beings are vulnerable when arrested by the authorities or deprived of their liberty, certain groups are at particular risk of being subjected to torture. Courts and the various UN Treaty Bodies often highlight this issue and refer to vulnerabilities. With regards to women, girls and LGBT+, the UN Special Rapporteur on Torture has noted:

> *Women, girls, and lesbian, gay, bisexual and transgender persons are at particular risk of torture and ill-treatment when deprived of liberty, both within criminal justice systems and other, non-penal settings. Structural and systemic shortcomings within criminal justice systems have a particularly negative impact on marginalized groups.*[64]

There are other vulnerable groups as well, e.g. persons with disability who may be at risk.

If the interview relates to a person belonging to a vulnerable group, it is important that the interviewer pays attention to this fact and is aware of the likelihood of specific forms of torture being used (see Chapter 5 for description of sexual torture methods and of the impact of such methods).

States are obligated under international human rights law to treat all persons equally and without discrimination – and, as mentioned above, to refrain from subjecting someone to torture on grounds of discrimination. The prohibition against discrimination is enshrined in a number of core international instruments including article 2 of the Universal Declaration of Human Rights and article 2(2) of both the ICCPR and the ICESCR. These provisions explicitly prohibit discrimination based on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Three examples will be discussed below:

LGBT+ persons

The protection with respect to sexual identity has been read into the "other status" clauses of the prohibition against discrimination (see above) obligating states to protect individuals from discrimination on grounds of their sexuality. Accordingly, torture and ill-treatment must not be imposed based on discriminatory reasoning, including stereotypical views of a detainee or prisoner based on racist or sexist attributes. The Special Rapporteur on Torture has confirmed that "both men and women and boys and girls may be subject to violations of the Convention on the basis of their actual or perceived non-conformity with socially determined gender roles".[65]

64 Report of *Special Rapporteur on Torture*, 5 January 2016 (A/HRC/31/57), para 13.

65 Ibid, para 22.

BOX 4.11

EXAMPLES OF DISCRIMINATORY TORTURE IN NORTH AFRICA

In 2017, Sarah Hegazy, a 30-year-old Egyptian queer feminist participated in a concert in Cairo with the Lebanese band Mashrou' Leila. She waved a rainbow flag. A week later, she was detained by Egyptian authorities on charges of "joining into a banned group aimed at interfering with the constitution". She was subjected to torture in detention, including the use of electric shocks and solitary confinement. Subsequently, she was released from detention and went in exile in Canada. On 14 June 2020, she took her own life.

In 2019, Malek el-Kashif, a 20-year-old transgender woman and human rights activist was arbitrarily detained for four months and was subjected to sexual harassment and abuse in a male prison.[66]

Women

Women may face gender-specific forms of sexual torture, such as rape and virginity testing, as well as mental and verbal abuse.[67] Torture and ill-treatment may also occur during childbirth and in relation to reproductive rights. When documenting cases involving women, the interviewer should apply a gender-sensitive lens and know that there is an underreporting of sexual torture against women and that it may be difficult for the woman to talk about such abuses. When applying the torture definition to gender discriminatory forms of violence, the purpose and intent elements of the definition would often easily be fulfilled, but as explained above, it is crucial to document some level of official involvement. Otherwise, the abuse would not in a legal sense qualify as torture or ill-treatment. But at the same time, the interviewer should avoid regarding violence against women as ill-treatment when more appropriately defined as torture.[68]

The interviewer should also remember that gender and vulnerability may influence the assessment of the impact of the act, as mentioned above. Thus, the assessment of severity will reflect the vulnerable situation for women and their experience of "pain and suffering".

Finally, it is crucial for the lawyers interviewing women to know the relevant provisions of CEDAW and legal rules regulating conditions for female detainees.[69]

66 Human Rigts Watch | Egypt: *Security Forces Abuse, Torture LGBT People*, 2020.

67 J. Baker & T. Rytter, *Conditions for Women in Detention: needs, vulnerabilities and good practices*, Dignity Publication Series No. 7, 2014; and J. Baker & E. Søndergaard, *Conditions for Women in Detention in Jordan*, Dignity Publication Series No. 9, 2015.

68 Report of *Special Rapporteur on Torture*, 5 January 2016 (A/HRC/31/57), para 8.

69 The Standard Minimum Rules for the Treatment of Prisoners (Mandel Rules 2015) and United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules 2011).

BOX 4.12

EXAMPLE OF RISKS FOR FEMALE ACTIVIST IN LIBYA

In 2021, the organization Lawyers for Justice in Libya (LFJL) documented a widespread pattern of online violence against Libyan women to silence their dissenting voices and force them to withdraw from participating in public or political life. Many women chose to self-censor or escape fearing for their safety. The Libyan state did not take effective measures to stop this pattern and did not carry out effective investigations to hold those responsible to account. In some instances, the perpetrators were state actors or militias affiliated and supported by the state and were threatening women and girls to silence them. Victims described that they suffered stress, increased anxiety, panic attacks, a sense of powerlessness and loss of self-confidence, which could amount to ill-treatment or in very specific cases to psychological torture. In some cases in Libya,[70] the violence started online and then developed to physical harm reaching to abductions or killings. For example, in November 2020, a prominent political activist and lawyer, Hanan al-Barassi, was killed in Benghazi. She was shot in the street by armed men just a few minutes after posting a video on Facebook in which she made allegations of corruption against the Libyan Arab Armed Forces (LAAF). Hanan Elmgawab, a Libyan journalist, has explained that she has been subjected to online violence for being a woman who discusses politics. Because of online violence and direct incitement and defamation, she had to leave Libya. Further, armed men abducted lawmaker and politician Seham Sergewa from her home in Benghazi in 2019 just one day after criticizing the LAAF's offensive on Tripoli and calling for the formation of civil state. Her whereabouts remain unknown until today.[71]

Children

Children constitute a vulnerable group with unique needs, and if detained, they are at a heightened risk of suffering from violence and bad detention conditions, as stressed by the UN Special Rapporteur on Torture.[72]

When documenting a case involving a child, the interviewer should always consider the physical and especially the psychological impact of violations. Many acts and practices may due to their impact on the child amount to torture, though they may not be categorized as such when employed against adults. For instance, a child may feel threatened much more readily, or experience ill-treatment as causing him/her severe pain and suffering.[73]

Finally, it is crucial for the lawyers interviewing children to know the specific legal safeguards for children which are covered by various treaties and most importantly by the CRC, as well as by several additional guidelines.[74]

70 Lawyers for Justice in Libya, *We will not be silenced: Online Violence Against Women in Libya* (2021).

71 Ibid.

72 Report of Special Rapporteur on Torture concerning the international legal framework and standards protecting children deprived of their liberty from being subjected to torture or other ill-treatment and from experiencing developmentally harmful and torturous conditions of confinement (A/HRC/28/68), 2015.

73 C. Giffard & P. Tepina, *Torture Reporting Handbook*, 2015, p. 34.

74 Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules 1985); Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines 1990), and the Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules 2009).

BOX 4.13

EXAMPLES OF TORTURE AGAINST CHILDREN IN EGYPT

A boy (A), born on 6 December 1998, was a first-grade student in secondary school. On the night of 22 February 2014, several officers of the security forces, the police and the homeland security stormed and searched the apartment in which A lived and arrested him without showing a warrant. A was blindfolded, handcuffed and forced into a military vehicle, which took him to Ataka police station in Suez where he was reportedly subjected to torture and ill-treatment by officers, who beat and kicked his arms and legs. During the next three days, A was subjected to further torture and ill-treatment in order to make him confess to crimes that he had not committed. The officers electrocuted him on the chest, the back and the genitals, eventually burning him and causing severe abrasions. He was charged with affiliation to Muslim Brotherhood, incitement to riot and participation in illegal demonstrations. He was held in a cell with adult detainees, continuously subjected to torture and ill-treatment by the prison personnel and other inmates and denied access to medical care.

A's brother (B), born on 20 April 2001, was a second-grade student. A year later, on 3 January 2015, B was arrested in the same way as his brother – without an arrest warrant, by homeland security officers in the apartment in which he lived. B was also taken to Ataka police station and charged by the Public Prosecutor with affiliation to the Muslim Brotherhood, incitement to riot and participation in illegal demonstrations. Police officers allegedly tortured B during two consecutive days, with electrocution on his entire body, and beatings with truncheons. He was also held in a prison cell together with adult detainees. Despite having numerous contusions on his body, he was denied access to medical care.[75]

In another case, national security officers took a 14-year-old boy from his home in Cairo on 30 September 2015. During the detention, he was tortured, given electronic shocks on his genitals and had a wooden stick repeatedly thrust into his anus as the police forced him to confess to protesting without authorization and belonging to the banned Muslim Brotherhood group.[76]

75 Opinion of the Working Group on Arbitrary Detention No. 53/2015 of 6 April 2016.

76 Amnesty International, 11 December 2015, available at https://www.amnesty.org/en/latest/news/2015/12/egypt-child-raped-with-wooden-stick-by-police-officers-must-be-released/.

CHAPTER 5: TORTURE METHODS AND THEIR CONSEQUENCES

To the extent that physical evidence of torture exists, it provides important confirmatory evidence that a person has been tortured. However, the absence of such physical evidence should not be construed to suggest that torture did not occur, since such acts of violence against persons frequently leave no marks or permanent scars.[77]

Introduction

Asking the right questions will in the end lead to better documentation. One aspect of professionalism is therefore to be able to ask the right basic questions based on knowledge about torture methods in general and the methods typically used in a local context. Knowing about these methods and the way they are used alone or in combinations may allow an interviewer to pose additional questions that will help him/her to better understand what happened. E.g., if a torture survivor tells that he/she was subjected to electrical torture, the interviewer may want to ask whether, at the same time, water was poured over his/her body, since this aggravates the effect of the electrical current.

Having this knowledge will also allow the interviewer to ask additional questions about how the victim is feeling at the time of the interview. E.g., knowing that a well-known consequence of suspension is nerve damage, the interviewer may ask whether the torture survivor has or has had any sensory problems in the affected arm. Asking this type of questions may convey to the victim that the interviewer has knowledge about the issue, and it may help building trust.

Another aspect of professionalism is the ability to understand what the torture survivor is saying without having to ask unnecessary questions. E.g., if a torture survivor uses local names for the particular types of torture to which he/she was subjected like shabeh or falaqa, the interviewer may want to let the survivor know that he/she understands, what the survivor is talking about

77 Istanbul Protocol, para 161.

without him/her having to explain in detail. This may be important if the type of torture in question is particularly painful for him/her to talk about.

This chapter will present a systematic description of different torture methods and provide a framework for understanding the consequences of torture, which may be physical, psychological, and social.

By the end of this chapter, you should:

- Know that a range of torture methods exist including physical, psychological and sexual methods
- Know the typical torture methods used in the region
- Know that torture may have both physical, psychological and social consequences, and that consequences may be acute, as well as chronic
- Know that interpreting the torture history and the findings may be the task of a specialist
- Be able to ask questions to a torture survivor that will help him/her describe what happened
- Be able to ask questions to a torture survivor that will help him/her describe how he/she felt both in the acute stage straight after the torture took place, and how he/she feels at the time of the interview.

5.1 TORTURE METHODS

Perpetrators of torture are unfortunately very imaginative and innovative. Therefore, it is not possible to make an exhaustive list of torture methods being used around the world since new methods keep emerging. One important trend is the use of methods that may produce intense pain but leave no, or only very limited, marks on the body. Another important trend is the increasing use of psychological torture methods. Both these types of torture methods make the task of documentation and prosecution/litigation even more challenging. Thus, when documenting torture, expect the unexpected, and trust the victim's story even if he/she tells about torture methods not mentioned in any textbook.

It may be useful to distinguish between different types of torture. A frequent typology used is the distinction between physical and psychological torture. However, it is important to remember that this distinction is partly artificial, and that there is a significant overlap between the categories. For example, all types of physical torture may lead to severe mental suffering as well. Some consider sexual torture a third, separate category, that may contain elements of both physical and mental suffering. The distinction between different types of torture may be useful to have at the back of the mind when interviewing a victim of torture and when systematizing the information given by a victim.

In all categories, there are several different types of torture. Some examples are:

Physical torture: Blunt trauma (kicks, punches, beatings etc.), positional torture (suspension, constraint of movement, forced positioning), burns, electric shocks, asphyxiation, chemical exposure (to salt, chili pepper, etc.), crush injuries, medical amputation, force-feeding, forced ingestion of drugs (also known as pharmacological torture), deprivation of food and water, and exposure to extreme heat or cold.

Psychological torture: Deprivation of sleep, deprivation of normal sensory stimulation, humiliation, mock executions, threats to the victim him/herself or to others e.g., family members, forcing victim to witness torture being inflicted on others, and violation of taboos (e.g., forcing a Muslim to eat pork or pulling the headscarf of veiled women).

Sexual torture: Violence against genitals, rape, forced nudity, forced masturbation, sexual humiliation and forced genital examinations.

Often, different types of torture are used together to increase the victim's suffering. And often well-defined patterns of torture are seen in particular contexts. It adds to the credibility of an account of torture if the pattern described is consistent with already existing knowledge about torture in that specific location.

5.2 CONTEXT KNOWLEDGE

Knowledge about the torture methods typically used in a particular context will help an interviewer assess the credibility of the information given by an alleged victim of torture. Again, however, torture should not be excluded if a person gives an otherwise credible description of having been subjected to other types of torture that do not fit with the typical local or regional pattern. When possible, it is important that lawyers and doctors, who do not deal with torture survivors on a regular basis, try to collect as much information as possible before carrying out interviews with torture survivors. This will help them to understand current patterns of torture in a country and to assess what the victim is telling them. It will also help them to ask sensible additional questions.

Below are some examples of torture methods having been reported in specific contexts. Please notice that they are examples and in no way an exhaustive lists of torture methods being used.

BOX 5.1

EXAMPLES OF TORTURE METHODS REPORTED FROM NORTH AFRICA

Physical torture methods:

Deprivation of food and water; unsystematic beatings (slapping and punching with hands and fists and with objects like batons, firearms, and whips); kicking; systematic beatings including falaqa and teléfono; suffocation by forcefully covering mouth and nose or by strangulation; burning with cigarette butts or hot metal tools or by pouring petrol on beard or genitals and then lighting it; electrocution; forced positions including suspension from genitalia, arms and legs and in the "roasted chicken" position (suspension from a bar from the back of the knees and with hands tied to the ankles); dragging across a hard surface and forcing a rag into the mouth and pouring dirty water onto it until the stomach is filled and the victim passes out, after which hitting and kicking in the stomach makes the victim vomit.

Psychological torture methods:

Insults; forcing the victim to hear screams of others being tortured; torturing family members or threatening to do so; sensory deprivation including blindfolding; sleep deprivation; solitary confinement; multiple transfers between torture centers until the victim loses track of time; telling lies about the victim's family, friends and relatives; falsely convincing a victim that he/she has been sentenced to death and take steps as if it were true including mock executions; and humiliations including by forcing a person to change name to an opposite sex name.

Sexual torture methods:

Forcing a person to be naked; forcing a person to dance naked or in undergarments only; groping; squeezing women's breasts and men's scrotum; forcing the victim to violate others; and rape, including rape using an object or a tool like wooden sticks of by forcing the victim so sit on bottles of the frontal part of a gun.[78]

Very often, torture survivors report having been subjected to more than one torture method. To understand what actually happened it is important to not limit oneself to talking about only one torture method, but to let the survivor tell in his/her own words what happened. Often, when different methods are used in combination, one torture method may potentiate the effect of other methods. For example, sleep deprivation may lower a person's pain threshold thereby increasing the effect of physical torture methods. Sleep deprivation may also add to the confusion of the victim and thereby make him/her more susceptible to threats. In some contexts, the combination of different torture methods has been systematized to the extent where names exist covering a combination of different methods like for example "the five interrogation techniques" used by the British military in Northern Ireland, which consisted of prolonged wall-standing, hooding, subjection to noise, deprivation of sleep, and deprivation of food and drink.

Every torture experience is different. But listening to the voices of the torture survivors and collecting their stories can teach us important things about how torture is perceived, which torture methods are used etc. The following are short examples of such stories.

78 Examples provided by partners.

BOX 5.2

EXAMPLE OF TORTURE STORY

"In the car, I was blindfolded by placing a black cloth on my face. I was taken to a place I did not recognize at the beginning… At this place, I was beaten up… Due to intensive beating, I lost consciousness and suffered from bleeding in my mouth… I stayed standing while blindfolded for around two hours… After dawn, they came back to me and it seemed that they had the greenlight to start torturing me… they started electrocuting me all over my body, where they had stripped me naked and no spot in my body was saved from electrocution even my private parts. They used the most horrendous methods of electrocution. They concentrated on my private parts (my genitals and anus) … Due to the heavy electrocution, all my body was burned and in order to mitigate the effect they put a liquid on my skin and then they repeated the electrocution starting from the evening prayers until the morning of the next day. They used both gas and petrol while electrocuting me, where they used to spray my body, in order to intensify the effect of electrocution and make it more painful. I was screaming but no one had mercy on me."[79]

BOX 5.3

EXAMPLE OF TORTURE STORY

"After around two weeks since my arrest and many interrogation sessions accompanied always with torture, I was sitting alone in my solitary confinement cell, I was suffering from a very severe fatigue and I totally lost many of my senses, my eyes were blindfolded which made me lose my sight sense, my nose was injured so I could not smell. I was hardly able to hear due to the cloth that had been tied on my eyes and ears. I was tied and could not move, I did not know what the time was, but it was after evening. My cell door was open, and I was taken to another building… I entered the office, I could not hear any of the voices of the persons surrounding me, but the voice of one officer, but I felt that there were others, but I did not see or hear them. The same questions were directed to me with the same introductions and style, I heard so many times since the beginning of the interrogations. My answers were the same as always, which did not satisfy them every time and this time it was not different. The officer started yelling in my ear while the others started hitting me upon his orders. The officer came next to me and electrocuted me in different parts of my body such as my head, mouth, neck, chest, shoulder and private parts. All this did not work with me I did not give them what they want to hear. The only thing I could do is to scream and to plead with them to stop… He ordered me to take off my pants, I pleaded with them to stop and leave me alone because I don't know anything, but they never listen it seemed that they were having fun. Under the pain of electrocution and my feeling of despair and the uselessness of my pleadings and that I will not tolerate any more pain, I responded to them and took off my pants. The officer said to me in a sarcastic manner: "As you were struggling outside, I want you to struggle with me here for your underpants, I want you to show me for how long you will fight to keep it on." At this moment, I was sure that I was dealing with a lunatic officer which terrified me more… At the end I surrendered and took off my underpants, I was standing before them totally naked except for the dirty piece of cloth tied to my eyes."[80]

BOX 5.4

EXAMPLE OF TORTURE STORY

The most painful and harsh torture method he was subjected to and still suffering from till this day is being hanged by one hand from the ceiling for three days accompanied by continuous beatings, stabbing, electrocution and spraying him with cold water. On the fourth day, they brought another prisoner to join him in the same place, where the said prisoner left him on his back in order to ease his pain. Suddenly and during this the person responsible for the prison came in and saw what was taking place. The prison official killed the new prisoner by shooting him in the head and he died under the victim's feet. This incident is still in his memory and he thinks that he is the cause of that young man's death, because he just wanted to help him and ease his pain.[81]

79 Example from partner.

80 Example from partner.

81 Example from partner.

In conclusion, torture methods are many, and the interviewer needs to understand how to systematize what he/she hears about different torture methods, both the ones that he/she has already heard of before and new ones coming up during an interview. Knowing about the different types of torture will not only enable the interviewer to ask the right questions during the interview and get the full picture of what happened, but it will also make him/her able to note down what he/she has heard in a coherent and understandable way.

5.3 CONSEQUENCES OF TORTURE

The consequences of torture are many, and torture is never only an individual experience for the victim him/herself but may affect entire families. Also, the fact that people run the risk of being tortured when being accused of crimes or serving sentences for crimes committed, when being politically active, when belonging to minority groups etc., leads to fear and a lack of trust in authorities, thus affecting the whole society. This may have huge implications on how people react in different situations and on the society at large. Perpetrators of torture may themselves experience psychological problems after having tortured others. Professionals like doctors and lawyers dealing with victims of torture may become secondarily traumatized. And spouses, children, other family members and friends may see their lives and relations change when one of their loved ones experiences torture or suffers from its consequences. This chapter, however, does not deal with the societal impacts of torture but with the consequences at the individual level, i.e. for the person who has him/herself experienced torture.

How to systematize the information about the consequences of torture

Information about the consequences of torture at the individual level may be systematized in different ways. Doctors will use the terms acute and long-term where acute consequences refer to the consequences that one may experience in direct relation with the trauma, i.e. when the trauma happens and in the days or weeks immediately following the trauma. Long-term consequences will be consequences that are still there or occur after weeks, months, or even years. If the person still experiences symptoms after a while, and these don't subside with surgery or other one-off interventions, one may talk about the symptoms as being chronic, i.e. of a long-term nature.

Another way of systematizing the consequences is according to the parts of the person that are affected. Physical consequences have to do with the bodily symptoms, whereas psychological consequences have to do with the symptoms of the mind, and social consequences have to do with the consequences that the individual experiences in his/her social life. This may for instance include the victim's relation to family and others, but also his/her connection to the labor market, where he/she lives, his/her social status, how he/she spends his/her free time etc. Often, the consequences will not be limited to one aspect of life, and a notion frequently used is that consequences of torture are bio-psycho-social in nature. It is important for the interviewer

to remember this when trying to understand exactly what consequences a victim of torture is experiencing.

Symptoms may fluctuate over time and depend on a lot of different factors like e.g., the duration of the torture, the time that has passed since the torture occurred, the victim's vulnerability and overall situation, his/her resilience, his/her access to treatment and rehabilitation, etc.

Physical consequences of torture

In the acute phase, torture gives rise to different physical symptoms and injuries. Typical injuries that are immediately visible include, but are not limited to, bruises, swellings, burns, open wounds and fractures – or in other words, the same types of injuries that one may see after other types of trauma not related to torture. One of the challenges faced when documenting torture therefore is to assess whether an injury is the result of torture or another trauma. For this, the victim's story is paramount. Also, some acute lesions have a typical appearance like for example the so-called "tramline bruises" (two parallel linear bruises separated by a paler, undamaged section of skin) following beating with a rod-shaped hard object, and the burns following electrocution.

The acute injuries following torture will typically be accompanied by pain, but in case nerve damage has ensued, for example after suspension or severe burns, numbness may also occur.

Most acute, visible lesions (bruises, burns, wounds, etc.) heal within about six weeks which explains why it is urgent that a victim of torture is examined by a qualified doctor as soon as possible after the trauma, so that any acute lesions can be properly documented before they disappear.

In some cases, the after-effects of the acute lesions will be visible even after months or years, e.g., burn scars, loss of hair, changed skin pigmentation and incorrect healing of fractures. Often, however, this will not be the case, and the visible signs of torture may completely disappear. It is therefore important to remember that a lack of physical signs does not imply that torture did not take place.

Unfortunately, once skin has healed after an acute lesion, like a wound, and what is left is the scar, it becomes very difficult – and in the case of older scars, close to impossible – to assess the age of the scar. This is another reason why it is important that lesions are documented as soon as possible after they occur.

It is important to remember that torture may affect practically all organs of the body. Some torture consequences can be related directly to a particular form of torture or a particular organ being involved, but others are more diffuse. Some examples of consequences directly linked to particular torture methods are:[82]

82 Istanbul Protocol, para 176 - 186.

Skin: Wounds and scars following burns or electrocution, swellings and bruises following beatings

Ears: Hearing problems following teléfono torture leading to rupture of the tympanic membrane

Eyes: Problems with eyesight following beatings leading to hemorrhages in the eye or dislocation of the lens

Face: Fractures of facial bones following beatings

Teeth: Loss of teeth following blows to the mouth

Heart: Acute cardiac rhythm disturbances following electrocution

Lungs: Acute and chronic breathing problems following strangulation, asphyxiation and inhalation of dirty substances (e.g., after waterboarding)

Trunk: Broken ribs following beatings

Abdomen: Lesions of anus and rectum following insertion of objects, bleeding in internal organs following beatings

Musculo-skeletal system: Impaired movement of joints following suspension, fractures of bones, loss of soft tissues in the foot soles following falaqa

Genito-urinary system: Sexual dysfunction, sexually transmitted diseases and pregnancies following rape

Central nervous system: Damage to facial nerves leading to facial paralysis and sensory disturbances following blows to the head, brain damage following blows or asphyxia in relation to strangulation or water boarding

Peripheral nervous system: Paralysis and sensory disturbances due to nerve damage after blows, overstretching during suspension or forced positions etc.

Some of the physical complaints presented by torture survivors are, however, not necessarily linked directly to an identifiable direct trauma to one particular body part. The reasons for this are many: The survivors may not be able to remember in all detail what happened to them, backpain may result from the body trying to compensate for pain in legs and feet, resulting in different gait patterns, nerves may have been damaged in one body part leading to pain in the body part served by that nerve, etc. Torture survivors often seek assistance from a doctor months or years after the torture took place and then present chronic problems, such as headaches, back and muscle pain, gastrointestinal symptoms and sexual dysfunction. These unspecific symptoms may be of fluctuating nature, i.e., of different intensity at different times, and they may be influenced by many other factors, e.g., treatments received, the survivor's psychological well-being etc.

Psychological consequences of torture

A victim of torture goes through a very extreme situation during which he/she is under the absolute control of the torturers and is rendered completely helpless. The methods of torture that do not inflict direct physical pain all have the aim of adding to the psychological pain and "breaking the mind" of the victim or humiliating him/her to make him/her confess, give information, etc. This is done through making the victim confused, disoriented, fearful, desperate, and lonely.

Therefore, it may come as no surprise that victims of torture are often also left with severe psychological symptoms, either alone or in addition to the physical symptoms. Common psychological symptoms include depression, anxiety, insomnia, nightmares, flashbacks, and memory difficulties. These psychological symptoms may be severe and will, for obvious reasons, influence the victim's ability to lead the life that he/she wants to lead, be the parent that he/she wants to be, etc. Asking questions about the psychological well-being of a victim of torture is therefore just as important as asking questions about the potential physical consequences of torture.

Physical consequences can – as stated above – often be directly linked with a specific torture method, e.g., beatings on one particular body part leading to pain and physical changes in that same body part. In some instances, a particular psychological symptom may also be directly linked with what happened to the victim, e.g., extreme anxiety when the victim is exposed to people wearing uniforms resembling the uniforms worn by the perpetrators. Often, however, the psychological consequences are of a more non-specific nature – like pain moving from one body part to another – and cannot be directly linked with specific torture methods.

Seen in a documentation context, the psychological consequences may influence the victim's ability to recount what happened to him/her in a consistent and coherent manner, and it may affect his/her ability to interact freely with other people including someone trying to document his/her case. See Chapter 6, in which advice is given on how to interview a person with severe psychological problems following torture.

One particular possible sequel of torture, post-traumatic stress disorder (PTSD [83]) merits special attention. PTSD is an anxiety disorder which may develop after exposure to a life-threatening event with intense fear and helplessness.

The dominant features of PTSD are intrusion (re-experiencing the trauma), avoidance (efforts to avoid the thought or feelings associated with the trauma), and hyperarousal (a state of increased psychological and physiological tension marked by such effects as reduced pain tolerance, anxiety, exaggeration of startle responses, insomnia, fatigue, and accentuation of personality traits). These symptoms may cause the torture victim to fear experiencing a re-enactment of the torture experience, which in its turn may influence an interview and an examination for

83 Exhibit 1.3-4, DSM-5 Diagnostic Criteria for PTSD - Trauma-Informed Care in Behavioral Health Services.

documentation purposes. All interviewers need to be aware of the risk of re-traumatizing a victim of torture during an interview and need to take all possible precautions to avoid this.

Similar to the physical symptoms, a detailed history about psychological symptoms is important to assess the full extent of the consequences of the torture that a person experienced. The interviewer's awareness is maybe even more important for psychological symptoms since in some cultures, experiencing psychological symptoms may be considered shameful, and the victim may therefore not tell about such symptoms spontaneously. Also, some victims do not see the link between the psychological symptoms that they experience now and the torture experienced, maybe months or years earlier, again resulting in them not mentioning the symptoms.

Social consequences

Last but not least, torture may give rise to huge social consequences for the victim and his/her family. Many, if not all persons, who have spent time in detention, face challenges when returning to freedom. The physical and psychological consequences of the trauma that torture survivors are suffering are adding to these challenges. Many social problems may follow, some of the most frequent ones being social isolation, loss of job and income, problems in the family including e.g. violence and neglect, divorce, etc.

Many different factors add up to influence the types of social consequences that a torture survivor may be facing. One model that may help analyze the interplay between different factors is the ICF-model (the International Classification of Functioning-model). This is a WHO-framework for measuring health and disability at both individual and population level.[84]

The ICF-model explains that different factors may influence a person's level of functioning, and thereby how he/she is able to engage and participate in social and family life, etc. In other words, a person's level of functioning is not only dependent on, for example, the bodily problems that he/she experiences. The types of activities that he/she is supposed to perform in society also play a role (e.g., whether his/her job is physically or psychologically demanding) as do his/her and others' expectations in terms of his/her participation in social life (e.g., one may face different expectations when being single with no family obligations or when being a single parent). Adding to this are environmental and personal factors, also called contextual factors. For example, someone with an understanding workplace and a supportive family may be better able to deal with an anxiety disorder than someone who is not as lucky. And someone who by nature has a resilient personality, may be better able to cope with the adjustments necessary, if the torture has given rise to a physical handicap. The opposite is also true: If someone has a physical or mental problem following torture and on top of that experiences extreme pressure because of loss of job and a difficult family situation, he/she may experience the consequences of torture more strongly. One aspect adding to the difficult situation may be the guilt and shame following

84 World Health Organization | *International Classification of Functioning, Disability and Health* (ICF), 2001.

the torture, e.g., guilt stemming from having been politically active and thereby bringing one's family into a difficult situation, and shame following rape, or shame following giving information about others while undergoing torture.

All in all, it is difficult to predict how an individual will react to torture, and each individual's reactions may change over time, due to contextual factors that are unrelated to the torture itself. The bottom line is that torture is an extreme life event that may change the life course of a person and his/her social situation from one day to the next. Therefore, when documenting torture, it is important to try to get an impression of how the social situation of the survivor was before the torture took place, and how it is at the time of documenting the case. Only if one remembers to ask about the survivor's social life, may one come to realize that his/her life has changed even though there is an absence of physical and psychological symptoms at the time of documentation.

Some examples of how torture may influence the life of the survivor come from testimonies given by survivors.

BOX 5.5

EXAMPLE OF TORTURE CONSEQUENCES FOR MALE STUDENT

A 21-year-old college student accused among others of demonstrating and destroying property was detained for two years, during which he experienced different types of torture including "tashrifah", the welcoming ceremony, where all the prison guards were lined up in two rows and the detainees had to go through them while they were beaten. He was also taken to a very small dorm where they put around 80 persons in an area so small that he could not lie down to sleep. He spent 11 days in that room. When interviewed after his release he told: "I was suspended from my college for security reasons, and now I am in another one. I don't really go to the college anymore."[85]

BOX 5.6

EXAMPLE OF TORTURE CONSEQUENCES FOR FEMALE STUDENT

A 20-year-old female student was arrested and accused of prostitution. She was raped on several occasions during her three days in detention. When interviewed, she told about one of the occasions where she was raped: "(He) slapping me on my face and opened the pants zip, held me and put his penis in my mouth and kept slabbing me. The other man came from my behind and held my breast from behind. I heard the door open, and a man came in and blindfolded me again, I started screaming and someone slapped me again in the face. They dragged me from my hair to the wall side and one of them sat on me and put my hands under his knees, while the other one spread my legs open, I started to cry and scream, he hit me on my private part with a piece of metal. I think it was his belt buckle, and when I screamed forcefully, he inserted it in my vagina, it stayed long time inside me. The other one kept forcefully squeezing my breast. I only woke up when I was in the basement, fully naked and could not do anything or even move…. I did not tell my father or my mother about anything and I will never do. I want to tell you, there is no girl who is not a virgin who will say that she was raped, if she was not. This is very shameful and if our families know about it, they will kill us and they will certainly say that they don't have girls… Sorry for the details, but I have to tell it."[86]

85 Example from partner.

86 Example from partner.

BOX 5.7

EXAMPLE OF TORTURE CONSEQUENCES FOR ADULT MAN

A 32-year-old man who was subjected to suspension and electrocution was described like this by the organization documenting his case: "When he was released his only concern was to be able to raise his children and go back to his job… He stayed in a self-imposed seclusion, he did not want to communicate or interact with anybody even his own family and did not want anyone to ask him. He still suffers until this day from the experience he went through. All this torture and harm he suffered from not to mention the side effects associated with the torture affecting the father, mother, siblings and other family members."[87]

5.4 CONSISTENCY

It is an important part of documenting torture to assess the correlation between the history (including the torture methods allegedly used) and the symptoms and findings that a torture survivor presents during the documentation process. This assessment may require specific expertise, and often the task is best performed by a trained professional, e.g., a doctor who has forensic expertise in assessing wounds, scars and other types of damage to the body, and who will know what additional examinations to request if the findings are not clear.

All professionals dealing with torture survivors should however know the basics of how findings are interpreted, since this may also influence the way questions are asked during the documentation process.

The interpretation of the consistency between the history and the findings has several elements:

- Consistency between allegations of abuse and acute and chronic physical symptoms (i.e., is it likely that the particular torture methods used might lead to the symptoms presented)
- Consistency between allegations of abuse and physical findings (i.e., is it likely that the physical changes in the body might be caused by the alleged torture methods)
- Consistency between allegations of abuse and psychological findings (i.e., is it likely that the torture experienced might lead to the symptoms presented)
- Consistency between allegations and findings on the one hand and commonly used torture methods and common after-effects in a geographical region on the other hand (i.e., is it likely that a torture survivor in a particular region would have experienced the particular types of torture mentioned, and is it likely that he/she would present with the signs and symptoms found)
- Assessment of any other factors that might influence the survivor's health and well-being (i.e., did the survivor for instance have a pre-existing condition that might have caused some of the health problems that he/she is experiencing, or is there any other stressors in the survivor's life that might influence his/her mental well-being)

87 Example from partner.

- Assessment of whether the torture itself has led to physical conditions that may make the survivor less consistent and coherent when explaining what happened to him/her (e.g., did the torture lead to physical brain damage that may influence his/her ability to answer questions).

It should be stressed that inconsistencies in a torture history is not necessarily an indication of the survivor not telling the truth. A survivor may not be able to recall in all detail what happened to him/her, e.g., because he/she was confused due to lack of sleep, or sensory deprivation, or because he/she suffered blows to the head leading to traumatic brain injury. He/she might also suffer from depression or PTSD that are both conditions that are known to influence memory. Therefore, the consistency assessment should be made with great caution and preferably only by people with experience in this field, and minor inconsistencies in an otherwise coherent and reliable story should not be taken as proof that the survivor is not credible.[88]

Overall, the consistency related to the alleged abuse and to each injury and the overall pattern of injuries will usually be described with terms relating to varying degrees of "consistent with" (i.e., the lesions found could – with some degree of probability – have been caused by the trauma described) or "not consistent with" (i.e., the lesion found could not have been caused by the trauma described).

It is important to stress here once again that a lack of findings does not automatically mean that torture did not take place. Torture does not necessarily lead to physical marks or psychological or social consequences, and some physical marks and some symptoms disappear over time.

88 See for example UN Committee Against Torture, C. T. and K. M. v. Sweden, Communication No. 279/2005, 22 January 2007; A. V. Switzerland, communication No. 21/1995, 8 May 1996; T. V. Sweden, communication No. 43/1996, 15 November 1996; K. V. Sweden, communication No. 41/1996, 8 May 1996.

CHAPTER 6:
THE INTERVIEW

Information is certainly important, but the person being interviewed is even more so…[89]

Introduction

6.1 Purpose of the interview and what information to collect

6.2 How to decide whether to engage in an interview

6.3 Interview basics

6.4 Key ethical principles

6.5 Engaging with the survivor during the interview

6.6 Conducting the interview

6.7 Next steps

Introduction

The ability to interview a survivor of torture in a sensitive and professional way is the most important skill for doctors and lawyers to master. The purpose of this chapter is to provide knowledge about core interviewing skills that should be further improved through practice and if possible, supervision by an experienced interviewer.

A documentation interview has the specific aim of collecting the survivor's story, and identifying signs showing that he/she may have been subjected to torture. The interview may also serve different more general purposes. By way of example, a torture survivor may want to obtain justice in court, whereas another may wish to seek treatment and rehabilitation. This chapter will present various interviewing skills and discuss what to do next.

By the end of this chapter, you should:

At preparation level:

- Know how to decide whether you are ready to engage in the interview and how to respect your limitations
- Know the key principles and the important implications of the do-no-harm-principle
- Know how to obtain informed consent.

.89 Istanbul Protocol, para 135

Interview:

- Know how to gain the trust of the torture survivor
- Know the key elements that should be part of a documentation interview
- Know how to follow up on the interview afterwards
- Be able to conduct an interview taking the content of Chapter 1-6 into account
- Be able to establish the best possible interview setting and collect the story while asking relevant questions about: Who did what to whom? When? Where? And Why?
- Be able to document clear physical signs of violence.

6.1 PURPOSE OF THE INTERVIEW AND WHAT INFORMATION TO COLLECT

The interview – the most crucial part of the documentation practice – has the specific objectives to:

- Gather the facts of what happened and of the allegations of torture or ill-treatment
- Allow the survivor to describe in as much detail as possible the facts and his/her experience
- Identify and document clear physical signs of violence.

The questions asked should be guided by these objectives. Some aspects of the interview may vary depending upon whether it is conducted by a doctor (focus on treatment and medical evidence) or by a lawyer (focus on justice and advocacy). By way of example, lawyers may likely ask additional questions that could lead to an initial legal assessment of whether the survivor's account revealed allegations of torture or ill-treatment. However, no matter what, the main task is to obtain as much information as possible about what happened, hear the survivor's account of his/her experience and identify clear signs of violence.

A positive outcome of the interview may also be that by telling his/her story, the survivor may feel some level of relief, and the interaction with the interviewer may have empowered him/her to consider for the first time how to best use his/her story to the benefit of him/herself and others.

Interviewing skills should be used to get as much information as possible about the core questions:

Who did What to Whom? When? Where? And Why?

In the ideal situation, the following information should be collected:

Who

Who were the perpetrators? If unknown, can they be described in any way (clothes, age, sex, looks, language)? The description of any witnesses to the torture is important for a future criminal procedure. Note that witnesses could also count cellmates present when the victim came back from interrogation.

What: What kinds of physical, psychological and sexual torture was the victim exposed to? Which torture tools were used (cables, plastic bag, strings etc.)? Which body parts were involved? What was the duration? This information should also include a description of the immediate bodily or psychological effects of the torture, as noticed by the victim.

Whom: The identity of the victim(s) including features of significance to the impact of the methods used (e.g., physical or mental conditions, age, sex, religion, ethnic or other characteristics).

When: The time and duration of the arrests and detentions and description of when the different methods of torture were applied to the victim.

Where: The places of detention, if known, where the victim was detained, including a description of the premises. Unique features of the rooms and cells, which could be used for a later identification of the place are of importance.

Why: The motive for the torture is important for understanding the background and who were the perpetrators. Classical motives are to obtain information or a confession, or to punish the victim.

6.2 HOW TO DECIDE WHETHER TO ENGAGE IN AN INTERVIEW

To begin with, the interviewer should consider what specific knowledge, skills and experience would be required for the difficult task of conducting an interview with a survivor of torture. As a minimum, the interviewer should have received some prior training and supervision in documenting torture and have some experience with trauma handling. More specialist skills would be required in some situations – for example cases involving children.

If the interviewer concludes that he/she does not possess the required skills and the possibility exists to refer the survivor to a professional with more expertise, this should be done. Depending upon the circumstances, the referral could be made within one's own professional group (for example from one doctor to another) or between professional groups. For example, if a doctor is preparing for an interview, he/she should then consider whether the survivor should be advised to (also) see a lawyer. If referrals to others are not possible, it is important that the interviewer acknowledges that he/she may be the only contact the survivor has and that doing nothing would be worse, and then he/she should proceed at least with obtaining basic information.

6.3 INTERVIEW BASICS

The interviewer should begin with having read Chapter 1-5 of this Manual and knowing the specific challenges of interviewing survivors of torture. Then, it is crucial to plan and prepare the interview beforehand, and the interviewer should for example consider the methodology to adopt in order to begin the interview and to ask the key questions that would be relevant (see below). The basics of an interview would entail as a minimum the following:

Knowledge of local context

Familiarity with the local context is important, because it will help the interviewer understand and assess what is being told during the interview. This includes a deep and detailed awareness of the likely contexts of torture in the country or region; whether torture has previously been reported from particular places of detention; and what the usual methods of torture are.

Gender considerations

In some contexts, gender considerations may influence the choice of interviewer and/or interpreter. For example, it may not be culturally acceptable for men to interview female detainees or for an interpreter of the opposite sex to be present. When in doubt, the survivor should be asked if he/she feels comfortable with the people present, and if not, the interview cannot take place, and another appointment with someone else should be scheduled.

Time, location and arrangement of the setting of the interview

Since memory and physical signs of torture may fade over time, it is important to arrange the interview as early as possible after the act occurred.

An interview with documentation purposes can take place in both a custodial setting and non-custodial setting, the former being for example police stations, prisons, courts, military camps and detention centers and the latter being for example NGO offices, private lawyers' offices, medical clinics and hospitals. Whether it is the doctor or the lawyer who sees the survivor first will depend on the setting and the circumstances.

The location of the interview, which is a major determinant in gaining trust, must be accommodated to the survivor as wisely as possible. If the survivor is still in detention, the interviewer will likely not have many options with regards to the arrangement of the setting, but the advice mentioned below should be considered to the extent possible. If the survivor is not in detention, the following advice could be considered:

- Prepare a room that feels comfortable for the survivor, and that is quiet and free of interruptions. Attention should be paid to the lighting, and strong light should be avoided because it may resemble an interrogation room
- Avoid items that may revoke and trigger memories of interrogation (e.g., clock and table)
- Provide refreshments, if nothing else at least a glass of water
- Ensure access to a toilet if possible.

Duration of the interview

The interviewer should allocate enough time to carry out the interview, as brief and hasty meetings are usually fruitless. If interviews are rushed, it destroys trust and negatively affects the quality of the information obtained. In some situations, it may be helpful to divide the interview

into several shorter interviews rather than one long one, and it may include allowing for breaks during the interview, until the survivor is ready to proceed.

In case of very complicated histories, there is a choice between selection and spending time. Either only a part of the story is recorded or recording the full story requires several sessions. In case only a part of the story is recorded, the selection may be based on different criteria, for instance:

- The part of the history most important to the victim
- The part of the history with the most brutal torture
- The part of the history related to physical consequences, possibly those that are still visible
- The most recent part of the history.

In case no selection is done, and the intent is to collect the whole history, provisions should be made to ensure that several appointments can feasibly be made, but also that the most important parts are recorded during the first session, in case it turns out that no follow-up sessions can be had.

How to make the place safe and decide who should be present

Whenever possible, a risk analysis needs to be made prior to the interview, and any mitigating factors that can be put in place should be implemented (Chapter 3). If the survivor is still in detention, efforts should be made to carry out the interview in private or – if nothing else is possible – maybe within eyesight but certainly out of hearing range of staff, co-detainees etc.

To avoid intimidating the survivor by evoking associations of being interrogated, the interview should be conducted by one person, preferably not more. However, in a non-custodial setting the presence of others, such as a friend or a family member, might provide some support to the survivor.

Due to language barriers, the interviewer may need to be assisted by an interpreter. If working with an interpreter, he/she should be qualified for the task and needs to be prepared for the interview and the specific challenges related to talking about torture and trauma.

6.4 KEY ETHICAL PRINCIPLES

The do-no-harm-principle

The principle of do-no-harm is one of the cardinal principles of all human rights work. It is the duty to safeguard the safety and well-being of people or communities by carefully weighing the risks (e.g., of reprisals from the authorities) against the benefits of any actions taken on their behalf. Adhering to the do-no-harm-principle is always crucial, but it is particularly important in closed environment controlled by the authorities, e.g., in places of detention where detainees are in a position of dependence and heightened vulnerability.

Sometimes the risks are so high and likely to occur that it is better to cancel the interview with a survivor of torture rather than running the risk of causing harm.

The first reflection that an interviewer should always make is whether the risk of harm may be less if someone more experienced (and available) carries out the interview. For example, would a more experienced interviewer be able to ask questions in a different way that reduces the risk of the interviewee becoming retraumatized? The second reflection is how the interview should be planned to minimize risks to the fullest extent possible (see below).

As mentioned above, it is important that the interviewer does whatever he/she can to minimize the potential harm done by the interview itself. This also relates to the risk of re-traumatization. The interview situation may lead to the survivor reviving painful memories, and it may be the first time for him/her to tell the story. This in turn may lead to some level of distress during the interview which may be unavoidable. However, the interviewer should do everything to avoid this leading to more serious reactions that in turn may lead to aggravated or recurring symptoms of PTSD, anxiety, depression etc. If the survivor demonstrates such serious reactions, the interviewer may be required to end the interview earlier than prepared.

Confidentiality: Confidentiality of the information gathered during the interview is another essential component, and all professional ethical codes include the duty of confidentiality as a fundamental principle with the aim of protecting the individual.

Confidentiality relates to privacy during the interview setting. A breach of confidentiality happens for example when a prison guard or a police officer insists on being present during the interview or on knowing afterwards what was being said during the interview (see below guidance for how to handle such a situation).

Securing confidentiality also relates to how to store and use the information retrieved during the interview. The interviewer should consider whether it is possible to safeguard the information, and how to do this. E.g., is an extra password needed on the computer, or a locked cupboard in the office where the files can be kept?

Informed consent: Informed consent implies making sure that when someone consents to an interview and the subsequent use of the information provided, they are fully informed of and have understood the potential benefits and risks of the proposed course of action.

The following steps need to be taken with regards to survivors of torture:

Information: The survivor should be given sufficient information about the interviewer, the purpose and objectives of the interview, how the interview is going to take place, and how the information will be used afterwards, including who might get access to the information, and about risks and benefits of different approaches. Only when all this information has been given will he/she be able to properly assess how to proceed.

Comprehension: The interviewer needs to assess whether the survivor has really understood the information. Mental ability, language, age, and other aspects may affect the individual's ability to give informed consent, and the explanations and information given need to be adjusted to this to ensure good understanding. Obviously, the higher the potential risk, the higher the obligation to ensure a proper understanding of the risks.

A good advice when assessing whether the survivor has understood the information given, is to ask him/her to repeat back in his/her own words the purpose of the interview and any other key information provided including risks and benefits.

Voluntariness: The survivor's agreement to be interviewed should be voluntary and the interviewer should never exert pressure or make promises in an effort to gain information. When asking for informed consent, the interviewer should be sensitive to the unequal power dynamics that exist between him/her and the survivor. If the person is still in detention, he/she is in a situation of vulnerability and powerlessness and may feel pressured to consent. The interviewer should not try to influence the survivor directly or indirectly, nor should he/she minimize or trivialize risks or raise expectations of what can be achieved through the action. Voluntariness also implies that the survivor may at any time withdraw his/her consent, and that he/she may decline answering specific questions during the interview and even stop the interview.

Types of consent: These may include but are not limited to:

- Consent to conduct the interview
- Consent to take notes and/or record during the interview
- Consent to keep the notes and files afterwards
- Consent to use parts of or all the information externally (e.g., in interventions with the authorities) and/or publicly (e.g., in reports). Specific (additional) consent should be given to use the source's name or other person-attributable data. If such consent is not provided, the information should only be presented anonymously without disclosing the names or any other details that could lead to identification
- Consent to refer the victim to other specialists (e.g., for treatment or further documentation).

How to obtain an informed consent? The interviewer should decide which of the various kinds of consent to collect in the individual case. Practically speaking, to obtain an informed consent, the following steps need to be taken:

- A verbal consent is acceptable and might be preferable in some situations, such as when the interview involves a detainee, as asking for a written consent could place the survivor at huge risk if the document fell into the wrong hands, or when survivors are illiterate. If a verbal consent is preferred, then the content of the consent relevant for the specific circumstances should be explained (with the assistance of an interpreter if required); time allowed for questions and clarifications; and finally, consent obtained and written down in the notes from the interview

- If a written consent is preferred, a written consent statement relevant for the specific circumstances should be prepared; then the statement should be read aloud allowing time for questions and clarifications (with the assistance of an interpreter if required); and finally, the survivor should be asked to sign the statement with date indicated.

6.5 ENGAGING WITH THE SURVIVOR

Torture is an intimate subject, and talking about the experience can be extremely intimidating, and it may be painful and even shameful to a survivor to have to relive and tell what he/she experienced. Most survivors would therefore not tell immediately what they have gone through or may even never come to the point of being ready. The issue of torture may be the reason for the interview having been organized and may therefore be on the agenda from the very beginning – or it may surface unexpectedly in a consultation with lawyers or doctors about other issues. There is obviously a difference between conducting interviews addressing cases of torture where the victim presents the torture up front, and cases where torture is not immediately on the agenda, maybe because the victim is not attentive to the impact on health or does not wish to bring it out in the open.

In any case, interviewing survivors is a skill set that can be improved greatly through preparation efforts, reflection, and experience. Communication, interpersonal and analytical skills are at the core, and for the inexperienced person, this should be learnt and developed through training, supervision and actual practice. Some important aspects of this skill set relate to the following:

Trust, empathy and rapport

Building trust, showing empathy and establishing good rapport with the survivor are important prerequisites for a successful interview, since it is only when the survivor feels that he/she is in a safe and caring environment that he/she may feel encouraged to talk about his/her experience. Respect and empathy can be shown in many ways:

- Both through words and actions
- Be on time and keep appointments
- Respect promises
- Make sure the interview does not resemble an interrogation. Spending some time discussing matters which may be marginally relevant for the purposes of the interview will often demonstrate that the interviewer is genuinely concerned about the survivor's well-being
- Adopt a non-threatening tone of voice and posture, and establish a caring context
- Avoid physical contact (e.g., handshake). If touching is necessary – for example during a physical examination by a doctor – always ask for permission before
- Maintain eye-contact, be attentive and do not focus too much on prepared questions

- Pay attention to posture and how to be seated in relation to the survivor; being seated too closely can be intimidating – but being seated at each end of a table can evoke memories of an interrogation. The appropriate distance can be assessed by being sensitive to body language, demeanor and what is appropriate in the cultural context
- Pay attention to language; plain and understandable language should be used to avoid intimidating or confusing the survivor
- Acknowledge feelings through words, body language and sentences like "I understand that it must be difficult to talk about this" and "Is it okay that we continue talking about this?"
- Make sure not to show any judgement through words or facial expressions on the information received. Even small body language expressions (for example of disgust) may make the survivor reluctant to give a detailed account of his/her experience.

Another aspect is the ability to listen neutrally. An interviewer wants to convey empathy to the torture survivor but does not want to become so emotionally affected by what he/she hears – for example angry, scared, or sad – that his/her ability to listen diminishes because he/she gets absorbed in his/her own emotions. One way of diminishing the risk of this happening is for the interviewer to familiarize him/herself with what he/she may expect to hear before actually meeting the torture survivor.

If an interview is carried out without the above due considerations, there is a risk that the survivor may leave the interview with a reactivation of the trauma experienced. This may influence his/her mental and physical health for a long time after the interview has taken place.

The above-mentioned, when used throughout the interview, will contribute to a good rapport being built in the interview, and the survivor will have a feeling of control over the situation.

The need to gain information about specific topics should be balanced against the needs of the survivor to be able to speak about what is important to him/her. Following this balancing approach may also help in supporting the strengths of the survivor and therefore contribute to his/her empowerment. The stories told are not only stories of submission and terror but may also be stories of resilience and resistance to the trauma and pain. The latter will give an impression of the person's coping mechanisms.

Avoid retraumatization

The survivor may become sad and start crying during the interview. His/her difficult situation should be recognized. Sweating, trembling, ticks, flashbacks and anger are all signs that the interviewee is becoming distressed and that a break (or ending the interview) may be needed. The interviewer should always focus on "reading" the survivor and pay attention to his/her body language, facial expressions, tone of voice, and gestures. This can indicate his/her emotional state and willingness to talk about a specific topic. No matter what, it is the victim who should decide the pace of the interview and what to talk about and what not.

Some "triggers" can lead to re-traumatization (see above), and the interviewer should do his/her utmost to avoid such triggers. By way of example, it is crucial that the interview does not in any way resemble an interrogation setting in which the interviewer - through body language, judgements, types of questions - imitate situations of abuse. Moreover, building a good rapport and showing trust and empathy, as explained above, would minimize the risk of re-traumatization. The survivor should feel that he/she has the power over the interview and should not be pressured to proceed beyond what he/she feels that he/she can handle. He/she should never be pressured into answering questions, and the interviewer should not interrupt or put words in the interviewee's mouth.

6.6 CONDUCTING THE INTERVIEW

The following steps could be taken to initiate the interview in a way that is compliant with the advice given above:

- Greet the person in a culturally appropriate manner, introduce yourself and your position
- Explain the purpose of the interview and how it will be conducted including how much time is available
- Manage expectations by clarifying what you can and cannot do
- Inform the survivor that he/she can choose not to answer certain questions, and can choose to interrupt the interview at any time or withdraw from the interview altogether
- Ask for permission to take notes and/or record the interview
- Clarify that information provided will be kept confidential, unless the survivor decides otherwise
- Ask for personal information (name, age, nationality, occupation, marital status, family etc.)
- Seek the informed consent
- Conduct the interview following the advice given in this chapter, including:
  - Show empathy in words and actions
  - Consider carefully which types of questions to use and when to use them
  - Let the survivor set the pace.

During the interview, questions should be asked that reflect what the person has told, so that over time the interviewer gets more and more detailed information. The types of questions asked during the interview will be very decisive for the information obtained.

Broadly speaking, there is a distinction between closed and open-ended questions:

- Open-ended questions allow the survivor to tell what happened in his/her own words, like for example, "Can you describe what happened to you?". This will show that the interviewer genuinely cares to hear the story in his/her own words, and respects what is being said, and the interviewer will probably even get more detailed information.
- Closed questions may be answered with only one or very few words, e.g., "Did you get beaten?" where the answer could be as short as "yes" or "no". Such questions may be useful to obtain factual knowledge or to verify already given information, but the interviewer also runs the risk of closing the conversation and making the survivor believe that the interviewer is only interested in very short answers and only in the specific details being requested.

In most instances, asking open-ended questions will be more helpful. If there are inconsistencies in the interviewee's account, clarifying questions may be asked, e.g., same questions using different words.

Questions related to sensitive issues, e.g., the trauma and personal experience of the harm suffered, or to cultural taboos, may evoke strong emotional reactions. The interviewer first needs to build a good rapport with the survivor before embarking upon asking about such issues (see above). The survivor's boundaries should always be respected, and the interviewer should be careful when addressing particularly sensitive issues. In practical terms, this means that he/she starts by asking questions that will give an impression of the survivor and his/her personal situation and only then gradually moves towards the sensitive questions.

Leading questions are questions that have implicit assumptions about what has happened, or what the correct answer is. For example, if the interviewer asks, "How many times were you suspended?" and the talk so far has not been about suspension, it is an underlying assumption that suspension actually took place. Leading questions should be avoided, since they may influence the validity of the testimony.

It is important to pay attention to the flow of the interview when deciding on which questions to ask and to let the interview progress nicely and naturally.

If the person is or has been detained and suspected or convicted of committing a crime, he/she may volunteer information about the crime in question. However, questions about this are unnecessary for documentation purposes since this information has nothing to do with the alleged torture.

Inconsistencies

An unchronological or seemingly incoherent account is not necessarily an indication of an unreliable interviewee but may be due to other factors such as stress, trauma or confusion. Several factors may complicate the task of collecting information, for example the survivor having memory problems due to PTSD or depression, and/or having problems giving a coherent account of what he/she experienced; he/she may be reexperiencing the torture triggered by telling the story; or the actual history may be quite complicated – many arrests and detentions, many interrogations during each detention and many torture methods and ill-treatment during each episode.

Checklists

Some interviewers, especially the less experienced persons, prefer to bring a brief checklist. It should be remembered that checklists should be used only to support the memory and not as a questionnaire guide. Checklists may negatively influence the flow of the conversation just like closed questions do. More experienced professionals master the interviewing skills and remember what to ask and would likely prefer to conduct the interview without the use of a checklist.

Drawings

Apart from the story, in some situations it may be useful to ask the victim to make drawings of locations and situations to get a better impression of what happened and where. The drawings may help the person remember the situation and ensure better accuracy, and they may help the interviewer understand what is being told.

Signs of violence

Even without being a doctor, the interviewer should consider whether signs of violence on the victim's body can be documented, e.g., scars or burn marks. Documentation can be done through drawings or photos. All signs of violence should also be described in words, e.g., location, size and color. The victim's consent should always be obtained, and nothing should be done that may intimidate him/her.

Finalizing the interview

Ending the interview in a good way is just as important as building rapport with the survivor when beginning the interview. He/she should not be left in an emotionally difficult state and the interview should therefore finish with topics that are not emotionally heavy. The interview may end as planned. However, always remember that the survivor should be allowed to control the interview process and he/she could decide to end the interview earlier if he/she does not want to proceed.

The following steps should be taken to end the interview:

- Move the discussion to a less sensitive topic to bring the survivor into a more positive state of mind
- Ask if the survivor has something to add to his/her story or any questions
- Inform him/her of the potential next steps
- Revisit the informed consent to make sure the survivor has not changed his/her mind in relation to what was initially agreed to, and make sure that the person is fully informed of, and has understood the consequences of the course of action, including the potential benefits and risks
- Mention possibilities of referral and refer for appropriate support, if necessary and desired
- Thank the person for his/her time and end with a proper farewell.

6.7 NEXT STEPS

Immediately or as soon as possible after the interview has taken place, the notes from the interview should be written up, using the survivor's exact words as much as possible. Impressions on atmosphere, reactions, non-verbal signs etc. should be included as well as the interviewer's reflections on the credibility of the information and the interview situation. This will all help the interviewer to later write the story.

Maybe one interview is not enough to collect the information. If more interviews are needed plans should be made on when and where to carry them out.

Notes and other documents should be stored as soon as possible in a secure location, and data should be de-identified for security reasons (Chapter 3).

CHAPTER 7: A CHRONOLOGICAL, COHERENT AND DETAILED STORY

Collecting quality, accurate and reliable information should always be the goal, no matter how difficult it might be in a given circumstance.[90]

Introduction

Introduction

This chapter focuses on the interviewer's task to write a chronological, coherent and detailed narrative account of the survivor's traumatic experience as told during the interview. The chapter begins with the practical issue of organizing the notes from the interview and then discusses how to write the story. The chapter will then discuss how to assess the story against the standards of high-quality documentation, and whether the story appears reliable and is of sufficient accuracy to appear credible to others, if a decision is made to publish the story or to litigate the case. A best practice example is provided at the end of the chapter.

After collecting the story, discussions with the survivor may ensure whether he/she would like to submit a complaint to the legal system or/and allow the story to be used for advocacy purposes. That may require a more comprehensive medical examination (Chapter 8) and/or further efforts to collect evidence and to corroborate the information gathered during the interview (Chapter 9).

By the end of this chapter, you should:

- Know how to organize your notes and the information collected during the interview
- Know the standards of documentation (accuracy, quality and reliability of information)
- Be able to write a chronological, coherent and detailed narrative
- Be able to apply the standards of documentation when assessing the information.

90 C. Giffard & P. Tepina, *Torture Reporting Handbook*, 2015, p. 65.

7.1 ORGANIZING THE NOTES AND THE INFORMATION

During the interview, information has carefully been collected based on what the survivor told, and what was observed. Subsequently, the interviewer will need to read the notes from the interview and organize the information following a systematic and analytical approach. It may be useful to make a timeline, and if separate stories are told during the interview, then relate each of the stories to a different time and place.

First, information about the interview setting and participants is noted, including where and when the interview took place, by whom, and who were present. Then, secondly, information about the circumstances around the abuse(s) is collected. It should be systematized according to narrative cycles that reflect the various "events" on the timeline that may include either detention or a non-custodial setting (or possibly a combination of both).

Create a timeline starting from detention or non-custodial situation and then indicate the numerous events that can differ and interchange back and forth depending upon the specific circumstances:

Detention

Detention may include the following situations:

- Arrest
- Transportation
- Interrogation(s) at a police station or another facility
- Transportation
- Detention (prison or another facility)
- Transportation
- Detention in prison after trial

Non-custodial situations

This may include sequenced situations related to several events or one event.

A separate story relating to each cycle should include details about "*who did what to whom, when, where and why*", as explained in Chapter 6.

It is likely that some details are missing, and that the chronologies are inaccurate and confusing (Chapter 6). When organizing the information, the missing information should be noted, and efforts made to try to clarify the inconsistencies.

If further interviews are possible, information about aspects that were missing or inconsistent in the first interview may be obtained, so that a clearer understanding is possible. Subsequent interviews should of course be thoroughly prepared to get the most out of them.

7.2 WRITING THE STORY

When having gone through the above elements, the interviewer is ready to write the detailed story. It should be noted that the narratives written by the doctor and lawyer have many similarities in terms of the key focus on collecting the survivor's story. Ideally, the two narratives would supplement each other and provide the full picture of what happened.

The goal of documentation is to prove a factual situation, namely that torture or ill-treatment took place. Good analytical and writing skills generally would be a prerequisite. Writing the story as soon as possible after the interview would provide the best outcome since, even with the best of notes, memory is still an important factor when writing the story. Over time there is also the additional risk of the memories unconsciously being mixed with memories from other interviews.

Despite different writing styles, some basic guiding principles for a well-written story would include the following:

- Be clear on what is the core of the story and what is relevant and what is not
- Be honest towards what has been said during the interview and use the survivor's own words
- Avoid adding factual information that has not been said by the survivor
- Structure the text around the chronology of the different events
- Keep in mind that the purpose of the story is to describe the elements of "who did what to whom, when, where and why"
- Add as many details as possible to what is considered the core of the story
- Write in a logical manner without contradictions
- Use an objective perspective on the story and avoid judgmental words
- Use appropriate language and avoid using technical language not understood by other professions and laypeople
- Adhere to common grammatical rules, use of same tense etc.
- Verify information if necessary (e.g., by consulting other sources of information)
- Read the story several times and assess whether the text is convincing
- Re-write the story several times until the flow and the chronological order is clear
- Share the story with the survivor to get his/her comments and amend the text accordingly

7.3 ASSESSING THE STORY AGAINST THE STANDARDS OF GOOD DOCUMENTATION

This Manual recommends using three key standards to assess the story with a view to ultimately assess whether the information could appear convincing to the specific audience, e.g., a judge, namely accuracy, quality and reliability.

Objectivity when assessing the information is a goal. During this assessment, it would also be important to remember the impressions during the interview – for example reactions from the survivor; non-verbal signs and whether the person appeared like you would have expected given his/her cultural and social context etc. Also remember to compare the story with drawings and photos.

The assessment of the accuracy, quality and reliability of the information should be made in light of the specific purpose of the interview. Some documentation purposes are not tailored to meet the high evidentiary standards of a court, and then there would be no requirement in the initial assessment to use these standards or to explicitly make consistency assessments (Chapter 8 – 9).

Accuracy and reliability depend very much on the time of collecting the information (best evidence is collected as early as possible) and the source of the information. Obviously, factual information which contains many details, is consistent, non-contradictory and clear, and that forms a chronology, would be considered of good quality and accurate.

Quality relates to the survivor's ability to remember the experience and communicate it to the interviewer. Memory is difficult and in addition torture will often leave the victim with difficulties remembering the traumatic event. Therefore, the story will often contain minor inconsistencies that may not affect the quality of the information. However, major inconsistencies should raise the attention of the interviewer and prompt further verification of the information. Thus, the interviewer needs to assess whether such inconsistencies make the factual information ultimately appear unreliable, or whether a broad outline of the traumatic events and torture will emerge and stand up over time.

Example of a detailed story:

BOX 7.1

CASE OF RACHED JAÏDANE

Rached Jaïdane (RJ) was educated as a mathematics teacher. In 1993, while RJ was a university lecturer in France, he travelled to Tunisia alone without family to attend his sister's wedding.

Arrest at sister's house

On 29 July 1993, at around 2:00 AM, when RJ was staying at his aunt's residence in Tunis, about 15 State security officers in civilian clothes (carrying small pistols) turned up in the middle of the night, without a warrant, and arrested him in front of his family. The officers searched his room where he was sleeping, and seized his passport and 2,000 dinars that he was intending to offer his sister as a wedding gift. RJ was handcuffed.

Around 3:30 AM, RJ was taken to the Ministry of the Interior and interrogated about his alleged links with Salah Karker, a leader and militant of the Ennahda Islamist party exiled in France. RJ was also interrogated about his involvement in planning a coup against the Democratic Constitutional Rally (the ruling party in 1993).

Detention and interrogation at the Ministry of the Interior

Same day (29 July 1993) around 4:30 AM, RJ was taken to the Ministry of the Interior and escorted to a plush office with padded doors on the fourth floor. A.S. (the Director of National Security), accompanied by an officer, was seated behind the desk. He introduced himself as the Director of National Security, without revealing his name, and then asked RJ "where the bombs were hidden". RJ replied that he had no knowledge of bombs, and that he had simply come to attend his sister's wedding. The exchange lasted for two minutes. A.S. then threatened to fetch his sister. RJ reacted and insulted A.S. who then nodded to an officer, who took RJ to another room, where Mohamed Koussai Jaïbi was introduced to him as one of his alleged accomplices.

In the other room, Mohamed Koussai Jaïbi was lying on the ground with his clothes torn and his face bleeding and swollen. His feet were bare, his bleeding right foot was apparently broken, and he had bruises on his hands. There were also about six officers in the room. They ordered Mohamed to state that RJ's assignment was to put him in contact with Salah Karker. Mohamed did not reply.

A dozen officers took RJ into another room on the same floor. A.S.' teams of officers then took turns in subjecting RJ to acts of torture until the following day (30 July) around 7:45 PM. The officers asked him questions accompanied by threats of torture and death. RJ, on receiving a first slap on the neck, turned around and spat at the officer. By way of retaliation, all the officers present punched him and beat him with truncheons and batons for several minutes.

RJ was then taken to another room with a chair and two desks on which they had placed a wooden pole. The officers ordered him to remove his clothes. When RJ refused, they undressed him by force, leaving him in his underpants. They hit him, beat him with a truncheon and administered electric shocks to his abdomen. RJ was suspended on the pole, which was tied to his ankles and wrists with pieces of cloth. He was then beaten in this position for about 30 minutes by a person called Belgacem, nicknamed "Bokassa". Other detainees informed him later that they had been subjected to torture by the same person.

After some time, RJ managed to loosen the bonds and fell to the floor. The officers began to hit him again, especially on the nails (he still has a scar on his right thumb); they crushed cigarettes on several parts of his body, including one of his hands and his genitalia. They then penetrated his anus with a stick, saying: "There you are, we pushed it in; do you think that you're a man?" RJ lost consciousness twice.

BOX 7.1 (CONTINUED)

The officers also threatened to bring in his sister and rape her. Then they put him in the "roasted chicken" position.

On the same day (30 July) at midnight around 12:30 PM, RJ was allowed to pray after promising his torturers that he would confess everything. Belgacem then made him sit down and brought him coffee. RJ pulled himself together and dealt him a blow. Belgacem retaliated and the torture resumed.

The officials brought in an iron basin. He was handcuffed behind his back. Two officers, nicknamed Gatla and Fil respectively, entered the room. They plunged RJ's head into the basin several times. When he started to drown, Fil sat on his stomach to make him cough up water. They put the detainee back in the "roasted chicken" position and proceeded to strike him, particularly on the sexual organs.

The torture session continued until about 7:45 PM on 31 July. RJ finished writing a dictated confession, in which he admitted to having been trained in the martial arts at the Parisian faculty of Jussieu, to knowing Mohamed Koussaï Jaïbi, and to having reached an agreement with the Islamist opponent Salah Karker.

Same day (31 July) at about 7:45 PM, RJ was taken down to cell No. 8 located in the basement of the Ministry of Interior. The cell, which measured about 3.5 by 4 metres, contained a mattress and a hole in the floor which served as a toilet. RJ shared the cell for several days with a fellow detainee.

During the subsequent 20 days in custody, RJ continued to be beaten with fists and clubs and to be subjected to threats with a view to compelling him to sign a new series of confession statements. The abuse was less severe than that inflicted during the first period of custody.

Release and after-effects of the torture

RJ was released from prison in February 2006 after 13 years in Tunisian prisons and continues to suffer severe physical and psychological after-effects of the torture, which have entailed a disability rate of 35 per cent. RJ suffers, among other, after-effects from an implosion of the right eye, a deviation of the nasal pyramid, buzzing in the ears, positional vertigo, multiple dental fractures, aggravation of a hernia and a varicocele, and post-traumatic neurosis. RJ is unable to father a child because of several of these pathologies.[91]

91 Decision by UN Committee against Torture, 3 October 2017 (CAT/C/61/D/654/2015).

CHAPTER 8:
MEDICAL DOCUMENTATION OF TORTURE

The evaluation should be based on the physician's clinical expertise and professional experience. The ethical obligation of beneficence demands uncompromising accuracy and impartiality in order to establish and maintain professional credibility.[92]

Introduction

8.1 Early signs of torture sequelae

8.2 Bringing torture into the interview

8.3 Getting the history

8.4 Describing symptoms

8.5 Physical examination of torture victims

8.6 Mental health examination

8.7 Describing findings

8.8 Preparing the medical record

8.9 The Istanbul Protocol guidance on how to write a medical report

Introduction

In some cases of torture, the first medical examination is initiated by judicial authorities as a part of proceedings, e.g., court proceedings or an investigation undertaken by the public prosecutor or even an inquiry commission. Such medical examinations will often be undertaken by specialists in forensic medicine.

In other cases, the consequences of torture give rise to acute or chronic health problems, which again urge the victim to seek help in the health care system. This is often with general practitioners or family physicians, but it could also take place in the emergency room or during a consultation with the prison doctor. In those situations, the victim may or may not talk about what happened to him/her, and it is up to the doctor to be attentive to the possibility that torture may be an underlying cause for the patient's problems.

Thus, while in some cases the issue of torture is on the agenda from the very beginning, in others this might be far from the case. Rather, the torture victim presents health problems without introducing that torture might be the cause, either because the victim does not acknowledge the connection or because he/she does not want to or cannot recall the terrible experiences. Also,

92 Istanbul Protocol, para 162.

if the victim is still in custody, he/she may fear reprisals from the authorities. Still, some victims may raise or imply the connection between symptoms and torture.

During a consultation, the doctor may suspect that the patient may be a torture victim. This may be based on what the patient explains (the history), the symptoms he/she presents, or the findings resulting from the physical and psychological examination. Such indicators should prompt the doctor to undertake, with the consent of the patient, an expanded interview and examination, focused on torture and its consequences.

The issue of torture may also surface unexpectedly when in contact with lawyers or human rights activists. While the role of health professionals and non-health professionals may be equally important when it comes to taking the history of torture, caution should be exercised by non-health professionals regarding "examination" of the patient in order not to cross borders of privacy or risk retraumatizing the victim if the examination is not done professionally. However, with the explicit consent of the victim, description and photographic documentation of early physical signs of torture could and should be done by other professions, so that evidence is secured while it is still visible.

There is obviously a great difference between addressing cases of torture where the victim presents the torture up front, and cases where torture is not immediately obvious, because the victim is not attentive to the impact on health or does not wish to bring it out in the open, and the doctor needs to proceed carefully to ensure the patient's consent and collaboration.

This chapter will provide guidance on how to elicit the torture history and carry out the physical and mental health examination as well as how to describe the findings when dealing with a suspected or alleged victim of torture. Overall, what is required in these cases is not much different from what is required in any other thorough medical interview and examination, but it is important that the doctor is aware of the specific issues that may arise and aware of how the results of his/her findings may later be used.

By the end of this chapter, doctors should:

- Be aware that victims of torture may be encountered in many different settings
- Be able to apply common medical practice in relation to victims of torture
- Be able to address specific signs and symptoms with which victims of torture may present.

By the end of this chapter, lawyers should:

- Know the basics of how doctors examine victims of torture
- Be able to identify early signs of torture sequelae and document these through description and photos
- Be able to explain to a victim of torture why a medical examination may be important and what will happen during the examination.

8.1 EARLY SIGNS OF TORTURE SEQUELAE

The signs that may trigger the thought that torture is involved could emerge from the history of the patient, the symptoms presented, and the signs found on physical and mental examination.

From the history told by the victim (the anamnesis) certain features may raise the suspicion that torture has been committed. First and foremost, information that the patient has been arrested, detained and/or imprisoned must trigger further attention. Also, information about social isolation, family conflicts and violence, and poor social functioning generally may contribute to such a suspicion.

Although there are no symptoms which apply to all victims of torture, some symptoms are quite frequent and may give rise to suspicion of torture or other types of trauma. First and foremost are symptoms related to PTSD. This condition has as its cardinal symptoms intrusion, avoidance and hyperarousal. These symptoms often give rise to sleep disorders including interrupted sleep and nightmares, social isolation, lack of ability to control emotions, and sometimes self-medication, possibly developing into an abuse of substances, alcohol or medicines. Bodily symptoms may include chronic unspecific pain or neurological symptoms like paralyses or sensory disturbances without obvious causal backgrounds. See also Chapter 5.

Physical findings which might indicate torture can include among others: Bruises or scars indicating violence, signs of fractures, soft tissue tenderness, neurological motor or sensory dysfunctions, reflex anomalies etc.

The more indicators present, the higher the likelihood that the patient has been subjected to torture. While there is no availability of research showing exactly the predictive value of each single indicator or their combination, clinical experience shows that just a few indicators (e.g., sleep problems and previous detention) may provide quite a good indication of torture being involved.

8.2 BRINGING TORTURE INTO THE INTERVIEW

The principle of autonomy must apply, if the doctor or lawyer wants to introduce the topic of torture in cases where the person in question has not done it him/herself. For this reason, it is necessary to exercise caution and phrase the question to the person in a way which leaves it to him/her to decide what and how much to tell. One way of asking could be:

I think that some of your problems may be related to the way you were treated by the authorities – would you mind if we talk a little bit more about that?

Or

The symptoms you have presented are sometimes seen with people who have been subjected to torture - do you think this might be the case for you, too?

This will give the person the opportunity to refuse to discuss the issue of torture, while still encouraging the possibility to do so.

However, even if the person agrees to the direction of the interview, the doctor or the lawyer should still let the process be guided by the reactions of the person. To help him/her decide how to proceed, it is important to explain why the detailed recording of the torture may be important. Reasons that may apply in the single case are:

- It will allow the professional to better assist with the relevant treatment, possibly including referrals
- It will ensure an early documentation of the signs and symptoms that may result from a focused interview and examination
- This will increase the chances of getting reparation
- This will increase the chances of having the perpetrators punished.

Whatever is the most relevant argument for embarking into the torture related topics, the victim must weigh this potential benefit up against the risk and the pain involved in retelling the story.

8.3 GETTING THE HISTORY

The torture history

The "who did what to whom, when, where and why" questions may be asked by human rights defenders, lawyers, and doctors, but a doctor may concentrate on what happened, and on the person's bodily and psychological reactions to this, both immediately following the incident and on a longer-term basis. This will help the doctor assess what to look for in the physical examination, and it will also guide him/her to which additional questions to ask to further understand what happened, and how the patient reacted to this. For example, if the torture victim tells about having been burnt by cigarettes, the doctor may proceed to ask him/her to describe the wounds ensuing from this, how they developed over time, whether they got infected, how the scars developed, etc. This put together, will again guide the doctor to assess the findings of the physical examination and their consistency with the story.

The medical and psychological history

The medical history, i.e., past and current medical conditions, is as important to the evaluation of torture cases as it is in general medical evaluations. This is obviously the case because past and present medical conditions may give rise to signs and symptoms which could blend with symptoms originating from the torture.

For instance, aspiration of substances (chili, petrol and/or vinegar) in connection with plastic bag torture may give rise to aspiration pneumonia and even long-term respiratory symptoms. In case the victim is a smoker and suffers from chronic obstructive pulmonary disorder (COPD),

the torture symptoms and the COPD symptoms may cover each other, and it may become difficult to assess the impact that the torture has had on the victim.

Similarly, the mental health consequences of torture may be difficult to evaluate in case the victim previously tended to suffer from depression or anxiety, and for this reason such historical information needs to be recorded. In psychiatry, conditions are evaluated against the usual mental health condition of the patient, the so-called premorbid condition, and this approach also applies when evaluating the mental health impact of torture.

Finally, pre-existing conditions may exacerbate the effects of certain torture methods. For example, a patient suffering from a phobia may have very severe immediate and long-term reactions to being exposed to the object of the phobia, and a patient suffering from a bleeding disorder (hemophilia) may develop bleedings which in individuals without the disease would cause nothing but bruises, but which in this particular individual may become life-threatening bleedings.

8.4 DESCRIBING SYMPTOMS

In the absence of a doctor, a non-medical professional may ask some general questions about symptoms, e.g., the intensity of pain at the time of the torture and at the time of the interview, but one should keep in mind that asking questions about bodily functions and reactions may seem inappropriate and intimidating when coming from a non-medical professional. Also, doctors have a certain logic behind their questions about bodily functions that may lead them to conclusions regarding diagnosis and trauma mechanisms only when specific additional questions are asked that follow logically from the information provided by the answers to the initial questions. Finally, to properly assess the information about bodily functions and symptoms provided by the victim, usually the information needs to be linked with the findings from the physical examination.

Symptoms include all the observations of bodily and psychological phenomena made by the victim him/herself. This includes not only current symptoms but also previous symptoms that may have a possible relationship with the torture. For instance, if the victim has been subjected to teléfono torture (beatings on both ears), symptoms of bleeding from the ear, hearing loss or tinnitus are relevant, even if they are no longer present. Thus, it is always important to also ask about previous symptoms, as they may guide the assessment of the torture story and provide important evidence.

A more complete description of symptoms may be prompted by going through organ systems similarly to a routine medical interview:[93]

- Vision and hearing
- Head and neck

93 The Free Dictionary by Farlex: Search on “Review of systems”.

- Pulmonary
- Cardiovascular
- Gastrointestinal
- Genito-Urinary
- Hematology/oncology
- Obstetrical/gynecological/breast
- Neurological
- Endocrine
- Immune system and infectious diseases
- Musculoskeletal
- Mental health
- Skin and hair

As mentioned above, the time aspect is of great importance. Hence, when describing symptoms, their time of onset, any major change and their possible disappearance should be clearly stated to allow for a comparison with the time of the torture. In general, symptoms should be described with respect to the following dimensions:

- Bodily location including radiation of pain to other parts of the body
- Chronology and development over time
- Quality and quantity (character and severity)
- Aggravating and alleviating factors
- Associated symptoms.

When describing symptoms possibly related to torture, maybe the most important feature is the time of onset and subsequent development. The victim should be asked to describe carefully when the symptoms were first noticed, and how they developed in terms of intensity and frequency. For instance, the symptoms following suspension could be soft tissue pains and a burning or prickling sensation (paresthesia) during the first days or weeks and then gradually disappearing, while symptoms of traumatic brain injury after beatings may develop over days or weeks and persist for months or even years.

A second important aspect to consider is the functional limitations resulting from the potential torture sequelae. By way of example, the ability to undertake activities and participate in major life areas (fulfilling role in family, in employment context, as active citizen, pursuing quality of life) may be hampered by torture. The type of reparation should reflect such consequences.

In relation to pain, a more thorough description could be warranted: How bothersome is the pain and does it interfere with daily activities? Does it keep the victim up at night? What is the pain intensity from 1 to 10 with 10 being the worst pain of their life?

8.5 PHYSICAL EXAMINATION

The doctor's physical examination of the victim takes place like in any other context following the basic pattern of a "top-to-toe" examination. However, in addition, the examination is guided by the torture history: If, for instance, there are allegations of falaqa torture, obviously special attention is given to examination of the feet and describing the walking function, and if there are allegations of teléfono torture, a careful examination of the ears including the tympanic membranes should be made.

The physical examination should include:[94]

- General condition
- Skin
- Head
- Eyes
- Ears
- Nose and sinuses
- Mouth and pharynx
- Neck
- Back
- Breasts and armpits
- Front of chest and lungs
- Heart
- Abdomen
- Rectum and anus
- Reproductive organs
- Legs
- Musculoskeletal system
- Blood vessels
- Neurologic screen

While doing the physical examination, it is important to consider how this can be done in a way that is as little intrusive to the victim as possible. For example, the victim should not be examined completely naked. The doctor should examine one body part at a time while ensuring that other body parts are covered in clothes or with a blanket.

94 The Free Dictionary by Farlex: Search on "Physical Examination".

8.6 MENTAL HEALTH EXAMINATION

The health professional's mental health examination includes any symptoms and signs of a mental disorder currently exhibited by the victim as well as a functional assessment.[95]

- General appearance and behavior
- Speech, mood, affect
- Coherence in thought processes, including recurrent themes, delusions, obsessions
- Thoughts of harming self or others
- Perceptual disturbances (hallucinations, depersonalization)
- Level of cognitive function (orientation, concentration, memory)
- Capacity for performing activities of daily living (physical and instrumental)
- Sensorium and level of cognitive function (e.g., orientation, attention, concentration, registration).

In addition, it might be relevant to implement brief tests on PTSD, depression and anxiety, for instance the trauma symptoms that are part of the Harvard Trauma Questionnaire.[96]

8.7 DESCRIBING FINDINGS

Findings which are potentially related to torture should obviously be meticulously recorded – as this is the whole purpose of documentation. The recording should include description and photographing.

The description of findings must be as detailed as possible. When it comes to changes of the skin, certain features must be included in the description. These include:

- The type of lesion ((bruise, abrasion, wound etc.)
- Localization (use body diagram): symmetrical, asymmetrical
- Shape: round, oval, linear, etc.
- Size (use ruler)
- Colour
- Surface: scaly, crusty, ulcerative, bullous, necrotic
- Periphery: regular or irregular, zone in the periphery
- Demarcation: sharply, poorly
- Level in relation to surrounding skin: atrophic, hypertrophic, plane.[97]

95 American Psychiatric Association: Practice Guidelines for the Psychiatric Evaluation of Adults, 2016.

96 Arabic version of Harvard Trauma Questionnaire, 2006.

97 IRCT | *Medical Physical Examination of Alleged Torture Victims*, 2004.

Visible changes should be documented photographically. There are certain guidelines for how to make photos for forensic purposes:[98]

- Use forensic ruler and fill out the data box (date, victim, place, photographer). If you do not have a forensic ruler, use another ruler or something that everyone knows the size of, for example a local coin. The date, name of the victim, place and photographer can then be written on a piece of paper.
- Ensure sufficient light
- Get as close to the subject being photographed as the situation permits
- If possible, mark right and left on close-up photos
- Also, take overview photo, both to indicate the identity of the victim (the face) and to show the anatomical position of the lesion
- Be aware that photos might be shown in court, so cover up body parts that are not important for the picture, and think about how to reduce exposure of naked body parts
- Protect data and photos carefully against theft, copy and abuse
- Use the camera that you have at hand. A mobile phone camera is better than no camera. If using a mobile phone camera, remember to save the photos in a secure place and delete them from the phone as soon as possible.

8.8 PREPARING THE MEDICAL RECORD

In cases where the victim is not seen by a forensic doctor or other specialists, the first documentation record may eventually serve as the most valid documentation of torture in a subsequent course of event, e.g., a criminal or civil court case. For this reason, a careful recording of all aspects of the examination should be made. This would include the general part of the history taking and examination, what prompted the doctor to continue with a torture focused history taking and examination and obviously, the results of this.

The torture history may contain highly sensitive information about places of torture and even about perpetrator characteristics. It is necessary to protect the safety and security of the victim in case the medical record should be accessed by representatives of perpetrators. It is therefore recommended to keep the torture related part of the record separate from the general medical record, in an anonymized form using e.g., initials and abbreviations, and keep the legend explaining initials and abbreviations separate in a secure place.

The medical record is, as per recent ethical standards, the property of the patient, and it should be made available in copy at the request of the patient or – with the patient's consent - his/her lawyer or relatives.

98 For further guidance see: Ö. Özkalipci & M. Volpellier, *Photographic documentation, a practical guide for non professional forensic photography*, 2007.

The destiny of the medical record may be to remain in the file of the doctor until such time where the victim or a lawyer or an NGO on his/her behalf raises a case with the authorities. It may, however, also prompt filing a case with the authorities – a complaint, with a view to a thorough investigation or even a court case. In all instances, the early documentation may turn out to be crucial for the consistency of the history and therefore the credibility of the torture victim.

8.9 THE ISTANBUL PROTOCOL GUIDANCE ON HOW TO WRITE A MEDICAL REPORT

In order to ensure that even when documentation is done by non-experts, it is of the highest possible quality, the authors of the Istanbul Protocol have defined what they call the Istanbul Protocol Principles. These principles include a list of issues that should be covered in a medico-legal report. A doctor may want to have this template or checklist in mind, even when the initial documentation is done – and a lawyer who requests information from a doctor may want to point the doctor's attention to the principles to ensure that the information provided is of the highest possible quality. If some of the information on the list below is not available, this should be explained in the medical report.

The Istanbul Principles for a medico-legal report are the following:

1 Circumstances of the interview: Name of the subject and name and affiliation of those present at the examination; exact time and date; location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g., detention centre, clinic or house); circumstances of the subject at the time of the examination (e.g., nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanour of those accompanying the prisoner or threatening statements to the examiner); and any other relevant factors;

2 History: detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;

3 Physical and psychological examination: record of all physical and psychological findings on clinical examination, including appropriate diagnostic tests and, where possible, colour photographs of all injuries;

4 Opinion: interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment and/or further examination shall be given.

Authorship: The report shall clearly identify those carrying out the examination and shall be signed.

CHAPTER 9:
SEEKING JUSTICE FOR VICTIMS

Lawyers are key interlocutors for victims of torture seeking justice and other forms of reparation.[99]

Introduction

9.1 Support and legal advice to victims

9.2 Evidence of torture and/or ill-treatment

9.3 Access to justice and forms of reparation

9.4 Complaint options

Introduction

During the interview, the victim may have expressed a wish to seek justice for the harm suffered. This demands an intervention primarily by the lawyer, but the doctor would also play a role in providing evidence and advising about how to seek rehabilitation as a form of reparation.

This chapter will provide lawyers with guidance on how to advice victims. General professional legal training would be the starting point, but some additional knowledge about the importance of medical evidence in cases of torture would be required, as well as about international standards regarding access to justice and reparation and about the specific legal options for victims of torture. At the same time, the chapter will provide doctors with knowledge about how the lawyers engage with victims and seek justice on their behalf.

First, this chapter addresses how to properly advice the victim and how you ensure that he/she makes an informed decision about whether to seek legal remedies. Secondly, the chapter discusses what kind of evidence that the lawyer may be able to collect – in addition to the victim's story that has already been obtained (Chapter 6-8). Thirdly, the chapter presents the main legal standards regarding the right to access to justice and the different forms of reparation. Combined legal and medical information could be used to seek justice through the various litigation options at national and regional level, as well as within the UN system when a complaint can be brought against the state. Finally, the chapter will discuss how to use the international definition of torture and the advantages and challenges of each complaint option.

The chapter is written primarily for lawyers, but it is equally important that doctors understand the basics of how lawyers think and what they do.

99 IRCT | Guides for lawyers: *Action against Torture: A practical guide to the Istanbul Protocol – for lawyers*, 2010, p. 7.

By the end of this chapter, lawyers should:

- Know the basics of how to collect evidence in torture cases and how to seek justice
- Know when and how to refer a victim of torture to a doctor for possible treatment and/or rehabilitation
- Be able to advise the victim about possible options for obtaining justice and their risks – to ensure that the victim is able to make the best choice for him/herself
- Be able to seek evidence and obtain medical evidence, including on psychological aspects
- Be able to select the relevant reparation to ask for in litigation

By the end of this chapter, doctors should:

- Know how lawyers advise about possible legal actions and how they build a powerful case
- Know when to refer a victim of torture to a lawyer or human rights organization
- Know the fundamental importance of medical evidence and how the lawyer would use a medical report in litigation

9.1 SUPPORT AND LEGAL ADVICE TO VICTIMS

Firstly, it is crucial to know that victims of gross human rights violations are defined broadly as:

> *Persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law.*[100]

The notion of victims would include the following groups of persons:

- The direct victim
- The immediate family or dependents of the direct victim
- Persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

Thus, a torture situation can produce several victims: In addition to the direct victim who has been tortured, also secondary victims (e.g., family members) may be traumatized. Family members, for example, have asked for compensation in cases related to enforced disappearance or if the direct victim dies. Even professionals and others who have intervened on behalf of the victim may as a result suffer harm and be considered victims (for example secondary traumatization

100 *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*, 2005, para 8. It is also stipulated that a person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim, para 9.

of professional caregivers). This means that this Manual is relevant not only when advising a victim ("the direct victim"), but also when being asked to provide legal advice to the victim's family and other indirect victims.

BOX 9.1

EXAMPLE FROM THE HUMAN RIGHTS COMMITTEE

The Human Rights Committee concluded in a case from Algeria in which the father and son were arrested and forcibly disappeared that the mother was also a victim due to the psychological impact of the violence. The facts were as follows: On 22 September 1994, uniformed police officers who were part of the fifth mobile criminal investigation brigade of the Cité de la Montagne police station in Bourouba broke down the front door of the mother's home. When her husband (AA) asked who they were and what they wanted, they insulted and shoved him. They then blindfolded him and took him into the bathroom. While the author and her three daughters were kept in the living room, one of the author's sons was led away from the family apartment by the police and was not seen since. A police officer then took the eldest and the youngest of the sisters into another room and asked them questions about their family and about their father's activities, while slapping and kicking them. They were then taken into the bathroom, where their father was tortured using the "rag technique". The police then went down to the family's storeroom and seized jewelry, money, foodstuffs and identity papers. After threatening to burn down the home if the mother told anyone what had happened that night, the police officers left, taking AA with them.[101]

A lawyer's task would be to provide the best legal advice and if the victim decides for a legal action, then to build the strongest case. As the interpretation of the definition of torture may vary to some extent, from one court to another and within the UN mechanisms, a lawyer needs to familiarize him/herself with the jurisprudence of the institution that he/she wishes to address in order to know exactly how best to strengthen the claim.

When a victim meets a lawyer, he/she is not necessarily determined to pursue legal action against the perpetrator, but he/she is seeking advice as to what are the legal options with regards to his/her particular case and what are the risks involved.

Based on the lawyer's professional legal skills and knowledge about current jurisprudence about torture, as well as the story and the likelihood of finding evidence to corroborate the story, he/she needs to be able to assess whether the victim has a good and strong case that could potentially lead to a favorable outcome. The lawyer would advise the victim in accordance with his/her legal assessment of the case. This includes providing the victim with information about the likelihood of building a strong case for adjudication, the various remedies available, the advantages and challenges related to litigation and complaint mechanisms to ensure that the chosen legal action would be in his/her interest. The advice should take into consideration the specificities of the particular case and reflect relevant jurisprudence.

Victims of torture may also need medical attention, and the lawyer should therefore be familiar with how to refer the person to a doctor or specialized treatment and rehabilitation centers. They may also need assistance with regards to housing and other social issues.

101 Human Rights Committee | Abdelkrim Azizi, 15 May 2014 (CCPR/C/110/D/1889/2009).

The lawyer should know the specific importance of remedies for torture victims. Experts have outlined a number of ways in which the right to a remedy can contribute to recovery, including by "acknowledgement of injustice", "assignation of blame", restitution of a "sense moral and social order", "restoring a sense of control" and "establishing trust and restoring bonds". [102] One could argue that provision of justice and reparation has an effect at the individual level so that the victims who have received remedies, have a better chance of succeeding in moving on with their life and re-integrating into society.

As the road to justice is particularly long and cumbersome for victims of torture, and no guarantees of success are provided, it is crucial that they are well-advised about the prospects of obtaining remedies and the risks involved, and that their expectations to the process and the final outcome reflect the current functioning of the national legal systems. Obtaining reparation in torture claims against a state is a challenge, and it is difficult in even the strongest democracies in the world, let alone in countries that are not fully based on the rule-of-law and in which impunity for torture is still the norm. It is therefore important that the lawyer correctly and realistically advises the victim about all the challenges and risks entailed in a litigation procedure and obtains informed consent before proceeding.

The lawyer also needs to provide the victim with information about security issues that may arise if legal actions are sought (Chapter 3). If the victim is still detained in prison or other facilities by the authorities, submitting a complaint about torture against authorities may have direct repercussions in the detention facility. Security concerns may also arise after release and/or in relation to the victim's family. Thus, the lawyer needs to provide information about victim protection, if available, and when no such protection is available, the best advice would in some situations be to wait with submitting a complaint until after release or even not at all. In specific serious situations, it may even be necessary to consider options for leaving the country.

After the lawyer has provided all the relevant information and advice, the victim needs to provide informed consent to start the legal process (Chapter 6) and he/she needs to maintain full control over the various decisions taken along the way.

When the legal action begins, it is paramount that the lawyer is fully aware of his/her professional duty to inform the victim about developments in the process, stand by the victim throughout the entire process of seeking justice, and to provide the support needed.

102 R. Gurr & J. Quiroga, *Approaches to Torture Rehabilitation: A desk Study Covering Effects, Cost-Effectiveness, Participation, and Sustainability*, 2001, Supp. No.1, 3. See also expert witness report that was submitted by Redress in the case el-Masri v. The Former Yugoslav Republic of Macedonia, application no. 396390/09, of 13 December 2012 in which Mary Robertson, clinical psychologist, noted that: "Where there is the possibility of a public process of vindication, this can impact on the individual's capacity to make sense of their experience and to locate the cause of their suffering outside themselves. Having the opportunity to tell their story and have the truth recognized by a wider society can help the individual reclaim their dignity and legitimize their suffering. Responses of recognition and restitution are necessary to rebuild the survivor's sense of order, justice and a meaningful world."

BOX 9.2

EXAMPLES OF DIFFICULTIES IN OBTAINING JUSTICE

Most victims of torture in North Africa who have submitted a criminal complaint to the authorities, are still waiting for justice. The national legal system's slow response to the complaint – if any at all – can give rise to frustration and disappointment, and the victim should be prepared for barriers to access to justice and negative outcomes.[103]

Since the revolution in 2011, DIGNITY has supported Organisation contre la Torture en Tunisie (OCTT), the Ligue Tunisienne des Droits de l'Homme (LTDH) and other organisations that submit complaints on behalf of victims of torture. Many lawyers are frustrated that impunity continued in Tunisia and that as a result many victims of torture have lost faith in the legal system and doubt whether they will ever receive justice. Since the revolution, in only one case out of several has a victim of torture obtained reparation through the ordinary criminal system.

9.2 EVIDENCE OF TORTURE AND/OR ILL-TREATMENT

Ultimately, it would be up to a judge to adjudicate and conclude whether certain facts constitute torture or ill-treatment in a legal sense, but a lawyer's task would be to collect strong evidence to support the facts, i.e., the allegations about torture and its impact. The lawyer should always try to obtain the best possible quality of evidence while adhering strictly to confidentiality and other ethical principles. This section discusses relevant sources of evidence in torture cases and why medical evidence may play a decisive role.[104]

Sources of evidence

When lawyers use the term "evidence", reference is made to what can prove or establish a factual claim. Evidence can be divided into 1) oral evidence; 2) documentary evidence and 3) real evidence.[105] The following would count as good evidence in a torture case:

1) Oral evidence: Testimonies
    a. The victim provides his/her version of what happened
    b. Testimonies by witnesses (including by other detainees who have witnessed the torture or its consequences[106]), family and others.
2) Documentary evidence

103 H. M. Khalil, *Access Denied: Institutional Barriers to Justice for Victims of Torture in Egypt*, 2013.

104 This section will not discuss standard of proof required in a specific case (e.g., the criminal standard of "beyond reasonable doubt" v. lower standard of proof in civil and asylum cases), national requirements to submission of evidence in court or the issue of how to safeguard evidence, but information on this important issue should be sought in the specific jurisdiction.

105 Stanford Encyclopedia of Philosophy | *The Legal Concept of Evidence*, 2015.

106 The testimonies of witnesses may be direct (e.g., they saw the act being carried out) or indirect (e.g., they saw the detainee being escorted to the interrogation room; they heard the screaming of the detainee; or they saw the detainee return to the cell in a bad state after the torture took place).

a. Administrative information from official records and other documents in the place of detention and from other relevant places, including police stations (e.g., list of officers on duty the day of the act)

b. Medical records and reports

c. Audio-visual material (photos or videos, for example on social media)

d. Other.

3) Real evidence: Objects etc.

In addition, the lawyer could request the court to summon the medical expert who conducted a medical examination, to appear in court with a view to explaining certain medical terms or adding explanations to the medical report.

In addition, circumstantial evidence may be relevant, i.e., non-direct evidence that cannot directly serve as proof that an act was committed against a certain individual but may nonetheless support his/her case. In torture cases, this may include for example reports related to relevant patterns or the prevalence of torture in the country or even in the same institution.[107]

It is not an easy endeavor to collect evidence as torture often happens when in the hands of authorities and behind closed doors with few witnesses. However, collecting evidence would require – most importantly – a consideration of how to obtain medical evidence of the consequences of torture and secondly, an assessment of which further sources of evidence could support the victim's version of what happened.

Finally, it should be remembered that even if no evidence is collected aside from the victim's story, it is ultimately the obligation of the state to investigate torture, and that obligation would be triggered legally based on the victim's allegations alone. Thus, it may then be considered requesting the state prosecutor to open a criminal investigation. Moreover, many complaints submitted to UN Treaty Bodies are based solely on written submissions and in some cases only on the story of the victim (see below).

What can the evidence prove?

Evidence can corroborate all the facts of the victim's story, and it can be used specifically to help to prove the four elements of the definition of torture, or that the act(s) fall within the scope of inhuman or degrading treatment (Chapter 4):

- Identify the perpetrators
- Describe the severity of the act

107 Circumstantial evidence played an important role in the case of Raquel Martín de Mejía who won her case against Peru only based on her own account and NGO reports that showed a consistent pattern of abuse against women in Peru between 1989 and 1992, Raquel Martin de Mejía v. Perú, Caso 10.970 Informe No. 5/96, Inter-Am.C.H.R., OEA/Ser.L/V/II.91 Doc. 7 at 168, 1996.

- Establish that the act was motivated by a specific purpose; and
- Establish that the act was carried out intentionally.

If the claim is that the act(s) fall within the scope of inhuman or degrading treatment, then only involvement of a public official and some consequences of the act need to be documented. A lawyer will then need to familiarize him/herself with the jurisprudence of the institution to which he/she wishes to address the complaint, to understand how the institution makes the distinction between torture and other forms of ill-treatment.

Generally, as in other legal cases, the strength of the evidence would depend upon whether the information is accurate, reliable and of good quality.

Medical and psychological evidence

Medical and psychological evidence provided by doctors and/or psychologists is vital in torture cases, as it can be used to prove the consequences of the alleged act of torture and to support a claim about the treatment/rehabilitation required. By way of example, the vast majority of torture complaints, which were successful before the European Court of Human Rights, contained a medical report (either a medico-legal report (see below) or another report by a doctor).[108] The same conclusion was reached in a study of 2,400 asylum seekers in the US: 90% who had medical documentation of past torture were granted asylum, compared with just 37% of those lacking such medical support.[109]

This section examines how to collect medical evidence[110] and/or write a medico-legal report to corroborate and support the allegations made by the victim.

Medical evidence may come from many different sources including emergency doctors, if the victim was seen in the emergency ward; the prison doctors; or any GP, psychologist or other health provider who has seen the victim after release. If a request for medical evidence from the authorities is denied that should be noted in the submission to courts.

If the case relates to detention, the lawyer could also use another approach and try to obtain medical records, photos, etc. proving that the person was in good health prior to detention and combine this with evidence of subsequent physical or mental injuries. In some jurisdictions, the burden of proof would then shift to the state to prove that the person was not subjected to torture/ill-treatment while in detention.

108 Research by Sarah Fulton on file with the author.

109 S. H. Miles & R. E Garcia-Peltoniemi, *Torture survivors: What to ask, how to document?* With reference to Lustig SL, S. Kureschi, K. L Delucchi et al., *Asylum grant rates following medical evaluations of maltreatment among political asylum applicants in the United States*, 2008.

110 This section will not discuss national procedural rules about how to collect medical evidence that should be admitted in court, but obviously it is important to know such rules.

A lawyer could also consider asking the court to allow a medical expert to the court hearings to give an expert opinion about a specific topic of relevance for the case – for example PTSD.

A medico-legal report by a forensic specialist is requested in a legal process – either by the court or by the legal representative – to prove or disprove certain aspects of the case and should be prepared by qualified experts and in accordance with the Istanbul Protocol that provides the international standards for such reports (Chapter 8). The medical and/or psychological expert assigned will assess the physical and psychological consequences of torture and other forms of ill-treatment and whether the findings are consistent with the allegations of torture. Thus, the forensic expert attempts to establish the cause of the act and not simply its consequences.

It is crucial to understand what a medico-legal report can demonstrate and its limitations. A medico-legal report can demonstrate that the recorded physical and psychological consequences are consistent or even highly consistent with the torture described. However, a medico-legal report will rarely, if ever, prove with absolute certainty that torture took place, nor will it rule out torture even if there are no physical signs (Chapter 8).

Sometimes, especially if doubts arise about the validity of contents or the conclusion in a medico-legal report, it may be considered to request a second opinion from another forensic expert. If a lawyer wishes to use the report in a court case, he/she needs to know the national rules for submitting a second opinion to a medico-legal report.

BOX 9.3

CASE STUDY: DENGUIR IN TUNISIA

On 1 November 2013, Denguir, who was a young man at the age of 34 years, was arrested by the police and soon after died at Wardia police station in southern Tunis (the capital of Tunisia). During the criminal investigation, the juge d'instruction ordered a medico-legal report from the national forensic institute in Tunisia. The report was challenged by the human rights lawyer Radia Nasrawi, director of Organisation contre la Torture en Tunisie (OCTT)), who had examined Denguir's body and met his family, and who claimed that he had been subjected to the torture method "roasted chicken" in which the victim's hands and feet are tied to a rod and the suspended body is beaten. Nasrawi represented Denguir in the court case and requested two second opinions from Danish and Swiss forensic experts who contradicted the main conclusion in the forensic report and concluded that the cause of Denguir's death had not been properly established. The court case ended, but subsequently the case was brought to the transitional justice mechanism in Tunisia, and at the time of writing, the case is still pending.[111]

It is also important to note that in some jurisdictions, a case may get a long way even without a medico-legal report. Thus, a case may still be won even in the absence of medical documentation from a forensic expert. A lawyer should then try to obtain other evidence of the injuries sustained, for example witness-statements or medical records.[112]

111 Input from partner.

112 IRCT's Independent Forensic Expert Group (IFEG) may provide assistance in specific cases.

9.3 ACCESS TO JUSTICE AND FORMS OF REPARATION

This section will discuss what the victim can ask for in litigation, and what it means to have the right to "access to justice". Initially, two related terms will be introduced: "Redress" and "remedy", which can be used interchangeably, and both emerged historically after the development of national and international law, especially since the human rights paradigm after the Second World War.

Redress contains the key idea of holding states or individuals responsible. The alternative would be impunity. Generally, with regards to human rights violations, the obligation for states to provide remedies is stipulated in the various specific human rights treaties, and for victims of torture and ill-treatment the right is stipulated in Article 14 of the UNCAT:

> *Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.*

Remedy is more specifically defined with three aspects as follows:

a) Equal and effective access to justice

b) Adequate, effective and prompt reparation for harm suffered

c) The right to access to relevant information concerning violations and reparation mechanisms.[113]

Thus, remedy has both a procedural aspect, i.e. the right to gain access to processes by which claims are heard and decided by adjudicating bodies and a substantial aspect, i.e. the right to reparation).

Access to justice is defined as:

> *A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law. Other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law.*[114]

Thus, victims of torture should have access to judicial remedies. In addition, access can be granted to other bodies, including for example UN Human Rights Treaty Bodies.

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113 UN Human Rights | *Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, 2005, para 11.

114 Ibid., para 12.

The term reparation is understood as including the following five aspects: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. A lawyer would therefore need to consider which kind(s) of reparation(s) he/she would ask for on behalf of the victim.

The most common form of reparation recognized under domestic law is compensation. This can be monetary or non-monetary compensation given to the victim for any assessable damage resulting from torture or ill-treatment. This may include:

- Medical and rehabilitative expenses
- Compensation for loss of earnings and opportunities and earning potential due to disabilities caused by the torture or ill-treatment; and
- Legal assistance associated with bringing a claim for redress.

It is important to understand that provision of compensation on its own is not sufficient for states to comply with their obligations under Article 14.

BOX 9.4

CASE STUDY: COMPENSATION IN TORTURE CASES IN TUNISIA

The national law does not include a specific provision regarding reparation. The victims can ask for compensation after a criminal judgement has been issued. As very few judgements have been issued, there are few cases of compensation being provided in the ordinary criminal system. In "Barraket Essahel", the victims received compensation. In the only judgement based on the torture provision in the Criminal Code, the plaintiff (Sami Balhadef) received in 2011 4500 Tunisian Dinars for the physical damage caused to him, 2000 Tunisian Dinars for the moral damage caused to him, and 200 Tunisian Dinars for the attorney fees (Case 16019/08).[115] In the transitional justice system, compensation has been provided to several victims.[116]

Note that rehabilitation is also a form of reparation recognized internationally and that could be asked for in litigation. The UN Committee against Torture has published its General Comment no. 3 regarding Article 14 that defines rehabilitation as:

> *The restoration of function or the acquisition of new skills required as a result of the changed circumstances of a victim in the aftermath of torture or ill-treatment. It seeks to enable the maximum possible self-sufficiency and function for the individual concerned and may involve adjustments to the person's physical and social environment. Rehabilitation for victims should aim to restore, as far as possible, their independence; physical, mental, social and vocational ability; and full inclusion and participation in society.*[117]

115 Case 16019/08 by M. S. Chaouch, *Criminal Chamber of the Court of First Instance in Tunis*, 25 March 2011.

116 Input from partner.

117 UN Committee against Torture, *General Comment No. 3,* Implementation of article *14*, 2012.

Rehabilitation should include medical and psychological care, as well as legal and social services.[118]

BOX 9.5

CASE STUDY: REPARATION PROGRAMME IN MOROCCO

The period between the 1960s and early 1990s is often referred to as the "years of lead" in Morocco – referring to the massive human rights violations that occurred in the government's campaign of political oppression, including executions and torture. In 1999, the Independent Arbitration Commission was created to compensate the victims. The commission decided more than 5,000 cases and awarded a total of US$100 million. In 2004, the Arab world's first official truth-seeking initiative "the Equity and Reconciliation Commission" was established and the Commission issued a reparations policy that resulted in roughly $85 million USD in financial compensation paid to almost 10,000 individuals. [119]

In conclusion, it is worth noting that in practice, most victims of torture never receive reparation or at least not full reparation.[120]

9.4 COMPLAINT OPTIONS

In each complaint, it is important that the lawyer always refers to the international definition of torture and other international legal obligations that the state in question may have violated. Below, the complaint options will be briefly discussed.

National litigation

Litigation in the home country would relate to either criminal or civil litigation. A lawyer needs to be familiar with the procedural requirements and the national jurisprudence. The following includes some general advice that may provide guidance despite national differences:

Criminal litigation: If a criminal investigation of the allegations of torture has not been initiated by the state, the lawyer of the victim can request that such steps be taken. If the state has decided not to open a criminal investigation, the lawyer can take this decision to the UN Committee against Torture and claim violation of article 12 and 13 of UNCAT.

If such an investigation already has been initiated by the state, the lawyer can take some practical steps to enhance the effectiveness of the investigation. The IRCT's auxiliary material to the Istanbul Protocol provides good advice and highlights the following steps:

- Obtain a detailed statement of the victim that includes information regarding the facts of the act of torture and of any legal proceedings
- Record any complaints made by the victim about his/her health condition

118 UN Committee against Torture, *General Comment No. 4*, Implementation of article 3, 2018.

119 Input from partners.

120 REDRESS | *Reparation for Torture – A Survey of Law and Practice in Thirty Selected Countries*, 2003.

- Examine the medical report for any inconsistencies
- Challenge any report issued by the investigative mechanism that is not sufficiently comprehensive and reasoned
- Collect secondary documentation (such as reports of human rights organisations, research studies, press articles etc.)
- Challenge the investigation if ineffective
- Intervene with the authorities where public officials involved in the allegations have not been suspended from their positions during the period of investigation.[121]

The lawyer can take the following action to challenge the decision of a national authority to close or suspend a criminal investigation:

- Request a copy of a written decision closing or suspending an investigation
- Apply to the superior prosecutorial body and/or for judicial review to challenge the legality of the grounds on which the decision was taken
- Seek to present "new facts" or arguments that may justify the reopening of the investigation.

Civil litigation: It would depend upon the national legal system whether a civil complaint can be submitted. Normally, the civil complaint would have to await the finalization of a criminal procedure. However, it is important to remember that according to international law, the right to submit a civil complaint does not depend upon a (positive) judgement in the criminal case. The following advice would be relevant in civil litigation:

- Use international human rights arguments as mentioned in this Manual.
- Use recent and relevant jurisprudence.
- Refer to positive case law of other countries to encourage judges to accept new arguments.

BOX 9.6

REGIONAL LITIGATION

Specifically for countries in North Africa, it is important to know that at the time of writing, Tunisia, Algeria, Libya and Egypt have recognized the competence of the African Commission on Human and Peoples' Rights (African Commission) to adjudicate alleged violations of the African Charter on Human and Peoples' Rights including its article 5 that prohibits torture and other forms of ill-treatment. Moreover, Algeria, Libya and Tunisia have also ratified the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights (African Court) and accepted the court's jurisdiction.

Thus, lawyers from the above-mentioned countries can take torture cases to the African Commission and Court if the national system fails to provide justice.

121 IRCT, *Practical Guide Istanbul Protocol – for lawyers*, 2009, p. 35.

The UN Treaty Bodies and special procedures

The Convention against Torture established a Committee of 10 independent experts with the mandate to monitor the implementation of the UNCAT in its member states. All States parties are obliged to submit regular reports to the Committee on how the Convention is being implemented (Article 19 UNCAT). States must report initially one year after acceding to the Convention and then every four years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations". The review in Geneva is undertaken based on the national government report, as well as so-called "alternative" reports submitted by national human rights institutions and civil society.[122]

BOX 9.7

EXAMINATIONS BY THE UN COMMITTEE AGAINST TORTURE

The five countries in North Africa have participated in the examination by the UN Committee Against Torture, and the Committee has issued concluding observations to all the five countries. The next cycle of reviews of Algeria, Egypt, Libya and Morocco has been delayed for years due to the pending submission of the national report. Tunisia was examined in 2016.

The Committee also has a mechanism to receive individual complaints (Article 22) that is binding upon states if they have accepted this mechanism. Finally, the UN Committee Against Torture has the option of opening a confidential inquiry into the situation in a country if it "receives reliable information which appears to it, to contain well-founded indications that torture is being systematically practiced in the territory of a State Party" (Article 20). [123]

BOX 9.8

DECISIONS BY UN TREATY BODIES

Algeria, Morocco and Tunisia have recognized the competence of the UN Committee Against Torture to consider individual complaints, and Algeria, Libya and Tunisia the competence of the Human Rights Committee. This means that lawyers from these countries can submit cases to the Committees if the procedural rules are followed. At the time of writing, the UN Committee against Torture has issued decisions in six cases against Algeria, 15 cases against Morocco and 10 cases against Tunisia. The Committee has twice conducted a country situation inquiry in Egypt (1996 and 2017).[124]

One of the main admissibility rules is that national remedies should be exhausted. This means that the Committees would not accept a case unless all national options for seeking remedies have been used. However, if the national legal system is not functioning well and is late in providing remedies, a complaint can be sent immediately to the Committee.

122 See the UN Committee against Torture and country specific search.

123 In addition, the Committee has a mechanism to receive complaints from other states (Article 21 UNCAT), but this mechanism has never been used.

124 See the website of the UN Committee against Torture.

BOX 9.9

CASE STUDY TUNISIA: DECISIONS BY THE UN COMMITTEE AGAINST TORTURE

On several occasions, the UN Committee Against Torture has concluded that Tunisia had violated article 12 and 13 of the UNCAT by not initiating any criminal investigation or by delaying an investigation. By way of example, in the case Jaidane, the torture took place in 1990 and he lodged his complaint with the Court of First Instance in Tunis immediately after the revolution in 2011. The UN Committee against Torture concluded that an investigation of the facts was not immediately initiated nor was it prompt and impartial, since more than 21 years elapsed from the date on which the facts were first reported without an effective investigation and prosecution of the alleged perpetrators. The Committee also noted that the trial was opened in April 2012 and the hearings were postponed on 15 occasions. This demonstrates a lack of will on the part of the judiciary to render justice to the author of the complaint, as concluded by the Committee, and hence there was a violation of Article 12 UNCAT (decision of 3 October 2017).[125]

UN Special procedures

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (SRT) is an independent expert appointed to examine questions relevant to torture as part of the UN Special Procedures of the Human Rights Council. The SRT can transmit urgent appeals to all states with regards to individuals reported to be at risk of torture or regarding past alleged cases of torture, undertake fact-finding country visits (upon invitation by a state) and submits an annual report on activities to the UN Human Rights Council and the UN General Assembly.

The Special Rapporteur takes action when persons are feared to be at risk of:

- Corporal punishment
- Means of restraint contrary to international standards
- Prolonged incommunicado detention
- Solitary confinement
- "Torturous" conditions of detention
- Denial of medical treatment and adequate nutrition
- Imminent deportation to a country where there is a risk of torture, and
- Threatened use or excessive use of force by law enforcement officials

The Special Rapporteur will send a letter to the Minister of Foreign Affairs of the country concerned, urging the Government to ensure the physical and mental integrity of the person(s).

125 Case CAT/C/61/D/654/2015 decision of 3 October 2017 by the UN Committee against Torture.

BOX 9.10

CASE STUDY TUNISIA: DECISION BY THE SPECIAL RAPPORTEUR ON TORTURE

On 18 December 1992, the Special Rapporteur on Torture sent the following letter to Tunisia urging the government to ensure the physical and mental integrity of Abderrazak Hamzaoui who was a student at the University of Tunis. He was reportedly arrested three months earlier on 19 September 1992 in the Ben Arous district of Tunis and taken to the Kasserine police station, where he was allegedly tortured and denied access to his family and lawyer. Concern was expressed for his health since he was said to have suffered osteomyelitis as a child, which had left him with weakened bones in his left leg.

The Tunisian government denied the allegations and replied to the Special Rapporteur:

Abderrazak Hamzaoui had been arrested under suspicion of being a militant member of an unauthorized association that advocated violence and holding illegal meetings. The Department of the Public Prosecutor had been informed, on the same day, of his arrest. During the investigation which followed, he had admitted that he belonged to the Al-Nahdah movement since 1986. On 1 November 1992, the Court had sentenced him to one year's imprisonment for membership of an illegal organization advocating violence. The Court had also ordered him to be placed under administrative supervision for two years. Mr. Hamzaoui had been granted all the legal guarantees necessary for his defense. He had not been subjected to torture and still less to ill-treatment, while he was held in custody or during his detention. In addition, he had been given medical follow-up examinations through the prison and re-education services. His last medical examination had been on 7 January 1993. The certificate issued by the doctor afterwards stated that, as a child, Mr. Hamzaoui had had osteomyelitis, but that, at the time of the examination, he was suffering from no sickness or injury.[126]

126 UN Commission on Human Rights | *Report of the Special Rapporteur on torture and cruel, inhuman or degrading treatment or punishment – Tunisia (Doc. E/CN.4/1994/31)*, 1994.

CHAPTER 10: FINAL REMARKS

… victims should not be seen solely as sources of information that help advance broader goals of eradicating torture and ill-treatment. Instead, the documenting process should be victim-centered and led by the primary principle of do-no-harm.[127]

Introduction

10.1 A victim-centered approach to documentation

10.2 Different purposes of documentation

10.3 Key limitations and striving for the best

10.4 Self-care

Introduction

Survivors of torture may have several needs and wishes in relation to their situation, and they may react in various and unpredictable ways while their case is being documented. Also, professionals involved in the documentation efforts may bring different approaches and fields of expertise to the table.

In this chapter, we will discuss some of the aspects that go beyond the legal framework and the actual documentation interview and examination, and touch upon some of the issues that should guide the planning of the documentation process and subsequent actions.

By the end of this chapter, you should:

- Acknowledge the right of the torture survivor to make his/her own decisions about the documentation process
- Acknowledge that documenting torture may affect your own mental well-being
- Acknowledge your obligation to refer a torture victim to others in case you do not possess the necessary skills to document his/her case or take care of his/her needs
- Be able to engage with a survivor of torture in a way where he/she feels respected and you as a professional live up to your legal, ethical, and other obligations.

127 C. Giffard & P. Tepina, *Torture Reporting Handbook*, 2015, p. 54.

10.1 A VICTIM-CENTERED APPROACH TO DOCUMENTATION

Working with a victim-centered approach means always putting the needs and priorities of the victim at the forefront. In previous chapters, it has already been discussed how the victim should be able to set the pace of the interview, and how his/her needs and reactions should guide the interviewer all through the interview both in the planning phase and when carrying out the actual interview. It has also been discussed how the victim should be given sufficient information to be able to give his/her consent to the documentation process. But working from a victim-centered approach means more than that.

One professional will not be able to cover all the victim's needs. For example, an emergency room doctor seeing a patient for only a short consultation will not be able to provide him/her with holistic rehabilitation services, a lawyer will not be able to cover a victim's medical needs and vice versa.

Aside from documenting his/her case, it will be helpful for the victim if the person documenting his/her case adapts a holistic view on his/her needs. This means that if needs are identified that the professional him/herself cannot cover, he/she could assist the victim to get in contact with other relevant professionals who may provide further assistance. This may entail referring the victim to someone from a different profession (e.g., referring a victim with severe psychological distress to a psychologist), but it may also entail referring to someone from one's own profession who is more experienced, has more time to look after the victim's needs, is more specialized, or is in other ways better suited to proceed with the case.

For a torture victim, there may be many aspects that need to be considered, like for instance the need for psycho-social support, treatment, and financial assistance. No-one expects one person to be able to cover all needs, but the person documenting the case may be the central person with whom the victim has confided his/her story, and that person may therefore be centrally placed to assist the victim in getting in touch with others. Therefore, it is highly advisable that those who are documenting cases of torture familiarize themselves with what exists in their area in terms of NGOs, treatment centers and other places where a victim may get assistance.

10.2 DIFFERENT PURPOSES OF DOCUMENTATION

Working with a victim-centered approach also means providing the victim with enough information for him/her to decide whether and to which degree his/her information should be used.

Some types of documentation are very basic. By way of example, an NGO collects information about the number of people tortured and the torture methods used on a particular occasion or in a particular detention facility but does not collect any further information about each

individual involved. This may serve well for advocacy purposes, but it will obviously not provide the anonymous victims with any forms of legal assistance.

At the other end of the spectrum, we find the sophisticated documentation provided by legal experts and forensic doctors who develop medico-legal reports containing all available details that can be used in high-profile court cases in national or international courts. Such reports may amount to dozens of pages.

Various kinds of documentation may serve different purposes. For example, NGOs may want to use concrete case examples in their advocacy work both at the national level and in international fora, e.g. in shadow reports to country examinations by the UN human rights bodies. The more detailed and well described the examples are, the more convincing they will sound. It may be even more convincing if a victim allows his/her name to appear in such examples. Well-documented cases may also be taken to court where medical evidence – also if it is not many pages – may play a paramount role in obtaining justice for a victim. Finally, documented cases may not be used immediately but may await the moment where processes of for example transitional justice can be carried out.

Thus, it is very important that the person who documents a case discusses with the victim what his/her wishes are, and that the options are presented to him/her in a way that makes him/her able to make his/her own decisions based on sufficient information. This is a conversation with the victim that the professional may need to have more than once during the documentation process, since perspectives may change along the way. Over time, the doctor or lawyer gets to know the victim's story better and can better assess what might likely come out of presenting the story in different contexts. At the same time, the victim may become more aware to what extent he/she feels comfortable telling his/her story, and what his/her wishes are for the future.

10.3 KEY LIMITATIONS AND STRIVING FOR THE BEST

Knowing their personal limits may compel professionals to refer a victim to someone else who has more expertise. In some situations, this is feasible, but in others the initial person getting into contact with the victim may be the victim's only chance to get his/her case documented.

If a professional is asked to document a case of torture, he/she should not hesitate to look for assistance. This may be from colleagues, even if all they can do is advise on how to interpret a specific finding or convey a specific message, but it may also be from NGOs or others who are involved in the fight against torture. Advice may also be sought from written material about how to document torture, most notably of course the Istanbul Protocol. Reference to further readings has been added at the end of the Manual.

In all situations, it is important that all professionals strive to do their best when documenting torture. The worst thing to do is to do nothing at all! Too many victims of torture have been left on their own because they were not able to speak up for themselves or contact someone who

could assist them, and no-one bothered to ask the right questions that would identify them as torture victims.

10.4 SELF-CARE

Engaging with and assisting victims of torture may be rewarding, but it may also be demanding, and listening to the victims' stories about their experiences and their suffering may be challenging and even exhausting and can even lead to what is technically referred to as secondary traumatization. This is a phenomenon by which someone close to a traumatized person starts experiencing symptoms of trauma without having actually lived the trauma him/herself. Such symptoms may for example include intrusive memories, nightmares, sleeplessness and anxiety.

Often, a way of dealing with stressful experiences is to talk about them with others. This may be others who also work with the documentation of torture, and who will therefore have a more intuitive understanding of these emotions. Or it may be people that the person documenting is close to and would usually share difficult emotions with. No matter with whom experiences are shared, this should be done in a way that keeps the information collected during a documentation interview confidential, unless the other person already has the same information, for example because he/she is a colleague working on the same case.

Others have found it helpful to try to get their mind off difficult torture stories by e.g. watching a film, spending time in nature or going out with friends. We all cope in different ways, but it is important to be aware of one's own possible reactions to the stories and to try to deal with the challenges. Ultimately, professional support and supervision may be needed to be able to handle the emotional reactions after documenting torture.

Finally, we would like to stress that documenting torture is not easy, but it is an important task that places the lawyer and the doctor in a central position in relation to victims of one of the gravest human rights violations. By reading this Manual, you have hopefully learned a lot, but you should not expect that you are now an expert. Expertise requires further training, practice and supervision. We hope, however, that by following this Manual in the future, you may find documentation of torture a bit easier. Doing your best, in the best interest of a survivor of torture, is what you should aim for. By writing this Manual we have wished to support you in pursuing that noble goal.

FURTHER READINGS

The sources of information, conventions and other texts referred to in this Manual can be found with links at DIGNITY's website: www.dignity/documentation/dk

DIGNITY MANUAL

COLLABORATION BETWEEN MEDICAL DOCTORS AND LAWYERS WHEN DOCUMENTING TORTURE IN NORTH AFRICA

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