

Documenting Torture While Providing Legal Aid: A Handbook for Lawyers

DIGNITY
DANISH
INSTITUTE
AGAINST TORTURE



THE PUBLIC COMMITTEE AGAINST
TORTURE
IN ISRAEL

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The Public Committee Against torture in Israel (PCATI) is an Israeli human rights organisation that, since its establishment in 1990, has relentlessly fought against the use of torture in Israel and the institutional impunity prevalent within its security authorities. PCATI's vision is to bring Israel into full compliance with the universal values of democracy, international human rights and humanitarian law in which the prohibition against torture and principles of protection are embedded. We advance this vision by merging direct outreach to victims, legal and public advocacy, research and documentation, and by targeting various change agents.

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DIGNITY – Danish Institute Against Torture Since 1982 DIGNITY has worked for a world free from torture and organized violence. DIGNITY is a self-governing independent institute and a national centre specializing in the treatment of severely traumatized refugees. We distinguish ourselves by undertaking rehabilitation, research and international development activities under one roof. DIGNITY is represented in more than 20 countries worldwide where we collaborate with local organizations fighting torture and helping victims and their families to live fuller lives.

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Selected Abbreviations

- ACHR:** American Convention on Human Rights, 22 November 1969, http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf
- Body of Principles:** General Assembly Resolution, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, U.N. Doc. A/RES/43/173, 9 December 1988. Available at: <http://www.un.org/documents/ga/res/43/a43r173.htm>
- Bangkok Rules:** The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), 21 December 2010. Available at: <http://www.un.org/en/ecosoc/docs/2010/res%202010-16.pdf>
- CPT:** European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- ECHR:** European Convention on Human Rights, 4 November 1950. Available at: http://www.echr.coe.int/Documents/Convention_ENG.pdf
- ECtHR:** European Court of Human Rights
- HRC:** UN Human Right Committee
- ICCPR:** International Covenant on Civil and Political Rights, U.N. Doc. A/2200A (XXI), 16 December 1966. Available at: <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>
- Istanbul Protocol:** The Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Professional Training Series N°8), Office of the High Commissioner for Human Rights, Geneva, 1999 (revised 2004). Available at: <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>
- Mandela Rules:** United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), E/CN.15/2015/L.6/Rev.1, 21 May 2015. Available at: <http://www.penalreform.org/wp-content/uploads/2015/05/MANDELA-RULES.pdf>
- SRT:** Special Rapporteur on Torture
- UNCAT:** Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. A/39/46, 10 December 1984. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

Terminology

Abuse: Abuse is a broad non-legal term, referring to any misuse of power. It can take many forms, such as verbal maltreatment, injury, assault or other violations of power.

Access to justice: The use of the term in this Handbook refers to the individual's right of Access to Justice, as defined in the UN 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: "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. Obligations arising under international law to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic laws" (para 12). The Handbook refers to Access to Justice under both domestic and international law.

Detainee: The term in this Handbook is used in the most general sense, referring to a person held in custody, confinement or any type of incarceration. This use of this term here does not distinguish between administrative, judicial, pre- and post-trial detainees.

Victim: The term is used as defined in the UN 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: "victims are 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. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization" (para 8). Some professional circles prefer the term "survivor of torture"; we have chosen not to do so, since many of our clients are still incarcerated and still subject to the experience.

Evidence: The term Evidence may refer to any material supporting the allegations of the victim. Evidence can include medical reports, psychological evaluations, forensic examinations, a victim statement, witness statements, or any other forms of third party evidence. By using the term in the Handbook we do not refer to the question of its admissibility.

Indirect monitoring: obtaining information about the treatment and conditions in places of detention, including torture and/or other cruel, inhumane or degrading treatment. This can be done by people who are not officially delegated to undertake monitoring visits.

Remedy: The term Remedy is used as defined in the UN Basic Principles (see above) and refers to the procedural aspect of enforcing or satisfying the right of the victim to access to justice and to the specific reparations, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition

S/He: Throughout this Handbook we refer to the victims of torture in the masculine. This is done primarily for ease of reading: of course women may also suffer from torture and ill-treatment, and their particular issues are addressed in chapter 5. Having said this, the vast majority of PCATI's clients are adult men, and the masculine usage also reflects our reality.

Introduction

The absolute prohibition of torture is a fundamental legal norm. It is firmly established in: customary international law, binding in all states; in treaties ratified by the vast majority of states; and in national constitutions and criminal codes. However, as authorities often fail to uphold such legal obligations¹, torture is endemic in many countries.² For instance, the Public Committee Against Torture in Israel (PCATI) has observed that the Israel Security Agency (ISA) continues to use torture systematically in the interrogation of Palestinian detainees — most of whom are from the Occupied Palestinian Territories — and does so without accountability. Another recent example is the use of torture, in its various forms, in the US Central Intelligence Agency's (CIA) Detention and Interrogation program in 2001-2006.³ The crime of torture is also widespread during armed conflicts, as in Syria and Libya.⁴ Moreover, proper investigations by authorities, and prosecutions of perpetrators, are scarce in all parts of the world, often leaving torture victims without any justice and support to rebuild their lives.

Nevertheless, over the last decades, we have gained a better understanding of torture and its characteristics, objectives, prevalence, and root causes. As a result, new strategies and tools for its prevention have been developed (e.g., preventive monitoring mechanisms under the Optional Protocol to the Convention Against Torture). Furthermore, we now have better evidence of how torture destroys people, increases violence in society, and creates a fundamental sense of insecurity and fear in countries where it is used. In response, new knowledge has been gained and methods have been developed to ensure that the medical needs of traumatized victims (and their families) are met.⁵

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- 1 Report of the UN Special Rapporteur on torture and other forms of cruel, inhuman or degrading treatment or punishment, U.N. Doc. A/HRC/28/68/Add. 1 (2015). Available at <http://bit.ly/U5cWWq>
 - 2 Amnesty has concluded that torture and ill-treatment is practiced in 141 countries and that more than half of the world's population does not feel safe from torture. See: *Amnesty World Report 2014*, available at <http://www.amnestyusa.org/sites/default/files/act400042014en.pdf>.
 - 3 Report by US Senate Select Committee on Intelligence, *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program*, 3 of December 2014 (date of declassification). Available at: <https://www.documentcloud.org/documents/1376764-committee-study-of-the-central-intelligence-agency>
 - 4 For other examples of the modern use of torture, see: Rejali, Darius (2007), *Torture and Democracy*, Princeton University Press.
 - 4 Diginty, *Consequences of Torture and Organized Violence – Libya Needs Assessment Survey* (2014).
 - 5 Gurr, Roger and Jose Quiroga, *Approaches to torture rehabilitation – a Desk Study covering effects, cost-effectiveness, participation, and sustainability*, Torture Supplementum No. 1 (2001).

The purpose of this Handbook

Torture victims require legal assistance and proper documentation of their stories. This Handbook mainly aims to assist lawyers worldwide, and to offer ideas and suggestions — based on PCATI's experience — of how to provide the best legal aid while attempting to promote accountability of perpetrators and justice for the victims.

This Handbook also aims to promote broader engagement in efforts to fight the underlying causes of torture and impunity. We pursue this by using “indirect monitoring” — a concept with clear advocacy aims. The lawyer thus acts as a “monitor” (with some limitations) when — through engagement in individual cases — he obtains information about the treatment and conditions in places of detention, including torture and other ill-treatment, even *without* official permission to undertake monitoring visits. Collecting such documentation (which will reveal broader structural obstacles and the wider scope of the problem in a country), through advocacy and/or dialogue, may ultimately force the authorities to improve the treatment of detainees, and provide justice to victims. Indirect monitoring is especially relevant in countries with few effective monitoring mechanisms — e.g. Israel and Occupied Palestinian Territories, where PCATI has used the method to advocate for general police and practice changes.⁶

Content of the Handbook

The Handbook consists of six chapters. Chapter 1 introduces the legal framework — including the international legal definition of torture and the prohibition of other forms of ill treatment, legal safeguards, and standards regarding treatment of detainees and conditions of detention. Chapter 2 discusses common torture methods and various medical and social consequences for survivors. Chapter 3 focuses on the lawyer's preparation of his visit to a detention facility, and on the skills and knowledge required before approaching torture victims. Chapter 4 relates to the visit and the interview, whereas Chapter 5 addresses the needs particular to vulnerable groups. Chapter 6 presents suggested follow-up actions, and methods of gathering additional information — also from the authorities — if the victim decides to pursue his claim further. This chapter also discusses the issue of litigation on the individual level, and more generally addresses how best to make use of the documentation collected, to promote accountability and the prevention of any future torture.

Each chapter cites further relevant readings, including key Handbooks on documentation.

6 PCATI shadow report to UN Human Rights Committee (2014), available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ISR/INT_CCPR_CSS_ISR_18197_E.pdf and PCATI briefing to CAT, (2016) available at: http://stoptorture.org.il/wp-content/uploads/2016/06/INT_CAT_NGO_ISR_23475_E-Last.pdf

Target audience

The Handbook addresses any legal counselor — whether in the capacity of a criminal defense lawyer, human rights lawyer, or a representative of civil society. The lawyer might be the first independent person to meet the victim after he has been subjected to torture (or other forms of ill-treatment). This immediate access both presents the possibility of meeting the victim's medical needs through early intervention, and facilitates an interview which will often reveal crucial evidence.

As a lawyer, you are familiar with the national legislation in your country. This Handbook provides additional insights into the international aspects of the crime of torture and the development of the international human rights paradigm. Today this paradigm includes : a clear right for victims to legal and medical assistance; a thorough investigation of the allegations, and comprehensive remedies — including rehabilitation. It focuses on the specific social and medical consequences of torture; how lawyers should ensure referrals for early medical intervention; and provides concrete examples of and solutions to the various challenges you may face while documenting and pursuing justice for victims. The experience of both PCATI and many others in the field suggests that torture victims can only be properly supported through the interdisciplinary involvement a number of professionals — doctors, social workers, psychologists, physiotherapists, forensic experts, and lawyers.

Why engage in a torture case?

Engaging in a case of torture will probably be a time and resource-consuming experience for you, yet hopefully rewarding, at the same time. You may be successful in eliminating the risk of the victim being subjected to further abuses; you may ensure referral to critical medical treatment; your intervention may prompt the authorities to initiate an investigation of the allegations; and your support, attention, and recognition of what has happened might empower the victim generally. However, in contrast to other human rights issues, torture poses a particular challenge: it is an act which may be inflicted by the state, and yet that very same state is the one meant to ensure accountability for a crime of torture and assume responsibility for preventing future abuses. Consequently, victims in many countries are reluctant even to initiate a claim against the authorities. In spite of this, we wish to encourage and support you! By providing legal aid and indirect monitoring of places of detention, you join many others around the world who fight against the use of torture.

* * *

PCATI is an Israeli NGO that, since its establishment in 1990, has relentlessly fought against the use of torture in Israel. Over 25 years of activity, we have visited hundreds of prisoners and collected their testimonies. By pressuring the legal and political systems, PCATI has reached a number of achievements which greatly limit Israel's use of torture, and raise public and media awareness of the persistence of these horrifying practices. DIGNITY is a Danish human rights institute that works to eradicate torture, abuse, and organized violence. DIGNITY focuses on the prevention of torture, as well as on treatment, research, international development work, and advocacy. By supporting local partner organizations in more than 20 countries, DIGNITY fights torture and help torture victims and their families to a better life.

PCATI and DIGNITY believe that by sharing our knowledge and experience, we can further advance the struggle against torture. We welcome any comments and suggestions (**please contact us at pcati@stoptorture.org.il**)

CHAPTER 1

Legal Framework for the Protection of Victims of Torture and Ill-Treatment

Introduction

The purpose of this chapter is to present the following legal issues:

The international legal definition of torture in the United Nations Convention Against Torture (UNCAT) and the concept of “other forms of prohibited ill-treatment,” as developed in international human rights jurisprudence. These legal standards and relevant state obligations will form the basis of interviews with victims and other inmates in police stations, prisons, or other places of detention. We will end with a short discussion of the incorporation of international legal standards in national law.

Each case is different and may prompt the invocation of one, or several, of these legal standards. It is very important to maintain proper documentation of standards violation — not only in order to provide every individual case with good legal aid and protection for the torture victim; but also for the broader purpose of recording patterns of violations by the state. This documentation will enable advocacy efforts intended to encourage and, ultimately, ensure the implementation of international legal standards at the national level.

This chapter is divided into eight sub-sections (see table of contents). We strongly recommend that a lawyer familiarize himself with these legal concepts before engaging in a case of torture or ill-treatment. Throughout the Handbook we will refer back to actual cases encountered in our work at PCATI to illustrate more general points; we hope these examples will help you interpret the principles and issues discussed.

1.1 Status of the prohibition of torture and the legal definition of torture in international law

History and legal status

Since the adoption of the Universal Declaration of Human Rights in 1948, which prohibits torture and other ill-treatment (Article 5), the prohibition of torture has been included in several key international human rights treaties:

- The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)⁷;
- The International Covenant on Civil and Political Rights (ICCPR) (Article 7)⁸;
- The International Convention on the Elimination of All Forms of Racial Discrimination (Article 5);
- The Convention on the Rights of the Child (Article 37);
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Article 10); and
- The Convention on the Rights of Persons with Disabilities (Article 15).

In addition, the prohibition of torture has been included in all regional human rights treaties — i.e. European Convention on Human Rights (Article 3), American Convention on Human Rights (Article 5), African Charter on Human and Peoples' Rights (Article 5), and Arab Charter on Human Rights (Article 8).

Torture is also prohibited by international criminal law⁹, international humanitarian law (applicable in armed conflicts)¹⁰, and international refugee law (which protects asylum seekers and refugees from deportation to a country where they risk facing torture).

Moreover, freedom from torture and the right to respect for the sake of human dignity are mentioned in a number of UN Guidelines, including: the revised UN Standard Minimum Rules (Mandela Rules,

7 Article 1 of the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), U.N. Doc. A/39/46, 10 December 1984. Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

8 Article 7 of the International Covenant on Civil and Political Rights (ICCPR), U.N. Doc. A/2200A (XXI), 16 December 1966. Available at: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

9 See Article 7(2)(e) as part of a crime against humanity and Article 8 (2)(a)(ii)—as a war crime—in the Rome Statute of the International Criminal Court, document A/CONF.183/9, 17 July 1997.

10 Torture and ill-treatment is prohibited by a number of provisions in the Geneva Conventions of 1949 and the Additional Protocols of 1977, including Article 3 common to all four Conventions. In an international armed conflict, torture is recognized as a grave breach of international humanitarian law (e.g., art 147 of the 4th Geneva Convention).

Rule 1)¹¹; UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 6); and the Protocol on the Effective Investigation and Documentation of Torture, and Other Cruel, Inhuman, or Degrading Treatment or Punishment (the Istanbul Protocol). Moreover, the UN General Assembly and the UN Human Rights Council (UNHRC) regularly adopt resolutions regarding anti-torture measures, and the rights of victims.¹²

In addition to the treaty-based, absolute prohibition, torture is prohibited as a matter of international customary law,¹³ so that the international legal prohibition can be invoked even before a state has accepted specific treaty obligations.¹⁴ It is a strong prohibition, seen as a so-called peremptory *jus cogens* norm, imposing *erga omnes* legal obligations on states.¹⁵

The prohibition on torture is absolute and non-derogable, as stipulated in Article 2(2) of the Convention against Torture:¹⁶ No exceptional circumstances whatsoever — whether a state of war or a threat or war, internal political instability, or any other public emergency — may be invoked as a justification of torture. The absolute prohibition has also been challenged before the European Court of Human Rights who has reiterated that, “there can be no weighing of other interests against it, such as the seriousness of the offence under investigation or the public interest in effective criminal prosecution, for to do so would undermine its absolute nature”¹⁷.

The Court has confirmed that even in the most difficult circumstances, such as the fight against terrorism and organized crime, the European Convention on Human Rights prohibits — in absolute terms — torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned.¹⁸

11 «All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification», Rule 1, p. 9 in: Commission on Crime Prevention and Criminal Justice, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), E/CN.15/2015/L.6/Rev.1, 21 May 2015.

12 The latest omnibus resolution by the UN General Assembly regarding torture and other forms of ill-treatment was adopted on 6 November 2015, U.N. Doc. A/C.3/70/L.27/Rev 1. On 19 March 2013, the Human Rights Council adopted a resolution regarding torture and ill-treatment focusing specifically on the right to rehabilitation, U.N. Doc. A/HRC/22/L.111/Rev 1.

13 The UN Committee Against Torture, General Comment 2, Implementation of article 2 by States Parties, U.N. Doc. CAT/C/GC/2/CRP. 1/Rev.4 (2007). Available at: https://www1.umn.edu/humanrts/cat/general_comments/cat-gencom2.html

14 World Organization Against Torture (OMCT) (2006), *Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies*, p. 30

15 Rodley, Nigel S., (with Matt Pollard), *The Treatment of Prisoners under International Law* (2009, 3th edition), Oxford University Press, chapter 2.

16 See, also: Article 4(2) of ICCPR, and the various regional human rights treaties.

17 European Court of Human Rights, *Gâfgen v. Germany* (22978/05), 01 June. 2010, para 176.

18 *Ibid*, para 87.

The torture-specific treaty — the UNCAT — was enacted nearly 30 years ago (26 June 1987)¹⁹ in order to

“...make more effective the prevention of torture by establishing some new obligations for the member states” (preamble).

Key among these new legal obligations was that torture would be criminalized as a matter of national criminal law (Article 4 UNCAT), victims would be provided with remedies (Article 14 UNCAT), and states would aim to prevent torture (Article 2 UNCAT) by a number of measures, including the obligation of investigation (Article 12 UNCAT). Thus, it is primarily the state’s — not individuals’ — responsibility to investigate and provide evidence.

The UNCAT also established a Committee (CAT Committee) with the mandate to review periodic reports from the states (Article 19 UNCAT), as well as to receive individual complaints (Article 22) or inter-state complaints (Article 21 UNCAT), if such a mechanism was accepted by the states (see further Chapter 6), and to initiate inquiries upon receipt of reliable information about well-founded indications that torture was being systematically practiced (Article 20 UNCAT) — unless the state in question has opted out of this procedure (Article 28 UNCAT).²⁰

Additional treaties were adopted with the aim of strengthening the prohibition on torture — e.g. the Optional Protocol to UNCAT (OPCAT)²¹, the Inter-American Convention to Prevent and Punish torture, and the European Convention on the Prevention of Torture.

To conclude, and as stipulated by the former UN Special Rapporteur on Torture, Sir Nigel S. Rodley:

*“International law prohibits every act of torture or other cruel, inhuman or degrading treatment or punishment, no matter where, when, or against whom it is perpetrated, including when it is perpetrated or tolerated in the name of protecting civilian populations from the threat, however grave or imminent, of terrorist attack.”*²²

19 The specific regulation of the prohibition on torture began in 1975 with the landmark declaration by the *United Nations General Assembly regarding the Protection of All Persons from Being Subjected to Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment* (1975 Declaration) available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeclarationTorture.aspx>

Regarding the history of the adoption of the declaration, and the Convention against Torture, see Rodley, *Treatment of Prisoners*, chapter 1.

20 Eight countries have not accepted the inquiry procedure, including Israel. The CAT Committee has initiated inquiries in nine countries, the most recent one about Lebanon (2014).

21 The Optional Protocol to the UNCAT and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), U.N. Doc. A/RES/57/199, 18 December 2002. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

22 Rodley, *Treatment of Prisoners*, p. 81.

Legal definition of torture in the UN Convention Against Torture

For legal purposes, “torture” refers to the legal qualification of certain acts/ treatment/behavior/ punishment — either a single act or a combination of acts — for example, beating a detainee during interrogation, and depriving him of sleep and food. Often, a detainee is subjected to a combination of prohibited methods, as in this case documented by PCATI:

F.T. was interrogated, sitting on a metal chair with his hands cuffed behind his back for long hours, extending on some occasions to days, without proper sleep... At first there was no direct physical violence though interrogators threatened to kill him, cursed, and humiliated him, including the use of his baby boy who born after his arrest. Then he was threatened with “military interrogation” (“better speak out of your mouth before I’ll make you speak out of your ass”). He was asked “to tell the story” and when he refused he was punched in the eye by an interrogator. This was followed by the “banana” position, where he was on a chair, one interrogator holding on to his legs, the other forcing his head backwards towards the floor. F.T. told PCATI he felt horrendous pain, as if his back was being broken, as well as strong pain in his thigh and stomach muscles. The interrogator holding his head smacked him. Every two minutes they would lift him up, and ask if he wanted to talk. After a few times F.T. lost consciousness, waking to find himself in a toilet with a prison warden pouring water over him. They told him they had no say in what was happening to him, and were just trying to help him. However, once they had changed his clothes they brought him back into the interrogation room. When he refused to talk, his interrogators punched and smacked him again. The interrogators would also place his back to the wall and hold him by the shoulders with his legs bent, ensuring that the full weight of his body was on his feet, until he collapsed. Following this, he was brought back to the “banana” position. At one point he vomited, unintentionally, on the interrogator who was holding his legs²³.

Article 1 of the 1987 UNCAT stipulates a clear and precise international definition of torture:

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 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 capacity²⁴.

23 PCATI shadow report to HRC 2014, para 70.

24 For a discussion of the history and drafting of Article 1, see: Nowak, Manfred and Elizabeth McArthur (2008), *The United Nations Uncat- A Commentary*, Oxford University press, p. 28. 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)).

This definition of the crime of torture thus contains four constituent elements:

- I. *Infliction of severe pain or suffering*: This refers to the act itself, and its impact, as causing severe physical or mental pain to the victim;
- II. *Specific Purpose*: The act was performed for a specific purpose (e.g. eliciting a confession or from a discriminatory motive);
- III. *Official involvement*: The act was performed or instigated by public officials, or at least with official knowledge or acquiescence; and
- IV. *Intention*: The act (i.e. causing pain or suffering) was intentional and not merely a result of negligence.

UNCAT distinguishes between acts which amount to torture (Article 1), and acts qualified as cruel, inhuman, degrading treatment or punishment (Article 16), (i.e., other ill-treatment). It is clear from the debate during the drafting process²⁵ that torture was considered an extreme form of ill-treatment, and carried a particular stigma. Another essential feature was that the act had to have been carried out for a specific purpose (*dolus specialis*).²⁶

In practical terms, this means that when referring to, or relying upon this international definition of torture, you need to document all four elements. The quality and amount of evidence required will depend upon your specific legal action (see Chapters 6). In PCATI's experience, some of the elements are less challenging to document. For instance, in a case related to severe interrogation methods, the specific circumstances of the case will often indicate the "**intention**" requirement — for example, the victim was a Palestinian detainee who had been in the custody of the Israel Security Agency or security officials, and subjected to interrogation. Moreover, the scope of the specific purpose element is very broad, and it is rare to find an interrogation scenario involving Palestinians without some of the indicated purposes, such as obtaining confession, intimidation, coercion and likely discrimination. Thus this element is also relatively easy to document in a number of PCATI's cases.

Two elements have in the past posed a challenge to documentation:

- I. "Severe", meaning the serious consequences for or impact on the victims — whether psychological or physical. Physical impact will inevitably be caused by some torture methods — e.g. the common methods in Israel of stress positions ("banana", "frog"), slaps and kicks, or prolonged and deliberately painful shackling. The victim will often also suffer psychological consequences of these acts. Some other torture methods leave primarily a psychological impact (e.g., sleep deprivation, threats—including death threats, and humiliations — including those of a sexual nature). Even when no documentation of physical injuries is available, the documentation of psychological impact can meet

²⁵ Nowak and McArthur, *Commentary*, pp. 29—51.

²⁶ For a discussion on which, if any, of these two features is the distinguishing feature between torture and ill-treatment, see: Rodley, *Treatment of Prisoners* and Nowak and McArthur, *Commentary*.

the legal requirement. The assessment of the pain caused by the act is subjective, and relative to the circumstances. Inspired by international jurisprudence, PCATI uses the following factors when assessing whether an act caused severe pain or suffering: age, gender, duration, type of punishment, personal circumstances, vulnerability, and health condition during the arrest. For example, the impact of ill-treatment on children is obviously more severe than on adults, as children — especially those in detention — experience pain differently from adults because of their physical and emotional development, and their specific needs (see further discussion in chapter 5).

- II. “Public official”, meaning that different public officials can be held liable, such as those who gave the order to use torture (e.g., public attorney general, head of a police station or interrogation center, etc.). Another example is the police/security officer who interrogated the victim, the other officers who supported the interrogation by carrying out the torture act, or the guards who stood outside the interrogation room — even the other guards who turned a blind eye to what was happening, those who were ordered to deny the detainee food, doctors who examined the detainee to ensure that the interrogation could continue, or doctors who during their examination of a detainee discovered signs of torture, and did not report it.²⁷ In your documentation, it is crucial to remember all these forms of liability, and to record every perpetrator who may be held accountable.

Various acts have been recognized specifically as forms of torture where the four elements defined in the UNCAT have been established, including Palestinian hanging,²⁸ falanga, rape,²⁹ serious beating in detention in combination with other techniques,³⁰ “dry submarine,”³¹ and various forms of psychological torture.³² The key reference books elaborate further on the relevant jurisprudence.

When conducting an interview with torture victim, **focus on what this definition means in practical terms** — i.e. how can these four elements be supported by facts for the purpose of documentation and litigation, and which facts are relevant? For example, how can you establish the identity of the perpetrator and his connection with the authorities? Which questions do you ask to prove what exactly occurred and the impact on the victim? It is also important to remember that the definition is not limited to torture used during a criminal investigation or an interrogation

27 Public Committee Against Torture in Israel and Physicians for Human Rights-Israel (2011), *Doctoring the Evidence, Abandoning the Victim: The Involvement of Medical Professionals in Torture and Ill-treatment in Israel*. Available at: http://stoptorture.org.il/wp-content/uploads/2015/10/Doctoring-the-Evidence-Abandoning-the-Victim_November2011.pdf

28 European Court of Human Rights, *Aksoy v. Turkey* (21987/93), 18 December 1996; *Dikme v. Turkey* (20869/92), 11 July 2000.

29 European Court of Human Rights, *Aydin v. Turkey* (57/1996/676/866), 25 September 1997. Also see REDRESS (2013), *Redress for Rape — Using International Jurisprudence on Rape as a Form of Torture or Other Ill-treatment*.

30 CAT Committee, *Dragan Dimitrijevic v. Serbia and Montenegro*, (207/2002); CAT Committee, *Dragan Dimitrijevic v. Serbia and Montenegro*, (172/2000); CAT Committee, *S. Ali v. Tunisia*, (291/2006); CAT Committee, *Slyusar v. Ukraine*, (353/2008); CAT Committee, *Sahli v. Algeria*, (341/2008) – all decisions are discussed in OMCT Handbook Vol. 4, p. 219. Also see CAT Committee, *Concluding Observations on Yugoslavia* (1999), and from the European Court of Human Rights, *Selmouni v. France* (00025803/94).

31 CAT Committee, *Gerasimov v. Kazakhstan*, (433/2010).

32 OMCT Handbok, Vol. 2, p. 105.

to obtain a confession: it also prohibits severe suffering in other situations, such as abusive arrest by law enforcement officials carried out with a purpose of punishment (provided that all four legal requirements are met). For instance, a Palestinian arrested by Israeli soldiers was subjected to the following ill-treatment:

“A detainee testified that he was arrested late at night in his home, and was taken outside with his hands bound in an extremely painful manner. While being transferred by military jeep to the settlement of Ariel, he was punched and kicked continuously in the neck and legs by a soldier who sat next to him. When they arrived in Ariel, A.S. was forced to stand. Every time he attempted to sit down from exhaustion, the soldiers would stand him back up.”³³

Clearly, this detainee’s story fulfills the four conditions of the definition of torture, though the ill-treatment did not take place as part of an interrogation.

PCATI believes that the following methods — often combined — fulfill the international criteria of torture: Incommunicado detention; sleep deprivation, mostly by means of continuous or near-continuous interrogation; forcibly bending the detainee backwards (“banana” position); slaps, kicks, and blows; strangulation; forced crouching (the “frog” position); forced semi-crouching, with back to the wall; tightening, pressing, or pulling handcuffs; prolonged shackling; curses and threats, including threats of a sexual nature, of death, use of family members, home demolition, and indefinite detention; humiliation, including sexual/gender-based, and incarceration in inhumane conditions.³⁴

We provide you here with an example of where the UN Committee Against Torture (The CAT Committee) concluded that the acts are classified as torture: the victim was stripped to his underwear, handcuffed to a metal bar, and beaten with a police club for approximately one hour. He spent the next three days in the same room — denied food and water, medical treatment, and access to the lavatory. (For further examples, see: OMCT Handbook, p. 206.)

Prohibition of torture in other legal instruments

Each of the international or regional bodies (or courts) adjudicates the facts of a case, in relation to the specific legal standards used in the founding document — which, in most cases, will not contain a definition of torture (barring UNCAT, the Inter-American Convention and the Rome Statute). While some courts refer directly to UNCAT Article 1,³⁵ it is important (for litigation purposes) to research and verify the jurisprudence of the specific body/court when a case has directly referred to it, or the national litigation has pointed to its jurisprudence. As noted further below, it may not be necessary

33 PCATI (2014), *Prosecutorial Indifference*, Available at: <http://bit.ly/1SM3Yak>

34 PCATI shadow report to UN Human Rights Committee (2014); Also see PCATI reports: *Shackling as a Form of Torture and Abuse (2009)*, available, at http://stoptorture.org.il/wp-content/uploads/2015/10/eng_report_shackling2009.pdf
Family Matters (2008) available at <http://stoptorture.org.il/wp-content/uploads/2015/10/Family-Matters-full-report-eng.pdf>

35 Eg. European Court of Human Rights in *Selmouni v. France* and in *Dikme v. Turkey*. See fn. 28 above.

to claim explicitly “torture” or “ill-treatment”; however, it is always necessary to document that the allegations at least related to prohibited treatment above the minimum threshold (e.g., as stipulated in UNCAT Article 16 or ECHR Article 3). Of course, it is ultimately the task of the adjudicating body to make the final assessment.³⁶

The Human Rights Committee: The ICCPR does not contain a definition of torture. Consequently, the Human Rights Committee does not categorize an act as torture³⁷ in its jurisprudence, but simply concludes that the act is prohibited under Article 7 of ICCPR.³⁸ However, the Committee recently noted that “it is appropriate to identify treatment as torture if the facts so warrant.”³⁹ For example, this case has resulted in a ruling of torture:

- Systematic beatings, electric shocks to the fingers, eyelids, nose, and genitals while the naked victim is tied to a metal bed frame; coiling wire around fingers and genitals; burning with cigarettes, extensive burns; hanging from hand and/or leg chains for extended periods, often combined with electric shocks; repeated immersion in a mixture of blood, urine, vomit, and excrement (“submarine”); standing naked and handcuffed for great lengths of time, threats, simulated executions, and amputations.
- For further examples of jurisprudence on acts found by the HRC to constitute “torture”, see OMCT Handbook Vol. 4, p. 159.

European Court of Human Rights (ECtHR): Article 3 of the European Convention of Human Rights provides that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”. ECtHR has introduced an entry level threshold or minimum level of severity⁴⁰ for an act to fall within the scope of Article 3. The assessment, which is relative to the specific case, takes all the circumstances of the case into consideration, including the duration of the treatment; the physical effects of the treatment; the mental effects of the treatment; the sex, age, and state of health of the victim; the nature and context of the punishment itself, and the manner and method of the punishment.

Since *Ireland v. UK*, the ECtHR has noted that there is a special stigma attached to torture, confirmed in *Selmouni v. France*. ECtHR also operates using a hierarchy of pain so that, in order to be classified as torture, the treatment must cause serious and cruel suffering. The ECtHR has distinguished between torture and other forms of ill-treatment, mainly according to a threshold of severity, although the element of purpose is also significant.⁴¹ In addition, the court has noted that the definition follows a progressive interpretation of Article 3 so that “certain acts which were classified in the past as

36 For an overview of jurisprudence, see: *Redress for Rape*, pp. 4-11.

37 HRC General Comment No. 20, U.N. Doc. HRI/GEN/1/Rev.1 at 30, 1994.

38 OMCT Handbook vol 4, p. 165.

39 HRC, *Giri V. Nepal*, Comm. No. 1761/2008. Also see OMCT Handbook vol 4 p. 165.

40 *Ireland v. United Kingdom*. Judgment of 18 January 1978. Series A. No. 25; (1978) 2 EHRR 25. para 162.

41 European Court of Human Rights, *Virabyan v. Armenia* (40094/05), 2 October 2012.

‘inhuman and degrading treatment’, as opposed to ‘torture’ could be classified differently in the future.”⁴²

Inter-American Human Rights System: The Inter-American Convention to Prevent and Punish Torture (IACPPT) includes a definition of torture in Article 2. In 2007 it stipulated for the first time the element required for an act to constitute torture: a deliberate action or intentional act, the victim’s suffering severe physical or mental pain or anguish, and an action committed with a clear purpose or aim.⁴³ Having examined relevant jurisprudence, OMCT concluded that the public official element is also relevant to the court.⁴⁴ The Inter-American Court also employs a progressive interpretation of the human rights standards, in order to reflect changing values of democratic societies.⁴⁵

African Human Rights System: For an overview of jurisprudence of the African Commission on Human and Peoples’ Rights, see OMCT Handbook, vol. 3.

International Criminal Law: For an overview of the development of some of the jurisprudence of the ICC, ICTY and ICTR, see REDRESS, *Redress for Rape*.⁴⁶

1.2 Cruel, Inhuman or Degrading Treatment or Punishment (other ill-treatment)

Distinction between torture and other ill-treatment

UNCAT Article 16(1) stipulates:

“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. In particular the obligations contained in articles 10, 11, 12, and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.”

While cruel, inhuman or degrading treatment or punishment (other ill-treatment) is absolutely prohibited under international law, it is not defined in any international treaty. It is possible that either the term was left open to interpretation to capture a wide array of official actions, or it “should be interpreted so as to extend the widest possible protection against abuses, whether physical or

42 Selmouni v. France, para 101. For a discussion of the jurisprudence of the European Court of Human Rights, see: OMCT Handbook, Vol. 1; Article 3 of the European Convention on Human Rights; Rodley, *Treatment of Prisoners*, Chapter 3; *Redress for Rape*.

43 OMCT Handbook Vol. 2: the Prohibition of Torture and Ill-treatment in the Inter-American Human Rights System, p. 104.

44 Ibid. p. 105.

45 Ibid, p. 106.

46 *Redress for Rape* pp. 9-10.

mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.”⁴⁷

The wording of UNCAT Article 16 indicates that cruel, inhuman, and degrading treatment presupposes some involvement of a public official. However, the other three elements of the definition of torture (regarding severity, intention, and purpose) “are presumably applied more leniently, if at all, in determining whether a breach has occurred.”⁴⁸ Ill—treatment, as it falls within the scope of Article 16 (which would be at a lower level of suffering than torture), may relate to: problematic detention conditions, prolonged solitary confinement (which could even amount to torture under specific circumstances),⁴⁹ use of invasive cavity searches in detention facilities, and administrative detention of foreigners (c.f further OMCT Handbook Vol. 4, p. 231). The jurisprudence of the European Court of Human Rights distinguishes between inhuman treatment -- e.g., prison conditions or beating that do not meet the severity threshold of torture — and degradation (which refers to a particularly humiliating treatment that affronts the victim’s dignity).

In the jurisprudence of the Human Rights Committee, the following acts fall within the definition of cruel/inhuman treatment (see OMCT Handbook Vol. 4, p. 168):

- The victim has been beaten unconscious, subjected to a mock execution, and denied appropriate medical care.
- The victim has been beaten repeatedly with clubs, iron pipes, and batons, and left without medical care for his injuries.
- The victim has been severely beaten by prison guards, and has also received death threats (from them).
- The victim has been imprisoned in a cell for 24 hours a-day, without a mattress or bedding, integral sanitation, natural light, recreational facilities, decent food, or adequate medical care. The HRC found the following acts constitute “degrading treatment”:
- The victim has been “assaulted by soldiers and warders who beat him, pushed him with a bayonet, emptied a urine bucket over his head, threw his food and water on the floor, and his mattress out of the cell.”
- The victim has been beaten with rifle butts, and denied medical attention for injuries he has sustained.
- The victim has been imprisoned in a very small cell, allowed few visitors, assaulted by prison warders, had his effects stolen, and his bed soaked repeatedly.
- The victim has been placed in a cage and then displayed to the media.

47 Principle 6 of the General Assembly Resolution, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, 9 December 1988, U.N. Doc. A/RES/43/173.

48 OMCT Handbook vol 2, p. 230.

49 U.N. Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. A/66/268 (2011).

- The state has failed to provide medical care and treatment for a prisoner on death row, whose mental health had severely deteriorated.

The CAT Committee has noted that in practice, the line between the definitions of ill-treatment and torture is often unclear. Occasionally, experts have tried to explain this difference. In keeping with much of the jurisprudence of such bodies and experts, it may be generally concluded that “cruel, inhuman or degrading treatment or punishment” describes forms of ill-treatment that do not meet all the key criteria of torture (as defined above). Thus if an official’s action causes severe pain or suffering, but is not intentional or purposeful (e.g., generally harsh detention conditions) it constitutes cruel, inhuman, or degrading treatment or punishment, rather than torture. Similarly, if such an act is purposeful and intentional (e.g., interrogation techniques), but does not cause “severe” pain or suffering it will not amount to torture, but to cruel, inhuman, or degrading treatment or punishment. Conversely, if severity, purpose, official involvement, and intention are all found to be present, the act will be determined as torture.

It should be emphasized again that under international law, no cruel, inhuman, or degrading treatment or punishment is permitted under any circumstances, and the discovery of such ill-treatment by state officials remains a grave violation of human rights.

1.3 Legal safeguards at the time of arrest and during detention

International human rights laws and standards provide a wide array of legal safeguards relating to the rights to personal liberty, security, and a fair trial. The key international legal provision is Article 9 of the Covenant on Civil and Political Rights (ICCPR), as interpreted by the Human Rights Committee in General Comment No. 35, and its jurisprudence, as well as the specialized international human rights conventions (e.g., the Convention for the Protection of All Persons from Enforced Disappearance).

If they are implemented effectively, many of these safeguards also serve to make torture and other ill-treatment (as discussed in section 1.1. and 1.2) less likely to occur.⁵⁰ For example, several of the procedural guarantees in Article 9 reduce the likelihood of arbitrary detention, which in turn decreases the risk of ill-treatment. The fulfillment of such safeguards is important for the protection of the victim detained either administratively or in connection with a criminal investigation. As a lawyer, your understanding of the connection between safeguards and ill treatment will translate to increased emphasis on these procedural guarantees. For instance, during the interview, ask whether he has enjoyed such rights.

⁵⁰ For a link between the legal safeguards and reduction of the risk of torture and ill-treatment, see: Human Rights Commission, General Comment No. 35 on Article 9, U.N. Doc. CcPR/C/GC/35, 16 December 2014.

PCATI uses the following list of minimum safeguards relating to each of the phases in the judicial process (i.e., arrest, detention, interrogation, and imprisonment prior to trial)⁵¹ when interviewing adults involved in criminal proceedings. Palestinians who are held either in administrative or preventive detention enjoy the same international safeguards, barring those specifically related to criminal proceedings. Additional safeguards apply for children, and as noted by the Human Rights Committee in its concluding observations to Israel in 2014, children should only be detained as a measure of last resort, and for the shortest period of time possible.⁵²

Arrest:

- Arrests must not be arbitrary, should be undertaken by authorized officials — as a rule, by a warrant — and must always be on proper grounds and in accordance with lawful procedure⁵³;
- The individual must be made aware of the reason for his arrest, and promptly informed of any charges against him — in a language he understands⁵⁴;
- Those arrested must be informed of their rights, particularly the right to remain silent during questioning by the authorities, and not to be forced to incriminate themselves.⁵⁵ These rights include:
 - a) The right to legal aid and to meet his lawyer in private.⁵⁶
 - b) The right to notify and communicate with their family and others.⁵⁷
 - c) The right to be examined by a doctor as promptly as possible.⁵⁸
 - d) Official records of arrests must be kept.⁵⁹

Transportation to/from a detention facility:

- All transport of arrested persons, including to the place of detention, between places of detention, and to and from courts, must be regulated and carried out humanely.⁶⁰

51 During the trial — whether of the main criminal case or in a case challenging the legality of the detention — the suspect is entitled to fair trial guarantees, as stipulated in the ICCPR. See: Amnesty International, *Fair Trial Manual*, 9 April 2014, Section B.

52 CCPR/C/ISR/CO/4 of 21 November 2014.

53 ICCPR Article 9(1-2);Mandela Rules, rule 7 .

54 ICCPR Article 9(2) and 14(3); Body of Principles, Principle 10; HRC, General Comment 35 of Article 9, para 24; ACHR Article 7(4), ECHR Article 5 (2). See GC No. 32 — also relates to the important right to be informed in detail so not only about the charges but also about the material facts or realities regarding the alleged crimes; relevant legal qualification — in order to give him an opportunity to prepare a proper defense.

55 HRC, General Comment 35 to Article 9 para 58; Body of Principles, Principle 13.

56 ICCPR Article 14(3)(d); HRC General Comment no. 13, para 11; General Comment 32, para 34; Body of Principles, principle 18.

57 Mandela Rules, Rules 58 and 68; Body of Principles, PrincipleS 16(1),18 and 19;.

58 Mandela Rules, Rule 30.

59 HRC , General Comment 35 of Article 9, para 58; Mandela Rules, Rules 6 and 7 ; Body of Principles, Principle 12(1).

60 Mandela Rules, Rule 73.

Interrogation:

- The detainee must be treated with humanity and respect for the inherent dignity of the human person (ICCPR Art 10), and must be protected against torture and other ill-treatment (ICCPR Article 7; CAT Article 1 and 16). All interrogation techniques, which amount to torture or other ill-treatment — whether physical or mental — are prohibited under any circumstances.
- The detainee has the right to speak with his lawyer⁶¹. Furthermore, his legal counsel must be present during his questioning.
- Detainees charged with a criminal offence may not be compelled to confess guilt or testify against themselves. Detainees have the right to remain silent during questioning by the authorities.⁶²
- The right to an interpreter, to ensure full comprehension, must be respected and fulfilled.⁶³ This is part of the detainee's right to understand the charges.⁶⁴
- Questioning should be recorded.⁶⁵
- Additional safeguards during interrogation apply to people with special needs, including children and women (see further Chapter 5)
- Judicial officials must use any appearance of detainees before them as an opportunity to observe and talk to them, and obtain other information regarding their treatment in custody.⁶⁶
- The authorities must keep under systematic review all interrogation rules, instructions, methods, and practices (which should be made public).⁶⁷

Judicial control:

- Anyone detained on a criminal charge shall be brought promptly before a judge, and shall be entitled to trial within a reasonable time, or else be released.⁶⁸
- Detainees must be brought without delay before an independent judicial authority to rule on the lawfulness of the detention.⁶⁹
- Detainees must be released if the detention is unlawful.⁷⁰
- Detainees who have been unlawfully arrested/detained are entitled to compensation.⁷¹

61 CPT 2nd General Report, Ref.: CPT/Inf (92) 3 [EN] 13 April 1992, para 38.

62 See for example Article 14(3)(g) ICCPR; Body of Principles, Principle 21.

63 Body of Principles, Principle 14; Inter-American Commission on Human Rights, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, 3-14 March 2008, Principle 5.

64 HRC, General Comment no 13 concerning administration of justice (Article 14), U.N. Doc. HRI/GEN/1/Rev.1, p. 14 (1994), para 13.

65 Amnesty Fair Trial Handbook, Chapter 9.

66 See Report by special Rapporteur on torture, submitted 9 January 1996, U.N. Doc. E/CN.4/1996/35/Add.2, para 76(l); CPT 12th General Report, CPT/Inf (2002) 15 3 September 2002, para 45.

67 UNCAT Articles 2 and 11.; ACHR Article 5(2); ACHPR Article 5; and ECHR Article 3.

68 ICCPR Article 9(3).

69 ICCPR Article 9; Body of Principles, Principales 4, 32 and 37.

70 Ibid, Article 9(4).

71 Ibid, Article 9(5).

Detention prior to trial:

- Detainees must be held only in officially recognized places of detention, and never in secret facilities or locations.⁷²
- Detainees must be treated humanely, and held in conditions that are dignified and conducive to their mental and physical well-being.⁷³
- Restraints, such as handcuffs, chains, irons, and strait-jackets should only be used on detained or imprisoned people for genuine security reasons, and not as a punishment.⁷⁴
- Detainees must continue to have their trinity of rights protected, i.e. access to legal counsel⁷⁵, relatives⁷⁶, and independent medical care.⁷⁷
- Detainees must have easy access to independent, impartial, and efficient complaint mechanisms, and protection provided against any adverse consequence for complainants.⁷⁸
- Conditions in detention must adhere to Mandela Rules standards (see further below at section 1.5).

Trial:

Habeas corpus

- The right to challenge the lawfulness of detention before the court (*habeas corpus*), is well established in IHRL,⁷⁹ and is particularly important in cases of incommunicado detention.
- International law sets a time limit for courts to address the petition. The Body of Principles states that proceedings challenging the lawfulness of a detention “shall be simple and expeditious, and at no cost for detained persons without adequate means”.⁸⁰ The Human Rights Committee has stated that a delay of “weeks or months” after receipt in hearing applications for habeas corpus is “incompatible with Article 9 of the [ICCPR]”.⁸¹

72 HRC, General Comment 35 to article 9, para 58.

73 See for example ICCPR Article 10(1); Body of Principles Principle 1; ACHR Article 5; U.N. General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), 16 March 2011, U.N. Doc. 65/229, Rules 12-13 and 42-43.

74 Mandela Rules, Rule 43.

75 Body of Principles, Principle 18; HRC, General Comment 35 to Article 9 para 46.

76 Mandela Rules, Rule 58; Body of Principles, Principle 19.

77 HRC, General Comment 35 to Article 9 para 58.

78 UNCAT Article 13; Body of Principles, Principle 33; as this pertains to women prisoners, see Bangkok Rules, Rule 25.

79 ICCPR, Article 9(4); ECHR, Article 5(4); ACHR, Article 8.

80 Body of Principles, Principle 32.

81 HRC, U.N. Doc. A/56/40, para 78(13), referring to the Dominican Republic.

1.4 Incommunicado detention

"[I]ncommunicado detention is the most important determining factor as to whether an individual is at risk of torture. As such, the Special Rapporteur . . . urges all States to declare incommunicado detention illegal." Sir Nigel Rodley, UN Special Rapporteur on Torture⁸²

UN General Assembly "reminds all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment, and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that prolonged incommunicado detention and secret places of detention and interrogation are abolished".⁸³

What constitutes incommunicado detention

Incommunicado detention refers to any period of detention during which the detainee has been held without any access to the outside world, particularly to family members, an attorney, or an independent doctor.⁸⁴ This total isolation from the outside world leaves the detainee particularly vulnerable to torture and violation of other fundamental rights. When people are detained, they are under the control of the authorities; when they are detained incommunicado, no one can protect them. Further, the reclusive nature of incommunicado detention may preclude reliable reporting of torture while physical marks are still evident. Thus even short periods of incommunicado detention are fertile ground for abuse.

UN bodies have taken an authoritative stance against this practice, determining that prolonged incommunicado detention may not only facilitate torture or other ill-treatment, but also amount to torture or ill-treatment in and of itself — in particular, prolonged periods that cause psychological harm.⁸⁵

The prohibition of torture and other ill-treatment discussed in section 1.1 and 1.2, and the safeguards discussed in section 1.3, are equally applicable to a situation of incommunicado detention. No unannounced or unacknowledged detention should exceed a "matter of days,"⁸⁶ regardless of security concerns.

In Israel, incommunicado detention is used extensively. This section will explain what PCATI's lawyers do to protect, and ensure the rights of a detainee kept in incommunicado detention.

82 SRT, U.N. Doc. A/54/426, 1 October 1999, para 42.

83 UN General Assembly Resolution, U.N. Doc. A/C.3/70/L.27/Rev 1 of 6 November 2015.

84 Rodley, *Treatment of Prisoners*, p. 460.

85 UNGA Resolution 67/161, 20 December 2012, Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, para 23; UNGA Resolution 66/150, 19 December 2011, para 22; HRC, General Comment 20 to Article 7, 44th session, 1992; U.N. Doc. HRI/GEN/1/Rev.1, 1994, p. 30, para 11; SRT report, U.N. Doc. A/61/259, 12 August 2006, para 56.

86 Body of Principles, Principle 16(4).

Case Study: Incommunicado detention in Israel

PCATI estimates that between 70%-90% of all Palestinian security detainees interrogated by the ISA have been held incommunicado for the entire period of their interrogation or a significant portion of it. A PCATI study shows increased exposure of incommunicado detainees to methods of violent and cruel ill-treatment during interrogation, and to inhuman conditions of incarceration. The detainee may be treated very differently according to the accusations against him, supporting evidence, and the perceived threat.

In Israel, civil law applies to Israeli citizens, and military law applies to Palestinian nationals. This means that Palestinians suspected of committing security offenses can be denied of meeting an attorney for up to 60 days (versus 21 days for Israelis).

How to locate a Palestinian detainee in Israel

- Contact military control center by fax no.03-7376938. You should have the detainee's full name, ID number and a Power of Attorney (PoA) from the detainee's family members, or the detainee himself.
- In case you do not have a PoA, or you did not manage to locate your client yourself, you should contact the Israeli NGO, Hamoked Center for the Defence of the Individual, who may assist you.
- The military control center should reply to your tracing request within 24 hours (according to the Hirbawi petition, HCJ 6757/95).
- In case you did not receive an answer from the military control center, or if the answer from the military control center is "not found," it usually means the detainee was released, or is currently being transferred. In this case, you should submit a *habeas corpus* petition to the Israeli High Court of Justice.

Case Study: Secret detention Israel — High Court of Justice Decision 5243/14

During Operation Protective Edge in the summer of 2014, the Israeli military apprehended many Palestinians in the Gaza Strip and transferred them to different undisclosed locations within Israel. The Israeli human rights organization, HaMoked - Center for the Defence of the Individual, presented urgent habeas petitions asking the state to provide a complete name list of the Palestinians who were arrested during the fighting in Gaza and transferred to military facilities inside Israel. Hamoked stressed that the right to notification about a person's arrest and place of detention is a basic right of both the detainee and his relatives.

In response, the state announced that it would not provide the requested list of detainees. Instead, HaMoked was advised to submit to the military control center individual tracing requests containing the specific detainee's full details, and proof that the inquirer was related to the alleged detainee.

Although the State of Israel continued to deny any obligation to reveal detainees' whereabouts to the organization, they agreed to waive the requirement for proof of family ties due to the "difficulties inherent in the situation." The High Court of Justice adopted the position of the state, and the information was never released directly to HaMoked.

Initial meeting with the detainee at a court hearing regarding remand extension

You may not have much time before the court proceedings begin to gather information from the detainee. In Israel, attorneys may not see their client until he arrives at the courthouse, minutes before the hearing. Therefore, collecting information about any possible ill-treatment is challenging. Below are some recommendations for approaches in court when the victim is or has been in incommunicado detention.

- It is advisable to ask him briefly about the treatment he has received — if there is a suspicion of ill-treatment, consider submitting a complaint already at this stage. Further details can be collected and submitted later.
- Ask the court to include information about the detainee's incommunicado detention in the protocol.
- Request that the court order a medical investigation as promptly as possible and consider whether to request an additional examination by a mental health expert.

- Ask the judge to ascertain whether the detainee has been ill-treated, and more generally how he feels. Although many victims will not respond honestly in this setting for many reasons (e.g., distrust or lack of privacy), the court appearance is a crucial opportunity for concerns over detention and treatment to be addressed.
- If the judge decides to continue the incommunicado detention without contact between the client and the attorney, ask the court to establish more frequent judicial reviews, so that at least the court exercises some supervision of his conditions.

1.5 Conditions in detention

There are international standards regarding detention conditions. In October 2015, the UN General Assembly adopted the revised Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) which stipulate the basic standards for the treatment of detainees, and the conditions in places of detention. Such standards include:

- Material conditions, including accommodation and overcrowding (e.g., lack of minimum space per person); lack of natural light or daylight, cleanliness; ventilation, quality and quantity of food and drinking water; light and access to fresh air, and access to medical services;
- Rights and freedoms, including religion and dietary requirements, information about rights;
- Regime and activities, including outdoor exercise, leisure and cultural activities; education, work, contact with family and the outside world, and respect of religious practices;
- Discipline and punishment, including use of coercion and other measure, including discipline and punishment (rules, procedures and means/instruments of restraint and use of force, solitary confinement, safeguards, training of staff on procedure and methods);
- Protection measures, including admission of prisoners into the prison, registration of prisoners, separation of categories of detainees and complaints procedures; and
- Vulnerable groups: additional standards apply to vulnerable groups, including women, children, elderly, disabled persons and foreigners.

Violation of the SMRs or other UN standards may amount to cruel, inhuman, or degrading treatment, and in worst cases could amount to torture. The CAT Committee explicitly instructed state parties to report detention conditions within their territories, as part of their obligation under article 16 of the Convention. In many cases, the Committee has concluded that conditions entailed a violation of a state party's obligations under this article.

The European Court of Human Rights has concluded in a number of cases that the conditions of detention were a violation of Article 3 of the European Convention on Human Rights.⁸⁷

⁸⁷ For a summary of case law see: European Court of Human Rights (2016), *Detention conditions and treatment of prisoners* factsheet, available at: http://www.echr.coe.int/Documents/FS_Detention_conditions_ENG.pdf

Although you will focus on the criminal case and the allegation of torture or ill-treatment during the interview with the victim, you should also ask him about the condition of detention, and write down what you see with your own eyes (see further in Chapter 4). Similarly, ask about conditions of detention in other places (e.g., the interrogation facility) where the detainee was held prior to arriving in the prison.

In PCATI's experience, it is important to focus not only on the act of torture or ill-treatment, but to obtain the entire story from the victim (including the conditions of detentions). In the complaint, we advise you to remember that the detention conditions do not stand alone, but contribute to the cumulative effect of the treatment on the victim.

1.6 Legal obligations of states

The "umbrella clause" in Article 2 of the UNCAT stipulates that torture – in its broadest sense – must be prevented by undertaking legislative, administrative, judicial (and other) measures by the states party to the Convention. Such means of prevention include guarantees concerning the rights to personal liberty and safety, and to a fair trial, as discussed in section 1.3, above. The CAT Committee stresses that "a mandatory requirement is that any measures taken are effective" in preventing torture and other forms of ill-treatment.

Additionally, state parties must:

- Adhere to the principle of non-refoulement (Article 3);
- Ensure criminal proceedings (Article 4-9);
- Initiate an investigation (Article 12);
- Protect victims and witnesses (Article 13); and
- Provide redress, including compensation (Articles 14-15)

The state's obligation to investigate cases of alleged torture is crucial. In Israel, this obligation is not fully respected, and as a result no officials in the ISA have been charged with relevant crimes.⁸⁸

It is important to remember that if torture (or other ill-treatment) occurs, the victim must have access to independent and effective complaint mechanisms to report ill-treatment. Furthermore, both he and his family are entitled to effective protection against reprisals and/or harassment.⁸⁹ Some victims of torture, who had submitted complaints, received threats either that their criminal case would be affected negatively by any torture complaint, or that they should withdraw the complaints. Consequently, PCATI has presented complaints about harassment.

⁸⁸ PCATI (2009), *Accountability Denied: The Absence of Investigation and Punishment of Torture in Israel*, available at: http://stoptorture.org.il/wp-content/uploads/2015/10/Accountability_Denied_Eng.pdf
Accountability still denied (2012). Available at <http://stoptorture.org.il/wp-content/uploads/2015/10/accountability-still-denied-2012.pdf>

⁸⁹ UNCAT, Article 13.

UNCAT explicitly prohibits the admission into any proceedings of any statement obtained by torture — except against a person accused of torture, as evidence that the statement was made.⁹⁰ International human rights bodies have clarified that once a credible allegation has been made that a statement was obtained by torture, a prompt and independent investigation must be carried out, and the onus is on the prosecution to prove that the suspect (or other witnesses) made the statement of his free will.

Other measures could also contribute to effective prevention of torture, such as ratification of international human rights treaties (including the Optional Protocol to the Convention against Torture), enacting relevant national legislation, inspection and monitoring of interrogations, and training of official staff.

It should be noted that all officials who may be involved in the custody, interrogation, treatment, or legal proceedings pertaining to any individual subjected to any form of arrest, detention, or imprisonment must undergo training in the prohibition on torture and other ill-treatment.⁹¹

Medical staff, particularly, must be trained to investigate complaints of torture and other ill-treatment, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Istanbul Protocol).⁹² This Protocol also states that non-medical officials must be trained, as applicable.⁹³

1.7 Torture by non-state actors

Definition

There is no authoritative definition of the term “non-state actors” under international law. The broadest possible definition includes all private actors distinct from the state — including private individuals, private companies, armed groups, and de-facto regimes.⁹⁴

Non-state actors are not party to international human rights treaties that stipulate obligations of states.

⁹⁰ UNCAT, Article 15.

⁹¹ UNCAT, Article 10(1); Inter-American Convention to Prevent and Punish Torture, Art. 7(1); HRC, General Comment 20 to Article 7 para 10.

⁹² For a discussion on investigatory procedures for medical personnel see: Istanbul Protocol, Chapter V.

⁹³ For an explication on legal investigations into torture, see: Istanbul Protocol, Chapter III; Recommendation No. 95 of the Second Report of the Public Commission to Examine the Maritime Incident of 31 May 2010 (The “Turkel commission”), February 2013.

⁹⁴ REDRESS (2006), *Not only the State: Torture by Non-State Actors, Towards Enhanced Protection, Accountability and Effective Remedies*, pp.14-16. Available at: <http://www.redress.org/downloads/publications/Non%20State%20Actors%209%20June%20Final.pdf>

Responsibility of non-state actors and accountability of states

As discussed previously, the definition of Article 1 of UNCAT presupposes some involvement of officials. However, under certain circumstances where a non-state actor is considered a de-facto authority, acts carried out by such a non-state actor fall within the scope of the definition of torture in the UNCAT.⁹⁵

When a state supports, or tolerates, acts of torture perpetrated by non-state actors, it may bear responsibility for the torture due to breach of its due obligations of diligence. Thus, if the state has failed to take sufficient steps to prevent, investigate, prosecute, and punish non-state officials committing acts of torture, or failed to provide effective remedies for victims of torture by non-state actors, the state has by consent or acquiescence also failed to fulfill its legal obligations.⁹⁶ This means that acts by non-state actors can lead to the state being held accountable.⁹⁷

It is also important to remember that non-state actors may be held responsible for torture or other ill-treatment under domestic criminal law. Although the international definition of the crime of torture is not always implemented in domestic law, perpetrators can usually be prosecuted on the basis of offenses stipulated in state penal law.

What can you do if the victim faced torture by non-state actor?

We advise that you document allegations of torture (or other ill-treatment) even if committed by non-state actors, because the victims may be able to obtain justice and compensation. Try to establish a link, if one exists, between the perpetrators and the state — if there is a link, you may be able to prove that the act constitutes torture according to the CAT definition. If there is no connection, you can act under domestic law, or bring the complaint in front of international bodies over the state's failure to prevent torture from occurring in its territories.

1.8 Incorporation of international legal standards in national law

National judges and other authorities may be reluctant to apply international law to cases of alleged torture and/or other ill-treatments. PCATI advises that, as lawyers, we should refer to international standards in our documentation work, try to persuade authorities to adhere to their international legal obligations, and convince judges of the proper interpretation of international law.

Although Israel has not incorporated international definitions and standards into its criminal code, the effect of international law on torture can be felt in Israeli jurisprudence. In 1999, in *HCJ 5100/94, Public Committee against Torture in Israel et al. v Government of Israel et al.*, the Supreme Court stated

⁹⁵ Ibid, p.17.

⁹⁶ HRC, General Comment 31, para 8.

⁹⁷ CAT, General Comment 2, Implementation of Article 2 by States Parties, U.N. Doc. CAT/C/GC/2/CRP.1/Rev.4, 2007, para 18.

that there is a total prohibition on torture, and prohibited certain interrogation techniques, yet failed to equate these techniques with torture. However, the prohibition applied only to a “reasonable interrogation.” In the case of the use of “physical means” in situations it referred to as a “ticking bomb,” the HCJ provided a loophole enabling interrogators who use torture to evade the law.⁹⁸

Another example of national incorporation of an important international legal principle - the principle of access to justice as stipulated in Article 14 of the UNCAT- is found in the Danish Supreme Court’s ruling in 2013 that the Danish Ministry of Defense was to allow Iraqi torture victims access to justice, and thus remove certain procedural hurdles.⁹⁹

Moreover, if the definition of torture is incorporated into the national criminal code (or not incorporated, as in Israel) we advise you to rely upon the relevant existing provision in order to avoid the case’s dismissal (see further in Chapter 6), while concurrently making the point that the facts of the case amount to torture, as defined in international law. Finally, provisions in national law cannot be used as a justification for violation of international legal standards.

98 For further details, see: PCATI, *Accountability Denied*.

99 Decision by the Supreme Court of Denmark 17 September 2013 (case 135/2013).

CHAPTER 2

Understanding Torture

Introduction

This chapter presents some of the most commonly used methods of torture, and provides an overview of the effects of torture on the victim and his surroundings.

It also outlines when and where torture is likely to occur, and addresses the identity of perpetrators and groups at high risk of facing torture. As there is an extensive body of research on the consequences of torture, this chapter does not pretend to exhaust the issue. Rather, it will provide you with basic knowledge, based on PCATI's experience, to guide you in your immediate work.

2.1 Torture typology

Although torture methods vary from one region to another, some similar methods are employed internationally. Certain interrogation techniques have been identified by jurisprudence as forms of torture or other ill-treatment. Be aware that particular methods may be considered torture in and of themselves, while others may only amount to torture when they are combined with other methods; this will depend on the specific circumstances of the case and the victim (see Chapter 1).

Below are some recurring types of torture and examples of their common sequelae.¹⁰⁰ We reiterate that **this is by no means a definitive or comprehensive list — neither in the methods listed, nor in their characterization**. We will list first the physical methods of torture, followed by psychological methods. Please note that although we list “psychological torture” as a separate category, all torture methods contain an element of mental suffering.

100 The list of methods is based on three main sources: The Istanbul Protocol; The Atlas of Torture; Gurr, Roger and José Quiroga (2000), Approaches to Torture Rehabilitation: A Desk Study Covering Effects, Cost-effectiveness, Participation and Sustainability, in *Torture - a Quarterly Journal on Rehabilitation of Torture Victims and Prevention of Torture* 11(1), pp. 3-35.

Should you require further information on a particular method, or its possible repercussions, we advise that you approach either local/international NGOs concerned with torture, or relevant health professionals, so as to be aware of patterns in your own country. You can also consult the libraries or research centers that focus on these topics, such as the DIGNITY Documentation Centre (<http://www.reindex.org/RCT/rss/Portal.php>).

Physical methods of torture

- **Beating and other forms of blunt violence:** Beating can cause skin injuries, damage to internal organs and the musculoskeletal system, and chronic pain. Beating can take many forms: slapping, punching, kicking, whipping, trampling, throwing against a wall or on the floor, and continuously hitting the same part of the body. This can include the use of implements in the beating.
- **Burns:** Burning of the skin (e.g., with flames, acids or caustic liquids, hot instruments). This method creates distinct patterns and scarring, which can be identified.
- **Violent shaking:** Forceful and repeated shaking of the victim's upper torso, causing the neck and head to swing rapidly. Shaking episodes are usually brief — only a few minutes or less, but may be repeated many times over a period of days or weeks. Shaking can cause headaches, uncontrollable vomiting, urination, loss of consciousness disorientation, and/or changes in mental status. It can also cause harm to spinal cord and serious brain damage, and in some cases result in death.
- **Suspension:** Suspension can produce extreme pain, but leave little visible evidence of injury. Yet even years later, neurological damage may become apparent in a detailed examination. This category includes techniques such as:
 - “**Cross suspension**” — spreading the arms and tying them to a horizontal bar;
 - “**Butchery suspension**” — fixating the hands upwards, either together, or one by one;
 - “**Reverse butchery suspension**” — fixating feet upwards, and the head downward;
 - “**Palestinian suspension**” — binding together of the forearms behind the back and to a horizontal bar, elbows flexed; and
 - “**Parrot perch suspension**” — flexed knees are fixated from a bar, usually while tying the wrists to the ankles.
- **Other positional forms of torture/stress positions:** Tying or restraining the victim in contorted or other unnatural positions for a prolonged time, putting weight and stress on certain muscles and ligatures. There are several techniques:
 - “**Banana position**” — the victim is held on a seat, hands tied in front and then pulled, pushing the victim backwards until the body forms an arch. This positions, like others,

causes pain and neuro-skeletal damage. In addition, while being held in this position, the victim's genitals are exposed, and he may also be subjected to sexual abuse;

“Reverse banana” — the victim is held on his stomach, with his hands pulled behind the back, and his feet pulled backwards towards the hands and tied to them;

“Frog crouch” — the victim is forced to crouch on his toes, while the hands are cuffed behind the back. When crouched, torturers may push or strike the victim until he loses his balance, and falls. This can cause injury to the knees, and other pains;

“Forced standing”— prolonged standing on one foot, or with arms and hands stretched high on a wall; and

“Tire torture”— the victim is forced into a tire, distorting his limbs.

- **Electric shock:** An electric current is transmitted through electrodes which are placed on the body. Common areas are the hands, feet, fingers, toes, ears, nipples, mouth, and genitalia. Torturers often use water or gels to increase the pain and prevent detectable burns. Unlike many other forms of torture, marks can be detected years later through biopsies.
- **Asphyxiation:** Asphyxiation does not usually leave a mark, and recovery is rapid. Known techniques are:
 - **“Dry submarine”**— covering the victim's head with a plastic bag, or another apparatus. Other methods include violently closing the mouth and nose, the placement of pressure around the neck, or forcing respiration of dust, hot pepper, etc.
 - **“Wet submarine”** — immersion of the victim's head into water (which is sometimes soiled or contaminated). This can result in actual drowning.
- **Dental torture:** This form of torture can be perpetrated by the breaking or extraction of teeth, or by the application of an electrical current to the teeth.
- **Restraint/shackling:** Shackles can be used for the punishment and humiliation of the victim, as opposed to their use for maintaining order and preserving the safety of individuals. The inappropriate use of shackles can create severe pain and problems in blood circulation. Leg irons should not be used unless the detainee poses a threat without them, especially since there are many alternatives that can and should be used in their stead. Prolonged shackling is of particular concern if a detainee is suspected of intent to harm himself and others, though he may need to be restrained, the shackling should be as brief as possible and preserve his dignity as far as possible. Any shackling which is either too tight, placed high on forearms (rather than the wrists), or uses inappropriate materials (e.g., rough rope) can cause pain, bruising, and damage to the nerves.
- **Sexual torture:** Although both males and females can be subjected to sexual torture, some techniques are gender specific. Sexual torture is often used as a means of emphasizing

weakness, humiliation, and subordination of the victim. In general, sexual abuse is particularly culture-dependent.

Rape — male rape is used to subordinate men, and in some cultures to emasculate them, and is therefore underreported. Women who are raped are also exposed to the additional trauma of potential pregnancy, infections, and loss of virginity that in some cultural contexts mean the loss of honor or value.

Forced nudity — nudity enhances the psychological nature of torture, indicating the vulnerability of the victim, and suggesting the potential for rape or other abuse. Moreover, prisoners may be placed naked in cells with family members or others, thereby breaking cultural taboos. Tearing off parts of a woman's clothing or forcibly taking off a headscarf can, in some cultures, be tantamount to nudity.

Targeting genitals — electricity, blows, testicular torsion/squeezing, and mutilation. Apart from the obvious intent to cause pain, this method also implies a loss of masculinity.

Female genital mutilation — procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons.

Anal torture — rectal insertion of a truncheon/bottles/hoses/catheters, etc.

Forced abuse — detainees may be forced to abuse one another.

- **Use of animals:** The use of animals as a torture apparatus has both physical elements (in that certain animals may bite or sting), and significant psychological elements which also relate to cultural perceptions of particular animals. Dogs, for example, may be used both to threaten, and to physically injure victims. This form of torture may include confinement in places with rats, snakes, scorpions, and/or other vermin.

Psychological torture

Psychological torture can take many forms, but the main goal always remains the same: to break the victim's spirit by causing extreme mental anguish.

- **Deprivation of basic needs:** Depriving the victim of basic needs (e.g., sleep, food, or medicine) weakens his body and spirit, and can cause severe pain and suffering.

Food and water deprivation — the deprivation of food and water can be highly dangerous, particularly in extreme climates, for people whose health is compromised, and pregnant or nursing women.

Sleep deprivation — the lack of sleep adversely affects the brain and cognitive function, which has the potential to cause severe suffering and hallucinations.

Denial of medical treatment — limited access to a doctor and/or the lack of required medicine.

- **Humiliations:** The use of verbal abuse, humiliating the victim through references to his personality, religion, and/or personal beliefs.
- **Threats:** The use of threats can cause severe mental suffering. Threats may be: against a person's life, or of further torture; of causing harm to a family member, or of prolonged imprisonment; of sexual abuse — especially when the victim is shackled and/or nude, or of publicizing information about the victim (regardless of verity) which has sexual implications.
- **Mock punishment:** Mock executions create a real and present fear of death, emphasizing the utter helplessness of the victim, and the absolute power of his torturers. Another example is the use of mock amputation.
- **Use of family members:** Perpetrators may either bring in a family member and subject him to ill-treatment, or threaten to do so. Another instance is convincing the victim of torture that a family member is detained.
- **Watching torture:** The victim is forced to witness the torture of others (e.g., relatives).

Other ill-treatment

The following are methods which amount to other ill-treatment, though in certain situations — or in combination with other methods — they could also amount to torture.

- **Imprisonment conditions:** Imprisonment consists of the restraint of personal liberty, and the prevention of the free exercise of powers of locomotion. Any deterioration of the imprisonment is seen as a further punishment, not an integral part of the penalty.

Poor detention conditions — lack of proper sanitary and hygienic conditions. Like many other methods, this has a strong psychological element, but may also adversely affect health.

Exposure to extreme temperatures — exposure to either extreme cold or heat is one of the most frequently used methods, as this usually barely leaves external marks. A victim may be exposed to cold in various ways, such as: exposure to the elements, forced nudity, use of water, or exposure to snow or ice. Following physical torture, exposing the victim to cold may also increase back pain. Exposure to hot temperature in detention, especially in summer, can also be related to lack of ventilation.

- **Incommunicado detention:** Detention of a person and prevention of his access to others, such as his lawyer or family members. Prolonged isolation may cause severe psychological damage (see more broadly in Chapter 1 above).
- **Excessive use of force:** Usually employed by police/military/security forces against demonstrators. Excessive use of force can occur in the context of demonstrations, armed raids, or other military and policing operations. One such example is the use of pepper spray, tear gas, or other elements of crowd control in closed spaces, at close range, or in other inappropriate and disproportionate ways. This can lead to severe bruising, loss of vision (whether temporary or permanent), and damage to the respiratory system.

In May 2015 Israelis of Ethiopian descent protested against police brutality and racism in a large demonstration in Tel Aviv, Israel. News outlets and social media reports documented several cases in which protestors were aggressively apprehended by police officers, isolated from the crowd, and subjected to beatings and verbal violence.

- **Force feeding:** Feeding against a person's will, usually employed against hunger strikers, is a unique circumstance which could amount to torture or other ill-treatment. The international standard of ethical practice adopted by the World Medical Association states in the Malta Declaration that "Forcible feeding is never ethically acceptable. Even if intended to benefit, feeding accompanied by threats, coercion, force or use of physical restraints is a form of inhuman and degrading treatment."¹⁰¹

The Tokyo Declaration and the Malta Declaration prohibit physicians from participating in force-feeding a detainee when he refuses nourishment, and is capable of understanding the consequences of doing so.¹⁰²

Force feeding can be accomplished by a tube inserted into the stomach. Force feeding can be extremely painful and may result in severe bleeding, infection, and death.

101 Principle 13 of the Declaration of Malta on Hunger Strikers, adopted by the World Medical Assembly in 1991 (as revised in 1992 and 2006).

102 Principle 2 of Malta Declaration; Section 6 of the Declaration of Tokyo – Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment, adopted by the World Medical Assembly in 1975 (as revised in 2005 and 2006).

2.2 Consequences of torture

The first and foremost consequence of torture is the immediate pain caused, which leaves indelible marks on the survivor. These marks can be physical, psychological, and social, as the consequences will haunt the torture victim, his family, and his society; some may be visible to the lay-person years after the event, while others may be hidden. As the victim's legal aid, you must be aware of the possible repercussions of torture, alert to these signs in interviews with the victim, and able to adjust your professional behavior and actions appropriately (see Chapters 3 and 4). For instance, repeated traumatic brain injury — e.g. caused by beating of the head — can result in impaired mental functions, sometimes years after the (physical) injuries. If you note such impairments in a detainee, and have reason to suspect he has been tortured, such cognitive deterioration may well be a symptom — and therefore evidence — of torture. Such evidence may also have direct relevance to your conduct in an interview with a torture victim. The goal of torture — whether physical or psychological — is to dehumanize the detainee, and reduce him to a position of extreme helplessness. With this in mind, you will understand why it is important that you reiterate to the victim his ownership of and control over the legal process.

Below is a list of some of the most frequently observed repercussions of torture. Not every torture survivor develops a diagnosable mental or physical illness: symptoms depend on many factors, including the age of the victim at the time, and the cumulative effect of other ill-treatment. Nevertheless, the long-lasting psychological consequences of torture are often more persistent and troublesome than physical disability. The most conservative studies speak of 40% of torture survivors suffering from Post Traumatic Stress Disorder (PTSD), but other factors such as exposure to other traumas (e.g., surviving a stressful journey to escape persecution or prolonged incarceration), can increase the rate of PTSD risk to 71%.¹⁰³ Although most commonly recognized, PTSD is only one of the possible diagnoses, including clinical depression, anxiety disorders, and various phobias.

Furthermore, it is important to remember that sometimes the border between physical and mental results of torture may be blurred. The most common psychological and psycho-physiological symptoms consequences of torture include: anxiety, trouble sleeping, irritability; emotional numbness, depression, cognitive impairment; panic attacks, dissociative behavior, flashbacks, and nightmares. The most common physiological consequences include: headaches, sexually transmitted diseases (STDs), broken bones that have healed to varying degrees, dental issues stemming from broken teeth, persistent muscle pains, scarring; neurological impairment, difficulty walking, and numbness in extremities. Many victims experience psychosomatic complaints, such as shifting pain or headaches, which do not have an organic (i.e., anatomical) origin. Conversely, many physical forms of torture manifest themselves in psychological symptoms — indeed, it is extremely rare for a survivor of torture to be completely unaffected mentally and emotionally. Such psycho-physiological symptoms may include gasro-intestinal pain, chronic pain and other unspecific symptoms from cardiovascular and locomotor symptoms.

103 Ford, Julian D. (2009), *Post-traumatic Stress Disorder: Scientific and Professional Dimensions*, Academic Press, p. 332.

Despite the fact that torture is a debilitating life experience, extreme trauma does not always produce psychological problems. Nevertheless, the lack of physical and/or psychological findings does not necessarily refute the claims of torture (see: Istanbul Protocol para 233 and throughout). Instead, it may indicate the resilience of the survivor, stemming from both his ability to adapt and overcome trauma, and from strong supportive networks and habits.

It is impossible to underestimate the effect of torture on both the individual and societal levels. A survivor of torture's domestic life has changed irrevocably, affecting his role and ability to function within the family. His closest circle may also suffer from secondary traumatization — communities are scarred forever by torture, filled with guilt, fear, and anger; and even high-functioning survivors commonly experience difficulties in their daily lives. These may be as visible as an inability to carry home bags of grocery, or as private as nightmares, known only to the victim.

2.3 Circumstances under which torture and other ill-treatment are likely to happen

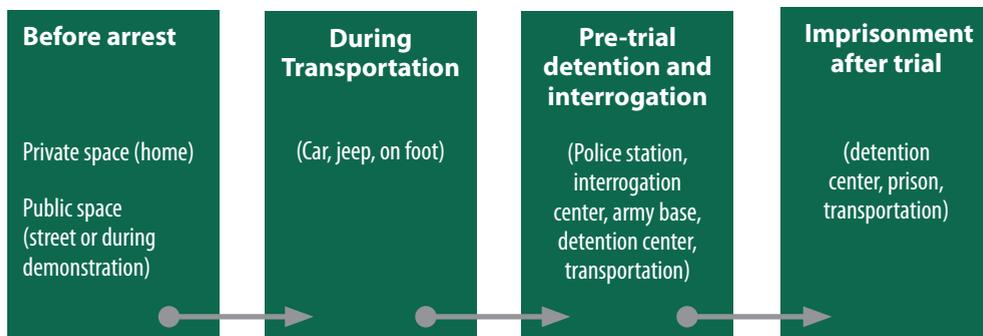
Torture and other ill-treatment most commonly occurs in relation to the arrest, interrogation, and detention of a person. However, as explained in Chapter 1, the international definition of torture does not relate to a specific location.

Arrest, interrogation and detention of a person

In the case of Palestinians tortured by Israeli authorities, torture often begins during arrest, whether in the detainee's house, or in public. It then continues throughout transportation, and later in the military posts (where detainees are held after arrest, but before interrogation). The majority of the torture occurs in the early weeks, following the arrest, in the interrogation center; it is most likely to happen during incommunicado detention. In some cases torture may be perpetrated after conviction, when the victim is imprisoned.

Diagram 1

Where and when torture is likely to happen in the context of the judicial process:



Torture can happen anywhere — from the moment a person is taken into custody, throughout the course of his transportation to detention and interrogation facilities, in the actual interrogation, and during his imprisonment. In many countries torture is most likely to occur in the pre-trial phase. During this time, the detainee may face torture during interrogation, and he may be held incommunicado and in poor conditions. However, acts of torture do not happen solely in custody: In reality, torture or other forms of ill-treatment can take place in various spaces ranging from the closed quarters of institutionalized sites, through to vehicles on the road, and obscured corners in public places.

For example, the arrest of Palestinians in the West Bank often includes subjecting the individual to violence in his home, after he is subdued, as well as physical and verbal violence in the arrest vehicles.

The risk in such cases is that because the victim was subjected to torture (or other forms of ill-treatment) in a location often perceived a torture-free, either you or the he may overlook it. We suggest that you make a point of exploring the possibility that the victim suffered such experiences in other places. Indeed, in some countries the use of torture outside police stations and detention facilities is a way of circumventing the safeguards established to prevent torture.

2.4 Who are the perpetrators?¹⁰⁴

State officials

As mentioned in Chapter 1, the definition of torture — according to the UNCAT— requires that torture is conducted by public officials, or at least with official acquiescence. Thus, the people most likely to be involved in torture are officials involved in the security and criminal investigation process, and those responsible for the security of the state. This may include primarily the police, the military and paramilitary forces, intelligence agencies, and prison guards. More rarely, health professionals - doctors, psychiatrists, or medical staff — may participate in torture either by action (i.e., direct involvement which may include certifying someone fit for interrogation), or by omission (i.e., falsifying medical reports and/or failure to give appropriate treatment).

In Israel, perpetrators of torture may be: Interrogators of the Israel Security Agency, Israeli soldiers and commanders, Israel Police and Border Police, and (to a lesser extent) Israel Prison Service personnel. Health staff in hospitals or official facilities may also be implicated.

Non-state actors

As discussed in Section 1.7 (see above), perpetrators may be non-state actors who act with the consent of the authorities may be held accountable — e.g. other detainees or civilians acting with explicit (or implicit) approval of public officials, acting under their orders, or acting with the incentive of financial gain from public officials. Armed forces ruling a region by *de facto* — with the explicit or implicit approval of the authorities — may also be held accountable.

As always, your own context will determine which of these actors is most relevant, and if there are particular units or bodies that may be active.

2.5 Who are the victims?

Anyone can become the victim of torture and other ill-treatment, regardless of their demographic or group affiliations.

In Israel, the torture victims are primarily Palestinian men, youth, and women, mainly suspected and/or accused of “security” crimes. At-risk groups in Israel also include Palestinian citizens of Israel, Syrian residents of Golan Heights, Jews from the extreme political right, Ethiopians, and African asylum seekers.

104 For further on this subject, see: The Torture Reporting Handbook (second edition), 2015, pp. 27-32.

CHAPTER 3

Preparations of the Visit to the Detention Facility

Introduction

This chapter will discuss how to prepare for an interview with a victim of torture who is still in detention, who may face intimidation and other reprisals. Most of the issues are also relevant for the preparation of an interview with a victim who is no longer detained, although concerns relating to the risk of reprisals by prison staff or other law enforcement officials — after the victim has told you his story — do not exist to the same extent.

Successful interviews — where precise and accurate information about the torture story is being recorded, no subsequent harm is inflicted upon the victim, and the interview has empowered the victim— presuppose readiness and planning, and prior consideration of a number of issues:

- 3.1 Ethical codes for lawyers and how to solve common dilemmas;
- 3.2 Sufficient knowledge about the local context and the practice of torture;
- 3.3 Preparedness for the individual case;
- 3.4 Logistics about the detention facility where the victim is held;
- 3.5 How to prepare an interpreter for the interview?
- 3.6 Considerations of security for the victim, yourself and others, and how to store the information obtained;
- 3.7 Knowledge about referral mechanisms in case the victim will need treatment;
- 3.8 How to be aware of eventual secondary trauma and respond to it?

All these issues are included **in the checklist** that you can use prior to the visit. Most importantly, you should ask yourself whether you are prepared for the task of engaging in a case of torture that includes allegations against the state authorities. Have you considered whether there are risks involved in documenting the case? Do you have the ability to do this type of documentation? Have

you received proper training? Have you consulted with local NGOs and lawyers who have brought torture allegations to the courts, or with international organizations that have expertise in the area?¹⁰⁵

Torture cases are extremely difficult, resource- and time-consuming, and may involve a security risk to yourself. Thus, you may decide (for various reasons) not to engage in a case. If so — and in order to ensure that the torture victim is assisted in getting access to justice — you should refer him to another lawyer and/or experienced NGO.

Inform yourself thoroughly, keep calm, and do not allow yourself to be provoked: the victim's well-being is at stake, and the more careful yet persistent you are, the more likely you are to actually help him.

3.1 Ethical codes for lawyers and how to solve common dilemmas

Lawyers play key roles in protecting and advancing freedom and human rights — and in protecting vulnerable groups and individuals from gross violations of their rights. In other words, you, as a lawyer, carry an ethical responsibility not only towards your clients, but also to use your training and abilities to protect and improve the society around you. By documenting allegations against powerful and protected state officials, you serve justice on several levels:

- You respect the interests of the victim whose well-being and empowerment is your ultimate goal;
- You assist in improving the justice system; and
- You 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 your professional obligation (as a lawyer) to maintain the honor and dignity of your profession “as essential agents of the administration of justice”,¹⁰⁶ and assist your client; meanwhile you must uphold the principles of justice, and promote and protect human rights,¹⁰⁷ as stated in the UN Basic Principles on the Role of Lawyers (and likely also in guidelines from your local Bar Association). Loyalty and respect for the victim include obtaining an informed consent (see Chapter 5). The ethical principles for medical professionals to “do no harm” reflect similar basic considerations.¹⁰⁸

The UN Basic Principles on the Role of Lawyers stipulates (Articles 13-15):

¹⁰⁵ Some of the main international anti-torture organizations include REDRESS in London (www.redress.org); World Organization against Torture (www.omct.org); DIGNITY – Danish Institute against Torture that was the first international organization to provide rehabilitation to victims of torture (www.dignityinstitute.dk) or Association for the Prevention of Torture (www.apt.ch)

¹⁰⁶ The UN Basic Principles on the Role of Lawyers 7 September 1990.

¹⁰⁷ Istanbul Protocol, para 50.

¹⁰⁸ See Istanbul Protocol, paras 57-62.

13. *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.*

14. *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.*

15. *Lawyers shall always loyally respect the interests of their clients.*

Although international law calls for the protection of lawyers¹⁰⁹, victims, and witnesses¹¹⁰, reality is often different, and includes risks to yourself, your client, or others. 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 your safety, or your client's, because of allegations made against well-protected state employees; or when the victim simply decides not to pursue the claim as he risks a "bad deal" because of the threat of more serious charges if he pursues torture allegations against the police. This has been an issue for PCATI's clients, as is the case in several other countries. Such dilemmas may lead to your decision to drop the case.

Another dilemma could arise when the interview turns out to be very difficult for the victim, and you are not able to obtain all the necessary details about the allegations. In order to respect the victim, you may need to end the interview.¹¹¹ National guidelines for lawyers stipulate that lawyers should keep all information obtained from the victim as confidential. However, often — as in the case of the Canadian Bar Association's Code of Conduct — exemptions to the main rule are mentioned. For example, if a person is at imminent risk of suffering physical *and/or* psychological harm, it is your duty to do the best you can to prevent such a situation — even if it means breaching confidentiality. You must protect the victim while minimizing the amount of information shared, as well as taking into consideration that the victim may suffer from retaliation.

3.2 Sufficient knowledge about the local context and the practice of torture

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

110 UNCAT, Article 13.

111 The Torture Reporting Handbook, p. 33.

Familiarity with the local context is important: you will need a deep and detailed awareness of the likely contexts of torture in your country, including the contexts in which clients who were formerly in other countries may have encountered torture — e.g. asylum seekers or immigrants. We cannot over-emphasize the significance of such contextual knowledge. In addition to a theoretical understanding of the definition of torture (see Chapter 5) and its repercussions, you will need to understand what is known about the general treatment of detainees in specific detention facilities; whether torture has previously been reported from particular places of detention; what the usual methods of torture in your particular country are; particular groups, particular accusations and prejudices. For instance, the use of electrical torture in interrogations, in Israel of 2015, is practically unknown. This means that if you have a victim complaining of such methods, you must be even more wary and careful than usual— this may be a unique instance, or it may alert you to the possibility of problematic credibility. On the other hand, the use of threats or sexual abuse while detainees are held in certain stress positions is well-documented in interrogation of Palestinians in Israel. Knowing this may enable you to pay special attention to these episodes (if recounted by your client), which will perhaps lead you to ask specifically about the interrogators' remarks, or the placing of their hands during the stress position. This knowledge should extend beyond interrogation techniques and specific weapons used during arrest and/or interrogation, to an awareness of the different security forces and the different ethnic, political, social, and religious groups in the country, and their histories with the security forces. This general knowledge will also be affected by the current daily context: Is a particular area tense at the moment and thus expected to see an increased use of violence? Or is a neighboring country currently engaged in violent struggle, which may affect asylum seekers?

This knowledge of the *de facto* situation must be supplemented with a professional understanding of the realities *de jure* in your country. You may have recourse to international mechanisms, regardless of whether your country's laws permit remedy for torture victims;¹¹² but knowledge of the local legal context will certainly influence your client's actions and recourses. For instance, is a confession obtained under torture admissible? If not, can it incriminate other people? Obtaining this knowledge before an interview will also allow you to present the victim with his options, and prevent the creation of false hopes. In this — as in understanding the local context of torture — civil society organizations in your country may prove useful.

112 As outlined clearly in the Torture Reporting Handbook, pp. 57-62.

3.3 Preparedness for the individual case

It is crucial that you are well-prepared for the case and allocate enough time. If you have only a limited time for the interview, or if you feel that the victim cannot express himself freely, you may want to limit the information obtained in this particular visit, and leave some issues for the next visit.

Interviewing a victim of torture may be time-consuming (see Chapter 5), and demands sensitivity and patience. This will require you to schedule your day in a manner that allows your clients the time and respect they deserve. Know your limits and do not over-schedule visits. In planning your timetable, you should also take into account the bureaucratic procedures (such as searches or waiting for you clients), and factor them into your timetable.

Before the visit, you:

- Should verify that the victim is still being held in the detention facility;
- Need to notify the detention facility authorities of your visit in advance;
- Verify whether the detention facility has specific visitation days and hours; and
- Check what sort of identifying documents are required.

You will be able to gather some information about your client, for example:

- A charge sheet obtained prior to a hearing on extension of pre-trial detention;
- Information from a referring lawyer; or
- Information from family members who can provide relevant biographical, medical, or psychological information. For instance, PCATI managed in one case to speak to the wife of a male victim; this allowed the lawyer to know in advance that the detainee suffered from high blood pressure.

There may also be gender issues — for example, if you are a male lawyer, you must ask a female victim if she has any issues that should be discussed with a female colleague.

You should be prepared for unexpected changes (e.g., the victim might be delayed or transported to another facility) and challenges during your visit. So rest well before a visit, and eat and drink. A particular recurring challenge is the security check you go through as you enter the facility, and/or on your way to the visitation hall/rooms. It is highly recommended that you check ahead of your visit what sort of security regulations the facility has, and what examinations you can expect — you might be questioned, strip-searched, have your files looked through, and so on. It is essential to know your own rights. If, for example, you do not want the security personnel to inspect your documents, or you are unwilling to go through a potentially humiliating questioning or physical examination, set these limits for yourself before entering. You certainly are not obliged to go through such examinations if they are not mandated by law or regulation, but by refusing to go through them you run the risk of not being allowed to see the victim until the matter is resolved.

In summation, good preparation allows you to establish trust with your client more easily and thoroughly, and prepare for potential difficulties.

3.4 Logistics about the detention facility where the victim is detained

You should familiarize yourself thoroughly with the general guidelines and regulations for lawyers' visits in your country, or specific to the detention facility. To obtain such information, you may contact the prison and probation authorities, the director of the detention facility, or lawyer colleagues.

As the staff at the facility will expect you to follow certain behavioral norms, adhering to them will minimize the risk of suspicions arising because of the sensitive nature of torture allegations.

You should try to find out details about the setting and visiting conditions; for example:

- How much time you will be allowed to spend with your client?
- In the interviewing room, is there a separating glass between you? or will you be seated in the same room?
- Will the interview be supervised?
- Can you request that the interview take place in a different place within the detention facility?
- Can you bring documents, notebooks, pen, camera, etc?
- Are you allowed to take photos — and will it be possible?
- Can you organize a follow-up visit?
- Can you pass on information from family and friends?

We suggest that you take necessary precautions, and monitor your own actions according to common sense. Be aware of the dangers of empathy and identification with the client/victim, which may prevent you from exercising the same sort of caution you usually would. As a preventive act of caution, you may want to clarify for both prisoner/victim and his family or friends that you will only pass on basic greetings from one to the other.

PCATI's lawyers should bring the following documents (see Annex 2):

- Your license to practice law
- Visit authorization letter from the prison
- Power of Attorney
- Waiver of Medical Confidentiality form
- Form of request for examination by external physician
- Biographical information form (of the detainee)
- Informed consent regarding legal and advocacy use of data

3.5 How to prepare an interpreter for the interview

If you intend to use an interpreter, make sure you have formal documentation authorizing the interpreter to join you in the visit *prior* to the actual visit. The interpreter will need to have the necessary documentation to enter the facility.

In PCATI, we use interpreters who are appropriately trained, and have experience with torture cases.

You will have to prepare the translator that he is likely to encounter challenges and even secondary trauma. You will also have to explain the role of the translator — that he must not intervene during the interview, and that translation must be done correctly without altering the information provided by your client. The translator must also understand the key ethical principles, including confidentiality and informed consent, and the principle of doing no harm, and he should show empathy, but not judgment.¹¹³

3.6 Considerations of security for the victim, yourself, and others - and how to store the information obtained

A number of risks might be associated with documenting allegations against the state in general, and regarding persons still in detention, in particular, including¹¹⁴:

- Intimidation/threats by the police or security officers;
- Direct punishments for clients who are still in detention;
- Coercive measures attempting to force the victim to drop the allegations; and
- Rejection by family members or the community as a result of the abuse.

You should use the best of your judgment to address such security issues. Local NGOs may be helpful with the assessment of security risks. The Istanbul Protocol also underlines the risk for a detainee who is too trusting:

“Every precaution should be taken to be sure that prisoners do not place themselves at risk unnecessarily, naively trusting an outsider to protect them.”¹¹⁵

Storing information in a safe location will also strengthen the protection for the victim and yourself.

113 For further information, see: Torture Reporting Handbook, pp.89-90; International Protocol on the Documentation and Investigation of Sexual Violence in Conflict (2014), p. 38.

114 For similar concerns, see: Documentation and Investigation of Sexual Violence in Conflict, p. 33.

115 Istanbul Protocol, para 132.

3.7 Knowledge about referral mechanisms if the victim will need treatment

During an interview you may identify visible physical signs on your client's body, which may also indicate that medical treatment is required. You may also notice indications that the victim needs psychological care, or it may be that he himself discloses to you physical wounds and/or mental difficulties. Such signs may be a direct result of torture or the treatment of your client, or they might be pre-existent to his arrest. Either way, you are required to know what to do in such a situation.

Consider whether there are governmental or non-governmental organizations you can contact. In Israel, for example, where it is possible to demand that an external physician to examine the victim in prison, PCATI has been collaborating with fellow NGOs and volunteer doctors in order to organize visits to imprisoned torture victims.

With the client's consent, you need to alert the prison's authorities and medical staff that the victim requires medical treatment. At times, and particularly if you suspect the involvement of prison authorities in the victim's condition, you may also need to notify the state authorities responsible for monitoring prisoners' health. Remember to record the medical issues in your own notes for future use before making such a referral.

In the event that the victim refuses to be treated, it is your duty as his attorney to decide what best serves his interest (in this specific context). Be sure to take into account possible obstacles to your client's overall well-being, particularly when psychological care may be needed. In PCATI's experience, it is often better to approach the prison's medical clinic, rather than the prison's administrators, if you decide an immediate referral is required.

3.8 How to be aware of eventual secondary trauma and how to respond?

Secondary or vicarious traumatization refers to the cumulative negative effect of listening to, and working with, people who have been through trauma. No lawyer working with detainees is immune to secondary trauma, and this is particularly true if the detainees are likely to recount harrowing stories of trauma and ill treatment. In order to maintain your ability to provide quality care to your clients without paying too high a price in your personal life, your best bet is to firstly establish an awareness of the manifestations of secondary trauma, and remain attuned to yourself and such signs. This may take the form of increased anxiety, changing sleep patterns, or alcohol and drug consumption; it may also affect your ability to accurately assess the interview.

“First, there is a danger that the interviewer may identify with those alleging torture and not be sufficiently challenging of the story; second, the interviewer may become so used to hearing histories of torture that he or she diminishes in his or her own mind the experiences of the person being interviewed” (Istanbul Protocol, para 94).

If you recognize either of these attitudes in yourself, regard them as ‘warning signs’, and take the appropriate action. If you can interview in pairs, this may also provide much needed support during, and after, the interview.

The second crucial element is establishing in advance a robust and flexible support system, allowing you to process and digest encounters — both on a regular basis, and when a crisis arises. This may be as simple as not scheduling more than a certain number of visits per week. It may also mean ensuring that, after a difficult day, you have sufficient time and space to decompress — sports, music, friends, or whatever suits your personality. In PCATI we have found that a conversation with colleagues, or an informal “debriefing” session, may be of use and help you process an interview and ensure you do not feel isolated. Sometimes, however, such measures will not be enough, and you will feel the need to talk to a professional. This may happen after a particularly affecting interview; but since stress is cumulative, it is also more likely to happen the longer you carry on with your work. Ensure you have a contact handy for these occasions.

CHAPTER 4

The Interview

Introduction

“Recording the allegations of torture is the most crucial step in the entire reporting process, because it dictates what you are able to do with the information in the later stages, yet is also the one which can be most difficult either to learn or to explain in a universally applicable manner.”¹¹⁶

This chapter contains PCATI’s advice on how to conduct an interview with a victim of torture who is likely — at least in our experience — to be in detention when the first interview takes place, and for various reasons is often hesitant in recounting the details of the traumatic event. Remember that as “torture always aims at the person’s perceived vulnerabilities whether physical or physiological”¹¹⁷, you — as a lawyer — should try to understand what torture does to people, and the serious psychological impact of torture (see Chapter 2). The psychological impact of torture often entails a feeling of having lost control over life and trust in others. This obviously poses specific challenges to a successful interview about such an intimate and emotional issue as torture, as it presupposes a good rapport between you and the detainee. How do you build that rapport? Why should he trust you? What are the right questions to ask in order to build the crucial trust? How do you ensure that you do not betray that trust?

“Interviews with people who are still in custody, and possibly even in the hands of the perpetrators of torture will obviously be very different from interviews in the privacy and security of an outside, safe medical facility. The importance of obtaining the person’s trust in such situations cannot be stressed enough. However, it is even more important not, even unwittingly, to betray that trust.”¹¹⁸

This chapter will outline the various steps in an interview process from the beginning to the end of the interview, and explain some good technical interviewing skills that can be used to build trust with the detainee and avoid flash-backs and re-traumatization (see, also: Chapter 3). This chapter

116 Torture Reporting Handbook, p. 33.

117 Robertson Mary., Chartered Clinical Psycholgist, *Expert Witness Report*, available at: <http://www.redress.org/downloads/casework/RonJonesMedical.pdf>

118 Istanbul Protocol, para 129.

presupposes thorough preparation (Chapter 3) and considerations of the various potential dilemmas that might arise during the interview — for example, between the need to obtain a useful account and the needs of the person being interviewed. You should be well-rested, have a clear idea of what you are doing, and the objective of your visit to the place of detention; begin the interview open-mindedly with as few preconceptions as possible so that you do not frame the interview in advance, and so that the detainee will feel comfortable with you and eventually will tell his story. Because this is an immense task, you might consider conducting the interview with another colleague.¹¹⁹

Since conducting an interview with a victim of torture is tiring and difficult — especially in countries with a record of torture¹²⁰ — we stress the importance of good technical interviewing skills, which can only be obtained through training and practice. We also emphasize the significance of a good understanding of the international definition of torture and other legal standards in the UNCAT (see Chapter 1) that — in addition to national legal norms — will form the basis for your questions.

Despite the serious potential pitfalls, our experience is that a well-conducted interview will empower the victim and help him to recover. Some psychologists believe the process of sharing a traumatic experience can be therapeutic — in other words, that it can be helpful to the victim in becoming a “survivor”. In our experience, some victims do indeed experience relief at releasing a story in a safe environment or to an active listener.

4.1 How to begin the interview?

Remember to allocate enough time for the interview and signal to the detainee from the beginning that you are patient and prepared to listen to him as long as it takes:

“A person interviewed at 8 p.m. deserves as much attention as one seen at 8 a.m... Prisoners who do not often see outsiders may never have had a chance to talk about their torture. It is an erroneous assumption to think that prisoners talk constantly among themselves about torture.”¹²¹

Begin by clearly introducing yourself by name, profession, and organization (if you represent a NGO). This should be done even if the guards have announced your name.

Explain why you are here now, and how you got his name: did a family member contact you and ask you to visit the detainee? Did an organization or another lawyer contact you? Were you nominated by the state as a defense lawyer? It is important for the detainee to understand exactly who you are and what the connection is between both of you. You might know some details in advance

119 If resources and circumstances allow, you can consider visiting the detainee with another colleague. This approach is recommended by the Torture Reporting Handbook (p. 89). Where the circumstances permit, it is best to interview as a pair, with one person asking the questions and the other taking notes. Even better is where the two individuals have complementary skills, e.g., medical and legal expertise.

120 Istanbul Protocol, para 127: “Visits to prisoners are not to be considered lightly. They can in some cases be notoriously difficult to carry out in an objective and professional way, particularly in countries where torture is still being practiced.”

121 Istanbul Protocol, para 134.

about the detainee's torture story, or you might be in a situation where your visit with the detainee is about an ordinary criminal case, and then allegations of abuse emerge unexpectedly during the interview.

If you use an interpreter, introduce him by name, and ask whether the detainee has any objection to the interpreter participating in the interview.¹²² Keep in mind that victims of torture, and detainees in general, have good reason to be suspicious of unknown people.

Take your necessary precautions (see Chapter 3 regarding security and risk of re-traumatization). Be sensitive to any signs of suspicion, treat the interviewee as a free agent who should give consent to any aspect of the interviewing setting, and therefore also explain if you intend to take notes — a pen in itself might remind the detainee of the interrogation setting. Ask whether the detainee has any objection to your gender (and the gender of an interpreter). In some cultures, and in PCATI's experience, male detainees have often no objections to be interviewed by female lawyers. However, other cultures might differ, and female detainees might be less willing to tell their story to a male lawyer (see Chapter 5).¹²³

Before explaining the specific reason for your visit, spend **some time on simply listening to the person** — you might call it small-talk, and talk about issues that you sense are important for him: ask about his comfort and health at the moment. Maybe you have spoken with a family member prior to the visit, and you can pass on some greetings or family news. Make sure the detainee understands that he can end the interview at any time.

Note the guidance in the Istanbul Protocol (para 135):

"...Information is certainly important, but the person being interviewed is even more so, and listening is more important than asking questions. If only questions are asked, all that are obtained are answers. To the detainee, it may be more important to talk about family than to talk about torture. This should be duly considered, and time should be allowed for some discussion of personal matters. Torture, particularly sexual torture, is a very intimate subject and may not come up before a follow-up visit or even later. Individuals should not be forced to talk about any form of torture if they feel uncomfortable about it."

PCATI lawyers prioritize this initial phase of the interview and might spend up to 30 minutes talking with the detainee to help him relax, to gain trust, and to get to know him better.

From the beginning, your posture and body language should be appropriate (see below). Ensure that the detainee feels at ease, ask if he wishes to have some water, and make sure he understands that he can always take a break.

122 Istanbul Protocol, paras 150-153.

123 Torture Reporting Handbook, p. 37 See, also: Istanbul Protocol, paras 154-155.

4.2 Is the setting of the interview appropriate for continuing the interview?

After the initial phase of the interview, you will have a better understanding of the victim, the specific circumstances of the case, whether you will be able to conduct a good interview in the particular setting, and whether the privacy required will be respected by the staff. Despite your efforts, you may decide that in order to respect the detainee's needs, it would be best to end the interview at this early stage already. The following case study illustrates this very common dilemma:

Case study: When to end an interview

OS was placed under administrative arrest and held incommunicado for a month.

When a female PCATI lawyer was ultimately permitted to see him, she was shown into a room with a guard standing in one corner; and other lawyers and detainees talking by phone across a glass partition.

OS was sitting with his hands and legs still shackled to a long metal chain, visibly tired and stressed. The length of the chain, constructed so that the detainee remains shackled to a chair, alarmed the lawyer and signaled the possibility that he was still undergoing interrogations.

When she asked the prison guard to step back, he insisted on staying in the room.

During the initial phase of the interview, OS started talking about still-ongoing, abusive interrogation that included physical violence. When he indicated that he wished to go into further details, the lawyer stopped him. She explained that the setting was not private, and pointed to the guard in the doorway. She promised to come back soon and hear his whole story, and explained that she would also not ask him any questions on subjects where privacy is crucial.

In this case, following PCATI policy, the lawyer decided to prioritize the client's interests ahead of ascertaining the facts, in spite of the client's apparent willingness to provide details. Based on her experience and her knowledge of the local shackling practices, she determined that it was highly likely that his testimony would be used in his continuous interrogation. The lawyer also took into account her client's obviously fragile state, and therefore chose to warn him explicitly against speaking too freely.

At a follow-up visit confirmed that the client had indeed been returned to interrogation after this first visit. The lawyer was then able to interview the client in greater privacy, after he had slept, and heard his allegations of torture and ill-treatment, including sexual abuse.

4.3 Informed consent

Scope of written consent

Before starting the formal interview, you should obtain informed consent from the victim to conduct the interview. If he continues to appear suspicious of you after the initial phase of the interview, it may be advisable first to listen to parts of his story and then ask for permission to record the information in writing. Explain that consent for written documentation does not entail permission to use the information in legal proceedings, media, or other ways.

Allowing the detainee to give consent to the interview can itself give him a sense of power and control.

You need specific informed consent to take legal actions. Remember to differentiate between “private” use of the information — e.g., presenting complaints to the authorities — and “public” use of the information through indirect monitoring. A victim may, for example, choose not to reveal his identity and thus forego presenting a petition, and yet participate in the anonymous use of his story for monitoring purposes.

Informed consent for all steps in the process should be documented in writing, dated, and signed. The consent should be written in a language that the victim understands. One of the reasons for that is that he might have been forced to sign a confession in a foreign language. You should of course avoid replicating this method.

If the victim is illiterate or unable to read for other reasons, consent must be verbally explained.

The detainee must understand the meaning and repercussions of consent, and therefore you should have explained your objectives and the possible use of the information clearly and thoroughly. In addition to obtaining a necessary document, you are showing respect for the victim’s right to make decisions, and thereby empowering him to regain control of his life.

Consent is considered informed if you share with and explain to the victim the possible steps in the legal process, as well as the risks and possibilities. No action should be taken on the victim’s behalf without prior informed, freely given consent.

Remember that in a case involving minors or persons who have been appointed a legal representative, you are required to obtain the guardian’s approval prior to any legal action (see Chapter 5).

How should I obtain informed consent to document the victim’s story?

This is straightforward: ask the victim if he is willing to share with you the details of his detention and interrogation. Request his explicit permission to document in writing what he tells you, and mention the language in which you will document the story (if relevant).

How should I obtain informed consent to take further steps?

The record of facts may be used for different purposes (see chapter 6). It is essential that you explain to the victim the possible use of the information, and obtain his consent for every step you consider taking. Informed consent should cover any course of action in which the victim's name and/or other identifying information will be publicized for legal or advocacy purposes.

In many countries, including Israel, complainants are required to testify in person, and victims of torture cannot remain anonymous during legal proceedings. The victim should understand that his name will appear on the complaint, and that it is most likely that he will be obliged to testify in person, in front of the relevant investigative bodies.

You should further verify that the victim clearly understands your suggested legal action(s) and that he agrees that you pursue legal action on his behalf. You must inform clearly of the possible negative consequences of legal action, including any potential impact on his criminal case and on his detention conditions. Avoid creating false expectations, and do not promise anything you cannot keep. The expected timeframe for legal action should be clear.

However, in our view, there is no need to exaggerate possible negative outcomes as this may unnecessarily deter the victim from pursuing his case. If the possible consequences of an action are unpredictable, share this uncertainty with your client.

Validity of the consent

Do not pressure the victim into giving his consent and always respect his decision, even if you believe it is wrong. The validity of the consent might be questioned if given while the victim is in detention and has no (or few) persons to consult with, and his motive for granting consent may be unclear. For instance, the victim may be motivated by a desire to please you, and thus retain your services as his lawyer, or to solicit your explicit or implicit approval. Be mindful of your client's verbal responses as well as his body language when assessing the validity of the consent, and do not hesitate to repeat your explanations when in doubt.

What should I do if I am not sure that informed consent was given?

It is advisable to ask the victim about his underlying reasons for giving consent. Although often his answer will reveal a correct motivation, you might in some cases discover a suspicious motivation — for example: "I want you to keep visiting me". In that case the consent is not valid in our view, and you need to engage in further explanations of the matter. If you are uncertain whether the victim gave informed consent, note your reasons in writing in your own records, and advise him to consider the matter further. Then suggest a follow-up visit.

It is our firm advice never to file a torture complaint with the authorities, or share information with others, if you have doubts regarding the validity or scope of the consent.

4.4 What information should I gather?

After the initial phase of the interview, you should allow the detainee to tell his story in his own words. You should start by opening questions, e.g., “What happened to you when you were arrested? What do you wish to tell me?” Avoid closed questions, such as “Were you beaten?”

Then you can proceed to obtain **an overview of the various events in the story**, including dates, places, duration of detention, frequency, and duration of torture sessions. As noted in the Istanbul Protocol:

“...A summary will help to make effective use of time. In some cases in which survivors have been tortured on multiple occasions, they may be able to recall what happened to them, but often they cannot recall exactly where and when each event occurred. In such circumstances, it may be advisable to elicit the historical account according to methods of abuse rather than relating a series of events during specific arrests...”¹²⁴

Based on the personal story and the summary, you will then begin asking more detailed questions about each of the events to ascertain **who did what to whom? (When, where, why, and how?)**

Questions suggested in the Istanbul Protocol:

What time was it? Where were you? What were you doing? Who was there? Describe the appearance of those who detained you. Were they military or civilian, in uniform or in street clothes? What type of weapons were they carrying? What was said? Any witnesses? Was this a formal arrest, administrative detention or disappearance? Was violence used, threats spoken? Was there any interaction with family members?¹²⁵

Where did the abuse take place, when and for how long? Were you blindfolded? Before discussing forms of abuse, note who was present (give names, positions). Describe the room or place. Which objects did you observe? If possible, describe each instrument of torture in detail; for electrical torture, the current, device, number and shape of electrodes. Ask about clothing, disrobing and change of clothing. Record quotations of what was said during interrogation, insults hurled at the victim, etc. What was said among the perpetrators?

For each form of abuse, note: body position, restraint, nature of contact, including duration, frequency, anatomical location and the area of the body affected. Was there any bleeding, head trauma or loss of consciousness? Was the loss of consciousness due to head trauma, asphyxiation or pain?

124 Istanbul Protocol, para 137.

125 Ibid, para 138.

Important information

- Circumstances of arrest:
 - Time and place of interrogation.
 - Who participated? Officials in uniform? Officials in civilian clothes? Others?
 - Were you informed of the reasons for the arrest?
 - How were you treated during arrest?
 - Were there any witnesses?
- Circumstances during transportation
- Circumstances during interrogation:
 - Time and place of the interrogation; how long did the interrogation last?
 - Who participated? How many? Can you describe them?
 - How were you treated during interrogation?
- Protection of legal safeguards (see Chapter 1)
 - Where you informed of your right to call relatives?
 - Did you have the right to call a lawyer?
 - Have you requested a medical examination? Have you met a doctor?
- Conditions of detention (see Chapter 1 and use the Mandela Rules)
- Cleanliness, access to toilets and sanitary needs, ventilation, crowding, and privacy
- Sleep conditions (including how many hours of sleep allowed, privacy, and bedding material)
- Food and water provision (including quantity, quality, access, and cultural/religious fit)

Your questions should lead to obtain a coherent narrative account. Some questions can be used to verify the credibility of the detainee.

Torture victims may focus on the physical acts and the “what-questions” — the physical beatings or the abuse that they sustained. However, in light of the definition of torture and the requirement to prove that the act caused “severe physical or psychological consequences”, it is equally important to obtain information on the subjective element, and what was the **impact of the act**. You may need to understand and establish the specific emotions of your client.

Few people can present all this information in a coherent and systematic fashion; the victim may well jump between events, or skip over episodes. When you can do so without interrupting his flow, go back and ascertain the details: Where were you at the time? Did you hear the names or nicknames of your abusers? Could you describe them? How long did this take? And how could you tell — for instance, was there a clock on the wall or did the sunlight change? Were there distinct smells or noises associated with one of the locations? Take into account that inconsistencies may also be a symptom of torture (either due to physical causes, such as head trauma, or psychological ones, e.g., shame). Your job is to try and minimize these by asking questions in different phrasings, or returning to the issue later, while accepting their existence.

The detainee will talk about various events and may focus on the most glaring parts, such as physical torture. Be aware that you might also unconsciously focus on such issues. However, we recommend making an effort to ask about all the various events, including the detention conditions — e.g., sleeping arrangements, size of the cell and number of people in the cell, cleanliness, access to toilets and sanitary needs, and ventilation.

4.5 Should I use lists of questions and checklists?

PCATI lawyers do not generally rely upon questionnaires during the interview. We train our lawyers on the interview setting, finding that an unstructured interview yields the best results, and ensures that the detainee maintains control over the situation and is not alienated by pre-prepared questions.

Thus, our lawyers rely on open-ended questions, increasing in specificity throughout the interview. This allows the detainee to tell you all the particulars of his story. For instance, you might ask “how did you sleep at night” rather than asking “were you deprived of sleep?” In this way you can also allow the story to determine your interview, so that you are listening to the victim and not imposing pre-conceived ideas. For all these reasons, you do not want to rely on lists that may detract from your focus on the particular persons, and force his experiences and answers into the models.

However, during your preparation, you can study and be inspired by the available questionnaires, including the Harvard Trauma Questionnaire available in many languages. Questionnaires may also be useful in obtaining diagnoses. For instance, if you are having trouble providing a detainee with necessary medical help, a reputable self-reporting symptom questionnaire may help make the case for further professional assistance; such a questionnaire may also be helpful to a health professional in preparing his visit.

4.6 How do I document signs of violence when I am not a health professional?

If you see physical signs of abuse on the detainee (e.g., burns or scars at the wrist) or if the detainee speaks of such signs (“I still have marks on my ankles from the shackles...”), then you should record this; eventually take a photo if permitted, and if the detainee consents. You can also in various ways try to measure the physical sign – a measurement tool could be your pen, a matchbox or a coffee cup. If you feel comfortable, you might also use a forensic ruler (a flexible ruler with a colour scale for medical-legal documentation). If the victim agrees, do your best to describe what you see, noting the location, shape, and size of any marks or scars, and taking pictures if possible, or adding drawings or diagrams, as needed.

Remember that professionals may later draw useful conclusions from any descriptions you provide. For example, if a lawyer states “client was limping, dragging left foot behind him as he entered; demonstrates inability to fully close his fingers in both hands into a fist,” a physician may later use this information and speak to the consistency of these symptoms with the alleged torture. In these cases, you may well want to prepare an affidavit of your own, testifying to what you have seen, and appending it to your further complaints or official requests.

PCATI often asks the authorities to ensure a medical examination of the detainee if this has not already been done (we would refrain from doing so if we have doubts regarding the professionalism of such an examination). The Israel Prison Service internal regulations specify that if a prisoner is harmed while in custody, a specific “injury form” should be filled out and included in the detainee’s medical file, including a photograph of all injuries. In practice, this regulation is rarely observed, and the necessary photographic equipment in the prison clinics is often out of order for months. However, knowledge of this regulation has allowed PCATI to demand its observance, leading in some instances to precious and rare documentation of injuries while they were still at the acute stage. Conversely, in other cases, when the injury was documented in writing but not photographed, PCATI was able to claim that the burden of proof now lies upon the state, since they did not follow the required procedures for preserving evidence.

Remember that a lack of physical evidence is not positive proof of a lack of physical torture.

If you wish to learn more about the principles of documentation, approach the relevant organizations in your country, and study the Istanbul Protocol which also includes helpful diagrams.

4.7 How do I ask about culturally taboo subjects, such as sexual violence?

You must ask about culturally taboo subjects with great sensitivity, remaining attuned and responsive to your client's implicit and explicit reactions. Sometimes a description of a situation or euphemisms will tip you off that the interviewee was subject to sexual abuse. You could try asking him to clarify the situation: "How exactly were you seated? How far away was the interrogator? Where were his hands?" If you feel that the interviewee is not comfortable sharing this information, you could also try to validate his reluctance: "I see that you are nervous. Maybe you feel like there are things you would rather not say."

Some victims of sexual violence may also feel strongly that they cannot "contaminate" their interlocutor by pouring out their story. If you sense that this may be the case, you can remind the interviewee that you are here as a professional, doing your job, and that they need not be ashamed to repeat abuses or describe a situation to you. You might also remind them of the purpose of your questions: that while these types of experiences are unfortunately universal, and do not reflect on the conduct of the interviewee, they are also illegal. Your purpose is not to cause the victim pain, but to document the abuse as part of an attempt to fight against it. Part of your documentation here will include body language, as mentioned above: people recounting sexual abuse may change their demeanor, lowering their voice or their gaze. This should be included in your affidavit.

There are many issues to consider when talking to a victim about sexual abuse (e.g., how to include abuse other than rape in the conversation, or what to do when the interviewee is not familiar with the concept of sexual harassment). We refer you here in particular to the Istanbul Protocol, para 99(vii).

In any case, you should respect the victim's final decision regarding what he will and will not share with you. Though you can encourage, or try and provide reassurances, the decision – and the consequences – are not yours. Keep the communication open and respectful, and allow space for such details to emerge in subsequent interviews.

4.8 What if the interviewee says everything was "normal"?

It is possible that nothing unusual happened during detention. It is also entirely possible that the victim has grown used to thinking of certain practices as an integral part of the detention process – including practices that you would classify as abuse or torture. It is also possible that the victim is still not sure how much he should share with you, or whether you are interested in the details. Ask the victim to describe exactly what happened to him, using more precise questions as needed – how did he get from one location to the next? Did anything happen on the way? Did anyone speak to him? Your understanding of the situation will increase as the story grows in detail.

4.9 How to ensure obtaining all the information?

The information provided through the interviews often lacks all the necessary details and is non-linear, ranging over different time periods and places.

“The examiner must remember that statements on the length of the torture session by the torture survivor are subjective and may not be correct, since disorientation of time and place during torture is a generally observed finding.”¹²⁶

Torture survivors may have difficulty recounting the specific details of the torture for several important reasons, including:

- (a) Factors during torture itself, such as blindfolding, drugging, lapses of consciousness, etc.;*
- (b) Fear of placing themselves or others at risk;*
- (c) A lack of trust in the examining clinician or interpreter;*
- (d) The psychological impact of torture and trauma, such as high emotional arousal and impaired memory, secondary to trauma-related mental illnesses, such as depression and post-traumatic stress disorder (PTSD);*
- (e) Neuropsychiatric memory impairment from beatings to the head, suffocation, near drowning or starvation;*
- (f) Protective coping mechanisms, such as denial and avoidance;*
- (g) Culturally prescribed sanctions that allow traumatic experiences to be revealed only in highly confidential settings*

For these reasons, PCATI lawyers find it helpful to review the information on the basis of the initial summary of the events, and ask some additional clarification questions. Remember, however, your role is to guide the interview – not to put words in the mouth of the detainee.¹²⁷

¹²⁶ Istanbul Protocol, paras 141-142.

¹²⁷ Torture Reporting Handbook, p. 42.

4.10 Your posture, voice and body language

Remember always to address the detainee directly — in your body language and in speech. If a particular technique is reported by nickname (“banana” or “telefono”), or if ambiguous or sexually explicit phrases are reported, it may be useful to ask the interpreter to record them literally, in the words used, as well as in translation.

If you use an interpreter, make sure your attention is focused on the detainee and not on the interpreter. For example, sit facing the detainee and not the interpreter — and in your speech, ask the detainee directly “what did you feel?” rather than speaking to the interpreter: “Ask him how he felt.”

4.11 Note-taking

Remember to ask specific permission to take notes, and explain why you are doing so, not assuming that this necessity is understood. In some circumstances, note-taking might not be appropriate.¹²⁸

Do your best to take effective and thorough notes, incorporating some direct quotations, especially relating to tricky episodes or subjective experiences (‘I felt I was choking’).

Note also body language, signs of fatigue, the manner of speaking, as well as the content: when recounting a particularly difficult episode, did the victim pause and take a minute to gather himself?

When recounting particularly traumatic memories some people may resort to the third person plural instead of the first, distancing themselves from the memory: “Many people in there were forced to do terrible things; they used to beat people unconscious”. This is a known symptom, which may be interpreted later by psychologists and used to corroborate the victim’s story. Try and contain yourself to describing any such changes, rather than drawing conclusions: A victim’s external reactions may be conditioned by culture and gender expectations, as well as being tempered by possible psychological reactions, such as dissociation. Even a behavior pattern such as crying is not universally standard.

¹²⁸ Torture Reporting Handbook, pp.93-94.

4.12 Taking photos and other advice to supplement the oral account

When possible, taking photos or video of physical marks is recommended. In Israeli detention centers, lawyers are not allowed to enter with a camera or phone into the facility; in such a scenario, you can, and should, try to get the professional authorities to document them: Request that the prison authorities photograph and document the injuries in writing, preferably by a medical professional.

4.13 Risk of re-traumatization

Telling someone a story of intense pain and/or humiliation is not a simple process. Your victim may never have spoken of his experience before, or hidden the details; the torture may have engendered feelings of shame, either because of things he was forced to endure or because of things he did. In some cultures, there may also be strictures against admitting pain: some detainees will prefer to present a facade of bravery and resilience. Others may have avoided burdening family and friends with the harrowing details. All of these influences may mean that you may be the first person to hear the story in its entirety, whether it took place days, months, or years ago.

Some psychologists believe the process of sharing such a traumatic experience can be therapeutic — in other words, that it can be helpful to the victim in becoming a “survivor”. In our experience, some victims do indeed experience relief at releasing a story in a safe environment. Yet even for them, reliving the torture in the telling, returning to the experience, can re-create some of the same feelings of pain. The victim may burst into tears during or after the interview; he may sink into depression later, or experience a worsening of symptoms in the days following the interview.

The options for dealing with re-traumatization differ greatly if the victim is in prison or released. In prison, your options after the interview may be limited or non-existent. You may want to warn the victim of the possibility of such a reaction, so that he can make an informed choice. In closing the interview, try and draw the conversation to his actions now: what is he hoping to accomplish by telling the story? Can this experience be used to achieve justice, personal or communal? To effect a release from detention? In doing so, you may help the victim see his story as one in which he is an active agent. If the victim is outside prison, you may want to contact him in the days following a difficult interview to ascertain how he is doing. You should also consider referring him to mental health professionals, if possible, those experienced in dealing with victims of torture. Such a referral can be tricky, as some clients will resist the implication that they need help: but even if the victim does not take up the suggestion, the referral can be used to universalize his experience: “Many people find telling the story difficult.... Others in your situation have found it helpful to talk to professionals”.

4.14 How do I close the interview?

As illustrated in the case study above, you might need to end the interview prematurely due to security concerns. During the interview, the detainee may also show emotional reactions – e.g., burst into tears – and it will be necessary to take breaks.

Bear in mind the potential emotional reactions after an interview, and/or the worsening of symptoms in the days following the interview. Talking about torture is emotional and wounds will be re-opened. All these reactions should be reflected in the way you conduct the interview: prepare the detainee for the risk of flash-backs, and consider whether he should be referred to treatment.¹²⁹ If you are contemplating a complaint to the authorities, explain what the likely consequences and timeframe are: How long will the legal process probably take, and what are the possible — not ideal — results?

Towards the end, you should bring the conversation back to what is important for the detainee, and his daily life. You may also ask if he would like you to contact his family.

Thank him for sharing the story with you, and give him the opportunity to ask you questions or clarify issues.

Make sure you state clearly what the likely follow-up is, and when you will visit him again. Do not give any promises that you cannot keep. Will you or someone else be returning, and when? Follow-up visits are very important to ensure the safety of the detainee. PCATI will organize a follow-up visit when we feel the first visit was incomplete; when there is new information to be shared with the client; when there is a need to prepare the client for a hearing or a testimony; or when we feel too long has passed without contact.

"...One-off visits, without follow-up to ensure the safety of the interviewees after the visit, may be dangerous. In some cases, one visit without a repeat visit may be worse than no visit at all. Well-meaning investigators may fall into the trap of visiting a prison or police station, without knowing exactly what they are doing. They may obtain an incomplete or false picture of reality. They may inadvertently place prisoners that they may never visit again in danger..."¹³⁰

Several excellent guides provide an overview of interviewing techniques, most notably the Torture Reporting Handbook and the Istanbul Protocol, which we encourage you to read (see [suggested reading](#)).

¹²⁹ Istanbul Protocol, para 156.

¹³⁰ Istanbul Protocol, para 127.

CHAPTER 5

PCATI's Experience Working with Persons from Vulnerable Groups

Introduction

A number of vulnerable groups might be more at risk of torture, may have experienced the ill-treatment differently from others, and/or would have special needs during an interview about torture. Such groups include children, women, elderly, persons with disabilities, foreigners, ethnic and religious minorities, and LGBT people.

International laws provide for additional protection and safeguards for a number of these groups — for example, regarding children, the Convention on the Rights of the Child (which is *lex specialis*), and a number of UN guidelines (see further below). Specific UN committees may also be relevant, such as the Committee on the Rights of the Child.

This chapter is based on PCATI's experience, and focuses on three vulnerable groups — people with disabilities, women, and minors. Each group has particular vulnerabilities, and is protected by specific international conventions and guidelines.

5.1 Persons with disabilities

Disability should be understood as a physical and/or mental condition which impedes an individual's ability to function in comparison to a person without this condition. Some disabilities are obvious, whereas others may either go undetected, or not be properly diagnosed. Physical disabilities are often more visible than mental disabilities, and many victims with mental health issues will not be recognized. Be aware that persons with physical and mental disabilities have multiple, unique, and complex needs, and as a result they face greater hardships in detention. Ill-treatment, inhuman conditions, and even torture of persons with disabilities may arise out of the cumulative effect of negligence, forced treatment, and/or inability of prison authorities to provide them with the health and care they require.

It is important that you familiarize yourself with the regional, national, and international legislations and relevant case laws, which outline the rights of persons with disabilities. This includes the UN Convention on the Rights of Persons with Disabilities, and the SMRs from 2015 which stipulate, *inter alia*:

- Prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental, or other disabilities have full and effective access to prison life on an equitable basis (Rule 5(2))
- Before imposing disciplinary sanctions, prison administrations shall consider whether and how a prisoner's mental illness or developmental disability may have contributed to his or her conduct and the commitment of the offence or act underlying the disciplinary charge. Prison administrations shall not sanction any conduct of a prisoner that is considered to be the direct result of his or her mental illness or intellectual disability (Rule 39(3)).
- The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other (Rule 45(2)).
- Persons who are found to be not criminally responsible, or who are later diagnosed with severe mental disabilities and/or health conditions, for whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangements shall be made to transfer them to mental health facilities as soon as possible. If necessary, other prisoners with mental disabilities and/or health conditions can be observed and treated in specialized facilities, under the supervision of qualified health-care professionals. 3. The health-care service shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment (Rule 109).

Your country or region may also have organizations dedicated to people with special needs, and they will be able to assist you here. Keep in mind, as discussed in Chapter 1, that interrogation techniques that would not cause severe suffering for others may have such an impact on a person with disabilities.

For an individual with special needs, it is likely that his pre-existing disability (and/or health issues) will be worsened by the incarceration and (ill-)treatment in custody.

It is important that you are prepared for the interview, and know about the impact of torture and other ill-treatment on people with disabilities. If you can, talk to the victim's family beforehand in order to understand his medical history, and obtain any evidence you can regarding his condition prior to arrest. For example, you may need to communicate with the victim in writing if he has hearing or speech impairments, read him legal documents in case of blindness, or allocate more time for the interview, in case of a cognitive disability.

The role of prison doctors is particularly important in assessing the cause and effect of detention (and interrogation) on his health and wellbeing. In such cases, it is recommended that you invest greater effort in obtaining the victim's full medical and social files from the relevant authorities.

Interview

According to international standards, persons with disabilities have full legal capacity, and a right to make decisions in their cases. Do not assume you understand the victim's needs and the merit of a legal action better than he does. Unless he has been appointed a legal representative, you must gain informed consent as usual (see p.59) before taking any legal action. Be aware that people with mental and cognitive disabilities may require more time to give consent. You may need to repeat your explanation, but as with all other victims of torture, do not pressure him into consenting. Likewise, explain the meaning of the consent as many times as necessary if he seems to consent too hastily. You must also protect the victim's confidentiality, and not share any information regarding his condition and case without his explicit approval.

As always, use good judgement and be sensitive. Allow the victim to describe his physical and/or mental condition in his own words, and utilize the same terminology that he does when referring to his disability. The victim may be reluctant to talk about his disability because of shame, or mistrust; or, in some cases, he may not be fully aware of it. In such instances it is best to respect his boundaries and gain his trust as you normally would (see Chapter 4).

The content of your interview should take into account the increased vulnerabilities of persons with disabilities, and the particular ways in which they may become victims of torture or ill-treatment. We recommend that you ask specific questions about the victim's difficulties in interrogation, and inquire about his daily reality in detention. Keep in mind that some persons with disabilities have faced discrimination and abuse all their life, and may not identify their situation as torture or ill-treatment. It is therefore important that your questions both corroborate his specific allegations, and that they allow you to understand better his overall treatment by the authorities.

You should also ask specific questions relating to his physical and mental health, before and after imprisonment, using the same guidelines outlined in Chapter 4. In many countries detention facilities are not equipped or staffed to accommodate the basic needs of disabled detainees, and quick deterioration may be a sign of negligence, as well as of torture. When assessing possible torture and/or ill-treatment, be aware that persons with physical and mental disabilities are particularly vulnerable to psychological threats and manipulations, and that women and minors with disabilities are especially susceptible to abuse in detention, including sexual exploitation.

When interviewing persons with physical disability (which may include among other things reduced mobility, impaired vision and hearing, and speech impairments), it is important that you ask questions related to daily spatial and social conditions. For example, a wheelchair user may not be able to use the common washing facilities on a regular basis, whereas a person with reduced

vision may be unable to access areas outside his cell without assistance. Your questions should therefore center on the response of the authorities to the detainee's special needs. Interrogators have additionally been known to condition the availability of aids (e.g., hearing devices or crutches) on cooperation.

When interviewing persons with mental disability, special attention should be given to their treatment by prison authorities, as forced medical treatment, isolation, and prolonged restraint may amount to torture or ill-treatment (see SMR's specific standards regarding persons with disabilities). Persons with mental disabilities are at a higher risk of being restrained for extended periods of time, and in some detention facilities these methods are used as an alternative to treatment. This is prohibited by international standards, and may amount to torture. Persons with mental disability are also particularly vulnerable to the effect of isolation, and international protocols assert that they should never be placed in solitary confinement as part of an interrogation, or while detained. Your questions should also take into account that people with mental disability can have difficulty in expressing their complaint in judicial proceedings, and are more easily pressured into confession under intense interrogation.

Detainees with previous mental health issues are more at risk of serious mental disability, and more prone to self-harm. Torture will have exacerbated the victim's mental condition even further. In such cases, more frequent visits are required in order to monitor the victim's condition and safety, and to ensure his access to justice. A sense of continuity is important in such cases, and it is recommended that the same attorney meets with the detainee each time when possible.

Case study

MA is a paraplegic Israeli man, arrested and interrogated for "security offenses". At the end of his first day of interrogations, he wheeled his wheelchair out of the interrogation room and was told to follow the guards up the stairs to his cell. When MA asked how he should ascend, he was told "crawl". Had MA not been disabled, this would — at most — be an indelicate way of speaking. Given his disability, and the lack of handicapped accessibility, this simple directive put MA in a humiliating and painful position, and thus unquestionably meets the criteria for humiliation and degrading treatment.

5.2 Minors

Children constitute a vulnerable group with unique needs, and are thus at a heightened risk of torture and other ill-treatment — as recently stressed by the UN Special Rapporteur on Torture.¹³¹ According to the Convention on the Rights of the Child, a child is defined as every human being below the age of eighteen years.

The specific legal safeguards for children are covered besides the Convention, by a number of additional guidelines, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), and the Standard Minimum Rules for the Treatment of Prisoners.

When dealing with torture allegations brought by minors, you should first contact the minor's parent or guardian: they are charged with safeguarding the minor's interests, and every step (e.g., interviewing the minor, submitting a complaint) should be taken in consultation with them, and with their approval. You should also take into account the psychological and physical impact of the violations against the minor (see Chapter 1). Many practices can amount to torture when used against a child, 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 severe pain and suffering.¹³² In addition to the direct use of torture, minors can also be employed as a means of pressure against adults, or forced to watch the torture of an adult.

Specific guidelines on how to interview children are provided in the Torture Reporting Handbook (second edition, pp. 100-101) and the Istanbul Protocol (paras 310-315) that stipulates:

“First, when evaluating a child who is suspected of having undergone or witnessed torture, the clinician must make sure that the child receives support from caring individuals and that he or she feels secure during the evaluation. This may require a parent or trusted care provider to be present during the evaluation. Second, the clinician must keep in mind that children do not often express their thoughts and emotions regarding trauma verbally, but rather behaviourally. The degree to which children are able to verbalize thought and affect depends on the child's age, developmental level and other factors, such as family dynamics, personality characteristics and cultural norms”¹³³

131 Report of the UN Special Rapporteur on Torture, 2015 – see footnote 1.

132 Ibid, para 33.

133 Istanbul Protocol, para 311.

The following is based on PCATI's experience.

In the interview, your primary aim is to minimize the harm caused to the minor in revealing the story.

If you do not have the professional experience and capacity needed to interview a minor, consider referring the case to a colleague. You can also consult with professionals prior to the interview, and, if possible, ask them to accompany you into the meeting. If the minor is still detained, usually the presence of a parent or a guardian during the interview is impossible. However, when it is possible, the presence of a parents or guardian is either legally necessary or may be helpful in providing the minor with a sense of support and security. This should, of course, neither interfere with the interviewee's story, nor pressure the minor into changing it. Your sensitivity to the minor's reactions and behaviors during the interview will allow you to gauge if you need to ask the adult to leave the room. As your first duty is to the minor and his interests and wishes, in many cases, especially when talking about sexual torture, any disclosure of the story (including to the family) should be carefully balanced against possible negative repercussions.

The clarity, reliability, and credibility of a minor depend on their age and maturity: you may have to observe the child's behavior, be patient, and be particularly wary of pressure on the minor in providing any information.

International standards stipulate specific safeguards for protecting children against ill-treatment (see above). In addition, you should be aware of the national legislation applicable to arrest and imprisonment of minors in your country, which may differ from international standards. This legislation should include: the right to notify the parents/guardian of the arrest, the right to have the parents/guardian present during the interrogation, and the right to be interrogated by a person who was trained in interrogation of minors. All other general safeguards (specified in Chapter 1) are also applicable to minors, and must be kept.

The infringement of these safeguards is often an element in the torture of minors. If that is the case, and if the minor wishes to proceed in submitting complaints to the authorities or in taking other steps (as mentioned in Chapter 6), you should always ask for the guardian's consent. Many countries also have specific organizations that support children in crisis. If you can contact such an organization and the minor and his guardian are interested to do so, this could provide necessary support (and assistance in rehabilitation) throughout the process.

Case study

PS is a 15-year old, arrested in the middle of the night from his home. He was woken by soldiers, kicked, and taken to a police station. During his interrogation, the two officers frequently hinted at sexual abuse, asking, “Do you know what will happen to a boy like you inside?” After several hours, one of the interrogators said to him: “This is your last chance,” drawing a latex glove over his hand. PS was afraid he would be raped, and signed a confession.

Later, when talking to his lawyer, PS did not at first give these details. He explained later that he thought the soldiers were allowed to beat him. He was also ashamed of having given into his fear, when in his view nothing physical transpired. PS’s age and lack of experience were crucial in forming his understanding of the situation, as well as the force and likelihood of the threats. An adult may have understood the attempt to intimidate him and dealt with it differently: A 15-year old felt it as a real and present danger, and therefore he experienced extreme pain and suffering. The key here was the lawyer’s ability to draw PS out by asking precise and detailed questions, giving him time, and building trust between the minor and the lawyer.

5.3 Women

“While all human beings are vulnerable when deprived of their liberty, certain groups are at particular risk. For women, the discrimination that they face in broader society reaches deep into places of detention such as prisons, which are largely still designed and managed for men, by men.”¹³⁴

Over the past 46 years, Israeli authorities have arrested approximately 10,000 Palestinian women.¹³⁵

Although many of women prisoners’ needs are identical to those of men, some needs are particular to females. This uniqueness is manifested in many basic needs, including: physical and mental health treatments, hygienic conditions, birth and pregnancy in prison; and special gender sensitivities to clothing, food quality, relations with the outside world, overcrowded cells, and more.

Detained women are at greater risk of gendered forms of torture and ill treatment, e.g. rape, sexual abuse, violence against pregnant women, and mental and verbal abuse. PCATI has encountered cases where Palestinian women -- who have been classified as “security” detainees – experienced

¹³⁴ Dignity, *Conditions for Women in Detention: Needs, Vulnerabilities and Good Practices*, 2014. Available at: https://dignityinstitute.org/media/2065759/pubseriesno7_wid_final_0814.pdf

¹³⁵ PCATI, *From the Testimony of a Palestinian Woman Prisoner*, 2013, p. 5. Available at: http://stoptorture.org.il/wp-content/uploads/2015/10/en_women_testimony-2013.pdf

physical and verbal violence, prevention of personal hygiene during menstruation (i.e., washing and access to sanitation products); harassment through physical proximity, exploiting family members as mental pressure, sleep deprivation, and painful handcuffing positions. We have also noted that Israeli detention facilities do not, as a rule, respect the special needs of female prisoners during detention, as they are expressed in the various legal standards (see below). As concluded in a recent PCATI study on Palestinian female prisoners, “while there is no uniformity in the detention and imprisonment conditions in the various detentions centers and prisons, in no case do they accord with international standards or satisfy the needs and rights of women prisoners in general, and of those Palestinian women political prisoners classified as “security” prisoners in specific.”¹³⁶

We note that Palestinian women, who have been detained in Israeli prisons, are often reluctant to file a complaint.¹³⁷ As well as their distrust of the system and fear of harassment — experienced by all Palestinian prisoners — which often prevent complaints, Palestinian women prisoners also encounter difficulties in reporting and complaining about intimate matters (e.g. gynecological needs, hygienic conditions) and other sensitive matters related to the female body and sexuality. Such complaints, exposed within the mostly conservative Palestinian public sphere, may carry a heavy, social cost. This may also be the case in other societies.

The following key issues are important when documenting cases involving women:

- Awareness of the specific international legal standards regarding female detainees, in addition to the general legal standards that apply for all prisoners (see Chapter 1);
- Awareness of the relevant national regulations, including the prison’s;
- Awareness of the common methods of torture and ill-treatment applied to female detainees (see Chapter 2);
- Particular preparation for an interview with a female detainee, including knowledge of her cultural and social background (see Chapter 3);
- Skills in conducting interviews with female inmates, taking into consideration the specific needs of women

International legal standards

The international legal standards discussed in Chapter 1 are relevant to all detained persons. During the application of these standards, the specific needs and realities of women prisoners should be taken into account — as noted in the preamble to the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules, adopted by the General Assembly December 2010), and as expressed in the fundamental prohibition against

¹³⁶ Ibid.

¹³⁷ Ibid. Of the 29 women prisoners, all of whom were subjected to torture or ill-treatment during their interrogation, only nine opted to file an official complaint against the authorities in charge of their detention, interrogation, and imprisonment.

discrimination. Other binding international standards include the Convention on the Elimination of Discrimination against all Women.

With regard to non-binding guidelines which should be implemented into national laws and regulations, the Bangkok Rules constitute the most important step in closing a gap in the international framework by providing guidance on addressing discrimination against and the specific needs of women. The Bangkok Rules contain specific provisions for female detainees that supplement the SMRs and binding legal standards. For instance, the prohibitions on using instruments of restraint on women during labor, birth, and immediately after birth are stipulated in Rule 24 of the Bangkok Rules and Rule 48(2) of SMRs.

These rules focus specifically on the special needs of women prisoners in areas such as healthcare, hygiene, punishment, and contact with the outside world, including their children. Bangkok Rule 23, for example, provides that:

“Disciplinary sanctions for women prisoners shall not include a prohibition of family contact, especially with children.”

“In order for the principle of non-discrimination, embodied in Rule 6 of the Standard Minimum Rules for the Treatment of Prisoners and Rule 1 of the Bangkok Rules to be put into practice, account shall be taken of the distinctive needs of women prisoners in the application of the Rules. Providing for such needs in order to accomplish substantial gender equality shall not be regarded as discriminatory.” (Rule 1)

“Prison authorities shall recognize that women prisoners from different religious and cultural backgrounds have distinctive needs and may face multiple forms of discrimination in their access to gender- and culture-relevant programs and services. Accordingly, prison authorities shall provide comprehensive programs and services that address these needs, in consultation with women prisoners themselves and the relevant groups.” (Rule 54)

Key areas of concern for female prisoners include: admission and classification; physical and material conditions; safety and security; health care, information and complaints; contact with the outside world; work, education, and recreation. For further discussion of the relevant legal standards applicable within these thematic areas.¹³⁸

Interview

- The following recommendations are based on the experience of PCATI lawyers who have interviewed Palestinian prisoners. The best, international practice and guidance on conducting interviews with female detainees are provided in the following Handbooks:
- Istanbul Protocol, para 154

¹³⁸ Dignity, *Conditions for Women in Detention*. See fn. 134.

- Torture Reporting Handbook
- International Protocol on the Documentation and Investigation of Sexual Violence in Conflict. Basic Standards of Best Practice on the Documentation of Sexual Violence as a Crime under International Law, June 2014.
- REDRESS (2015), Istanbul Protocol Handbook¹³⁹

In PCATI's experience, meetings in which Palestinian women prisoners give testimonies to attorneys take place under difficult conditions. The glass barrier between them often creates mental roadblocks, accompanied by fear that giving a testimony will become a kind of "second interrogation situation."¹⁴⁰

Who should conduct the interview?

You should always take into account the prisoner's social and cultural background, especially when interviewing women from traditional societies. It may be problematic for a male to interview a female victim, thus it would be preferable to have a female interviewer. However, PCATI's experience illustrates that matching the interviewer's gender to the interviewee's will not necessarily create rapport (see Chapter 3) — especially when there are differences in culture, ethnicity, and/or class. For instance, a religious woman may feel more comfortable talking with a man of her background than to a westernized secular woman. You should always begin the interview by obtaining informed consent. Thus, if a male lawyer is visiting a female detainee, he should ask her at the beginning of the interview whether she agrees to the interview, or whether there are issues she would prefer to discuss with a female colleague. If informed consent is not provided, you should not begin the interview, but instead seek to hand over the case to a female colleague, and inform the female detainee about your next steps.

Informed consent

As discussed in Chapter 3, you should obtain an informed consent to conduct the interview with the female detainee. This requires that in your explanation of the various steps in the documentation process and how the documentation will be used, you have taken into consideration the specific needs of women (e.g., the increased risk of social stigmatization).

Empowerment

Women who have suffered from torture, especially sexual abuse, tend to be afraid of expressing themselves. Try and foster trust by empowering the victim, emphasizing that the interview is confidential, and that only she can decide whom to share it with. The importance of empowering the client should always be in your mind when interviewing torture victims; but it is of particular importance with women, who may be especially vulnerable. Remember that simply telling the story may be an significant milestone in itself, regardless of the outcome, recognizing her experience

¹³⁹ Available at: <http://www.redress.org/downloads/publications/Istanbul%20Protocol%20Handbook.pdf>

¹⁴⁰ PCATI, *Testimony of a Palestinian Woman Prisoner*. See fn. 135.

and validating it. It is important to state that what has happened it is not her fault, perhaps by universalizing the abuse (“things like this have happened to other women as well...”).

If privacy is compromised during the interview — for example, because prison staff are present — you could end the interview and ask to reschedule the meeting.

Questions

In phrasing your questions, take into account the prevalent culture and attitudes of the female detainee. For instance, some women will respond “no” if asked if they have been raped or subject to sexual harassment; but if you rephrase this as “has a man touched you against your will?”, they may reply “yes”.

Your questions should take into account the gender aspect of the interrogations and imprisonment. Issues related to sexual abuse and conditions of detention should receive special attention. For instance, in many countries (such as Israel), women are routinely interrogated by male interrogators, increasing the likelihood of sexual abuse, and deepening the anxiety and fear of being subjected to it.

Due to the fact that a verbal offense mentioned during the interrogation might be interpreted as a threat of sexual abuse, you should always ask the detainee to specify the exact words used, while stating the physical distance the interrogator kept at that point of time (since the proximity of the interrogator can indicate sexual abuse).

You should ask if she was allowed to use her usual dress code and whether her privacy was preserved during the interrogation, since a woman’s clothing can affect her sense of dignity, especially in conservative societies. In many cases, forcibly taking off her veil can be tantamount to taking off a shirt:

“Throughout the interrogation period, they prevented me from wearing a headscarf; this injured me deeply as a Palestinian woman and as a religious person.”¹⁴¹

Female detainees can be subjected to threats of publicizing compromising pictures of them.

During the interview you should ask about her health before and after the imprisonment. Many symptoms can indicate whether the conditions she was kept in have deteriorated her health. Questions regarding gynecological treatment, and whether she feels comfortable with the gender of gynecologist, are also important.¹⁴²

International standards state that women detainees’ hygienic needs should be provided. Lack of personal hygiene needs may amount to ill-treatment by itself.

“I was in the middle of my period and reached an unbearable mental state — I ran out of pads and was ashamed to ask the prison guard for more. I didn’t know what language to

¹⁴¹ Ibid, p. 9.

¹⁴² The Bangkok Rules, rules 6-18; The Mandela Rules, Rules 24-27.

...speak to her, or how. I was also ashamed because I was uncomfortable speaking with her about my intimate needs.”¹⁴³

In addition, women are especially susceptible to some diseases, which may develop due to the lack of hygienic conditions and a shortage of sanitary products.¹⁴⁴

Special attention should be given to pregnant women, breastfeeding mothers, and mothers with children in prison. The international legal standards should be respected with regard to this specific group. Methods of restraints are of particular importance — e.g. shackling (often used against Palestinian women), the size of a prison cell and its capacity, and the amount and quality of food.¹⁴⁵

Follow-up

When you advise a female detainee to submit a complaint or publish her story in the media, it is important also to explain the potential social consequences of such exposure. You should always protect her identity carefully and describe her story in a way that will not identify her.

Here is an example of testimony, which was included in a publication and used for advocacy purposes, from a Palestinian female prisoner:

“The period of interrogation was difficult in and of itself, and the imprisonment conditions were unbearable. I was held in an isolation cell with rough, grey walls; the beds were concrete without cots so that I was forced to use a blanket in place of a mattress. The air conditioning kept the temperature very low; I shivered from the cold at night. The light in the cell was bright, red, and always on. In my cell the toilet was a jora [hole in the ground] and no hot water at all ran in the shower, which was outside the cell.”¹⁴⁶

143 PCATI, *Testimony of Palestinian Woman Prisoner*, p. 16. See fn.135.

144 The Bangkok Rules, rules 5, The Mandela Rules, Rules 18.

145 The Bangkok Rules, rules 15,22, 39,42, 48-52 and 64; The Mandela Rules, Rules 48(2).

146 PCATI, *Testimony of a Palestinian Woman Prisoner*, p. 9.

CHAPTER 6

Next Steps in the Documentation Process: Collection of Evidence for Legal Action and Advocacy

Introduction

Let us assume that during the interview(s), the victim has told you his story and provided informed consent for continuing the documentation process by collecting further evidence and eventual submission of a legal complaint. If such informed consent does not exist, you are not entitled to take further actions.

This chapter provides some guidance on the next steps in the process of documentation, i.e.,

- Testimony of the victim and other evidence gathered during the interview
- Chronological order of the facts
- Interviews with witnesses

Each case involves specific circumstances and challenges, and it is not an easy task to collect additional evidence. In some cases, you will have no access to other evidence — for example, if he was tortured in a third country. You might face the obstacle that relevant documents cannot be revealed to you due to security considerations; that a forensic examination by independent experts is not undertaken, or that the quality of the forensic report is poor and contradicts the victim's statement. In Israel, one such common challenge stems from the fact that the medical record pertaining to the victim does not contain any type of information about violence inflicted upon him. A PCATI study of over 100 files revealed that only in a single case did the medical file contain some appraisal of superiors' violence inflicted upon a victim.¹⁴⁷

The absence of additional evidence does not mean that the allegations of torture will be considered unfounded. The statement of the victim in itself — eventually supported by circumstantial evidence (e.g., NGO publications reporting high prevalence of state sanctioned torture methods and institutional impunity) — might be sufficient to establish the allegations.

¹⁴⁷ PCATI (2011), *Doctoring the Evidence, Abandoning the Victim*. See fn. 27.

In bolstering the documentation, keep in mind the wellbeing of the victim in accordance with the resources available in your country. In Israel, for instance, detainees have no access at all to rehabilitation after torture. If you are able to provide the victim with such services in your national context, they could be an integral part of the process.

6.1 Testimony of the victim and other evidence gathered during the interview

As discussed in Chapter 4, it is likely that the victim was confused as to what happened and disoriented. His statement may therefore be repetitive as well as lacking in a logical and chronological order of facts. However, using the interviewing techniques, you may have been able to obtain more accurate details about the various incidents.

You might also have taken photos and gathered information about external signs of torture/ill-treatment that should be supported by additional examinations (see below). Remember that the lack of physical evidence does not suggest that torture did not occur, as stipulated by the Istanbul Protocol:

"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."¹⁴⁸

It is important to continually assess the credibility of the victim's story. The following case study illustrates a case in which the victim suffered from a psychological disorder that led him to tell an incorrect story:

148 Istanbul Protocol, para 161.

Case study

JA was a young Palestinian man from Hebron. In an interview with a PCATI lawyer after his release from prison, he spoke of being arrested in the center of Hebron with considerable physical violence, including the repeated use of a Taser gun.

JA told us that he was taken to a police station, handcuffed, and tasered again repeatedly. In an interview with a physician and a psychiatrist, who were invited to write an evaluation based on the Istanbul Protocol, clear burn marks were found and photographed. These burns were consistent with his story and diagnostic of taser use. JA was also diagnosed as suffering from severe paranoia, which he described as beginning after the arrest.

PCATI was about to submit a complaint. However, during a conversation with JA's public defense attorney, PCATI was told that a video tape of his detention existed and subsequently was allowed to watch it. The video showed JA in a full-blown psychotic episode, beating everyone attempting to come near him, knocking policemen to the ground, and punching holes in the walls with his hands. Tasers were indeed used against him, but as part of an attempt to subdue him, and before he was handcuffed.

Thus, the video revealed that JA's story was inaccurate. This was supported by further evidence that JA suffered from a significant psychiatric disorder, and prior to arrest had been diagnosed with schizophrenia.

6.2 Chronological order of the facts

Take the time to organize the story chronologically, relating to the different phases of the story — arrest, transportation, interrogation and detention, and various locations. It is likely that many details will be clarified and new information will emerge as you collect further evidence, interview witnesses, and verify documents. By the end of the process, you should be clear about the order of events, and the transition between each phase.

6.3 Interviews with witnesses

As a lawyer, you should try and identify any potential witness who could shed more light on the victim's story and provide evidence to corroborate the allegations. Assess what steps you can take to validate or confirm the victim's story. What evidence could you collect? The arrest can occur anywhere and might have been witnessed by family members, friends, by-standers, or others, whereas the other stages of the story — in which the victim was in the custody of the authorities (i.e., transportation, interrogation and detention) — often are only witnessed by other detainees and officials.

Independent witnesses

As the effectiveness of your next actions depends on the accuracy and reliability of the data you gather, it is vital that you consider anyone who might have been present and witnessed incidents at any of stages the story.

In interviewing family members who witnessed alleged violations, PCATI lawyers have heard new information. For instance, a witness may describe an additional violation and point to evidence. Cell mates or fellow prisoners may also have important information confirming the victim's statement.

The interview with the witnesses should be conducted in accordance with professional guidelines (see Chapter 4) and will require informed consent to be used in further legal proceedings. The security concerns discussed in Chapter 3 should also be assessed. Although the state has an obligation to protect witnesses (Article 13 UNCAT), giving testimony places witnesses in a vulnerable position.

For further details on interviews with independent witnesses, see *Torture Reporting Handbook* (second edition), p. 112.

Officials working in detention

Prison guards or other officials who have accompanied the victim during transportation from the interrogation to his cell in the prison, or other prison staff, may have important information about the location, time of the various states of detention, and eventually about the incidents. However, various concerns and obstacles should be seriously considered before any interview with officials:

- It is rather unlikely you will be able to identify the relevant guards on duty at the various states of the detention, and that these officials would be willing to testify against their own colleagues.
- More importantly, approaching officials could increase the risk of reprisals.

PCATI's generally does not approach officials for witness statements. In theory, we could try to get a statement from the alleged perpetrators, but in practice it is not a feasible approach.

Other officials

Other officials might have met the victim at a crucial juncture and witnessed his state of health or psychological wellbeing (e.g., clerks and judges).

Health professionals

Various health personnel (e.g., in prisons, public hospitals or within the military), who have examined the victim, can testify to the physical or mental condition of the victim. The medical professionals who interact with detainees before, during, and after their interrogation may have especially crucial evidence. As they are often the only ones to meet the detainees except for the interrogators, they can witness injuries sustained during the interrogation. Unfortunately, despite the obligation of health professionals to record and report such ill-treatment, in PCATI's experience they rarely do so:¹⁴⁹

JM from Jenin (born in 1980) was arrested in April 2010. Soldiers broke into his bedroom and, using their guns, began to beat him. One of the soldiers seized his arm so violently that his shoulder was dislocated. JM lost consciousness and woke up to find himself in a clinic. Subsequently, he was detained at Kishon Detention Center, where he told the doctors what had happened. However, in his medical file, the doctor only noted that JM suffered from pain in the right shoulder, and thus failed to record that JM had been unconscious, and subjected to violence by soldiers. PCATI's complaint in this case is still pending.

6.4 Administrative information from records and other documents

Most countries keep reliable, detailed records of detainee movements. These may be as basic and minimal as a record of time of entry into a particular detention facility, which is of course also useful in building a case; but they may also include more substantial corroborating evidence. If the victim was brought before a judge for any reason, including remand hearings, you may be able to obtain the court protocols. In several of PCATI's cases, the remand hearing judge either commented on a detainee's battered appearance, or recorded the detainee's complaints of ill-treatment. In some cases, the court records also show the judge ordering that, in view of his state, the detainee must be seen by a medical professional.

149 PCATI (2011), *Doctoring the Evidence, Abandoning the Victim*. See fn. 27.

In some countries, you may have access to audio-visual records of an interrogation. In Israel, security interrogations are exempt from providing such recordings, but a written summary of the proceedings is provided. While this will rarely include evidence of physical abuse, it may still be useful as proof of psychological torture or sleep deprivation.

You may sometimes suspect that certain documents are missing: for instance, if a victim reports being transferred to a certain facility, but there is no such record; or if a few days are unexpectedly missing from the record. This may, of course, be a simple clerical error, in which case you should try and see if it can be rectified, or if the missing records are simply lost in transition. However, it may also indicate the intentional removal of records. Identifying such lacunae in the administrative record, and confronting the authorities with them may provide you with crucial supporting evidence.

6.5 Medical examination and assessment

Medical records

Try to obtain all relevant health records related to the victim, including any physical, psychological, or psychiatric records. Health records prior to arrest, during detention, and after detention (if the victim was released) are relevant.

It may be helpful to have a record on file that the prisoner was in good health before the interrogation. Firstly, this may support your argument that the deterioration in his condition occurred while in custody. By way of example, a victim's medical file showed a weight loss of 10 kgs over a period of less than two weeks, and specifically during a period when he alleges he was subject to severe sleep deprivation and beatings. Such a dramatic loss of weight, which in other circumstances might have had been caused by illness, is consistent with and supports his allegations of torture. Moreover, medical records of good health prior to detention might also change the burden of proof in a court case, so that the state would be asked to prove that the injuries are unrelated to the period of detention.¹⁵⁰

Health records during detention are often key to realizing the rights of a victim of torture as, in many cases, medical professionals are the only individuals these detainees meet aside from their interrogators in the initial phase of detention.¹⁵¹ You should be aware of the detention rules governing the frequency of health check-ups, to ascertain whether they were followed and that you have received the complete files. In Israel a detainee is supposed to be seen by a medic upon entrance to a detention facility. If you have received a medical file, showing that there is no record of his visits to the clinic after entering detention, and during a few days of his interrogation, you ought to treat this file with extreme caution. The missing check-ups suggest either a breach of regulations, or that the relevant records were removed before being passed on to the lawyer.

¹⁵⁰ This principle has been developed by the European Court of Human Rights in its jurisprudence.

¹⁵¹ For the rules regarding medical records in Israel, see: PCATI, *Doctoring the Evidence*, pp. 24-25. See fn.27.

Most countries have national legislation, recognizing the patient's ownership of his medical records, and his right to access these records. As his legal representative, you are entitled to see them all, promptly.

While medical evidence is rarely conclusive, it can be crucial in describing a consistent, coherent story. You should therefore always try and obtain the complete medical record, even in cases where you are not confident that the medical examinations are as thorough or as independent as one might wish.

When assessing medical evidence, look at various quality indicators: for instance, the duration of the medical examination, the professional education of the health professional, when the report was written, under what conditions the exam was performed, and the inherent independence of the health professional. All of these will help you determine whether this information meets accepted professional standards for care and documentation. If you are not confident you can rely on the information, you can always ask for a second opinion. Finally, if the victim has received treatment for the traumas after release from detention, medical interviews and findings for treatment planning will also provide important documentation about the impact of the ill-treatment.

Specialized medical examination according to the Istanbul Protocol

A specialized medical examination may document the compatibility of the history of torture with medical findings in an individual case. As stipulated in the Istanbul Protocol, the medical examination of a torture victim should include both a physical and psychological examination. The purpose of the report is to prove the likelihood of torture, the identity of perpetrators, the consequences of torture, and what type of reparation is required (Principles of Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Annex 1 to the Istanbul Protocol).

Key reference books and guidelines explain the procedure, standards, and details of such a specialized medical examination, and how to use it in legal proceedings:

- The Istanbul Protocol (Chapter 5 and 6 with annexes);
- The Torture Reporting Handbook (second edition);
- Medical Investigation and Documentation of Torture — for Health Professionals (Essex University);
- IRCT Guidelines on the Istanbul Protocol for lawyers, doctors, and psychologists.

To avoid duplication, reference is made to these standards and textbooks. However, below are some additional comments based on PCATI's experience, and a checklist that PCATI's lawyers use when requesting a specialized medical examination. PCATI underlines the importance of performing the medical examination as soon as possible after the alleged event. In spite of this, a medical examination determining the consequences of torture may also prove extremely valuable months, and years, later.

Forensic reports will rarely provide conclusive direct evidence of torture, but they may speak to the degree of consistency between the physical and psychological signs, and the allegations. A medico-legal report will address the question of causation, going beyond the notation — for instance, of a particular bruise — to discuss its possible provenance, and its relation to the detainee’s story. If you are considering asking for a full forensic assessment, we suggest you first consult the Istanbul Protocol and local organizations experienced in the process. If there are no experts in your country, or if you do not trust their independence, several international organizations may be able to assist you.

In general, an Istanbul Protocol assessment requires a fair amount of inter-professional work, calling together a lawyer, a physician and a mental health practitioner. This is not always a simple, or intuitive, process for all involved — and of course, it may be difficult or re-traumatizing for the victim. We have included a checklist for conducting such an assessment, which lists the actions to be taken before, during, and after the assessment.

Finally, in the vast majority of PCATI’s cases, the act of torture has left minimal physical marks — if any at all. Experts may also use diagnostic tests and imaging, and psychological evaluations to bring to light the sequelae of torture long after the incident.

The importance of psychological examination: *Selmouni v. France*

The case of Ahmed Selmouni illustrates the importance of psychological evidence. Selmouni was examined by multiple physicians — both during, and immediately after the four days he was tortured by the French police. He insisted that he was brutally beaten, and all of the medical reports indicate that this was true. However, Selmouni was too ashamed during this period to admit that he was also raped. Selmouni told the public prosecutor about the rape during his next interview that, due to judicial delays, did not take place until a year later. Then another half-year passed before he was re-examined. Due to the delays, physical evidence of rape was inconclusive.

Notes from the public prosecutor’s office indicate that Selmouni started crying when he shared the story. However, no psychological examination was ever performed.

Ultimately, the lack of evidence proving the sexual assault, led to much lighter charges and sentencing against the officers. This may have been remedied with a psychological examination.

As a lawyer, you should be especially vigilant about procuring and documenting psychological evidence of ill-treatment. As illustrated in this case, investigations by the state may be delayed and incomplete, and victims may hesitate sharing traumatic experiences.

6.6 Other sources of information

You also need to verify other relevant sources of information — e.g. NGO reports, confirming a pattern of torture that is consistent with the story you are documenting. Such reports might include anecdotal information from other victims who have been subjected to similar methods of torture; otherwise, you could seek out such victims. There may eventually be more scientific research about the prevalence of specific torture methods in your country.

You should also consider expert opinions. For instance, REDRESS in one court case requested an expert opinion by clinical psychologist, Mary Robertson, to add supporting evidence regarding, *inter alia*, the psychological consequences of torture, and the potential beneficial effect of reparation generally.¹⁵²

Another example is the case of a Palestinian man who alleged torture was used in his interrogation. PCATI applied to leading international experts in the field of torture, and provided them with the relevant documents. They analyzed the case in light of international law on torture — their field of expertise — and gave as their opinion that the practices did indeed meet all the criteria, and fell under the definition of torture, according to CAT.

6.7 Assessment of the evidence in relation to legal standards

You have finished collecting all of the evidence, including one or more of the following:

- Victim's statement
- Witnesses signed testimonies
- Medical evidence (files, records) e.g. from doctors and psychologists
- Photos
- Physical evidence
- Official records
- Statements of family members
- Forensic medical report
- Amicus briefs
- Expert opinions
- Reports about torture in the country (HRW, Amnesty, DIGNITY etc), newspaper clips
- Statements of other victims of torture

¹⁵² Robertson fn 117 above.

As in other legal cases, you assess the quality of the documentation in accordance with key principles — such as the source of information, level of detail, consistency, accuracy, patterns, and age of information — and conclude whether the evidence corroborates/supports the account and allegations made by the victim.

It is your responsibility as a lawyer representing a victim of torture to assess whether the information you have gathered does indeed constitute torture (as per the international definition), or at least meets the minimum threshold of severity to constitute other ill-treatment (according to international legal standards), and whether other legal standards have been violated (Chapter 1).

The assessment of evidence is also connected to the legal procedure you wish to follow. Filing a complaint of torture with the national authorities requires less evidentiary support than civil claims, in which the burden of proof is the plaintiff's. Finally, the distinction between the different forms of ill-treatment is not made easily. However, at least in cases of filing complaints with the authorities, your role is to raise suspicion that some form of ill-treatment occurred. The obligation to investigate the case lies with the authorities, and the final determination of whether the treatment amounted to torture or other ill-treatment, is the duty of the investigative body.

6.8 Legal actions

National legal procedures

Three main courses of action are available, through which lawyers can provide victims with remedy in the national sphere: invalidating evidence obtained by torture or other ill-treatment, filing a complaint of torture, and filing a civil lawsuit.

Invalidating evidence obtained by torture or ill-treatment

As mentioned in Chapter 1, the UNCAT explicitly prohibits the admission into any proceedings of any statement obtained by torture.¹⁵³ Therefore, when you are representing the victim, you should take action to disqualify evidence obtained illegally — thus maintaining due process and ensuring that a person is not convicted on the basis of information and/or evidence obtained under torture.

In Israel, there is no explicit prohibition of evidence obtained by torture. The Rule of Evidence determines that a confession is admissible in criminal procedures only when the prosecution has produced evidence of the circumstances under which it was made, and the court is satisfied that it was given freely and voluntarily.

If you believe that the evidence were obtained by torture, it is recommended that you submit “mini-trial (*zuta*)” proceedings. In this situation, a complaint previously submitted to the authorities may assist you.

153 UNCAT, Article 15.

Submitting complaints to the national authorities

Individual complaints of torture, submitted to the national authorities, intend to initiate criminal proceedings against the perpetrators in order to hold them — and ultimately, the state — accountable for their actions. As with all legal action, be certain that you have the victim's informed consent before submitting a complaint on his behalf. Firstly, he should be aware that the investigation of his complaint could take a long period of time — often years, and that it will not lead to remedy for the individual such as compensation to the victim. Secondly, it is crucial to manage the victim's expectations. For example, data shows that more than a 1,000 complaints of torture in ISA interrogations have been submitted in Israel since 2001, but not one criminal investigation has been opened, let alone any indictments served. Furthermore, action to invalidate evidence in Israel results in the automatic freezing of the examination process by the authorities. Finally, it should be noted that, in some contexts, submitting a complaint of torture on behalf of a detained victim might put him at risk and thus its potential benefits must be carefully considered.

While according to international law the duty of investigation lies with the authorities, in practice it is often insufficient to simply alert the relevant investigatory body to the allegations of torture. It is therefore highly recommended that you provide sufficient, well documented, and — if possible — corroborated information in order to ensure that the complaint will indeed be investigated. Concurrently, lawyers should be aware that too-detailed complaints may hinder the victim's case in the future: the testimonies of victims of torture (and other ill-treatment) are often discredited on minor points of discrepancy in their narrative, since memory can be selective due to the trauma. Thus, unless a detail can be substantiated, we advise to avoid the use of such precise information as timeframes, and the exact number of interrogators (e.g., “The victim was arrested in the morning hours” rather than “the victim was arrested at 8:30 am”). It is also important to establish the elements of the offence in accordance with domestic legislation, when possible. If an offence of torture has not been established in the penal law in your country *per se*, try to establish that the acts constituted a crime under existing national legislation (e.g., due process, sexual harassment). Lastly, remember that exhausting domestic legal avenues is an essential phase before turning to international mechanisms — thus a complaint should be submitted even if a prompt and effective investigation is unlikely.

Operative steps of submitting a complaint in Israel

- Identify the organizational affiliation of the perpetrator. (e.g., IDF soldier /ISA Interrogator/ISA field coordinator/Police officer /IPS guard)
- Complaints regarding torture or other ill-treatment by IDF soldiers should be submitted to the MAG groups for operational matters (fax no. 03-7407847).
- Complaints regarding torture or other ill-treatment by ISA Interrogators (including ISA interrogator who interrogates the detainee at the place of his arrest) should be submitted to the Attorney-General with an electronic copy to the Interrogatee Complaints Comptroller (The head of the Mavtan) via fax no. 02-6466230 and the Mavtan, via fax no. 02-6467067 or mail: JanaM@justice.gov.il.
- Complaints regarding torture or other ill-treatment by police officers and ISA field coordinators (who took part in the arrest, but did not interrogate the detainee in the field) should be submitted to the Police Investigations Department (Machash) via fax no. 02-6467794
- Complaints regarding torture or other ill-treatment by IPS guards should be submitted to the National Prison Wardens Investigation Unit via fax no. 08-9189400
- Power of Attorney should be added to the complaint.

Civil procedure

Another legal avenue you may take on the victim's behalf is filing a civil lawsuit against the state and the perpetrators of torture. The objective of a civil procedure is to obtain compensation for the victim, including means for his rehabilitation.¹⁵⁴ In order to do so effectively, you must know the national law and the restrictions (in legislation or practice) on filing a damage claim. These may be related to the identity of the plaintiff — i.e. the victim — or to the circumstances under which he was tortured. For instance, Israeli legislation does not allow civil lawsuits to be brought against the state for damages resulting from wartime action. Another restriction lies in the identity of the victim — if the victim is a member of or active in a “terror organization” the state will not be held liable for any damage caused.¹⁵⁵ A third restriction concerns the statute of limitation: in Israel, the statute of limitations for torture lawsuits is 7 years, and any suit for damages regarding events which took place more than 7 years ago will be dismissed.

You should also remember that although in civil lawsuits the level of proof is lower than in a criminal cases, the burden of proof lies on the plaintiff — it is therefore essential to have sufficient evidence to indicate that torture caused the victim harm and damage.

¹⁵⁴ As required by article 14 of CAT.

¹⁵⁵ Israeli Civil Tort Law (Liability of the State) 1952, Article 5B.

Civil procedures may have several advantages — e.g. the possibility of receiving financial compensation, which will help the victim to recover; empowering the victim by allowing him to be heard in court; and, at times, even triggering a judicial review of official conduct during the arrest and interrogation. Nevertheless, take into account that a civil lawsuit can take a long time, and entails heavy costs.

UN mechanisms or international/regional courts

If after exhausting domestic remedies you consider submitting a complaint to an international body, we suggest that you familiarize yourself with these mechanisms. Taking this step may provide the victim with a remedy that he is not likely to receive at the national level. Key reference books include the Torture Reporting Handbook (second edition) Part C, the OMCT Handbook Volumes I—IV on relevant jurisprudence, and the Istanbul Protocol (Chapter I). The Torture Reporting Handbook provides practical advice on how to use these mechanisms — e.g. the standard format for approaching each specific mechanism. Additionally, you can seek assistance from local NGOs and international organizations, such as DIGNITY (Danish Institute against Torture) or REDRESS, who have experience in the use of international mechanisms.

6.9 Media publications

Media attention can be a powerful tool for advocating on behalf of torture victims. Public exposure can assist the victim by pressuring the authorities to investigate the complaint thoroughly and effectively, and it may lead them to hold torturers accountable for their actions. Engaging with the media by publicizing incidents of torture can also contribute to advocacy campaigns against torture and institutional impunity in your country. Nevertheless, there are inherent risks in media exposure, and you should evaluate these before the publication of the victim's story. Deciding whether and how to engage with the media (e.g., at which point in the legal process and through which outlet) is very much a matter of experience. As a rule, you should only push for the publication of the story when it is in the victim's best interest, and will not impede his legal case and/or his rehabilitation. Furthermore, be prepared to provide him with the increased support he may need following the exposure.

Obtain the victim's informed consent prior to any publication/exposure of information about himself and his detention and torture. His consent must specify the exact terms of the publication — e.g. is the victim willing to be named or otherwise identified? Is he aware that media coverage may then be picked up by other outlets with other audiences? Be aware that, even if the victim's name is not mentioned, he may be identified through other personal and procedural details. We recommend that you actively assess the possible effects of any media exposure, and not rely solely on the victim's consent. Societal pressures are sometimes neutralized while torture victims are in detention, and the negative consequences of exposure may only become apparent following release (e.g., shame, stigma). You should be particularly mindful of the effect of media exposure on female victims of

torture, as well as on victims whose torture included extreme physical, psychological and/or sexual abuse, who may be re-traumatized by the interview. In certain cases you should also consider (and urge the victim to consider) possible repercussions for the victim's family. On the other hand, you want to allow the victim the possibility of telling his story to the world, especially since it can be an empowering experience, and important to the victim for several reasons.

It is your responsibility to ensure that the media exposure of the victim's experiences does not disrupt legal proceedings in any way. Events recounted by torture victims differ from one time to another, so that the victim's story will most probably change somewhat each time it is told. Be aware that a media publication can create a different version of the victim's torture case, and that such duplication may discredit his credibility before the investigatory body and/or judges. In order to avoid the publication of a different version than the one detailed in the torture complaint, we recommend that the publication portrays the general chain of events, and not the specific details of the case. If the victim is interviewed in person, you should explain this to him and accompany him to the interview. Lastly, do not push for the victim's torture allegations to be published if you are unable to corroborate them yourself from a trustworthy source.

Case study

MI is a Palestinian woman, and married with children. She was arrested in 2011, and held in incommunicado for several days. Subsequently, a female lawyer from PCATI interviewed her. MI testified that her interrogation included sexual humiliation, and an abusive nude search conducted by a female in front of men. She was released a few months after her arrest.

A journalist, who had heard about MI's case, contacted PCATI and asked for an interview with her. MI gave her permission to such an interview. The story — including the nude search — was published in the Israeli press with MI's full name and picture, and was then picked up by the Palestinian press. MI's family and her in-laws read the story, and placed her under massive pressure to retract the allegations so as not to "shame herself". MI retracted her allegation, and withdrew the Power of Attorney from PCATI.

PCATI should have been more careful in this case, assisting MI in assessing the repercussions of her exposure in different media (and the degree to which she could control the story once published), and attending the interview with the journalist. As a result, PCATI has changed its practice, and now attends meetings between victims and journalists (with the victim's consent). This may prevent the publication of sensitive stories with identifying information, ensure observation of the standard policy of anonymity, and allow PCATI lawyers to help the victim pause the interview when required.

6.10 Advocacy

Introduction

This section will give some examples of how to use information about individual cases of ill-treatment or other violations of legal standards for **broader national and international advocacy purposes**, to support the proper implementation of legal standards.

In addition to the “classic” legal-aid-provider role, the lawyer also acts as a “monitor” when he (through engagement in individual cases) obtains information about patterns of maltreatment, and general conditions in places of detention that do not accord with international legal standards — most importantly cases of torture and/or other ill-treatment. The lawyer plays this “monitor” role without official permission to undertake monitoring visits proper, and monitoring per se being the reason for his visits to places of detention. Moreover, the lawyer is not part of a monitoring team — he acts on his own, based solely on his relationship with the victim. And yet, his role is crucial, since places of detention are closed facilities, and often there is a scarcity of information about them.

No specific monitoring techniques or checklist will be introduced.¹⁵⁶ Instead, the assumption is that the information collected in individual cases — based on the techniques and checklists previously introduced — will reveal broader structural obstacles and the wider scope of the problem in a country. The key principles discussed in Chapter 3 apply equally when information from an individual case is used in broader analysis, and for advocacy. Moreover, it is crucial that informed consent is obtained from the victims before using their stories for advocacy purposes.

It is important to emphasize that the initial interview with the victim was made for litigation, and not monitoring, purposes. As such, some of the information gathered may not be relevant to advocacy (e.g., specific crime; personal details)

Thus the narrow purpose of this chapter is to use case studies to illustrate how, through advocacy and/or dialogue, documentation may ultimately force authorities to improve the treatment of detainees, and bring about justice for victims. This is especially relevant in countries with few effective monitoring mechanisms, and where there is little willingness among authorities to change old practices.

¹⁵⁶ For specific human rights monitoring techniques, see, for example: United Nations Office of the High Commissioner for Human Rights: Training on human rights monitoring, New York/Geneva, 2001, available at <http://www.ohchr.org/Documents/Publications/training7Introen.pdf>

National advocacy

NGO advocacy initiatives ultimately seek to ensure that national authorities live up to international legal obligations under the Convention against Torture, and other ratified human rights conventions. Moreover, national advocacy work aims to guarantee the general public is knowledgeable about critical conditions for detainees — e.g. through newspaper articles, radio, and TV-spots.

Two reports by the Egyptian Initiative for Personal Rights (EIPR) provide good examples of NGO advocacy based on collected prisoner testimonies. One was the report titled *Martyrs Behind Bars*, which shed light on the conditions of detainees in Egypt.¹⁵⁷ In this case, lawyers who were providing legal aid to victims were able to substantiate allegations about the conditions in five specific prisons. The second report, which proved extremely important, revealed health conditions in Egyptian prisons, after interviews with inmates provided the information¹⁵⁸

International advocacy

At the international level, advocacy can be used to promote accountability and prevention of torture in the future. One tool is pressure within the UN system to increase states' compliance with international human rights obligations. If you wish to engage in such advocacy efforts, you should contact a local organization with some experience, or an organization based in Geneva, that knows how to lobby within the UN system. **For example, PCATI's submission to the UN Human Rights Committee (2014), and its submission to the The CAT Committee (2016)**¹⁵⁹. Using testimonies, systematic collection of data recorded in individual cases, and court documents, PCATI was able to submit convincing conclusions about the systematic use of methods of torture.

157 EIPR (2011). Available at: <http://eipr.org/en/report/2011/08/24/1300>

158 EIPR (2014), *Health in Egyptian Prisons: A field study on the determinants of health behind bars*. Available at: http://eipr.org/sites/default/files/reports/pdf/health_in_prison_e.pdf

159 See fn 6 above.

ANNEXES

ANNEX 1: Checklists

Lawyer's checklist before a visit to a detention facility

Logistic issues:

- I have ascertained that my client will be present in the detention center on the day of my visit.
- I have contacted the prison administration; they are aware of my intended visit, and I expect to be allowed to see my client
- I am bringing all relevant information regarding my client's identity (including his/her ID number with correctly spelled name and surname)
- I am bringing documentation of my membership of the Bar Association.
- I am bringing all relevant documents, either signed by my client or blank (if this is the first visit), in the required language, including Informed Consent, Power of Attorney, Waiver of Medical Confidentiality, etc.)
- I am aware of security regulations at this detention facility (Will I be searched? May I bring in writing materials? Etc.
- I am familiar with relevant regulation regarding privacy of interviews. If these regulations are not observed, I have considered my options (May I oppose such decisions? What are the consequences for myself and my client of my actions?)
- I have chosen my clothing carefully in order to respect cultural sensitivity and to convey a professional attitude.
- I know how to get to the detention center, and roughly how long the journey will take.
- I have cleared my schedule for the day to allow sufficient time for the visit and the interview(s).
- If an interpreter is required, I have explained to him/her the importance of total confidentiality and his/her role in the interview.

Other issues:

- I am aware of the basic principles when interviewing victims of torture, first and foremost the principle DO NOT HARM.
- I have assessed security concerns for myself and the person in detention.
- I am familiar with international human rights standards and national legislation regarding torture and other forms of ill-treatment, as well as regarding legal safeguards for detainees and standards for the treatment of detainees and for detention conditions.
- I know how to obtain a valid informed consent.
- I am aware of arrest and interrogation practices in this detention center and generally in the country.
- Before my visit, I have attempted to ascertain the circumstances of my client's arrest and interrogation
- I have verified gender, age, and occupation of my client, as well as other special circumstances and needs.
- I know how to prepare a complaint if my client decides on this course of action.
- I know how to begin the interview and what issues to address in the interview
- I know how to close the interview if required, for example when difficult or traumatizing memories are mentioned
- I know how physical and/or psychological trauma may affect people's memories ability to be consistent in their explanations of facts and sequences of facts.
- I am well aware of local cultural and religious sensibilities and taboos.
- I am aware of the signs of secondary trauma in myself; I know with whom I can talk and de-brief with after the interview; I know who to contact for further professional assistance if needed.
- I understand the basics of how to document any visible signs of torture or ill-treatment. I am aware of the difference between my capacities and those of a forensic physician, and I am also aware that if I wait for a trained physician, signs in the acute stage may fade and disappear.
- I understand the principles of attorney-client confidentiality and what information should under no circumstances be passed on to anyone else.
- I know what messages I will and will not pass back and forth from prison; I have taken into considerations the laws and regulations of my country in this regard.
- I know to whom to refer my client if medical assistance is required.

Lawyer's checklist in preparation for a medico-legal assessment

Before assessment:

- I am clear on the purpose of the assessment.
- I have communicated the legal and medical needs to the health team clearly.
- I have obtained any relevant pre-detention and post-detention background medical materials, and shared them with the team.
- I have communicated the nature of the assessment, its purpose, and possible consequences, both legal and personal, to my client.
- My client agrees to the assessment and to the makeup of the health team.
- I have taken special care to ensure that the client and the team understand the limits on confidentiality.
- I have spoken with the medical team on any special considerations (gender considerations, religious sensibilities, etc.).

If the assessment takes place in detention:

- I have obtained written permission for the medical staff to enter the detention center.
- I have confirmed with the detention center that the assessment will take place with the required privacy.
- I have attempted to facilitate taking photographs, is necessary using the prison facilities, during the assessment.
- I have prepared the health team for the particular security arrangements at this detention center.
- I have spoken to the health team about their options, if the necessary and agreed upon privacy and security arrangements are not met.
- I have clear my schedule to be available, by phone if not in person, for the duration of the assessment and in case there are any problems in entering, interviewing, or leaving the detention center.

After the assessment:

- I have spoken to my client, thanked him for his participation, and heard any concerns, within 48 hours if possible.
- Within a month, I have reviewed a draft of the written evaluation, and shared any legal concerns, while taking great care not to interfere in the health team's independence.
- I have confirmed that the evaluation conforms with all regulations regarding written testimonies, ensuring that it can be presented in court as a supporting document.

ANNEX 2: Examples of documents PCATI's lawyers bring to detention visits

Power of Attorney

I, the undersigned _____, ID No. _____, hereby appoint _____, Adv. and/or others of the Public Committee Against Torture in Israel (hereafter PCATI), to be my agents and represent me in the matter of _____

_____.

Without prejudice to the generality of the aforesaid appointment, my agents will be permitted to act in my name and in my place in all or part of the following actions relating to or resulting from the above matter, as follows:

1. To sign and file any complaint, appeal, review request, preliminary High Court proceedings, petition and/or any request, defence, objection, appeal, permission request to appeal, announcement, further discussion, claim, proceeding, or any other procedure relating to or resulting from the matter aforementioned - without exception.
2. To call witnesses, appoint experts, and take actions in accordance with current and future legal ordinances, or actions in accordance with every law, warrant or other procedure that is or will be applied to the suit or legal proceeding above.
3. To request and receive a medical opinion from any physician or institution that examined me or another opinion relevant to the aforesaid matter.
4. To appear in connection to all above actions before civil and military courts, various tribunals and other institutions - governmental or otherwise - at every level.
5. To settle on all issues related to or deriving from the above matters, at the discretion of my agents, and to sign this settlement in or outside the courtroom.
6. To collect the claim amount or any other sum in all things regarding the above matter, including legal expenses and counsel fees, to receive in my name any document and object and to provide receipts and exemptions as my agents see fit.
7. To take any action and to sign documents and writs - without exception - at my agents' discretion in any issue resulting from the aforementioned matter.
8. To delegate all or some authority according to this power of attorney to other lawyers from PCATI, to dismiss them and employ others in their stead, to manage my above matter at their discretion and to generally take any step they see fit and beneficial regarding the trial or with my above matter, and I hereby approve in advance the actions of either my agents or their representatives by virtue of this power of attorney.

The references to the individual above includes the group, and vice versa.

And in evidence I signed today _____ of the month of _____, year 20_____.

Declarant's signature _____

I hereby confirm the signature above.

Attorney's signature _____

RE: Written Waiver of Medical Confidentiality

I, the undersigned, request herein to transfer to the Public Committee Against Torture in Israel (hereafter PCATI) or their representatives all medical, mental, rehabilitation or social information required by my aforesaid agent relating to my illness, the treatment I received, its results and/or any document needed in regards to mental, physical, rehabilitation, social condition, existing opinions on these subjects, and the treatments I received. My signature below is to be viewed as my consent to allow my agent to pass on this information to an investigative authority according to law and/or medical experts on behalf of PCATI, including Physicians for Human Rights.

Name _____ ID no. _____

Date ___/___/___ Signature _____

I, the undersigned, _____, Adv. confirm that the signature above was provided willingly.

Attorney's signature and stamp _____ Date ___/___/___

Personal Information Form for Attorney Visiting a Detainee

Date _____ **Noted by** _____, **Adv. File no.** _____

Name _____ Date of birth ___/___/_____

ID No. _____ Address _____

Contact no. (Family / Neighbor) _____

Personal Details/family status/education/occupation* _____

Location of incarceration during statement _____

Security / criminal record _____

Date and location of arrest _____

Prevention of meeting began _____, the hindrance was extended by
_____. Prevention of meeting ended _____

Custody extended until _____

Stage of criminal proceedings (indictment / trial in progress / tried)

If prevention of meeting was sporadic and/or the detainee was not informed of its end, please make note.

Legal representation throughout criminal proceedings _____, Adv.

Ph. _____ - _____

Private counsel? Y / N Is there an organization assisting with/providing legal advice? Y / N

Name of organization _____

Time lapsed between arrest and first courtroom appearance _____

Did the detainee complain about the conducting of his arrest and interrogation? If not, why?

State of health prior to arrest _____

State of health during visit _____

Consent to file a complaint and exhaust all possible procedures in Israel Agree / Refuse

Consent to collect testimony for documentary purposes

Agree/ Agree anonymously / Refuse

Consent to use testimonies for reporting purposes in public reports in Israel

Agree / Refuse

Consent to advertise his complaint through the media

Agree / Agree anonymously / Refuse

Consent to be interviewed by the media

Agree (TV - Radio - Printed press - Online) / Refuse

Consent to international activity, e.g. reports for UN human rights committees

Agree / Agree Anonymously / Refuse

Comments _____

Request for Examination by an External Physician Sent on Behalf of Physicians for Human Rights

I, the undersigned, _____ ID no. _____

Incarcerated at _____ Prison

Request that Dr*. _____, M.D, appointed by Physicians for Human Rights (hereafter PHR) will examine me and pass his opinion to PHR.

Signature _____ Date ___/___/___

PHR takes it upon itself to cover the expenses of the physician's visit.

Name _____ ID no. _____

Address _____

Signature _____ Date ___/___/___

* I agree that the physician's name will be added after I have signed the form, with the proviso that it is a physician sent by PHR.

ANNEX 3: Suggested reading

- ❖ Istanbul Protocol: The Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Professional Training Series N°8), Office of the High Commissioner for Human Rights, Geneva, 1999 (revised 2004). Available at: <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>
- ❖ Human Rights Centre, University of Essex, The Torture Reporting Handbook (second edition), 2015 available at: <https://www.essex.ac.uk/hrc/documents/practice/torture-reporting-Handbook-second-edition.pdf>
- ❖ IRCT: Action against torture. A practical guide to the Istanbul Protocol for lawyers (2007). Available at: http://www.freedomfromtorture.org/sites/default/files/documents/action_against_torture_a_guide_for_lawyers_irct.pdf
- ❖ Amnesty International and CODESRIA, torture, cruel, inhuman or degrading treatment, and prison conditions, 2000. Available at: https://www.amnesty.nl/sites/default/files/public/booklet_eng_torture_0.pdf
- ❖ Human Rights Center, university of Essex, Combating torture: A manual for judges and prosecutors. Available at: https://www.amnesty.nl/sites/default/files/public/booklet_eng_torture_0.pdf
- ❖ APT, Monitoring Police Custody – a practical guide, 2013. Available at: http://www.apr.ch/content/files_res/monitoring-police-custody_en.pdf
- ❖ OMCT, Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies By Sarah Joseph, Katie Mitchell, Linda Gyorki & Carin Benninger-Budel, Foreword by Manfred Nowak, United Nations Special Rapporteur on Torture Available at: <http://www.omct.org/monitoring-protection-mechanisms/reports-and-publications/2006/11/d18503/>

In many countries lawyers are often the first independent persons to meet individuals after they have been subjected to torture or other forms of ill-treatment. Lawyers thus hold a crucial role in ensuring that torture victims' medical needs are addressed, that evidence is documented and that allegations are brought forward. Through their engagement in individual cases lawyers can additionally act as "indirect monitors", obtaining information about patterns and conditions in places of detention.

The main aim of the Handbook is to offer lawyers practical advice on providing effective legal support to victims of torture or other ill-treatment. It is designated for all lawyers, whether in the capacity of a criminal defense lawyers, human rights lawyers or representatives of civil society.

The Handbook was written by the Public Committee Against Torture in Israel (PCATI) in close cooperation with DIGNITY - Danish Institute Against Torture. The content and recommendations found in this Handbook are based on hundreds of visits to detainees carried out by PCATI over many years and its experience working with victims of torture in Israel and in Palestine. Though torture patterns, detention conditions and available legal remedies differ from country to country, we believe and hope that much of the information detailed here will assist lawyers working with victims of torture and other ill-treatment worldwide.

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