

## Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

# The Istanbul protocol

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## Summary

The Istanbul Protocol (Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) is the United Nations standard for training in the assessment of persons who allege torture and ill treatment, for investigating cases of alleged torture, and for reporting such findings to the judiciary and any other investigative body.

Key words: Istanbul Protocol; torture; UNCAT; OPCAT

## UNCAT Part 1, article 1

For the purposes of this Convention, the term “torture” means 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 capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

## Torture: a global problem

Torture and related acts of extreme violence (in the legal formulation “cruel, inhuman or degrading treatment and punishment”) can be seen as a global problem [1] because of their widespread use and because of the severe and long-term impact, especially on mental health, on the victim [2–6], family members as “indirect victims” [7, 8], helpers, therapists [9, 10], and civil society as a whole [11]. International standards, including especially the UN Convention against Torture (CAT), have therefore been established to ban its use, but reports for example by the UN Committee against Torture indicate a persistent or regionally even increased use of torture<sup>1</sup>.

## Actions against torture

A number of further strategic action steps have therefore been taken to support the aims of the convention, including

- the creation of the office of the UN Special Rapporteur on Torture;
- the Optional Protocol (OPCAT) that provides for special independent bodies to monitor and help in local implementation;
- and with the UN General Assembly Decision<sup>2</sup>, the “Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (IP) [12, 13].

Torture is defined by the UNCAT in article 1:

Inhuman and degrading treatment (IDT) is equally sanctioned, and characterised by the lack of the intention to achieve aims such as obtaining confessions.

A number of standards and declarations including the CAT have underlined the special duty of healthcare professionals, also outlined in the Istanbul Protocol, not only to refrain from any participation in torture but also to document and actively report any act of torture or IDT<sup>3</sup>.

## The Istanbul Protocol

The Istanbul Protocol reflects a concerted effort of a large international expert group to establish a binding multipurpose training standard for the documentation, evaluation and investigation of torture<sup>4</sup>. It is supported by key umbrella organisations, including the World Medical Association<sup>5</sup>. The interdisciplinary approach is intended to harmonise the effective collaboration of legal and healthcare experts in the process.

Providing expertise in torture cases demands special experience and training. Common medical curricula and everyday work are frequently guided not by forensic but by treatment-oriented principles, and consequently physicians are usually not well trained to produce documentation on reporting or assessment of physical and psychological injuries that stands up as evidence in court, especially in controversial situations.

Principles that guide medical ethics in specific situations might not be common knowledge. Recognition of techniques of torture like falanga and their charac-

<sup>1</sup> See for example the website of the Office of the High Commissioner for Human Rights for detailed reports [www.ohchr.org](http://www.ohchr.org)

<sup>2</sup> 4.12.2000 as part of Resolution A/RES/55/89

<sup>3</sup> See [www.wma.net/en/70education/30print/10medical\\_ethics/](http://www.wma.net/en/70education/30print/10medical_ethics/)

teristic sequels [14, 15], as well as their use in different countries, requires specific knowledge.

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**The IP protocol consists of six parts:**

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- I Relevant international legal standards**  
Introduction to the relevant international legal human rights standards
- II Relevant ethical codes**  
Overview of relevant medical and legal professional standards of ethics
- III Legal investigation of torture**  
Basic aspects and strategies for independent investigations
- IV General considerations for interviews**  
This chapter includes also considerations referring to prevention of retraumatisation (secondary victimisation)
- V Physical evidence of torture**  
Physical medical examination with examples for common sequels and diagnostic steps
- VI Psychological evidence of torture**  
Psychological impact, as perceived on a symptom and on a diagnostic level
- Annexes**  
The annexes offer tools including a summary and a map to document physical injuries.

The interdisciplinary approach of the IP requires that all parts can be read independently of background profession, while chapters II, IV and VI are of special relevance to mental health professionals. Integration of physical and psychological findings can be a challenge that can best be resolved by close collaboration between mental health and other experts. Cognitive or memory impairment from brain or psychological trauma and culture-based factors that can be identified by the psychiatrist or psychologist could, for example, lead to misunderstandings or incomplete history taking for physical examination and in the legal process if not considered. In spite of the fear of stigma, all examinations should therefore include a mental health assessment. In some situations, such as in visits of places of detention with small teams, one health professional might have to cover all aspects, so special care has to be taken to update mental health or other specialty-related training.

If used not only for documentation, but also for a full assessment, the IP based report distinguishes between “a) Not consistent, b) Consistent with, c) Highly consistent, d) Typical of, e) Diagnostic of,” (§ 187) to draw conclusions on the degree of certainty regarding causality. A concluding statement should also explain to a court aspects of the findings that might not be obvious to legal professionals. For example, it should draw attention to the fact that a negative finding might not disprove a report of exposure to torture, but could reflect limitations of diagnostic methods, resilience, or the natural course of healing.

The IP is not intended as a complete and comprehensive handbook of state of the art of knowledge on torture or trauma-related disorders, but as a general guideline that must be applied with currently updated knowledge in a respective field.

Location-specific factors, including legal processes, or torture techniques must be reflected in materials developed for a country within that framework. The sometimes rapid international development of legal and medical knowledge cannot be reflected in an international standard but must be complemented by updated training materials or by reference to the literature. This is also relevant for the mental health assessment, for example for recent changes in the DSM (Rev. 5) [16] and upcoming definitions in the *WHO International Classification of Diseases* (Rev. 11).

DSM now emphasises, among other relevant issues, complex symptoms in post-traumatic stress disorder (PTSD), an extended description of trauma related disorders in children, and also culture and disability [17]. It facilitates assessment of these aspects by provision of two standard instruments, i.e., the Cultural Formulation Interview (CFI) and the WHO Disability Schedule (DAS II). Culture-specific “idioms of distress” that might be more relevant than, for example, PTSD as a sequel to traumatic events would be especially important in the assessment of migrants and refugees.

At present, updating the protocol should be only considered with care, as the well-established position of the protocol in many countries and the existing training and implementation programmes would create substantial challenges in the process. Updates are therefore best provided by additional materials summarising present knowledge in a specific field. A specific model for this has been developed as part of the ATIP/ARTIP projects [18].

## Mental health aspects

Mental health aspects play a key role in the protocol, not only because they can interfere with a complete and unambivalent reporting of the acts of violence encountered by a survivor. Concentration and memory functions can, as described before, be disturbed during torture and also during examination or court hearings, owing to a number of factors including dissociation, stress-related disorders, brain trauma or other untreated physical or psychological conditions. These psychological sequels are not only common and long-lasting, sometimes requiring long-term treatment, but are also an important part of the evidence.

PTSD is usually seen as the most common specific mental health sequel [19–23]. More nonspecific sequels,

4 The protocol is freely available on the website of the UN High Commissioner for Human Rights (<http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>) and in an indexed and annotated German open access version [www.v-r.de/uploads/media/files/9783737000307\\_frewer\\_oa\\_wz\\_010746.pdf](http://www.v-r.de/uploads/media/files/9783737000307_frewer_oa_wz_010746.pdf)

5 As to October 1, 2016 the list includes but is not limited to the World Medical Association, World Psychiatric Association, World Council of Nurses, and the World Council for Psychotherapy

such as mood and anxiety disorders, and somatoform pain disorders are also common in survivors of torture and can either reflect culture-based idioms of distress or be added to the cultural patterns [24, 25].

Sequels to blunt brain injury [26, 27] or hunger strike [28] should also be considered in this context. Persecution, war, or stressful life events after torture, such as flight, the insecure fate of family members, or an insecure social situation, can interact with torture related sequels [29, 30].

Specific aspects of the interview underlined in the IP include concepts, such as countertransference, that require further explanation for legal or medical professionals not experienced in mental health terms. The special importance of avoiding secondary victimisation (retraumatisation) through inadequate interviews is again a key factor for both legal and healthcare professionals and is discussed in several parts of the protocol. Investigations in prisons have a special role, but could be seen as an example for other settings, such as evaluation of refugees seeking asylum [31–33] (discussed below), preventive monitoring, or the examination of released prisoners in later assessments.

## Torture survivors in Europe

Torture and IDT might be rare in Western European countries and especially in members of the European Union, but a high standard of forensic assessment is required both to ensure effective investigation and prevention of further acts, and to effectively contribute to the distinction between correct and false allegations. Most torture survivors living in Europe have been exposed to torture in other regions, and studies, for example in the US, have demonstrated that they are frequently not recognised in general public healthcare systems [34, 35].

A number of good medical and legal reasons speak for careful screening for exposure to torture and documentation of physical and, especially, psychological sequels in migrants, asylum seekers and refugees [36].

### Aims of the documentation of torture in asylum seekers and refugees

#### Preservation of evidence

Medical or psychological assessment can be difficult, impossible or dangerous for both the victim and the medical expert in many countries where torture is common. Preservation of evidence in advanced models of documentation is therefore of special importance in host countries. It can be essential for the criminal and civil legal case.

#### Instigation of an investigation

This step can be difficult, as long as no fair process can be expected in the country where torture took place. Newly estab-

lished tools such as universal jurisdiction might change this situation.

#### Monitoring by international bodies

Again, monitoring and reporting of human rights violations can be difficult or impossible in countries with ongoing civilian rights violations, though international bodies such as the UN committee on torture require reliable data.

#### Acknowledgement of suffering

A correct and respectful interview can help the survivor to experience attention to and respect for the suffering encountered.

#### Protection

Survivors need and are entitled to special protection, including against detention [37–39] and against refoulement.

#### Preparation and needs assessment for comprehensive rehabilitation

A comprehensive report based on the IP can also identify treatment needs, and offer early intervention and secondary prevention.

Torture survivors and victims of similar acts of criminal violence are entitled by standards like the UN Convention against Torture or the EU reception directives to receive special protection [33] and comprehensive rehabilitation. Therefore, they should be identified at an early stage, though early identification might not be best performed with the IP, but rather with screening tools such as the UNHCR Protect<sup>6</sup> or the Refugee Health Screener (RHS-15) [40]. This also should be considered in protection against refoulement, for example in “Dublin III” cases, when a refugee is returned to an EU transit country.

Questions presently under discussion are, for example, application to indirect victims, the impact of impunity, and the specific needs in regard to redress for victim. A recent European Court on Human Rights judgement has granted substantial reparation for psychological suffering to family members of “disappeared” victims as indirect victims, because the state in question had neglected to conduct an investigation to clarify their fate (Cyprus v Turkey (2001) (No. 25781/94).

Rehabilitation of victims is an obligation of all states according to the UN CAT, as are special protection and support for victims of any crime including torture as, for example, outlined by the European Union framework directive for victims of crime<sup>7</sup> and the CAT. Special programmes are available in most countries, including Switzerland, to offer such services reflecting the complexity of the trauma and culture-sensitive treatment needs<sup>8</sup>. Victims should receive support from the respective countries. Comment on specific rehabilitation needs might be part of an IP assessment.

The dissemination, teaching and active embedding of the guidelines of the protocol in everyday practice require active implementation strategies in each coun-

<sup>6</sup> <http://www.pharos.nl/information-in-english/protect-recognition-and-orientation-of-torture-victims>

<sup>7</sup> Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, adopted on 25 October 2012 and entered into force on 15 November 2012

<sup>8</sup> See [www.irct.org](http://www.irct.org)

<sup>9</sup> See <http://www.istanbulprotocol.info/index.php/en/>

<sup>10</sup> See [www.irct.org](http://www.irct.org)

try [41–43]. This includes integration into legal and medical standards and the legal system, and also inclusion in pre- and postgraduate training and curricula. Special programmes such as ARTIP/ATIP<sup>9</sup> and IPIP<sup>10</sup> have therefore been developed, many of them supported by the European Union, to support necessary teaching and training activities as well as general implementation.

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