

MEDICAL DOCUMENTATION OF TORTURE & OTHER ILL-TREATMENT

Quick Guide for Lawyers in the Maldives

What is medical documentation of torture and other ill-treatment?

Medical documentation of torture and cruel, inhuman or degrading treatment or punishment (other ill-treatment) includes:

- medical records – both physical and psychological;
- photographs of physical injuries; and
- reports written by expert doctors after physical and psychological examinations of alleged victims of torture or other ill-treatment.

Torture and other ill-treatment do not always lead to physical and psychological injuries, however often they do. Prompt recording of these injuries is important evidence for any subsequent investigation and prosecution, as well as other legal proceedings. Expert reports prepared by medical professionals are particularly useful where the expert can assess the degree to which any medical and psychological findings support the allegations the individual is making.

Why is it important?

Torture and other forms of ill-treatment are absolutely prohibited under the Constitution of the Maldives, the Anti-Torture Act 2013 and international law, particularly the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, torture, by its very nature, is committed by those with power, often behind closed doors. Documenting evidence of torture and other ill-treatment when it occurs is therefore crucial to combating it. Accurate medical records and expert medical and psychological reports provide important supporting evidence that torture or other ill-treatment has occurred, and may be crucial for successful investigations and prosecutions.

Lawyers in particular can use medical documentation:

- to request the authorities to open an official investigation into allegations and to prosecute those responsible
- to prevent further violations against their client (eg. to have a confession extracted under torture excluded from trial or to request to have the individual moved from the place where torture or other ill-treatment is being carried out)
- as evidence in legal proceedings on behalf of their client for redress, including actions for compensation and rehabilitation through both the domestic courts and at the international level (such as the UN Human Rights Committee)
- to assist victims to access services and in asylum applications
- in evidence-based advocacy for law reform and reform of polices and institutions at the domestic level

What does the Anti-Torture Act say about medical documentation?

The Anti-Torture Act 2013 recognises the importance of medical documentation. **Article 19 of the Act sets out a detainee's right to consultation with a doctor.** It grants a person being detained for more than 24 hours, and a person released from detention, the right to request access to a doctor working in a location other than the place where the person is/was detained. Access to the doctor must be provided within 24 hours. Costs are to be borne by the person seeking access unless the Human Rights Commission of the Maldives (HRCM) finds that the person lacks the financial capacity to pay, in which case the State must pay within the 24 hour period.

The **consulting doctor must produce a medical report**, which is to be included in the person's detention file. Article 20 (c) requires this report to include specific information, including details of any injuries, the estimated period at which such injuries were inflicted, and the suspected cause for such injuries.

What do lawyers need to know?

It is important that lawyers are familiar with the provisions of the Anti-Torture Act, the standards set out in the Istanbul Protocol, and the Mandela Rules.

In particular, it is helpful for lawyers working with survivors of torture and other ill-treatment to know:

- how to recognise the physical and psychological symptoms of torture and other ill-treatment
- how torture and other ill-treatment can be medically documented
- how to sensitively interview victims of torture and other ill-treatment
- how to collect other documentation, including photographs
- ethical principles that apply to their actions
- the minimum standards authorities should meet for an effective investigation of torture under international law
- the minimum standards for collection of medical evidence, including procedural safeguards for detainees
- who should have access to the medical evidence.

Further detailed information on all of these issues can be obtained from the Istanbul Protocol (available at www.ohchr.org/Documents/Publications/training8Rev1en.pdf) and REDRESS (2015) 'Istanbul Protocol Manual: Standards & tools for medical documentation of torture & other ill-treatment in the Maldives': <http://www.redress.org/downloads/publications/Istanbul%20Protocol%20Handbook.pdf>.

What guidelines are there on medical documentation?

The United Nations has recognised a set of guidelines on how investigations into torture should be carried out and how medical evidence of torture and other ill-treatment should be documented to enable states to comply with their international human rights obligations. This is known as the **Istanbul Protocol**.

Other important standards for the medical examination of detainees in particular are provided in the Revised United Nations Standard Minimum Rules for the Treatment of Prisoners (known as the "**Mandela Rules**"), adopted by the Commission on Crime Prevention and Criminal Justice at the Vienna Crime Commission in May 2015.¹

1 Revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), adopted by the Commission on Crime Prevention and Criminal Justice on 21 May 2015, E/CN.15/2015/L.6/Rev.1.

The Istanbul Protocol

- Is “a set of international guidelines for 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”

Guidance for Medical Professionals and Lawyers

- provides guidance as to international professional ethics obligations for medical professionals and lawyers in relation to documenting torture and ill-treatment
- provides information on the medical and psychological effects of torture and other ill-treatment and how to assess them
- outlines specific considerations for interviewing alleged victims of torture and other ill-treatment

Standards for medico-legal reports

- contains internationally recognised standards and procedures on how to identify and document symptoms of torture so the documentation may serve as valid and useful evidence in court
- provides standards for producing, and critically evaluating, medico-legal reports for use as evidence

Standards on investigations

- outlines procedures and minimum standards for investigations into torture and other ill-treatment

Guidance for States

- provides States with guidance as to procedures that need to be established in places of detention and elsewhere to allow effective medical documentation of allegations of torture and other ill-treatment in line with obligations under international human rights law

Relevance & Status

- can be used for criminal investigations, human rights investigations and monitoring, refugee application evaluations, the defence of individuals who “confess” to crimes during torture and needs assessments for the care of torture victims, as well as gathering evidence for advocacy
- is a recognised United Nations document and an “international point of reference” for health professionals, judges, lawyers, state officials, human rights monitoring bodies and non-government organisations

Safeguards from the Istanbul Protocol

For interviewing those in detention

Particular safeguards should be followed when medical examinations are carried out in relation to detainees. The Istanbul Protocol provides (at paras. 123-124) that:

- the detainee should be taken to the forensic medical examination by officials other than soldiers and police
- the officials who supervise the transportation of the detainee should be responsible to the public prosecutors and not to other law enforcement officials
- the detainee's lawyer should be present during the request for examination and post-examination transport of the detainee
- detainees have the right to obtain a second or alternative medical evaluation by a qualified physician during and after the period of detention
- medical evaluation of detainees should be conducted at a location that the physician deems most suitable, which could be, e. g. official medical facilities rather than in a prison
- each detainee must be examined in private
- police or other law enforcement officials should never be present in the examination room except where "in the opinion of the examining doctor, there is compelling evidence that the detainee poses a serious safety risk to health personnel. Under such circumstances, security personnel of the health facility, not the police or other law enforcement officials, should be available upon the medical examiner's request. In such cases, security personnel should still remain out of earshot (i.e. be only within visual contact) of the patient"
- if police or prison officers or other law enforcement personnel are in the examination room, this should be noted in the report. Such presence may be grounds for disregarding a negative medical report.
- If the forensic medical examination supports allegations of torture, the detainee should not be returned to the place of detention, but should be brought before the prosecutor or judge to determine the detainee's legal disposition.

Confidentiality of medical evidence

The Istanbul Protocol provides (at para. 126) that:

- The original, completed medical evaluation should be transmitted directly to the person requesting the report, generally the public prosecutor
- When a detainee or a lawyer acting on his or her behalf requests a medical report, the report must be provided
- Copies of all medical reports should be retained by the examining physician
- Under no circumstances should a copy of the medical report be transferred to law enforcement officials.

What can lawyers do to increase the role of medical documentation?

Lawyers have two key roles: acting as advocates for their clients, and pressing more broadly for reform to allow for the collection and receipt of effective medical documentation.

In relation to their own clients who allege torture and/or other ill-treatment, lawyers can play a key role in ensuring that medical evidence is obtained and used appropriately by:

- obtaining a detailed statement of the client, which includes information regarding possible evidence in relation to the act of torture and any proceedings
- ensuring that they interview their clients in a sensitive and appropriate way
- recording any complaints made by the client about his or her health condition; viewing injured parts of the body with the consent of the client and indicating injuries on the body diagram contained in the Istanbul Protocol
- requesting independent medical evaluations for their clients under the Anti-Torture Act 2013 if applicable, and ensuring that the appropriate safeguards are in place and are followed applied
- obtaining any other medical records that may be available (with their client's consent)
- examining medical evaluations for any inconsistencies with other records, and ensuring that these are brought to the attention of the judge
- obtaining independent medical evaluations if required
- challenging substandard medical evaluations and reports carried out as part of police investigations or investigations by other bodies
- educating judges through their legal arguments as to the domestic and international standards concerning the usefulness of and standards for medical evidence and through expert evidence on the medical and psychological effects of torture and other ill-treatment
- advocating for changes in legislation, regulation and practice to allow independent medical evaluations of those alleging torture and other ill-treatment in line with Istanbul Protocol standards.

Lawyers can also promote improvement of procedures in line with Maldivian law and international obligations through their casework, lobbying, and participation in training of state officials. This can include:

- using international human rights arguments in case submissions and referring to positive jurisprudence of other countries to encourage judges to accept new or novel arguments
- developing casework strategies that seek progressive changes in the approaches of judges to the question of torture
- lobbying for amendments to the Rules of Court, Procedural Codes and/or other relevant evidentiary principles to allow for the receipt of expert medical evidence
- objecting in individual cases and lobbying for amendments to regulations or procedures that violate the procedural safeguards of their clients, including the right of access to a lawyer and the right of access to a doctor
- taking cases to international mechanisms, such as the UN Human Rights Committee, where domestic procedures do not provide an adequate remedy.

In relation to their own clients, lawyers should insist that:

- independent medical and psychological evaluations are carried out where an allegation of torture or other ill-treatment has been made (and paid for by the State if the conditions under the Anti-Torture Act are satisfied)
- the lawyer is allowed to be present at the independent medical evaluation
- security forces are not present at the independent medical evaluation
- other procedural safeguards of the Istanbul Protocol (including those set out above) are followed
- the medical professionals carrying out the evaluation adhere to the highest ethical standards
- a prompt and detailed report is provided in line with the Istanbul Protocol requirements
- medical records and reports are kept confidential, and are provided to the client or the lawyer with the client's consent

Where can I find further information?

- UN Office of the High Commissioner for Human Rights (OHCHR), 'Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (the "Istanbul Protocol"): www.ohchr.org/Documents/Publications/training8Rev1en.pdf
- Revised United Nations Standard Minimum Rules for the Treatment of Prisoners (known as the "Mandela Rules"): http://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_24/resolutions/L6_Rev1/ECN152015_L6Rev1_e_V1503585.pdf
- IRCT/REDRESS (2009) 'Action Against Torture: A practical guide to the Istanbul Protocol – for lawyers', IRCT and IRCT/REDRESS, 'Checklist for Lawyers', available online at: <http://www.irct.org/media-and-resources/library/other-irct-key-publications.aspx>
- REDRESS (2015) 'Istanbul Protocol Manual: Standards & tools for medical documentation of torture & other ill-treatment in the Maldives', June 2015: <http://www.redress.org/downloads/publications/Istanbul%20Protocol%20Handbook.pdf>
- REDRESS (2015), 'Medical Documentation of Torture and Other Ill-treatment in the Maldives: Basic guide for medical professionals', June 2015: <http://www.redress.org/downloads/publications/Guide%20for%20Medical%20Professionals%20Maldives.pdf>



This Quick Guide was produced with the support of the OPCAT Special Fund
June 2015