PRACTICE NOTE 3

ISTANBUL PROTOCOL MEDICO-LEGAL REPORTS

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TRAUMA TREATMENT INTERNATIONAL

REDRESS

Ending torture, seeking justice for survivors

This guide is part of a series of **Practice Notes** designed to support holistic strategic litigation on behalf of torture survivors. It is aimed at lawyers, researchers, activists, and health professionals who assist torture survivors in the litigation process.

This guide shares the experience of **REDRESS** and **Trauma Treatment International (TTI)** and is intended to assist clinicians, such as physicians and clinical psychologists, to undertake an assessment and elaborate reports that are compliant with the United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

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INTRODUCTION

This practice note is primarily intended to assist clinicians such as physicians and clinical psychologists to undertake an assessment and produce a report that adheres to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

The Istanbul Protocol is intended to provide guidance for investigating, documenting, and reporting on torture and cruel, inhuman, or degrading treatment or punishment (ill-treatment or CIDTP).

This practice note will also be of use to human rights lawyers who use reports from a clinician in a court. The purpose of such reports is to:

- Document torture and ill-treatment;
- Collect and provide evidence relevant to investigations into torture and ill-treatment;
- Assess the shortcomings and gaps of investigation into torture and ill-treatment;
- Provide supporting evidence for reparation claims, nationally or internationally.

WHAT IS THE ISTANBUL PROTOCOL?

The Istanbul Protocol is a series of principles that set out the minimum standards for States to investigate and document torture and ill-treatment as defined by the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984 (UNCAT).

The infliction of severe mental or physical pain or suffering on the victim is a key element of the crime of torture. Torture is defined by UNCAT Article 1 as:

> "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 leads to physical injuries and/or psychological injuries, which can both take various forms. The IRCT notes that:

> "The Istanbul Protocol is an important instrument in the fight against torture – the effective investigation and documentation of torture helps to expose the problem of torture and to bring those responsible to account. The Principles contained in the Protocol reflect important international standards on the rights of torture survivors and States' obligations to refrain from and prevent torture."

The Istanbul Protocol contains sections on international anti-torture standards, relevant ethical codes (including ethics of lawyers and health professionals), the

legal investigation of torture, general considerations for interviews, physical evidence of torture, and psychological evidence of torture. It also contains a few practical annexes which can be used by practitioners in their work.

An investigation into torture may be wide ranging, comprising of evidence such as witness statements from alleged victims, alleged perpetrators and other witnesses; physical evidence, such as instruments that could be used in torture, fingerprints, biological forensic materials, photographs, or drawings; site visitation; digital evidence, such as electronic health records, CCTV, social media; and medical/psychological evidence.

This practice note focuses on medical and psychological evidence.

The Istanbul Protocol and Lawyers

It is essential for lawyers to understand the Istanbul Protocol as it contains international standards, applicable to States and which can be used to hold perpetrators and States to account. While the Protocol itself is non-binding, most of the principles and guidelines it contains are reflections of treaty provisions and customary international law. The Istanbul Protocol has been widely referred to by regional courts and international treaty bodies in their jurisprudence.

Lawyers need to fully understand the impact of torture and ill-treatment on survivors in order to effectively represent them. This will help them understand the mindset and reactions of the survivor, understand what type of evidence might be required to support their case, ensure that they ask the right questions during interviews, and also prepare themselves to talk about the subject of torture. Familiarizing oneself with the Istanbul Protocol will help in tackling the holistic aspects of strategic litigation.

The Istanbul Protocol also sets out international anti-torture standards. This serves as a strong guide to identifying international obligations of States in relation to torture (*see also: Practice Note on Holistic Strategic Litigation against Torture*). State obligations in relation to torture and ill-treatment are as follows:

- States must **protect against and prevent** torture and CIDTP internally.
- States must **hold individual perpetrators to account** both domestically and internationally.
- States must provide **reparation to victims.**

Lawyers also need to understand how interviews of victims of torture and ill-treatment should be carried out, and how medico-legal reports of torture and ill-treatment are put together and documented. Gaining such an understanding will help lawyers make the best use of such documentation in court, and avoid re-traumatisation of the victim/s whom they represent.

WHY CONDUCT AN ISTANBUL PROTOCOL MEDICO-LEGAL EVALUATION?

Torture is often hidden and denied, taking place away from public scrutiny, with the active participation or tacit agreement of a State. In most cases the State is knowingly breaking their own national laws or international treaties that they are a party to. Therefore, gathering evidence from witnesses and other sources can be difficult or impossible.

Medical and psychological evidence can provide a form of evidence which supports a claim of torture , without being reliant on witnesses (other than the victim) or on other physical evidence.

The purpose of the medico-legal evaluation is to provide an expert opinion, based on a clinical interpretation within the limitations of the skills and training of the clinician undertaking the assessment. The clinician is asked to use their professional knowledge, based on all relevant clinical evidence, to comment on the degree to which clinical findings correlate with the alleged victim's description of torture.

Once clinicians have gathered clinical evidence they provide their professional opinion, normally in the form of a medico-legal report. The report forms part of the evidence into an investigation and is given to the judiciary or relevant authorities and legal representatives. The clinician may be required to further communicate their opinion in court under cross examination.

Istanbul Protocol-compliant medico-legal reports submitted to the judicial process may be used as part of criminal persecutions, civil litigation, human rights claims, and asylum claims. The clinical opinion may also serve to educate the judiciary, government officials, NGOs, and local and international communities about the alleged practice and consequences of torture.

HOW TO CONDUCT AN ISTANBUL PROTOCOL ASSESSMENT

Who should conduct an Istanbul Protocol Assessment?

Clinicians conducting Istanbul Protocol medico-legal reports must act with objectivity and impartiality. The assessments must be based on the clinician's expertise and professional experience. The ethical obligations of clinicians demand uncompromising accuracy and impartiality in order to establish and maintain professional credibility.

Clinicians are responsible for assessing and reporting any findings that they consider relevant, even if those might be adverse to the case of the party requesting the medico-legal report. Clinicians must not exclude from a medico-legal report any findings that are consistent with torture or ill-treatment, under any circumstances.

If possible, the patient should be able to choose the gender of the clinician and, where used, of the interpreter. If it is not possible to provide a clinician of the gender that a person chooses, then consideration and discussion should focus on how best to mitigate any concerns the individual has regarding the gender of the assessor.

Many Istanbul Protocol assessments benefit from both a medical and a psychological assessment. The Istanbul Protocol recommends that assessments are performed jointly. In practice this is rarely possible, often not practical, and sometimes counterproductive. For example, a physical examination of scars does not require a psychologist to be present. However, ongoing communication including the early sharing of opinions and/or draft reports is highly recommended. In some cases, there may be no need for a medical examination.

Preparation

Ensure that you are familiar with the latest edition of the Istanbul Protocol.

The *purpose of the assessment* is to make a professional judgement about consistency between allegations of torture and the physical and psychological markers. However, there may be additional aspects that require comment. For example, the ability of the witness to provide evidence in court, memory and recall errors, or recommended treatment.

Gain *clear and concise instructions* from a legal representative where possible. In the absence of these, the assessor's task is to judge consistency between allegations of torture and physical and psychological sequalae.

Assess *collateral information* that may be relevant to your instructions. When available, consider relevant documents in advance. For example, medical records can provide information about a person's health prior to the alleged torture, treatment during incarceration, and accounts and treatment after the alleged event. Information such as history of deliberate self-harm or previous scars is a useful basis to judge consistency.

During the Assessment

Location. The assessment should be conducted in a safe, private location.

Ensure privacy and explain confidentiality. Be aware that assessments conducted in the prison where the alleged torture occurred or at a medical facility while the person remains incarcerated will present additional challenges. For example, prisoners will not feel safe to disclose allegations of torture in front of a guard, which also breaches confidentiality boundaries.

Communication Barriers. Anticipate and address possible barriers to effective communication. Barriers include language differences/use of interpreters, shame

and avoidance of aspects of torture, educational differences, physical discomfort, lack of privacy, personal biases, dissociation, and traumatic brain injury.

Rapport. Take time to build trust and rapport. This is enhanced by off topic discussion, open body language, warm empathic communication style, and allowing sufficient time in the interview. Consent, including express permission to not provide details, is paramount.

Pace. Consider the pace of the assessment. Allow breaks and moderate the tempo of the narrative. Be alert to dissociation: keep the interviewee grounded and orientated in the present.

Detailed Narrative. Try to gain a detailed narrative of personal history. Experiences of torture must be placed within the context of a person's entire life. An assessment is to appraise the consistency between allegations of torture and current mental and physical health; a detailed personal history regarding events prior to the alleged history must be undertaken to provide a judgement on causality. A detailed narrative of the alleged torture is also needed, along with an understanding of what happened afterwards.

Language Use. Be aware that language and questioning style of the assessor influence the recall and memories of the victim. Be clear and direct. Adapt language to the interviewee considering aspects such as age, education, ability to concentrate etc.

Using an interpreter. Keep language simple, speaking in short sentences. Allow time to translate.

Open ended or closed questions. Open-ended questioning can increase the amount of information and build rapport. Closed, focused, and probing questions are useful to provide context (which reduces the possibility of a flashback) and focus traumatised people who have a fragmented memory and who could otherwise provide a disjointed account. Ensure your questioning style does not reflect that used by an interrogator.

Consider how alleged factors and conditions occurred in synchrony. In particular, consideration should be given to "no touch" techniques such as sleep deprivation,

humiliation, poor diet, cramped conditions or solitary confinement, forced stress positions, forced exercise, threats, and hot or cold cells. If a witness does not spontaneously comment on an aspect, ask probing questions such as: "*How much sleep were you able to have*?"; "*Were you treated for your injuries*?"; "*Were you able to wash or use the toilet*?". In general, leave follow-up questions until after a person has finished answering open-ended questions.

Avoid self-report symptom measures in mental health evaluations. Self-report symptom measurement is typically comprised of a list of possible symptoms where the patient is asked to tick a box regarding whether they experience that symptom and how frequent or severe it is. Symptom measurement such as the Impact of Events Scale Revised (IES-R) or the Beck Depression Inventory (BDI) are useful in evaluating to what extent symptoms change during treatment, but are not appropriate in legal contexts. Using them increases the possibility of malingering as well as the possibility of misunderstanding terms that may then be inappropriately used to inform diagnosis. Structured and semi-structured, validated interviews may be helpful tools, but tick box symptom measurements are not.

Shame. Be especially attentive to disclosures likely to produce a shame response such as sexual violence or harming others. Be warm and empathic, allow time. Ask questions when there are gaps, but understand the client controls the amount of detail. It is often helpful to tell a client that asking direct, specific questions can reduce distress. Preface this with an explanation that it is the perpetrator, not the victim who is responsible or at fault. Understand but do not collude with stigma attached to an event.

Assessing Children. Ideally undertake specialist training. Ensure their rights and privacy are respected and adapt language and questions to their developmental stage. Understand that attention span differs from child to child. Consider having a parent present but do not assume it is always beneficial. (*See: REDRESS-TTI Practice Note on Working with Child Victims of Trauma*).

Re-traumatisation. This is a term that has historically not been well defined. Since the basis of many evidence-based psychological therapies for PTSD include the construction of a detailed, contextual narrative, recounting torture is not inherently harmful. However, recall of traumatic events is distressing and torture survivors may have an increase of distress in the days following the assessment. In addition, there is the potential for the assessment to resemble aspects of torture. Assessors could inadvertently appear like interrogators. Medical assessments involving nudity or blood have the potential to trigger flashbacks. There may be emotionally detrimental beliefs regarding reporting shameful experiences, gaining a mental health diagnosis, or discussing taboo subjects.

Psychological Benefits. Although the purpose of an Istanbul Protocol assessment is not to provide therapy, providing a detailed history can exert therapeutic benefits even if describing events is distressing at the time. People alleging torture should be encouraged to provide a detailed history but not cajoled or obliged to do so. The need for consent and control by the alleged victim always comes above the need for a detailed account. Having a diagnosis and treatment plan for physical ailments can bring relief, as can feeling heard and believed.

Traumatising the assessor. Vicarious trauma or directly triggering memories of previous personal traumas is possible. Burnout leading to compassion fatigue is possible, which would lead to an impairment of the ability of the assessor to evaluate the consistency of the reported torture.

HOW TO WRITE AN ISTANBUL PROTOCOL MEDICO-LEGAL REPORT

General

Tone and Language. Your opinion should be authoritative, while remaining neutral and objective. Your aim is to provide an unbiased opinion to the court or other relevant body. Be concise, but provide the basis of your opinion. Medical jargon or psychological concepts should be explained so that it can be understood by a lay audience. Avoid hyperbole and carefully consider adjective use. International judges may speak a different language than the report is written in. The report may be translated or read using a second language.

Be concise. Number your paragraphs. Each paragraph should be concise and make only one point. Use short sentences. Be clear to whom you are referring. Avoid the passive form. Consider using the name rather than he or she to promote clarity. Cut repetition. Saying something twice does not make your point stronger or clearer.

Be clear and specific. State your opinion with confidence. If you are unsure of your opinion, state why this is and provide alternatives. If possible, state which is most likely on the balance of probability.

Structure your report. Use clear headings and subheadings. If you are writing using Microsoft Word, use style headings and include a table of contents. Group sections thematically. Include a summary.

Present your opinion in a neutral, objective manner. Clearly state the basis of your opinion, outlining the evidence.

Issues Specific on Istanbul Protocol Report

Clearly state your credentials and expertise. Conducting Istanbul Protocol evaluations does not require certification as a forensic expert.

Introduction. Provide the reason for the report, relevant legal arguments and an overview of the victim and their allegations.

Instructions. State clearly what you have been legally instructed to comment on. In the absence of formal instructions state the purpose of the report and that you are writing it in accordance with Istanbul Protocol guidelines.

Collateral Information. List all of the materials you were provided with. For example, medical records, prison records, witness statements. Comment on aspects of those materials that are relevant to your opinion.

Describe the assessment. Date, duration, location, and who was present. What language was the assessment conducted in? Record any relevant observations. State any clinical tools you employed. Include diagnostic tests, body maps of injuries, and photographs.

Provide a detailed history. Include relevant factors before alleged torture occurred, a detailed description of torture, mental and physical health history, drug and alcohol use, education and work history.

Report relevant psychological and medical conditions. Comment on their consistency with allegations made. Consider physical and psychological evidence together. Document physical and psychological evidence of torture.

Make Treatment Recommendations. For example, Cognitive Behavioral Therapy for PTSD.

Highlight areas in need of further exploration. For example, a psychologist may suggest that an expert in scarring is instructed to provide an assessment or vice versa.

Consider alternative possibilities for any injuries and consequences. For example, could injuries have arisen through deliberate self-harm? Could the person be faking or malingering? Is there evidence of false memory or delusions? Does the clinical picture suggest a false allegation of torture? Are there current stressors or previous traumas that cause or contribute to the clinical picture?

Consistency

Comment on the degree of consistency between the observed and reported sequalae, knowledge of torture methods used in a particular region, and the testimony of the alleged survivor.

Psychological Medico-Legal Reports

In formulating a clinical impression for the purposes of reporting psychological evidence of torture, the following important questions should be asked:

- Are the psychological findings consistent with the alleged report of torture?
- Are the psychological findings expected or typical reactions to extreme stress within the cultural and social context of the individual?
- Given the fluctuating course of trauma-related mental disorders over time, what is the time frame in relation to the torture events? Where is the individual in the course of recovery?
- What are the coexisting stressors impinging on the individual (e.g. ongoing persecution, forced migration, exile, loss of family and social role)? What impact do these issues have on the individual?
- Which physical conditions contribute to the clinical picture? Pay special attention to head injury sustained during torture or detention.
- Does the clinical picture suggest a false allegation of torture or ill-treatment?

Medical Reports

The levels of consistency for such correlations are commonly expressed as follows:

- **Not consistent with.** The finding could not have been caused by the alleged torture or ill-treatment;

- **Consistent with.** The finding could have been caused by the alleged torture or ill-treatment, but it is non-specific and there are many other possible causes;
- **Highly consistent with.** The finding could have been caused by the alleged torture or ill-treatment and there are few other possible causes;
- ***Typical of.** The finding is usually observed with this type of alleged torture or ill-treatment, but there are other possible causes;
- **Diagnostic of.** The finding could not have been caused in any way other than that described.

**Note: The "Typical of" level of consistency is not commonly used to assess psychological evidence of torture and ill-treatment as psychological findings tend to depend on individual factors. Also, the "Diagnostic of" level of consistency is used more frequently in the interpretation of physical evidence of torture and ill treatment and is rarely used in the interpretation of psychological evidence.*

*Consistency is not a reliability assessment***.** Clinicians should focus on the consistency between allegations of torture and clinical evidence, not the reliability or credibility of the witness.

The absence of clinical evidence does not imply the absence of torture or ill-treatment. Additionally, absence of a diagnosis does not imply absence of mental or physical suffering. Many methods leave no physical marks and approximately 50% of people who are tortured do not develop PTSD in response. Consequently, many torture survivors will not have psychological or physical injuries that generate a diagnosis.

End of Report

Summary. Restate concisely the main points of your report. State conclusions and recommendations.

Include a "Statement of Truth". Different courts may have different requirements, which should be followed. If no guidance is given, write a statement such as:

I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer. I understand that my primary duty is to provide objective evidence to the court.

FURTHER READING

- OHCHR, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) (2004).
- International Rehabilitation Council for Torture Victims (IRCT). Action Against Torture: A practical Guide to the Istanbul Protocol-for lawyers (2009).
- REDRESS, Istanbul Protocol Handbook (2015).

REDRESS is an international human rights organisation that delivers justice and reparation for survivors of torture, challenges impunity for perpetrators, and advocates for legal and policy reforms to combat torture.

Trauma Treatment International (TTI) provides psychological support for victims of trauma and are experts in effectively dealing with and mitigating additional trauma for torture victims who are seeking justice through strategic litigations.

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