

MODULE 15

Introduction

Evidence can be defined as any means used to support an allegation. It can be material items or assertions of facts to ascertain the truth of the alleged matter.

Guidance on the documentation and investigation of torture and ill-treatment can be found in the [Istanbul Protocol](#). Other bodies of principles, such as the UK FCO [International Protocol on the Documentation and Investigation of Sexual Violence in Conflict](#), should be relied on in complementarity with the Istanbul Protocol when seeking to document other specific types of crimes.

This module should be read in complementarity with *Module 13: Working with Victims of Trauma*.

Strategic issues

There are several questions to keep in mind when identifying and preparing evidence for torture and other human rights cases, including:

- What are the elements of the crime of torture or other human rights violations we are trying to prove?
- What are the sources of evidence we need to prove those elements?
- What is the standard of proof in relation to the crime before the body where we have submitted the case? Is it a national or international court? Is it a case related to criminal responsibility or State responsibility?
- How do we obtain the necessary evidence to prove the violations?

The definition of torture under UNCAT, Article 1 is as follows (see *also Module 2: UNCAT and the 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 capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

As such, the elements of torture are as follows:

- *Severe pain or suffering.* This includes showing that the client suffered either physical pain - i.e., broken ribs, arms or other physical injuries - or mental pain - i.e., the victim is suffering from post-traumatic stress disorder, depression, or anxiety disorder.
- *Intention.* Did the perpetrator intend to inflict pain or was the act committed inherent in or accidental to a lawful sanction?
- *Purpose.* If the perpetrator had an intent to inflict pain or commit torture, what was the purpose for such infliction? Was it committed with the purpose of obtaining a confession or information? To punish, intimidate, or coerce the victim? To discriminate against the victim due to their religion, race, ethnicity, sexual orientation, or any other cause?
- *State involvement.* Was the torture carried out by State agents, such as police officers, military, or others, or were they acting on behalf of the State/did they have a connection to the State? Or were they non-State actors? In that case, was there a failure from the State to prevent, investigate, and/or redress?

Some of the sources of evidence to look for in torture or ill-treatment cases are as follows:

- *Victim statement.* Can you speak with the victim themselves and obtain a story of their ordeal?
- *Witness statements.* Statements from other individuals who may have witnessed torture or a victim who may have information about torture, i.e., a cell mate, eyewitness, or a family member.
- *Medico-legal reports.* Medical or psychosocial reports are important to show the injuries and harm that the victim has endured.
- *Other expert reports.* These can prove that the crime was committed in a certain context (widespread and systematic context), or following a pattern in relation to other violations committed in the same context.
- *Secondary sources.* UN and NGO reports, as well as media clippings that could help to prove that the person was in police custody, or in any way detained and tortured. Those sources can also provide relevant information on the political and cultural component or to show patterns of torture or ill-treatment committed by the authorities.

All the evidence should corroborate the story of the person you represent and minimise inconsistencies.

In the case of *Mariam Ibraheem* (victim of torture in detention in Sudan), her testimony was consistent with media reports and her submission before the AComHPR.

Burden of proof in cases of torture

The complainant bears the burden of presenting *prima facie* evidence of torture or ill-treatment. If the evidence presented is credible and corroborates the allegations, then the complainant's allegations may be considered substantiated unless rebutted by the State party.

The presentation of prima facie evidence of torture or ill-treatment creates a strong presumption that the victim was tortured. Further, there is a strong presumption of torture when a person is injured in detention or while under the control of security forces.

The burden of proof then shifts to the State to rebut the complainant's allegations. It is insufficient for a State to remain silent. The State party must give a "thorough explanation".

Additionally, the burden may lie on the State if the complainant demonstrates that "they have no possibility of obtaining documentation relating to their allegation of torture or have been deprived of their liberty". The rationale is that it would not be appropriate to expect persons deprived of their liberty at the material time to be able to gather the necessary evidence, whereas the State would have access that information.

Where the burden of proof is reversed, it is the responsibility of the State to "investigate the allegations and verify the information on which the communication is based." In order to avoid liability, State authorities must provide sufficient information to prove that they are not responsible for the allegations against them.

Characteristics of good pieces of evidence

There are several elements that make for good evidence. These include:

- *Proximity to events.* The closer to the event the evidence is, the better, as it may be easier to gain detail from it.
- *Reliability.* It is important that a witness, report or other evidence is credible or believable. For example, use a forensics expert with a strong reputation working with victims of torture, with experience testifying at trials; choose a report prepared by the UN or another established organisation on torture patterns in the country you are working in or against.
- *Detail.* The more detailed information one provides, the better.
- *Internal consistency.* Each piece of evidence must be internally consistent, ensuring that it does not contradict itself.
- *Corroboration.* This can help make an allegation stronger or increase the chances to obtain a remedy.

Conducting interviews

Preparation. Before you start interviewing a victim or witness of torture or ill-treatment, you should think about the purpose of the interview, what information you are seeking to obtain, and the logistics of the interview. You should be acquainted with the Istanbul Protocol or other protocol for the type of torture or ill-treatment you are seeking to prove (see above). You should also be aware of the consequences that torture and ill-treatment (or the witnessing of such treatment) may have on those you are interviewing.

Usually, the primary objective of an interview is to collect evidence to show that person was tortured, to support that the legal elements of torture are fulfilled, and that the alleged perpetrator is responsible for the offence.

During the interview, keep in mind the need for consistency and for detail. The needs of the individual should be a central consideration in the leading of the interview (mental state, fatigue, retraumatisation, etc.).

Logistics. The interviewee should feel comfortable and safe to share their story. Ensure that you have all you need – and all the interviewee needs – to conduct the interview: location, note-taking method, food, drinks, ability to take breaks, etc.

Language. If the interviewee does not speak a language which you speak or understand, it may be necessary to have an interpreter present. This may require some advance logistical work. Depending on the subject matter that you are addressing (sexual violence for instance), be mindful of the gender of the interviewer and of the interpreter (and any other person present in the room).

Confidentiality. It is your obligation to explain to the victim the issue of confidentiality. Explain carefully which pieces of information that the interviewee reveals will be used for what and how they will be protected. Explain also their duty of confidentiality, depending on the rules of procedure, and the security concerns involved, if any.

Location. Think about the room, its layout, the people present during the interview, access to natural light, to a bathroom, food or other breaks, privacy, comfort, temperature, etc. Will the interviewee feel safe and at ease? Think about places the interviewee has to pass by on the way to the location. For example, inviting them to interview at a location nearby a location where they were held would not be suitable. Also think about accessibility and the interviewee's physical disabilities, if any.

Recording and storage. If you decided to record the interview, seek the interviewee's consent first. Ensure that you have the means to safely store the data. Explain safety and storage protocols to the interviewee. If you are using acronyms to protect the identity of the interviewee, ensure that you can store the list of acronyms safely.

Other considerations. Think about other issues that may be important when interviewing a survivor or witness of torture: how will trauma impact the interviewee? Should a medical or psychological support person be present? Is there a fear of reprisal if the person speaks with you? How do you ensure the safety of the person? What precautions can you take to minimise the fear of reprisal? If the victim has children, can you make sure childcare is provided while you are conducting the interview?

Information you want to obtain from an interview:

- *Identity and background of the victim.* Name, date of birth, nationality, occupation, place of residence, marital status. You might want to include information related to the victim belonging to a minority group or group in a situation of vulnerability. This information is important in presenting the story of the victim.
- *Events leading up to torture or ill-treatment* (e.g., arrest, abduction, etc.). What events led to the torture of the victim? Were they arrested, and if so what were the charges? Was the person informed of the charges? Did they have access to external help? Doctors? Lawyers?
- *Location of the events.* Can the victims recall where they were held and what the conditions of the detention facilities were like? Any detail is important.

- *Form of ill-treatment or torture* (where, what, how, why, who). This focuses on obtaining the information specifically related to torture. How was the individual tortured, where were they tortured and by who, for how long, what injuries have they sustained as a result, what has been the effect of torture on the individual's life, including mental and physical impact, family relations, economic situation? Name body parts. When talking about sexual and gender-based violence, make sure to use the correct terms.
- *Identity of the perpetrator(s)*. Who was the victim tortured by? Were they members of the police/army/non-State actors? What did the perpetrator say or do? Were they wearing uniforms? What questions did they ask? Is the victim able to identify the perpetrators by name, appearance, ranking, or other features?
- *Steps taken by the victim following torture*. Has the victim taken any steps following the violation of their rights? Did the victim, their relatives, or their friends file a complaint before the authorities? Is there a written record? This section can also include information on whether the victim sought any medical or psychosocial assistance, the cost of treatment, and the long-term impacts on the victim's health as a result of torture.
- *Official response* (access to justice and reparations). How did the authorities respond to the allegations of torture? Were investigations undertaken? By which authority, and what were the results? Try to get a full record of all the legal avenues used by the victim and the outcomes of those actions. Try to get copies of the legal criminal, civil, and administrative proceedings.

Witness statement

All statements should be written in the witness's own voice. The statement should read as a story of what happened to the victim. For lengthy statements, it is recommended to use headings and signposting to provide the reader with a road map and make it easier to follow the statement. As much as possible, stick to assertions that can be supported with external evidence. Avoid making statements and allegations that cannot be proven or supported with external evidence, as this may weaken your case. In some cases, this might not be possible as the victim's statement might be the only piece of evidence available. Provide the reader with the context and explanation for gaps in the evidence that may exist, to explain why these gaps occur. For example, even though the victim might have tried to report their abduction and subsequent violations to the police, the police might have refused to record the events and open a file.