

The Needs of Victims of Torture – *understanding their pain and respecting their rights*

Nora Sveaass
University of Oslo
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I will touch
upon the
following...

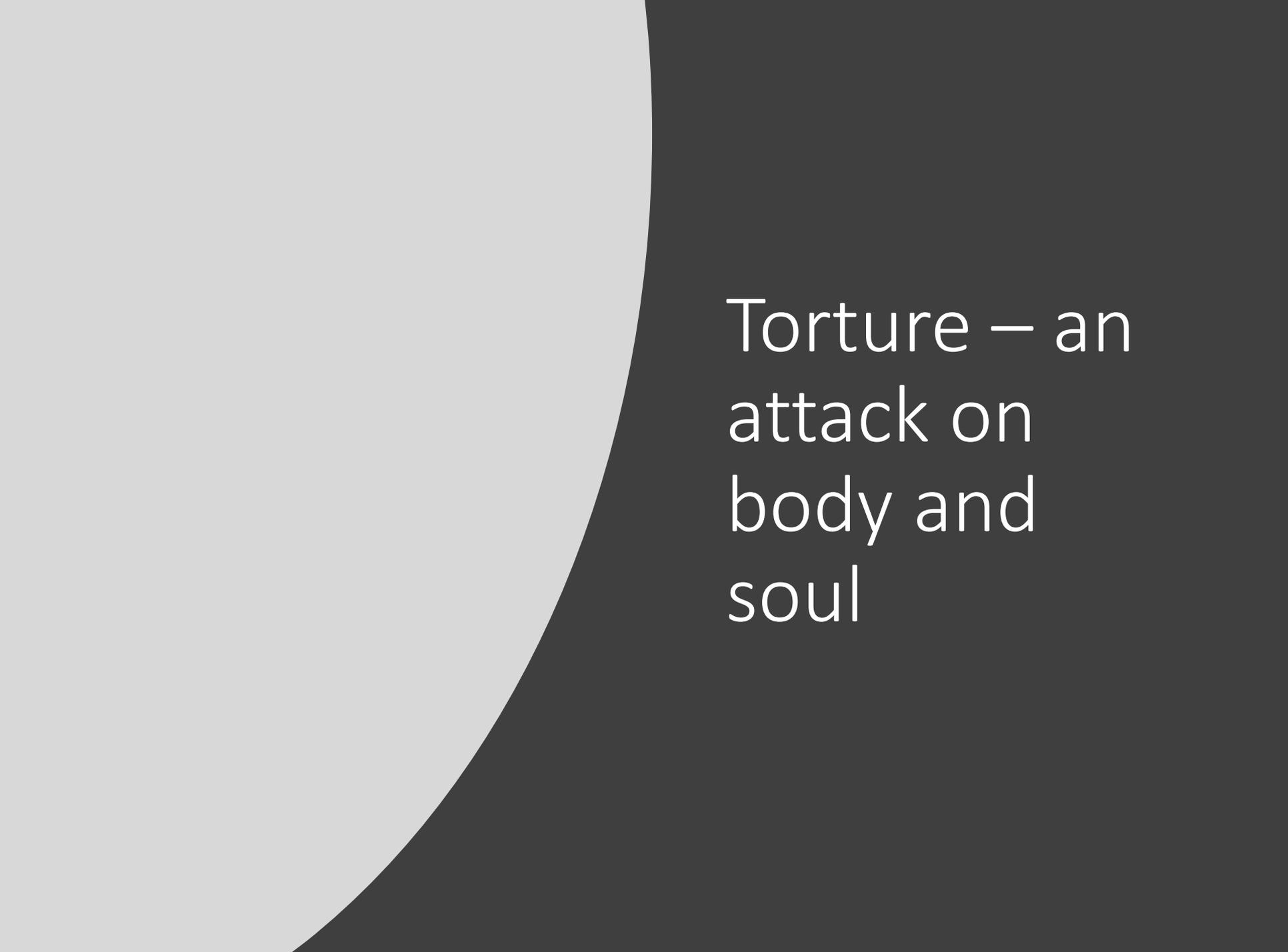
- Torture and its consequences – in particular cognitive changes
 - Torture - often under the radar
 - Obligations and recommendations
 - Identifying and documenting torture
 - The Istanbul Protocol in the asylum procedure
 - Highlighting IP-22 guidance
- 

Torture – Jacobo Timerman (1923-1999)

"Part of my spirit has been destroyed. The great cost has been to my peace of mind. I try to come back now to the things that were most important to me, and I cannot. It is very frightening. I have lost the ability to read the great poets, Sophocles, or T.S. Eliot, or Delmore Schwartz, that were so important to me. I have been invited to Princeton to write a book about the effects of torture on the spirit, and I may do it. But I am afraid of what I may learn.

You see, I was not degraded by the torture, but I was deteriorated.

[The Torture Of Jacobo Timerman - The Washington Post](#)



Torture – an
attack on
body and
soul

The person who is tortured is exposed to

- Intentional and severe pain – mental and/or physical
- Total control of another person or system
- Lack of protection and no possibility to protect him/herself
- Willed powerlessness in the person
- Lack of information, oversight, why, how long, where?
- Creation of confusion and lack of cues – makes it difficult to identify what happens
- Humiliation and mockery
- Sexual assault
- Attack on values, attempts at moral destruction

Reactions to such devastating and inhumane attacks

- Bodily pain and even disabilities
- Loss of control and feeling of helplessness
- Worthless and powerless - lack of agency
- Shame and often feelings of guilt
- Extremely insecure about own judgement and decisions
- Lack of confidence in others
- Fear, anxiety and other emotional difficulties
- Memory problems and difficulties to concentrate
- Hard to place stories in context – sense of time and sequence often altered

One of the central aims of torture

- is to reduce an individual to a position of extreme helplessness and distress that can lead to a deterioration of cognitive, emotional and behavioural functions (IP-22, 498).
- *José A. Saporta and Bessel A. van der Kolk, “Psychobiological consequences of severe trauma”, in Torture and its Consequences: Current Treatment Approaches, Metin Başoğlu, ed. (Cambridge, United Kingdom, Cambridge University Press, 1998), pp. 151–181,*

ISTANBUL PROTOCOL

PROFESSIONAL TRAINING SERIES No. 5/Rev. 1

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



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

The new edition of the
Istanbul Protocol (2022)

includes a chapter: General considerations
for interviews;

The evaluating clinician should
***acknowledge potential limitations in
recalling*** all events.

In addition, ***a lack of detail should
not be considered as an indication of
being untruthful*** as there may be
important social, cognitive and
contextual reasons for the lack of
detail

342. Torture survivors may have difficulty recounting the specific details of the torture or ill-treatment 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**, for example high emotional arousal, cognitive avoidance due to painful emotions, such as guilt and shame, and impaired memory, secondary to trauma-related mental illnesses, such as depression and PTSD;
- (e) **Neuropsychiatric memory impairment from head trauma, suffocation, near drowning or starvation**;
- (f) **Protective coping mechanisms**, such as denial, avoidance and dissociation;
- (g) **Culturally prescribed sanctions** that allow traumatic experiences to be revealed only in highly confidential settings

Cognitive deficits following torture

- IP-22 437. Having been exposed to blows to the head, a torture survivor may complain acutely of pain, dizziness, nausea, vomiting and visual disturbance. Chronically, there may be **persistent headaches dizziness and memory or other cognitive deficits**
- IP-22 454. Any of these forms of asphyxia may cause loss of consciousness due to insufficient oxygen supply to the brain and the consequences of this type **of loss of consciousness may be similar to that from blunt trauma head injury, in terms of loss of short or long-term memory or other cognitive deficits.**

... furthermore....Inconsistencies

- between a person's allegations of abuse and the findings of the evaluation may arise from any or all of the aforementioned factors and should not be assumed to indicate untruthfulness.
- **Clinicians have a duty to pursue possible explanations of such inconsistencies**

The Istanbul Protocol
in the Asylum
procedure –
identification,
documentation and
protection



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on Article 3

- **General comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22**
- **III. Preventive measures to guarantee the principle of non-refoulement**
- (d) Referring the person alleging previous torture to an independent medical examination free of charge, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol);



From General Comment no 4

- 49. All **pertinent information may be introduced by both parties** to explain the relevance of their submissions under article 22 of the Convention to the provisions of article 3. The following information, while not exhaustive, would be pertinent:
 - (b) Whether the complainant has been **tortured or ill-treated** by, at the instigation of or with the consent or the acquiescence (tacit agreement) of a public official or other person acting in an official capacity in the past, and, if so, whether this was in the recent past;
 - (c) Whether there is **medical, psychological or other independent evidence to support a claim by the complainant that the complainant has been tortured or ill-treated** in the past, and whether the torture had after-effects;

Recommendations from CAT on the IP

- It should also continue to ensure that all relevant staff, including medical personnel, are **specifically trained to identify cases of torture and ill-treatment, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol)**.
- [CAT/C/SRB/CO/3 \(CAT 2021 \)](#)
- c) **Ensure that the Istanbul Protocol is made an essential part of the training for all medical professionals and other public officials involved in work with persons deprived of their liberty and asylum seekers;**
- [CAT/C/LVA/CO/6 \(CAT 2019 \)](#)
- (a) **Take measures to ensure that timely medical examinations of alleged victims of torture and ill-treatment comply with the procedures set out in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol), and in particular that they are conducted by trained, independent health experts with the support of professional interpreters;**
- [CAT/C/CYP/CO/5 \(CAT 2019 \)](#)

Identifying and assessing torture: UN CAT recommendations to Belgium 2014/2021

- Training for public officials regarding the absolute prohibition of torture
-all relevant personnel, including health-care professionals, who are in contact with prisoners and **asylum seekers should receive specific training on how to identify signs of torture and ill-treatment.**
- This should include an introduction to the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**the Istanbul Protocol**).
- In addition, the State party should develop **evaluation mechanisms** to assess the effectiveness and impact of such training and educational programmes

Concluding observations on the third periodic report of Belgium.

Adopted by the Committee at its fifty-first session (28 October–22 November 2013).



Torture under the radar

Persons exposed to torture in the Norwegian asylum procedure

- Norway is not doing enough to identify asylumseekers who have experienced torture

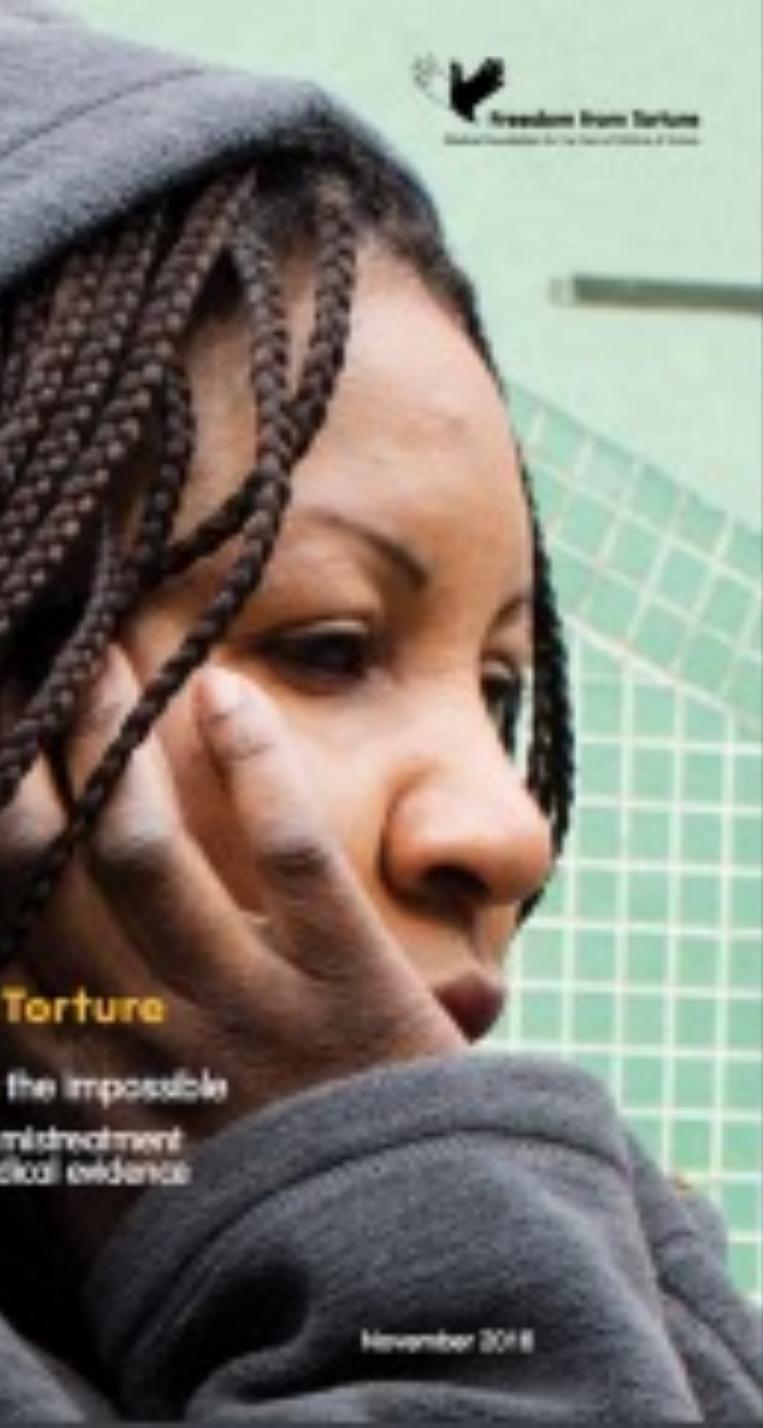


Findings

- Absence of guidance, routines, procedures and competence regarding torture
- Torture infrequently referred to in interviews
- Lack of clarity with regard to division of responsibility between the different sectors
- Lack of knowledge about the UNCAT and the IP
- Lack of knowledge about rights for victims of torture
- No system for identification purposes
- A belief that torture survivors speak easily about their experiences

Recommendations

- More focus on torture in the asylum procedure
- More systematic health assessments aiming at identifying victims of torture
- Establish routines for assessment and documentation throughout the system
- Capacity strengthening on all levels



Report: Proving Torture
FREEDOM FROM TORTURE, UK

- Proving torture, demanding the impossible: Home Office mistreatment of medical evidence (November 2016)
- We have evidence that medical evidence is being handled incorrectly by the UK Home Office.

From the report
«Proving
torture»

- Evidence from this research shows that **poor treatment of expert medical** evidence by asylum caseworkers persists
- Home Office mistreatment of expert medical evidence
- Strengthening capacity building in the system

BODY OF EVIDENCE:

Treatment of Medico-Legal Reports for Survivors of Torture in the UK Asylum Tribunal Freedom from Torture, 2011

- The determinations assessed in this sample demonstrate **that many Immigration Judges are familiar with and apply the guidance that is given, primarily in case law, on the treatment of expert medical evidence for cases involving a claim of torture**, as well as the standards articulated in the Istanbul Protocol. In most of these cases the appeals are allowed and a grant of refugee status or humanitarian protection is made.
- However, **the evidence shows that there is a serious lack of consistency in the treatment of MLRs across the Tribunal** and that in a significant number of cases the **guidelines given in case law and good practice standards are not followed by Immigration Judges**, leading to a dismissal of the appeal. Although an onward appeal may have been pursued in a number of these cases, depending on continuing access to legal aid and a diligent legal representative, a significant failure of protection could be the consequence for individual claimants who may be returned to a country in which they have been tortured.

Assessment and documentation of torture and consequences of torture

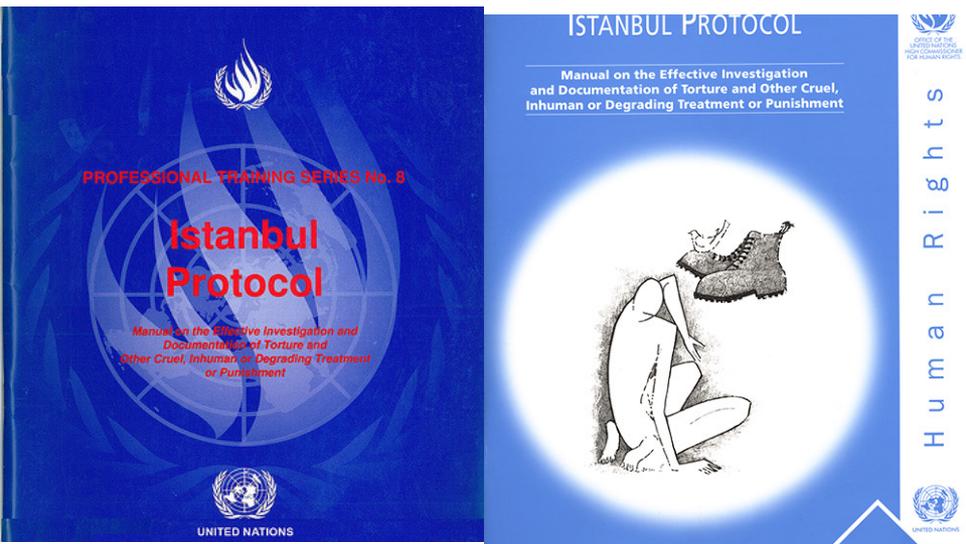
Istanbul protocol

When there are allegations of
torture

As part of investigation of
torture

In the context of rehabilitation
and compensation

In asylum procedures



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Updated istanbul protocol – IP-22

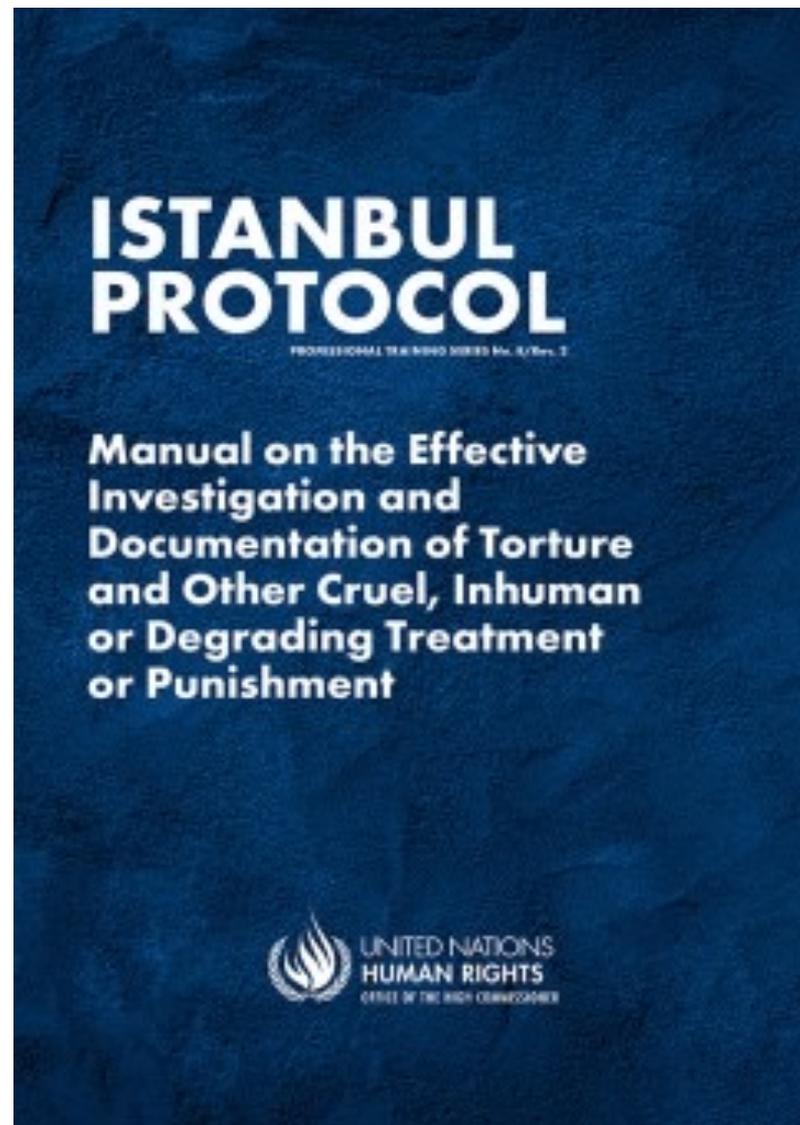
Launched in Geneva June 2022

- New chapters:

Chapter VII: The role of Health Professionals in Documenting Torture and Ill-treatment in Different Contexts

Chapter VIII: Istanbul protocol implementation

Annex II: Guidelines for Documenting Torture and Ill-treatment of Children.





Who conducts the
clinical evaluations?

Chapter IV on Clinical Qualifications, IP-22

- 303. *All clinicians who conduct clinical evaluations of alleged or suspected cases of torture or ill-treatment should do so **in accordance with the Istanbul Protocol and its Principles**. The clinical skills necessary to document physical and psychological evidence of torture and ill-treatment include basic clinical competencies. **Conducting evaluations in accordance with the Istanbul Protocol does not require certification as a forensic expert**, even though this may be the normative practice in some States and is sometimes used to intentionally exclude the testimony of independent clinicians from court proceedings.*

Relevant criteria to qualify.....

- *305. Judges and legal experts should be familiar with **relevant criteria to qualify forensic and other clinical expert witnesses** in legal proceedings on the basis of their expertise, knowledge, experience and training, rather than on the basis of a particular professional licence or certificate.*
- *Qualification to conduct evaluations in accordance with the Istanbul Protocol is **not synonymous with certification as a forensic expert.***

Post-interview considerations

- 381.*While interpretations of physical and psychological evidence have some differences, both evaluations require clinicians to determine the **level of consistency between all of the clinical evidence that the clinician has documented and the allegations of torture or ill-treatment.***
- *In some cases, the overall evaluation may report a higher level of consistency **than each individual clinical finding**, especially if there are many clinical findings that, when taken together, confirm the same conclusion.*
- *It is important to note that the highest level of consistency of an individual finding often determines the level of consistency for all of the clinical evidence.*

Provide clinical opinion

- *382. The Istanbul Principles require clinicians to provide a clinical opinion **on the overall possibility of torture or ill-treatment.***
- *In formulating a clinical opinion on the possibility of torture or ill-treatment, clinicians should consider **all relevant clinical evidence**, including “physical and psychological findings, historical information, photographic findings, diagnostic test results, knowledge of regional practices of torture, consultation reports etc.”, as stated in annex IV*

Good knowledge about the IP protocol and a capacity in the system to provide medico-legal reports in asylum cases, and understanding the conclusions,

are important steps in the efforts to comply with human rights standards and principles, and to ensure that torture survivors have the rights they are entitled to – protection, redress and in particular, rehabilitation



Mental health
AND HUMAN RIGHTS INFO

THANK YOU FOR YOUR ATTENTION !!!
nora.sveaass@psykologi.uio.no

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