



"No, it's not water. You seem to be retaining food."

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## Importance of Systemic Documentation Following the Istanbul Protocol in Asylum Process



James Lin  
Senior Legal Advisor  
Istanbul Protocol Programme Coordinator

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- What's the connection between rehabilitation and documentation?
- Why document in the asylum process?
- How to document?

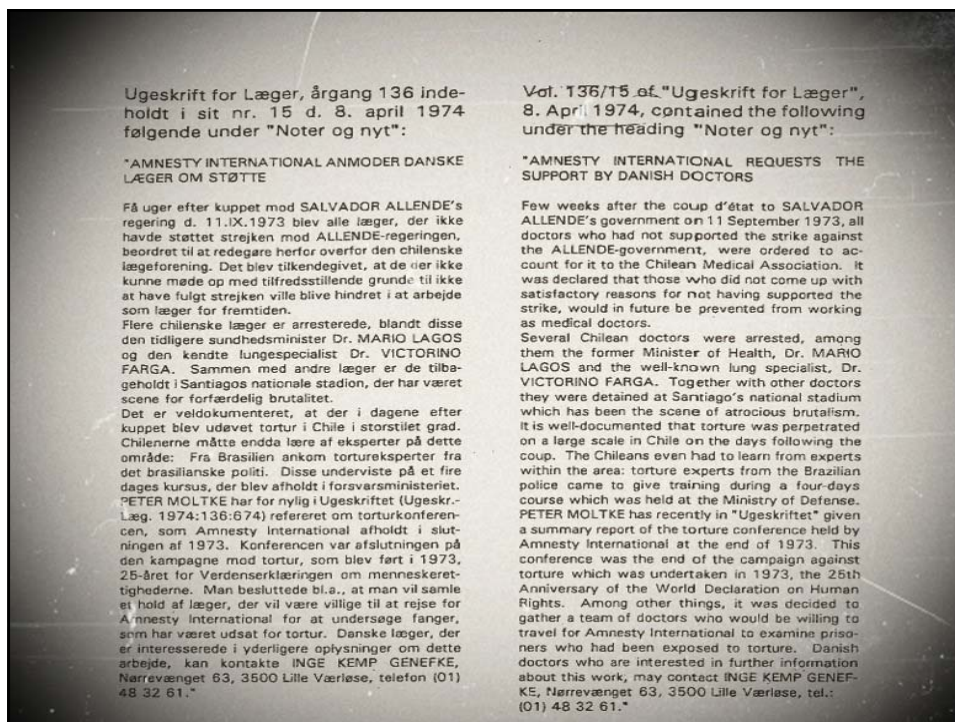


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## Coup d'etat September 1973



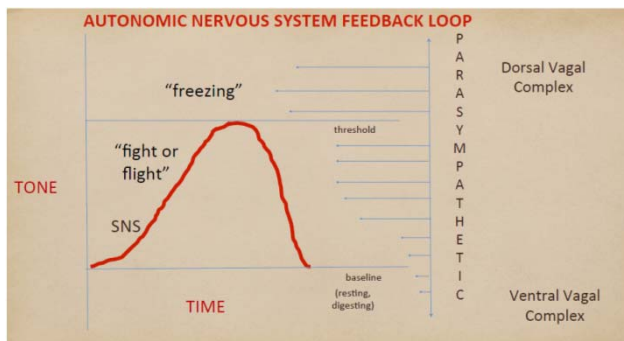
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"After examining just the first 15 victims, we concluded they suffered horrible psychological sequelae. Of course we found physical sequelae.

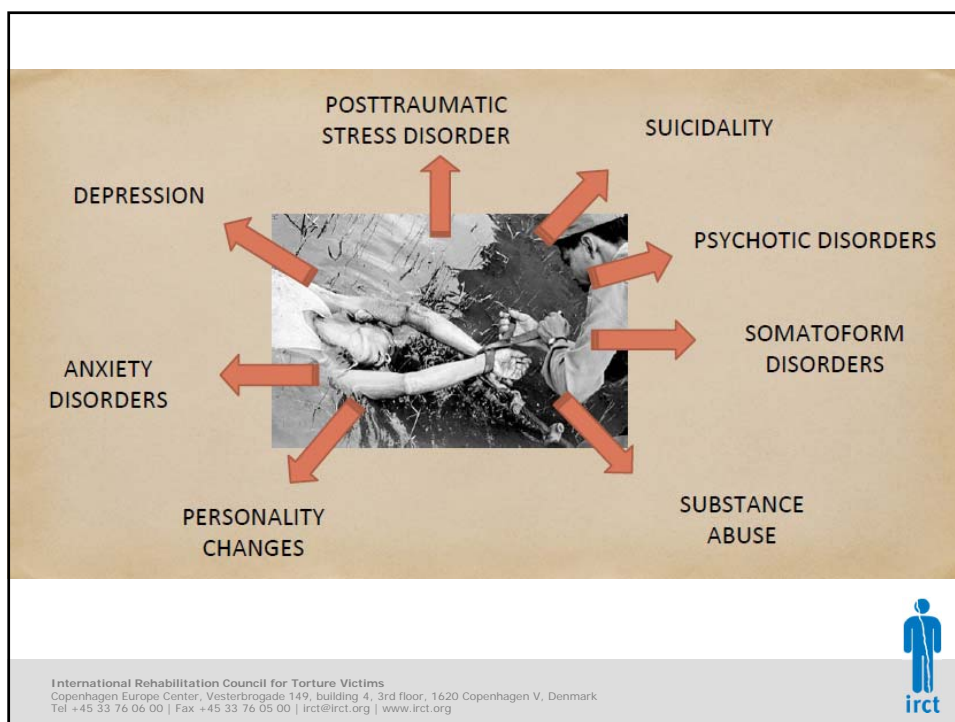
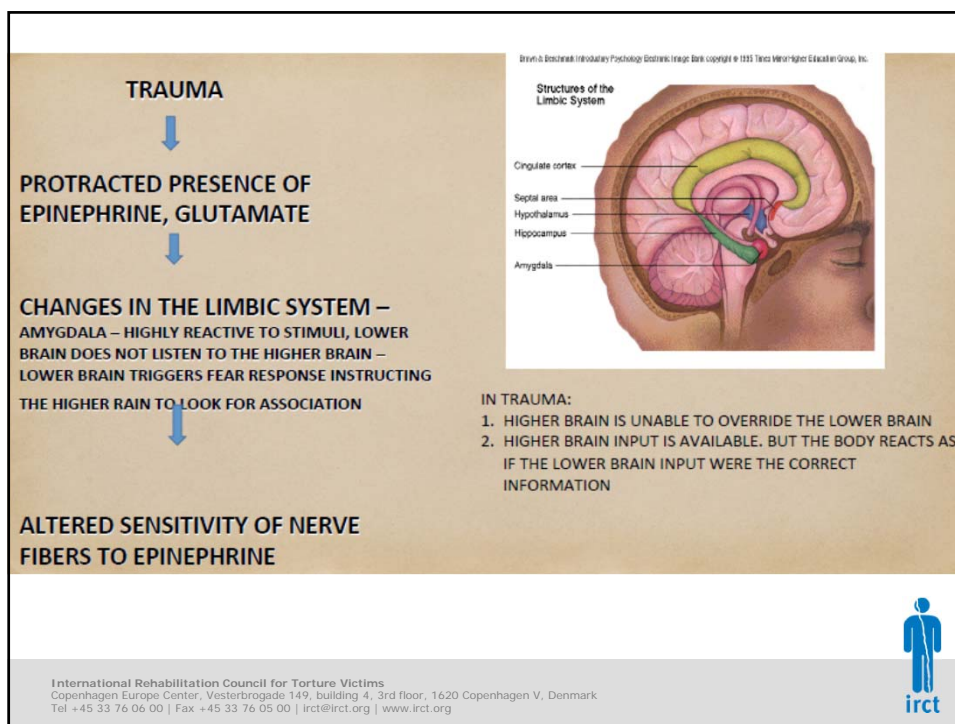
But the worst sequelae were psychological: depression and anxiety, the inability to concentrate and the terrible guilt"

Dr Inge Genefke



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## What does this mean?

Impact on children of female torture victims in Peru:

- Suicidal ideation - 55%
- Suicide attempts – 41%
- Theft – 50%
- Homicidal tendencies – 38%



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1982



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## IRCT's global presence 1982 - Present



- Treat minimum 50 victims a year
- Provide holistic rehabilitation

154 members in more than  
74 countries

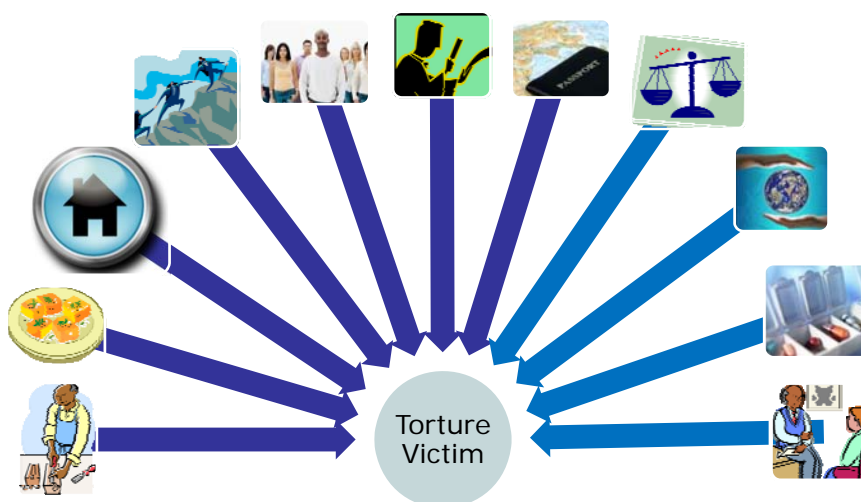
- Strengthening capacities
  - Influencing policies nationally, regionally, and internationally
  - Sharing Knowledge

# 100,000

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## Holistic rehabilitation: A comprehensive approach



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## Legal Obligation of States UN CAT General Comment 3

- Provide as full rehabilitation as possible
- Holistic/multidisciplinary rehabilitation
- Positive obligation of the state
- The obligation does not refer to the available resources of States parties and may not be postponed



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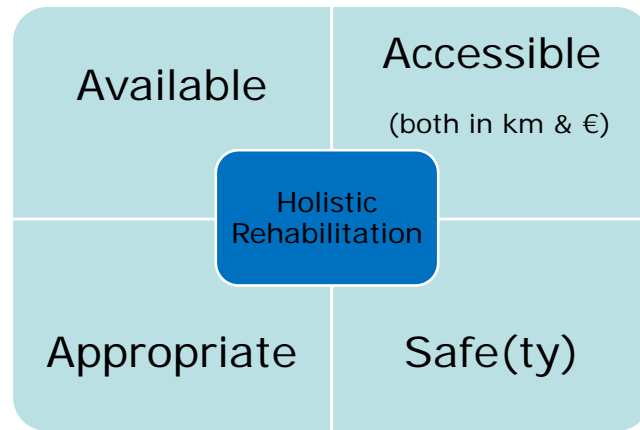
## Specialized services

- State party should adopt a long-term and integrated approach and ensure that specialised services for the victim of torture or ill treatment are available, appropriate and promptly accessible.
- ... should include: a procedure for the assessment and evaluation of an individual's therapeutic and other needs, based on, among others, the 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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## Contextualisation of State-supported rehabilitation



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### Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment 23 September 2014

21. International law provides for absolute and non-derogable prohibition of torture and other ill-treatment. 2 The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment envisages **three main pillars** in the fight against torture, which are the obligation of States **to ensure justice** and **to prevent** and **to redress** all acts of torture. **The obligation to investigate is central to the realization of all three main pillars.** The evidence collected during investigations may form the basis for civil, administrative and criminal proceedings seeking justice; it may support claims made under the exclusionary and non-refoulement rules; and it may help assess victims' claims for reparation. Lastly, thorough investigation is necessary to ensure that official bodies and the general public can monitor and be made aware of such practices in order to prohibit them and encourage reform.

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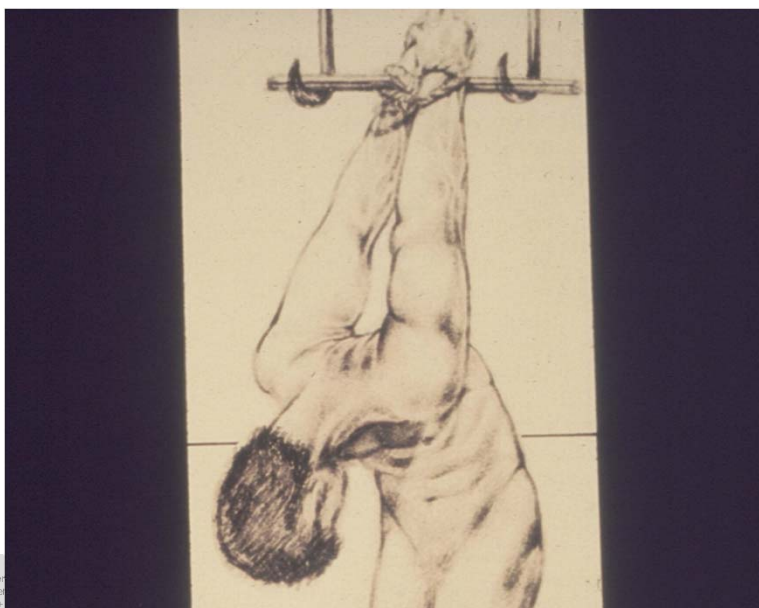


## Research on torture documentation

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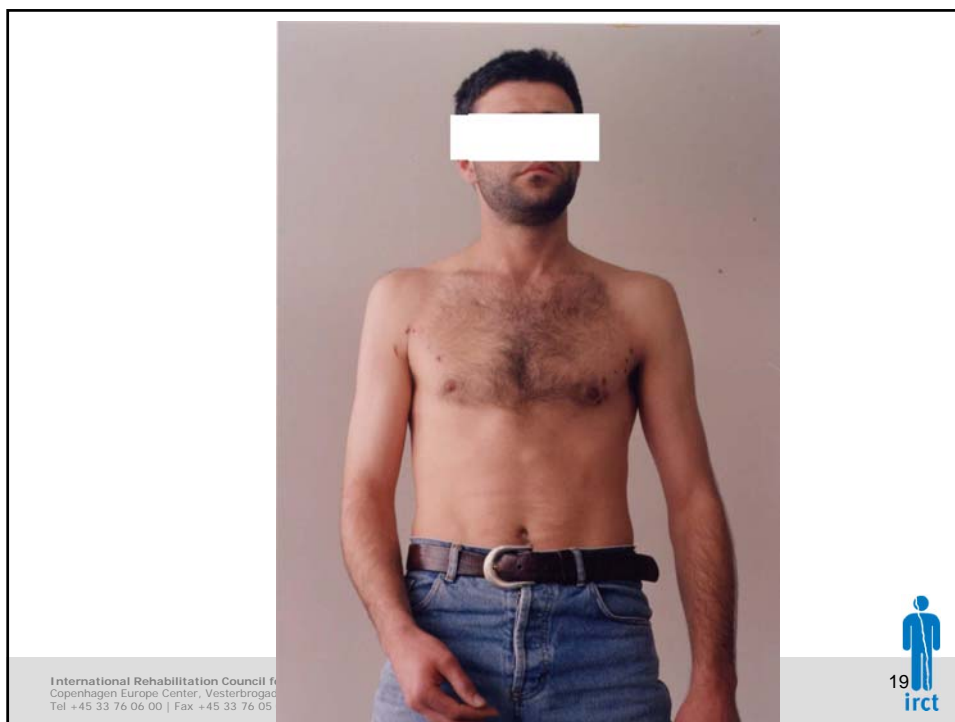


### "Palestinian" suspension



Inter  
Copen  
Tel +





## Winged scapula



## Falanga

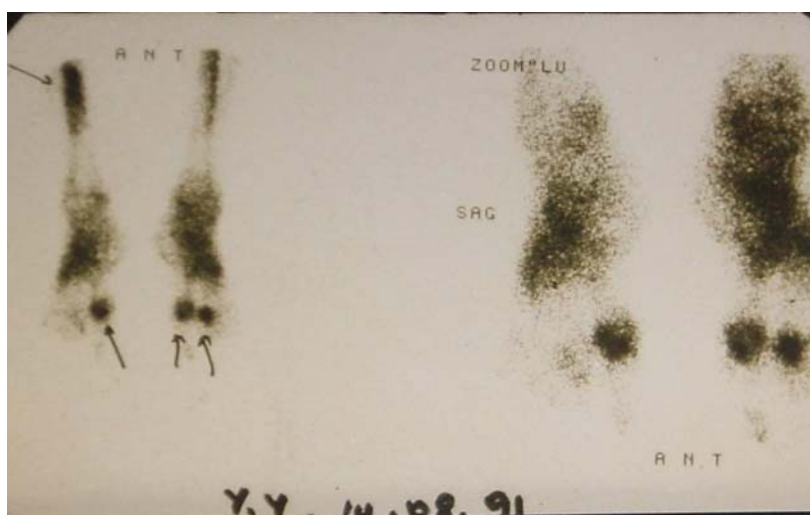


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## Scintigraphy

## Technetium-99m



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- Why document in the asylum process?



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## Sri Lanka Civil War "1983-2009"



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## Freedom from Torture

### **"Out of the Silence"**

**35 MLRs from May 2009 – 2011**

**"Tainted Peace" 148 MLRs 2009-2013**

- Torture perpetrated by state actors within both the military and police has continued in Sri Lanka after the conflict ended in May 2009 and is still occurring in 2011;
- Those at particular risk of torture include Tamils who have an actual or perceived association with the Liberation Tigers of Tamil Eelam (LTTE);
- A variety of different types of torture have been perpetrated in a significant number of locations around Sri Lanka during the post-conflict period;
- A wide range of different forms of torture have been used, often in combination, to inflict severe suffering on victims of torture with devastating psychological and physical consequences;
- Many Sri Lankan torture victims are left with visible scarring attributable to both blunt force trauma and burns which suggests impunity for perpetrators of torture in Sri Lanka.



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*"The world didn't know what was happening at the end of the war; the government didn't allow any international reporters into the country. Now many in the Tamil community have no homes, people are still harassed and tortured. We need reconciliation. This can happen only with the involvement of organisations like the UN."*

- Sri Lankan torture survivor



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## Traumatic experiences



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"The aim of torture is to destroy a person as a human being, to destroy their identity and soul. It is more evil than murder. (...) They sought the destruction of other human beings. We have proved that they have not succeeded."

- Inge Genefke

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Perpetrators often attempt to justify their acts of torture and ill-treatment by the need to gather evidence. Such conceptualizations obscure the purpose of torture and its intended consequences. **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. Thus, torture is a means of attacking the individual's fundamental modes of psychological and social functioning.** Under such circumstances, the torturer strives not only to incapacitate a victim physically, but also to disintegrate the individual's personality. The torture attempts to destroy a victim's sense of being grounded in a family and society as a human being with dreams, hopes and aspirations for the future.

- Istanbul Protocol para 235



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**Trauma and PTSD have a crucial impact on the victim's ability to recall and present past events,** especially those related to traumatic experiences.

Not showing any emotion while talking about extremely traumatic experiences – which may often be perceived as a sign of lack of credibility – can be a completely normal form of behaviour of a traumatised person.



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## Why it is important to identify victims of torture early in the process

"His asylum claim was rejected after an interview at the airport under the accelerated procedure. Afterwards, the applicant became suicidal. A medical/psychological examination was undertaken, and the asylum seeker reported he had been tortured for years in his home country.

However, he had not been able to disclose that fact in his asylum interview because he had been too nervous and too afraid. The examination also showed scars caused by torture as well as evidence of serious posttraumatic stress disorder.

After the examination, the applicant was found to be credible and was granted asylum."

- BZFO, Germany



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## Why medico-legal reports (MLRs) are an important tool

"During the immigration hearing the tribunal found that "his psychiatric condition coupled with a lack of former education led to considerable confusion and perversity in the presentation of the evidence" and found his testimony problematic, disjointed and simply confusing. The tribunal however provided refugee status after the presentation of an MLR stating that "The appellant has been fortunate that he has had the services of two world class professors in the preparation of a forensic evaluation report. The standard of this report is excellent. It has assisted in explaining to the Tribunal many of the problems in the presentation of his evidence. "

- RSANZ, New Zealand



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"No, it's not water. You seem to be retaining food."

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- How to document?



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## Baki Erdogan's Death in Custody Turkey 1993

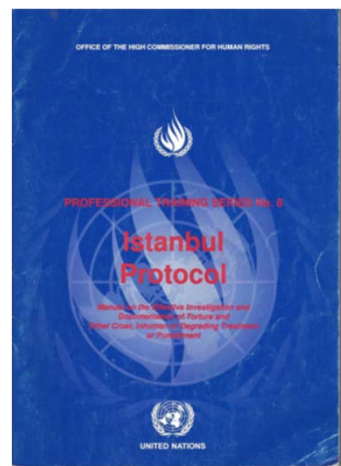


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## Istanbul Protocol

- UN Standards for the effective investigation and documentation of torture and ill treatment
  - 3-year effort, 1996-1999
  - 75 experts in law, health and human rights
  - 40 organizations from 15 countries
- Content
  - Legal Standards
  - Legal Investigations
  - Medical Evaluations
  - Psychological Evaluations
  - “Istanbul Principles” outline minimum standards to ensure effective investigation and documentation



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## Istanbul Protocol – International Recognition



- Vincent Iacopino, Physicians for Human Rights; Mary Robinson, High Commissioner for Human Rights; Onder Ozkalipci, Human Rights Foundation of Turkey

- Official UN Document, August, 1999
- International Recognition of Istanbul Principles:
  - UN General Assembly resolution 55/89
  - UN Commission on Human Rights 56<sup>th</sup> Session
  - UN Committee Against Torture
  - Regional Bodies
    - African Commission on Human and Peoples' Rights
    - European Union
  - Application in regional courts
    - European Court of Human Rights
    - Inter-American Court of Human Rights

- References:

[www.ohchr.org/Documents/Publications/training8Rev.pdf](http://www.ohchr.org/Documents/Publications/training8Rev.pdf)

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## IP is translated into over 20 languages

- |           |              |            |
|-----------|--------------|------------|
| • Arabic  | • Armenian   | • Romanian |
| • Chinese | • Azeri      | • Serbian  |
| • English | • Catalan    | • Turkish  |
| • French  | • Georgian   | • Thai     |
| • Russian | • German     |            |
| • Spanish | • Farsi      |            |
|           | • Finnish    |            |
|           | • Hungarian  |            |
|           | • Indonesian |            |
|           | • Korean     |            |
|           | • Portuguese |            |

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## Main aspects

- Methodological: based on full narrative
- Medical/Scientific approach on physical and psychological documentation
- Practical and communicative
- Next steps: proper investigation, redress, rehabilitation



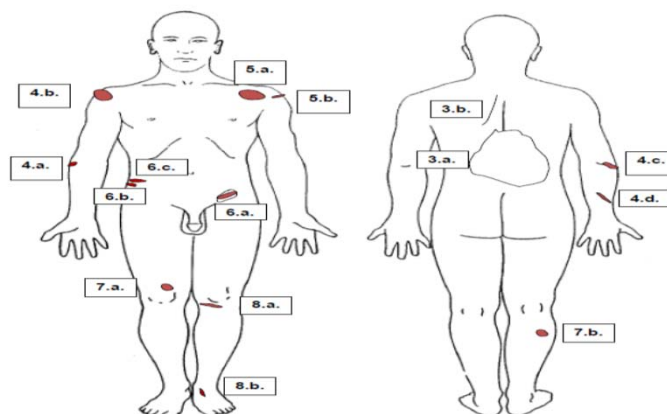
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## Clear Communication

Medical Report on Mr. [REDACTED] 1 January 2010. Dr X and Dr Y

Date of examination: .....01-01-2010 by Dr Y

Name: ..... [REDACTED]



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- Psychological evidence
- Victims-centered approach (avoid re-traumatisation): proper interviewing
- Multidisciplinary: medical doctors, psychologists & lawyers
- Comprehensive



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## IV. Realistic



- Gabriel Shumba, Zimbabwe, Jan [2003](#)
- IRCT IP medico-legal evaluation, [2010](#)
- Court decision, March [2013](#)



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• *“Witness and survivor **testimonies** are necessary components in the documentation of torture. To the extent that physical evidence of torture exists, it provides important confirmatory evidence that a person has been tortured. However, the absence of such physical evidence should not be construed to suggest that torture did not occur, since such acts of violence against persons frequently leave no marks or permanent scars. ”*

• *“Torturers often use water or gels in order to expand the entrance point of the electric current into the body and prevent detectable electric burn traces of torture.”*



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**Thanks for your attention !**



James Lin  
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