
Monitoring and Investigating Torture, Cruel, Inhuman or Degrading Treatment, and Prison Conditions

Amnesty International and CODESRIA



Amnesty International



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I. Definitions and examples of torture

1. What constitutes an act of torture?

Torture can take various forms, and some of the most common methods are described below. They include: beatings, imposition of electric shocks, hanging by the arms or legs, rape, sexual assault, or the threat of rape or sexual assault, mock executions, etc.

In 1966, the General Assembly of the United Nations adopted the International Covenant of Civil and Political Rights (ICCPR) which stipulates, in its article 7, that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation”. The aim of the provisions of article 7 of the ICCPR is to protect both the dignity and the physical and mental integrity of the individual.

In 1984, the United Nations introduced the Convention Against Torture (CAT) which aims to prohibit the use of torture. The CAT requires that all member states take effective measures (including legislative, administrative, judicial or other measures) to prevent acts of torture in any territory.

The CAT also introduced following definition of torture:

- *an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person*
- *for such purposes as:*
 - (i) *obtaining from that person or a third person information or a confession,*
 - (ii) *punishing that person for an act he/she or a third person has committed or is suspected of having committed,*
 - (iii) *intimidating or coercing that person or a third person,*
 - (iv) *for any reason based on discrimination of any kind.*
- *inflicted by or at the instigation of or with the consent or acquiescence of the authorities.*

The CAT definition of an act of torture has therefore three main elements:

- **It constitutes acute suffering**
- **It is inflicted for a purpose**
it does not happen by accident but it is deliberately inflicted on somebody. The international definition lists four purposes behind the use of torture but the list is not exhaustive. In other words, there may be other purposes besides the four listed by the definition, such as: humiliation, degradation, etc.
- **It is inflicted by a public official or other person acting in an official capacity, or at his/her instigation or with his/her consent or acquiescence.**

Notice that article 7 of the the ICCPR differs from the CAT definition in that, according to the ICCPR, torture can be inflicted by people acting in their official capacity, outside their official capacity, or in a private capacity.

Example:

As the testimony below underlines, torture constitutes acute suffering deliberately inflicted on an individual by others. In John's cases, the perpetrators were law enforcement officials. The experiences described occurred in Kenya, but similar violations are reported throughout the continent.

John, age 19, was arrested on the night of 11 January 1995 by a policeman whom he knew was aided by 8 policemen waiting outside. He was first held in the police station and then transferred in a lorry along with about 30 others to an unknown place. The blindfolded prisoners had their arms fixed behind them and were tied in groups of four. On leaving the lorry he was beaten and taken to a single cell where he remained for the duration of his detention. On the first day he was made to hang from a door and was beaten on the soles of his feet. He was also

beaten while sitting on a chair and, was made to do exercises and forced to adopt stressful positions. On the following day, interrogators tied a wire around his testicles and pulled for around three minutes. He was subsequently submitted to boxing of his ears and beating on the body.

On 1 March he was taken to Kakamega police station where he was finally charged with membership of an illegal organisation. He was held in the prison and then transferred to Kodiega prison where he was held in an unhygienic cell along with 29 other prisoners. Prisoners complained of sickness did not have their complaints accepted by warders. After a prisoner died in September, the other prisoners were given limited amount of medication. John was eventually released on a bond in December 1995.

This is, unfortunately, a common experience for many prisoners, be they political prisoners or not, throughout the world. John was repeatedly tortured throughout his imprisonment, including in a secret detention centre. John was also submitted to cruel, inhuman and degrading treatment in the later part of his detention, in Kodiega prison, where the prison conditions were so bad that they resulted in the death of one prisoner.

2. Armed groups and torture

The definition of torture raises an important question: according to the last characteristic, acts of torture, to be qualified as such, have to be committed by, or at the instigation of, or with the acquiescence of state officials. Does this mean that the word “torture” cannot be used with reference to armed groups? The response is “No”. As the example below will emphasise, armed groups may also be held accountable for acts of torture.

- Under a conflict situation, all armed groups are required to abide by the Geneva Convention which governs the laws and customs of war. The laws of war

prohibit all parties to the conflict from perpetrating torture.¹

- Armed groups are therefore always responsible for any acts of torture committed by their forces.
- As a human rights worker investigating torture by armed groups, you will not be in a position to refer to the Convention Against Torture because the perpetrators are the members of an armed group. But you can refer to the laws of war and state that all parties to a conflict are prohibited from perpetrating acts of torture, and acts of indecent assault against women (both of which cover rape and other forms of sexual assault whether perpetrated against women, men or children).

Examples:

The following are the testimonies of children and adults caught up in the conflict in Northern Uganda, between the Ugandan government and an armed opposition group, the Lord Resistance Army (LRA).

A 17-year-old girl, abducted by the LRA, described what happened to her when she tried to escape:

I was seen by the rebels staying up in the trees They caught me and punished me for trying to escape. The teacher tortured me. He poured boiling oil on my hand.

A woman describes what happened to her family during an LRA attack on her village:

I was sitting in my home with my six-month-old baby. The rebels arrived. They picked the baby from me and threw him on the ground. He survived. My husband is a civil servant. He was there, along with a man who had come to buy groundnuts. The rebels started beating them. They killed my husband. They did not kill the buyer but he is now mentally deranged. Then they started raping me. My daughter was seven years old. They burnt her with fire, tortured her and asked her

1

In addition, some non-governmental organisations, such as Amnesty International, apply the definition of torture to acts committed by members of armed groups.

where my husband had put government property. I was also beaten on the head and lost my teeth.

3. Where can torture take place?

As the examples above show, torture can take various forms, be committed for a number of purposes, by different actors, and in a variety of places.

In many cases, the human rights worker will investigate torture or CID treatment perpetrated against individuals in the context of their detention. Such places of detention may include:

- a police station
- a gaol or prison
- a military camp or military prison
- secret detention centres
- a hospital
- a mental institution

An act of torture can take place even when the victim has not been formally arrested, charged or sentenced.

In particular, torture can also be committed against individuals who are not formally imprisoned. Torture can be inflicted outside a formal place of imprisonment. It can take place:

- in the victim's home
- in the village
- in the street
- in the field
- in the context of an armed conflict

4. What are the state's responsibilities?

It is very important that you find out whether or not your state has ratified the Convention Against Torture. If it has not, you must put pressure on your government so that it does. If it has, it means that your state is under an obligation to prohibit torture and to take various measures to enforce this prohibition, including:

- States are required to ensure that all acts of torture are offences under its criminal law. It is therefore **very important** that you find out whether the Constitution and domestic law in your country prohibit the use of torture.
- Confessions or evidence obtained by torture are NOT admissible in a court of law. In other words, if someone has admitted to having committed a crime under torture, this confession does not constitute evidence and a judge should not accept it.
- All victims of torture should receive fair and adequate compensation.

II. Cruel, inhuman or degrading treatment: Definitions and examples

1. What is cruel, inhuman or degrading treatment or punishment?

Cruel, inhuman or degrading (CID) treatment or punishment is a “lesser” form or act of torture.

More specifically, cruel, inhuman or degrading (CID) treatment or punishment refers to:

- any **harsh or neglectful treatment** that could damage a detainee’s physical or mental health. Such a treatment may characterise, for instance, prison conditions.
- any **punishment** intended to cause physical or mental pain or suffering, or to humiliate or degrade the person concerned.

Like torture, CID treatment or punishment can occur in a number of places and for a number of reasons. In many cases, the human rights worker will investigate CID treatment or punishment perpetrated against individuals in the context of their detention (such as a police station or secret detention centres). But CID punishment can also be inflicted outside a formal place of imprisonment, such as in the victim’s home or in the street.

2. Is it always necessary to distinguish torture from other forms of CID treatment or punishment?

Quite often, there may not be a need to differentiate between the two.

- In a particular context, prisoners might suffer from various practices, some of which could be classified as torture and others as ill-treatment. You would **describe all these practices** and then **call for an end to all torture and other forms of cruel, inhuman or degrading treatment or punishment**, without having to label each specific practice individually.

According to the international convention against torture, states are obliged to ensure that complaints of both torture and CID treatment or punishment are investigated.

- **BUT: Defining an act as torture rather than CID treatment may have important implications because the responsibilities and obligations of the state in cases of torture may not be applicable in cases of CID treatment** (see above on the state's responsibilities).

3. What are the differences between torture and cid treatment or punishment?

There are two main differences between torture and CID treatment.

- The first difference relates to the severity of the pain or suffering inflicted: Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment. The severity of the pain may be determined by such factors as: For how long was it inflicted? What was the physical health of the victim before it was inflicted? What was the age and gender of the victim? And so on.
 - For instance, while beatings inflicted on a young child, an old man or a pregnant woman might be referred to as torture, the same form of beating on a healthy younger man might be referred to as CID treatment.
 - Beatings inflicted for ten minutes by one law enforcement official on a detainee might be CID treatment, while beatings inflicted over a long period of time (several hours or days) will constitute torture.
- The second difference is that torture is always a deliberate and purposeful act aimed at imposing great

suffering, while CID treatment might occur because of neglect.

- For instance, poor prison conditions, a lack of sanitation, lack of access to medicine, or a poor diet imposed on prisoners will constitute, in the majority of the cases, CID treatment. Prison officials are neglecting to provide prisoners with the minimum adequate conditions; they might not be deliberately imposing acute suffering on the prisoners.
- However, please note that deprivation of food or water might also constitute an act of torture: if prisoners are made to starve or endure slow suffering through water deprivation, these are acts of torture.

Beware: Not separating men and women, or adults and children constitutes a form of CID treatment. However, if, as a result of the lack of separation, women are raped by male inmates, or children by adults, these acts could be seen as constituting a form of torture because, in effect, they have occurred with the consent or acquiescence of the authorities.

Example: Kenya Human Rights Commission

Although juveniles are supposed to be kept separate from adults, one respondent reported an incident in which nine male juveniles were so badly sodomised by adult prisoners that their rectums protruded.

- In several situations, however, the distinction between an act of torture and CID punishment or treatment will not be easy to make. However, as highlighted above (Part 2) it may not be necessary to distinguish between the two.

4. Examples of CID treatment or punishment

Some of the acts and omissions constituting cruel, inhuman or degrading treatment or punishment include:

- deliberate measures to cause suffering, such as confinement in a dark punishment cell
- punishments which damage the mental or physical health of the prisoner
- the use of chains or irons either as punishment or as a means of restraint
- the use of handcuffs, shackles, leg-irons and strait-jackets as a punishment
- solitary confinement for prolonged periods
- painful measures in which suffering may not be the object, such as the use of manacles as a restraint
- bad prison conditions, such as overcrowded cells, lack of water, poor hygiene and sanitary conditions, etc.
- neglectful treatment, such as denial of food or denial of medical treatment
- all forms of corporal punishment

Example: Prison conditions in Kenya

The purpose of enforcing discipline in prison is to inculcate a personal attitude that respects other individuals as well as institutionalised order. However, in Kenyan prisons, discipline . . . has become a form of punishment on top of the punishment of imprisonment . . . In Athi River Prison, corporal punishment is often administered to the point of unconsciousness. Interviewees from Machakos Prison revealed that . . . forms of punishment include corporal punishment, isolation, sleeping in a cell flooded with water; denial of food and denial of earnings from labour.²

Although the policy is to segregate men from women and juveniles from adults, when there is no space the categories are simply mixed.³

2.
Kenya Human Rights
Commission Prison
projects, *A Death
Sentence, Prison
conditions in Kenya*,
Nairobi: Kenya
Human rights
Commission, 1996,
p.54

3.
Ibid, p.76

5. Can prison conditions be cruel, inhuman or degrading?

Prison conditions or treatment may be characterised as CID treatment or punishment when you have evidence of:

- **any harsh or neglectful treatment that could damage a prisoner's physical or mental health,**

***Example:** In many police stations, the cells are small and usually overcrowded. Ventilation and access to drinking water is inadequate and opportunities for bathing very restricted or non-existent. The food is only partially cooked and prepared and served unhygienically. Access to medication is also a problem for prisoners.*

Prisoners are not automatically given access to a doctor, and attempts by doctors from outside the prison to see prisoners are frequently blocked or delayed.

There have been reports of male and female detainees having been kept together.

- **any punishment intended to cause physical or mental pain or suffering, or to humiliate or degrade the person concerned.**

***Example:** A lawyer who denounced the torture of detainees in his country was arrested at home and detained at the police station in the capital. After his arrest, he was stripped to the waist, had his shoes taken away and was verbally insulted. He was treated in a degrading way: he was forced to wash a car and sweep the street and use a cardboard box in his cell as a toilet.*

***Example:** Strip-searches can also constitute CID treatment if they are made to degrade or humiliate the detainees.*

For instance, if prisoners are strip-searched in front of everyone, including other prisoners and prison staff, such a strip-search constitutes CID treatment.

If female detainees are strip-searched by male guards or strip-searched by female guards but in front of male detainees or prison staff, this constitutes CID treatment.

6. Can poor economic situations justify bad prison conditions?

Many governments argue that they are unable to address bad prison conditions because of the overall poverty and economic problems throughout the country.

However, there are many reforms that can be introduced by governments to address bad prison conditions. Such reforms do not have major financial implications. For example, the following steps can be introduced with minimum cost:

- Stopping police officers, prison guards, other law enforcement officers from beating prisoners
- Allowing prisoners access to daylight
- Ensuring that prison food is cooked properly
- Making proper sanitary arrangements
- Cleaning the cells
- Allowing doctors access to prisoners as and when needed
- Allowing visits
- Prohibiting contacts between male staff and female detainees
- Hiring and training women to take care of female detainees
- Alternatives to imprisonment for petty offenders, such as extramural penal employment, parole, probation, suspended sentences, community service, and fining in lieu of imprisonment
- Fines to be paid in instalments for convicts who are unable to raise cash sums at once

Moreover, many of the actions taken by governments to restrict human rights are costly in themselves.

It costs money to:

- arrest and detain political opponents
- run secret detention centres
- treat victims of torture
- perform autopsies on prisoners who have died in custody

7. Investigating prison conditions: The example of RADDHO

We participated in an investigation of prison conditions in Senegal. Our experiences during the investigation highlighted the importance of certain techniques of investigation. At the time of our first investigation, the Senegalese government did not want to give us access to the prisons to collect information. We were therefore obliged to collect our information from recently released prisoners and from prison guardians who were willing to give us information. We also met with the prison authorities and had even found certain prison wardens who were willing to bend the rules to give us access to certain prisons. However, access in the larger cities such as Dakar was much more difficult.

After the investigation, we released a report on prisons in Senegal. We then invited all those involved in prison administration and the press to publicly release and disseminate the report. The authorities denied the charges in the report, but the press gave so much publicity to the issue that the government was more or less obliged to give us access (although this was tightly controlled) to conduct a second investigation.

See Annexe Three for a check-list for prison visits

III. How to monitor torture and CID treatment

Monitoring is the long-term observation and analysis of the human rights situation in a country or region.

- It consists of collecting **systematically and consistently** information that may be related to human rights violations, from a variety of sources.
- This information, collected over a certain period of time, should allow you to **put the cases under investigation into a political and legal context**, as well as to **identify patterns** in terms of torture or CID treatment. They should also allow you to develop an in-depth knowledge of the security forces and opposition groups, their methods of operations, their chains of command, etc.
- Please refer to the Booklet “Monitoring, Fact-finding and Documenting Human Rights Violations: General Principles and Activities”.

Torture is unfortunately a common state of affairs in many countries throughout the world, hence the importance of thorough monitoring to assess the extent of the violations and to identify the likely set of events that triggers and characterises such acts.

Three main steps for monitoring torture or CID treatment

- Step 1: **Collect** information on the law, political climate, organisation of the security forces and armed groups.
- Step 2: **Record and follow-up** individual allegations of torture or CID treatment.
- Step 3: **Analyse** information and allegations and identify **patterns**

1. Collect information on the legal system, the security forces or the armed group forces

Information may be obtained through media monitoring and by collecting legal or other official documents.

1. Legal information

The first important questions are;

- has the government ratified the Torture Convention?
- does the government report to the Committee Against Torture?

You should then turn your attention to the Constitution and domestic law and regulations and find out:

- Are all forms of torture and CID treatment are prohibited by law and/or the constitution?
- What is the domestic definition of torture and CID treatment?
- What are the obligations put upon the state in terms of prohibition, investigation, punishment, etc.?
- What is the legislation governing the use of force by the police, the military or other security bodies? Does it address torture and CID treatment? How?
- What are the rules governing prisoners' access to medical practitioners?

If allegations of torture or CID treatment are made, what steps is the state supposed to take? What are the official regulations regarding the investigation of allegation of torture and/or CID treatment?

- If an allegation of torture and/or CID treatment is brought to court, what type of evidence is required from the victim?

2. Information on the political and social climate

You should seek to find answers to the following questions:

- How do government officials or representatives of armed groups define opponents and activities against them? How do they respond to accusations of human rights violations?
- How do they define common criminals?
- Is there some form of popular support for or approval of torture or CID treatment carried out by the authorities?
- How do the media react to allegations of torture or CID treatment?
- How do the media characterise common criminals or political criminals? Do the media tend to justify the use of violence against them? Do the media tend to ask for violence to be committed against them?

3. Information on the organisation and methods of the security forces

This type of information will be important for assessing which branch of the security forces is most likely to have committed torture or CID treatment.

- Identify the different branches within the security forces and the chain of command.

Look for answers to the following questions:

- What are the codes of conduct; lethal force regulations; regulations or internal guidelines regarding crowd control, arrest of criminals.
- What type of training is given to the police force? Does it include information regarding the prohibition of torture and CID? Who is providing this training?
- Which security forces are usually involved in repressive activities and demonstrations?
- Does the law provide for paramilitary militias, police reserves, civilian forces?
- Have you come across allegations of secret detention centres?
- Are torturers “trained”? Where? By whom?

- Are foreign services involved in providing training or instruments of torture?

4. Information on the organisation of opposition groups or armed groups

- Have organisations or parties that oppose the government been known to be organised on a paramilitary basis? What is their chain of command? How do they operate?
- What has been the reactions of the leadership of opposition groups to allegations of torture? Have there been instances when they do not react?
- Are these groups known to have secret detention centres?

Possible sources of information (individuals and/or groups)

- Media
- The constitution
- Domestic law
- Official speeches and reports
- Court cases (prosecution and trials of alleged perpetrators of torture)
- Police records
- Contacts (lawyers, medical doctors, human rights NGOs, etc.)
- Victims or relatives (individual allegations)

2. Record and follow up individual cases

By following up on individual cases brought to your attention, you should be able to develop a better knowledge about the nature and perpetrators of torture or CID treatment.

- Record and follow up allegations brought to your attention

Such individual cases may be brought to your attention by the victims themselves, their families, witnesses of their arrest or torture, lawyers, medical personnel, or the media. Newspapers often carry stories about prisoners tortured or ill-treated by the police or warders, as well as by members of armed opposition groups.

- Conduct fact-finding whenever necessary or possible, to assess allegations;
- Develop a filing or database system to access and analyse the information easily

To facilitate monitoring, it is recommended that you develop a form to record individual cases of alleged torture or CID treatment. On the next page is an example. You need to adapt it to the specific circumstances of your country or region.

Please refer to Annexe Two for a check-list for interviewing victims

Sample form for recording information on torture or CID treatment

Date: Registration number: Information compiled by:

Visit to the scene: No Yes by on

Interviews of witnesses: No Yes by on

1. Victim identification information

Name (Last and first name, nickname):

Date of Birth or Age: Gender:

Profession/Occupation: Family Status:

Address:

Nationality: Religion: Ethnicity:

Physical description or picture:

2. Location

Date and time of the incident:

Exact location:

Province: District City/village (or nearest):

Street address (if applicable):

3. Nature of the incident

Date, place, time:

Description of the torture or CID sessions:

4. Nature of the injuries

Description of the injuries:

5. Alleged perpetrators

Names:

Officers in charge:

Chain of command:

6. Evidence

Witnesses:

Forensic evidence:

Court record:

Other (videotapes, photographs, etc.):

7. Complaints

Was a complaint lodged? No Yes

If yes, when? where?

by whom?

8. Government responses

Was an investigation conducted? No Yes

If yes, by whom? when?

Did the case reach court? No Yes

If yes, which court? when?

Were any statements made by public officials; if so, what?

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.....
.....

3. Identify patterns

In many parts of the world, torture and/or CID treatment present a number of common characteristics also called patterns. You will be able to identify these patterns through the review and analysis of the information collected and allegations brought to your attention. Such patterns may include:

Patterns in the identity of the victims

- Who are the most likely victims of torture and/or CID treatment?

Such victims may be political prisoners, common prisoners, male detainees, female detainees, common criminals, foreign nationals, armed opponents, suspected armed opponents, protesters, relatives of activists, members of ethnic or religious groups, etc.

In 1998, over 110 people were brought to court, accused of involvement in attacks on military barracks in January. Many defendants appeared to have been detained solely because of their ethnic origin. Many of the detainees had been forced to make statements under torture.

In many places, almost all detainees face the risk of being a victim of torture and/or CID treatment, be it at the time of their arrest or later on.

Torture is widespread in this particular country. Many people are beaten at the time of their arrest and tortured in custody, particularly in private detention centres and those belonging to the security forces.

Patterns in the circumstances resulting in the incident of torture and/or CID treatment

- Are incidents usually preceded by a specific set of events?

Such circumstances may include: up-coming elections; the government passing a new law, such as: sedition or emergency laws; attacks; high level of criminal activities; etc.

In many places, allegations of torture and/or CID may **increase** following specific circumstances, such as activities of armed groups.

Patterns in the circumstances of the arrest

- Do all arrests present common characteristics?

Such characteristics may include: the rank and number of people proceeding with the arrest, the existence or not of an arrest warrant, the time and day of the arrest, etc.

For instance, in many countries, arrests should only be made by officers with appropriate arrest warrants issued under judicial authority. However, individuals are frequently arrested without such warrants.

Quite often, arrests may take place late at night or over a weekend to prevent the detainee from contacting a lawyer.

Patterns in prison conditions

In many countries, prison conditions are similar throughout the prison system. They may be better or worse in some prisons or detention places (e.g. police station, military barracks, etc.). But they may present a number of common points.

- **Please refer to Annex Three**

Patterns in the methods of torture and/or CID treatment?

- Are the methods of torture and/or CID treatment usually similar? Is there a typical torture “session”?
- At which point is torture most likely to occur?
- How many individuals are usually involved?

The torture or CID methods may be very similar throughout the country or the same methods may be used within specific police stations, prisons, etc. The usual torture session may take place before the arrest, during the arrest, before the trial, etc. The sessions may have common characteristics, such as the number of people involved, the nature of the methods, the nature of the threats, etc.

The former detainees said they were held in a block containing 36 rooms in solitary confinement, about 300 metres from the cells where torture took place. From 6 a.m. they were taken to the bathroom blindfolded. The blindfold was removed during bathing but replaced on leaving the bathroom. Prisoners were then taken to the torture cells where they stayed for one to two hours. While torture was being administered, some 12 to 13 people would be in the room: four carrying out the torture and the remainder observing and encouraging. All were dressed in suits.

Patterns in the location of torture or CID treatment

- Where is torture or CID treatment most prevalent?

Such locations may include specific regions or cities, specific police stations or prisons, military facilities, civilian homes, secret detention centres, etc.

The evidence gathered documented the use of a torture centre not previously reported. The victims made reference to an “unknown place” where they were taken to, blindfolded, and in trucks.

Patterns in the identity of the alleged perpetrators

- What are the main forces involved in acts of torture and/or CID treatment?

In some countries, torture is likely to take place in some locations only and to be perpetrated by specific security branches or armed groups.

- Who are the principal individual perpetrators within these agencies?

The individual perpetrators may have certain things in common. Some specific individuals may be named in connection with allegations of torture and/or CID treatment. In other cases, the perpetrators may have similar ranks, or be members of a specific security force. *Even when they cannot be formerly identified, perpetrators may present certain characteristics, such as colour of their uniform or clothes, the language spoken, etc.*

- Are members of the medical profession involved/implicated in torture?

In a number of situations, victims may be visited by a medical doctor whose role is to check the fitness of the detainees in order to assess whether they are fit for further “interrogation”.

Patterns in government responses to alleged cases of torture

- Do the courts refuse to accept prisoners’ confessions because they were obtained under torture?

The courts should not accept as evidence any confessions obtained under torture. However, in many places, the judge may accept the confession and reject the allegation of torture or the medical evidence presented to demonstrate that torture took place.

There is always the possibility of the court rejecting the medical evidence of torture. Convicted prisoners who wish to have access to their medical records to substantiate their allegation of torture may find that such access is blocked by ministerial resort to Section 131 of the Evidence Act, which allows a minister to refuse to disclose a convicted person’s medical record.

...

In other cases attempts have been made to mask

torture by the police by accusing the local population of having beaten the alleged suspect before arrest; the accused is then said to have been 'rescued' by the police.

- Are complaints and reports of torture systematically, impartially and effectively investigated? Or are victims often unable to file a complaint?

All alleged victims of torture or CID treatment by security forces should be able to make an official complaint. The state is then under the obligation to investigate the allegation. However, quite often, the victim cannot even file a complaint.

The complainant has to go to the police station and obtain a form from the police and get it signed by his or her doctor or medical practitioner. But people are often refused permission or discouraged by the police from filling in the form. In other cases, the forms may be lost or removed from the case files held by the police. In yet other cases, victims may be told by the police not to talk about what happened to them or face re-arrest or worse. They are then too scared to go to a police station to make a complaint.

- Are those alleged to have committed torture charged and prosecuted?

Alleged perpetrators of torture should be charged and prosecuted. However, very often, if they are charged, the case may never go forward. Or they may never serve their sentence. In yet other cases, perpetrators will receive a weak sentence, or no sentence at all, or may be moved to another position or location where they may carry on torturing detainees.

Patterns in the responses of armed groups to allegations of torture

A pattern may also emerge over time in terms of the responses of the leadership of the armed group to accusations of torture. Such a pattern may be characterised by:

- the nature of public statements issued following the allegations
- blunt denials
- promises of investigation
- justification for acts of torture
- putting the blame on government forces

IV. How to conduct fact-finding

Fact-finding consists of investigating a specific incident or allegation of human rights violations, collecting or finding a set of facts that proves or disproves that the incident occurred and how it occurred, and verifying allegations or rumours.

You are undertaking fact-finding in order to prove (or disprove) that torture or CID treatment took place. For this purpose, you need to:

- Step 1: Gather **material evidence** that will confirm (or not) the allegations

Material evidence may include medical records, photographs, physical signs or marks, official documents or acknowledgements.

- Step 2: Conduct **interviews**

Individuals to be interviewed may include the victim, family members, eye-witnesses or other witnesses, security officials, local officials, etc.

- Step 3: **Assess** the information and evidence

Having gathered material evidence and interviewed the victims or witnesses, you will need to assess the information and evidence provided in order to determine whether torture, or CID, or both, took place and establish responsibilities. The key questions guiding the assessment are the following:

1 Do the acts described by the victims or witnesses constitute torture, CID treatment or both? Or could they be attributed to some other factors or to acts of violence that occurred before detention?

2 Do the testimonies of the victims or witnesses appear consistent with the allegations? Do they fit with what

- is known about the patterns of torture or CID treatment?
- 3 Does the description of early and current symptoms accord with the known pattern of symptoms of torture or CID treatment?
 - 4 Are there any physical marks remaining on the victim? Do they appear to be the results of torture or CID treatment?
 - 5 Is medical evidence consistent with the allegation?
 - 6 Do the responses (or lack of responses) of the government or of the armed opposition group indicate that it is responsible for this particular incident and/or a pattern of similar incidents?

Example: Investigation of torture in Mozambique

FT had been charged with stealing a mini-bus owned by his employer. Later, after thorough investigations, it was discovered that the culprit had been someone else. What happened is that, after seeing that the vehicle was missing FT alerted the owner's wife who refused to accept his story and simply demanded the mini-bus back. Worried about the situation, FT went home and discussed it with his wife and they decided to go to the police station. There, to their surprise, they found that the lady (his employer) had already filed a complaint. Without bothering to enquire into the case, the police simply arrested FT.

FT's wife witnessed her husband's torture which started around 9 p.m. on 2 June. She said her husband was cuffed by the hands and knees, then a team comprised of 4 police officers proceeded to torture him using sharp rods, sticks, and even firearms to poke him in the nostrils, ears and backside. They also inflicted pain on his genital organs, which caused him to faint a few times. The torture lasted until 11 a.m., with FT's wife and 3-month-old baby standing by.

A human rights activist describes for us what he did after hearing about the case.

*I headed to the **police station** on a fact-finding mission accompanied by two colleagues from our Legal Assistance Department. Aware of their colleagues' actions, the other officers obstructed our inquiries.*

*First, the Head of the PIC (Criminal Investigation Unit) denied any knowledge of a prisoner by the name of FT and of any torture. My attempts to see the **gaol cells** were thwarted and I was threatened with prison for abuse of authority. Not intimidated, I persisted and finally the Head of the Unit relented and ordered his men to check on FT. He was found to be in grievous state. I was assured that the victim would be taken to the hospital.*

Still perturbed with the case, I went back to the police station at around 2 p.m. and was told that FT had been taken to the hospital and that an arrest warrant for the officers on duty on the night of the torture had been issued. No mention was made of the other four perpetrators.

*At 6 p.m. that day, I went to the **hospital**. FT's body had been completely wrecked. He could not speak so I was not able to get a word out of him. This uneased me because I knew that, if he died, I wasn't going to be able to get the proof I needed. At 3 p.m. the following day, I was informed of FT's death.*

An officer later informed me that the bus owner's wife had offered to give money to the police if they could force him to confess to having stolen the vehicle. Another source assured me that they had already received the money. According to other leads, which I was not able to follow through owing to police obstruction, the main crime suspect was already in police custody.

1. Preparing for the investigation: Get the facts

List everything you know about torture

- Be knowledgeable about the law related to torture or CID; find out exactly what is prohibited under domestic laws and international human rights standards; seek information from experts.
- Be knowledgeable about the patterns related to torture or CID treatment in your country

Get the facts

- List everything you already know about the case

For instance, in the case above, the researcher had already been told that torture had taken place. He had obtained from the eye witness a detailed description of the torture committed against the victim. He went to the prison in order to be fully certain about the allegation of torture and in order to seek remedies, e.g. make sure that the prisoner gets access to medical care as soon as possible.

- List everything you already know about the particular location where torture or CID treatment is alleged to have taken place
- Ask yourselves the following question: What do you already know about the case? What are the information missing? What kind of evidence is lacking?

Seek expert advice

- Get all the necessary information or expert advice before going to the scene, e.g. consult with forensic pathologists, lawyers, etc.

Prepare your interview format

- Write down a check-list of the data and facts necessary

to assess the allegations

- If this is your first investigation of torture, show the check-list to local contacts who have worked on such cases to get their input: they will often be able to add questions.

See Annexe Two for examples of questions

2. Going to the scene and other locations

Carry out a thorough risk assessment

If you decide to go to the scene, you need to assess all the risks involved for you, your colleagues, and the people you will talk to.

- List all possible security concerns (e.g. your own physical security and the security of your contacts) and develop contingency plans to deal with each one of them (e.g. evacuation: how?). If access to, and your presence at, the scene carries many dangers, identify alternative means of carrying out the research, e.g. rely on a confidential contact who has access to the prison or the police station to get information and interview possible witnesses.
- If necessary, seek official written authorisation to go to the scene.

Composition of the delegation

If you decide to send more than one person for the investigation, you should take into account the following:

- **Be strategic:** The investigative team should not be constituted of individuals who may be perceived as partial by the informants because of their ethnicity, religion, known political affiliation, etc. As far as it is possible, identify team members who are impartial but who will also be *perceived* as impartial by the informants.

- **Experienced delegation:** An organisation's credibility is at stake, hence the need to send trained and credible researchers who can establish trust with informants
- **Experts:** Identify which expertise will be most needed during the investigation: you may need forensic pathologists, a ballistic expert, a lawyer, etc. If possible, you should include such an expert in your delegation. If it is not possible, you should meet with experts before going on a fact-finding mission.
- **Gender-balanced delegation:** The delegation should include a woman who will be able to interview female prisoners, family members, female staff, etc.
- **Ethnicity, language, etc.** As much as possible, you should also seek to get delegates representative of different ethnic groups, language groups, etc. If you have little resources and few delegates, identify the one who will be best equipped to deal with the ethnic, language or other important factor.

3. Identify the main sources of information

- Before your departure, list all possible contacts and sources of information you may need to interview and meet in order to investigate and corroborate the information
- **Identify who it may be more appropriate to meet first**, provided, of course, that you have the luxury to set up and organise meetings. In any case, you should decide whether and at which point in the investigation you will meet with security officials.

Let's return to the investigation conducted by X into the torture of FT. X went to:

- the police station
- the actual cell of the prisoner
- the hospital
- the court
- the mortuary

He interviewed:

- police officers
- the Head of the Criminal Investigation Unit
- probably the victim's wife and other prisoners

In the majority of alleged cases of torture or CID treatment, these places and individuals will be crucial to your research. You will need to go to the police station where the victim was first taken to, the prison if she/he was transferred to another place of custody, the hospital, and the mortuary if the victim died as a result of torture or CID treatment. If the allegation of torture is being investigated, you will need to go to court.

You will also need to interview police officers and the officers in charge, other prisoners who may have witnessed the torture, family members who may also have witnessed the torture, hospital workers, and mortuary workers if the torture has resulted in the death of the victim.

**A generic list of possible sources of information
(individuals and/or groups)**

- Eye witnesses
- Relatives
- Lawyers
- Medical personnel
- Local human rights activists
- Members of religious institutions
- Members of political parties, civil rights groups, trade unions; ethnic groups, etc.
- Members and officials of the police force
- Other police/judicial representatives
- Members and officials of the army
- Members and officials of armed opposition groups
- Other witnesses
- Community leaders
- Journalists
- Prosecutors

4. Identify and collect material evidence

Torture leaves traces. It is the work of the investigator to find and document these traces. The evidence comes in a variety of forms which carry different levels of weights and pose different problems in evaluation.⁴

Possible material evidence

- Medical records
- Photographs
- Official acknowledgements
- Official documents, e.g. court records, police reports
- Post-mortem report
- Physical signs or marks
- Mental state of the victim

Medical certificate or records

The victim of torture or CID treatment may have sought independent medical certificates upon her/his release. If he/she has not yet seen a medical doctor, you should immediately organise for a doctor to see him/her, and issue a medical report confirming (or not) the allegations of torture.

Photographs

Torture marks may have been photographed. If not, you should seek to take photos yourself of the marks and scars on the body. Expert evaluation by trauma or forensic specialists may result in strong evidence of torture.

Acknowledgment by authorities

In the Mozambican example presented, the human rights worker had obtained an acknowledgement from the head of the police unit that the man under detention had indeed been tortured.

4

Based on Jim Welsch, *Documenting Torture: A Human Rights Approach*,

A paper presented at the meeting "Science of Refugee Mental Health: New Concepts and Methods", Harvard University, Cambridge, Massachusetts, 29 September – 1 October 1992

Any statement by a government, government agency, or armed group that an individual under its authority has been tortured represents evidence that torture occurred.

Official documents

In some cases torture has been documented by official or highly reputable unofficial sources. The most persuasive example of this is a legal document in which the state itself acknowledges that the person has been tortured. This happens, for example, in states which require a state-run forensic institute to examine prisoners at some point in their period of detention or release.

Post-mortem report

If the victim has died following acts of torture or CID treatment, the post-mortem report may prove it. In a number of cases, the family may have to request a second post-mortem to be conducted.

Testimonies

If possible, you should seek to interview the victims of torture or CID treatment, eye-witnesses who can corroborate the allegation, medical personnel, police officers, etc. Physical marks of torture and the mental state of the victims are important piece of evidence.

The objectives of the interviews should be to gather information and evidence about:

- The survivor's description of the **symptoms following the alleged torture:**

You need to remember that the victim is still suffering (see Annexe One on post-traumatic stress disorder). Take all necessary precautions during the interview session.⁵ If necessary, refer him/her to medical experts.

- The survivor's description of **current symptoms and illnesses**

⁵
Please see the section on interviews in the handbook *Monitoring and documenting Human Rights Violations in Africa*.

- The survivor's description of the **circumstances, location, procedures, individuals involved, the sequence and timing of the events**
- the **identity** of the alleged perpetrators
- the **responsibility** of the state or of the armed group

Please refer to Annexe Two for a check-list of data to get from the victims.

V. How to assess information

The key questions guiding the assessment are the following:

- 1 Do the acts described by the victims or witnesses constitute torture, CID treatment or both? Or could they be attributed to some other factors or to acts of violence that occurred before detention?
- 2 Do the testimonies of the victim or witnesses appear consistent with the allegations? Do they fit with what is known about the patterns of torture or CID treatment?
- 3 Does the description of early and current symptoms accord with the known pattern of symptoms for torture or CID treatment?
- 4 Are there any physical marks remaining on the victim? Do they appear to be the results of torture or CID treatment?
- 5 Is medical evidence consistent with the allegation?
- 6 Do the responses of the government indicate that it is responsible for this particular incident and/or a pattern of similar incidents?

1. Reliability of initial source

- Are your initial sources or contacts reliable?

Often the allegations of incidents of torture come from the media, a local organisation or individual contacts who have conducted their own fact-finding exercises. In your experience, have these sources been reliable and accurate before?

2. Consistency with patterns

- Is the incident reported to you consistent with what you know about the pattern of incidents of torture or CID treatment in the country?

In many countries, the incidents of torture will present strong similarities from which patterns can be extracted.

- Compare the case under investigation with what you know about patterns of torture.

3. Assessing medical evidence⁶

Whenever possible, you should refer all available medical evidence (medical certificate, photographs, testimonies) to medical experts

- Presence of physical signs on the survivor

More than one form of torture has usually been applied, causing overlapping injuries. It is therefore difficult to define the symptoms and signs that have been caused by a particular form of torture on an individual victim.

Physical signs that can occur as a result of torture may have a variety of possible causes. Rarely can the medical findings prove beyond doubt that torture occurred, especially since the passage of time makes this type of evidence difficult to acquire. This means describing medical evidence as “consistent with” the torture alleged by the survivor.

- Lack of physical signs of torture, including rape

Beware: Torture is increasingly carried out by means which do not inflict long-term physical injury. For instance, rape may not leave physical marks visible to the researcher or, indeed, to a medical professional. Medical evidence may require vaginal and rectal examination, blood and urine analysis (for sexually transmitted diseases, pregnancy), etc., which are not necessarily available.

In such case, effort is required to elucidate a clear description of the torture itself and of its physical and mental effects on the victims. Verbal evidence is highly persuasive and very important when you are pursuing a case.

- Psychiatric signs and symptoms

6.
Based on Jim Welsch,
1992, Documenting
Torture: A Human
Rights Approach.

Beware: The mental and behavioural effects of torture are not uniquely caused by it. Depression, withdrawal, anxiety, sleeping, eating, and sexual disorder, suicidal thoughts, etc., can be linked to a variety of traumatic experiences or to pre-existing problems.

Nevertheless, the survivor's description of her/his psychiatric symptoms and other illnesses (see Annexe One) should allow you to draw some conclusions as to whether the information is consistent or inconsistent with the allegation of torture.

4. Reliability of the testimony

Pay special attention to:

- The survivor's description of the **symptoms following the alleged torture**: what type of physical pains and mental reactions has the victim experienced following the alleged torture?
- The survivor's description of **current symptoms and illnesses**: what are her/his current health complaints, both physical and mental? What was his/her health before being submitted to torture or CID treatment?
- The survivor's account of the **circumstances, location, procedures, individuals involved**, etc. Are they consistent with what others who witnessed similar events at the same time and place say; or with the patterns in torture and CID treatment?
- The survivor's account of the **sequence and timing of the events**
- **Consistency of the testimony**: Whether the testimony concurs with others as well as with any previous pattern of torture or CID treatment in the country/region? Does the survivor contradict himself/herself when asked the same or similar questions?

- **Inconsistencies of the testimonies:** Are they the result of the survivor's dishonesty or of faults in memory, exaggerations, unsubstantiated rumours, cultural differences and misunderstandings between the interviewer (or interpreter) and the interviewee?

5. Assessing the responsibility of the government

The evidence includes: interviews, official acknowledgements or unofficial statements by representatives of the government, court testimony, conclusions of independent investigation bodies, or the lack of independent investigations;

In assessing this evidence, be aware that political factors may come into play: if abuses have allegedly been carried out by the opposition or other governments, the government of the country concerned may issue statements and bring up evidence that should not necessarily be taken as proof that torture or CID treatment has occurred.

As far as the government is concerned, court testimony, where those accused of torture have given testimony, may help indicate the degree of knowledge and responsibility of officials

Some of the key questions guiding the assessment of responsibility include:

- **Identity of the victims:** Have the security forces or the armed group been known to target specific individuals or groups?
- **Motive:** Is there any apparent motive for the act of torture? Had these individuals been previously targeted? By whom?
- **Methods:** Are these methods of torture ordinarily used by the security forces or the armed group?
- **Location:** Have previous allegations been made about this detention centre? Is the area where torture is

alleged to have taken place under the military control of an armed group? Has the armed group be known to carry attacks in this area?

- **Possible involvement of customary, religious or other traditional authorities:** Have customary authorities been accused of such acts in the past? How did they react to the accusations? What were the causes and circumstances? Have the cases been settled out of court? In this case, what were the circumstances and causes? How many individuals were involved? How many victims were there?
- **Responses of the government:** Did public officials in any way justify torture or CID treatment immediately after the event? Did the courts refuse to accept the victims' confessions because they were obtained under torture? Or did it accept the confessions as evidence? Was the victim able or willing to file a complaint? Did the security officials try to prevent the victims from filing a complaint? Did the police harass the victims, witnesses, medical doctors, relatives of the victim? Did other authorities try to convince the victims not to file a complaint? Was an inquiry initiated? Who or which agency was responsible for the inquiry? Did the inquiry follow principles set down by domestic law? Was a criminal procedure initiated? Was a civil suit initiated? Was the case settled out of court? Was internal investigation initiated? Was disciplinary action taken against alleged perpetrators?

If a government has not investigated past or current allegations; if it has not introduced preventive or remedial measures to combat torture or CID treatment; then it is fair to infer a lack of government concern to stop it. A continuing pattern of torture and/or CID treatment must then be seen as attributable to government policy, whether by direct command or by negligence

6. Assessing responsibility of the armed group

Assessing the responsibility of an armed group may be particularly difficult:

- There may be several armed groups in the same area, the government and the armed group may be using similar methods, the government may accuse the armed groups of acts of torture committed by its own forces, etc.
- Material evidence may be scarce, with the exception of medical evidence and the physical signs and marks of torture. Information gathered through interviews and your knowledge of the usual methods followed by the armed group will therefore be central to your assessment of the responsibility.

The following questions may assist you in assessing the responsibility of an armed group:

- Did the leadership of the opposition group try to “justify” the acts of torture in any way?
- Did it claim responsibilities for the acts of torture? Did it deny any responsibilities for them?
- Did it admit or agree to carrying an internal investigation?

Annexe One: Forms of torture, physical injuries and post-traumatic stress disorder

There are a large number of torture methods but some of the most frequently used include: systematic beating, sexual torture, electrical torture, suffocation, burning, suspension, mutilations, dental torture.

Immediately after torture, the survivors have many and severe pains due to wounds, large haematomas, torn-off nails, knocked-out teeth, fractures, etc. In prison no or only poor medical treatment is given and the injuries often heal with defective functionality as a consequence.

Physical and psychological effects of torture vary from person to person, but many subsequent injuries, be they physical or psychological, present common characteristics.

Torture may be carried out by means which do not necessarily inflict long-term physical injury (e.g. physical methods which don't leave scars or psychological methods).

1. Physical injuries resulting from torture⁷

What follows is a brief list of possible injuries resulting from various forms of torture.

7.

Based on: Metin Basoglu, ed., *Torture and Its Consequences*, Cambridge: Cambridge Univ. Press, 1992, chapter 2; Glen R. Randall and Ellen L. Lutz, *Serving Survivors of Torture*, American Association for the Advancement of Science, 1991, chapter 2; Brisbane Refugee Torture and Trauma, *Reclaiming the Power Within*, Brisbane: Women's Health Centre, 1994, pp.4-11; Physicians for Human Rights, *Medical Testimony on Victims of Torture*, Boston, 1991; Lone Jacobson and Peter Vesti, *Torture Survivors*, Denmark: IRCT, 1992, chapter 2.

1. Blunt violence

Almost all torture victims will have experienced blows and/or cane beatings to most parts of the body or falls from a height.

Some of the signs include:

- healed fractures with or without deformities
- scars
- bruises: they disappear very quickly in young people but persist longer in old people
- tramline stripes (beating with a cane or rod)

2. Beating of the soles of the feet (falanga)

Beating of the soles of the feet with cables, iron rods, etc.

Late symptoms of falanga include:

- intermittent pain in the legs and feet, sometimes

accompanied by tingling and pins and needles in the calves and feet (the survivor cannot sit with crossed legs or squat; the pain is worse in cold, damp, windy weather).

- skin of the soles shows hard, rough scars

3. Suspension

The victim is usually suspended by his/her arms stretched above the head or by the arms tied behind the back, by one arm or leg, by the hair, etc.

Symptoms include:

- an often symptom-free period, lasting months or years, between the torture and the occurrence of the symptoms
- burning and sharp pains in one or more extremities

4. Electrical torture

This is performed with electrodes placed at different, usually very sensitive, areas of the body (such as the ears, the tongue, genitals, nipples, etc.), with a mobile electrode, such as a shock baton, and a fixed electrode, such as an iron bed. It provokes violent muscular contractions and the victim very often bites his/her tongue, inside of the cheeks and lips.

Symptoms include:

- skin changes
- (sometimes) scars
- splintering of teeth or teeth falling out up to six months to a year after the torture.

5. Water

The submarine torture consists in the head of the victim being forced below the surface of polluted water until the stage of suffocation or until the physical reflexes cause aspiration of the contaminated fluid. Soaking with cold water is also common, as is the forced intake of large quantities of water or other liquid.

This form of torture can lead to chronic bronchitis.

6. Sexual torture

All forms of torture include an overtone of sexual humiliation. Physical sexual torture is said to comprise direct maltreatment of the genitals, anal region and breast, in the forms of rape, rape by animals, bottles or truncheons, and beatings or electrical torture on the genitals.

Symptoms include:

- genital trauma (bruising, lacerations, mutilations and damage to surrounding pelvic structures such as the bladder and rectum)
- irregular periods
- spontaneous abortions
- pain from the testis, anal itching
- sexually transmitted diseases
- sexual dysfunction
- bruising in the arms and chest, patches of hair missing from the back of the head, bruising on the forehead

7. Other forms of torture leaving marks

- Cuts, burns (with cigarettes, hot irons, heated iron frame), corrosion with acid: they can leave cicatrices and disfiguring skin scars.
- Torture of the teeth (drilling or extraction of teeth, electrical torture, blows to the face): they result in broken teeth and a broken jaw.
- Mutilation can include the extraction of hair from their head or beard, nails pulled out or the amputation of parts of the body, such as the testicles, ears or tongue.

8. Forced intake of drugs

The forced intake of drugs or toxic substances causes pain, internal injury, disorientation or anxiety.

9. Psychological torture

Some of these methods are:

- deprivation and exhaustion
- threats about torture, disablement, execution and threats against members of the family or friends
- witnessing the torture of others
- humiliation
- mock executions

2. Post-traumatic stress disorder⁸

Effects of torture vary from one person to another but many of the symptoms displayed by torture survivors fit the following criteria, also referred to as post-traumatic stress disorder.

1. Characteristics of the symptoms

Criterion A

The person has experienced an event that is outside the range of usual human experience and that would be markedly distressing to almost anyone.

Criterion B: Persistent re-experiencing of traumatic event
The traumatic event is re-experienced in at least one of the following ways:

- Intrusive thoughts or distressing recollection of the event
- Recurrent nightmares of the event
- Feeling as if the event was recurring
- Intense distress at events symbolising the traumatic episode

Criterion C: Trying to avoid

- Efforts to avoid thoughts or feelings associated with the event
- Efforts to avoid activities or situations that arouse recollections of the trauma
- Inability to recall an important aspect of the trauma (mild to severe amnesia)

8.
American Psychiatric
Association,
*Diagnostic and
Statistical Manual of
Mental Disorders*,
1987.

- Diminished interest in significant activities
- Feeling of detachment or estrangement from others
- Sense of having no future

Criterion D: Physical symptoms

These symptoms which were not present before the trauma include:

- Difficulty falling or staying asleep
- Irritability or outburst of anger
- Difficulty concentrating
- Hyper-vigilance
- Exaggerated startle response

2. Phases of Post-Traumatic Stress Disorder (PTSD)

PTSD generally follows two phases⁹

Acute phase

The time immediately following the event.

Symptoms that predominate during this phase tend to be symptoms of physiological arousal, such as intrusive thoughts, flashbacks, sleep disturbances, nightmares.

Chronic phase

If no treatment is provided during the acute phase, the disorder enters into a delayed phase in which anxiety and other automatic arousal decreases, while signs of more chronic disorders become predominant. These include: depression, personality changes, dysfunction, etc. At this point, the person is least likely to attribute their symptoms correctly to the traumatic event that may now be several months or more in the past.

Effects of torture on survivors' family and friends

Torture is likely to affect not only the individual on whom it is inflicted, but also their immediate circle of relatives and friends, and, in many cases, the community where they live. If other family members have witnessed torture, or have a relative who died or disappeared without trace, they may also suffer from trauma.

9.

New York City/Balkan
Rape Crisis Response
Team, *Training
Manual*, New York:
September 1993, p.8.

Annexe Two: Check-list for interviewing victims of torture or CID treatment

The following is a generic list of data and/or evidence that you may need to collect in the course of the interviews. Notice that this is an extensive list and that, in most cases investigated by Amnesty International, not all data mentioned below will be necessary. The type of information required will depend on the action objectives of the interview, the circumstances of the interview (conflict-zones, danger, etc.), your schedule and the survivor's schedule, his/her health, etc. Furthermore, the nature and order of the questions will vary from interview to interview.

1. Interview

- Date
- Location of the interview
- Interviewer
- Interpreter
- Others present

2. Personal Information

- Surname and first name, nickname
- Gender
- Mother's name and father's name
- Date of birth
- Marital status
- Number of children
- Address
- Nationality
- Ethnic origin
- Region of origin
- Religion
- Occupation

3. Circumstances of arrest or attacks (by government or armed group officials)

- When (day and time)

- Where was the victim at the time?
- Were other people present?
- Who carried out the arrest/attack? (Description of the individuals involved: number, uniforms, whether they were carrying arms, etc.)
- What did they say?
- Was violence used?
- Was the victim the only one arrested/attacked?
- Were there any witnesses?
- In the case of an arrest: Was an arrest warrant presented?

4. Circumstances of torture and ill-treatment

- Location (e.g. detention centre, private prisons, home of the victim, etc.)
- Were any questions asked?
- Was a purpose for the torture given?
- Who participated? (Number of people involved; personnel such as security, military, others, etc.)
- Was a medical officer present? Did he/she participate in the torture?
- Did the victim see a medical officer before/after the torture?
- Forms of physical torture
- Forms of psychological torture
- Duration of the torture
- Frequency (e.g. several times a day, twice a week, etc.)
- Physical pains experienced immediately following torture
- Mental reactions experienced immediately following torture
- Did the victim sign any statements?
- Were charges filed against the victim?
- Did the victim have access to a lawyer during detention?
- Trial: Did the courts refuse to accept the victim's confessions because they were obtained under torture? Or did it accept the confessions as evidence?

5. Circumstances following torture

- How long did the victim remain in detention?
- Access to a lawyer
- Access to a medical professional (name, gender, day of the first examination, other examinations)
- Type of examination and diagnosis
- Date and circumstances of the release

6. Current situation and symptoms

- Victim's state of health **before** the arrest (e.g. past illnesses, previous injuries)
- Feelings and other symptoms which the victim noted at various intervals (e.g. one week afterwards, one month, etc.)
- Current physical symptoms
- Current mental symptoms
- Medical or other treatment the victim is currently receiving

7. Observation: Wounds

For each of the following, indicate location and appearance, and, if possible, take pictures:

- Marks/scars/bruises
- Fractures
- Deformities
- Burns
- Amputations
- Other distinguishing characteristics

8. Observation: Demeanour of the interviewee

- Tone of voice (e.g. soft, loud, emotionless, etc.)
- Gaze (e.g. little eye contact)
- Tears (at which point during the interview?)
- Silence or talk non-stop
- Body language (e.g. nervous movements, no movements, etc.)

- Responses (hesitation after questions, ask for questions to be repeated, etc.)
- Other

9. Responses of the government

- Was the victim able or willing to file a complaint? Did the security officials try to prevent the victim from filing a complaint? Did the police harass the victim, witnesses, medical doctors, relatives of the victim?
- Was an inquiry initiated?
- Who or which agency was responsible for the inquiry?
- Did the inquiry follow principles set down by domestic law?
- Was a criminal procedure initiated?
- Was a civil suit initiated?
- Was the case settled out of court?
- Was an internal investigation initiated?
- Was disciplinary action taken against alleged perpetrators?

Annexe Three: Check-list for prison visits

- Date of visit

- Date of previous visits

- Administration
 - Governor
 - Deputy
 - Medical Officer
 - Nurse
 - Security Officer
 - Other

- Capacity of the detention centre
 - Number of detainees
 - Number at times of previous visits
 - Admissions
 - Transfers
 - Discharges
 - Deaths
 - Escapes
 - Other

- Categories of detainees
 - People awaiting trials
 - Sentenced prisoners
 - Others

- Age and gender
 - Male above 18
 - Female above 18
 - Male children (under 18)
 - Female children (under 18)

- Conditions in the cells
 - Size of the cells
 - How many prisoners per cells?
 - How many beds?

- How many blankets?
- Windows?

- Hygiene
 - How many toilets?
 - Access to bath or shower facilities? How often?
 - Access to sanitary towels?
 - Can detainees wash their clothes? How often?

- Medical care:
 - Do detainees have access to medical practitioners?
 - How often?
 - Are medicines free?

- Overall health conditions:
 - Most prevalent diseases
 - Suicide

- Food
 - Ask detainees to describe meals of the previous day
 - Was it well cooked?

- Clothing and bedding
 - Are prisoners well clothed?
 - Are these their clothes?

- Work:
 - Do prisoners work?
 - What type of work?
 - Are they paid?
 - How much?

- Leisure and physical exercise
 - Recreation outdoors
 - Sports
 - Games
 - Reading matter
 - Opportunity for study
 - Radio, etc.

Other facilities

- Relations with the outside
 - Are visits allowed?
 - Is correspondence allowed?
 - Are parcels allowed?
- Religious observance
- What is the daily schedule? (Wake-up time, meals, etc.)
- What kind of discipline is observed?
- What are the prison rules?
- Nature of disciplinary punishment
- Nature of the complaint mechanisms and procedures
- Punishment or isolation cells
 - How many such cells?
 - Size of the cells
 - How many prisoners per cells?
- Are there women guards for women prisoners?
- Are men and women prisoners well separated?
- Are adult and juvenile inmates separated?

Annexe Four: Some International and Regional Standards

International human rights standards

Universal Declaration of Human Rights (UDHR) (1948)

Article 5: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.

International Covenant on Civil and Political Rights (ICCPR) (1966)

Article 7: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his consent to medical or scientific experimentation”.

The prohibition of torture was regarded as such an important matter that the ICCPR, in its article 4, number 2, declared that article 7 is non-derogable.

The Human Rights Committee responsible for monitoring the implementation of the ICCPR, stated, in its **General Comment 20** (10/04/92):

- It is the duty of the states to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.
- There should be provisions in criminal law which penalize torture and cruel, inhuman and degrading treatment, whether committed by public officials or other persons acting on behalf of the State, or by private persons.
- States should disseminate, to the population at large, relevant information concerning the ban on torture and the treatment prohibited by article 7. Enforcement personnel, medical personnel, police officers and any other

persons involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment must receive appropriate instruction and training.

- States could keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest . . . Provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends.

UN Convention against Torture (CAT) (1984)

Article 2, (1) establishes a positive obligation for the member states, prescribing that: “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”.

Article 2, (2) confirms the non derogable nature of the prohibition of torture. It proclaims that: “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

Article 2, (3) declares that: “An order from a superior officer or a public authority may not be invoked as a justification of torture”.

Other prescriptions of CAT worth mentioning are:

Article 3, (1): the prohibition of “*refoulement*” or extraditing persons to another state where there are substantial grounds to believe they would be in danger of being tortured;

Article 4, (1): the obligation to ensure that all acts of torture are offences under its criminal laws;

Article 10, (1): the obligation of ensuring that education and information regarding the prohibition of torture are fully included in the training of law enforcement personnel;

Article 11: the obligation to keep under systematic review interrogation rules and methods and practices for the custody and treatment of people subjected to any form of arrest, detention or imprisonment.

Standard Minimum Rules for the Treatment of Prisoners (1977)

Principle 31: “Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishment for disciplinary offences.”

Principle 95 extends the protection given in Principle 31, to all people arrested or imprisoned without a charge.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)

Principle 1 provides that: “All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person”;

Principle 6 outlaws torture and other cruel, inhuman or degrading treatments or punishments in detention centres or prisons and declares that these practices are to be avoided always, without exception;

Principle 35 provides for compensation for detained or imprisoned people that have suffered: “damaged incurred because of acts or omissions by a public official contrary to the rights contained in these principles”.

Code of Conduct for Law Enforcement Officials (1979)

Article 5: “No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as the state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.”

Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982)

Principle 2: “It is a contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.”

Basic principles on the Use of Force and Firearms by Law Enforcement Officials (1990)

Principle 6: “Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superior.”

Principle 7: “Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.”

Principle 8: “Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.”

Regional standards: African Charter on Human and Peoples' rights

Article 5: "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. It prohibits all forms of exploitation and degradation particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

International humanitarian law standards

The provisions of the **Geneva Conventions** of 12 August 1949 and Additional Protocols 1 and 2 of 1977 specifically prohibit torture. The following rules of conduct apply to all armed conflicts, whether international or non-international:

- People who are not, or no longer, taking an active part in hostilities, such as the wounded and sick, prisoners and civilians, must be respected and protected in all circumstances.
- Civilians must be treated humanely; in particular, violence to their life and person is prohibited, as are all kinds of torture and cruel treatment, the taking of hostages, and the passing of sentences without a fair trial.

Annexe Five: Possible action and recommendations

Domestic legal action

- Review, evaluate and revise criminal laws, codes and procedures so that it clearly prohibits torture and CID treatment or punishment.
- Lobby government so that it removes provisions that allow for or condone torture and/or CID treatment or punishment.
- Take cases to court; provide legal, material or any other support to victims of torture who have brought their cases to court.

International legal action

- Take cases at the international level to the Committee Against Torture (CAT)
- Send information regarding cases to the United Nations Special Rapporteur Against Torture. The Special Rapporteur on torture is an independent expert appointed by the Commission on Human Rights to examine questions related to torture, seek and receive information concerning torture, and recommend steps to prevent and respond to violations.
- Ensure that your government prosecutes torturers from foreign countries who are currently present in your country. Universal jurisdiction authorises any country which apprehends a torturer to bring him or her to justice. The CAT requires a government to prosecute cases where the alleged torturer is in its jurisdiction, unless the accused is to be extradited to another state which intends to prosecute the case. (The concept of universal jurisdiction explains the actions undertaken by a Spanish judge against General Pinochet, former ruler of Chile.)

Action on behalf of victims and detainees

- Provide victims with medical and psychological support
- Contact the commanders of individual soldiers responsible for torture or CID treatment/punishment (for instance, identify the commanders or prison officials most sensitive to the issue and willing to work against it)
- Lobby governments and prison authorities so that prison conditions satisfy international standards regarding prison conditions and treatment of prisoners
- Organise training sessions for police officers; guards; judges; etc.

Public awareness campaign

- Inform the media whenever you have investigated a case of torture brought to your attention
- Organise press conferences around such cases
- Inform, launch public awareness campaigns informing the general public that the police has no right to torture
- Educate general public about the steps they should take if they have been the victims of torture or CID punishment
- Organise exhibits about torture
- Create lobby groups composed of a variety of NGOs, political personalities, etc., to eradicate use of torture by law enforcement officials
- Network and create umbrella organisations to co-ordinate activities

Armed conflicts

- Lobby governments to sign and ratify the creation of the International Criminal Court
- Lobby governments to undertake a full investigation of all acts of torture during war; bring to justice those alleged to have committed war crimes and provide full redress to victims
- Ask governments and armed groups to issue clear orders that torture, including rape and other sexual abuse of women and girls, will not be tolerated under any circumstances.

Annexe Six: Amnesty International recommendations for the prevention of torture and ill-treatment (November 1998)

Official condemnation

The highest authorities of every country should demonstrate their total opposition to torture and condemn it whenever cases arise. They should make it clear to all members of the police, military and other security forces that torture will not be tolerated under any circumstances.

Access to prisoners

Governments should ensure that all prisoners are brought before a judicial authority without delay after being taken into custody, and that relatives, lawyers and doctors have access to them without delay and regularly thereafter. Effective judicial remedies should be available at all times to enable prisoners, relatives and lawyers to urgently ensure a prisoner's safety and for relatives and lawyers to find out immediately where a prisoner is held and under what authority.

No secret detention

In some countries torture takes place in secret locations, often after the victims are made to «disappear». Governments should ensure that prisoners are held only in publicly recognised places of detention and that accurate information about their arrest and detention is made available immediately to the courts and to relatives and lawyers.

Safeguards during detention

All prisoners should be told of their rights immediately, including the right to lodge complaints about their treatment. The authorities responsible for detention should be separate from those in charge of interrogation. Judges should have the right and duty to supervise effectively the detention of prisoners. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

Prohibition in law

Governments should ensure that acts of torture are punishable offences under the criminal law. The prohibition of torture and the essential safeguards for its prevention must not be suspended under any circumstances, including states of war or other public emergency.

No use of statements extracted under torture

Governments should ensure that statements and other evidence obtained through torture may not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made.

Investigation

All complaints and reports of torture should be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators. The methods and findings of such investigations should be made public. Officials suspected of committing torture should be suspended from active duty during the investigation. Complainants, witnesses and their families should be protected from intimidation and reprisals.

Prosecution

Those responsible for torture should be brought to justice. This principle should apply wherever they happen to be, wherever the crime was committed, whatever the nationality of the perpetrators or victims and no matter how much time has elapsed since the commission of the crime.

Compensation and rehabilitation

Victims of torture and their dependants should be entitled to obtain fair and adequate redress from the state, including appropriate medical care, financial compensation and rehabilitation.

Training

It should be made clear during the training of all officials involved in the custody, interrogation or medical care of prisoners that torture is a criminal act. They should be instructed that they have the right and duty to refuse to obey

any order to torture. An order from a superior officer must never be invoked as a justification for torture.

Ratification of international treaties

All governments should ratify international human rights treaties containing safeguards against torture, including the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment with declarations providing for individual and inter-state complaints. Governments should comply with the recommendations of inter-governmental organisations for the prevention of torture.

International responsibility

Governments should use all available channels to intercede with the governments of countries where torture is reported. They should ensure that transfers of equipment, know-how and training for military, security or police use do not facilitate torture. No one should be forcibly returned to a country where he or she risks being tortured.

The Publishers

Amnesty International (AI) is a worldwide voluntary activist movement working towards the observance of all human rights as enshrined in the Universal Declaration of Human Rights and other international standards. It promotes respect for human rights, which it considers interdependent and indivisible, through campaigning and public awareness activities, as well as through human rights education and pushing for ratification and implementation of human rights treaties. Amnesty International takes action against violations by governments of people's civil and political rights. It is independent of any government, political persuasion or religious creed. It does not support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect. It is concerned solely with the impartial protection of human rights.

Amnesty International Dutch Section Special Programme on Africa (SPA) was established in 1994. Initially, SPA developed a programme to assist Amnesty Sections worldwide to improve the effectiveness of their campaigning against human rights violations in Africa. Since 1996 SPA has moved towards providing support to the broader Human Rights Movement in Africa. Rather than funding projects, SPA is developing and co-ordinating long term projects for and in cooperation with other human rights organisations and AI sections. In addition to copublishing *Ukweli*, SPA is also coordinating advocacy and training workshops in southern and West Africa, a project on policing and Human Rights, and a pilot project to raise human rights awareness in rural areas in Liberia.

CODESRIA is the Council for the Development of Social Science Research in Africa head-quartered in Dakar, Senegal. It is an independent organisation whose principal objectives are facilitating research, promoting research-based publishing and creating multiple forums geared towards the exchange of views and information among African researchers. It challenges the fragmentation of research through the creation of thematic research networks that cut across linguistic and regional boundaries.

CODESRIA publishes a quarterly journal, *Africa Development*, the longest standing Africa-based social science journal; *Afrika Zamani*, a journal of history; the *African Sociological Review*, and the *African Journal of International Affairs (AJIA)*. Research results and other activities of the institution are disseminated through 'Working Papers', 'Monograph Series', 'New Path Series', 'State-of-the-Literature Series', 'CODESRIA Book Series', the *CODESRIA Bulletin*, *KIBARU* and *CIVIC AGENDA*.