

# Medico-legal evaluation of torture victims in the USA before the Istanbul Protocol

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Now that the updated version of the Istanbul Protocol has been published, there is an opportunity to reconstruct pieces of history on the long road to having forensic torture assessment tools. This article is an attempt to contribute to that journey through our first-person personal memories of those experiences, especially in the early years, far before the drafting and approval of the Istanbul Protocol: Amnesty International (AI).

Peter Benenson, a British lawyer, published in 1961 a prominent article in *The Observer*: “The Forgotten Prisoners”. Simultaneously, he launched a worldwide campaign called, “*Appeal for Amnesty*.” His appeal was printed in newspapers across the world and turned out to be the genesis of AI, a movement that opened the first doors to the anti-torture movement.

The first international meeting of AI was held in July 1961, with delegates from Belgium, the United Kingdom, France, Germany, Ireland, Switzerland, and the United States. It was agreed to establish “a permanent international movement in defense of freedom of

opinion and religion “. In the following year, a conference in Belgium led to the formation of a permanent organisation that would be known as *Amnesty International*. Sometime later, in 1972, the organisation launched its first worldwide campaign for the abolition of torture.

The first full Urgent Action was issued in 1973 on behalf of Professor Luiz Basilio Rossi, a Brazilian who was arrested and tortured for political reasons. Luiz himself believed that Amnesty International’s appeals were crucial: “*I knew that my case had become public, I knew they could no longer kill me. Then the pressure on me decreased and conditions improved.*”

That same year, AI in London published the first report on the prevalence of torture worldwide with data detailed by country. At that time there was not even a legal definition of torture. AI proposed the first operational definition in that early study: “*Torture is the systematic and deliberate infliction of acute pain in any form by one person on another, or in a third person, in order to accomplish the purpose of the former against the will of the later*” (Amnesty International, 1974b, 1974a). The World Medical Association adopted a similar definition in its Declaration of Tokyo (WMA, 1975). AI was awarded the Nobel Peace Prize in 1977 for “*having contributed to securing the ground for freedom, for justice, and thereby also for peace in the world*”.

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### **Military coup and military dictatorship in Chile**

On September 11, 1973, the democratically elected government of Salvador Allende in Chile was overthrown by a military coup instigated by the USA. The new regime agreed to admit a three-person AI's mission for an on-the-spot probe into allegations of massive violations of human rights (Kornbluh, 2003). The United Nations approved the AI-inspired resolution formally denouncing the systematic use of torture in Chile (Quiroga & Lira, 2022).

At that time, José Quiroga (the first author of this paper) was one of President Salvador Allende's personal physicians and witnessed the armed action that ended in his death. He was detained inside the government Palace on the day of the coup. After four years in Chile, he came into exile to the United States as faculty of the School of Public Health at the University of California in Los Angeles (Quiroga & Lira, 2022). Very soon, working with exiled people coming from Chile and other Latin American countries was part of his remit.

### **Refugee and AI medical groups in the USA and the foundation of the Program for Torture Victims**

In 1972, David Kinzie founded the Inter-cultural Psychiatric Program, at the Oregon Health & Science University (OHSU) for the treatment of refugees, some of them torture victims, from the Indo-Chinese, Viet Nam, Cambodia, and Laos wars. The program started developing the first model of transcultural evaluation and therapy (Kinzie, 1972; Kinzie et al., 1980).

In 1979, Michael H. Nelson MD, a practicing psychiatrist from Boston, organised the first medical groups of Amnesty International in the USA. The objective was to document

the consequences of torture among refugees and asylum seekers in the USA. He developed a comprehensive medico-legal evaluation protocol to be used by all AI medical groups, and was able to organise AI medical groups in Boston, Washington DC, Seattle, San Francisco, and Los Angeles. These medical groups had a short life - only the Los Angeles program has survived until now: *Program for Torture Victims* (PTV). It is the oldest program in the United States and the only program of its kind in the Los Angeles area.

Nelson visited Los Angeles late in 1979 where José was in charge to organise the Los Angeles AI Medical Group, with the help of Jack Rendler, Director of AI in Los Angeles at that time. Glen Randall was the chairperson of the San Francisco AI medical group, Ellen L. Lutz JD. was the local Director of AI. Cornelius Kolft, and Roscius Doan organised the Seattle AI medical group.

### **Foundation of the Program for Torture Victims**

At that time, a reduced group of physicians met regularly to help design the program: Kevin O'Grady, a physician of the Department of Medicine at UCLA, and Kim Thorburn and her husband Terence Allen, both experts in prison health care. The objective of the medical group was to document cases of torture among immigrants and refugees in Los Angeles. Soon, Anne Deutsch (the second author of this paper), a psychologist and refugee from Argentina, joined the group to provide the psychological perspective that the team urgently needed. In the Supplementary Material of this paper, we include the first medical and psychological assessment protocol drafted by Michael Nelson and adopted by the authors and the Los Angeles group.

A group of Chilean torture survivors had arrived in Southern California in a special

parole program of the Justice Department in 1976. They had been selected by the USA embassy in Santiago amongst political prisoners in different detention centres in Chile. All of them were torture survivors of the Pinochet regime. The selection criteria used by the US Embassy is not known. Furthermore, the Lutheran Immigration and Refugees Services (LIRS) brought nearly 400 Chilean people to the Agate Refugee Center in Chula Vista, San Diego. These Chilean refugees later resettled in different cities in California. We had the difficult task of persuading them to come to the program. It is well known that the military coup in Chile was promoted by the Nixon administration, so, naturally, Chilean refugees did not want to be examined by American physicians. They agreed to attend the program because there were bonds of political confidence being the first author a known person among the exiled Chilean community (Kornbluh, 2003).

In January 1980, we began to document the first cases of torture allegations in the Los Angeles area. After two years, the AI Los Angeles, San Francisco, and Seattle programs had examined 42 torture survivors.

It was clear from the beginning that refugees needed more than a forensic evaluation. The Los Angeles AI's regional office was advised by the central headquarters in Washington and London that AI could not be involved in treatment. As the survivors had already been evaluated and were in urgent need of rehabilitation, we decided to establish the Program for Torture Victims (PTV) as a completely independent organisation of Amnesty International.

The objective of PTV was to create a program for the rehabilitation of torture victims, but in those years, there was no experience on the treatment of torture survivors.

Even the Convention against Torture had not yet been approved. The only way to learn was to exchange experiences with similar groups already founded in Chile (1973, 1977), Argentina (1980) and Uruguay (1980), which were pioneers in the theoretical reflections and design of therapeutic models, beyond the first programs being established in Denmark, England and other places in Europe. The *Christian Churches' Welfare Foundation (Fundación de Ayuda Social de las Iglesias Cristianas-FASIC)* had begun in 1977 in Chile to use the testimony of trauma as a therapeutic instrument (Cienfuegos, J., & Monelli, 1983). As most of the torture survivors evaluated for us were also Latin Americans, we began to use Testimony Therapy used in Chile (Quiroga, Lira, 2022).

#### **A first descriptive study on torture**

PTV presented the data of the 42 initial forensic reports in a thematic symposium at the 89<sup>th</sup> Annual Meeting of the American Psychological Association (Quiroga J et al., 1981). There were also presentations and debates at the symposium on *Torture, Medical Practice, and Medical Ethics* at the American Association for the Advancement of Science (AAAS) Annual Meeting in Washington DC in January 1982. Federico Allodi, head of the Transcultural Psychiatric Unit at Toronto (Canada) began to develop a model for the forensic assessment of refugees and began to apply a consistency analysis between allegations of torture and physical and psychiatric examinations (Allodi, 1982). Allodi had a similar study. Both teams made, sometime later, a joint publication, and the assessment tools used by the US and Canadian teams became a core element of the Istanbul Protocol (IP), as we now know it (Allodi et al., 1985).

## Justice and Reparation

### Immigration courts in the US: some figures

As explained, PTV began as an AI Medical program with the objective of supporting torture survivors in their claims as asylum seekers in US. At the same time, the program aimed to help in the rehabilitation of the severe medical and psychological sequelae

and provide medical support in the fight for justice and reparation, if possible. It is difficult to estimate how many survivors we had the opportunity to document during the more than 40 years working with torture survivors since then. It might be several hundred. PTV contracted with the US Office of Refugee Resettlement (ORR) to take care of 100 new and 150 old survivors of torture per year.

### Federal Court in the US: The *Filártiga v. Peña-Irala* Case

*Filártiga v. Peña-Irala* is a significant international law case in the USA. It established the precedent for US federal courts to punish non-American citizens for torturous acts committed outside the US in violation of relevant treaties. This expanded the jurisdiction of US tribunals to cover torturous acts worldwide in 1980.

The case involved Dolly and Joel Filártiga, citizens of Paraguay, who claimed that his son, Joelito Filártiga, was kidnapped and tortured to death on March 29, 1976, by Américo Norberto Peña-Irala, who held the position of Police Inspector General in Asuncion at that time. Dolly Filártiga and Américo Peña separately arrived to the US. Dolly sought political asylum, while Peña remained on a visitor's visa. Dolly discovered Peña's presence in the US and reported it to the Immigration and Naturalization Service, resulting in his arrest and deportation order due to overstaying his visa.

Dolly Filártiga sought assistance from her immigration attorney, Michael Maggio, who reached out to Peter Weiss, the Director of the Center for Constitutional Rights (CCR) in New York. The CCR filed a civil lawsuit against Peña-Irala, using the Alien

Torture Statute (ATS), a US federal law established in 1789 that grants federal courts jurisdiction over lawsuits filed by non-US citizens for torture committed in violation of international law. Initially, Judge Nickerson ruled in Peña's favour, citing jurisdictional concerns.

The Filártiga family's lawyer appealed the judge's decision to the Second Circuit Court of Appeals. During the hearing, Glenn Randal, Jose Quiroga, and Ana Deutsch provided testimony on the medical and psychological effects of torture on the victim and his family. Chief Judge Wilfred Feinberg and circuit judges Irving Kaufman and Amalya Lyle Kearses presided over the case. On June 30, 1980, they unanimously decided that "deliberate torture perpetrated under an official authority violates universally accepted norms of International Law of Human Rights regardless of the nationality of the parties." They concluded that the Alien Torture Statute (Title 28 of the United States Code, Section 1350) provided a basis for US jurisdiction in the lawsuit. This landmark decision led to a surge of ATS litigation, particularly concerning corporate liability, in the following decades.

Table 1. Inter American Court of Human Rights Cases where PTV team provided forensic expertise.

Number	Cases	Psych.	Med.	Sentence date
1	Villagran Morales and others vs Guatemala	X		November 19, 1999
2	Bamaca Velazquez vs Guatemala	X		November 2000
3	Las Palmeras vs Colombia	X		December 9, 2001
4	Niños del Centro Panchito López vs Paraguay	X		September 2, 2004
5	Tibi vs Ecuador	X		September 7, 2004
6	La masacre de Maripán vs Colombia	X		September 15, 2005
7	Gutiérrez Soler vs Colombia	X		September 12, 2005
8	Hermanas Serrano Cruz vs El Salvador	X		March 1, 2005
9	Penal Miguel Castro vs Perú	X	X	November 25, 2006
10	Cabrera García y Montiel Flores vs México	X	X	November 26, 2010
11	Gelman vs. Uruguay	X		February 24, 2011
12	Masacre de Santo Domingo vs. Colombia	X	X	November 30, 2012

PTV has been working for justice and reparation for victims of torture in other Latin American countries specially providing expert witnessing before in the Inter-American Court of Human Rights.

Table 1 shows some of the most prominent historical cases in which PTV provided expert witnessing. The psychological expertise provided by the second author, Anna Deutsch, was essential in all cases.

In future research, it would be interesting to analyse the psychological and medical affidavits of these historical cases and see how the reports evolved over time as the demands of the Court also evolved.

When the IP appeared, the reports followed the IP, which was, by then, the international tool of reference for the forensic

documentation of torture. We hope that our efforts, in close links with our Latin American colleagues, helped to provide the strong theoretical basis that the forensic documentation of torture now has with the updated version of the IP.

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### Supplementary material

In the website of the Journal, as a supplementary material, the reader can find the Amnesty International Medico-Legal Evaluation Format from 1979, in the same presentation and typeset that was used at that time.