

# The use of the Istanbul Protocol in Israel: Insights at the reception of the revised (2022) version

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## Objective

Health professionals and lawyers in Israel have used the Istanbul Protocol (IP), the internationally accepted protocol for documenting torture and ill-treatment, for many years (Abu Akar et al., 2014; Weishut, 2022). A complete IP report requires substantial effort and investment of -mostly pro bono- experts, while the IP interview on which it is based is often an emotionally burdensome experience for clients. This paper presents insights about the use of the IP in Israel, as collected by a group of experts in the documentation of torture and ill-treatment, at the reception of the revised (2022) version.

**Keywords:** torture and ill-treatment, interdisciplinary encounters, Istanbul Protocol, health professionals, legal system, Israel.

## Introduction

Since 2001, over 1,400 complaints of torture by the Israeli Security Agency have been submitted to the Ministry of Justice, which resulted in only three criminal investigations and no indictments (Public Committee Against Torture in Israel, Situation Report 2022). Most of these complaints involved alleged torture or ill-treatment of Palestinians by Israeli authorities, and more than a few were supported by IP reports, which, in two cases, were submitted to the Israeli High Court of Justice. In contrast with the lack of legal success regarding claims of torture and ill-treatment, authorities sometimes accepted IP reports submitted to support asylum seekers in Israel, asking for a release from detention or recognition as victims of trafficking and slavery (The Public Committee Against Torture in Israel & Israeli Medical Association, 2014). The lack of recognition of the value of the IP in Israeli courts and other authorities has caused doubts regarding its implementation.

## The Istanbul Protocol in Israel

In 2022, the United Nations issued a revised version of the IP (United Nations Office of the High Commissioner for Human Rights, 2022). The revised IP was created by more than 180 experts, a process that took six years (Koseoglu, 2022). A compilation of the main

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changes was published by Pérez-Sales (2022). The revised IP is a 220-page document that details many topics essential to legal, health, and mental health professionals examining torture and ill-treatment. The downside is that the document is overwhelming and challenging to handle, especially for those who are not fluent in English.

We dealt with the abundance of information in the new IP in two steps. First, we held a workshop for the IP documentation trainers; each prepared one chapter to be discussed in three consecutive meetings. Then, we organized a study day for which we invited lawyers, medical doctors, and mental health professionals, who were trained previously in the IP to update them with information from the revised version. Fifteen professionals participated in the study day. We discussed selected themes: the IP use in Israel, vulnerable populations, specifically children and members of the LGBTIQ community, the applied use of the IP, and ideas for the future. Here are some of the insights we collected.

Foremost, we realized that there is a significant gap between the IP recommendations and the situation in Israel. Israel ratified the UN Convention Against Torture, and the IP establishes the minimum standards for an effective torture investigation. Nonetheless, the present reality is that the Israeli High Court of Justice and authorities do not see the value of IP-based reports in clarifying a complaint's factual or legal questions. There are several reasons the Israeli High Court of Justice and authorities do not grant weight to IP reports; the revised IP addresses each, which makes the current attitude a rejection of the IP itself.

### **Reasons for disregarding Istanbul Protocol reports**

The reports are often not given any weight because the clients provided in their testimo-

nies a different version of what happened to the one on record or the one provided by the interrogator. Minor discrepancies between different versions of a person's story are viewed as signs of lying, despite the many possible reasons for inconsistencies in the testimonies of torture survivors (Weishut & Steiner-Birmanns, 2023). The IP emphasizes that: "discrepancies in those statements should not be considered per se as denoting the falsehood of the testimony" (§ 76) and that "inconsistencies are common in the accounts of events by victims of torture and occur for many reasons. Adequate explanation of such inconsistencies should be understood as an indication of the reliability of the clinical findings rather than a matter of untruthfulness" (§ 351).

Furthermore, the Israeli High Court of Justice and authorities claim that too much time has passed between the alleged torture and the IP evaluation. The IP responds that "the physical and psychological after-effects of torture can be devastating and last for years" (§ 57).

In addition, the Israeli High Court of Justice and authorities sometimes argue that narratives of IP reports rely on the client's story alone, as do the psychological complaints. It is self-evident, though, that the testimony provided by a victim of torture, as in other cases of abuse, will often be the primary source since the people present are usually only the victim and the perpetrator(s).

Moreover, courts occasionally claim that the reported post-traumatic symptoms have different etiologies, regardless of psychological evidence showing the link with the alleged torture. The IP refers to these issues as follows: "Clinicians routinely consider the cause of the symptoms of their patients. In the case of medico-legal evaluations of torture or ill-treatment, clinicians have the necessary knowledge and experience to formulate an opinion on the possibility of whether the clinical findings that

they observe were caused by the infliction of the severe physical and/or mental pain or suffering alleged” (§ 384).

One more reason for Israeli authorities to disregard complaints of torture or ill-treatment is the assessed level of consistency between the findings of IP evaluations and the alleged torture or ill-treatment. A couple of reports assessed this level as “consistent”, leaving space for other possible causes, and not as “highly consistent”, “typical”, or “diagnostic”. This situation occurred when symptoms were non-specific. The IP addresses this misinterpretation of the level of consistency and states that “the absence of physical and/or psychological evidence of torture or ill-treatment, however, does not mean that it did not take place. Many factors may account for the absence of physical and psychological findings” (§ 390).

It is important to note that there is no change in the principle that the IP report should, at a minimum, “include an assessment of the level of consistency between all clinical evaluation findings and the allegations of torture or ill-treatment” (§ 379). At the same time, “clinicians are not advised to comment on the credibility of an alleged victim or suspect in their medico-legal reports or witness testimony” (§ 389). This guideline is a change from the previous IP version. In Israel, the clients’ lawyers customarily ask to include a section referring to credibility in the report, as there is often little evidence to support credibility otherwise. This request is because, in Israeli courts, it is common to doubt the truthfulness of the testimonies of alleged torture survivors (and other abuse victims).

We were content to read that the revised IP addresses another concern of ours: “some courts have also rejected relevant clinical opinions by asserting incorrectly that they are beyond the remit or expertise of the clinician. On the contrary, as directed by the Is-

tanbul Principles, all clinicians should always include opinions on the possibility of torture or ill-treatment in their medico-legal evaluations” (§ 392).

### **Applied uses of the Istanbul Protocol**

We appreciate the increased attention in the revised IP to its alternative and applied uses. Using the IP has had more positive results when submitted to Israeli authorities for aid on humanitarian grounds. Thus, IP-based reports have assisted tortured African asylum seekers in pleas for non-refoulement or recognition as being subject to trafficking or slavery. It is noteworthy, though, that these cases refer to offenses that took place neither in Israel nor by Israelis, unlike the situation of complaints by Palestinians.

With a lack of proper investigations of torture by the relevant authorities, the documentation by physicians and other health professionals - in prison clinics, emergency rooms, and community and family practice - seems essential, even though these settings allow documentation of only the most critical parts of the IP. The revised IP elaborates on applying its principles in different settings where victims of torture or cruel, inhuman, or degrading treatment may receive initial or partial treatment. In these situations, time, privacy, or freedom of speech are challenges that interviewers will have to deal with. The participants of the study day conveyed that in Israel, many medical professionals lack education on human rights and fail to recognize the importance of accurately recording a patient's medical history (cf. Weishut et al., 2021). Consequently, professionals are reluctant to provide proper documentation or sometimes write dismissive and laconic reports that do not adhere to IP principles. This problem is pronounced in cases where the complaint is

about violence by state actors and especially in cases of patients under arrest.

## Conclusion

Health and legal professionals in Israel welcome the revised (2022) Istanbul Protocol and believe it is exhaustive in its information on many aspects of the documentation of torture and ill-treatment. It will be an asset in our attempts to bring justice to victims of torture and ill-treatment.

It must be noted that the length and detail of the revised version make it less applicable as a practical guide for professionals for whom torture documentation is not the main focus or who work in languages other than English. The IP annexes contain succinct summaries of the instructions for taking a history, which is helpful. Still, we encourage the creation of a user-friendly handbook that is readily translated into many languages and could guide health professionals with no particular focus on torture documentation in writing IP-based reports.

There is minimal recognition of the IP in the Israeli court system and enormous difficulty in bringing justice to victims of torture and ill-treatment. However, it was suggested that “significant advances in protecting the rights of victims of torture and similar crimes can be achieved through domestic courts even in countries with limited respect for the rule of law” (Lisitsyna, 2022, p. 201). Related fields, like sexual violence, coped with comparable difficulties, such as trials focusing on inconsistencies, the truthfulness of victims (Smith & Skinner, 2017), and the complexities of the interchange between mental health and legal discourses (Cohen & Enosh, 2021). Over the years, there has been increasing recognition of various forms of sexual assault in courts (Tracy et al., 2012). With this in mind, the forensic group of the Public Committee

Against Torture in Israel will continue using the IP relentlessly.

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