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Special section: Forensic documentation of torture: Reflections and learnings on the Istanbul Protocol

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Documentation of torture in children and young adults: Time to reflect

Pau Pérez-Sales*

Documenting torture in children and young adults (ChYA) is a challenge. Less than 3% of academic papers on documentation and rehabilitation of torture victims are focused on children and youth. In the Delphi study on research priorities in the sector (Pérez-Sales, Witcombe, & Otero Oyague, 2017), five lines were proposed regarding torture in children, which covered: developmental disruptions related to the torture of relatives; developmental deficits related to infant torture; the effect on caregivers of torture/kidnapping of their children; the impact of torture on identity and worldviews among adolescents; and transgenerational trauma. Only the latter was considered among the 40 top research priorities.

Although the Istanbul Protocol (IP), in the present version, devotes three paragraphs to the topic, it specifies that "a complete discussion of the psychological impact of torture on children and complete guidelines for conducting an evaluation of a child who has been tortured is beyond the scope of this manual" (UNHCHR, 1999, para 310-315).

There are many guidelines that contribute to the early detection (Hoft & Haddad, 2017) and forensic assessment of minors in cases of sexual abuse and neglect (NICE, 2017). Although torture is a different entity from abuse, these guidelines are sometimes used as an alternative. Den Otter and colleagues (2013) recently concluded that they could not find a comprehensive guideline that achieves for children what the Istanbul Protocol does for adults. The authors strongly recommended a child-specific, comprehensive guideline. Since this publication, the situation remains largely unchanged.

Regarding *legal aspects,* an Amnesty International (AI) report (2000), published nearly two decades ago, put forward the first comprehensive overview of legislation and areas of concern relating to children and torture. The report identified 40 policy recommendations in relation to: children in armed conflict; child soldiers; children in custody; children in detention; and children in schools and other institutions. AI referred to torture in children as the "hidden shame" given that most cases never come to light. A 2009 desk review in this journal, as part of a Special Section that included eight other research papers, highlighted key points of concern and challenges for the sector (Quiroga, 2009). Besides the above-mentioned paper by den Otter and colleagues, there has been a position paper by UNICEF (O'Donnell & Liwski, 2010), and reviews on epidemiological data (Slone & Mann, 2016) and health effects (Kadir,

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Shenoda, & Goldhagen, 2019). Although these papers are undoubtedly important contributions, more specific information is greatly needed.

From a broader perspective, children's rights are reasonably well defined outside of the specific focus on torture. The Convention on the Rights of the Child specifically addresses torture. It was adopted in 1989 and has been ratified by 193 States, making it the most universally ratified human rights treaty. Its committee ordered the Global Study on Violence Against Children as a joint inter-agency effort that provided a set of recommendations to states to strengthen the protection of children (Pinheiro, 2006). Guidelines on assessing the status of protection and monitoring centers have since appeared (Defence for children international, 2016; Holman, 2012), and a comprehensive legal compilation by the Anti-Torture initiative on protecting children in detention was also published (Center for Human Rights and Humanitarian Law, 2015).

Regarding forensic documentation, only some isolated works have provided specific practical guidance on medical and psychological aspects. The Defence for Children manual (2016) includes a section on interviews with children (p. 73), and a section on ethical considerations for interviews (see Annex 2, p. 160) that goes even beyond the recommendations of the IP for adults. There are other expert recommendations on how to conduct a victim-sensitive interview with children (Thakkar, Jaffe, & Vander Linden, 2015) that can also be applied to children who are torture survivors. Guidelines on physical exploration of sexually tortured children are also available (Kellogg, 2007; Volpellier, 2009).

Torture in adults and torture in children and youth are often quite different phenomena, which further contributes to the challenge of putting forward specific guides. However, reviewing the differences and similarities could help to enlighten key complexities associated with building a corpus of knowledge on ChYA. In this editorial, we briefly review: aspects related to the notion of torture as applied to ChYA; specific ethical problems in forensic documentation; and challenges in the formulation of consistency statements. By doing so, we aim to outline key challenges that researchers and practitioners ought to pursue.

The Concept of Torture as Applied to Minors

Child abuse refers to physical, emotional and sexual abuse committed by parents, caretakers or other persons in a position of responsibility, trust or power vis-à-vis the child (Seddighi, Salmani, Javadi, & Seddighi, 2019). Although child abuse can overlap with torture in certain circumstances, there are many other situations of ill-treatment and torture that are not covered by the concept of child abuse. International institutions sometimes prefer the more general term of "child violence."[1] Child abuse is thus distinct from child torture and faces its own definitional problems (e.g., whether violence from peers should be included) and the definition of "child sexual abuse" is a particularly thorny issue (Mathews & Collin-Vézina, 2019). The Convention Against Torture (CAT) considers that torture happens when there is:

> "*(a) intentional infliction on a person (b)* of *severe pain or suffering, whether physical*

[1] United Nations Committee on the Rights of the Child, General Comment No. 13 (2011): The right of the child to freedom from all forms of violence, UN document CRC/C/GC/13, Office of the High Commissioner for Human Rights, Geneva, 18 April 2011.

> *or mental, (c) for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, (d) when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. And that (e) It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."*

As highlighted in Table 1, applying this definition to the context of children and torture faces important dilemmas.

Intentionality as a required condition for torture becomes unclear in certain situations, such as those involving Female Genital Mutilation or Corporal Punishment in families or schools, where, from the subjective perspective of the caregiver, the situation may be perceived to be in the best interest of the child.[2] Particularly challenging situations are those in which children have witnessed the ill-treatment or torture of their relatives, or when ill-treatment is due to a lack of prevention or reckless attitudes (i.e., discrimination of any kind,[3] including severe cases of bullying).

The most recent definitions of child maltreatment have largely addressed the dilemma of intentionality. Today, there is enough evidence to accept that child maltreatment is not an isolated event, but a process determined by the interaction of various amalgamated factors—biological, cultural, contextual—in which the intentionality of each element cannot be discerned. However, merely recognizing the presence of such dynamics does not detract from the child's experience of suffering. Is there intentionality when child abuse is the result of a series of psychosocial factors—such as poverty—that prevent caregivers from meeting the child's needs? Harm may or may not be the expected consequence, but in any case the intentionality of a behaviour should not define the existence or non-existence of abuse (Cicchetti & Toth, 2015; Pollak, 2015). The "intentionality" criterion is thus not easily applied in the context of torture in ChYA and requires careful consideration.

Severe physical or psychological suffering cannot be measured. In adults, medical and psychological consequences are often used as an approximation to suffering. This position has many problems, as the correlation between suffering and consequences is sometime weak or even non-existent.[4] This is already a challenge in adult forensic work but the situation is even more complex in children. It is often stated that children are "resilient" (UNVF, 2016). It should be said that children in "resilient environments"—including caring families—may *seem* to be "asymptomatic" or do not develop visible behaviors that are easy to detect. There are *always* consequences but detecting them can be challenging. The limited long-term follow-up studies that are available evidence both damaging clinical and non-clinical

[2] See Lenta (2017) for a debate on whether corporal punishment of children can amount to torture.

[3] See an analysis of discrimination against Roma as ill-treatment or torture here: https://www.amnesty.org/download/Documents/64000/eur010122007en.pdf

[4] Children subjected to watching crimes against parents can be victims of inhuman treatment because of the mental suffering intended by such conduct, regardless of whether the children present with post traumatic stress or not (Baro, 2006).

Table 1: *The difficulties in conceptualizing torture in ChYA*

CRITERION (CAT)	ADULTS	CHILDREN AND YOUTH
"Intentional harm"	- Intentional harm must be proven with adults	- Grey zone (i.e., female genital mutilation (FGM), corporal punishment)
"Severe physical or psychological suffering"	- Difficulties of "severity criteria" / forensic experts use assessment of clinical consequences as an alternative	- Often long-term attachment disorders, insecurity, lack of emotional regulation - In the short term, many children are resilient if the family is a source of comfort and understanding - Often non-clinical consequences (i.e., poor school performance, unspecific externalizing symptoms)
"Purpose"	- Information (i.e., confession, punishment, intimidation, discrimination)	- Exploitation (i.e., child soldier, sexual) - Submission / obedience - Adult ones (information, punishment, intimidation, discrimination)
"Public official or person in official capacity"	- Action by state agents - In non-state actors, the state can also be liable in certain cases if fails in its duty to protect	- The State is *almost always* obliged to protect and has a direct or indirect responsibility to protect infancy
"Not a consequence of a lawful sanction"		- What is a "lawful sanction"? (Are rules at closed institutions/schools, or cultural/religious rules imposed on children based on education or tradition, lawful sanctions?)

effects of torture in children linked to emotional, cognitive, moral or developmental issues (Björn, Bodén, Sydsjö, & Gustafsson, 2011; Halevi, Djalovski, Vengrober, & Feldman, 2016; Kaplan, Stolk, Valibhoy, Tucker, & Baker, 2016; Vervliet, Lammertyn, Broekaert, & Derluyn, 2014). There are often long-term consequences linked to either difficulties in emotional regulation, insecurity and tendency, to depression or to cognitive and attentional deficits, which might not be initially observable. The concept of Developmental Trauma Disorder (Sar, 2011; Van der Kolk, 2005) is the diagnostic label in the DSM-V that comes closest to defining what happens to children exposed to chronic and systematic abuse.

The detection is difficult as symptoms are often minor (educational difficulties as compared to same age children, unspecific externalizing symptoms etc.) and can be attributed to acute stress and anxiety. Thus, documenting suffering in children based on the consequences that might appear in a long-term follow-up is inevitably complex. The expert is faced with the short term *resilience* dilemma. There are different approaches to dealing with this, such as: (a) putting greater emphasis on the monitoring of international conventions than the documentation of individual cases; (b) lowering the standard of probe for ChYA, something that has already been proposed (Mendez, 2015), and; (c) considering

Table 2: *Purpose for ill-treatment and torture relating to* ChYA

FEAR & SHORT-TERM SOCIAL CONTROL		IDENTITY CHANGE	
Punishment	Interrogation	Discrimination	Exploitation
- Street children (police or paramilitary) - Children/ youth detained/interrogated in adult prisons - Children separated from relatives (i.e. US-Mex Border)	- Self-incrimination - Information from others (particularly parents and caregivers)	- LGBTQI discrimination - Torture in ethnic cleansing (for example, in the MENA region where basic rights are lacking)	- Child soldiers - Pedophilia - Sexual slavery
Education	Humiliation	Next of kin/ secondary victims	Cultural identity
- Corporal punishment at institutions/ isolation/ use of restraints - Corporal punishment at home when the State fails to protect	- Bullying and public humiliation - Internet-based exposure and harassment	- Children abducted and given up for adoption - Sons and daughters of torture survivors -Sons and daughters of persons detained or disappeared	- Female Genital Mutilation - Virginity testing - Sterilization - Handicapped ChYA

intentionality rather than suffering as the basis for analysis, specifically when there is a clear purpose, as has already been proposed for adults (Pérez-Sales, 2017).

The convention suggests five examples of *purposes* of actions to be considered torture: information, confession, punishment, intimidation or discrimination. Although they can certainly be applied to children, particularly interrogation, the two main purposes of ill-treatment and torture in ChYA are not directly addressed. These are exploitation and submission. In exploitation, an adult aims to attain control through fear in order to use the ChYA, as exemplified by child soldiers or sexual abuse of any kind. In submission, an adult aims to entirely transform a youth's identity for many different purposes.

Table 2 demonstrates how, under the label "torture in children and youth," there are a plethora of situations in which torture can take place. Although commonalities between them are not necessarily obvious, fear and identity change can be common themes that cut across these situations. Impacts on identity can be multiple; from distortions in worldviews, to even fragmented or dissociated sense of selves.

It is important to be aware that Table 2 represents the view of the perpetrator, but the purpose may be perceived as an entirely different one from the perspective of the ChYA. Violence, suffering, and pain have social, political or economic contexts that may not be evident to the child and young adult in question. For example, physical and mental pain inflicted on a child may be

interpreted as related to interpersonal, family or community relationships rather than the social or political conditions that may have fertilized the ground for the infliction of pain to take place. There is a need to explore subjective meanings to determine the exact nature and intensity of suffering. This is also necessary in adults but it has a more central role in children.[5]

A way forward in the forensic documentation of torture in ChYA could be to scrutinize those *torturing environments* that foster control through fear and identity change.

Involvement of the State: The requirement of a public official or person acting in an official capacity also entails challenges, as the State has the obligation to protect children and, thus, a direct or indirect responsibility in all cases of ill-treatment to minors.[6] The State can be considered accountable in the majority of cases described in Table 2. An example of the complexity of this point is FGM, where there is often a gulf between the law of banning and the implementation of formal laws (de jure) and de facto laws, such as traditions promoted by local authorities that they may perceive as licit acts (Table 1).

Not due to a lawful sanction: Children and youths are often subject to a plethora of regulations, such as rules and disciplinary measures at closed institutions, schools or social services facilities, or cultural and social norms at the family and community levels. The limit of a "lawful sanction," when viewed in the light of the other rights of minors, is a constant source of debate in legal and social arenas (Center for Human Rights and Humanitarian Law, 2015).

Most of the situations identified in Table 2 do not fall into the classical interrogational or coercive models of torture in adults. Therefore, they are covered by softer law that tends to consider them as forms of cruel, inhuman or degrading treatment.

Age, trauma, torture and self-perceived identity

Quiroga (2009) considers three different development stages of ChYA and how each group may be a target for different forms of torture:

1. Prenatal (1-4 years): Abduction of children born in detention, torture of pregnant women.
2. Early childhood (5-10 years): Forcing to witness atrocities against parents, committing atrocities, ill-treatment in closed institutions.
3. Adolescents (11-18 years): Torturing during detention as a punishment to the parents, torture for sexual orientation, political participation.

However, distinguishing ChYA torture from torture in adults may, in and of itself, be in contradiction with the self-perceived identity of someone who was adultized

[5] While an adult has an interpretation of the environment as something external to them, and can understand the origin of violence more easily, in the child's symbolic world violence can be interpreted as a consequence of one's own attitudes, emotions, thoughts and desires. There is a world of fantasies and meanings that can perpetuate abuse by justifying it. The victim-sensitive child interview will explore this world of fantasies and desires through non-verbal techniques that are rarely used on adults.

[6] See a discussion of the State's duty to protect children from abuse in all situations in Louise O'Keeffe versus Ireland (European Court of Human Rights, 2016). See an analysis of the sentence in https://strasbourgobservers.com/2014/03/13/the-states-duty-to-protect-children-from-abuse-justice-in-strasbourg-in-okeeffe-v-ireland/

since a very early age. Take the case of a 14-year-old child that grew up in the streets of a town and assumes the care of the elder brothers and mother (Brueggemann, 2018). Consider too, the 17-year-old sexual slave who was abducted and forcibly married to a member of a militia and gave birth to three children during captivity; she developed the role and identity of a mother that cares and protects for her children, and is seen as the adult figure by them (Yüksel, Saner, Basterzi, Oglagu, & Bülbül, 2018). In legal terms, the division between torturing ChYA and adults is clear. However, the forensic expert and the therapist need to work carefully with the ChYA to detect self-perceived identity and to adjust the assessment and intervention to the identity of the victim, alongside considering the rights that the age entitles.

Beyond age, the complexities of the interplay between trauma, torture, and identity are exposed in a recent review aiming to unify the many different conceptualizations of child sexual abuse (CSA), the most complex form of child abuse (Mathews & Collin-Vézina, 2019). The authors suggest four questions that can help. Firstly, is the person a child? That is, is the person either: (a) developmentally a child, or (b) below the legal age of adulthood or otherwise considered by the society's norms to be a child? Secondly, is true consent for sexual activity absent? That is, is the child either: (a) unable to give consent due to their developmental stage or lack of capacity, or (b) able to consent, but did not actually give true consent? Thirdly, is the act sexual? That is, is the act done either to seek any physical or mental sexual gratification for the abuser or another person, or is the act otherwise legitimately experienced by the child as a sexual act? Fourthly, does the act constitute "abuse"? That is, does the act: (a) occur within a relationship of power; (b) occur where the victim is in a position of inequality; (c) exploit the child's vulnerability, and (d) occur without true consent? All four should be met for CSA but in the experience of Mathews & Collin-Vézina most of these questions almost never have a binary yes/no answer. The ChYA may not be able to provide a clear answer, or the answer may be the consequence of power dynamics between perpetrator and victim. While these dilemmas might certainly appear when assessing sexual torture in adults, the abuse in ChYA is performed in an identity that is *under construction*. This implies that the desired objective of trying to take as a reference the voice of the children means that solving these ethical dilemmas demands a careful exploration of each of these four aspects. It does not have a straightforward answer.

The first section of this editorial has attempted to detail the ChYA group and its specificities and identify problems and challenges, while providing some preliminary suggestions related to possible ways to move forward in research. In so doing, the attempt has been to illustrate how this leads to more complexity for the Istanbul Protocol, a topic specifically addressed below.

Istanbul Protocol principles as applied to children and youth

Ethical Dilemmas

The Istanbul Protocol has some ethical principles that must be respected to ensure that the documentation of ill-treatment or torture has been done correctly (see IP, chapter 4 and Annex 1). For the forensic expert, however, applying the IP principles can be a challenge if there are no clear rules and guidelines. Consider the following areas, which are non-exhaustive:

Informed consent: How informed consent can be applied to children needs careful consideration and probably a reformulation, especially when parents or caregivers are not available or are considered part of the problem, as is the case with child soldiers or CSA. The following questions pose important ethical quandaries:

- How can informed consent and its implications be explained to ChYA?
- Is it possible to ask for truly *free* informed consent when most adults will be seen as an authoritative figure, children need a lot of self-confidence to have their voice heard, and children tend to accept what they do not understand?
- Can informed consent be provided *at all* in certain environments (i.e., prisons, juvenile centers, schools) where so many things depend on showing submission?
- Is *ex post facto* consent a realistic option?

Confidentiality: The IP suggests that parents or caregivers shall always be present in the assessment of children, an assumption that not all experts share (Thakkar et al., 2015). Situations shrouded in a sense of shame may mean that children feel the need to hold back information—particularly if caregivers are involved in the situation. Research has shown that comparing interviewing parents with play-diagnosis methods, most parents did not reveal significant symptoms, while important elements of distress appeared using other methods of diagnosis with the children alone (Björn et al., 2011). On the other hand, being alone with an interviewer for a child that suffered ill-treatment may, in and of itself, be a threat. Therefore, confidentiality needs to be re-thought. A way forward could be to define confidentiality in ChYA in terms of providing a secure environment for an interview, including assessing which elements and persons will guarantee this sense of privacy and confidence.

Security: Children and young people are particularly vulnerable to retaliatory measures when providing information on abuses. Monitoring mechanisms of juvenile institutions may underestimate the risks that ChYA victims assume when they denounce a situation. Most measures that can provide protection after the assessment are unsuitable; ChYA may not have the knowledge or the confidence to access a lawyer or a judge, make a complaint or answer a security phone.

Double loyalty: When parents or caregivers are involved in the ill-treatment or torture, either directly or passively, a challenging ethical dilemma is also presented to the ChYA. There is no "magic" solution, but clear rules and guidance are necessary for the forensic expert to protect the child from these "lose-lose" dilemmas and the almost inevitable subsequent guilt associated with them (Donohue & Fanetti, 2016; Mathews & Collin-Vézina, 2019).

Methodology and Timeline

Symbolic expression of suffering and use of drawings or projective tests: While acknowledging that non-verbal tools may provide useful information, there is also ample room for free interpretation by the expert doing the assessment. Drawings, sand play, and other similar methods of assessment can help to identity elements to explore. However, they have been questioned (Lilienfeld, Wood, & Garb, 2000; Veltman & Browne, 2002) and there have been calls for their use to be restricted in forensic assessment and court procedures (Allen & Tussey, 2012). They should not act as substitutes for the voice of the ChYA.

Time framework: As Anna Freud (1943) already identified, contrary to adults, young people do not tell their story to be able to deal with painful emotions but tell their story when they have dealt with their emotions and are thus able to tell their story. Creating a narrative can take months and even years. Therefore, it is very important to respect their time to talk (Jones, 2008, 2018). This clashes with the needs of a forensic report, particularly with an assessment in detention. Clear guidelines are thus needed on the minimum information required and the standard of probe to support allegations of ill-treatment without entering into unnecessary details of what happened. Especially in young adults, eliciting a detailed narration for forensic purposes (i.e., asylum claim) when the person is not prepared to process the strong associated emotions can lead to numbing behaviors (i.e., drug consumption, cutting or other forms of self-aggression) or externalizing conducts (Donohue & Fanetti, 2016). It is not always clear how much the expert needs to press the young survivor for a detailed account when even the concept of a "report" and its usefulness might not be self-evident, and when talking is extremely painful.

Privacy: Information can be stigmatizing and harmful, particularly among teenagers and children. Information of a case coming to light can lead to stigma. Access to forensic reports, especially to perpetrators or institutions linked to abuse, can be an important issue to consider.

Witnessing in court: Beyond the forensic work are the special provisions to protect children when witnessing in court, but there are additional important measures to be taken (Beresford, 2005).

Assessment of Consequences

Resistance: In the short term, most children may be resilient if they can be reassured and find an internal logic to what is happening to them. But resistance does not mean resilience (Masten, 2019). The child might present with unspecific symptoms of anxiety and fear. Damage and consequences are often developmental and thus long-term. In contrast to adults, the forensic expert, besides paying attention to acute suffering and acute stress symptoms, might have to assess risk factors and vulnerabilities. Acute symptoms could be misleading, and resistance (e.g., understood as adaptation) may wrongly suggest a low level of suffering (Halevi et al., 2016; Montgomery, 2010; Panter-Brick et al., 2018; Suarez, 2013) or an apparent absence of damage. Nonetheless, assessing suffering and damage must at least include: (a) traumatic symptoms (including dissociation); (b) developmental problems, and; (c) attachment disorders.

Subtle damage when ill-treatment is prolonged: It is particularly important to consider the torturing environments in any evaluation. With children, there are two aspects that will need particularly careful assessment, yet marginal attention is given to them in adult cases (Table 4):

1. *Elements that foster fear*: especially threats (i.e., of pain to relatives, peers and others) and the context in which the ChYA is isolated from their parents and caregivers that could be a source of security and reaffirmation.
2. *Elements that question the self and identity*: especially when these elements are not defined, but in construction, and the ChYA is particularly vulnerable to emotional, cognitive and group manipulation.

Table 4: *Elements to be explored in forensic assessment of torturing environments that target identity in children*

1. *Isolation:* Isolate the child physically or psychologically from the influence of care givers or normal environments.
2. *Break-up with the past:* Everything that belongs to the past must be eliminated, including family and community ties.
3. *Stimulus control:* Regulations, rituals, codes, structures and planning prevent children from developing and exercising free will by accustoming them to a planned and submissive life.
4. *Fear to terror:* It can be caused by threats of pain or actual pain (e.g., trafficking, child soldiers, street children) or by the psychological internalization of fear, for example through the use of humiliation, rejection or differences in use or handling (e.g., child abuse, bullying, gender violence, sects).
5. *Lack of control:* Environments where everything is under strict rules and norms and prevents the child from exercising any control (e.g., seclusion centers, institutions).
6. *Helplessness and arbitrariness:* The institution or the perpetrator is the ultimate decision-maker without necessarily having to be logical in these decisions (e.g., child soldiers, sexual exploitation).
7. *Use of the body:* Normalizing the breaking or dissolution of bodily limits and intimacy.
8. *Affective and emotional manipulation:* The child is involved in overwhelming emotions that progressively lead to confusion and ambivalent attachment and dependency on the perpetrator (e.g., corporal punishment, interrogation).
9. *Breaking cognitive patterns, beliefs and worldviews:* Irreversible changes in the way human beings are perceived, in the principles of trust, kindness and reciprocity.
10. *Questioning of moral principles:* The child/young adult experiences how the differences between right and wrong, between good and evil, are blurred, subject to ethical dilemmas in which survival is at stake (e.g., interrogation, child soldiers, abuse).
11. *Group pressure:* Exploiting the need for belonging and attachment needs (e.g., closed institutions, LGBTQI discrimination).
12. *New paradigms*: Readings, re-education, control of behavior and attitudes by supervisors or leaders and internal control systems, achievement of objectives, reinforcement of progress in the right direction and punishment of deviations (children abducted, LGBTQI discrimination).

Assessment of what the child suffered and lost: An important difference is also to assess what could have happened to them if the ChYA had not been submitted to the situation in areas such as family, life projects and goals, and community damage.

Psychometric analysis: There is also an urgent need for validated trauma and mental health screening tools for children and youths who might have undergone ill-treatment and torture (Gadeberg & Norredam, 2016).

Consistency Analysis

Consistency analysis also poses specific challenges when:

- No clear description of events can be obtained in relation to trauma, but also to difficulties of expression due to age, education and developmental stage.
- Few cases have physical sequelae.
- Psychological symptoms are quite unspecific and elusive (i.e., bedwetting), and depend on being in a supportive family environment. Distress is mostly expressed through syndromes, while a court expects a diagnosis, such as PTSD in adults.
- In detention and other situations, ChYA have lost regular contact with parents or caregivers, and access to sources that enable triangulation of information are unavailable.

All these very specific difficulties have one clear implication: using the four standard levels of consistency analysis as those suggested by the IP for use with adults (maximum consistency, highly consistent, consistent, inconsistent) would probably mean that in most cases the forensic expert would have to resort to the lower levels of consistency. Although there is no data comparing consistency in adults and ChYA, it would be appropriate to assess whether the categories in the case of ChYA should be adjusted to the kind of information that can be obtained in a child interview.

Credibility in the forensic assessment of children: Additionally, in children, there are specific concerns related to credibility. There are no reliable estimates of false allegations of abuse in children and how many of them are due to lies, and how many to false or induced memories (Laney & Loftus, 2013).

A conceptual distinction should be drawn between "credibility" and "reliability." While in penal procedures credibility of the description of events is important, in administrative procedures, such as an asylum claim, it is important to assess that the child provided a truthful account, even if some of the facts are incomplete, out-of-date or inaccurate. There should be different levels of standard of probe (UNHCR, 2015). There is no agreement on how best to assess credibility in children. Content-based analysis is accepted as the best available procedure insome courts, although most reviews show, that in fact, it lacks enough basis to be accepted as evidence (Vrij, 2005). A good investigative interview with open questions seems still the best option (Beresford, 2005; Donohue & Fanetti, 2016; NICE, 2017) when added to an analysis of contextual and relational criteria (Baita & Moreno, 2015). From the perspective of the forensic expert, in spite of the recent increase in research on how experts, jury, and courts make an impression on the credibility of the child, there is no agreement on how to conduct this properly and measure it (Voogt, Klettke, & Thomson, 2017).

Summary

The forensic assessment of ill-treatment and torture in children and young adults has important challenges. It draws its conceptual grounds from the theoretical fields of child violence, child abuse, and child sexual abuse, but there are distinctive elements in torture that need to be addressed. Children and youth are a unique group, yet this uniqueness is not fully researched or reflected in the IP guidelines in its present conceptualization. Patently, there is ample ground for theoretical research from ethical, conceptual and clinical perspectives.

In this editorial, we have attempted to outline a map of core elements that would help readers to have an overall view of challenges and possible ways forward. We have emphasized situations in which severe suffering is inflicted on children and youth but the intentions and purposes are blurred, and specific elements regarding purpose imply a different consideration of what can be considered as torture methods or torturing environments. Documentation of suffering when many ChYA are apparently resilient or have minor complaints is also a challenge, because the impact can sometimes be devastating yet undetectable until many years after the events. A way forward is to explore risk assessments and link clinical findings with protection issues. Finally, the way that consistency statements are made, and the complexities of credibility analysis, add additional elements that need guidelines. Perhaps not everything can be solved, but academia has a clear role to play

in supporting the forensic investigation, documentation, and rehabilitation of victims of torture in children and young people.

New generations are emerging in many countries in the Global South that demand strong social changes, especially relating to gender issues and democratic liberties. The experience of some failed *spring movements* and the plethora of ongoing democratic challenges around the world suggests that ill-treatment and torture of young people is likely to increase in future years, to repress these movements.

In a time when there is an update of the Istanbul Protocol and children and torture is one of the topics for a cross-cutting analysis, it might be interesting to consider gathering information within a special section or chapter that unifies and addresses all relevant information.

In this editorial, we can only highlight some of the issues in the field of torture of children and young adults; unfortunately we cannot explore them further due to the dearth of published studies. Researchers must dedicate more energy to this area and many of the points raised in this editorial identify challenges that ought to be taken on, as well as possible strands of research to be explored further.

In this issue we develop a special section on *Forensic documentation of torture: Reflections and learnings on the Istanbul Protocol*. In the Delphi study on priorities for research in the field, recently published in this journal (Pérez-Sales et al., 2017), the panel of experts considered as the second most important topic: "Outcomes of the Istanbul Protocol. Impact of documentation of torture in the decisions of the judicial system." The experts were interested in knowing if forensic documentation of torture really impacts judges in their decisions and which elements are most influential. Overall, the five papers collected in this section give a global perspective to elements that explore this line of research into pertinent issues for which we lack empirical data. There are more articles to come that could not be included in this issue.

Myriam Rivera and co-authors have conducted a mixed methods analysis on how to integrate a participatory approach with anthropological perspective in the forensic assessment of the survivors of the Santa Barbara massacre in Peru, in the framework of a litigation in the Inter-American Court of Human Rights. The authors show that the Istanbul Protocol can successfully include a participatory approach and an anthropological perspective. Rembrandt Aarts and colleagues analyze a broad sample of nearly one hundred medico-legal reports from the Netherlands within the framework of international protection applications. They show that only medical evidence, and not psychological evidence, predicts a positive outcome. Francesca Magli and co-workers analyze forensic medical reports based on the Istanbul protocol carried out by the Milan Institute of Forensic Medicine to show the limitations of undertaking only medical assessment of external scars, making the case for a full application of the IP. Vesna Stefanovska analyzes the landmark 1976 Ireland vs UK judgement of the European Court of Human Rights, which established jurisprudence on the distinction between torture and cruel, inhuman or degrading treatment, based on the severity of suffering criterion. The author analyzes the available data on the long-term evolution to show that there now is sufficient evidence that the cases involved torture. The fact that the Court recently refused to re-open the case with this new available evidence constitutes, in the author's view, the loss of an historic

opportunity to redefine the criterion of severe suffering in the context of the distinction between torture and CIDT. Rohini J Haar and colleagues present the results from a worldwide survey on the uses and applications of the Istanbul Protocol and the potential risks and benefits of updating it. Connected to this main section, Bojan Gavrilovic puts forward a psychosocial and legal reflection on the difficulties for prosecution of perpetrators of sexual violence in post-conflict Iraq.

This issue also includes a small section on *Sport and Exercise as Rehabilitation Tools for Torture Survivors*. Shakeh Momartin and colleagues from the STARTTS center present preliminary results of using Capoeira with refugee adolescents and youths in schools in Australia, showing positive results in the areas of emotional regulation, self-efficacy and adaptation to the environment. Rebecca Horn and co-authors present preliminary qualitative data on the collaboration between the Arsenal Football Club and Freedom for Torture, whereby Arsenal coaches use football as a healing tool. The paper offers numerous and very practical reflections from both participants and coaches.

Following our past Special Section on Forced Migration and Torture—see *Issue 2018(2)*[7]—Fabio Perocco reflects on the positive and negative aspects of the recently approved Global Compact on Migration, Prof. Nils Meltzer on the importance of torture in the context of migration as a priority for governments and organizations, and Gerald Grey on the separation of children from their relatives in the US-Mexican border as a form of torture. Together, articles—along with other important contributions in the form of book reviews, a news story and letters to the editor—put forward an exciting collection of papers that combine theory and practice that we hope will be both stimulating and useful to readers of the *Torture Journal*.

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Psychosocial and community assessment of relatives of victims of extra-judicial killings in Peru: Informing international courts

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Key points of interest

- This paper proposes the need to include a communitarian perspective in the forensic documentation of human rights violations.
- Addressing the community impact and the local idiom of distress can enable a deeper understanding of survivors' long-term sequelae following human rights violations.
- Psycholegal accompaniment for victims, using a participatory research approach, is essential for the proper documentation of the consequences of violence in complex contexts, and the articulation of meaningful reparation proposals.

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Abstract

Introduction: During the Peruvian internal armed conflict, fifteen members of the Santa Barbara community were collectively executed by state agents, and their relatives were made victims of persecution, torture, and imprisonment. The case, known as the Santa Barbara massacre, was brought to the Inter-American Court of Human Rights. The documentation of individual, family and community impacts for the Court became a challenge due to the need to address cultural, geographical, political and community aspects. This paper aims to discuss the complexities of forensic documentation of human rights violations using a psychosocial and communitarian background. *Method:* The assessment included seven survivors from three different families. Both qualitative and quantitative instruments were used. A participative action research framework guided the design, documentation process, and discussion of outcomes with the survivors. *Results/discussion:* The report included four levels of documentation embedded in the Istanbul Protocol framework: clinical impacts from a western perspective, emic formulations and cultural idioms of distres, communitarian

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perspectives, and a proposal of reparation measures for the Court. Individual analysis revealed chronic mental health sequelae of forced displacement, imprisonment and torture. Local idioms of distress (in Quechuan, "pinsamientuwan," "llaki," "ñakary," "umananay" and "iquyay") deepened the understanding of the damage faced by the survivors. The analysis of the community uncovered three main areas of collective damage: broken social and cultural identity, lack of political participation, and loss of perspective on the future. Regarding reparations, survivors highlighted the pursuit for justice, the dignified remembrance of their loved ones, social re-inclusion of displaced persons into the community, education for offspring, and measures for the preservation of their community's identity and culture. *Conclusions:* Psycholegal accompaniment for victims through a participatory research approach is essential for the proper documentation of the consequences of violence in complex contexts. It is also essential in guaranteeing that the forensic documentation of the impact of political violence can be reparative for the survivors in itself.

Keywords: Psycholegal assessment, mental health, enforced disappearance, torture, transitional justice

Introduction

The so-called "internal armed conflict" (1980-2000) was the longest and most destructive war in Peruvian republican history. The Peruvian Maoist revolutionary movement known as "Sendero Luminoso" launched political and military actions to replace the bourgeois democracy in an impoverished country with flagrant social imbalances. Later, the Túpac Amaru Revolutionary Movement (MRTA) and other armed groups joined the violent actions. On the other hand, the Peruvian state practiced systematic violation of human rights to eliminate political resistance and maintain the status quo.

The Truth and Reconciliation Commission (TRC) described the enormous impact of the war in terms of human, but also political, economic and social costs. It described how the conflict depicted the fragility of the rule of law and democracy. Poverty, marginalization and undermined family structures were exacerbated by the conflict. The most affected populations were Quechua-speaking highland communities, who were already excluded to some extent, and whose daily subsistence was based on agriculture and collective work (TRC, 2003). They suffered both state terrorism and insurgent military actions.

The two decades of conflict led to the collapse of the national security system, causing the regions to become isolated and the communities to become fragmented. The three democratically elected presidents, while combating the insurgent actions, used systematic authoritarian policies that included widespread human rights violations, such as extra-judicial detentions, torture, rape, enforced disappearances, and massacres of entire communities (TRC, 2003). Besides the approximately 70,000 fatal victims, the TRC highlighted that more than 600,000 people were forced to flee their hometowns, thousands were disappeared, and thousands more were detained or tortured. In Peru, torture was one of the most widespread violations of human rights. Recent actions to prevent and punish torture, and to offer access to justice for the victims, are still insufficient (Centro de Atención Psicosocial CAPS, 2016).

The objective of this paper is to present the complexities in the psychosocial and

community assessment of torture survivors after a massacre. We present the process of documentation related to Case No. 10.932 *Santa Barbara Campesino Community vs Peru*, which was subject to the attention of the Inter-American Court of Human Rights (ICHR).[1]

The massacre in Santa Barbara

About the Community

Santa Barbara (4,380 meters above sea level) is an isolated community in the highlands of Peru, with temperatures between -5°C and 15°C all year round. The community comprises a small group of houses made of basic materials, with no water supplies or modern sources of heating. Due to extreme poverty and lack of state presence in the area, there are still no public services available, such as paved roads or electricity. Schools and health centers are up to three hours walking distance from the community.

The Sequence of Events

In 1991, a state of emergency was declared by the government in many regions of Peru to recover control of the country, combat revolutionary actions, and deter their potential supporters in local communities (TRC, 2003). The state of emergency permitted permanent military interventions in communities and the detention of civilians without judicial orders.

On July 2nd, 1991, two military patrols arrived in Santa Barbara where they interrogated community members in relation to the movements of Shining Path in the area. The army illegally detained 15 people; two were elderly, four were women (one of whom was pregnant), two were men, and seven were children (between one and seven years old).[2] The army made them walk for hours to an abandoned mine, where they shot them and detonated their bodies using explosives.

The soldiers burnt the families' houses and stole their belongings, animals, and other goods. The military patrols surrounded the community to ensure that all members were captured, in what was considered by the ICHR as a carefully planned operation.[3]

The sons of the elderly people were not in the community because they were working as temporary peasants in other communities nearby. When they returned to their hometown, they found destruction and chaos and immediately started looking for their disappeared family members. After following the footprints of their relatives, and speaking to neighboring communities, they arrived at Mine Misteriosa. Here they found the remains of their parents, wives, and sons, which exhibited signs of being tortured, shot, burnt, and detonated. In a state of shock, they turned to local authorities and legal agents to seek justice. The response they received, however, was contrary to their expectations.

In the days following the massacre, the army deployed more military patrols to the area of Santa Barbara. This new military incursion seemed to be directed at closing the mine and removing any trace of human remains. The army captured 23 peasants, some of whom were the surviving family and community members of those massacred. Those arrested were walking to the mine, expecting to meet the local authorities and

1 https://ijrcenter.org/2015/02/19/inter-american-court-of-human-rights-holds-107th-session/

2 https://cejil.org/es/comunidad-campesina-santa-barbara

3 http://www.corteidh.or.cr/docs/casos/articulos/seriec_324_esp.pdf

a judge to attest the facts. However, the authorities and the judge never arrived, stating that their car ran out of fuel on the way to the mine. The army was waiting instead and kept the peasants tied and in captivity for more than seven hours. During this detention, the peasants learned that the army completed three visits to the mine to clear the human remains (Rivera-Holguín & Pérez-Sales, 2015).

The relatives and community members were then ordered by the military and state agents to walk for hours in the highlands, in extreme weather conditions without food or water, to a remote location where they were placed in a shed and prepared to be shot one by one (Rivera-Holguín & Pérez-Sales, 2015; TRC, 2003). By chance, one of the state agents read their identity cards and discovered that one of the captives was the brother of a local judge. This serendipitous finding saved the peasants' lives and they were ordered to leave the area and never return. Two weeks later, the authorities and the judge went to Mine Misteriosa to document the absence of human remains. However, the community witnesses were too afraid to go back.

Families and communities were intimidated and received death threats. Information about their relatives' whereabouts was witheld, and evidence was destroyed to prevent families from looking for them (Rivera-Holguín & Pérez-Sales, 2015; TRC, 2003). Undaunted, the survivors of the massacre continued their struggle to attain justice and denounced what happened in a local court. Consequently, some of the survivors were again detained and accused of cooperation with terrorists. They were sentenced in trials where the judge and the alleged witnesses were hooded, supposedly for security reasons, and were condemned to lifelong sentences in high-security prisons as members of Shining Path. They endured isolation, torture, and threats for around 20 years.

Other family members decided to move to different areas and have lived in isolation, experiencing persecution, harassment, hostility, social exclusion, and discrimination ever since. This involved concealing their identities and family names to avoid being labeled as "threats," to the point that they did not

Photograph 1: *Remains of the main house and annexes previously belonging to their daughters and parents-in-law*

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even want to be part of the International Court's legal process.

This was not an isolated case. The final report from the TRC (2003) identified what happened in Santa Barbara's community as part of a wider systematic practice of state terrorism to intimidate and control highland communities.

In spite of imprisonment, marginalization, poor health, and poverty, survivors have continually fought for their rights and justice (Rivera-Holguín & Pérez-Sales, 2015; Suárez & Suárez, 2016). Despite the national indifference and these precarious conditions, surviving victims launched social organizations to look for their disappeared family members, protect each other, and feed and school orphans (Suárez & Suárez, 2016; TRC, 2003).

International psychological expert reports after human rights violations

After trying and failing to find justice in the Peruvian law system, survivors of the massacre of Santa Barbara had the chance to appeal to the ICHR in San Jose, Costa Rica. The case was accepted, and an expert psychological evaluation of the survivors of the massacre was requested (Rivera-Holguín & Pérez-Sales, 2015).[4]

24 years after the massacre, the report evidenced how these events dramatically changed survivors' lives. Although medical sequelae were not prominent after so many years, the massacre left indelible marks, such as the altering of life projects, and the dramatic dislocation of the individual, familial, community and social relations in the area (Gómez, 2009).

As described by the TRC (2003), most human rights violations in Peru (79%) were perpetrated against indigenous Quechua-speaking peasants. Despite this, most of the formal regulations and procedures for justice failed to take into consideration concepts and customs relating to the cultural identity and wellbeing of indigenous victims (Patterson, 2016; Rivera-Holguín & Velázquez, 2017). The regulations and procedures for justice in Peru followed western-oriented legal rules, which mainly focused on the punishment of individuals, rather than a search for justice and wellbeing by enhancing the restoration of social bonds and conviviality within society (Ansión & Rivera-Holguín, 2017).

In the same vein, the reports of many psychological experts focus only on trauma and overlook the communitarian and cultural components of damage, and the victims' views and proposals on reparation. Other reports[5] to the ICHR also emphasized the need for a strong cultural component addressing the altered family projects, interrupted community and social relations, and damaged cultural aspects of the victims' lives (Correa, 2012; Gómez, 2009; Vargas, 2017).

4 http://www.iri.edu.ar/wp-content/uploads/2016/08/2-2016-derint-cidh-casocomunidad-Santa-Barbara-Perú.pdf

5 Clemencia Correa (Cases of Rosendo Cantú & Fernandez Ortega versus Mexico), and Nieves Gomez (Cases of Plan Sanchez and Dos Erres versus Guatemala) included psychosocial, contextual and cultural aspects of mental health, and described how these violations affected the identity of the whole community and altered the community's projects. Ruth Vargas (Case of Norin Catriman and other members and activists of the indigenous Mapuche people versus Chile) described the consequences of the violation of individual and collective human rights of the Mapuche etnia.

The ICHR has become more sensitive to these aspects (2004[6], 2009[7], 2010[8], 2014[9], 2015[10]) by delivering sentences and recommendations regarding memory and dignity, public acknowledgement, and access to health and education for the victims, their families and communities. However, the indigenous components of justice, which emphasize the restoration of social links and collective wellbeing, are still challenging western concepts of law (Rivera-Holguín & Velázquez, 2017).

Methodology

A participatory action-research process guided the design, fieldwork, and discussion of results. Group meetings with survivors were held to review the optimal ways to proceed with psychological evaluation and assessment, meetings, timing, and networking. Psychosocial support, communitarian accompaniment, and commemorative activities proposed by survivors were also included.

The study was developed in three phases between April 2014 and October 2015. The first phase involved participatory work, planning, and data collection. The second phase was concerned with data analysis and discussion conducted by the interdisciplinary team. During the third phase, results were validated by discussing preliminary results with survivors.

Psycholegal Accompaniment: A Collaborative Model for an Integrative Approach

The project relied on an interdisciplinary approach, based on close interaction between the psychological and legal teams. The lawyers regularly updated survivors on the legal process in accordance with their needs and demands regarding the possibility to have new DNA tests. Psychologists discussed their expectations, particularly in relation to the whereabouts of their relatives in the pursuit of justice. This process was handled in a caring environment,[11] sensitive to subjectivities, emotions, and culture. The psychological team provided detailed information to lawyers regarding the evaluation process, the emotional experience of the victims, and aided their understanding of grief, ambiguous loss, family and community dynamics.

The survivors of the massacre were assembled and took an active role in proposing activities for the restoration of dignity to their family members, in which authorities participated. For example, the involvement of local authorities and community members in discussing justice and reparation in public assemblies was

6 Corte IDH. 2004. Caso Masacre Plan de Sánchez vs. Guatemala. Sentencia 29-05-2004. Serie C. No. 105.

7 Corte IDH. 2009. Caso Masacre de las Dos Erres vs. Guatemala, Excepción Preliminar, Fondo, Reparaciones y Costas. Sentencia 24-11-2009. Serie C. No. 211.

8 Corte IDH. 2010. Caso Fernández Ortega y otros. vs. México. Excepción Preliminar, Fondo, Reparaciones y Costas. Sentencia de 30 de agosto de 2010. Serie C No. 215. Corte IDH. 2010. Caso Rosendo Cantú y otra vs. México, Excepción Preliminar, Fondo, Reparaciones y Costas. Sentencia 31-08-2010. Serie C No. 216.

9 Corte IDH. 2014. Caso Norin Catriman y otros (Dirigentes, Miembros y activistas del pueblo indígena Mapuche). Fondo, Reparaciones y Costas. Sentencia 29-05-2014. Serie C. No. 279.

10 Corte IDH. 2015. Caso Comunidad Campesina de Santa Barbara vs. Peru. Excepción Preliminar, Fondo, Reparaciones y Costas. Sentencia 01-09-2015. Serie C. No. 299.

11 This was deemed particularly important as legal procedures in Peru tend to be long-lasting and complex, which represented an additional source of distress for the families and communities.

important to them. Time was made for remembrance and building a collective memorial to their challenges and efforts. The survivors also promoted spiritual and commemorative activities—they organized a catholic mass, evangelical rites, and even a journey to Santa Barbara, where they performed a symbolic ceremony with candles, flowers, and prayers.

Participants: The seven participants had been looking for their disappeared family members for more than two decades before they had appealed to the ICHR. When the massacre took place, two of the seven survivors were minors. At the time of the study, the participants were between 26 and 60 years old, and they lived in different regions of the country. Only one of the survivors currently lives in the area of Santa Barbara, where most of the houses remain in ruins.

Instruments and procedures: A mixed method approach was used, giving pre-eminence to semi-structured individual and group interviews (Johnson & Onwuegbuzie, 2004) and the interviews followed the structure proposed by the Istanbul Protocol (UNCHR, 1999). The interviews were in Spanish and Quechua.

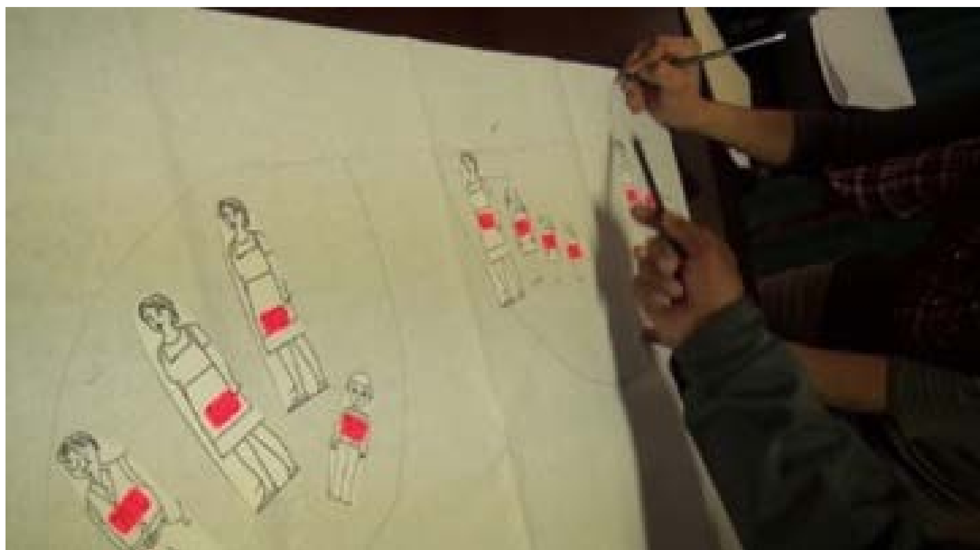
At least two individual interviews were conducted per participant, with clarifications sought between interviews (n=15). Group interviews were also conducted to elucidate emergent themes and explore contrasting findings through collective discussion (n=3). Interviews collected narratives of local idioms of distress and social suffering (Das, Kleinman, Ramphele, & Reynolds, 2000; Nichter, 2010; Pedersen & Kienzler, 2015). Interviews were transcribed in Spanish, based on the audio recording of the interview and then analyzed using an inductive approach. Two members of the team used an emergent thematic coding approach to code the interviews independently and then they contrasted and synthesized both proposals into one matrix with key concepts and examples (Gale, Heath, Cameron, Rashid, & Redwood, 2013).

Qualitative information regarding psychological impact was triangulated with three clinical questionnaires: the General Health Questionnaire (GHQ-12); the Hopkins Symptom Checklist (HSCL-25); and the Post-Traumatic Checklist (PCL-C), validated for Peruvian Quechua-speaking population by Pedersen, Gamarra, Planas and Errázuriz (2001).

Intercultural contexts challenged researchers to include participatory tools and to encourage survivors to have an active role in the process (Suárez, Balcázar, Garcia & Taylor, 2014). Thus, a timeline and drawings were used to assists survivors to portray their narratives. The use of genograms elicited a better understanding of the family composition and the impact of violence. Since Quechua families do not follow the western model of a standard biological family, co-creating the genograms with the interviewees offered an invaluable context for remembrance and disclosure. It also facilitated a more in-depth exploration of relevant topics during the interviews (Rempel, Neufeld & Kushner, 2007).

The aims, benefits and risks of the assessment were discussed with participants and they signed an informed consent form prior to data collection. Participants gave consent to the dissemination of the results of the assessment. The assessment was implemented with professional independence to make clinical judgments and provide impartial evidence. After each interview,

Photograph 2: *Genograms during assessment: Survivor describing the massacre*



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there was a closing session with individual and group exchanges, in which emotional issues were addressed. This was added to the healing commemorative activities proposed by survivors. Follow-up is still being provided.

Results and discussion

We distinguish between the clinical impacts in western and local cultural formulations, communitarian impacts as expressed by survivors, and the proposal of reparations.

Starting Point: The Individual Assessment from Western Concepts

The results of the GHQ-12, HSCL-25, PCL-M and the interviews revealed deep damage, despite the psychological assessment having been undertaken more than two decades after the massacre. The symptoms had evolved from immediate acute manifestations—including ideation and suicide attempts, severe dissociative experiences and sadness—to chronic distress that interferes with the interviewees' daily living, reflected in emotional, cognitive and behavioral symptoms, such as intense fear, feelings of vulnerability, irritability, difficulties in concentrating, temporary disorientation, and trouble with decision-making (see Table 1).

Survivors experienced prominent and intrusive re-occurring symptoms related to torture, detention and the finding of human remains. In most cases, fears were activated by the presence of state agents, and as sequelae of frequent nightmares. At least two people described prominent numbness, illustrating permanent difficulties with connecting to their feelings and the feelings of others since the massacre. Some of them exhibited loneliness and most of them reported difficulties in their relationships with others (De Haene, Rousseau, Kevers, Deruddere, & Rober; 2018; Navarro, Pérez, Lopes, Martinez & Morentin, 2016).

Table 1: *Long-term sequelae in survivors of the Santa Barbara massacre*

Age	Family losses in the massacre	Other experiences and suffering related to the context of internal armed conflict	GHQ-12, HSCL-25, & PCL-M	Description of current mental health
MH, 45 years old	Loss of 14 family members (pregnant wife, one-year-old-son, mother, father, sisters, cousin, nephews, and nieces).	Found bodies of his loved ones hidden in Mine Misteriosa (bodies were shot, exploded and burnt). Life threats and persecution when reporting the extrajudicial execution and enforced disappearance of his family. Accused by faceless courts to life imprisonment and later sentenced to 20 years without evidence. Physical and psychological torture during imprisonment. Transferred to prison 900 km. away from family members. Loss of community ties and family bonds. Loss of family's house, lands, animals, and livelihood.	GHQ: > 2** HSCL: 2 Depression indicators: 1.9** Anxiety indicators: 2.07** PCL: 57**	*"I'm better away, in another town. Better because when I visit my family, everything makes me remember."* *"I have the emotions blocked (…). The other day, when I arrived home, I couldn't cry… I can't cry, my heart gets hard (like a rock…). I'm beaten, I get strong to pretend I'm fine."*
ZO, 55 years old	Loss of 14 family members (wife, three daughters, father-in-law, mother-in-law, sisters-in-law, brother-in-law, nieces, and nephews).	Found bodies of his loved ones hidden in Mine Misteriosa (bodies were shot, exploded and burnt). Survived violent attacks and torture in the aftermath of the massacre when looking for his family. While kidnapped by the army, witnessed three explosions in Mine Misteriosa where his family's remains were found. Life threats and persecution when reporting the extrajudicial execution and enforced disappearance of his family. Accused by faceless courts and imprisoned for 11 years and seven months without evidence. Physical and psychological torture during imprisonment. Loss of community ties and family bonds. Loss of family's house, lands, animals, and livelihood.	GHQ: > 2** HSCL: 1.98 Depression indicators: 2.1** Anxiety indicators: 2.0** PCL: 84**	*"I dream my daughters, my wife. That mistreats me psychologically (…). The dreams, they appear once a week, every fifteen days, every two months (…) it's not steady. If it were, it could affect me more… but they have never stopped coming. My wife, my father-in-law, my daughters… that's a great anguish."* *"I spend a lot of time sad. With worry. I'm like absent."*
GH, 52 years old	Loss of 14 family members (mother, father, sisters, cousin, nephews, and nieces).	Found bodies of his loved ones hidden in Mine Misteriosa (bodies were shot, exploded and burnt). Survived violent attacks and collective torture in the aftermath of the massacre when looking for his family. While kidnapped by the army, witnessed three explosions in Mine Misteriosa where his family's remains were found. Life threats and persecution when reporting the extrajudicial execution and enforced disappearance of his family. Accused by faceless courts judges to life imprisonment and later imprisoned for eight years and nine months without evidence. Physical and psychological torture during imprisonment. Loss of community ties.	GHQ: 1 HSCL: Wasn't applied because of mild general health affection PCL: 42*	*"That's why my head fails a little, today we are talking and tomorrow I do not remember some words. [In] the tortures they hit my head. Tomorrow, I [will] forget what we talked about."*

ZH, 61 years old	Loss of 14 family members (mother, father, sisters, cousin, nephews and nieces).	Life threats and persecution when trying to report the extrajudicial execution and enforced disappearance of his family. Social discrimination and stigmatization. Loss of community ties.	GHQ: 1 HSCL: N.A. (mild general health affection) PCL: 27	*"I lost consciousness, I forgot everything, I didn't remember what I had to do with some things."*
VC, 41 years old	Loss of six family members (sister, brother-in-law, nephew, and nieces).	Loss of father in violent attack during the war one year before the massacre. Loss of mother and two sisters during the difficult years of isolation, while looking for justice. Forced to flee from his area and into hiding for 10 years. Collective isolation after being displaced from home and community. Social discrimination and stigmatization. Loss of community life, and family bonds, family's house, lands, animals, and livelihoods.	GHQ: > 2** HSCL: 2.68 Depression indicators: 2.6** Anxiety indicators: 2.8** PCL: 84**	*"Suddenly memories come to me and (…) I direct what I'm doing to other things. I think that this way of being absent at times affects me in the workplace."* *"Very quickly I react. I did not have that kind of reaction before. For example, when I do things in the community, I am thinking that the other will do bad for me."*
MG, 46 years old	Loss of four family members (sister, nephews, and brother-in-law).	Survived violent attacks, collective torture and life threats by the army when looking for her family. While kidnapped by the army, she witnessed three explosions in Mine Misteriosa where her sister and nephew's remains were hidden by the army. Persecution when looking for justice for her beloved ones. Loss of mother when still looking for justice. Loss of community life, family bonds.	GHQ: > 2** HSCL: 2.2 Depression indicators: 2.09** Anxiety indicators: 2.06** PCL: 70**	*"I can't go alone, everywhere my son always accompanies me or my husband, and we are all afraid."* *"The trauma is always re-living what happened…."*
AH, 26 years old	Loss of 14 family members (father, grandmother, grandfather, brothers, uncles, aunts, cousins).	Loss of father in the massacre when he was three years old. Loss of his mother at 12 years old. No access to education. Isolation and poverty. Fragile family bonds. Loss of community ties, and loss of family's house, lands, animals, and livelihoods. Social exclusion.	GHQ: 2 HSCL: NA PCL: NA	*"My father was murdered, I couldn't meet him. If he would be alive, he would make me study."* *"No one tell me about it, I don't know why. They don't want to talk."*

** Severe impact *Moderate impact

One Step Further: Recognizing Emic Formulations and Cultural Concepts of Distress

Cultural diversity and contextual understandings are key issues when identifying symptoms of distress in a non-western populations. The survivors expressed their suffering through the concepts of "pinsamientuwan," "llaki," "ñakari," "umananay" and "iquyay."

"Pinsamientuwan" (the experience of having worrying thoughts throb inside one's head) could be understood as a continuum that goes from not being able to think ("manan pinsamientuwan") to feeling full of worrying thoughts ("tutal pinsamientuwan"). Pedersen & Kienzler (2015) in their review of local idioms of distress in the Peruvian Andes stated that perceived extremes on this continuum are considered serious cases by the community. "Pinsamientuwan" is closely related to the idea of "rumination" and "thinking a lot," that is also described in other contexts (see Hinton, Reis & Jong, 2015). It is associated with headaches, but also with damaged intergenerational relations, isolation and silences in the families.

Survivors attribute "pinsamientuwan" to the unfulfilled desire to learn of their families' whereabouts, frustration at the lack of response from authorities, and the difficulty of sharing these sequelae with others: *"I'm always worried, a lot of thinking (…) my brain hurts, when I remember, my head only worries me"* (MG, 46). "Manan pinsamientuwan" was also mentioned: "*that's why for a while I'm distracted, like lost, I don't remember, suddenly my mind is blocked (null), my memory is blank*" (MHQ, 45).

The survivors describe their emotions during these years as "llaki" (comparable to constant painful memories) and "ñakary" (external suffering brought to the community and extended to all individuals). They are attributed to the cumulative impact of events spanning years and are seen as the embodiment of suffering (Malvaceda, 2010; Pedersen & Kienzler, 2015; Theidon, 2004). The survivors also associate "llaki" and "ñakari" with current symptoms of sadness, distress, constant tiredness, apathy, and uncertainty:

> *"I got up alone and cried, everybody noticed that any time I lost my head. This is too sad (too much), I went to my house and it was all burnt, my mom's belongings, everything (…) I cried to the mountains. We were confused, desperate"* (MH, 45).

Suffering and living with permanent sorrow interfere with their daily lives. Participants reported that they will never be the same again, as both body and soul are affected: *"with that we live, we are totally forgot, half traumatized. In my house I even close the door and leave my keys inside—that's because I have no mind, I lost several relatives"* (ZH, 60). The language of pain stretches beyond words and can be traced in the interaction between social relations and the body. "Umananay" as described by Darghouth, Pedersen, Bibeau, and Rousseau, et al. (2006), refers to a sort of headache that connects body and emotions within a framework of suffering, and familial and social problems. For example, ZO said, "*since that date my brain presses me (me ajusta), my heart stirs me (me agita)* (…). *It hurts more when I start worrying*" (ZO, 55). In the Andean culture, body and mind are connected and constantly interact with nature and the environment, meaning that chronic sorrow affects everyday performance. The term "iquyay" (weakness and pain in the body) expresses this interconnectedness between mind and body, and between sorrow and physical pain (Malvaceda, 2010; Theidon, 2004, 2006). Survivors described feelings

of weakness and lethargy as connected to despair and sorrow: *"my arms hurt as if someone punched me"* (MG, 46), which prevented them from performing productive and social activities.

Social suffering can be described as the relationship between physical pain, traumatic events, and worrying grief-related thoughts (Das et al., 2000). This can be seen in the accounts of survivors: *"my mom cried a lot, with headache, she died with that. Her head ached, she cried a lot, (because) my sister was lost and her little children (...) my mother complained about her head, we gave her herbs."* (MG, 46). That profound and insurmountable pain is transmitted to the following generation; when confronted with the past, the mother, whose death is attributed to "umananay" stated, *"my brain hurts when I remember, when I worry (...) it feels as it will explode"* (MG, 46).

Other parts of the body also experience pain, which is often the consequence of poor living conditions during their search for justice—total "pinsamientuwan," mistreatment during imprisonment, or the sorrow and despair derived from extreme violence: *"current pain in the spine, in the waist (...) after I've slept on the ground, I might have got cold in there, in the prison of Ayacucho"* (GH, 52).

Survivors expressed their suffering and displayed an even closer bond to their belongings, their animals, plants, river, mountains and wind:

> *"When I'm around (my land), I see my house totally black, burnt, and from there I do not remember. I feel despaired. I see the dead puppy, the head of the chicken, all undone. I feel despaired. I screamed, cried to the mountains (...) I drink water from the puquial. When I see my abandoned house, there is nothing (now), not even a plant"* (MH, 45).

However, nature is not the only setting. It is represented through different characters that take roles and participate in everyday life:

> *"I went (out of the house) to the door, I lost my mind. To the river we went. On the way a strong wind hit me and (then) I reacted, my brothers-in-law were behind, crying"* (ZO, 55).

Talking or screaming to the mountains depicts the interaction that Andean people have with their natural and supernatural entities. Survivors expressed their sense of connectedness with nature in their suffering experience in three ways. Firstly, they described nature as an entity that can be screamed at in times of suffering and sorrow. Secondly, it is viewed as a source of remedy in the healing process ("*drinking water from the puquial"* or providing *"herbs and sources for traditional rituals*" (MH, 45)). Finally, nature can be seen as an opportunity to re-connect with reality when "pinsamientuwan" or "llakis" are numbing their minds.

Even though most of these symptoms are persistent among survivors, they also express trust and hope in the future: *"I trust a lot, with support (...) I would like to go to therapy"* (MH, 45) and *"I have never lost hope"* (ZO, 55). As seen in other studies, survivors manage to express positive expectations and show resilience (Suárez & Suárez, 2016).

A Holistic Approach: Acknowledging the Communitarian Perspective

Survivors' narratives revealed that a community perspective exists beyond their individual ones. The grieving experience of the survivors is linked to current limitations regarding political participation, the performance of their cultural identities, and the development of a communitarian perspective on the future.

The community was never rebuilt, its members are dispersed around the country.

When the psycholegal team visited Santa Barbara, it was still as it was left in July 1991. The survivors never came back due to systematic persecution, horror and fear. Before the massacre they felt they were part of a community, but now they feel that they neither belong in Santa Barbara nor where they currently live.

The Andean culture of the highlands is organized around a collective system that supports survival in extremely difficult conditions, as found in the nuclear and extended family bonds:

> *"My parents needed support (…) I decided to live next to my father to help him with the animals. My wife's mother was a widow and her sons: one worked in Huancavelica and the other studied. I helped (my parents and my mother in law) both. That's what I dedicated myself to—my family"* (MH, 45).

The feeling of orphanhood generated by the absence of family bonds remains intense even two decades after the event. The disarticulation of the community and the lack of collective ties affected their collective and cultural identity. By becoming poor workers in the peripheries of towns, they lost what once shaped their identity and gave meaning to their lives, namely their participation in a network of social relationships, and their social capital: *"we were an organized family. We were a respected family. Until now many people still remember my father (…) and what are we now?"* (VC, 41).

These family bonds gave the opportunity to be part of the social life within communities where daily living is based on family work and being alone implies extreme poverty: *"I'm practically left alone. My brothers have their families"* (MH, 45). When membership of a community is impossible, suffering increases as survivors perceive themselves as "huaccha," a Quechua word referring to being alone, condemned to sadness, poverty, and orphanhood (Ossio, 1995). Due to the persistent consequences of displacement, imprisonment and torture, some of the survivors never had a partner and were not able to create a new family. The devastation of their birth families led to live as "huacchas."

For those who remained in neighboring areas of Santa Barbara, the disarticulation of their family threatened the roots of their identity due to fewer possibilities to engage in an active social life with group activities:

> *"We have lost our culture. (When we lived in the community) we practiced those customs, now we don't because they remind us of those cases (the massacre). That has led us to stop practicing activities as 'los matos,' 'the celebration of the Santiago,' 'all the saints' or gathering in Christmas. Because we are only two or three remaining people."* (VC, 41).

A community is also a space for political participation. The destruction of the community in the massacre meant that they were dispossessed of the opportunity to engage in communal political processes, exchange ideas, and take responsibility for community organization (Rivera-Holguín, Velázquez & Morote, 2016):

> *"Even though [in the neighboring community] they welcomed us, there was a limitation in our participation in the meetings, we were just refugees from another community. We were not full community members ('comunero') with the right to participate in all activities (…) When there are meetings at the community level, they do not give us the possibility to have an opinion at the same level as others. [They say] 'Why do they have to talk?' They do not belong here. Sometimes you hear comments that try to involve you with the situations from the past, as if you brought the violence with*

you and were a danger when we have not ever participated directly or indirectly in anything related to the violence. Why is there so much marginalization from neighboring communities if we did nothing?" (VC, 41).

As the above quotation captured, the non-reconstitution of their home community has left them isolated and unrooted. Additionally, hosting communities play a key role in the impact of survivors in the aftermath of the violence (Betancourt, McBain, Newnham & Brennan, 2014).

Finally, a key aspect of the communitarian life is a shared perspective of the future (Lazarus, Seedat, & Naidoo, 2017). The survivors repeatedly mourned for what their lives could have been like with resentment: "*What happened detaches us and harms us. We would have been living together*" (MH, 45); "*they took my life first with the massacre and then with the jail"* (ZO, 55).

In addition to the emotional implications of returning to Santa Barbara, the survivors presented the material costs of re-starting their lives in the community as almost insurmountable. Only one of the survivors, the son of a disappeared elder, lives close to the former community. With no family and few material resources, he lives in extremely harsh conditions: *"it's abandoned here, I wanted to build but there is no water (…) and I only have 20 little alpacas to survive… we do the best we can… "* (AH, 26). The feeling of ambivalence was pervasive amongst some of the survivors:

"Sometimes I think about going back and rebuilding my house, but I never make up my mind (…) If I were to build, it would be in my home town (…) I can make my life in my new city, but I miss my family (…) (When) I return from my home town to my new city, I remember the love of a mother who says goodbye, a dad who gives you advice. There is no longer that for me. There is no one to worry about if you are dead, sick or healthy (…) I am alone" (MH, 45).

Looking Forward: Responding to Harm

Addressing the future is also related to their current search for justice and the possibility of reparations. The seven survivors showed signs of resilience, resistance and some proposals for the future as other researchers also found in similar contexts (Melville & Lykes, 1992; Suárez & Suárez, 2016). They highlighted their pursuit for justice, and the need to build a better society, secure education for their children, overcome the effects of war, preserve their identity and culture, and live in their community.

Reparations are an essential way of providing dignity and recognition to victims and their relatives (De Greiff, 2008; Uprimny, 2009). The group addressed the right of victims of torture to receive reparation—both economic but particularly the non-monetary kind—including an acknowledgement of responsibility, apologies, burials, memorials, medical and other forms of rehabilitation, according to international precedents (Shelton, 2007). The psycholegal team did not suggest any specific measure but discussed the issue with each victim individually and also during work groups. The Peruvian Plan of Reparations proposed a host of reparation measures[12] but the Peruvian state has not

[12] The Peruvian Integral Reparation Plan (TRC, 2003) developed six reparation components: Symbolic Reparations, Health Reparations, Educational Reparations, Restitution of Civil Rights Reparations, Economic Reparations and Collective Reparations: http://www.psicosocial.net/grupo-accion-comunitaria/centro-de-documentacion-gac/violencia-y-cambio-politico/justicia-verdad-y-reparacion/251-plan-integral-de-reparaciones-gobierno-de-peru/file

implemented them fully. Thus, it has not tended to the needs of the victims, nor recognized the overwhelming impact that the war had on communities, including the unique challenges to mental health (Laplante & Rivera-Holguín, 2006, Macher, 2014, Rivera-Holguín & Velázquez, 2017).

Although the damage described by the survivors is irreparable, the reparations have a strong symbolic meaning that will not replace or repair what was taken from the survivors but will at least acknowledge damage and help them in partially rebuilding their lives (Hamber, 2008). One survivor emphasized *"how they [the State] would not compensate for the damage, never. They will never be able to compensate for the past, the wounds… the open sores in the heart"* (ZO, 55).

Survivors considered that the reparations should prioritize assurances around the State's search for their disappeared family members' remains, as this can dignify the memory of the people executed by the army, and ensure prosecution of those who were responsible.[13] They also stressed the mandate for economic reparation and measures of collective development in the area.

The expectation is that economic reparations will help with individual needs and also recognize the community as a center, and represent collective measures related to dignity, the prevention of violence, improved education and roads, and investment in animals as a source of development.

Exhumations of mass graves are necessary for mourning and for funeral rituals, and help survivors to process loss. In this case, explosions had taken place at least twice, so the possibility of finding remains after so many years was minimal. However, the relatives wanted the State to assume the task regardless. Survivors claimed: *"I'm asking for a new exhumation. Only then I will reach my full calm in life, to bury them"* (ZO, 55); and *"How much I would like (to find my sister)? [That] worries me a lot: she is not here. Some people found [the remains]. Is that true? (…) that is my wish, at least a small piece"* (MG, 46).[14] Even though there are recent laws[15] regarding the search for disappeared people in Peru, there are still thousands of families waiting for the implementation of these laws.

A key priority of the survivors was to dignify the memory of the victims. They proposed that this takes place firstly through memorial and remembrance; for example, the Peruvian state establishing local monuments and places of remembrance. Secondly, survivors believe in the importance of educating society to prevent the stigmatization of victims as people who bring violence to communities: VC (aged 41) stated, *"the government has to make the monument; the government has to*

13 For instance, one of the main people responsible for the massacre fled to the United States.

14 After the sentence of the ICHR, the human remains were identified and given to the families for a proper grave. The psychological expert report (Rivera-Holguín & Pérez Sales, 2015) contributed with a host of specific recommendations regarding reparation that were considered by the ICHR in its sentence. http://www.corteidh.or.cr/docs/casos/articulos/seriec_324_esp.pdf

15 The Law No. 30470 was enacted in 2016 to look for the disappeared missing people of the Peruvian internal armed conflict. In 2018, the Legislative Decree No. 1398 was enacted to create the Genetic Bank to ease the identification of the disappeared persons. In Peru, more than 20,000 were disappeared during the period 1980-2000, and there are still 13,000 people with unknown locations. In the last 20 years, only 3,000 bodies have been restituted.

assume it, through the regional government," while MH (aged 45) communicated the following reflections: *"a memory, for children to know in the future what has happened in the community. (…) A monument devoted to the people that were murdered or disappeared"*. Another stated: *"As a symbolic reparation, the government has to name streets after the disappeared children to remember what happened to them. Youngsters do not know anything about the past, they may think: 'What might have they done?'"* (ZO, 55)

Regarding society in general, survivors proposed the inclusion of human rights in the national curricula of primary and secondary schools to educate students on their country's history of human rights violations.

Conclusions

This study makes a number of key contributions relevant to designing forensic research and reparation programs.

The participatory-action research design gave survivors a sense of control over the process and used a methodology that attempted to be a healing element in itself. The interdisciplinary and collaborative approach also allowed the psycholegal team to build a report in which the relatives could recognize themselves.

Community-based approaches may ease the interplay of individuals, families, context, culture, and other social determinants in the wellbeing of communities. They recognize community's participation, knowledge, identity and sense of belonging, thereby fostering social bonds that contribute to building a sense of control, and enhancing local leadership for social transformation. Embracing and promoting the role of victims in the process represents an empowering action and has a healing aim—recognizing in oneself the capacity to take active roles that can lead to finding new resources to cope with adversity. Searching for justice individually in Peru can be frustrating and can foster a sense of impunity. At the same time, sharing the experiences of the process of seeking justice allows the recognition of a common history and joint efforts to re-signify and rebuild social bonds. The forensic work showed that damage needs to be framed in the familial and relational spheres and that maintaining the family bonds, small as they were, was an important protective factor. The existence of family and collective bonds that foster the seeking of justice could be a future line of study in the field.

Incorporating these elements of participatory action research makes the forensic documentation a reparation process in its own right. This psycholegal dimension is key and it should be part of any legal process in the context of human rights violations.

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Appendix 1

Photograph 3: *Contemporary bedroom of house in Santa Barbara*

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Appendix 2

Photograph 4: *Remains of cooking materials made of stone "Mortero"*

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Expert medico-legal reports: The relationship between levels of consistency and judicial outcomes in asylum seekers in the Netherlands

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Key points of interest

- Symptom-story consistency in medico-legal reports is associated with several factors such as gender, history of trauma and receipt of mental health care.
- Presence of physical signs and symptoms and their consistency with the refugee's story was positively associated with being granted asylum, but the presence of psychological symptoms and their consistency with the refugee's story was not.

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Abstract
Introduction: If asylum applicants need to prove that they have been persecuted in their home country, expert judgment of the psychological and physical consequences of torture may support the judicial process. Expert medico-legal reports can be used to assess whether the medical complaints of the asylum seeker are consistent with their asylum account. It is unclear which factors influence medical expert judgement about the consistency between an asylum seeker's symptoms and story, and to what extent expert medico-legal reports are associated with judicial outcomes. *Methods:* We analysed 97 medico-legal reports on traumatised asylum seekers in the Netherlands. First, we evaluated the impact of trauma-related and other variables on experts' judgments of the consistency of symptoms and story. Second, we evaluated the effect of experts' judgments of symptom-story consistency on subsequent judicial outcomes. *Results:* Gender, receipt of mental health care and trauma-related variables were associated with symptom-story consistency. Positive asylum decisions were predicted by expert judgments about the presence of physical signs and symptoms of torture, and ill-treatment and their consistency with the refugee's story, but not

psychological symptoms. *Conclusion:* These results suggest that standardised procedures for the documenting of medical evidence by independent experts can improve judicial decision quality and the need to improve psychological and psychiatric assessments.

Keywords: Asylum seekers, refugees, torture, legal medicine, post-traumatic stress disorder, Istanbul Protocol

Introduction

Forced migration has been a global phenomenon in recent decades and the Netherlands has received considerable numbers (30,000 in 2018) of asylum seekers looking for protection (Ingleby, 2005; Jennissen, 2009). The decision to grant asylum status depends on numerous factors, including the consistency and credibility of the asylum seeker's story, availability of objective evidence, host country policies, and the emotions of both asylum seeker and decision maker (Herlihy & Turner, 2013). Disturbances of emotion and memory can influence the consistency of an asylum seeker's story; discrepancies in an account are often considered as evidence of fabrication and therefore reduce the probability of obtaining asylum (Herlihy & Turner, 2006; Schulz, 2008). History of torture or ill-treatment and the medical consequences thereof are often overlooked during the asylum procedure (Bruin, Reneman, & Bloemen, 2006). Several authors have argued that medico-legal reports should play a greater role in the procedure on this very basis. Medical evidence should consist of a standardised, written expert opinion about psychological and physical signs and symptoms of torture and other forms of ill-treatment (Cathcart, Berger, & Knazan, 1979; Jane Herlihy & Turner, 2007; Oomen, 2007). Physical scars and content of intrusive recollections in post-traumatic stress disorder (PTSD) can provide an indication of their cause and may consequently be used as medical evidence. Evaluating physical scars after traumatic events can prove difficult and requires careful physical and psychological examination. A history of intrusive recollections, in combination with observable behavioural reactions to specific 'triggers', can also be supportive (OHCHR, 2004). The relationship between torture, ill-treatment and the medical consequences, such as scars or PTSD, plays a central role in experts' judgments of the consistency between an asylum seeker's physical and psychological state and their story. Asylum authorities normally have no medical background, lack medical understanding, and focus mainly on legal aspects. This explains why consistency between symptoms and story plays only a marginal role in the final decision regarding an asylum seeker's status (Lustig, Kureshi, Delucchi, Iacopino, & Morse, 2008; Wilson-Shaw, Pistrang, & Herlihy, 2012).

Since 1999, the Istanbul Protocol has set the standard for medico-legal investigations of asylum seekers and other victims of torture and ill-treatment (UN, office of the High Commissioner for Human Rights, 2004). Research into the practical application of the Istanbul Protocol indicates that there is room for improvement (Keten, Akcan, Karacaoglu, Odabasi, & Tumer, 2013). Several authors have also emphasised the importance of the Istanbul Protocol as a potentially effective approach to documenting torture, in order to build medical evidence, and secure justice for torture victims (Furtmayr & Frewer, 2010; Haagensen, 2007; McColl, Bhui, & Jones, 2012).

Asylum lawyers can request an expert medico-legal report if physical and psychological signs and symptoms are accompanied by a history of torture or ill-treatment (iMMO, 2017; Wilson-Shaw et al., 2012). European laws also imply that medical evidence in the asylum procedure is becoming increasingly important (European Court of Human Rights, 2010; Migration & Affairs (ACVZ), 2014). In asylum law, the granting of a residence permit by the authorities responsible for decisions on asylum applications is referred to as a 'status decision positive', whereas the denial of a residence permit is referred to as a 'status decision negative'. In 2015 the new European Asylum Procedure Directive was implemented, which requires asylum authorities to commission a medical examination if there are medical signs that torture or ill-treatment may have occurred (EP, council of the EU, 2013).

The factors influencing judgements on the consistency between an asylum seeker's psychological or physical state and their story remain unclear. The extent to which expert medical judgments influence the judicial outcome of asylum applications is also unknown. We analysed 97 medico-legal reports on asylum seekers in the Netherlands to investigate the variables associated with experts' judgments on the consistency between the asylum seeker's psychological and physical state and their story. The second aim was to compare the expert judgments on consistency with the subsequent judicial outcome. We defined the following specific research questions. Firstly, what trauma-related and other variables play a role in expert opinions about the degree of consistency of an asylum seeker's psychological and physical state and their story? Secondly, how do expert judgments about consistency in the medico-legal report relate to decisions about asylum applications?

We hypothesised, firstly, that symptom-story consistency would be associated with reported exposure to trauma, female gender and receipt of mental health care. Our second hypothesis was that symptom-story consistency would be associated with a positive judicial outcome.

Methods

Data Sources

This descriptive quantitative study of medico-legal reports used in the asylum procedure in the Netherlands used data from 97 reports written by independent experts working for the Institute for Human Rights and Medical Assessment (iMMO). All the reports were written between the foundation of iMMO in 2012 and the start of this study in June 2013. All experts are clinicians who have received training from iMMO. Whereas some experts may have a background in psychology, others may be medical doctors. Some of the reports are co-authored by two people with different backgrounds; for example, a physician and a psychologist.

iMMO is an independent, neutral and non-governmental organisation carrying out expert medico-legal reports for asylum seekers in the Netherlands. iMMO thereby contributes to the protection of human rights by facilitating timely and accurate identification of victims of torture and ill-treatment, in accordance with European asylum law and regulations (EP, council of the EU, 2013; iMMO, 2017). Asylum lawyers can request a medico-legal report in cases where they suspect that the individual is experiencing the physical or psychological consequences of torture and ill-treatment and that this has not been properly considered in the asylum procedure. These medico-legal reports include an expert judgment on the

consistency between the psychological and physical findings and the refugee's story. The medico-legal examination consists of a full mental and physical health assessment in a neutral environment. The examination usually takes several hours and can be extended if necessary. Where appropriate, a professional interpreter is present. Specific psychometric evaluations can also be performed, as well as specific parts of the physical examination. The reports produced by iMMO experts are written in accordance with Istanbul Protocol guidelines and include a joint evaluation of medical and psychological symptoms and global conclusions (iMMO, 2017; OHCHR, 2004).[1] iMMO office staff systematically review the experts' reports, which go through an extended process of peer review and feedback before they are used by the asylum lawyer to support a claim for asylum status. The peer review process focuses on adherence to the Istanbul Protocol, consistency of the report, and substantiation of the conclusions and language. We included in our dataset all finalised peer-reviewed iMMO reports produced up to June 2013. The degree to which the asylum seeker's story was deemed consistent with their physical and psychological symptoms of trauma was rated on a scale from 1 to 5, where: 1 = 'not consistent'; 2 = 'consistent'; 3 = 'highly consistent'; 4 = 'typical of'; and 5 = 'diagnostic' (OHCHR, 2004).

Data Extraction and Coding

Demographic and clinical data on asylum seekers, trauma characteristics, judicial outcomes, and symptom-story consistency were coded. We analysed the following trauma-related variables: history of detention, history of physical violence, and history of sexual violence.[2] Information about whether an asylum seeker was receiving mental health care was taken from available medical documents. Data extraction was performed by the authors, with any differences in interpretation of the reports being resolved by discussion, after which the consensus decision was recorded. Asylum lawyers provided written information about the judicial outcome of asylum claims as part of their routine feedback to iMMO. Outcomes were coded as 'status decision positive', 'status decision negative' or 'status decision still unknown'. Those asylum seekers, whose reports appear in this study, gave their consent to have their data included in an anonymised form for educational purposes. All asylum seekers were assured that their data would remain confidential.

Analyses

The influence of gender, history of detention, sexual violence, physical violence and receipt of mental health care on physical symptom-story consistency and on psychological symptom-story consistency was analysed using bivariate correlations. Judgments of the degree of physical and psychological consistency were cross-tabulated and their correlation was calculated to evaluate possible risk of multi-collinearity in the logistic regression analysis (see below). Associations between psychological consistency and

[1] The number of reports that systematically reported on the consistency between verbal and non-verbal expression and consistency of the description of events was low, so this was unable to be analysed.

[2] Note that 'history of physical violence' and 'history of sexual violence' refer to being subject to physical and sexual violence respectively. These terms are used in this sense throughout the paper.

refugee status decision, and physical consistency and refugee status decision, were also calculated using bivariate correlations. In addition, the influence of expert judgments on asylum decisions was analysed using a logistic regression analysis. The analysis was conducted with judicial outcome (0 = 'negative decision'; 1 = 'positive decision') as the binary dependent variable. Expert judgments of physical symptom-story consistency and psychological symptom-story consistency were the independent predictors. No other covariates were included. Cases for which refugee status decision was still unknown (N = 8) were excluded from the analyses.

Results

The reports concerned asylum seekers from 25 different countries, most often from Iran (N = 16), Uganda (N = 11), Sri Lanka (N = 10), Guinea (N = 8), and Afghanistan (N = 8). Table 1 summarises the demographic and clinical characteristics of the sample. The majority of the asylum seekers were male. The experts diagnosed almost all subjects with clinically significant PTSD. The vast majority of asylum seekers reported physical violence and over half reported sexual violence.

Data on the degree of consistency between the psychological and physical state of the asylum seeker and their story

Table 1: *Summary of demographic and clinical characteristics (N = 97)*

Variable	N (%)	mean ± SD, range
Age in years		28.6 ± 7.5, 13 - 61
Male	70 (72.2)	
Clinical diagnosis of PTSD	90 (92.8)	
Receiving mental health care in host country	51 (52.6)	
Number of months spent in asylum procedure		24.0 ± 27.4, 0 - 138
History of physical violence	92 (94.8)	
History of sexual violence	61 (62.9)	
History of detention or hostage-taking in country of origin	69 (71.0)	
Detention or hostage-taking in country of origin in weeks		21.5 ± 52.1, 0 - 225
Refugee status decision positive	67 (69.1)	
Refugee status decision (still) unknown	8 (8.2)	
Refugee status decision negative	22 (22.7)	
Consistency psychological symptoms[1]		3.71 ± 0.50, 2 - 5
Consistency physical scars[1]		2.76 ± 0.56, 1 - 5

[1]Scale Istanbul Protocol (1: not consistent,…, 5: diagnostic).

Table 2a: *Descriptive statistics of expert judgment on the presence of psychological and physical symptoms/scars and the degree of consistency with the refugee's story (N = 97)*

Symptom-story consistency scale	Explanation of symptom-story consistency scale	Psychological Symptoms N (%)	Physical Symptoms/ Scars N (%)
No symptoms present or not able to judge consistency	The expert was not able to judge the degree of consistency between the condition of the subject and the trauma described.	4 (4.1) [1]	27 (27.8) [2]
Not consistent	The condition could not have been caused by the trauma described.	0 (0.0)	0 (0.0)
Consistent	The condition could have been caused by the trauma described, but it is non-specific and there are many other possible causes.	1 (1.0)	6 (6.2)
Highly consistent	The condition could have been caused by the trauma described, and there are few other possible causes.	26 (26.8)	27 (27.8)
Typical	This is a condition that is usually found with this type of trauma, but there are other possible causes.	65 (67.0)	31 (32.0)
Diagnostic	The condition could not have been caused in any way other than that described.	1 (1.0)	6 (6.2)

[1] No psychological symptoms present or not able to judge psychological symptoms (N=4)
[2] Not able to judge physical scars (N=1), no physical scars present (N=26)

is shown in Table 2a. The vast majority of expert reports (N = 93, 95.9%) included a rating of psychological symptom-story consistency using the interval scale stipulated in the Istanbul Protocol. In most cases the asylum seeker's psychological state was rated 'typical of' someone who had experienced the reported type of trauma (N = 65, 67%). 71 reports included a physical examination of scars, 26 subjects did not have scars and, in one subject, physical examination was undertaken but the expert was not able to judge the degree of consistency. Most expert reports rated the physical scars as 'highly consistent' (N=27) or 'typical of' (N=31) someone who had experienced the reported type of physical trauma.

Table 2b presents a cross-tabulation with the consistency judgments of psychological symptoms and the consistency judgments of physical symptoms/scars. We found an inverse association between physical symptom-story and psychological symptom-story consistency ($r = -0.27$ $p = .009$).

The hypothesised variables and their influence on symptom-story consistency are shown in Table 3. Being female, presenting a history of sexual violence,

Table 2b: *Cross table with expert judgments on psychological symptoms and physical scars*

		Expert judgment psychological symptoms (N)					
Expert judgment physical symptoms (N)		0	1	2	3	4	5
0	No symptoms present or not able to judge consistency[1]	1	0	0	4	21	1
1	Not consistent with story	0	0	0	0	0	0
2	Consistent with story	1	0	0	2	3	0
3	Highly consistent with story	2	0	0	4	21	0
4	Typical	0	0	0	15	16	0
5	Diagnostic	0	0	1	1	4	0

[1] Not able to judge physical scars (N=1), no physical scars present (N=26), no psychological symptoms pre-

Table 3: *Associations between gender, trauma-related and clinical variables, and expert judgments of symptom-story consistency*

Associations with psychological symptom-story consistency	**Pearson correlation**	**P-value**
Male (vs. female) gender	0.23	0.011
History of detention	-0.14	0.447
History of sexual violence	0.27	0.004
History of physical violence	0.06	0.294
Receipt of mental health care	0.34	0.000
Associations with physical symptom presence and their consistency with the refugee's story	**Pearson correlation**	**P-value**
Male (vs. female) gender	-0.39	0.000
History of detention	0.34	0.000
History of sexual violence	-0.17	0.052
History of physical violence	0.35	0.000
Receipt of mental health care	0.10	0.460

and being in receipt of mental health care were significantly associated with expert judgments of higher psychological symptom-story consistency. The receipt of mental health care was most strongly associated with expert judgments of psychological symptom-story consistency. Being male, presenting a history of detention and presenting a history of physical violence were significantly associated with the presence of physical symptoms and a higher physical symptom-story consistency.

The association between the expert judgments of symptoms and asylum status decisions is shown in Table 4. About two-thirds of the asylum seekers in our sample were granted asylum (N = 67, 69.1%), several requests were denied (N = 22, 22.7%), and eight (8.2%) cases were excluded from the analysis because the refugee status was still unknown. Physical symptom presence and consistency with the refugee's story and refugee status decision were significantly correlated ($r = 0.40$, $p < .000$), but psychological symptom-story consistency and refugee status decision were not ($r = 0.00$, $p = .972$). Similarly, physical symptom presence and consistency with the refugee's story significantly predicted a positive refugee status decision (OR=1.96, $p < .001$), but psychological symptom-story consistency did not (see Table 4).

Table 4: *Logistic regression of expert judgments as predictors of positive (vs. negative) refugee status decisions*

	OR	95 % CI	P
Expert judgment psychological symptoms	1.96	0.61—6.29	0.260
Expert judgment physical scars	1.92	1.37—2.70	0.000

Discussion

As hypothesised, the results indicate that receiving mental health care, being female, and having a history of sexual violence may influence experts' judgments about psychological symptom-story consistency. Also, our results indicate that 93% of the subjects were diagnosed with PTSD, which is a higher percentage than usually found in the literature. This finding may be related to the observation described in the literature that severely traumatised and thus psychologically disturbed asylum seekers tend to give inconsistent accounts during the first asylum hearings, thereby lowering their chance of obtaining asylum (Herlihy & Turner, 2006).

Male gender and a history of detention and physical violence play a critical role in experts' judgments about physical symptom-story consistency. This may indicate that experts become more convinced by reports on potentially traumatic situations when this involves physical violence, and by special details of the symptomatology that fit to the reported situations, when there is written proof of treatment history.

Regarding our second hypothesis, positive asylum decisions were significantly associated with expert judgments regarding the presence of physical signs and symptoms of torture and ill-treatment and their consistency with the asylum seeker's story, but not with psychological symptoms. The probability of obtaining asylum was higher if experts indicated the presence of physical signs and symptoms and rated a higher degree of consistency of these signs and symptoms with the refugee's story. This indicates that expert medical evidence influences the outcome of decisions regarding asylum in this population. The mean expert symptom-story consistency

rating was higher for psychological symptoms (3.71) than physical signs and symptoms (2.76). Subjectivity of the interpretation of intrusive psychological symptoms, compared with physical scars, may therefore play a role and help explain this finding. Asylum procedures are often complex and lengthy, which explains why, at the time of the study, the outcome remained still unknown in 8 cases (8.2%). The data used suggests that decision makers are more influenced by experts' assessments of physical symptoms their consistency with the refugee's story than by psychological symptom-story consistency. This suggests that asylum decision makers consider experts' judgments about the physical signs and symptoms of trauma, and their consistency with the asylum seeker's account, more objective or more reliable than comparable judgments about consistency between story and psychological symptoms. This may be because indices of psychological symptoms are perceived to be more subjective than physical signs and symptoms (i.e., they are dependent on the individual's account rather than being based on direct measurement or observation). Further training for decision makers should be delivered to inform them about the possibilities (and limits) of medico-legal expertise evaluations.

Expert judgments in medico-legal reports stating that physical signs and symptoms are present and consistent with the asylum seeker's story are associated with a higher probability of obtaining asylum. However, at present, many asylum seekers with physical and psychological signs and symptoms of trauma lack access to medical and psychological examination and documentation by specially trained experts as established in the Istanbul Protocol (Bruin et al., 2006; Keten et al., 2013; Migration & Affairs, 2014; Wallace & Wylie, 2013). Our results have implications for the way medico-legal reports are prepared and used in asylum procedures. Earlier access to the documenting of medical evidence by independent experts could improve decision quality. Signs, symptoms and medical evidence of torture should be documented according to the Istanbul Protocol guidelines. Placing more medical professionals in asylum centres, and giving them a specific task in the early identification of signs and symptoms of torture, might facilitate earlier identification of torture survivors, thereby leading to more medico-legal reports being requested. An increase in requests by the asylum authorities and judges, following the implementation of Article 18 of the new European Asylum Procedure Directive, which requires asylum authorities to obtain a medical examination where there is an indication of trauma or a reported history of trauma, will result in an increased use of medical evidence in procedures for making decisions about asylum.

Limitations

Our study contains a number of limitations that must be acknowledged. Data on judicial outcomes in eight (8.2%) of the cases analysed was unavailable, which reflects the length of asylum procedures. Refugee status was known for 89 out of 97 subjects (February 2017). The decision was positive in 67 cases, and negative in 22 cases. The eight subjects for whom refugee status decision was still unknown at the time of analysis did not differ from the analysed group regarding gender, age or other demographic

variables.[3] Because outcome data was not available in all cases, it is possible that our analysis under-estimated the judicial impact of expert medical reports.

Another limitation is that we were not able to analyse the rationale behind the decision-making after the medico-legal report was used in the asylum procedure. Lawyers provided iMMO with routine outcomes regarding the result of the claims, but no rationale was provided for positive decisions. Therefore, if one were to analyse how decision makers judge the provided medico-legal report, further research, which takes into account the socio-cultural judicial context in which medico-legal reports are used, would be required. After the medico-legal report was used in the asylum procedure, 69% of the asylum seekers obtained asylum. This percentage may not be comparable to other countries and may not generalise to other time periods. For example, it is possible that the increase in asylum applicants following the Syrian crisis may have led to a different percentage. This is another limitation that should be acknowledged.

However, the relatively large sample size of medico-legal reports and the availability of data on judicial outcomes of the asylum procedures are key strengths of the study. To the best of our knowledge no other studies quantitatively evaluated medico-legal report in the asylum context. Furthermore, the majority of reports (71%) include expert judgment about both psychological and physical consequences of torture, reflecting the medical and psychological expertise of iMMO.

3 In terms of variables related to the asylum history, it appeared that suicidality was mentioned more often in reports for those whose status decision was still unknown compared to those whose decision had already turned out to be negative or positive ($X2\ (1) = 4.77,\ p < .05$). Actual presence of suicidality was similar in both groups.

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The medico-legal assessment of asylum seeker victims in Italy

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Key points of interest

- Enhancing multidisciplinary approaches when undertaking clinical evaluations of asylum seekers could improve the quality of investigations on the origin of physical scarring and on subsequent decisions regarding refugee status.
- Psychiatric, psychological and social approaches are also crucial to assess people who claim severe physical violence with no physical signs.

Abstract

Introduction: Changing patterns of migration has required states and governments to respond to the specific medical and legal needs of asylum seekers. Based on medical assessments undertaken at the University Institute of Legal Medicine, the present study aims to describe the cases of asylum applicants who have suffered from physical violence, including torture, and the variables involved. *Methods*: Over a 10-year period, 225 survivors were examined by clinical forensic professionals from the University Institute of Legal Medicine. *Results:* 85% of asylum applicants came from Africa, 87% were male, and the most common age group was 26-40 years old. 46% of applicants fled their country for political reasons. Blunt force injuries were reported in 45% of cases, the trunk was the most affected area of the body (40%), and applicants presented with an average of two different mechanisms of lesions and an average of four lesions each. *Discussion/conclusion:* Assessment of physical violence on asylum seekers requires the cooperation of professionals with different skillsets and training.

Keywords: Clinical forensic medicine, asylum seekers, physical assessment, medico-legal assessment, violence, Istanbul Protocol

Introduction

A person forced to abandon their country of origin faces many difficulties and has often experienced physical and psychological violence, including torture. Italy is a destination country for many people forced

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to flee their homes and is one of the highest recipient nations of migrants in the Mediterranean. Once in Italy, migrants usually either continue their journeys onwards to Northern European countries or remain in Italy in the hope of attaining refugee status. The legal processing of asylum applicants for refugee status in Italy follows international regulations, as stipulated by the European Union and United Nations High Commission for Refugees (UNHCR). Applicants are examined through detailed interviews with the Territorial Commission, the Italian First Instance Determinative Authority, to decide whether the asylum seeker meets the criteria to be granted international or national protection.

Medical reports can decisively influence the result of the application (Asgary et al., 2013; Peart et al., 2016). Medical examinations are fundamental to demonstrating the vulnerability of an asylum seeker in all its forms (e.g., medical, personal, linked to familiar issues) and assessing the credibility of their narratives when an asylum seeker claims to be a victim of torture or other severe forms of violence in their country of origin. The Istanbul Protocol provides critical guidelines for physical and psychological medical assessment.[1] It details the circumstances in which an alleged victim of torture should be interviewed, outlines ethical considerations, and explains the process of thorough medical examination for symptoms of torture.

The Istanbul Protocol has been applied in multiple contexts, such as: in Sweden (Edston and Olsson, 2007; Moisander and Edston, 2003), in Denmark (Arge et al., 2014; Masmas et al., 2008; Leth and Banner, 2005), in Egypt (Ghaleb et al., 2014), in Kyrgyzstan (Moreno et al., 2015), and for documenting abuse and psychological symptoms of child soldiers in different contexts (Afana, 2009; Guy, 2009). However, only a limited number of studies have focused on the methods for assessing scars (cf. Pfortmueller's, 2012; Sheather et al., 2015; Thomsen, 2000).

This study primarily focuses on the Italian experience in the Metropolitan city of Milan and is concerned with the medico-legal evaluation of asylum seekers who have suffered from physical violence, including torture as well as the variables involved. This study draws on 10 years of clinical forensic medicine experience and provides a description of physical evaluations of asylum applicants in Italy for the first time.

Background to study

The Municipality of the Metropolitan City of Milano and the University Institute of Legal Medicine have made the medico-legal assessment of victims of violence a key priority, as part of a broader project aimed at protecting vulnerable people. A team—composed of experts in clinical forensic medicine, ethno-psychiatry, anthropology, psychology and social work—are responsible for examining asylum seekers and assisting with their applications for asylum.

In September 2013, the Municipality of Milan approved a new Protocol by Municipal Decree, which established an operational network in the Milanese territory that was tasked with assisting and caring for asylum seekers and vulnerable subjects in particular. The members of the Protocol meet on a monthly basis to exchange information on interventions,

[1] See Istanbul Protocol: Manual of Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Submitted to the UN High Commissioner for Human Rights on 9 August 1999.

aiming to improve needs assessments of the traumatized and enable service providers to deliver adequate levels of assistance and protection.[2]

The University Institute of Legal Medicine actively collaborates with this Protocol by performing two types of evaluations. The first evaluation is of scars and lesions in asylum applicants who have declared themselves to be victims of physical violence, to determine the consistency between allegations of physical violence and evidence of healed wounds. The second evaluates the age of asylum seekers. A thorough report is written on each evaluation and presented on the day of the hearing at the Territorial Commission. Following this, the Commission decides whether applicants meet the criteria to be granted international or national protection. The data used in this study is taken from physical examinations undertaken during this process.

Materials and methods

Between 2008 and 2018, 225 asylum seekers underwent physical examination. Following the Istanbul Protocol, full medical examinations of the alleged victims were performed during the clinical assessments. Final reports were drafted on the consistency between the allegations of physical violence and the results of the external examinations, and submitted to the Territorial Commission. In all cases, individuals were examined by forensic specialists. Interviews were conducted (often using a mediator or translator) to gather an initial history of the person, including the reasons they fled their country, detailed accounts of violent and/or traumatic events, and their health status.

A judgment on the degree of concordance between the narrative and the lesions investigated was undertaken in accordance with the Istanbul Protocol, based on the following criteria: “not consistent,” “consistent,” “highly consistent,” “typical of,” and “diagnostic of” (cf. Franceschetti et al., 2017).[3]

Results

Year of Examination

The number of the evaluations increased over the years (Table 1) with two examinations of asylum seekers both in 2008 and 2009, five in 2010 and 2011, followed by 17 (2012), 15 (2013), 20 (2014), 24 (2015), 38 (2016), and 29 (2017). In 2018, the number rose to 68 and is further increasing in 2019.

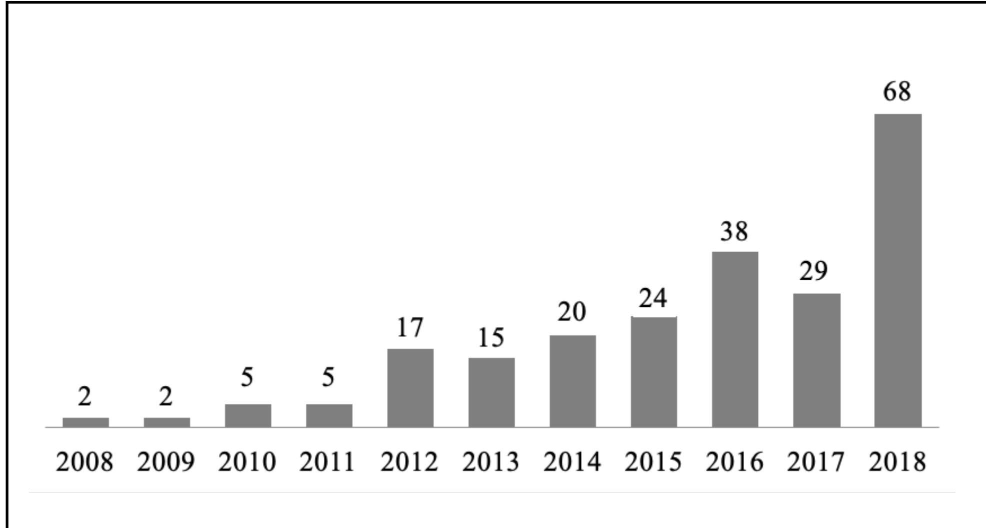
Background Characteristics

Asylum applicants predominately came from African (192 individuals) and Asian countries (32). Figure 1 captures this regional representation, which is predominately comprised of the following countries: Nigeria (35), Ivory Coast (28),

[2] The signatory members are also concerned with promoting scientific and multidisciplinary initiatives to fundamentally improve the treatment of trauma in asylum seekers, developing knowledge and tools, carrying out specific core activities to enable a collaborative approach, and providing a comprehensive caring service to those involved.

[3] In this investigation, the degree of concordance, the pattern of mechanism of the lesions, the final judgment of the Territorial Committee, and their correlations were not described in detail. Considerations and analysis of these topics were already remarked on in a previous paper; see Franceschetti et al. (2019).

Table 1: *Number of asylum seekers undergoing medical examination in Milan from 2008 to 2018*



Somalia (24), Gambia and Mali (12 each), Senegal (10), Togo (6), and Algeria (5), Pakistan (20), Afghanistan (9), and Iran (3).

104 individuals (46%) fled their country of origin due to political reasons, 37 (16.5%) due to religious conflicts, 14 (6%) due to belonging to an ethnic minority, 26 (12%) due to family violence, 9 (4%) due to gender-based discrimination, and 35 (15.5%) due to other reasons.

133 persons (87%) were males, a figure that echoes the data provided by UNHCR.[4] Asylum applicants were predominately young or middle aged: 19 persons (12%) were 16-18 years old, 45 persons (29%) were 19-25 years old, 84 persons (53%) were 26-40 years old, and none were older than 60 years old.

[4] See UNHCR operational portal on refugee situations: https://data2.unhcr.org/en/situations/mediterranean

Findings from Physical Examinations

Most of the wounds observed were related to blunt force injuries (363 – 45%),[5] followed by sharp force injuries (180 – 22%) and thermal injuries (169 – 21%) (Table 2).

The most affected area was the trunk (321 – 40%), which is commonly associated with subjects attempting to defend themselves against assailants.[6] There were also other typical defense-related injuries, such as lesions on the hands and forearms. 96 lesions (12%) were observed on the cranial and cervical area. Finally, the number of scars mostly ranged from 2 – 4 lesions (Table 3).

[5] This includes different methods of harm, such as beating, kicking, punching, the use of blunt objects, and ligatures.

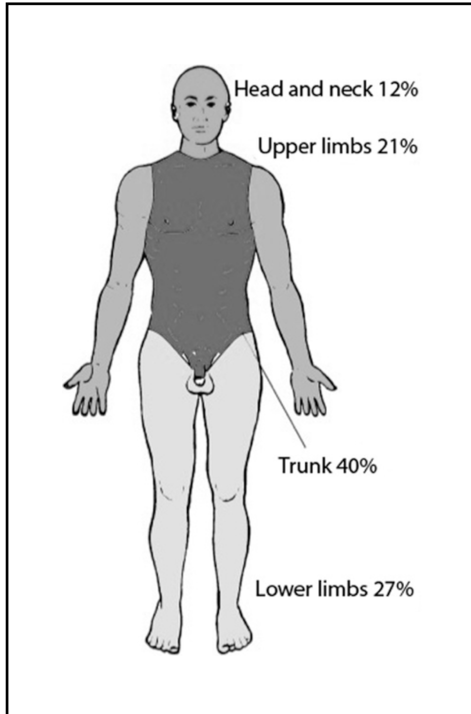
[6] Physical disorders strictly related to the injuries suffered during assaults can also result in osteomuscular lesions, leading to chronic pain or impairment that have a negative effect on the subject, even from a psychological point of view (Moisander and Edston, 2003; den Otter et al., 2013; Castagna et al., 2018).

Figure 1: *Countries of origin represented between 2008 and 2018*

Table 2: *Mechanisms of lesions in percentages*

Mechanism of the lesion	%
Explosion	1%
Sexual abuse	1%
Prolonged light exposure	1%
Electrocution	1%
Chemical injuries	3%
Gunshot wounds	5%
Thermal injuries	21%
Sharp injuries	22%
Blunt forces injuries	45%

Figure 2: *Percentages of lesions on the body*

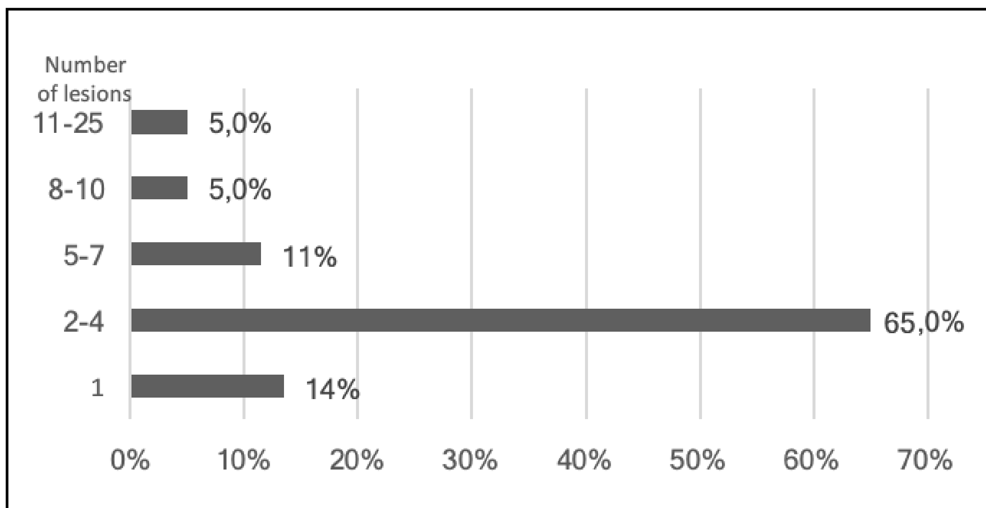


Degree of Concordance

In a previous study concerning the degree of concordance between reported events and physical findings, it was identified that only 1.8% was "not consistent," 49% was "consistent," 42.1% was "highly consistent," 5.3% was "typical," and 1.8% was "diagnostic" (Franceschetti et al., 2019). It was also observed that there was a positive association between higher levels of consistency and the frequency of protection being granted. In particular, the Commission observed:

- *When not consistent:* 100% humanitarian protection.
- *When consistent*: 56.5% asylum, 26% humanitarian protection, 14% subsidiary protection, and 17.8% denial-of-asylum.
- *When highly consistent:* 50% asylum, 8.3% humanitarian protection, 33.3% subsidiary protection, and 8.3% denial-of-asylum.
- *When typical*: 66.7% asylum and 33.3% denial-of-asylum.
- *When diagnostic*: 100% asylum.

Table 3: *Number of lesions over the body by person in percentages*



Discussion and conclusion

The assessment of symptoms of physical abuse has important limits. Firstly, the detailed characterization of scars often does not enable a "high consistency" judgment with the narrative reported by the victim. Current literature mostly focuses on comparisons among single case reports or series and it is predominately based on anecdotal data (Clément et al., 2017; Leth and Banner, 2005; Masmas et al., 2008; Moisander and Edston, 2003; Pfortmuller et al., 2012). Secondly, a limited percentage of asylum applicants are actually examined despite frequently reporting torture; consequently, the exact incidence of torture symptoms is unknown (Moisander and Edston, 2003). In addition, the decision to undertake an assessment of physical signs of torture among asylum seekers is strictly linked to geographical contexts and birthplaces of asylum applicants.

This study has revealed key characteristics of asylum seekers, discerned certain conditions that precipitated migration to Italy, detailed common mechanisms of physical torture, and identified common areas of lesions as a consequence of torture. To our knowledge, there is no other data concerning the latter two variables investigated in this study.[7] Although this information may appear somewhat anecdotal, we maintain that it is useful in the assessment of physical symptoms to achieve a more thorough medical examination and such detail may prove consequential in the final judgment of the Territorial Commission. For example, a person that, regardless of the grade of consistency, reports at least 10 scars has a higher probability of obtaining some kind of benefice that another one that reports one scar. Similarly, the application of an individual that has scars related only to blunt forces could receive a negative judgment by the Territorial Commission compared to an individual that reports scars inflicted by different mechanisms. The limited number of women in our study prevents the ability to undertake a meaningful comparative analysis between males and females.

During the medico-legal evaluations, mandated by the Municipality of Milan, a number of lessons and challenges were identified. Firstly, forensic instrumental examinations should be included in the ordinary clinical examination when investigating the origin of scars. X-rays are helpful when assessing the presence of bone calluses or metallic fragments and echography could provide a better evaluation of scar depth (Clément et al., 2017). Indeed, these subjects often suffer from psychiatric and organic disorders, which would require (expensive) specialized examinations (Mladovsky et al., 2012). In addition, migrants who have health needs often face challenges in accessing the required health care partly because of language difficulties, social isolation, administrative obstacles, and poor knowledge of the legal environment.

Torture survivors are entitled to rehabilitation independently, regardless of whether there is a positive or negative risk assessment (Bhugara, 2004; Kinyanda et al., 2010; Rechel et al., 2011; WHO Regional Office for Europe, 2010). The lack of information concerning countries of

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[7] In our previous study (Franceschetti et al., 2019), it was observed how these results related to the type of outcome. The percentage of refugee status recognition increased with the number of injuries by up to 57% when more than 10 scars were observed. Equally, when three or more different mechanisms of lesion were observed in the same individual, negative outcomes never occurred.

origin sometimes prevents examiners from providing a correct differential diagnosis of the observed scars. In cases where the healing process has the tendency to produce unusual scars, especially among dark skinned persons (Fuentes-Duculan et al., 2017), such as hypertrophy or abnormal scarring, the involvement of other professionals, such as specialist dermatologists, may well be beneficial. A multidisciplinary approach could facilitate an improved forensic evaluation, thereby reducing errors when assessing the presence of these confounding factors (Clèment et al., 2017; Moisander and Edston, 2003).

In Milan, a critical consideration concerns survivors who underwent violence and torture but the consequences of which are not physically evident. Psychiatric, psychological and social approaches are therefore crucial.

The Istanbul Protocol plays a key role for investigating allegations of torture and other forms of ill-treatment and specifies that any evaluation of torture should include a psychological assessment. In 2000, the ASST Grande Ospedale Metropolitano Niguarda established the Ethno-psychiatry Service in response to increasing migration flows. For each hearing of the Territorial Commission for the Refugee Status recognition, a report is drawn up for each applicant, following the guidelines provided by the Istanbul Protocol. The Ethno-psychiatry Service is also one of the signatory members of the above-mentioned Protocol of the Municipality of Milan and increasingly close cooperation is anticipated. Ongoing work aims to guarantee that all professionals involved co-sign a single final report, instead of two separate documents, to build an accurate description of events and establish a more consistent result.

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Reassessment of the Ireland v. the United Kingdom ECtHR case: A lost opportunity to clarify the distinction between torture and ill-treatment

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Key points of interest

- The European Court of Human Rights' (ECtHR) decision on the Ireland v. the United Kingdom case in 1978 based its judgment on the severity of the treatment without considering the long-term psychological effects of the five (torture) techniques.
- The decision of the ECtHR, in 2018, not to reassess their original judgement, based on the Istanbul Protocol and by considering the long-term or permanent damage to the victims, may have adverse repercussions for future cases.

Abstract

Introduction: In the 1978 Ireland v. the United Kingdom case, the European Court of Human Rights (ECtHR) did not consider that the so called "five techniques" did not cause enough severity of suffering to be considered torture. The intentionality criterion, outlined in the Convention against Torture's definition of torture, was also not fully considered. The Istanbul Protocol, which is critical for evidencing torture, did not exist at that time. Although a re-opening of the case was requested in 2014 by Ireland, forensic documentation using the Istanbul Protocol was not used; in 2018, the ECtHR decided against re-opening the case. *Objective:* By using the Ireland v. The United Kingdom case, this paper aims to map the origins of the five techniques, review whether applying them constitutes torture, analyze the information about the claimants available 30 years later, and explore the ramifications of the ECtHR decision not to revise its judgment. *Methodology:* Relevant texts were gathered from the HUDOC database, Cambridge University Press, Wiley Online Library, SCOPUS and MEDLINE /PubMed, and the Library of the ECtHR in Strasbourg. *Discussion/conclusions:* The five techniques, elaborated upon in the case of Ireland v. the United Kingdom, were used well before the incidents in Northern Ireland in 1971 and there is evidence that United Kingdom officials have, subsequently, used the techniques. Furthermore, there is clear evidence that the "Hooded Men" had cognitive, psychological and neurovegetative symptoms as a result of the five techniques, which had long-term effects. The ECtHR did not take this into consideration when it decided not to re-open the case and the full implications of this decision for future cases and victims remain to be seen.

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Introduction

Article 3 of the European Convention on Human Rights (ECHR) enshrines one of the most fundamental values of democratic societies, stating that: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." As one of the most difficult norms to interpret, the European Commission of Human Rights (EcommHR; the Commission) and the European Court of Human Rights (ECtHR; the Court) have faced a number of disagreements regarding what practices constitute torture. The *Ireland v. the United Kingdom* case provides a particularly illustrative case of this.

In 1971, the Irish Government brought an application to the ECommHR on behalf of 14 "Hooded Men," who were subjected to five harsh interrogation techniques by the UK government during "the Troubles"—a conflict regarding the constitutional status of Northern Ireland.[1] These techniques comprised: hooding, wall-standing in stress positions for long periods of time, noise, sleep deprivation, and food and water deprivation. After the Commission unanimously decided that the "five techniques" were in breach of Article 3 of the European Convention on Human Rights (ECHR), it was referred to the ECtHR. In 1978, the ECtHR judged that the practices used amounted to "inhuman and degrading treatment" but not torture. They judged that ill-treatment must attain a minimum level of severity to fall within the scope of Article 3 (Padeanu, 2018). The assessment of severity is relative and depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (ECtHR, 1978: *Ireland v. the United Kingdom*, §162).

Several years after this judgment, the 1984 Convention against Torture (UNCAT) put forward a definition of torture in which both physical and mental suffering can constitute torture on the condition that they are purposefully inflicted. Intentionality is thus a critical criterion of torture; severe pain or suffering, whether physical or mental, must be intentionally inflicted on a person. Indeed, Pérez-Sales (2017) argues that intention and purpose go hand-in-hand; when a purpose can be identified, so too can intentionality. Purpose is, however, challenging to infer without proof of intentionality.

As evidenced by the Ireland case and others, initially, no precedent existed for the ECtHR using intention to infer torture; however, a number of cases have forced the ECtHR to reconsider its position in this regard. For example, if we analyze the Strasbourg jurisprudence with the intentionality criterion, *Aksoy v. Turkey* is an informative case. The Court noted, "…this treatment could only have been deliberately inflicted…" and found that a certain amount of preparation and exertion would have been required to carry it out (Reidy, 2002, p.13). This was in relation to the so-called "Palestinian hanging" case, where the victim was suspended by his arms, which were tied behind his back (ECtHR, 1996: *Aksoy v. Turkey*).

Despite this, in 2018, the ECtHR rejected Ireland's request—made in 2014—

[1] Hooded Men is a term often used when referring to this group of 14 men in academic publications and news stories because hoods were placed on them while they were interrogated.

to revise the original decision relating to the Hooded Men, which was made on the basis of new evidence. This was a lost opportunity to clarify the conceptual distinction between torture and cruel, inhuman or degrading treatment (CIDT), particularly in relation to psychological torture.

After briefly detailing the methodology used, this paper proceeds as follows: demarcates psychological torture and maps the historical origins and application of the five techniques, which led to psychological torture; details the interpretation of the five techniques in the original *Ireland v. The United Kingdom* case; reviews the implications of the recent decision by the ECtHR not to revise its judgment; discusses other disagreements between these two institutions; explores the jurisprudence of the use of the five techniques documented in other cases globally regarding psychological torture; and concludes.

Methodology

The data that informed this paper consisted of books, articles, newspaper searches, and cases. Some of the sources were collected during a research visit to the ECtHR in Strasbourg. Other sources were found using the Cambridge University Press database. Databases such as Wiley Online Library, SCOPUS and MEDLINE /PubMed were also used to locate articles in relation to the *Ireland v. The United Kingdom* case, psychological torture, and the long-term effects of the five (torture) techniques. Court cases were found using the HUDOC database and the IACtHR. In total, 54 sources were identified, of which 37 were deemed relevant and used in this research. The rationale for the selection of papers was not only influenced by the case in question as a whole but the consequences of it.

The documents were reviewed and analyzed through two approaches. Firstly, the sources were read thoroughly and annotated to develop themes and gain a clearer picture of psychological torture. Secondly, historical methods were used for gathering facts pertaining to different decades and continents, with the purpose of showing that the five (torture) techniques were applied well before the incidents in Northern Ireland and that they continued to be used after, although they were considered to be illegal. Based on this literature, comparable cases were also sought to form comparisons between the case in question and other cases from the Strasbourg and Inter-American case law. The purpose was to show that now the ECtHR has clarified that the assessment of the minimum level of severity is relative and depends on the circumstances of the case.

Demarcating psychological torture

Both physical and psychological torture produce physical and mental suffering, which makes distinguishing between them challenging. "Psychological torture" can relate to two different aspects of the same entity. On the one hand, it can consist of non-physical methods as "physical methods" of torture are often self-evident, such as thumbscrews, flogging, application of electric current to the body, and other similar techniques. On the other hand, physical methods can also cause mental suffering. In this context, "non-physical" refers to a method that does not hurt, maim or even touch the body, but touches the mind instead (Reyes, 2007). Practices that constitute psychological torture include: isolation, debilitation, spatiotemporal disorientation, sensory deprivation, sensory assault, the threat of death or

violence, degradation, and pharmacological manipulation (Ojeda, 2008).[2]

Both physical and psychological effects of torture are comprehensively discussed in the Istanbul Protocol, which considers virtually all aspects of torture and its consequences, and establishes a procedure for governments or independent bodies to conduct a standardized investigation into the use of torture (Reyes, 2007). The application of the Istanbul Protocol can categorically document torture without there being a need for visible scars or marks.

Psychological torture, expressed through interrogation techniques, can also be described as an "assault to the mind." Pérez-Sales (2017) explains that, in interrogation and torture, physical and psychological techniques aim to create the physical, cognitive and emotional exhaustion in the detainee considered necessary for the successful questioning of a potential source of information. The term "interrogation techniques" is ordinarily used to refer to methods of questioning as well as every aspect of a prisoner's experience between arrest and release, all of which have an impact upon their will to cooperate (Newbery, 2009). Coercive interrogation is most frequently characterized by hours of exhaustive questioning with interrogators shifting roles, taking turns and using emotional and cognitive manipulation tactics (Pérez-Sales, 2017). This is a form of psychological torture, which, unlike its physical counterpart, more easily evades detection and thus severely inhibits investigation, prosecution or prohibition attempts.[3]

The five techniques and their historical application

According to the Commission's findings, later elaborated on by the ECtHR, the five techniques of torture can be defined as follows (ECtHR, 1978: *Ireland v. the United Kingdom*, § 13):

a) *Wall-standing:* forcing the detainees to remain for periods of hours in a "stress position," described by those who underwent it as being "spread eagled against the wall, with their fingers put high above the head against the wall, the legs spread apart and the feet back, causing them to stand on their toes with the weight of the body mainly on the fingers."
b) *Hooding:* putting a black or navy-blue colored bag over the detainees' heads and, at least initially, keeping it there permanently except during interrogation.
c) *Subjection to noise:* pending their interrogations, holding the detainees in a room where there was a continuous loud and hissing noise.
d) *Deprivation of sleep:* pending their interrogations, depriving the detainees of sleep.
e) *Deprivation of food and drink:* subjecting the detainees to a reduced diet during their stay at the center when interrogations were pending.

The five techniques were developed in the 1950s by officials in the Joint Services

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2 See Fields (2008), Leach (2016), Nowak (2008), Turner and Gorst-Unsworth (1993), and Williams and van der Merwe (2013) for discussions on torture methods and psychological symptoms.

3 Both physical and psychological torture compromise the mind-body integrity and produce physical and functional changes in the brain that can be identified through neuropsychological testing and neuroimaging (Fields, 2008).

Interrogation Wing (Britain's only official interrogation training school), drawing from the experience of British campaigns in the colonies. The first reports on the use of some of the five techniques are from the Kenya Emergency (1953-1954) and there are also reports from the Malayan Emergency (1955-1960). In the British Cameroons, a territory mostly belonging to present-day Nigeria (1960), the use of the five techniques was considered to be effective during the interrogation of subversives from the neighboring Cameroon Republic. They were also successful in ascertaining that labor problems in Swaziland in 1963 were not created by a subversive organization as had been suspected. In another example, which took place in Aden (now part of Yemen) in 1964, the information produced by the interrogation of 11 suspects, arrested after a hand grenade was thrown at a senior official and his party at Aden airport, supported their innocence (Newbery, 2009).

In 1963, the British Army developed a large-scale interrogation operation in Brunei involving more than 2,000 suspects, with three interrogation centers working simultaneously. Hooding and white noise were used with all the detainees and the five techniques were used on "high value" suspects. It was the first time that reports distinguished between two basic components of psychological torture: "environment manipulation" and "handling of prisoners." The detainees were deprived of food and sanitary facilities, subjected to high temperatures, and were brutally beaten (Newbury, 2009).

The five techniques were also used in Northern Ireland. After training from British intelligence on the elusiveness of psychological torture—that psychological torture often lacks clear signs of abuse or visible marks to indicate the degree of severity—the Royal Ulster Constabulary applied these methods on Irish Republican Army (IRA) suspects in Belfast in 1971. Enforced wall-standing, hooding, blaring music, sleep deprivation, and dietary manipulation were used (McCoy, 2012).

Although the British Government vowed not to use the five techniques after they took place in Northern Ireland, their use has been subsequently documented in Latin America in the 1970s and 1980s. The influence of this "British model" was particularly strong in Brazil and is evidenced by documents of the Brazilian Truth Commission and the testimonies of survivors of the Brazilian dictatorship (Pérez-Sales, 2017).

The five techniques also left a substantial impact on detainees in Iraq in 2003. Detainees recounted the long-term physical and psychological effects of these experiences in detention, including a series of suicide attempts and night terrors (Newbery, 2015). There are also long-standing allegations of the UK's involvement in prisoner abuse during counterterrorism operations as part of the United States-led so-called "war on terror" (Blakeley & Raphael, 2017). These techniques were applied to detainees, and one of them, Baha Mousa, died as a result of the brutality. The Baha Mousa Inquiry report, presented by Sir William Gage in 2011, concluded that use of the five techniques was a key factor that, in combination with others factors, led to the death of the detainee. The report found that Mousa's body had sustained numerous injuries (Her Majesty's Stationery (Office HMSO), Baha Mousa Inquiry, 2011, §2.1236)). Stress positions were primarily used to ensure that the "shock of capture" was maintained from arrest until questioning. In Mousa's case, the standing

position was also used to the extent that pain or suffering was inflicted (ibid, § 2.1612).[4]

Application of the five techniques in Northern Ireland

On 16 December 1971, Ireland lodged an inter-state application against the United Kingdom before the ECtHR alleging that the use of the so-called five techniques of interrogation amounted to torture and violation of Article 3 of the ECHR.

Over the course of three decades (1968-1998), a conflict on the constitutional status of Northern Ireland led to violence across the UK and the situation was especially tense during the first half of the 1970s (Lopez Cursi, 2017). The Northern Ireland Government proposed (and the British Government approved) Operation Demetrius—a series of extrajudicial measures of detention and internment of suspected terrorists, which meant that detainees could be arrested without a warrant and held for 48 hours without bail for the purpose of interrogation. There are no official documents regarding the exact number of people who were arrested on suspicion of being IRA terrorists but some authors estimate that 342 people were arrested on the first day alone, although not everyone who was arrested was interrogated (Donahue, 1980). There is clear evidence that 14 men were subjected to these five techniques because of their alleged relations to the IRA: Jim Auld, Pat Shivers, Joe Clarke, Michael Donnelly, Kevin Hannaway, Paddy Joe McLean, Francis McGuigan, Patrick McNally, Sean McKenna, Gerry McKerr, Michael Montgomery, Davy Rodgers, Liam Shannon, and Brian Turley (Murphy 2016).

The report of the Commission contains evidence on the effects of the application of these techniques, which was gathered through investigation over a number of years. There are also testimonies of two witnesses—“T.13” and “T.6”[5]—who were arrested, selected for special interrogation, and sent to an unknown interrogation center. On arrival, they were medically examined and then taken by helicopter to another location where they served a detention order for four or five days. The exact duration of the interrogation could not be determined by the Parker Inquiry or Compton Committees[6] (ECommHR Report, 1976).

In its report, the Compton Committee concluded that interrogation by means of the five techniques constituted physical ill-treatment, but not torture (Donahue, 1980). The Committee in the Parker Inquiry concluded that no rules or guidelines had been laid down to restrict the degree to which these techniques could be applied (Her Majesty’s Stationery Office [HMSO], Parker Inquiry, 1972, §12). The long-term mental repercussions were more challenging to determine due to the lack of reliable information concerning medical

4 Ultimately, Mousa’s death resulted from his poor treatment throughout his detention combined with the application of the five techniques and beatings.

5 While under interrogation they were given code-names to hide their identities.

6 The Compton Committee was established in 1971 to prepare a Report of the inquiry into allegations against the Security Forces of physical brutality in Northern Ireland. Afterwards, it prepared a Report of the Committee of Privy Counsellors appointed to consider authorized procedures for the interrogation of persons suspected of terrorism, chaired by Lord Parker of Waddington.

evidence (ibid, §15). The Committee did identify that torture, whether physical or mental, is determined by the intensity of the techniques applied and on the provision of effective safeguards against their excessive use, and identified that torture is unjustifiable under any circumstance. Lord Parker[7] posed the following question: "where does hardship and discomfort end and, for instance, humiliating treatment begin, and where does the latter end and torture begin?" The answer, he stated, is found by interpreting "words of definition," meaning that "opinions will inevitably differ" (ibid, § 28, 30, 34).

Lord Gardiner in the Parker Inquiry explained that both the physical and mental effects of the five techniques had been considered. There was evidence of minor injuries to detainees and the Committee received unchallenged medical evidence that subjection to a noise level of 85 decibels for 48 hours may result in 8% temporary loss of hearing and in 1% permanent loss of hearing (HMSO, Parker Inquiry §13). According to Lord Gardiner, in examining the physical and mental effects on the detainees, it was highlighted that these techniques were known to cause: artificial psychosis, episodic insanity, unbearable anxiety, tension, attacks of panic, and nightmares.

The mental consequences are also manifold. In-depth interrogation, as described in the first Compton report, is a form of sensory isolation leading to mental disorientation.[8] As one group of distinguished medical specialists put it: "sensory deprivation is one method of inducing an artificial psychosis or episode of insanity and there are records that people who have been through such an experience do not forget it quickly and may experience symptoms of mental distress for months or years" (HMSO, Parker Inquiry, §13).

The Compton Report and Parker Inquiry gave figures for the total time each of the 14 men were interrogated for and identified that they were forced to stand at the wall for between nine and 43.5 hours (HMSO, Compton Report, 1971). Wall-standing was used to achieve security for the guards working at the center by ensuring that detainees' hands were visible. White noise, which had been likened to a train letting off steam, was produced by an electronic noise generator and used to prevent communication between detainees. This also prevented them from overhearing the interrogation of their associates or any other activity in the center (Newbery, 2009).

There is a consensus that certain methods of physical ill-treatment are accepted as torture but the same cannot be said for those that cause mental suffering. Therefore, infliction of mental suffering may produce different consequences for different persons (Neziroglu, 2007). Moreover, Strasbourg case law[9] has shown that mental and psychological suffering alone may constitute torture, depending on its severity. In the 1978 the *Ireland v. United Kingdom* case, the Court accepted that use of the five

7 Lord Parker of Waddington was appointed as a Chairman together with Mr. J.A Boyd-Carpenter and Lord Gardener as members to prepare the Report of the Committee of Privy Counsellors.

8 This was first developed by the Soviet Committee for State Securing (KGB) in Russia, where they placed suspects in the dark and silence.

9 It refers to the initiated cases and judgments brought by the ECtHR in relation to possible violations of the Conventions' provisions.

techniques constituted inhuman treatment, as it caused intense physical and mental suffering to the victims. It did not mention any physical methods of torture that would supersede acute psychiatric symptoms.

Testimonies of the Hooded Men and evidence of psychological torture

Cognitive, psychological and even neurovegetative symptoms are evident in the *Ireland v. United Kingdom* case, in which the Hooded Men showed signs of the symptoms discussed. During the interrogation sessions, Paddy Joe McClean reported to hear funeral hymns, see his own coffin and a firing squad. At one point, he reported to forgot who he was, believing himself to be a farmer from Enniskillen he had met once. Francis McGuigan saw himself in the company of friends and could not understand why they would not take off his handcuffs (Conroy, 2001). He could also not spell his name, which indicates memory disturbance and poor concentration. Kevin Hannaway sang the song "Four Green Fields" because he thought that he would be shot (ibid).

The Hooded Men also exhibited symptoms of concentration camp syndrome, where the physical and the psychological effects can be demarcated. Physical symptoms include: weight loss, pathological fatigue, dizziness, headache, and sleep disturbance. For example, Francie McGuigan lost almost 10kg of his body mass. The mental symptoms consist of depression, nightmares, a reduction in memory, and an inability to concentrate (Turner & Gorst-Unsworth, 1993). Jim Auld suffered from blackouts, a likely symptom of post-traumatic stress. Sean McKenna subsequently went to a mental hospital as he could not bear noise in any form. Michael Montgomery was reported as not being able to even tolerate the noise of a vacuum cleaner (Eldemire, 2018). Brian Turley suffers from nightmares, while Kevin Hannaway still suffers from anxiety attacks and heart problems. Five of the Hooded Men died as a result of health problems, so their long-term psychological effects cannot be discerned.

The testimonies of the Hooded Men illuminate the extent to which the five techniques were applied. One of the Hooded Men, Jim Auld, recalls that when he arrived at the Ballykelly facility he was severely beaten and a hood was placed on his head. He was put in a boiler suit against the wall, spread-eagled, with his hands way above his head, and there was a hissing noise in the background (Conroy, 2001). At one point, when Auld could no longer bear the noise and the pain, he contemplated suicide, and when his attempt to hit his head on a pipe failed, he was severely beaten again.

Paddy Joe Mclean, Michael Montgomery and Joe Clark were beaten, forced to stand against a wall, and deprived of food and water. Joe Clark began hallucinating and, at one moment, "snapped," leading him to run around the room and grab one of his tormentors (McKay, 2015). Francie McGuigan recalls that he was severely beaten and forced to stand against a wall. He remembers that during those seven days in Ballykelly he was handcuffed to a cast iron pipe on a concrete floor with a hood on his head, up against the wall in the "music room," and interrogated (Farrell, 2018). Brian Turley, Liam Shannon and Kevin Hannaway also experienced the five techniques of interrogation, which are said to have been used to erode their dignity. Liam Shannon remembers that when he was brought to a washroom and his hood was removed he could not recognize himself in the mirror (McKay, 2015).

In light of the evidence above, there is a possibility for the survivors of this case to be reassessed according to contemporary forensic standards contained within the Istanbul Protocol. Trained clinicians can examine all available signs and sequelae of physical and psychological abuse, and produce a medical-legal affidavit documenting their conclusions, which serve as evidence to prosecute perpetrators of torture. The decision of the Court not to revise its decision in the case of *Ireland v. United Kingdom* thus appears a lost opportunity.

Disagreements between the Commission and the Court

The case of *Ireland v. the United Kingdom* underlined the different points of view of the Commission and the Court regarding the issue of what constitutes torture and what conduct amounts to torture. The Commission considered that the purpose of using the five techniques was to obtain information. Moreover, the Commission viewed that the combined use of the five techniques unanimously amounted to torture (EcommHR Report, 1976, §167). The Commission was triggered by the nature of sensory deprivation and the practice of all five techniques as a sophisticated method of breaking their willpower (ibid, § 792).

Paradoxically, the ECtHR (by a 13:4 vote) disputed that the five techniques amounted to torture. Eventually, they were classified as a practice of inhuman and degrading treatment (ECtHR, 1978, §167-8). According to Rodley and Pollard (2009), that was unsatisfactory reasoning and a distinction should have been made between torture and other ill-treatment; the Court found a lack of evidence for any "special stigma" attached to the interrogation techniques, therefore the threshold to determine the practices as torture was not met.[10]

Furthermore, Judge Zekia expressed doubt regarding whether the Court was justified in disregarding the unanimous conclusions of the Commission in respect of torture, which had not been contested by the representatives of both states. He stated that the word "torture," included in Article 3 ECHR, is not capable of an exact and comprehensive definition (ECtHR, 1978: *Ireland v. UK*). Judge Fitzmaurice stated, "Article 3 ascribes no meaning to the terms concerned and gives no guidance as to their intended scope" (ibid, p.105). However, Judge Zekia also disagreed with the view that the intensity of physical or mental suffering is a requisite for a case of ill-treatment to amount to torture. In light of the evidence that was brought before the Commission, Judge O'Donoghue reiterated that the Court did not have the advantage of hearing any evidence from witnesses (ibid, p.96), and based its judgment on only two cases. In contrast, the Commission's judgment was based on an analysis of 502 pages and hundreds of witnesses.

A missed opportunity for case revision

The case recently resurfaced in the public's consciousness. On 20 March 2018, the ECtHR refused to revise its judgment from 1978 and decided not to re-open the case because it expressed doubts about whether the submitted documents contained sufficient prima facie evidence of the alleged new facts.

The request for revision had been submitted on 4 December 2014, in line with Rule 80 of its Court Rules, which states:

[10] See Rodley (2014) who, by applying the UNCAT definition, makes clear that the pain or suffering inflicted can be both mental and physical.

> *"A party may, in the event of the discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown to the Court and could not reasonably have been known to that party, request the Court, within a period of six months after that party acquired knowledge of the fact, to revise that judgment."*

The legal grounds for revision came to light with the appearance of "the torture files," pursuant to the "thirty-year rule" of United Kingdom Government public archives (Padeanu, 2018). In its request, Ireland formulated two grounds for revision. Firstly, that the UK had information within their possession including medical reports from "Dr L." demonstrating that the effects of the five techniques could be substantial, severe and long-lasting while the Government, through the evidence of the same "Dr L." before the Commission had alleged that the said effects were minor and short-term. Secondly, the archive material revealed that the use of the five techniques had been authorized at a ministerial level (ECtHR, 2018: *Ireland v. the United Kingdom*, § 20). Moreover, there is a handwritten note in the margin of a letter written in 1977 by the British home secretary, Merlyn Rees, to Prime Minister, James Callaghan, related to the use of methods of torture in Northern Ireland. The note in the margin reads: "This could grow into something awkward if pursued" (Mc Kay, 2015). Further, a document described as a "loose minute" contains a letter of 15 December 1976 from Roy Mason MP, Secretary of State for Northern Ireland, to Airey Neave MP. It argues that the Hooded Men cases had to be settled out of court because of the embarrassment which could arise for those concerned, including Lord Carrington, the then Defence Secretary (ECtHR, 2018, Ireland v.UK § 30). Ireland, as the applicant Government, argued that neither Rule 80 nor the Court's case law indicated that the Court would be prevented from modifying the grounds on which a violation was found. In their view, the Court was called to consider the grounds on which it had found a violation of Article 3 in respect of the five techniques, in light of the new material (ibid, § 69).

Pursuant to the different interpretations of the true meaning of the right to request case revision upon Rule 80, O'Boyle (2018) argues that the Court only has an inherent power to revise a judgment where an error has been made concerning matters that were unknown to the Court and which, had they been known, might have had a decisive influence on the outcome of the case. However, a number of elements have changed or come to light subsequently. If the original case was first raised today, it is likely that the five techniques would be found to constitute torture, particularly given the UNCAT definition on torture and the Istanbul Protocol.[11] Secondly, the British authorities never disputed the use of the five techniques, even promising not to use them again. Thirdly, it is clear that the UK had withheld material evidence from the Court (O'Boyle, 2018). The ECtHR, however, did not re-open the case. Some legal professionals argue that this was based on the chaos and uncertainty that would have perhaps ensued, for legal certainty is a fundamental aspect of justice (Padeanu, 2018). Others have looked to counterfactuals, such as what would have happened if the Court had originally *not*

[11] See the Torture Journal issue 2019-1 for papers focusing on the Istanbul Protocol.

focused on the intensity and severity of the treatment, but on the long-term effects of the use of the five techniques instead.

Worldwide jurisprudence on psychological torture other than the Ireland case

If we analyze Strasbourg case law, it becomes clear that the Court has now clarified that the assessment of the minimum level of severity is relative and depends on the circumstances of the case, which distinguishes between torture and other forms of ill-treatment. For instance, in the *Cambell and Cosans v. United Kingdom* case, which involved the threatened use of corporal punishment on two schoolboys, the Court stated that, "provided it is sufficiently real and immediate a mere threat of conduct prohibited by Article 3 may itself be in conflict with the provision. Thus, to threaten an individual with torture might in some circumstances constitute at least inhuman treatment" (ECtHR, 1982: *Campbell and Cosans v. United Kingdom*). Furthermore, in *Elçi and others v. Turkey,* the Court considered the conditions of detention as inhuman treatment. In *Gäfgen v. Germany,* the Grand Chamber of ECtHR was confronted with a difficult issue: can police officers threaten to torture a suspect if they believe this may save the life of an innocent child? The Court clearly stipulated that they cannot.[12]

In *Selmouni v. France*, the Commission found medically certified trauma on various parts of the body as proof of torture in the form of beatings over a period of days, involving punches, kicks, and blows with a truncheon and a baseball bat (ECtHR, 1994: *Selmouni v. France*). The Court unanimously agreed, using diction that marks a departure from the language used in the *Ireland v. the United Kingdom* case; it was observed that these acts were violent and would be heinous and humiliating for anyone, irrespective of their condition. It also found that all injuries, when taken together, established the existence of physical and mental pain and suffering.

More recently, in *Dikme v. Turkey*, the ECtHR found that the treatment inflicted on the victim consisted of "at the very least a large number of blows and other similar forms of torture," which cause both physical and mental pain or suffering followed by permanent damage to the applicant. The Court considered that such treatment was intentional (ECtHR, 2000: Dikme v. Turkey). Furthermore, in *Aydin v. Turkey*, the applicant alleged that she was raped in police custody. The Court, when finding that she had been raped, stated, "rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim (ECtHR, 1997: *Aydin v. Turkey*). In *Akkoç v. Turkey*, the victim, in this case, had been subjected to electric shocks, hot and cold-water treatment, blows to the head, and threats concerning the ill-treatment of her children (ECtHR, 2000: *Akkoç v. Turkey*). This treatment left the applicant with long-term symptoms of anxiety and insecurity, and post-traumatic stress disorder (PTSD), which required medical treatment. Thus, PTSD found in prisoners subjected to coercive interrogations would qualify as significant psychological harm and permanent damage.

12 See: ECtHR, Elçi and others v. Turkey, App. No 23145/93; 25091/94 and ECtHR, Gäfgen v. Germany, App. No.22978/05

The Inter-American Court further observed that, according to international standards, torture could be inflicted through physical violence and through acts that produced severe physical, psychological or moral suffering in the victims. In the case of *Cantoral Benavides v. Peru*, the Court considered that the acts were planned and inflicted deliberately upon Mr. Cantoral Benavides for at least two purposes. Prior to his conviction, the purpose was to wear down his psychological resistance and force him to incriminate himself or to confess to certain illegal activities. After he was convicted, the purpose was to subject him to other types of punishment and imprisonment (IACtHR, 2000: *Cantoral Benavides v. Peru*). Consequently, the Court noted acts of psychological torture and a failure of Peruvian authorities to prevent such conduct.

The definition of torture contained in the Inter-American Convention to Prevent and Punish Torture (IACPPT) goes further than UNCAT because it does not require the pain or suffering to be severe and refers to "any other purpose" rather than "such purposes as." In *Tibi v. Ecuador*, the Court found that the aim of repetitive execution of violent acts was to diminish the physical and mental abilities of the victim and annul his responsibility for him to plead guilty of a crime (IACtHR, 2004: *Tibi v .Ecuador*). Similarly, the Human Rights Committee (HRC) in its case law had classified the threat of serious physical injury as a form of psychological torture. For instance, in the *Kooijmans First Report,* the Committee found there to be torture including applications of electric shocks, use of submarino,[13] beatings, suffocation, near asphyxiation in water, and other torture methods.

Conclusion

In the case of *Ireland v. the United Kingdom*, the Court established that the five techniques used on the Hooded Men did not amount to torture. This paper has emphasized the importance of the intentionality criterion when reconsidering previous cases, and outlined how systematic psychiatric forensic reports based on the Istanbul Protocol can reveal psychological torture.

However, the Istanbul Protocol did not exist at the time of the initial hearing. It is likely that this influenced the Court's original judgment, which was based on the consideration of the severity of the methods and speculative assumptions regarding the severity of suffering in the absence of thorough medical and psychiatric documentation. However, in the request for revision in 2018, the Court could have reassessed their original verdict, based on assessments of the victims using the Istanbul Protocol, to evidence long-term permanent damage suffered by the Hooded Men. They elected not to do so. With this, the ECtHR missed a historic opportunity to: establish a clear distinction between ill-treatment and torture by giving full consideration to the intentionality criterion; consider the suffering criteria according to present day conditions; and to clarify its position in relation to the use of the five techniques, as well as other psychological torture techniques.

One important question that remains unanswered is whether the decision not to re-open the case has encouraged, and will influence on an ongoing basis, other state

[13] Inter alia, immersion in a mixture of blood, urine, vomit and excrements, which leads to a "near-drowning" experience where victims are suffocated by having to hold their breath underwater.

governments to rely on the 1978 judgment as a basis to validate acts that are now considered as torture. The decision may also deter others from requesting historical decisions to be reconsidered. If this is the case, the consequences for victims of torture for accessing full justice and reparations, as part of their wider rehabilitation process, extends far beyond the 14 men who had their life trajectories altered at the hands of the United Kingdom. The ripple effects may be far more wide-reaching.

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The Istanbul Protocol: A global stakeholder survey on past experiences, current practices and additional norm setting

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Key points of interest

- The Istanbul Protocol is deemed important to professionals from a diverse demographic background and is used for: public knowledge, capacity building, investigations, promoting laws, advocacy, documenting torture, and rehabilitating torture survivors.
- Updating the Istanbul Protocol may make it more accessible, practical, and inclusive of new and timely material. However, an update may also pose risks.

Abstract

Introduction: The Istanbul Protocol (IP) principles and guidelines have served as international norms for the effective investigation and documentation of torture and ill-treatment since 1999. Given the widespread use of the IP and recent calls to update or enhance its norms, we conducted a large-scale study among stakeholders to understand current practices as well as opinions on additional IP norm setting. *Methods:* Between February 20, 2017 and April 7, 2017, we conducted an online survey of IP users using a combination of criterion and chain sampling. The survey instrument included the following domains of inquiry: 1) respondent characteristics (demographics, anti-torture work, country conditions, and IP training); 2) IP use, importance and practices, and; 3) opinions on additional IP norm setting. *Results:* The survey was distributed to 177 individuals and 250 organizational representatives with response rates of 78% and 47% respectively. The respondents came from a variety of clinical, legal, academic, and advocacy disciplines from around the world. The respondents indicated that they use the IP for a wide range of anti-torture activities: investigation and documentation, advocacy, training and capacity building, policy reform, prevention, and treatment and rehabilitation of torture survivors. The vast majority (94% of individual respondents and 84% of organizations) reported that the IP is important to their anti-torture work. A majority of individual (60%) and

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organizational (59%) respondents reported that updating or adding clarifications to the IP would help to address the challenges they face and provided specific suggestions. However, 41% of individuals and 21% of organizational respondents also reported concerns that additional IP norm setting could have negative consequences. *Discussion:* The IP provides critical guidance for a wide range of torture prevention, accountability, and redress activities and can be enhanced through the development of additional updates and clarifications to respond to the current needs of torture survivors and stakeholders.

Keywords: Istanbul Protocol, forensic documentation, torture, stakeholder survey

Introduction

In 1999, members of civil society, together with United Nations (UN) anti-torture bodies, developed international norms for effective investigation and documentation of torture and ill-treatment, The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, commonly known as the Istanbul Protocol. The Istanbul Protocol serves to bridge the gap between the treaty-based duties of States to investigate and document torture and ill-treatment and the practical challenges to executing these functions by providing normative guidance, particularly on medico-legal investigation and documentation into torture allegations (UNHCHR, 1999).

The Istanbul Protocol (IP) outlines international legal standards on protection against torture and sets out specific guidelines on how effective legal and medico-legal investigations into allegations of torture and ill-treatment should be conducted. The IP also contains a series of "Istanbul Principles," which were adopted by the UN General Assembly and provide minimum standards for State adherence to ensure effective investigation and documentation of torture and ill-treatment. The IP was the result of three years of analysis, research, and drafting undertaken by more than 75 forensic doctors, physicians, psychologists, lawyers and other stakeholders who represented 40 organizations from 15 countries. The IP has been used for the documentation of torture among a broad spectrum of survivors, including detainees, asylum-seekers and refugees, as well as for survivors of other forms of ill-treatment and abuse for nearly twenty years (Haagensen, 2007; Kalt, Hossain, Kiss, & Zimmerman, 2013; Masmas et al., 2008; Moreno & Iacopino, 2008; Park & Oomen, 2010; Perera & Verghese, 2011; Piwowarczyk, Moreno, & Grodin, 2000; Visentin, Pelletti, Bajanowski, & Ferrara, 2017). It has also been utilized by a wide array of stakeholders, including civil society organizations, national and international government institutions, and regional and international bodies to develop guidelines on the prevention, accountability and redress of torture and to treat survivors (Furtmayr & Frewer, 2010; Kelly, 2016; Otter, Smit, Cruz, Özkalipci, & Oral, 2013; Piwowarczyk et al., 2000; Ucpinar & Baykal, 2006).

While the IP provided critical norms for legal and medico-legal investigation and documentation of torture and ill-treatment, it did not provide guidance on how States should implement those norms (Ucpinar & Baykal, 2006). In 2012, four organizations with extensive IP implementation experience (Physicians for Human Rights, the International Rehabilitation Council for Torture Victims, the Human Rights Foundation of Turkey, and REDRESS)

developed a series of practical guidelines for State implementation of the IP (known as the "Istanbul Protocol Plan of Action"). The Istanbul Protocol Plan of Action was recognized and supported by the UN High Commissioner for Human Rights in 2012 and, since then, has been applied in a number of countries (Iacopino, 2017; Iacopino & Moreno, 2017).

In September 2016, more than 200 regional and international IP stakeholders participated in a meeting in Bishkek, Kyrgyzstan entitled, "Istanbul Protocol Implementation: Transforming Regional Experiences into International Norms for Effective Torture Investigation and Documentation." Bishkek meeting participants, together with representatives of the four UN anti-torture bodies (the Committee Against Torture, the Special Rapporteur on Torture, the Subcommittee on the Prevention of Torture, and the UN Voluntary Fund for Victims of Torture) discussed how best to update and enhance IP norms, including to give guidance to States on implementation (Ludwig Boltzmann Institute of Human Rights, 2016).

Given the widespread and longstanding use of the IP, the organizations leading the IP plan of action agreed to conduct a large-scale stakeholder survey of individual IP users as well as civil society anti-torture organizations to gather their experiences using the IP and suggestions for ways to enhance the Protocol. This study presents the results of this survey in an effort to enhance IP norms for effective investigation and documentation of torture and ill-treatment.

Methods

Two surveys with parallel content, one for individual IP users and the other for representatives of organizations that use the IP, were developed. Individuals were asked to respond with their own experience while organizational representatives were asked to consult with relevant personnel, including clinical evaluators and attorneys, within their institution in order to convey the collective IP experiences of their organization. The surveys included three primary inquiry domains including the following: 1) Respondent Characteristics; 2) IP Training Experience, Use and Challenges, and; 3) Opinions on enhancing the IP. The Respondent Characteristics included questions on demographics of the respondent and their experience with anti-torture work as well as general working conditions in their primary country location. The IP training experience, Use and Challenges section included questions on the individual or organization's experience with the IP, how it is used and perceptions of its importance and utility in day-to-day functions as well as challenges to practical applications. The opinions on an additional norm setting section included questions on updating or revising the IP and potential positive and negative consequences. The surveys, written in English, were pilot-tested among an eight-member committee and clarifications incorporated into the final versions of the surveys before distribution.

We employed a combination of two purposeful sampling methods: criterion sampling and chain sampling. We chose these sampling methods to ensure the participation of a global cohort of IP users with a wide range of experiences in their respective fields. Our criteria for sampling included several types of IP use (investigation/documentation, advocacy, training and capacity building, policy reform, prevention, and treatment/rehabilitation) as well as geographical representation. PHR developed an

initial list of individual and institutional participants based on these criteria. The lists were then circulated to representatives of organizations conducting the survey for subsequent elaboration, including: the International Rehabilitation Council for Torture Victims (IRCT); the Human Rights Foundation of Turkey (HRFT); REDRESS; the UN Committee Against Torture (CAT); the UN Special Rapporteur on Torture (SRT); the UN Subcommittee for the Prevention of Torture (SPT); the UN Voluntary Fund for Victims of Torture (UNVFVT); and several consultants. We took additional steps to limit overrepresentation of large homogenous groups of potential participants such as the PHR Asylum Network of more than 400 clinicians who conduct clinical evaluations of US asylum applicants by utilizing the criterion of a minimum of 30 completed asylum evaluations.

From February 20, 2017 to April 7, 2017, investigators administered the survey to respondents using a secure online survey tool. Email messages with the survey link were sent and followed up at bi-weekly intervals to remind respondents to complete the survey.

All analyses were conducted using Stata v.14.2 and Excel v.15.33. Descriptive statistics is reported, side-by-side, for individuals and organizational representatives for all survey questions except in a few cases where the same question was only asked to one of the groups. Chi-squared testing was used to test possible correlates for questions on possible IP norm setting.

The study was administered by researchers at the University of California, Berkeley, PHR and the IRCT. All participants provided informed consent for participation in this study and publication of de-identified data. The study was reviewed and approved by PHR's Ethics Review Board (ERB).

Results

Over a seven-week survey period, a total of 177 individuals and 270 organizational representatives were invited to complete the survey. We received 153 individual entries into the online survey of people that completed any part of the questionnaire of which 138 individuals (78% response rate) completed questions beyond the initial screening questions. Among the institutional responders, we received 192 entries of which 91 responses (34% response rate) had completed the survey beyond the initial screening questions. Some individuals received both versions of the survey and were asked to respond as both an individual and on behalf of their organization. Of note, the organizational respondents were asked to consult with relevant stakeholders in their organization to complete the survey. No participants indicated that language or fear of reprisals prevented them from completing the surveys.

We report response frequencies and/or percentages and note the total number of responses ("n" values) for each question since not all respondents answered all survey questions. Data is reported separately for the individual and organization surveys with the exception of several questions where pooled data were deemed more informative.

Respondent characteristics and conditions

Demographics

Of all respondents who answered (n=220), 49.5% were men and 50.5% were women. Respondents resided in 30 countries from all continents with the exception of Antarctica (Figure 1).

Of the 110 individual respondents, 32 were based in the United States of America, 15 from Turkey, nine from Denmark, and seven from Switzerland. Three respondents each were based in: Canada, France and Spain while two respondents each were from Australia, Austria, Georgia, Greece, Netherlands, Norway, Philippines and Portugal. There was one respondent from each of the following countries: Albania, Columbia, Finland, Germany, Hungary, Indonesia, Kenya, Mexico, Palestine, Peru, Serbia, Sri Lanka, Tunisia and Zimbabwe. Among the 90 organizational respondents, 20 were based in the United States of America. Four respondents were based in Israel and the Netherlands, three from the Democratic Republic of the Congo, India, Switzerland and the United Kingdom. There were two respondents each from Austria, Brazil, Canada, Denmark, Georgia, Germany, Kyrgyzstan, Nepal, Pakistan, Philippines, and South Korea. There was one respondent from each of the following countries: Afghanistan, Argentina, Armenia, Australia, Bolivia, Bosnia and Herzegovina, Cameroon, Chad, Chile, Ecuador, Finland, Greece, Iran, Iraq, Ireland, Mexico, New Zealand, Palestine, Peru, Serbia, South Africa, Spain, Sri Lanka, Sweden, Turkey, and Ukraine.

Respondents reported professions in health, law, human rights, administration and academia (Figure 2). Sixty-two percent of all respondents were health professionals. Among all those who noted they were health professionals, 84 (51%) were physicians; 32 (20%) were psychiatrists; 36 (22%) were psychologists; 4 (2%) were social workers and 2 (1%) were nurses. The remaining 14 held various roles such as student, department chair, and public health professionals.

Among the individual respondents (n=123), the most frequently cited affiliation was to a non-governmental organization (62%), but respondents were also affiliated with academic institutions (52%), health service providers (32%), professional associations (25%), UN or regional mechanisms (5%), and intergovernmental agencies (2%). Twelve percent had other affiliations such as private practice,

Figure 1: *Country location of individual and organizational respondents*

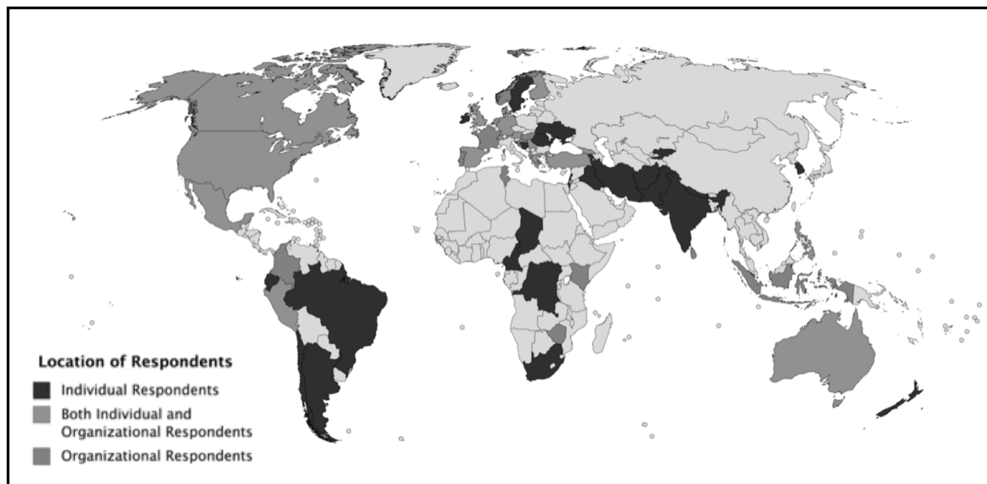
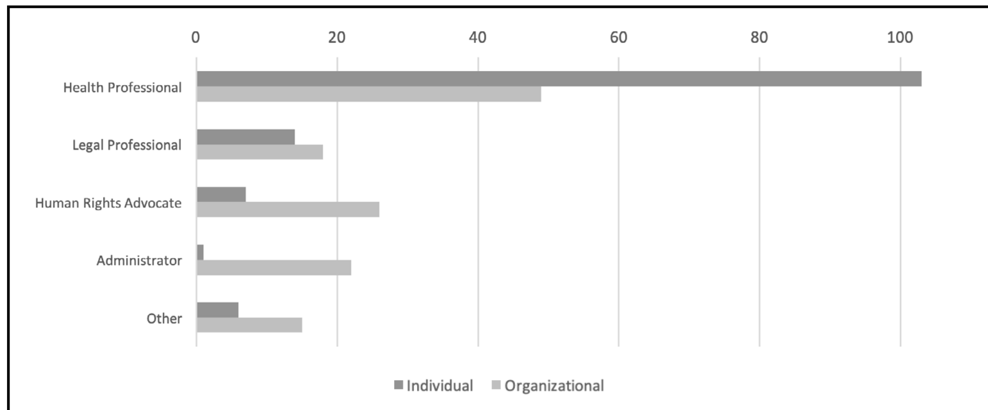


Figure 2: *Respondents' professions for individuals (n=131) and organizations* (n=91)*



* organizational respondents noted holding multiple roles simultaneously (130 total responses among 91 respondents).

humanitarian organizations and private companies. Among the organizations (n=90), 78% were non-governmental organizations, 6% were academic institutions, 6% were health service providers, 4% were professional associations, and 2% each were government agencies and UN/regional mechanisms. Two organizations (2% of respondents) noted other affiliations (civil association and student-clinic).

Anti-Torture Work

Respondents reported working in various settings including national settings (49% of individuals, 67% of organizations) but also in regional (19% of individual and 17% of organizations) and international settings (32% of individual and 17% of organizations). Respondents reported serving diverse populations. Of the 212 total respondents (both individual and organizational), they served: torture survivors (81%); asylum applicants (53%); refugees (51%); persons deprived of their liberty (pre-trial and administrative detention) (33%); adult prisoners (32%); child prisoners (21%); domestic legal clients (27%); and patients in health and mental health institutions (25%). Other populations served included: prisoners of war; victims of sexual and gender-based violence; families of missing persons and victims of human rights abuses; and civilian survivors of war and conflict.

In serving these populations, respondents reported being engaged in a number of anti-torture activities (Figure 3). Among the other activities not listed in the table below, respondents noted they conduct psychosocial support, research, networking, and teaching.

Country Conditions

Respondents provided important contextual information on the conditions of the primary country location where they conduct their anti-torture activities (Figure 4). While the majority of respondents reported that the UN Convention against Torture (CAT) has been ratified in their country, the incorporation of the IP into national standards is far less prevalent.

Figure 3: *Anti-torture activity for individuals (n=122) and organizations (n=91)*

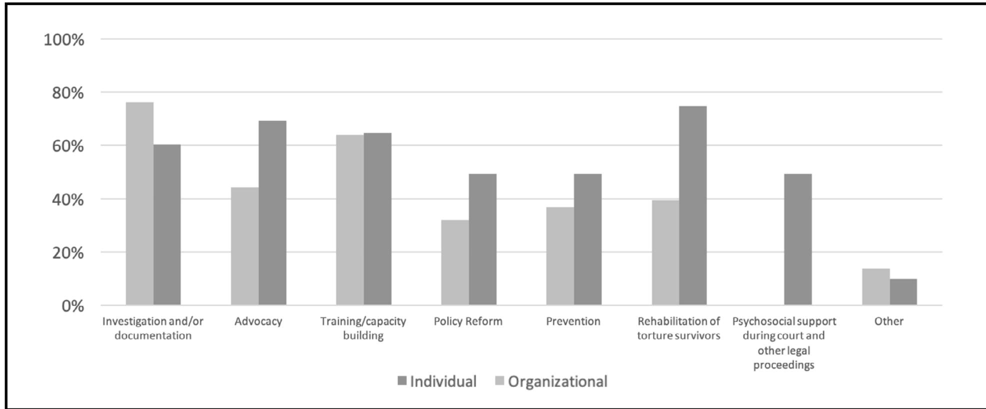


Figure 4: *Reported country conditions among individuals (n=113) and organizations (n=80)*

0% 10% 20% 30% 40% 50% 60% 70% 80% 90% 100%

UN CAT has been ratified
The Optional Protocol to CAT has been ratified
A National Preventive Mechanism (NPM) has been established
Detainees typically have prompt access to an attorney
Detainees typically have access non-governmental medical and/or psychological examinations
The promptness of official forensic evaluations is adequate
The quality of official forensic exams is adequate
Official forensic services are under the authority of the Ministry of Justice or Internal Affairs
Medical testimony by non-governmental experts are accepted in courts of law
Forced confessions are the primary means of criminal convictions
Corruption is a significant factor in the legal/judicial system
Medical and legal experts who investigate and document torture typically fear reprisals
The IP has been officially recognized by official statements
The IP has been officially recognized by legislation
The IP has been officially recognized by administrative regulations
The IP has been officially recognized by investigation/Documentation practices
The IP has been officially recognized by standardized forms
The IP has been officially recognized by courts/judicial bodies
The IP has been integrated into national law, policies, and/or regulations
The IP has been integrated into medical, forensic and/or health curricula
The IP has been integrated into the curricula of legal experts
The IP has been referenced or used by courts and other adjudicatory bodies
The IP has been translated into the official language of my country
The IP has been adapted nationally for country-specific application

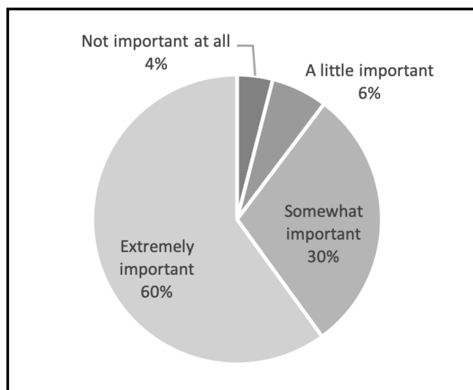
Individual
Organizational

Istanbul Protocol relevance, experience, utility & challenges

IP Importance

Ninety percent of all respondents indicated that the IP is either extremely or somewhat important to their work or that of their organization (Figure 5).

Figure 5: *Importance of IP in work (n=175)*



IP Experience

Individual respondents reported having extensive experience using the *Istanbul Protocol*. There was an average of 16 years (range: 0 to 40 years) of anti-torture experience among the individual respondents. On average, those who provided clinical services estimated that they provided medical or mental health treatment or support to 234 torture survivors each (range: 0 to 2000) and conducted 22 trainings (range: 0 to 200 trainings) on IP norms and practices. Organizational representatives reported extensive trainings for their medical professionals (mean of 5.1 training days per year), mental health professionals (average 3.2 training days per year) and legal staff (average 4.2 training days per year) as well as trainings for social workers, researchers, field officers, students, and others.

IP Utility

The IP was utilized in a broad range of activities related to torture prevention, accountability, and redress as well as awareness raising and advocacy (Figure 6). Most respondents utilized the IP for advancing public knowledge, compelling investigations, promoting the IP in national laws and policy reform, for campaigning and awareness raising, and in legal, medical and mental health evaluations. The IP was used by about one third of respondents as an intake tool for medical and mental health treatment. Other purposes described by the respondents included research, education and to screen or document other traumatic experiences such as child abuse or domestic violence.

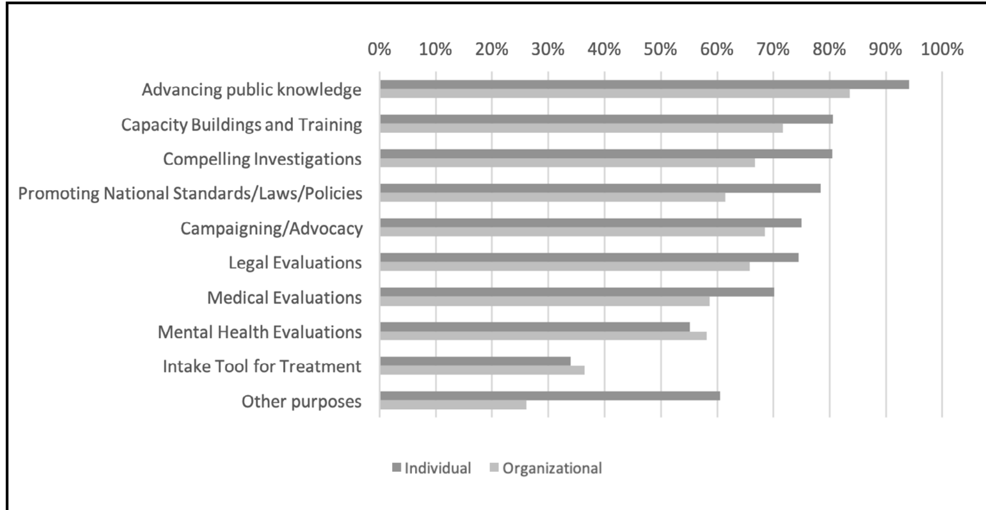
Respondents provided additional information on their IP use detailed in the Supplementary Materials.[1]

IP Challenges

Respondents were asked to identify the most significant needs and challenges that they face in their use of the IP. They responded to this open-ended question with concerns about external factors such as lack of public knowledge and awareness of the IP, limited training of relevant health professionals, difficulties with official state adoption of the IP and political challenges in incorporating IP standards into their national and institutional policies. Respondents also identified challenges involving the content of the IP such as limited gender perspectives, complexity of IP guidance, especially in cross-cultural contexts or areas with limited resources for training, outdated text, limited specific

[1] See: https://doi.org/10.7146/torture.v29i1.111428

Figure 6: *Utility of the IP among individuals (n=107) and organizations (n=73)*



guidance on torture of children or through sexual violence, and the accuracy of IP translations.

Opinions on additional IP norm setting

Survey participants provided their opinions on the possibility of additional IP norm setting such as updates and clarifications and the possible risks that may be associated with undertaking such actions.

Updating or Revising the IP

Sixty percent of individual (54 of n=90) and 59% of organizational (38 of n=64) respondents believed that updating or revising the IP would help to address the challenges that they face. Of those who supported updating or revising the IP, several key themes emerged from the open-ended responses:

(1) The majority of suggestions referred to clarifying and shortening the IP to making it more "user-friendly," accessible or practical for regular use. Several respondents noted that additional summaries or practical guideline documents may have great utility.
(2) Many respondents requested additional or more thorough practical guidelines or training documents for better implementation including more translations, guidelines on advocacy and seeking accountability, human rights and legal texts and practical standard documentation forms.
(3) Respondents wanted factual updates, particularly in the legal sections and in diagnostic tools (e.g., modified recommendations on laboratory and radiological procedures) and documentary photography. This also included better references and anatomical illustrations.
(4) Respondents requested more thorough and updated content on the following topics: mental health; the torture of children; legal aspects of investigations; gender-related issues (particularly issues faced by sexual and gender minorities); sexual torture; crime scene investigation

and proper documentation; as well as, ethics and treatment recommendations. The great majority of respondents (60-85%) supported a broad range of specific additions and changes to the IP (Figure 7).

Potential Consequence of Revision

Among all respondents, a number of potential positive (Figure 8) and potential adverse consequences (Figure 9) were identified by individual and organizational respondents (these were not mutually exclusive questions). Sixty-six percent of individuals and 89% of organizations responded that there are positive consequences to revising or supplementing the IP while 41% of individuals and 21% of organizations indicated that there could be adverse consequences.

Opinions on Benefits versus Risks

All respondents were asked to provide their opinion on whether "in the current political climate, do the potential benefits of changing the Istanbul Protocol outweigh the potential risks of changing the Protocol?". Of the 145 respondents (both individual and organizational representatives) who answered this question, 97 (67%) indicated their belief that the potential benefits of changing the IP outweigh the potential risks of changing

Figure 7: *Assessment of support for possible IP revisions among individuals (n=88) and organizations (n=66)*

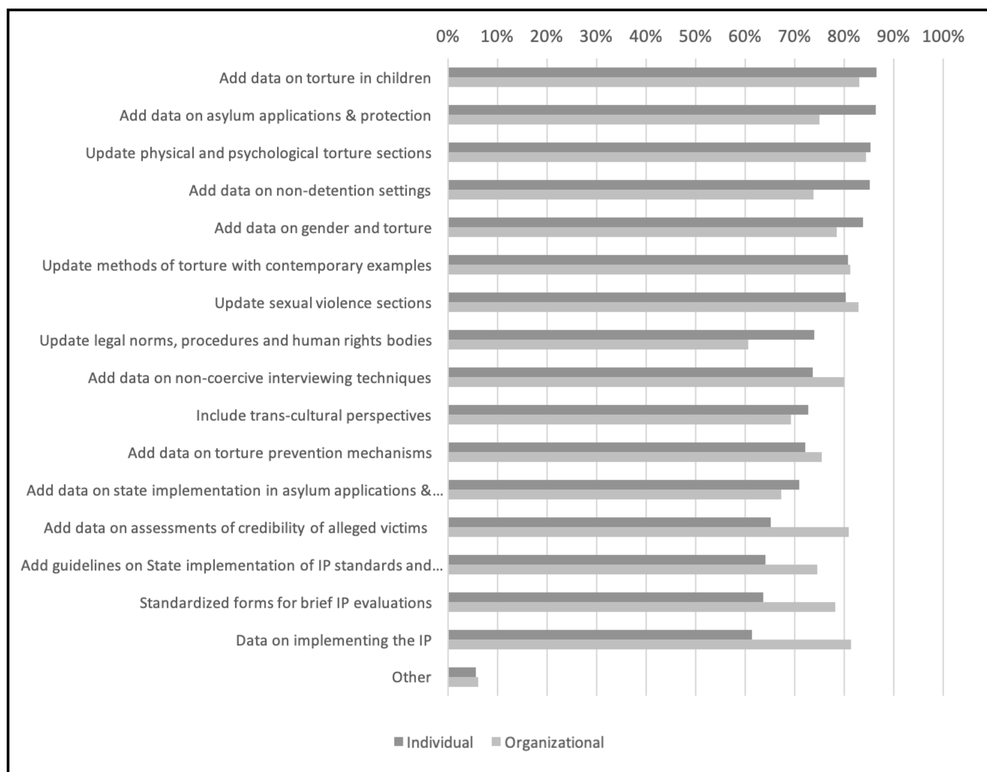
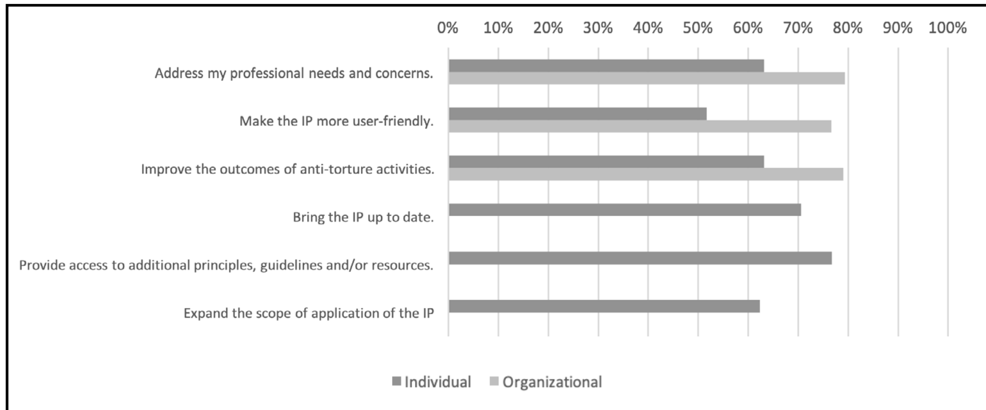
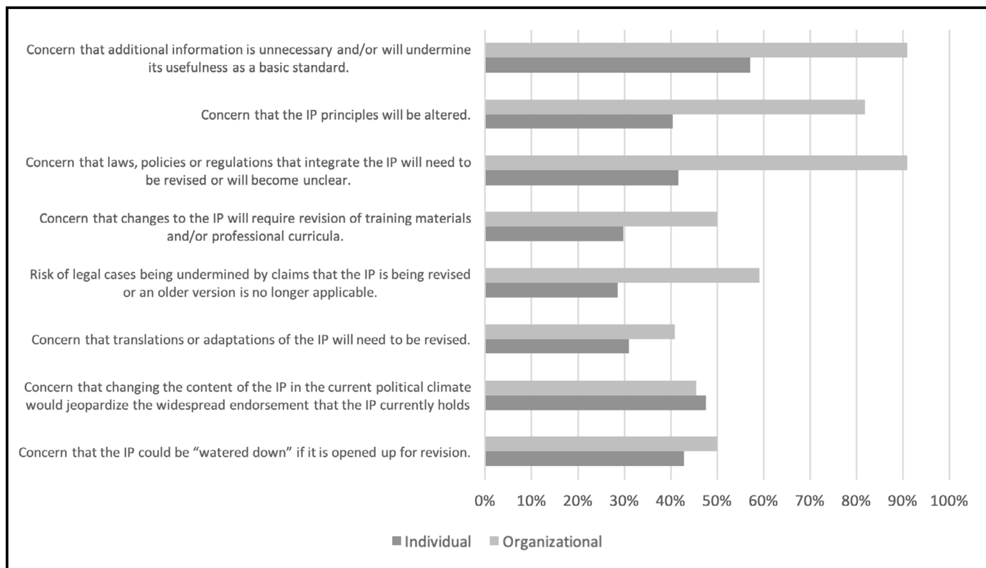


Figure 8: *Potential positive consequences of IP revision among individuals* (n=87) and organizations (n=50)*



* Some questions were not asked of organizational representatives

Figure 9: *Potential negative consequences of IP revision (n=84 individuals and n=22 organizations)*



the Protocol. There was no significant difference between the individual vs. institutional respondents ($p>.05$).

Discussion

To our knowledge, this is the first large-scale survey on IP experiences and practices since the IP became the UN standard for effective investigation and documentation of torture and ill-treatment nearly two decades ago.

Respondents were from nearly all parts of the world and had extensive IP knowledge and experience. They also came from a variety of clinical, legal, academic and advocacy disciplines and identified many specific country conditions and challenges that affect their anti-torture work. For example, more than half of the respondents indicated that: 1) the IP has not been officially recognized in official statements, national courts or judicial bodies, official investigation and documentation practices, or administrative regulations; 2) official forensic services lack independence from law enforcement or prosecution authorities, and; 3) detainees do not typically have access to non-governmental medical and/or psychological exams. In addition, many of the respondents reported that in their country: 1) the IP has not been officially recognized in legislation, national laws or polices; 2) forced confessions are the primary means of criminal convictions; and 3) clinical and legal experts who investigate and document torture typically fear reprisals.

Under these challenging circumstances, the respondents indicated that they use the IP for a wide range of anti-torture activities including: investigation and documentation; advocacy, training and capacity building; policy reform; and prevention and treatment and rehabilitation of torture survivors. They reported using the IP to serve diverse populations and work in regional, national, and international settings. The populations served not only include alleged torture victims and survivors, but also asylum seekers and refugees, prisoners, victims of conflict, and survivors of trafficking and other abuses.

The vast majority of respondents (80%) reported that the IP is important in their anti-torture work. This is not surprising given the widespread use of the IP by participants and the IP's international standing as normative guidance on the State obligation to investigate and document torture and ill-treatment. Based on nearly twenty years of practical experience of using the IP in their anti-torture work, a majority of individual (60%) and organizational (63%) respondents reported that updating or revising the IP would help to address the challenges that they face. Respondents identified content that would benefit from updates as well as additional information or clarifications in the IP. More than half of all respondents recommended updates on legal norms and procedures, methods of torture and investigation and documentation practices, including sexual violence. More than half of all respondents recommended additional information and/or clarifications on, *inter alia*: the role of the IP in torture prevention mechanisms, the relationship between gender and torture, the effects of torture on children, the role of health professionals in non-detention settings, guidance on State implementation of IP standards, assessments of credibility by clinical evaluators and the need to develop standardized documentation forms for alleged or suspected torture or ill-treatment in primary health care settings.

A majority of individual and organizational respondents also identified specific, potential benefits of updating and/or adding to the content of the IP including: bringing the IP up to date, addressing

specific stakeholder needs, and making the IP more user-friendly.

On the other hand, the primary potential risk that was supported by a majority of both individual and organizational respondents was that of undermining the legal standing of the IP in the current political climate. This concern was expressed primarily by organizational representatives, rather than individuals. Concerns about the adverse consequences to revising the IP, including the potential risk of undermining the legal status of the IP or jeopardizing current laws and policies that have incorporated the IP or current cases, were likely underestimated in this study as our sample populations included mostly health professionals (84% of individual respondents) who may not fully appreciate the potential legal and policy risks related to changing the IP in international or national contexts. While the study did not include many professionals working at or extensively with UN bodies, it included representatives from the four primary UN anti-torture bodies, who can appreciate the current climate and likelihood of UN endorsement of an enhanced IP.

While individual and organizational respondents identified a number of specific potential benefits and risks associated with updating and/or adding to the content of the IP, 66% of all respondents (53 (61%) of 87 individual and 46 (74%) of 62 organizational respondents) indicated that they believed the potential benefits outweigh the potential risks. Given that the survey was not representative, this finding does not indicate that there is global agreement for an update, but it does suggest that there are both benefits and risks and illustrates the range of opinions and possible outcomes of an update. This survey sets the stage for a deeper process of discussions on the current utility, strengths and weaknesses of the IP and permitted a large swath of international stakeholders to express their experiences and opinions. Since the conclusion of the survey, a more thorough consideration of risks has been undertaken as a key part of the discussion around updating the IP, including interviews with a wide spectrum of stakeholders and consideration of the experience of other recently updated United Nations documents such as the Minnesota Protocol on the Investigation of Potentially Unlawful Death (UN Office of the High Commissioner for Human Rights, 2018).

This study had other important limitations. For example, the meaning of some of the responses was open to interpretation by the respondents in their unique contexts. For example, one of the "Utility" (Figure 6) responses was labeled "advancing public knowledge." This term could refer to a variety of functions including campaigning, advocacy work and education depending on the context. To avoid overstating or summarizing incorrectly, we have chosen to present the responses as they were asked in the survey. We also note that because the study was not representative, disaggregating the data by country, region or other demographic factors would not be suitable and may be misinterpreted. As such, we present the aggregate data. Future surveys may consider randomizing for region, country, status of economic development or organizational function to better understand how these factors play a role in the experience and opinions of respondents. The findings of this study are not generalizable to all IP users as our sample populations were not randomly selected. The aim of this study was not to ascertain the prevalence of IP practices among all stakeholders, but rather to provide as many IP stakeholders as possible with the opportunity to share their IP experiences and contribute to the

ongoing process of enhancing IP norms and understand the range of experiences, opinions and concerns. We believe that this large-scale effort provides considerable insight into the ways in which the IP has been used and how it may be strengthened and/or enhanced.

In fact, the findings of this study have been used to inform current efforts to enhance IP norms in a project led by PHR, IRCT, Human Rights Foundation of Turkey, REDRESS, the UN CAT, UN SPT, UN SRT and UNVFVT, with substantial support from DIGNITY. The project includes more than 180 participants from 51 countries. The list of the participants for the IP survey was used as a foundation for the initial participants of the IPS project. On May 11, 2018, former UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein endorsed the project saying:

> *"I would like to express my support to the IPS Project, in particular because it is being set in motion at a time when there is a growing need for strengthening international norms and preventive tools in the face of the pervasive use of torture across the globe. It is without a doubt that efforts, such as yours, to prevent occurrence of acts of torture and ill-treatment, to identify and effectively investigate such acts and to assist the victims of torture and ill-treatment are essential."*

Forensic medical and psychological documentation of torture is one of the most powerful forms of evidence in establishing the crimes of torture and ill-treatment. In his annual report to the UN General Assembly in October 2014, the former UN SRT Juan Méndez recognized the critical role of forensic and medical sciences in the prevention, accountability, and redress of torture and other ill-treatment. He stated that, "The Istanbul Protocol serves as a standard for medical evidence given by experts, for benchmarking the effectiveness of the evidence, and for establishing redress for victims" and that, "Quality forensic reports are revolutionizing investigations of torture" (*UN Meetings Coverage and Press Releases*, 2014).

One of the most important strengths of the IP is that it was developed by independent and civil society as a means to create normative guidance on the State obligation to investigate torture, as well as to empower non-state actors to end torture practices and hold perpetrators accountable. The legitimacy and authority of IP principles and guidelines lies in the consensus achieved across multiple disciplines between stakeholders in civil society and the UN and the wide endorsement of these principles and guidelines by States and international bodies. The present IP stakeholder assessment represents a critical step in the process of achieving broad stakeholder consensus on the process of enhancing IP norms.

Conclusion

The findings of this study indicate that the IP is an important tool in the struggle to end torture and to hold perpetrators accountable, and has continued to be used for a wide range of purposes for over 20 years. In addition, IP stakeholders support efforts to enhance IP norms, although there may be risks in doing so, and provide specific recommendations for updates and clarifications to the IP to better address the needs of the torture victims they serve.

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Capoeira Angola: An alternative intervention program for traumatized adolescent refugees from war-torn countries

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Key points of interest

- Capoeira Angola is an Afro-Brazilian martial art that incorporates dance and is used as an alternative psychological treatment for young refugees needing clinical services and support.
- A Capoeira Angola program for young refugees in Australia improved interpersonal skills, increased a sense of responsibility and discipline, and promoted improved behavior towards peers and teachers.

Abstract

Background: Following resettlement in Australia, young traumatized refugees often face social challenges, including language and cultural barriers and social adjustment, which can lead to behavioral difficulties. Providing support at this vulnerable stage is therefore vital for reducing future setbacks. *Objective:* The STARTTS Capoeira Angola program was developed to help traumatized adolescents successfully integrate into their school environments. As an Afro-Brazilian martial art that incorporates dance, Capoeira appeared an appropriate intervention for adolescent refugees due to its unique ethos of empowerment and group membership. *Method:* 32 refugees from Middle Eastern and African countries (aged 12-17) from the Intensive English Centre (IEC) department of the participant schools were assessed pre- and post- intervention using the Teacher's Strengths and Difficulties Scale (SDQ). Teachers were also asked to observe the students' functioning in a range of different situations at school. *Results/conclusions:* A significant overall decrease in behavioral problems was observed, which was associated with improvements in interpersonal skills, confidence, respect for self and others, self-discipline, and overall sense of responsibility.

Keywords: Adolescents, refugees, trauma, alternative intervention, capoeira

Introduction

Over the past two decades, the global population of forcibly displaced persons has increased from 33.9 million (1997) to 65.6 million (2018) (UNHCR, 2018) largely as a result of persecution, war and human rights violations. Of this latest figure, 25.4

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million are identified to be refugees. 75,000 unaccompanied minors have been identified in 2017 alone, and children below 18 years of age constitute 51% of the overall refugee population, the highest figure in a decade (UNHCR, 2018).

Exposure to high levels of cumulative trauma—such as war, violence, traumatic loss and witnessing gross human rights violations—places refugee children and adolescents at significant risk of developing psychological complications (Fazel & Stein, 2002). Many have also experienced high levels of deprivation, and threats to the safety and security of themselves and their loved ones (Aroche, Coello & Momartin, 2012a). In a study of Cambodian adolescents living in a refugee camp, Mollica and colleagues (1997) found heightened symptoms of somatic complaints, depression, anxiety, social withdrawal, and attention problems, due to cumulative trauma coupled with a lack of basic needs. Exposure to trauma in childhood can have a significant impact on the processes of psychological, emotional and social development of young people. Miller, Mitchell & Brown (2005) describe the experiences of refugee children and adolescents as distinctive, since suffering traumatic events often results in disrupted lifestyles and interrupted education. The interactions between the effects of exposure to trauma and the stresses involved in exile and resettlement processes are complex and have significant consequences for family relationships and their dynamics (Aroche & Coello, 1994).

Australia has received a large number of refugees and asylum seekers in the last decade, seeking security and safety for themselves and their families (AHRC, 2012; Karlsen, 2011; UNHCR, 2017). The New South Wales Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS), one of Australia's leading organizations in refugee mental health, provides psychological treatment and rehabilitation to refugees who have survived torture, trauma, and conflict. The organization receives approximately 3,500 clients annually in need of counseling, clinical intervention, and community development programs. Almost 19% of this figure are adolescents; therefore, the need for sustainable interventions, as an alternative to traditional behavioral therapies, is recognized. The STARTTS Capoeira Angola program was developed to specifically address the particular interpersonal challenges faced by these adolescent refugees.

This paper illuminates the features of Capoeira, briefly surveys the evidence-based rationale for why Capoeira may be an effective intervention for traumatized young refugees, provides an overview of the Capoeira program, and presents the quantitative-based results from an evaluation of the program.

Capoeira Angola

Capoeira Angola[1] is a simulated non-contact combat between two players and uses an amalgamation of music, singing, dance, acrobatics, and martial arts movements. It is an Afro-Brazilian art that shares certain qualities with martial arts and originates from Angolan slaves brought to Brazil during the 16th century by Portuguese colonists (Boneco, 2002; Hedegard, 2012). They developed it as a diversion from fighting when they were not allowed to have weapons, hence the emphasis on dance. As the slaves had been transferred to Brazil from the Southern African nation of Angola, the art led to an Angolan style of Capoeira, focusing on evasion tactics and

1 Capoeira Angola is referred to as simply "Capoeira" throughout the paper.

self-defense to escape physical attacks from slave owners. The game is characterized by the "ginga," a fluid, rocking body movement, which serves as the basis for other movements. Players maneuver each other into unguarded positions with contained movements, avoiding strikes through skillful awareness and turning with the other player's rhythm. Players perform inside a circle of other players known as a "roda," which is conducted by the "mestre" (master) who determines when players start and finish. Music is an integral part of the game and is played by a "bateria" (an orchestra of simple traditional instruments).

The game is also conducted by singing based on call and response whereby players sitting in a circle answer the chorus sung by the "mestre." Both players and the audience are involved at all times. The elements of movement, music and singing are equally crucial to the game and, when combined, create a unique social interaction based on rules of respectful communication.

Capoeira as a therapeutical intervention: Possible benefits

The use of Capoeira as an intervention is indicative of a broader shift from cognitive and behavioral therapies to more interactive and social methods of group therapy (Nosanchuk, 1981). For example, the use of movement and dance has been used to instigate therapeutic change and further emotional, cognitive, physical and social integration based on the empirically supported premise that the body, mind and spirit are interconnected (Dunphy et al., 2015). Furthermore, Lossing and colleagues (2017) explored dance movement as an intervention for patients experiencing depression and dementia because of its combination of exercise, music and cognitive engagement, indicating a correlation between mind and body awareness, expression and coordination. Verreault (2017) also reported benefits of dance and movement therapy for traumatized female refugees that reinforced bodily engagement and included the use of music and movement, which strengthened their treatment model and provided a shared psychological safe space for self-expression.

A number of Capoeira's features—including its unique framework of empowerment, confidence-building and overcoming adversity through the development of individual self-discipline, inner-strength and group membership—make it particularly suitable for young refugees. It is also culturally appropriate, transportable, low cost, and can be easily facilitated (Capoeira, 2003). We draw upon relevant literature to posit some key benefits of Capoeira that informed the rationale for the intervention, as well as the possible channels that may cultivate the outlined benefits. These benefits are presented thematically.

Theme One: Repairing the Mind-body Link

Trauma experiences can work to sever the mind from the body, particularly if the body was the site of trauma, which makes it imperative to involve the body in the healing process (Gray, 2001).[2] A key interdisciplinary concept is "kinesthetic empathy," which facilitates the cultivation of compassion and kinship by observing the movements of others. Kinesthetic empathy enables self-development and introspection within the adolescent when the process has been blocked or interrupted by trauma

2 Note that Gray (2001) also suggests that the absence of judgment or criticism in movement therapies is important for survivors of human rights abuses as it puts them at peace with themselves.

(Reynolds & Reasons, 2012). Capoeira may help to enhance the mind-body connection through bodily engagement, by moving it in unfamiliar ways and developing physical awareness, confidence and control. Indeed, Capoeira is physically demanding and can be initially challenging for some but it is an effective way to build fitness over time, which is a core component of emotional wellbeing (Assunçao, 2005). The use of music and movement in clinical therapies, which—in light of the deep and complex relationship between body, mind and psychological trauma—has been shown to greatly affect the physical body (Hayes, Strosahl & Wilson, 1999).

Theme Two: Youth Engagement and Appropriateness

Twemlow and colleagues (2008) suggest that interventions should be comprehensive, practical and highly engaging in order to connect with youth, but dropout rates from other forms of individual therapy indicate that sustaining the attention of traumatized young people can be particularly challenging. Adolescents with problematic behavior, such as impulsiveness and aggressiveness, may not always respond to traditional therapies alone but combining the physical movements with therapeutic ideology may help to stimulate behavior change (Twemlow, Biggs, Nelson, Vernberg & Fonagy, 2008). The same authors also note that movement-based therapies are often more effective than traditional talk-therapy for aggressive or traumatized young people. Therefore, Capoeira has the potential to provide antagonistic and violent adolescents with non-aggressive approaches that reinforce prosocial behavior and positive role modeling. Moreover, Capoeira has been shown to elicit a sense of belonging, camaraderie and the feeling of membership necessary to sustain the interest and tolerance of young people.

Theme Three: Resilience, Relationship Building and Behavior Change

The framework of Capoeira is also tightly intertwined with the notions of resilience and cooperation. It was used by the African slaves as a method of maintaining their identity (Boneco, 2002; Joseph, 2012), and it has a strong philosophical foundation of non-violence and cooperation. Participants are encouraged to take responsibility for teaching one another, while respecting the traditional forms and structures, and practicing teamwork (Capoeira, 2006). Bearing in mind that a disconnection from others is often at the core of psychological trauma, recovery incorporates the development of trust and new connections within the context of relationships. It cannot occur in isolation (Herman, 1997). The purpose of Capoeira is not winning or losing, but rather striving for alternative behaviors (Capoeira, 2006). Thus, when combined with support and encouragement, Capoeira may create an environment that diminishes undesirable and anti-social behavior through the strengthening of character and prosocial learning (Capoeira, 2006).

Theme Four: Previous Positive Results

Burt and Kent Butler (2011) assert that Capoeira could operate as a pragmatic model that supports cultural sensitivity and self-efficacy for young refugees.[3] Indeed,

[3] There are other social role modeling prevention programs, such as Aggression Replacement Training (Glick & Goldstein, 1987), for young people, although the safe framework, secure environment, peer relationships and camaraderie of Capoeira seems to be eliciting the observed improvements.

Capoeira has been used as a therapeutic method in a number of refugee camps. Sixsmith (2010) reported on the success of a UNICEF led Capoeira therapy group, titled "CapoeirArab," in helping highly traumatized young people in the Al-Tanf refugee camp on the Syria-Iraq border to achieve physical strength, confidence, and psychological stabilization. Capoeira, as perceived by the parents, was central to fostering the morale of the children and contributed to building emotional strength among camp residents as they observed children's marked improvement. Similarly, a British non-profit organization, Bidna Capoeira (We Want Capoeira), organized Capoeira classes for Palestinian refugee children from Qalandiya refugee camp. The author reported that hundreds of children, over a period of a few years, experienced the benefits of Capoeira during a distressful period in their lives and, despite limited facilities, the children were reported to have fun, learn valuable life skills, and learn to control their anxiety (Alsaleh, 2013). Capoeira was also introduced to a refugee camp in Angola by UNHCR as an activity to promote peace, reconciliation and self-control, and to ease tensions among different groups of refugees (Schmitt, 2016).

The Capoeira Angola program in Australia: Suitability, aims and hypothesis

Given the considerable number of adolescent refugees in Australia, whose social and educational development was disrupted by trauma, the school-based Capoeira program was developed to foster healing and address interpersonal challenges and to complement standard treatments.

Young refugees in Australia often face new challenges such as language barriers, discrimination and anxiety relating to the new culture (Aroche, Coello & Momartin 2012a; Fernandes & Aiello, 2018). These risk factors, if not managed properly and when complicated by pre-settlement trauma, could lead to future social problems such as failure to complete school, unemployment, antisocial behavior, economic dependence, and mental health conditions. In this context, Capoeira may operate as a protective factor, mitigating the impact of these problems, enhancing identity formation and predicting better future outcomes.

The purpose of the study was to appraise whether the overall objectives of developing this program were achieved—namely, helping enrolled adolescents to more effectively settle into their school life, instilling a sense of safety and control, increasing social skills and self-esteem, and feeling more satisfied in their relationships with peers and teachers. Specifically, the evaluation aimed to assess the efficacy of the program among this group of traumatized individuals.

Based on the literature of movement-based therapeutic programs, it was hypothesized that students participating in the intervention would exhibit an overall improvement in their behavior at school, with an increase in functional behavior and a decrease in dysfunctional behavior, as rated by their teachers.

Methodology for evaluation

Study Overview and Timeframe

STARTTS school liaison officers, who periodically visit schools with large numbers of refugees, had obtained teacher testimonies about high truancy rates, minor offenses and frequent school suspensions as a result of un-adaptive behavior. During academic years 2014-2015, preliminary consultations between the school liaison officers and school principals and teachers provided the Capoeira evaluation team with impressions regarding

the needs of the students. Following initial preparations, the evaluation was planned to be carried out during academic years 2015-2016. During this period, the project aims were described and memorandums were signed. In preparation for the program, Western Sydney schools were selected based on their large numbers of refugee populations from war-torn countries, and their high numbers of students in the Intensive English Centre (ESL). A mixed evaluation method using both quantitative and qualitative techniques was selected, although the present paper presents the quantitative findings.

Capoeira ran at two high schools in Western Sydney, within the Intensive English Centre (IEC), over three school terms (nine months, with each term being three months, excluding 10-day term breaks in between).[4] A total of 37 students participated in consecutive groups of the program. Groups were facilitated by Capoeira Master, Mestre Roxinho, a professional Capoeirista with more than thirty years of experience. The young people participating at each school were granted an hour during school each week to participate in assessment sessions on school grounds, which were run by the Research Officer and a Community Development Evaluation Officer. Before the group sessions began, the youth received information about the Capoeira program. Some volunteered to participate whilst others were selected by teachers according to their needs. It is important to reiterate that, during the intervention, the students did not receive any other type of individual treatment or group therapy. However, as this was an alternative therapy, it was clarified that if any of the participants were identified to need other forms of therapy, or requested it themselves, they would have been immediately placed in contact with an experienced STARTTS counselor.

Sample Background

Overall, 32 participants completed the study (five of the participants left the group) and all were refugees, comprising of 21 males and 11 females. The average length of resettlement in Australia prior to the initial assessment was one year (range=8-12 months) and the majority spoke functional English (n=30), with the remainder supported by bilingual teaching aids. Participants ranged in age from 12 to 18 years old (mean of 15). The schools were different in nature; one was a boys' high school whereas the other was co-educational. The participants were mainly from the regions of the Middle East and Central Asia (Iraq, Afghanistan, and Pakistan), Africa (Sudan and Somalia) and South East Asia (Burma and East Timor).[5]

Prior to resettlement, four of the participants had lost one or both parents, 10 had lost a loved one as a result of human rights violations (including beatings, torture, murder, and bombings) and seven spent

4 The program was delivered through schools as adolescents spend most of their time at school and a need was observed. School is also the vital bridge between young people and the wider society and provides the primary context for the development of the child's peer, social support and reference network (Aroche, Coello & Momartin 2012b).

5 Thirteen non-refugee students also participated in the program. Although this group was not comprised of refugees, they were disadvantaged youth from low socioeconomic backgrounds within the community who attended the same schools. Due to the small number of non-refugees, data from this group was not utilized within the analysis. Nevertheless, the benefits of the program were also observed amongst these disadvantaged youths.

lengthy periods in refugee camps. Four had arrived in Australia as unaccompanied minors, and seven had traveled with families. All participants had experienced or witnessed human rights violations, interrupted education and a lack of basic needs—factors that were perceived by the teachers to have impacted their behavior.

Measures: Teacher-Rated Strengths and Difficulties Questionnaire (SDQ)

The SDQ was used to assess the students before and after the intervention, similarly to other studies (Becker et al., 2004; Goodman, 2001). The SDQ is a concise behavioral screening questionnaire for 3-16-year-olds and has been widely used in schools with young people from a range of ethnic and refugee backgrounds to measure the impact of interventions (Birman & Chan, 2008; Ford et al., 2009). It uses clear English, which was important for ensuring prompt responses from the Capoeira facilitators.

The SDQ consists of 25 Likert-scale items that include both positive and negative behaviors, such as, “often loses temper” or “kind to younger children,” with answers chosen from “not true,” “somewhat true,” or “certainly true.” Answers to these 25 items are scored on five scales:

1) Emotional symptoms (five items)
2) Conduct problems (five items)
3) Hyperactivity/inattention (five items)
4) Peer relationship problems (five items)
5) Prosocial behaviors (five items)

The teacher version of the instrument was chosen for this evaluation due to logistical and administrative issues. While using teachers’ ratings of student behavior was not optimal, the close relationships between the teachers and students arguably improves the reliability of their ratings, as they were able to observe them in a range of situations at school.

The key informants of the 32 students (i.e., the teachers) assessed the students using the SDQ based on the participants’ behavior in class, their interpersonal skills with teachers and peers, and their self-esteem. Three teachers from the Intensive English Centre (IEC) participated in the project. Each student was rated by one teacher only.

Data Handling and Analysis

Results were analyzed in SPSS Version 20, using an alpha of .05 (representing a 95% confidence level). Scores for the item that rated the presence of headaches and other somatic features were missing from SDQs in either the pre- or post-Capoeira intervention for seven participants due to an error in the data collection form. The missing values were replaced with the individuals’ available scores from either pre- or post-intervention SDQ assessment sessions, which gave a conservative estimate of “no change” for participants with missing scores.

Means, standard deviations and t-tests were used to describe the sample and identify differences, comparing pre- and post-data. Although the items used a Likert-scale, SDQ claims that the dimensional scores can be treated as continuous scores, hence paired sample t-tests for each dimension were used to analyze results. Owing to the fact that t-tests are robust against violations of assumptions at sample sizes of 30 or above, normality assumptions were not tested. The sample size of 32 achieved an 80% probability of detecting a significant pre- to post-intervention effect of $r = .29$, which was calculated using GPower software (v3.1.5).

Results of teacher SDQ

Descriptive and Comparative Analysis

Means and standard deviations of pre- and post-intervention based on the teacher-rated

SDQ dimensional scores are shown in Table 1, with significant differences indicated in Table 2. As hypothesized, the intervention resulted in significant reductions in problematic behavior at school, as measured by "total difficulties" scores on the teacher-rated SDQ, from pre- to post-intervention. Although it was not hypothesized which specific areas of behavior would be perceived to have improved, the direction of change for each specific dimension was predicted by the hypothesized overall improvement.

Two-tailed Exploratory Analysis
Using two-tailed significance tests, an exploratory analysis was conducted to identify areas for the development of future hypotheses. Since this analysis was exploratory, no correction was made for multiple comparisons. For three of the five dimensions measured by the SDQ—"emotional," "conduct," and "prosocial behavior"—medium-sized to large significant improvements in pre- to post-intervention teacher-rated scores were observed. For

Table 1: *Means and standard deviations of pre- and post-Capoeira SDQ scores*

	Pre-Capoeira			**Post-Capoeira**		
	Mean	N	SD	Mean	N	SD
Emotional	3.9	32	2.0	2.3	32	2.3
Conduct	2.6	32	1.8	2.0	32	1.1
Hyperactivity/inattention	5.2	32	2.2	4.4	32	1.6
Peer problems	3.9	32	1.0	4.3	32	1.2
Prosocial behavior	6.1	32	2.1	7.7	32	2.2
Total difficulties	15.6	32	4.6	13.0	32	3.8
Impact	1.0	29	1.4	0.7	29	1.4

Table 2: *Differences in SDQ scores from pre- to post-Capoeira*

			95% CI of Mean					
	Mean diff.	*SD*	Lower	Upper	*t*	*r*	df	*p* (2-tail)
Emotional	1.6	1.8	0.9	2.3	4.88	.66	31	< 0.001
Conduct	0.6	1.5	0.0	1.1	2.18	.37	31	0.037
Hyperactivity / inattention	0.8	2.3	-0.1	1.6	1.90	.32	31	0.067
Peer problems	-0.4	1.1	-0.8	0.0	-1.88	.32	31	0.070
Prosocial behavior	-1.7	2.2	-2.4	-0.9	-4.33	.61	31	< 0.001
Total difficulties	2.6	3.7	1.2	3.9	3.88	.57	31	0.001
Impact	0.3	1.2	-0.1	0.8	1.51	.27	28	0.143

"hyperactivity/inattention," a similar trend was evident but this was not significant. The exception to this general pattern of improvement was "peer problems," which worsened from pre- to post-intervention scores, though not significantly.

Despite the significant reductions in problematic behavior (and increases in "prosocial behavior"), no significant reduction was observed in teacher-rated SDQ impact scores, although they did show a consistent trend. The SDQ impact score measures the extent to which teachers perceived that the participants' behavioral problems caused those participants distress or were a burden on them. One explanation for the lack of significance could be that the average initial impact scores for the group were already low, indicating borderline (value of 1) but not clearly abnormal (value of 2) behavior. Many participants, therefore, had little or no room for improvement on this score. This explanation could be tested by using a subsample of participants with higher initial SDQ impact scores than observed; however, the present sample contained too few of these cases for this purpose and further data would thus need to be collected and evaluated.

Discussion

Reductions in emotional and behavioral problems were observed as well as an overall diminution in behavioral challenges. The program had a discernible impact on peer relationships and reduced "hyperactivity/inattention" in at least some participants, which is reflected by the following quote from a teacher:

> *"They're not the angry disrespectful kids who were constantly getting into trouble with police. They are calmer, don't get angry quickly and get into fights. Anger and disruptive behavior has been a big problem, which is why this is a huge achievement and something we are proud of."*

The significant transformations in the participants' daily social lives—namely positive relationships with teachers, caretakers and peers—suggests that the Capoeira programs can be an effective intervention for assisting young refugee students to settle in school, thereby improving their social skills and capacities, and decreasing problematic behavior. Despite the non-significant improvement in peer problems, a visible bond developed between the students, teachers and "mestre," which was perceived to contribute to the overall positive outcomes of the intervention. This is presented in the qualitative findings, which have been published in the journal *Intervention* (Momartin et al., 2018).[6] The combination of music and martial arts educated and trained the young people on respect, cooperation and non-violent communication and interaction. Furthermore, the mentoring and role modeling by the instructor helped to increase trust, which was important in forming respectful relationships and friendships.

Other factors may have contributed to the improvement of the participants other than Capoeira. Indeed, positive outcomes of therapy can sometimes be due to external variables such as time, receiving empathy and perceived optimism. However, the evaluation provides suggestive evidence that the effectiveness of the program is a compilation of various aspects, predominantly due to factors that are unique to Capoeira when compared to other programs available

[6] Our qualitative findings identified further benefits of the program, which were not only constructive for the individual's current functioning and future growth but also effective for their overall school experience.

for young people in schools. This is due to the mentoring and role modeling provided, as well as the holistic nature of Capoeira and the values it embodies. Capoeira represents a distinctive blend of movement, music, self-expression and communication, a mix that is not found in most other activities available to young people, such as competitive sports or arts. Students may connect more with one aspect of the activity than the other; for example, teachers later reported that some students expressed that they especially liked the music and playing instruments. Others appreciated the mastery of movements or enjoyed the interaction and sense of belonging and camaraderie with their peers experienced during "*roda*." It appears that integrating therapeutic principles with martial arts, within a culturally sensitive model, promotes change in the conduct of vulnerable adolescents, thereby cultivating appropriate and acceptable school behavior.

The success of the Capoeira program has continued over time with further intervention groups being established in Western Sydney. Moreover, the perceived effectiveness of the program is demonstrated by schools beyond Western Sydney (encompassing those in the wider New South Wales (NSW) regions) requesting that the project be implemented in their schools. At present, the Capoeira program runs in 17 groups around NSW (including Western Sydney, South West Sydney, Inner Sydney, regional Wollongong, New Castle, Coffs Harbour). Nine new schools are currently on the waiting list to join the program.

Limitations

A major limitation of the study is that it did not utilize a quantitative self-report assessment for individual students due to time and resource constraints. Male and female differences were also not calculated as there were more girls than boys, and this limited sample size prevented meaningful sub-group analysis. The rate of student attrition from the program was an additional challenge (Attrition rate=5%). Students resigned for a variety of reasons, including moving to another school or transferring from IEC to mainstream curriculum. This meant that some students (approximately 7) who were assessed at the beginning of intervention had left by the end of the year, and those who subsequently joined the group (approximately 6) had not completed a pre-intervention assessment. There was also no control group.[7]

Conclusion

This study provides suggestive evidence that Capoeira can enhance the behavior of refugees. Young traumatized refugees have the potential to develop psychological complications, which may lead to anti-social and other negative behavior in the absence of a constructive outlet and guidance. Timely Capoeira interventions—with a highly structured environment, defined boundaries, and strong physical, moral and ethical codes—may help to prevent negative social challenges associated with dysfunctional behaviors. The experience of the Capoeira Angola program has convinced the authors of this paper that Capoeira can encourage cooperation, teach refugees to co-exist, promote functional relationships governed by mutual respect, and transform behavior. Further research is sorely needed on the efficacy of the intervention on other populations in other contexts using robust study designs, as well as more thorough

[7] As mentioned, 13 non-refugee students participated in the program and underwent pre- and post-assessments. As it was a small group, we did not use the data for comparison.

investigation into the channels through which Capoeira elicits change. It would also be interesting to explore whether an additional element behind the effectiveness of Capoeira is the controlled movements that would otherwise be harmful to the other player, and whether exercising and strengthening inhibitory pathways increase the overall capacity to inhibit impulsive behavior. Given their traumatic and distressful past, and taking into consideration their struggles with anger, being able to control the young people's movements is a significant improvement in their inhibitory pathways and would also be valuable to study further.

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The role of a trauma-sensitive football group in the recovery of survivors of torture

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Key points of interest

- Football is a potentially useful tool for enabling torture survivors to build relationships, manage their emotions and reconnect with their physical body.
- A partnership approach between football specialists and therapeutic specialists offers a promising way forward.

Abstract

Introduction: Whilst there is some preliminary evidence for the benefits of sports-related interventions for survivors of torture, how sport and exercise can contribute to the rehabilitation of torture survivors needs to be better understood. Specifically, this paper aims to: 1) explore the ways in which a football group contributed to the wellbeing of participants and; 2) suggest characteristics of the football group which could potentially contribute to its effectiveness. *Methods:* An exploratory mixed methods study was undertaken with participants and trainers of a joint programme delivered by Arsenal Football Club and Freedom from Torture in London. Individual discussions, group discussions and participatory ranking activities were used which led to the development of an initial programme model. This model was, subsequently, further developed through a variety of data collection methods. *Results:* Six potential outcomes of involvement in the football group were identified: relationships, a sense of belonging, hope for the future, emotion management, enjoyment, and improved physical health. In addition, the process highlighted factors contributing to the effectiveness of the football group: a sense of safety, therapeutic aims, similar participants, a partnership approach, staff characteristics, other opportunities, and consistency in terms of approach, session content and staff. *Conclusions:* This exploratory study outlines the potential benefits of the football programme that would require further validation through a case-control study and participant follow-up. A model is put forward as well as a number of recommendations that serve as a starting point for similar programmes and guides academic research in the area.

Keywords: Torture survivors, sports therapy, football, programme model, refugees

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Introduction

The challenges of life after torture can be amplified by flight from an unsafe environment and living in a new and, sometimes, hostile host country. As a result, torture survivors often suffer from multiple, overlapping, and protracted stressors. Symptoms of post-traumatic stress disorder (PTSD), anxiety and depression are frequently reported (Williams & van der Merwe, 2013) and feelings of trust in the world around them can be eroded as a result, which inhibits the development and maintenance of relationships (Boyles, 2017). The consequences of torture often include: complaints relating to the nervous system; signs of hyperarousal (e.g., breathlessness); and chronic muscle contraction that inflicts pain (Kira, 2002; Rothschild, 2000; Van der Kolk, 2014). The physical and psychological effects of torture are tightly intertwined. Therefore, effective torture rehabilitation interventions need to address multiple areas of survivors' lives and be responsive to the inter-connected nature of the challenges faced.

A phased approach for working with survivors of torture has attracted considerable support, based on Judith Herman's (1992) stages of recovery: 'safety, remembrance and mourning, and reconnection'. The three phases overlap, and an individual may move between all three multiple times during their recovery. This view emphasises the need for both one-to-one therapeutic work and reconnection with the body and with other people (Herman, 1992; van der Kolk, 2014). Activities that do not directly depend on expressing thoughts and feelings—such as sport, art, music, and movement—provide important dimensions to therapy (Dutton, 2017). Van der Kolk (2014) emphasises the importance of interventions that help survivors to live fully in the present, which complement approaches that more directly focus on addressing distressing thoughts and memories.

Rosenbaum et al. (2015) concluded that traditional treatment for trauma may benefit from the inclusion of physical activity interventions as adjunctive treatments. Ley and colleagues (Ley, Krammer, Lippert, & Rato Barrio, 2017; Ley, Rato Barrio & Koch, 2018) studied the effects of a sports and exercise therapy programme with war and torture survivors and found that "the experience of pleasure, the distraction and respite from illness-related thoughts and worries, the being in the present 'here and now', the experience of mastery and achievements, as well as activation and motivation for physical activity seemed therapeutically meaningful in this population" (Ley et al., 2017, p. 92).

Dutton (2017) describes a football group with asylum seekers and refugees in the UK, many of whom were survivors of torture. He describes how football addresses the whole person—the body, mind, emotion, and spirit. Players reconnect with their bodies through the physical elements of the game. In addition, football requires different types of mental activity, such as identifying strategies for passing the ball or organising the team, and stimulates a range of emotions, such as joy and frustration: "The spirit can be lifted by collective endeavour towards a common goal—a shared experience that can be spiritual in a simple way" (p. 277).

Therefore, there is some evidence for the benefits of sports-related interventions for survivors of torture, but more research is needed on how sport and exercise should be organised to provide the most effective support to this population and to avoid inadvertently causing harm (Ley et al., 2018). This

paper shares the descriptive insights from data that was originally collected to develop a programme or 'logic' model of a football initiative between Freedom from Torture and Arsenal in the Community in London, UK. Specifically, this paper aims to: 1) explore the ways in which a football group contributed to the wellbeing of participants; and 2) identify the features of the football group which contributes to its effectiveness. The paper provides an overview of the initiative, details the data collection methodology, describes key results, discusses the factors informing the results, and concludes with recommendations for practitioners.

Overview of the football group

Arsenal in the Community and Freedom from Torture have, together, been running a football group for Freedom from Torture clients since 2012.[1] Freedom from Torture is a UK charity that provides medical consultation, forensic documentation of torture, psychological therapies and support, as well as practical assistance, to survivors of torture and organised violence, most of whom are seeking asylum and refuge in the UK. In many cases, clients suffer from the physical and emotional consequences of torture, as well as the emotional, social and practical consequences of leaving their homes, families and livelihoods, in addition to dealing with the asylum system in the UK with minimal social and economic resources. Arsenal in the Community is a part of Arsenal Football Club, which delivers programmes across four main themes (sport, social inclusion, education, and health) and always prioritises social outcomes ahead of sporting achievements.

The group meets once a week at 'the Hub', which is the Arsenal in the Community centre next to the Emirates stadium. Between 15 and 25 players attend each session and there is considerable variation in terms of age (the 60 clients referred to the group to date range from 18 to 57 years, with an average of 34.5 years), physical fitness, and football skills. Bleep test scores from September 2017 (17 players participated) ranged between 1.4 and 10.9 and one-third of the players rated themselves as 'a little fit', 'quite fit' and 'very fit' respectively. Again, approximately one third rated their football skills as 'OK', 'quite good' and 'very good' respectively.[2]

Freedom from Torture clinicians make referrals to the group based on an assessment of the client's ability to cope, medical risk, and interest in joining. Despite the group being open to both men and women, no women have yet joined. The group is a therapeutic activity that emphasises psychosocial wellbeing rather than physical fitness or football skills and the sessions focus on providing a safe environment that promotes enjoyment and wellbeing. Each football session begins with warm-up activities that encourage teamwork and communication, followed by a series of short matches. Sometimes players act as referees. The session ends with a 'cool down', which helps to calm any emotions that may have been particularly heightened during the session.

1 The Freedom from Torture and Arsenal in the Community football group is referred to throughout as 'the group' or the 'football group'.

2 See online appendix here: https://doi.org/10.7146/torture.v29i1.106613

Until clients obtain their 'right to remain' or refugee status, their involvement with the football group is limited to attending the session. However, once a client obtains their right to remain, the Arsenal in the Community staff seek opportunities to link the client to other aspects of their programme, particularly their Employability project. This teaches work-related skills and can lead to various forms of employment afterwards, such as in the catering and retail sectors.

From the outset of the partnership, there was a conscious aim to combine the Freedom from Torture psychotherapy and the Arsenal in the Community social models to create a strong psychosocial framework for the football project. Staff work together very closely. For example, the Freedom from Torture clinician attached to the group attends each session and, given that emotions are often triggered during the football sessions, helps the coaches to reflect on the factors that may underlie them and advises on how to manage them appropriately.

Methodology

The study reported here was conducted in 2017-2018 over a 12-month period, five years after the group was first established. Although no systematic data had been collected, as the group began and developed in a relatively informal way, the two organisations wanted to better understand and document how the football group may contribute to the recovery of survivors of torture.

Therefore, an exploratory mixed methods study was conducted to develop and validate a 'programme model' or 'logic model'. A programme model articulates *how* a programme is intended to work, and the precise nature of the issues which it seeks to address.[3] Such models provide a useful working theory for structuring the gathering of data on these relationships (Rogers, 2008), and can be used as a basis for better organising, monitoring and evaluating a programme. The purpose of developing a programme model for the football group was, firstly, so that the perceived outcomes and mechanisms by which they were achieved could be clearly articulated, leading to an agreed focus and vision within the programme team. Secondly, the hypothesised outcomes and mechanisms could form the foundation of a future, more formal, evaluation.

The study had two distinct phases. The first phase focused on the initial development of the programme model and the second phase was concerned with the elaboration and validation of the model. Both qualitative and quantitative methods were used.

Phase One: Initial Development of the Programme Model

The below methods were used to gather the information necessary for the development of the initial programme model, which aimed to understand the perceived effects of the programme and the means by which these effects are achieved.

Discussions with staff involved with the project: One group discussion took place between two coaches, the clinician attached to the group, the Arsenal in the Community manager, and the Freedom from Torture London & South East Clinical Services

3 A programme model 'details the components, mechanisms, relationships and sequences of causes and effects which are presumed to lead to desired outcomes' (Coalter & Taylor, 2010).

Manager. Four of these five people have been involved with the group from its inception. The objective of the discussion was to document perceptions of how participants in the football group change over time (potential 'outcomes') and the factors that contribute to these changes. Multiple informal conversations with individual staff members were also held to further explore emerging themes.

Participant ranking exercises: Two 'participant ranking exercises' (PREs) (Ager, Bancroft, Berger, & Stark, 2018) were conducted with clients involved in the football group (one group of seven and one group of eight), to understand the perceived benefits of participating in the football group. Players were asked the following question: *"Tell me some of the most important ways the football group helps the people who come to it. You can think about yourself, and about other people"*. For each 'benefit' identified, the player was asked to explain it briefly and then select an object to represent that issue and explain why.[4] This yielded additional insight. For example, 'opportunities' was represented by a tape measure and the player explained that each mark along the tape measure indicated one more step in life, and all the steps yet to come. The process continued until a maximum of 10 issues had been identified, which were then ordered from 'more important' to 'less important' by the participants. Participants were asked to explain their placements. Further discussion and readjustment of the placement of objects was encouraged until the line of objects represented the consensual view of participants regarding the appropriate relative prioritisation of 'benefits'. Throughout the session, the facilitator took notes, such as verbatim comments, justifications given for proposed positioning of the various benefits, and disagreements.

Individual interviews with players: Individual semi-structured interviews were conducted with four players. Three were currently involved with the group (self-selected), and one former player was requested to participate. Interviews included questions to elucidate: their feelings when they were first referred to the group and attended; changes that they noticed as they continued attending; similarities and differences with other groups that they were involved with; their relationships with the two organisations involved; and their perceptions of staff. Written informed consent was given before the interview and each interview was tape recorded and transcribed in full. The interviews lasted an average of 45 minutes.

Observation of football sessions: The lead researcher attended and observed five football sessions during the course of the study and took field notes.

Analysis and development of initial programme model: Thematic analysis was conducted on the data from the individual interviews, the discussions with staff, and the PREs using Dedoose data analysis software. The themes were not pre-determined but emerged from the data. The themes were categorised into perceived outcomes and factors that contributed to the outcomes, and the relationships between them were explored. A visual representation of the programme

[4] The facilitator had brought a wide variety of objects to choose from, including a padlock with key, a small model drum, a tape measure, a pen, a small toy lion, a small football, a cup, a ring, and a battery.

model was then developed to illustrate the relationships. This was shared with staff and revised based on feedback. Next, additional information was sought to more systematically explore the key themes identified.

Phase Two: Elaboration and Validation of the Initial Programme Model
The following methods were used to collect additional information on the 'outcomes' and 'contributing factors'.

Player questionnaires: A questionnaire was developed to obtain more systematic information on: perceptions of the organisations involved in the football group; the coaches and the football sessions themselves; self-rating of fitness and football skills; and relationships and social networks. 27 players completed this questionnaire.

Player behaviour checklist: A checklist was developed to obtain more systematic information regarding: the number of players participating in the football sessions; any instances of aggressive behaviour or refusing to abide by referee decisions or instructions; whether and how the coach addressed an emotional issue or interpersonal problems; and whether players helped each other during the session. One coach completed the checklist after five sessions in August and September 2017. A 7-item questionnaire was also developed to assess players' participation and interactions with others. The clinician who attended each session completed this for 26 players.

Physical health interviews: Individual interviews were conducted with five players to explore the impact of the football group on their physical wellbeing. They were all from the Democratic Republic of Congo (DRC) and aged between 22 and 52 and had been involved with the football group between one and five years. They were selected for interview by Freedom from Torture staff because they had specific physical problems when first referred to the group. The issues explored during the interview included: how the players felt when they were referred to the football group; any physical health changes when playing football; how they felt about their bodies when they were playing and how this has changed over time; and their current physical wellbeing. The interviewer took notes during the interviews, and subsequently conducted a thematic analysis of the information obtained. The analysis was conducted manually, and themes emerged from the data rather than being determined in advance.

Revision and validation of the programme model: This additional information was inputted into the programme model on an ongoing basis over a six month period, and was supported by regular review sessions with staff. Once the programme model appeared to accurately reflect the data, it was shared again with a group of players and their input was used to validate the model.

Results

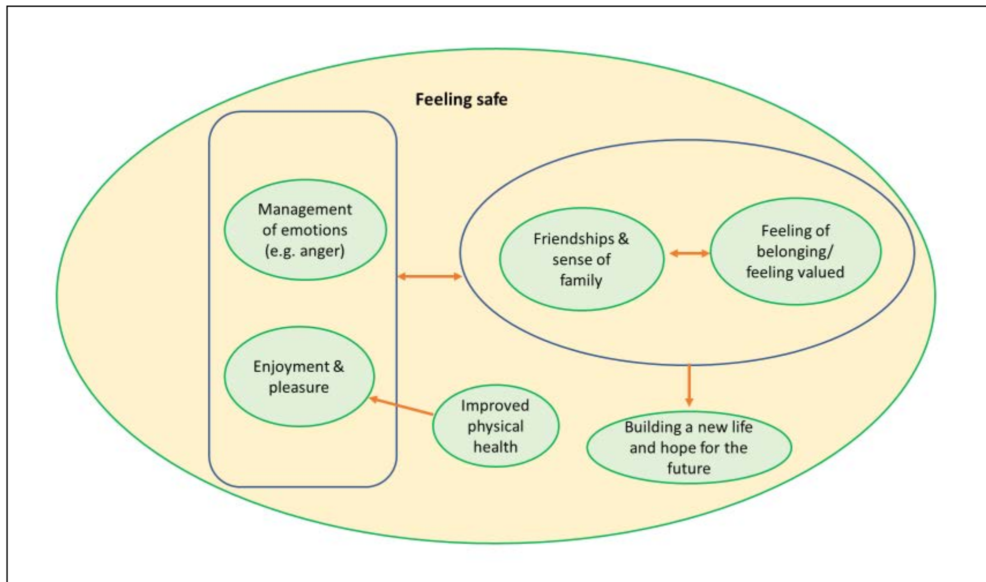
The final programme model is shown in Figure 1. Six potential outcomes of involvement in the football group were identified, some of which are inter-related as progress towards one is connected with progress towards another.

Outcomes

Six outcomes were identified.

1. Friendships and sense of family: The ability to establish new relationships is

Figure 1: *Football group programme model*



a key element of recovery: "The core experiences of psychological trauma are disempowerment and disconnection from others … Recovery can take place only in the context of relationship; it cannot occur in isolation" (Herman, 1992, p. 133). Survivors of torture struggle to trust others and build relationships. Therefore, short and time-limited sports programmes may not enable them to create the type of new connections necessary for recovery (Ley et al., 2018). The open-ended nature of the football group enables clients to progress at their own pace in terms of connecting with others.

Players are not required to talk about their problems but some communication is needed in order to play as a team, and relationships amongst players and between players and staff generally strengthen over time. Players spoke powerfully about the importance of the relationships that developed, often referring to others in the football group as their closest friends or 'like family':

> *"In the beginning, individuals want to demonstrate their own skills, and they would all sit separately in the waiting room. Over time, their confidence within the group grows—passing, working together, using each other's names, awareness of other people—they start to remove the defensive armour."* (Staff member)

Given that all group members are Freedom from Torture clients, they face similar challenges. This contributes to the feeling of safety within the group. Additionally, there is a relatively low turnover of staff and players, which allows for relationships to build over time: "*People come from different communities, we speak different languages but when we play we have one language, the language of football*" (Player).

2. Feeling of belonging: The feeling of belonging is about a connection to

something bigger than themselves. Although players feel a sense of belonging with both Freedom from Torture and Arsenal, there is some ambivalence about their belonging to Freedom from Torture because this relates to a painful aspect of their identity. Their connection with Arsenal, on the other hand, is a source of pride and a positive part of their self-identity. As one staff member put it, "*the players would not want to wear Freedom from Torture t-shirts, but are proud to wear Arsenal shirts*". This finding reflects Boyles' (2017) claim that torture survivors' therapists can become representative of the new country. For some members of the football group, Arsenal is seen as a symbol of the UK, therefore, being accepted and valued by Arsenal has a broader significance:

> *"When I arrived in the UK it wasn't easy to socialise, I didn't know anyone, even I didn't want to talk. But I feel like I belong to the UK because I belong to Arsenal. Arsenal is part of the history of the country, if I belong to Arsenal I belong to the country."* (Player)

The close proximity to the Emirates Stadium and the other opportunities available through Arsenal in the Community strengthens the feeling of belonging to the club: "*When I'm walking the street I feel like a big man because I'm a member of Arsenal" (Player)*.

3. Building a new life and hope for the future: Through their involvement with the football group, players have access to other projects offered by Arsenal in the Community which helps them to develop new skills and could potentially lead to employment, college courses or other positive changes. For some, the opportunities they were given alongside the football group helped them to develop personally in positive ways. For example, "*When I was on the coaching course, I learned more about managing my emotions"* (Player). Another player stated:

> *"When I came to the UK my brain was full of old memories, thinking only of the place I came from. It takes time to start collecting new memories—now I dream about my time here, instead of at home. Coming to the football group gave me a starting point, a way to start collecting new memories."* (Player)

4. Management of emotions: A number of players and staff members noted that players learned to manage their emotions better over time. When players first join, some regularly over-react to the actions of others during matches, but this diminishes with time: "*One player, every session he would take a foul, he would totally kick off, 'right, I'm leaving'. Now his behaviour has changed completely and he puts that down to the group—he says this is his family."* (Staff member).

Players generally perceived that the behaviour of Arsenal in the Community and Freedom from Torture staff and the way in which they model calm behaviour was important to learn how to manage their own emotions. Their friendships with other players and sense of solidarity and compassion when others behaved aggressively was also important: "*We've been through the same things, so we know how to manage each other. I know I need to manage my anger because other people are going through the same kind of problems as me."* (Player); "*The staff are great, I've never seen them angry. Even if you're an angry person, being around them teaches me to be calm. I love the way they control the atmosphere—they know we have problems. They are patient."* (Player).

The coaches work closely with the clinician to establish strategies to manage heightened emotions during the football

sessions through regular conversations regarding issues arising within the group.

5. *Enjoyment and pleasure:* One of the consequences of torture, and of displacement to a country which may lead to hostile interactions, can be a loss of interest in activities which were previously enjoyed. According to van der Kolk (2014), people who are traumatised are unable to experience pleasure in day-to-day activities. Re-engaging with an activity and enjoying it is thus an achievement in itself, which can also have a considerable impact on recovery. A clear theme running through players' descriptions of their involvement with the football group, and of observations of the football group sessions, was enjoyment and a temporary release from painful thoughts:

> *"The time you're playing football you don't think about the difficulties in your life. The only thing is, your main concern at that time is to enjoy your game, is to score goals or something like that, that's the only thing you're focused on that day. Probably you might want to think, 'oh my God, my papers', but you see the ball is coming, and you forget about that for at least one or two hours, which is enough for the whole day."* (Player).

25 players rated how much they enjoyed the football sessions by choosing one of the following options: 'not at all'; 'a little'; 'quite a lot'; 'very much'. 22 stated they enjoyed the sessions 'very much', and three enjoyed them 'quite a lot'. Whilst engaging in an enjoyable activity for a few hours a week may seem like a small part of an overwhelmingly difficult existence, this can be an important element in recovery (van der Kolk, 2014). Of particular note is the way in which the staff have been able to create an enjoyable environment for a group of players with considerable diversity in terms of physical fitness and football skills.

6. *Improved physical health and connection with the body:* Torture survivors often report that their bodies are broken and permanently damaged, and may perceive themselves as physically weak, so avoid exercise (Boyles, 2017). This can exacerbate feelings of poor physical wellbeing and lead to physical deterioration. Playing football enables survivors of torture to "reconnect with their bodies in a physical way that was familiar from the past and grounded them in the present" (Dutton, 2017, p. 278). Van der Kolk (2014) concluded that survivors of traumatic experiences need not only to talk about their feelings and experiences, but also to have physical experiences to regain a sense of control.

Most players in the football group experienced some physical health problems when they were first referred, and those interviewed said that they had experienced an improvement in their physical wellbeing through the football group (e.g., increased energy, feeling fitter and stronger). Two players suffered from more serious physical problems, and both said these had improved over the time that they were with the group. For example, a player who had suffered a stroke perceived that his gait and balance improved through his participation in the football sessions. Players also discussed the positive consequences of the group on physical symptoms of stress, such as headaches. One player stated, "*I love playing football, exercise is good for my body. I sleep better*". Some communicated that they had been able to develop a more positive connection with their bodies, even outside the group, and developed a belief that their bodies could recover and become stronger. They described how they consciously make healthier decisions, such as to walk instead of taking the bus. For example, one client said, "*now I make a plan to run in the park*

every Saturday…I have to find a way to maintain fitness".

Factors contributing to the achievement of outcomes

Through the data gathered during the development of the programme model, a number of factors were identified that contributed to the effectiveness of the football group in terms of strengthening the psychosocial wellbeing of participants.

1. Sense of safety: Players feeling safe during the football sessions was a cross-cutting theme that was perceived as crucial to achieving all the outcomes: "*When I walk inside I feel relaxed, safe. I'm a different person. When I'm outside I don't feel safe.*" (Player); "*Safety is most important—when you're not safe, you can't do anything, you can't learn, you always feel stressed.*" (Player). Developing a sense of safety is crucial for trauma-sensitive sports projects to achieve positive effects amongst torture survivors (Ley et al., 2017). The consistency of the approach used in the football sessions, session content, and staff were identified as important elements in achieving this. In addition, the low turnover of players enables them to get to know each other, which fosters a cohesive culture and develops feelings of safety. Players perceived that the caring nature of the staff enhances this.

2. Nature and structure of the football sessions: Coaching staff must strike the right balance between the perceived demands of the activities and the skills of the participants. If the demands are perceived as too high, the individual may become frustrated and anxious and so withdraw from the activity. Conversely, if they are perceived as too low, the individual may become unstimulated and disengaged. Although the diverse nature of the group makes achieving this balance challenging, this study indicates that participants' positive experiences do not depend on their level of skill or fitness. The way that the coaches manage the activities contribute to this.

The staff work to ensure that the sessions are structured in a way that maintains a therapeutic approach. This involves managing the sessions so that they do not become overly competitive or focused around the particularly good players. Staff have adapted sessions to enable players who have special physical needs to participate alongside the others. They also regularly remind the players that the aim is to enjoy the time together rather than to win.

The physical nature of the activity means that players can manage how much they communicate with each other. Staff encourage connection and communication by, for example, 'warm-up' activities that involve calling other players' names as they pass the ball. However, there is no requirement for players to talk about anything other than the activity that they are engaged with. Importantly, there are opportunities for conversation which allows clients to build confidence and relationships at their own pace.

Football also facilitates the development of strategies to manage emotions, as players have to learn to accept referees' decisions which go against them and to tolerate mistakes made by their colleagues and by themselves. They learn these strategies partly through experience and engaging with the other players, but also through the direct support of staff who engage with players who struggle with negative emotions during a session.

3. Participants with similar experiences: The football group is open only to Freedom from

Torture clients, therefore there is tolerance within the group of behaviours that others might find difficult to understand (e.g., over-reaction to certain situations) and they often attempt to help those who are having difficulty managing their emotions.

4. The partnership between Freedom from Torture and Arsenal in the Community: Clients continue to work with Freedom from Torture as they engage with the football group, which facilitates the rehabilitation process. As they reconnect with others and with their own bodies, they can explore issues which emerge through this process with the clinician present during football sessions, and with their therapist.

Although players exhibited some ambivalence regarding their association with Freedom from Torture, because this relates to a painful part of their identity, the acceptance that they experience from Arsenal in the Community appeared to have positive consequences. The fact that Arsenal is an internationally recognised organisation may contribute to this. Players' sense of belonging to Arsenal is, therefore, extremely significant, particularly for those who have felt rejected and marginalised by other UK institutions.

5. Staff characteristics: The qualities of the coaching staff and the Freedom from Torture therapist attached to the group appeared to be central to the effectiveness of the programme. The qualities and behaviour of the staff associated with the football group are essential elements in the creation of a safe environment, within which players can start to become more confident, develop relationships, learn to manage their emotions, and strengthen their psychosocial wellbeing.

The importance of building trusting and supportive relationships with those facilitating activities has been found to be an essential component of effective programmes (e.g., Lykes & Crosby, 2014). In their discussion of an exercise programme conducted with men and women who had experienced war and torture, Ley et al. (2018) noted the importance of the continuous participation of a therapist with expertise in working with this population. As well as enabling staff involved with the group to respond effectively to any negative feelings that occur in the course of the football sessions, any difficult emotions triggered during the sports sessions can then be explored during therapy sessions. This demonstrates how participation in a sports programme can directly complement individual therapy and vice versa.

The characteristics of the staff involved with the football group, which were consistently mentioned by players, were that they are calm and patient in all situations, continually demonstrated positive behaviour, and exhibited care for players. As van der Kolk (2014) states, social support is not just being in the presence of others, the critical issue is "being truly heard and seen by the people around us, feeling that we are held in someone else's mind and heart" (p. 25).

6. Connection to other opportunities: The connection with other Arsenal in the Community projects is an important element in players' ability to move forward, develop new skills and confidence, and have hope for the future. Developing new skills are seen as key to building a new life.

6. Consistency: High levels of consistency—in terms of approach, session content and staff, and low turnover of players—contributes to the creation of a safe environment. Players know what (and who) to expect. Dutton (2017) notes that in the football group

he ran with refugees and asylum seekers, having sessions that followed the same format was important therapeutically, in that it brought predictability and containment so that trust could develop. Consistency allows relationships to be built slowly and be maintained over time.

Conclusions

The football group developed organically and has never been formally funded. This study was the first attempt to document the nature and effects of the group.[5] Our results are solely based on the perceptions of participants, without any objective measure of outcomes. Although the final programme model was not developed in a standardised way, it reflects this particular football group with this particular group of clients. Thus, it cannot be claimed that participation in the football group leads to the identified outcomes for all those involved because of the limitations associated with methodologies used, the lack of an initial baseline data, and the participants' heterogeneous nature, and the small number of participants. Our exploratory study suggests some potential benefits from the programme that would require validation through a well-designed case-control study and participant follow-up. Nevertheless, and considering the lack of similar data, we put forward a model of understanding and some recommendations that serve as a starting point.

Taking the limitations of this assessment into account, the following recommendations for those involved in establishing sports-related rehabilitation programmes (particularly football programmes) for survivors of torture are forwarded:

- Maintain as much consistency as possible, in terms of approach, session content and staff, and strive for a low turnover of players.
- Restrict group members to those with similar backgrounds and experiences to promote a sense of safety for new members. Those who are ready can be linked to other groups which would enable them to connect with a wider range of people.
- Ensure that the group sessions involve both staff with football coaching skills and staff with therapeutic skills. Coaches and therapeutic staff should maintain an awareness of key points likely to trigger negative emotions in players (e.g., a referee's decision or a mistake made by another player or themselves) and offer appropriate responses and support.
- Select coaching staff who have the skills and qualities to develop trusting relationships with players, yet maintain the necessary boundaries. Other essential characteristics are patience and an ability to manage emotions in a calm yet assertive way.
- Ensure the principle focus of the football group is on enjoyment and cooperation, rather than competition and winning. This may mean that some of the more skilled players need to be connected with a more competitive group in addition to the therapeutic football group.
- Adapt sessions to enable those with special physical needs to participate fully.
- Include simple communication exercises within sessions without putting pressure on players to talk to each other about issues other than the game.

5 Arsenal in the Community is now in the process of developing a set of monitoring and evaluation tools which will enable them to gather information on an ongoing basis and conduct a systematic evaluation of the football group in the future.

- Enable players to continue with individual therapy alongside their involvement with the football group, so they can explore issues which emerge as they reconnect with others and their own bodies.
- There are considerable advantages to linking a football group to a prestigious club since this enables players to develop a sense of identity, which is connected to belonging to an institution which has positive connotations for them and for those they interact with.
- Connect those involved with the football group to other opportunities when they are ready and when possible.

Conflict of interest

The first author has completed paid work for Freedom from Torture over the past ten years as a consultant and has conducted pro bono work during the same period. The first author was paid to undertake the assessment of the football group on which this paper is based.

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A criminal tribunal and a wide-ranging reparation programme is necessary for the victims of sexual violence and torture in Iraq

Bojan Gavrilovic*, Stephanie Schweininger**

Introduction

The frequency and extreme nature of sexual violence committed in Iraq, primarily by the self-declared Islamic State in Iraq and the Levant (ISIL) from 2014 onwards, has shocked the international community. Now, four years later, victory over ISIL has been proclaimed but addressing past atrocities and their consequences has barely begun. There is a wide discrepancy between Iraq's human rights obligations, stressed by the United Nations (UN), and the reality on the ground, shaped by the Iraqi authorities. The present paper aims to highlight this discrepancy by providing an overview of the crimes committed, their qualification under international law, and the efforts of Iraqi authorities to punish those responsible. It will also discuss legal frameworks and the role of the UN, before positing some possible solutions.

Object of the inquiry

The primary object of this inquiry is the conflict-related sexual violence (CRSV) that has taken place in Iraq since 2014. The term CRSV is used in the international discourse to designate sexual violence occurring during or following armed conflict. UN bodies have set a gravity threshold for defining CRSV—incidents or patterns of acts of sexual violence such as "*rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity*" (UN Action Against Sexual Violence in Conflict, 2011, p. 3).[1]

Factual overview of recent CRSV in Iraq

The armed conflict that spread across Iraq with the advent of ISIL increased the existing spiral of violence to an unprecedented level[2] and sexual violence played a key role in ISIL's reign of terror. The majority of those exposed to systematic

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1 WHO defined sexual violence as: "any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work" (Krug, 2002, p. 149). ICTR defined sexual violence as "any act of a sexual nature which is committed on a person under circumstances which are coercive" (ICTR, 1998, § 688).

2 According to UNAMI, from the beginning of 2014 until the end of July 2018, the number of civilian casualties of hostilities in Iraq amounted to 86,522 (30,605 killed and 55,917 injured) (UNAMI, 2018).

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sexual abuse were reportedly women and girls of the Yazidi faith, but also other religious and ethnic minorities. Sexual violence against men and boys of various religious and ethnic backgrounds has also been reported. The Iraqi Security Forces (ISF), and affiliated militias, are also said to have committed CRSV. In addition, there have been allegations that women with perceived affiliation to ISIL, residing in camps for internally displaced people (IDP), are being subjected to or threatened with rape and sexual exploitation (Amnesty International, 2018, pp. 27–29).

Patterns of CRSV

Sexual violence against Yazidi women was thoroughly documented and thus helps to illuminate the methods employed by ISIL. After ISIL established control over the Sinjar area, entire Yazidi families were taken captive (Human Rights Council, 2016, para. 29). The separation of women and children from men and boys older than twelve followed (ibid, para. 42; UNAMI/OHCHR, 2016, para. 14). Men and boys were forced to choose between execution and conversion to Islam (ibid, 2016, para. 32; UNAMI/OHCHR, 2014b, p. 12). Those who refused to convert were executed within hearing range of their families (ibid, 2016, para. 33-34; UNAMI/OHCHR, 2016, para. 10; OHCHR, 2015, para. 18). Women were usually confronted with a similar choice: convert to Islam or be forced to continuously provide sexual services to ISIL fighters (ibid, 2015, p. 22). However, even conversion would not spare them from being raped. Those who refused to convert or marry ISIL fighters were either sold or allotted to individual militants as ISIL's "collective property" and forced to provide sexual services (UNAMI/OHCHR, 2014b, p. 13, 15).

Women were sold together with their small children (Human Rights Council, 2016, para. 81). However, girls were separated from their mothers as soon as they turned nine and were subjected to the same pattern of abuse (ibid, para. 82). Boys above seven years of age were sent to ISIL camps to be indoctrinated and receive military training (ibid, para. 92, 94-95; OHCHR, 2015, paras. 45-46).

From the survivors' accounts it transpires that women were subjected to various forms of sexual violence including virginity tests (ibid 2016, para. 51), rape, sexual slavery, forced prostitution (OHCHR, 2015, para. 35, 37), forced pregnancy (ibid, 2016, para. 71), and forced abortions (ibid, 2015, para. 39-41). They were coerced into sexual intercourse by being severely beaten, and threatened with gang rape, death, beating, and the killing or selling of their children (Human Rights Council, 2016, para. 65-68; UNAMI/OHCHR, 2016, paras. 15-16). Multiple consistent allegations of the brutality of the sexual act—leading to bleeding, cuts, and bruises—have been recorded. For instance, some women were handcuffed behind their backs or had each leg tied to the side of the bed while being raped (ibid, 2016, para. 64) and escape attempts were severely punished by gang rape, as well as other atrocities (ibid, 2016, para. 68). Victims were denied medical care when injuries were incurred (ibid, 2016, para. 66) and there are accounts of women being raped hundreds of times during their captivity (ibid, 2016, para. 69). Even pregnant women were not spared (ibid, 2016, para. 64; UNAMI/OHCHR, 2016, para. 14; OHCHR, 2015, para. 41). Some were involuntarily administrated contraceptives (ibid, 2016, para. 69). The extent and outcome of the forced pregnancies and sexually transmitted

diseases that undoubtedly ensued were not satisfactorily documented due to victims' reluctance to speak out (ibid, 2016, para. 71). Sexual slavery was usually combined with forced labor in their captors' households (ibid, 2016, para. 72). Food was sometimes deliberately withheld as a punishment; moreover, nutrition provided to the victims was generally poor (ibid, 2016, para. 73). Some of the victims attempted or committed suicide (ibid, 2016, para. 53).

The following case examples aim at reporting the lived experiences of two individuals, whose experiences are representative of many other women.[3]

Leila

When ISIL soldiers attacked their village in August 2014, Leila and her husband were taken as prisoners whereas their children, a son and three daughters, managed to escape. ISIL fighters forced Leila to watch her husband's execution while forbidding her to express her grief by crying. She was then imprisoned and crammed between the dead bodies of former prisoners for hours. Afterwards, Leila was forced to convert to Islam and trafficked several times. Her initial resistance resulted in severe beatings and sexual abuse. She was initially sold to a man whose two wives frequently pressured her to kill herself. In spite of this, she refused to end her own life as her children would then be orphaned. Leila was eventually re-sold to an elderly man whom she implored to treat her "*as his daughter,*" but to no avail. Again, she was sexually abused and then re-sold. Luckily, a random man on the street agreed to smuggle her to the Kurdistan Region of Iraq (KRI) where she was reunited with her children. Upon her return, she learned that her oldest child had died of starvation, whereas the remaining children refused to accept her, and saw their paternal grandmother as their mother. Leila was shattered to the core. Her love for them had given her the strength to avoid taking her own life. She doubted that there could be justice in the world, as her tormentors were not punished. She reports a number of psychological symptoms following the captivity, including aggressive behavior, disrupted sleep, re-experiencing symptoms, hyper-arousal, and fear of men with long beards and loud voices. Leila perceives relocation out of Iraq, to somewhere the family could be safe and start afresh, as the only way out of this unbearable situation.

Bahar

After a failed attempt to flee from her native village, Bahar, a seven-year-old Yazidi girl was captured by ISIL troops along with her mother, father and two siblings. ISIL separated the women and children from the men and imprisoned the former. Bahar had not seen her father since. Detention conditions were appalling. The prison cell was flooded with residue water, only inedible food and dirty drinking water were made available, and neither blankets nor heating were provided. Bahar's mother stated, "*ISIL militias have treated us very badly and brutally, furthermore, they have used offensive words. We have suffered due to hunger and thirst.*" Women and girls considered attractive were separated from the rest of the group through brute force. "*The atmosphere was full of the sounds of*

[3] These personal accounts, recorded in 2017, stem from narratives of two survivors who received medical treatment and psychotherapeutic support at a Trauma Clinic for survivors of sexual violence in Iraq, run by the Jiyan Foundation for Human Rights. The names have been changed for the purpose of protecting the survivors' identities.

women and children crying, screaming, praying and asking for help," added the mother. Shortly thereafter, Bahar and the rest of the family were sold and forced to live with an ISIL militant and his family. In addition to being humiliated, beaten and exploited by the captor's family, the girl's mother was raped. She described the experience as "*an unbelievably painful event I shall not forget for as long as I live,*" and added, "*I was only worried about my children.*" The family was sold several times and Bahar's mother was being continuously raped by different men. Finally, their last captor took pity on them and arranged their escape from ISIL controlled territory. The family now lives in an IDP camp in the KRI. Bahar still suffers from anxiety, cries a lot, displays fear towards a variety of external cues (e.g., loud voices, bearded men and people wearing black clothing), has nightmares, displays eating problems and cannot concentrate.

Legal qualification of CRSV in Iraq

International Human Rights Law

Given that nearly all international human rights treaties do not explicitly prohibit sexual violence, human rights bodies addressed it under provisions prohibiting torture and other cruel, inhuman or degrading treatment. Therefore, to assess whether CRSV committed in Iraq could be considered torture under International Human Rights Law (IHRL), one needs to determine whether the key elements of torture specified in article 1 of the United Nations Convention Against Torture (UNCAT) are met; namely, severity, intent and purpose, and state involvement.

Severity: Regarding the criterion of severity, it is well established that any pain or suffering caused by rape meets the requisite level of severity (ICTY, 2004, § 485; Rodley & Pollard, 2009, p. 96). The pattern of sexual violence where women were deprived of liberty and incessantly raped is certainly severe. However, the situation is not so clear in the cases of other acts of sexual violence. Sexual harassment in the IDP camps, for instance, may not reach the level of severity required for torture.[4] Although virginity tests might not always meet the torture threshold, in the present context, they were normally carried out as part of a larger abuse pattern. Therefore, most acts of sexual violence described by the survivors must have caused severe physical and/or psychological pain.

Intent and purpose: Severe pain and suffering must be inflicted intentionally and with a purpose in mind. It has been suggested that a purpose consistent with the logic of UNCAT should have "*some-even remote-connection with the interests of policies of the State and its organs*" (Burgers & Danelius, 1988, pp. 118–119). ISIL's treatment of people not fitting into their vision of Islam reveals a purpose resembling those stipulated in the UNCAT. In the Yazidi case, this meant forced conversion to Islam, where Muslims of different beliefs and practices were expected to adopt the "correct" version of Islam. In any event, purposes explicitly specified as prohibited in the UNCAT—such as punishing, intimidating or coercing the victim—are evident in the context described, and the experiences of Lila and Bahar. Therefore, we argue that the purpose element is also met.

[4] This does not, however, prevent adjudicating bodies from qualifying incidents with a sexual background as inhuman or degrading treatment. For a short overview of the practice of international bodies in qualifying sexual violence as specific forms of ill-treatment see Gaggioli (Gaggioli, 2014, p. 523).

State involvement: Finally, it must be established whether the indicated pattern of CRSV in Iraq meets the requirement of state involvement set forth in article 1 of the UNCAT. Some form of official sanction is required for a conduct to be designated as torture or other ill-treatment. In order to cover less conventional modes of state involvement, UNCAT specified that, in addition to a "public official," a perpetrator can also be "any other person acting in an official capacity." As this wording was meant to cover situations where state involvement was less evident, one could argue that even paramilitary formations wielding power resembling that of a state are covered. Namely, in the Elmi case,[5] the Committee Against Torture (CAT) reasoned that in a state where a central government has collapsed, members of rival armed groups are to be considered persons acting in an official capacity (CAT, 1999, § 6.5). However, the same body later stated that where state authority exists, even nominally, violations committed by armed groups fall outside the ambit of the UNCAT.[6]

As ISIL never exercised authority in the absence of the *de jure* government in both Syria and Iraq, it seems that ISIL militants could be considered as neither state officials nor persons acting in an official capacity.

Similar problems arise if one qualifies CRSV as a violation of the right to life, or of the right to liberty and security of the person. The principal rule is that international law primarily deals with state responsibility for a breach of these specific obligations by an official whose acts are attributable to the state.[7]

It becomes more complicated when a state did not abide by its positive obligations. As the legal definition of slavery does not necessitate state involvement (Slavery Convention, 1927, Art. 1), private practices amounting to slavery can be qualified accordingly. The State could, then, be found responsible for the failure to meet its obligations (Stoyanova, 2017, p. 443-448) to act with due diligence in preventing such occurrences and punishing the perpetrators. The same is true for forms of ill-treatment other than torture and the violation of the right to life. However, these alternative avenues for qualifying and charging gross violations of human rights under IHRL might be seen as inappropriate for CRSV of such magnitude and brutality. Moreover, state-run justice systems could hardly effectively follow up on this by prosecuting individual perpetrators nationally.

Prospects for Holding ISIL Accountable as a Collective Entity

It is useful to consider whether an armed group member could be considered a person acting in an official capacity and, if so, whether it is possible to hold a state-like entity accountable.

[5] CAT examined a complaint of a Somali national against Australia who claimed that, if returned to his country of origin, he would be tortured and killed by armed clans exercising a de facto control over Mogadishu. Australia argued that as armed clans cannot be considered public officials the definition of torture is not met and the application ought to be declared inadmissible. See CAT (1999).

[6] In H.M.H.I. v. Australia CAT dealt with an almost identical set of circumstances as in Elmi, only three years later. The crucial difference being that Somalia, at that point, did have a central government recognized by the international community (CAT, 2002, § 6.4).

[7] On attribution under IHRL see Marks and Azizi (2010).

ISIL harbored an ambition to be perceived as a state and, more importantly, acted as one. It performed tasks falling within a state's prerogatives (e.g., issuing official documents, including birth certificates, collecting taxes, etc.) (Callimachi, 2018). Executions, torture, and inhuman punishments were normally carried out following a ruling of self-appointed courts working to enforce ISIL rules. For instance, smoking and drinking were punished by lashing, and stealing by hand amputation (UNAMI/OHCHR, 2014c, p. 14).

However, the refusal of most of the international actors to consider sanctioning acts of privately run armed groups under the framework applicable to states persists, as if the group nature of the war effort is irrelevant for the capacity of individuals to commit mass crimes. In reality, however, such a state-like effort proves to be instrumental in enabling individuals to commit atrocities (e.g., war crimes, crimes against humanity, and genocide) on an immense scale. ISIL is a textbook example of such a paradigm, as its ability to indoctrinate, organize local administration, generate revenue and mobilize fighters from around the world surpassed that of many states.

The international obligations of armed non-state actors and their accountability remains a largely academic debate. There are no international fora where state-like groups could be held responsible (Bellal, 2017, pp. 240-242). Even if ISIL, as an armed non-state actor, is indeed, in addition to IHL, bound by IHRL, claims against it as a collective entity are not judicable at the international level.

International Humanitarian Law (IHL) and International Criminal Law (ICL)

War crimes and crimes against humanity: In contrast to the IHRL, under the IHL/ICL framework, involvement of a state official is not necessary for an act to constitute torture (Henckaerts, Doswald-Beck, & Alvermann, 2005, pp. 317–318). Namely, it is well established that the essence of torture, either as a war crime or a crime against humanity, is not in the status of the perpetrator but in "*the nature of the act committed*" (ICTY, 2001a, § 495). It was further clarified that state involvement required under IHRL "*is inconsistent with the application of individual criminal responsibility for international crimes found in international humanitarian law and international criminal law*" (ICTY, 2001b, §§ 138–139).

Additionally, acts of CRSV are in and of themselves absolutely prohibited in international and non-international armed conflict under IHL (Henckaerts et al., 2005, pp. 323–327) and thus can constitute international crimes in their own right. The Rome Statute of the International Criminal Court (1998) explicitly criminalizes sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity (Art. 7 (1) (g), 8 (2)(b)(xxii), 8 (2) (e) (vi)). Alternatively, CRSV could be characterized as other acts amounting to either war crimes (inhuman or cruel treatment) or crimes against humanity (e.g., persecution, enslavement or other inhuman acts) (Centre for International Law Research and Policy, 2017, pp. 21, 31, 42, 49, 57, 66). It follows that most of the outlined atrocities fit squarely within the above categories.

Furthermore, specific requirements for an incident to be qualified either as a war crime (nexus between an offense and an armed conflict) or a crime against humanity (an act committed as a part of the widespread and systematic attack against civilians) are by and large met in the present situation. Namely, armed conflict in Iraq

could qualify as non-international as it meets the criteria of the intensity of violence and organizational capacity of the opposing parties (ICTY, 2008, § 49, 60). The acts themselves were by no means ordinary crimes given that the armed conflict "*played a substantial part in the perpetrator's ability to commit the crime, his or her decision to commit it, the manner in which it was committed, or the purpose for which it was committed*" (ICTY, 2008, § 49, 61). Lastly, ISIL's entire *modus operandi* in committing CRSV satisfies the necessary requirements for an attack against civilians to be considered widespread and systematic; the "*large scale nature of the attack and the number of victims*" was noted, as well as "*the organized nature of the acts of violence and the improbability of their random occurrence*" (ICTY, 2001a, § 428-429).

Genocide: Concerning the "crime of crimes," as genocide is often known, it appears that the outlined pattern of CRSV committed against, at least, the Yazidi minority satisfies the material requirement for genocide. In particular, the prohibited acts of causing serious bodily or mental harm to members of the group and imposing measures intended to prevent births within the group. As to the mental element of the crime, namely the infamous genocidal intent (the intent to destroy, in whole or in part, a protected group), such an intent is discernible in documents issued by ISIL as well as consistent methodology, and a high level of organization and discipline demonstrated in carrying out the criminal acts. Moreover, the contours of a full-blown genocidal policy of ISIL towards Yazidis are discernible.[8] Therefore, it appears that CRSV perpetrated against Yazidis together with other prohibited acts through which destruction was to be effectuated (e.g., killing members of a group, forcibly transferring children, etc.) constituted acts of genocide as well.[9] In sum, acts of CRSV, considered alone or categorized as torture or other crimes, may amount to war crimes, crimes against humanity, and genocide.

Severity requirement revisited: The question of severity also emerges in the context of IHL and ICL. Although severe forms of CRSV presumably constitute international crimes, this is not clear with regard to CRSV of lesser gravity. A certain threshold of gravity must be reached for an act of CRSV to be considered a war crime, crime against humanity or genocide. Acts of sexual violence of comparable gravity might include, for instance, "*trafficking for sexual exploitation, mutilation of sexual organs, sexual exploitation (such as obtaining sexual services in return for food or protection), forced abortions, enforced contraception, sexual assault, forced marriage, sexual harassment (such as forced stripping), forced inspections for virginity and forced public nudity*" (Gaggioli, 2014, pp. 506–507).

As most of the CRSV reported from 2014 onwards probably meets the required level of gravity, the gravity threshold cannot be considered a significant obstacle

8 The genocidal policy is, strictly speaking, not a requirement for a genocide to exist but can contribute to establishing that a perpetrator harbored a genuine genocidal intent (Gaeta, 2014, pp. 763–765).

9 For a comprehensive analysis of crimes committed against Yazidis and its characterization as genocide in line with the requirements set out in the Convention on the Prevention and Punishment of the Crime of Genocide and the Rome Statute of the International Criminal Court, see Human Rights Council (2016).

for effective prosecution. Lastly, nothing prevents the forthcoming criminal justice mechanism in Iraq from extending its understanding of war crimes and/or crimes against humanity to cover all CRSV.[10]

Advantages of the IHL/ICL approach: In addition to the outlined advantage of making use of the framework provided by IHL and ICL rules, there are others. By qualifying CRSV as an atrocity crime due to its large-scale and systematic nature, the so-called "contextual element" (Gaeta, 2014, pp. 756–757) of these crimes and the common plan the perpetrators pursued to carry them out would come to light. It follows that concepts provided by IHL and ICL are important for ensuring that the "architects" of atrocity crimes are convicted, and are indispensable for establishing the broader narrative of how such crimes came to pass.

Overview of legal framework applicable in Iraq

International Level

Although Iraq is party to almost all core international human rights treaties,[11] it did not accept any individual complaints procedure, nor did it ratify the Optional Protocol to the ICCPR abolishing the death penalty and the Optional Protocol to the UNCAT, which established an advanced system of monitoring places of detention. Moreover, it entered reservations to Articles 2 (f, g) and 16 of the CEDAW mandating states to repeal discriminatory laws and practices and ensure equality in all matters related to family and marital relations.

Iraq is a state party to the Geneva Conventions of 1949 and Additional Protocol I relating to the protection of victims of international armed conflicts, as well as to the Convention on the Prevention and Punishment of Genocide. However, it neither acceded to the Rome Statute of the International Criminal Court (ICC) nor accepted the ICC's jurisdiction in relation to crimes committed on its territory under Art. 12 (3) of the Rome statute (UNAMI/OHCHR, 2014a, pp. 4–7).

National Level

Iraqi legislation is inadequate for addressing grave human rights violations, particularly sexual violence because it does not possess a legal framework necessary for effective prosecution of perpetrators and redress of victims. Atrocity crimes are not criminalized under Iraqi law, whereas forms of criminal responsibility (joint criminal enterprise or command responsibility) necessary for linking planners of crimes and those with command authority to the actual commission of concrete crimes are not envisaged. Furthermore, Iraqi penal and criminal procedure laws display significant

[10] The statute of the Special Court for Sierra Leone stipulates that in addition to explicitly specified sexual crimes (rape, sexual slavery, enforced prostitution, forced pregnancy) any other forms of sexual violence are to be considered crimes against humanity (UN Security Council, 2002; Gaggioli, 2014, p. 507).

[11] Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (UNCAT); International Covenant on Civil and Political Rights (ICCPR); Convention for the Protection of All Persons from Enforced Disappearance (CED); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); International Convention on the Elimination of All Forms of Racial Discrimination (CERD); International Covenant on Economic, Social and Cultural Rights (CESCR); Convention on the Rights of the Child (CRC); Convention on the Rights of Persons with Disabilities (CRPD).

deficiencies. As rape is considered a private offense, the state cannot take legal action against the alleged perpetrator without the consent of a victim or their legal guardian (Iraqi Criminal Procedure Code, Article 3). Failure to prove rape could lead to the victim being prosecuted for extramarital sexual relations. Marital rape is not criminalized. Legal proceedings against an alleged rapist are to be discontinued if he marries his victim (Iraqi Criminal Code, Art. 398), a husband's prerogative to punish his wife is considered his legal right rather than an offense (Iraqi Criminal Code, Art. 41), and honorable motives for committing an offense constitute mitigation ground (Iraqi Criminal Code, Art. 128). Legal frameworks in KRI concerning discrimination of women have somewhat improved as some of the problematic provisions in the penal code have been repealed (article 41, 128) and several gender-sensitive laws and strategies passed (KRG, 2012; Puttick, 2015, pp. 6–10). However, given the enduring discrimination against women and KRI's poor implementation record (Kaya, 2017, pp. 9-12), depicting KRI as progressive and the rest of Iraq as backward would be rather misleading.

Finally, both the Government of Iraq (GOI) and the Kurdistan Regional Government (KRG) enacted controversial antiterrorism legislation with a broad definition of terrorism, inadequate legal safeguards, and mandatory death sentences for a range of offenses labelled as terrorist acts.[12] Rape and other acts of sexual violence are not even criminalized under these laws (Human Rights Watch, 2017, p. 29).

[12] For a critical assessment of KRG and FGI Anti-Terrorism Laws No.3 of 2006 respectively see UNAMI/OHCHR (2017, pp. 7–8); UN Special Rapporteur (2018, §§ 46–49).

Ongoing efforts to punish perpetrators of grave human rights violations

Legal proceedings aimed at punishing ISIL supporters are taking place in both federal and KRI courts under their respective anti-terrorism legislation. However, these trials have not been conducted in compliance with international fair trial standards. Alleged perpetrators are arbitrarily deprived of liberty and held "incommunicado" to facilitate the acquisition of confessions, often by force. Moreover, guilty verdicts rely on confessions only, as no other corroborating evidence is deemed necessary. In addition, merely being an ISIL member or affiliate, or assisting ISIL in any capacity, suffices for conviction and subsequent sentencing to death or life imprisonment (Human Rights Watch, 2017). Finally, no efforts have been made to enable the participation of victims in the ongoing trials (Human Rights Watch, 2017, pp. 4, 22-23).

The outlined milieu for administering justice has profoundly negative consequences for victims of sexual violence. It has been reported that even when the accused admitted to having perpetrated crimes of a sexual nature, no separate charge under this heading has been brought (Human Rights Watch, 2017, p. 30). In addition, the requirement that victims ought to bring the rape charges personally might deter many from coming forward. Put simply, the entire legal framework and practice of judicial bodies in tackling ISIL-generated sexual violence appears beyond repair.

When confronted with incriminating evidence indicating ISF involvement in torture or extrajudicial killings, GOI either rejected the allegations altogether or, on rare occasions, assured that investigation will be carried out. Not a single case where such crimes were adequately punished could be

verified (UN Special Rapporteur, 2018, §§ 57–58; UNAMI/OHCHR, 2017, p. 2).

As to the efforts to document serious crimes in Iraq in line with international standards, the most important actor is the Commission for Investigation and Gathering Evidence (CIGE). This body was established by the KRG in September 2014 to document international crimes committed by ISIL. Although CIGE appears to have collected a large amount of evidence and even identified a number of perpetrators, further action is blocked due to an unfavorable domestic legal framework (UN Special Rapporteur, 2018, § 71).

An initiative to establish a full-blown criminal tribunal in KRI, mandated to prosecute and try perpetrators of grave crimes committed in the war with ISIL in line with best international practices, has most probably been abandoned (Van Schaack, 2018, p. 125). This is a further discouragement to the possibility of justice.

Assistance of the International Community

Following the request for assistance from the Iraqi Government, the UN Security Council established a special body (Investigative Team to Support Domestic Efforts to Hold ISIL (Da'esh) Accountable for Acts that May Amount to War Crimes, Crimes Against Humanity and Genocide Committed in Iraq (IT)) in September 2017 to assist GOI in holding ISIL accountable for international crimes committed on its territory. The core mandate of the IT is to collect and store evidence against ISIL, for acts amounting to atrocity crimes, to be used in fair criminal proceedings, primarily before Iraqi courts (UN Security Council, 2017 § 2, 5).

The Special Advisor is mandated to "*work with survivors… to ensure that their interests in achieving accountability for ISIL are fully recognized*" (UN Security Council, 2017 § 13). After the terms of reference were finalized in February 2017 (UN Security Council, 2018), the UN Secretary-General was appointed as the head of the IT on 31 May 2018.[13] At the point of writing this article, it is not clear whether the IT became fully operational on the ground.

The IT faces considerable challenges.[14] It cannot ignore crimes committed by non-ISIL armed groups and also be perceived as impartial by all religious/ethnic groups in Iraq, empower the same courts that are sentencing alleged ISIL supporters in flagrant disregard of human rights standards, or cooperate closely with the KRG bodies such as CIGE, while respecting Iraq's claim on absolute sovereignty. Persuading Iraq to properly address atrocities committed within its borders, in exchange for focusing on ISIL crimes only, may prove to be a mistake. In particular, the fates of those already convicted under anti-terrorism laws have not been duly considered.

Forthcoming court—basic requirements

Although the structure and composition of the prospective court are not known, it would need to meet some minimum requirements. Any criminal justice accountability mechanism established to deal with serious violations of international law, including CRSV in Iraq, in addition to having jurisdiction over international crimes committed by all parties to the

13 A UK citizen with extensive experience in ICL and IHRL, Mr. Karim Asad Ahmad Khan, has been appointed to serve as a head of ITA in the capacity of a Special Advisor (UN Secretary-General, 2018).

14 For a detailed analysis of the ITA and its prospects of success, see van Schaack (2018).

conflict, would need to be embedded in a wider transitional justice strategy of the GOI and KRG. Besides addressing criminal accountability, truth-seeking, and reparation issues, such a strategy should include a plan for dealing with individuals convicted in deficient proceedings conducted under anti-terrorism legislation. Legal professionals working in the forthcoming court or tribunal ought to be capable of managing diverse evidence and making it available to the defence. These professionals should be able to correctly qualify the crimes in question and be well versed in different modes of liability, such as co-perpetration, indirect perpetration, joint criminal enterprise, and objective liability, in order to connect senior leaders and those higher up in the chain of command with individual crimes. Merely proving that crimes actually took place does not suffice. They need to be attributed to individual perpetrators by utilizing the "beyond reasonable doubt" standard of proof typically applied in criminal justice settings (Wilkinson, 2011, pp. 17–18). Standards employed by various UN fact-finding missions established to collect evidence, including the Commission of Inquiry on Syria, fall short of the requisite standard of evidence (UN Commission of Inquiry on Syria, 2018, § 4; Wilkinson, 2011, pp. 40–41). Ideally, various data collection and analysis methods need to be employed to produce evidence on patterns of sexual violence (Aranburu, 2010). Finally, victims need to be adequately involved in the forthcoming trials. This would involve establishing a victim and witness support department and arrangements for their protection.

The issue of reparations

Reparations for victims of CRSV including rehabilitation, satisfaction, and guarantees of non-repetition are particularly sensitive.[15] The most suitable response to these crimes would be pursuing a transformative approach to reparations (UN Secretary-General, 2014, pp. 8–9), giving preference to measures capable of changing the imbalance of power that is detrimental for women in present-day Iraq. Guarantees of non-repetition are also important considering that many Iraqis have lost confidence in the state to prevent the recurrence of atrocities. Survivors belonging to the Yazidi community actively seek any opportunity to emigrate. Indeed, there have recently been initiatives, such as those sponsored by the German Federal State of Baden-Württemberg, offering Yazidi women temporary re-settlement and mental health treatment in third states. However, relocating survivors from their homeland, in the long term, may have a detrimental effect on the local society as it erodes north Iraq's cultural and ethnic diversity. This highlights the need for the State to work on appropriate legal, economic, physical and psychological recovery measures as soon as possible after violent conflict has ended.

Law No. 20 on Compensation for Victims of Military Operations, Military Mistakes and Terrorist Actions, passed by the Iraqi parliament in 2009, provides a framework for victims of recent atrocities to claim material compensation in the form of a one-time payment (the award of family rent or a plot of land). However, the amounts given to victims are relatively small; this statute has a number of shortcomings and is not fully implemented in practice.[16]

15 On the right to reparation in general see (UN General Assembly, 2006).

16 For a detailed analysis of the forms of reparation envisaged by the law, and practice of state organs

Most recently, on 28 March 2019, the Iraqi Presidency submitted a Yazidi Female Survivors´ Law[17] to Parliament suggesting a range of reparative measures for Yazidi women abducted by ISIL and then released (Press release of the Iraqi Presidency, 2019). Although some articles, such as those recognizing genocide against Yazidis (though it refers only to abducted women) (Yazidi Female Survivors´ Law, Article 9), ensuring monthly payments as a way of compensation (Yazidi Female Survivors´ Law, Article 8), establishing a national remembrance day on crimes committed against the Yazidis (Yazidi Female Survivors´ Law, Article 10), and pledging rehabilitation services (Yazidi Female Survivors´ Law, Article 5), are to be condemned. The bill left much to be desired. Namely, it contains no explicit reference to CRSV and excludes all victims other than abducted and subsequently released Yazidi women. This bill thus hardly advances the objectives of transitional justice in Iraq as it tends to fuel rather than overcome sectarian divisions in Iraqi society, especially among victims themselves.

Acknowledging the victim's perspective

The victims of CRSV face multiple traumas and require appropriate responses that involve them in decision-making processes. On the one hand, this requires making survivors aware of the legal status of the atrocities that have befallen them with a view to enabling them to accept the justice dispensed by the state, and thus facilitating the healing process. On the other hand, lawyers, politicians, and other decision-makers must keep individual fates in mind when drafting legislation, ratifying international instruments, and creating accountability mechanisms or reparation programmes aimed at redress. Whilst there is no general consensus on the appropriate mode of participation for victims in criminal proceedings, punishing the perpetrators appears essential for strengthening their healing process (Danieli, 2009, p. 45). Keeping victims removed from legal reckoning and focusing solely on “eliminating the problem” produces especially grave effects as it denies survivors a crucial chance to regain power against the perpetrators as part of their mental healing and search for justice.

Our position

Mass CRSV reached international awareness both in the early 1990s during the war in the former Yugoslavia, and in 2014 as the conflict in Iraq and Syria raged. Although both provoked a public outcry, they led to different outcomes. Whereas the UN Security Council in the 1990s established the ICTY, today we can witness a range of indecisive actions aimed at assisting Iraq in holding ISIL members accountable. These actions are not entirely misplaced; however, the question to be raised is whether they are sufficient. The main assumption on which IHRL rests, namely that gross human rights violations committed by non-state actors are to be sanctioned nationally, simply does not hold in the case of Iraq. The outlined accounts demonstrate that Iraqi authorities have no capacity either to bring justice to victims or to set the groundwork for enduring peace. The international avenues are also blocked since survivors have no recourse to international instances dealing with either state or individual

authorized to work on its implementation see Sandoval and Puttick (2017, pp. 17–21).

17 At this point it is hard to foresee whether this law will be passed through the Iraqi parliament and whether there is a room for improvement.

criminal responsibility. The situation is also complicated by the fact that most crimes have been committed by members of non-state armed actors. In light of this, the efforts of the international community focusing solely on enhancing the capacity of GOI seem inappropriate.

The psychological scars caused by the loss of family members to violent conflict, long periods of captivity and extended physical and psychological abuse, if not appropriately addressed, give rise to significant impairments to the individuals, their families, and communities and society as a whole. Yet, the two personal accounts presented in this paper bear witness to the extraordinary strength, resilience, and vitality of the survivors who managed to endure against the odds. This must be acknowledged. In addition to appropriate legal processing, the medical, psychological and social recovery of survivors must be accorded due priority in all programmes addressing CRSV in Iraq.

From a transitional justice perspective, the most sensible way to proceed would be to refer cases to the ICC or establish a hybrid tribunal mandated to prosecute and adjudicate serious international crimes committed by all parties in the conflict in Iraq, and to pursue a comprehensive gender-sensitive reparation programme. Iraq's compliance could be induced by, for instance, making the development and reconstruction assistance conditional upon meeting basic transitional justice requirements. The people of Iraq simply deserve better justice than that currently dispensed.

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Migration-related torture: One of the greatest tragedies of our time.

Nils Melzer*

Without any doubt, the torture and abuse suffered by millions of migrants in all parts of the world is one of the greatest tragedies of our time. The undeniable links between irregular migration and torture are manifold and deeply troubling. Not only is the risk of torture and violence one of the most important "push-factors" causing countless people to flee their country of origin, it is also a frightening and pervasive reality of most irregular migration routes and, most shockingly, even of the treatment they receive by the very countries to which they turn for protection.

My mandate as the United Nations Special Rapporteur on Torture is to seek, receive, examine and act upon information regarding torture or other cruel, inhuman or degrading treatment or punishment. My sources of information are governments, international and civil society organizations, but also journalists, individual victims and their lawyers, doctors, relatives, and friends.

Since my appointment in 2016, one of my highest priorities has been to alert the international community as to causal connections between the policies and practices adopted by states in response to irregular migration and the staggering numbers of victims of torture and ill-treatment among migrants. For a full year, I researched the matter, collected information and consulted with governments, international organizations, civil society groups and victims' organizations worldwide. Although I have spent two decades working with victims of war and violence, I was left speechless by the sheer magnitude of pain and suffering arising in this context, and particularly by the widespread indifference, hostility and even deliberate cruelty with which irregular migrants are confronted in all corners of this world.

By the time I presented my report on migration-related torture to the UN Human Rights Council in March 2018, it had become evident to me that the primary cause for the massive abuse suffered by migrants worldwide—including torture, rape, enslavement, trafficking and murder—is neither migration itself, nor organized crime nor the corruption of individual officials, but the growing tendency of states to base their official migration policies and practices on deterrence, criminalization and discrimination rather than on protection and human rights.

This results in abusive practices including, for example, deliberately harsh reception conditions; forcible prevention of new arrivals; and prolonged or indefinite detention of irregular migrants, often in

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conjunction with the deliberate separation of family members. It must be particularly emphasized that migration-related detention, in and of itself, may well amount to cruel, inhuman or degrading treatment or punishment, or even torture, most notably where it is intentionally instrumentalized for the sole purpose of deterring new migrant arrivals, or where it is automatically imposed simply based on immigration status. Of course, the longer migration-related detention lasts, the worse the material conditions of detention are, and the less detained migrants can do to influence their situation, the more intense their suffering will become and, consequently, the greater the likelihood that their detention is not only arbitrary, but that it also amounts to torture or other ill-treatment.

The global scale, gravity and increasingly systematic nature of torture, ill-treatment and other serious human rights violations inflicted on irregular migrants is not only a question of state responsibility under human rights and refugee law, but also of individual accountability for crimes against humanity and, potentially, war crimes. Under international criminal law, culpable intent and complicity do not require that torture and ill-treatment be the desired outcome of a particular policy or practice. Moreover, criminal culpability is not limited to those personally committing torture and ill-treatment, but may also extend to state officials, corporate managers and other superiors and leaders responsible for policies, practices and even qualified omissions which, in the ordinary course of events, may be expected to result in the commission of such crimes.

Without any doubt, irregular migration is a complex issue influenced by numerous environmental, political, economic and social factors. But there are concrete and practical steps that can be taken to prevent this global trend from becoming a more generalized global tragedy. In my report to the Council, I have made a number of recommendations to states with a view to preventing torture and ill-treatment in the context of irregular migration. Most importantly, states must stop basing their migration policies on deterrence, criminalization and discrimination and, instead, provide sustainable pathways for safe, orderly and regular migration based on protection and human rights.[1]

Last but not least, while the legal duty to respect and ensure human rights undoubtedly rests with states, let us never forget that the ultimate responsibility for making human dignity an experiential reality for irregular migrants throughout the world lies with every single one of us: whether as professionals working with torture survivors, as activists influencing public opinion, as voters electing our political leadership, or simply as private citizens treating migrants with compassion, recognizing that they, like us, are members of the same human family.

1 Nils Melzer (2018), UN Doc. A/HRC/37/50.

The potential and limitations of the Global Compact for Safe, Orderly and Regular Migration: A comment

Fabio Perocco*

Introduction

On 19 December 2018 the UN General Assembly approved the Global Compact for Safe, Orderly and Regular Migration (GCM), with 152 votes in favor, five against (Czech Republic, Hungary, Israel, Poland, United States), 12 abstentions (Algeria, Australia, Austria, Bulgaria, Chile, Italy, Latvia, Libya, Liechtenstein, Romania, Singapore, Switzerland), and 24 countries not voting (UN, 2018). The GCM builds on the 2030 Agenda for Sustainable Development (UN, 2015) and on the New York Declaration for Refugees and Migrants 2016 (of which it aims to implement Annex II) (UN, 2016).

After the preamble, the first part of the GCM contains the vision of the pact with 10 guiding principles: people-centredness; international cooperation; respect for national sovereignty; respect for the rule of law, due process and access to justice as a fundamental element to all aspects of migration governance; sustainable development; human rights; a gender-responsive and child-sensitive approach; and a whole-of-government and whole-of-society approach.

The following part of the document includes 23 objectives that paint a general picture of regulation for the conditions of migration. Some of them may be useful to prevent and combat torture by: providing accurate and timely information at all stages of migration; ensuring that all migrants have proof of legal identity and adequate documentation; enhancing availability and flexibility of pathways for regular migration; facilitating fair and ethical recruitment and safeguarding conditions that ensure decent work; addressing and reducing vulnerabilities in migration; strengthening the transnational response to the smuggling of migrants; preventing, combating and eradicating trafficking of persons in the context of international migration; managing borders in an integrated, secure and coordinated manner; using migration detention only as a last resort; providing access to basic services for migrants; eliminating all forms of discrimination; and promoting evidence-based public discourse to shape perceptions of migration.

The last part of the GCM identifies, in detail, the commitments and the actions needed to achieve all 23 objectives.

On torture

During the negotiations, Europe emphasized the responsibility of the sending countries in the ambit of returns and readmissions, with the legal obligation for States to take back their nationals. This

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element was incorporated into Objective 21: "Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration." This is a very important point regarding (the risk of) torture that must be treated carefully.[1] For this reason, within Objective 21 the following sentence was inserted:

> *"We commit to facilitate and cooperate for safe and dignified return and to guarantee due process, individual assessment and effective remedy, by upholding the prohibition of collective expulsion and of returning migrants when there is a real and foreseeable risk of death, torture, and other cruel, inhuman, and degrading treatment or punishment, or other irreparable harm, in accordance with our obligations under international human rights law."*

If this is the only point in the GCM where torture is mentioned, the situation is somewhat different in the case of Global Compact on Refugees (GCR), issued by the UNHCR and approved on December 17th 2018 (UN, 2018). In the GCR the use of torture and inhuman treatment is explicitly called into question. It calls for a greater capacity to address the specific needs of people as survivors of torture and contains important provisions on the support provided to torture victims. In the chapter on reception (section «Addressing Specific Needs»), the GCR urges:

> *"The capacity to address specific needs is a particular challenge, requiring additional resources and targeted assistance. Persons with specific needs include: children, including those who are unaccoçmpanied or separated; women at risk; survivors of torture, trauma, trafficking in persons, sexual and gender-based violence, sexual exploitation and abuse or harmful practices".*

Torture victims are qualified as persons with specific needs, which means that States will establish "mechanisms for identification, screening and referral of those with specific needs to appropriate and accessible processes and procedures." In the chapter on meeting needs and supporting communities (section «Health»), the GCR urges States and relevant stakeholders "to contribute with resources and expertise to expand and enhance the quality of national health systems to facilitate access by refugees and host communities, including (…) survivors of trafficking in persons, torture, trauma or violence, sexual and gender-based violence (…)". Thus, in the GCR torture victims are a specific beneficiary within the public policies towards refugees.

Potential and positive aspects of the GCM

The GCM acknowledges international migration as a structural and global phenomenon and as one of the most significant social issues of our time, which should be tackled using a global approach. It is the first world pact on migration and aims, through multilateralism, to build a collective and shared response. It aims to tackle migration in a dynamic way, with a consideration of the different steps of the migration process (e.g., emigration and immigration). It adopts a multi-dimensional perspective, which considers the different aspects of the migration phenomenon (e.g., work, health, access to services, family, rights, and remittances) and of the social life of emigrants and immigrants (hereafter "migrants").

[1] Maijcher proposes six indicators which can help assess the human rights compliant implementation of commitments under Objective 21; available at https://rli.blogs.sas.ac.uk/2019/04/16/gcm-indicators-objective-21-cooperate-in-facilitating-safe-and-dignified-return-and-readmission-as-well-as-sustainable-reintegration

In times of globalizing anti-immigration policies and discourses, the GCM recognizes the right to emigrate and be welcomed to another country with decent treatment. It discusses respect for migrants and their rights and the fact that they deserve to see their dignity recognized in any situation or context. This point is important as it entails a political commitment and legal influence. The resolutions by the UN General Assembly are not legally binding as they invite States to adopt them, yet they may have (limited) legal force as, in specific matters, they may be considered sources of international customary law. Moreover, the GCM includes specific organizational rules, procedures, management and control bodies, along with specific goals with corresponding concrete actions. Consequently, courts and civil society have a further tool for progressing the rights of migrants. The "war on migrants" is a factor in the increasing use of torture towards them. The GCM's concept of migration, whereby migrants are given full dignity and social citizenship, may facilitate the prevention of torture and inhuman or degrading abuse.

Limitations and issues

Although the GCM provides some precise instructions and indicators for implementing and monitoring progress, some of the principles it presents, although grounded in admirable values, already have their own operational tools in international conventions and fundamental charters. This presents two issues.

Firstly, the GCM confirms, even in its title, the distinction between "regular" and "irregular" migration, from which the difference in rights for the two categories of migrants is drawn. There is no rejection of the socially created category of undocumented, "irregular," "illegal" migrants. Instead, there are traces of criminalization of migrants, as shown by the points on the detention of undocumented migrants and on the standardization or sharing of the biometric data of migrants. Article thirteen states that detention should be a last-resort measure but it is not explicitly forbidden, even for minors.

Secondly, the GCM erred in their presentation of "regular migration" and "irregular migration." Documented migration contains in itself the full protection of "regular" migrants. A rationale is not provided as to why a further framework for their protection is needed. Thus the issue here is undocumented migration in a context of deep global inequalities, a structural economic crisis, and repressive policies against migrants taking place in several parts of the world.

As for undocumented migration, the GCM states that Member States shall promote legal channels for migration and, to this end, it encourages the identification of specific political goals and good practices. However, States' commitment remains somewhat vague. At the same time, the GCM establishes, as a priority, the prevention (also in the sense of struggle and countering) of "irregular" migration. In this way, many States will have the possibility to reinforce their borders, to encourage "border cooperation," to enter into agreements on the externalization of borders, closing borders, repatriations, and readmissions. In the balance between "States' prerogatives and economic interests" and "human rights," the former prevails on the latter.

The issue of undocumented migration has raised opposition, especially among countries against the GCM. And it remains unresolved in practice. Article 25 (Objective 9 «Strengthen the transnational response

to smuggling of migrants») binds States "to ensure that migrants shall not become liable to criminal prosecution for the fact of having been the object of smuggling, notwithstanding potential prosecution for other violations of national law": it provides the possibility of enlarged reception and rights to all migrants, irrespective of the differences in migration status and legal condition. Article 31 (Objective 15 «Provide access to basic services for migrants») confirms this concept: "We commit to ensure that all migrants, regardless of their migration status, can exercise their human rights through safe access to basic services," while article 20 (Objective 4 «Ensure that all migrants have proof of legal identity and adequate documentation») entails the commitment by States "to fulfil the right of all individuals to a legal identity by providing all our nationals with proof of nationality and relevant documentation" without distinction between regular and irregular migrants. However, it is not clear how the GCM would promote "regular" migration versus "irregular" migration, which does not have an international legal definition. Considering that such topics and distinctions remain a prerogative of States as provided for by article 15 (Section «Unity of purpose»): "Within their sovereign jurisdiction, States may distinguish between regular and irregular migration status, including as they determine their legislative and policy measures for the implementation of the Global Compact, taking into account different national realities, policies, priorities and requirements for entry, residence and work, in accordance with international law."

The GCM, therefore, fails to address the crucial matter—the regulation and normalization of undocumented and under-documented migration—in a clear and straightforward fashion. The opposition of several Western countries, mainly from Europe, has entailed the downsizing of the initial drafts. The opening on family reunification was limited (it would entail a social rooting of migrant populations, which increases their social value and creates social transformations in receiving countries); the reference to the flexible conversion of visas was eliminated as it would make migration and migrant workers less constrained and bonded. In essence, several aspects have been downsized, so much so, that according to Groenendijk, "the level of aspiration of the text is clearly below the level of rights granted in the current EU migration directives to migrants from outside the EU. Hence, the Compact could be used to legitimize restrictive immigration policies in the EU."[2]

Furthermore, the GCM does not tackle two other crucial points. Firstly, it should be considered how migration policies are tightly connected with national economic growth—developing welcoming inward migration policies, for example, is often a function of a need for labor market; in this function, they influence the conditions of migration and of migrants. Secondly, there is a lack of attention to the structural determinants of contemporary migrations from the Global South to the North of the world, including: global inequalities and polarized development; industrialization and mechanization of agriculture in Asia, South America and Africa; land grabbing; external debt, mass privatization and restructuring plans; wars, civil wars, and local conflicts; and environmental degradation. Although article two states that it is necessary to minimize the adverse drivers and structural

2 See https://rli.blogs.sas.ac.uk/2018/11/26/gcm-commentary-objective-5 (5.12.2018)

factors that compel people to leave their country of origin, the causes—which are becoming increasingly acute— are not considered seriously enough.

A global migration policy needs to consider the world labor market, global capital and the deeper causes of migration. The notion that a global migration policy, the criteria for which are innately subjective, could be successful without this is perplexing. One could argue that the convergence of national migration policies into one global migration policy could still be positive, but it depends on its features and orientation. Currently, it seems to be within the paradigm of the traditional governance of migrations and its tools (i.e., soft law, international agencies, control, privatization of international law).

Finally, the GCM is not legally binding and it has very limited legal power. It recognizes and confirms the primacy of individual States in the control of migrations, implying that it does not attempt to weaken national sovereignty. The point of interests for States (e.g., control and security) seeks to continue the primacy of national sovereignty, whilst also retaining the protection of migrants. Why, then, did some States, which do not lack influence, abstain or vote against the GCM for the sake of national sovereignty?

Supporters and detractors

States' reservations about the GCM are manifold. They particularly include the following: it favors uncontrolled migration; there are fears that there will be an invasion from Global South to North of the world, as it provides that migration shall be considered a fundamental right, so that States cannot curb arrivals by law; the right to migration and to receiving decent treatment will lead to mass migrations from poor countries (i.e., the brain and brawn drain); it limits national sovereignty; and it cancels the distinction between economic migrants and political refugees by considering them at the same level. Among countries against the GCM, we see the sovereigntist bloc (the Visegrad group—Poland, Czech Republic, Hungary, Slovakia—along with Austria and Bulgaria)[3] together with the USA,[4] Australia,[5] and Israel.[6] Considerable doubts were also expressed by Italy, Switzerland (where a parliamentary debate is in progress), Belgium, and Brazil (uncertain on the appropriate decision to take). These countries—currently the champions of the "stop migration" discourse and policies—want migration policies to be the exclusive competence of national States; they are not against neo-liberal globalization, but would rather have a new nationalization of the State to compete in the world economy and redefine the hierarchies of the international division of labor. Regarding migration, for several States, this does not mean completely stopping migration as such, but rather making a strict (i.e., professional, political, social) selection of migration movements, to achieve restrictive and punishing politics in the name of utilitarianism and criminalization, to pursue a model of subordinate integration of migrants in the name of social and symbolic inferiority. Many of those who oppose the

3 See http://eumigrationlawblog.eu/eu-states-exit-from-the-global-compact-on-migration-a-breach-of-loyalty (7.3.2019)

4 See https://usun.state.gov/remarks/8841 (7.1.2019).

5 See https://www.ft.com/content/88a475c6-ed37-11e8-89c8-d36339d835c0 (7.1.2019).

6 See https://www.middleeastmonitor.com/20181121-israel-refuses-to-sign-international-migration-pact/ (7.1.2019).

GCM fear that the decent treatment of *all* migrants (documented, undocumented, under-documented) will not protect their real interests, *inter alia* possessing a cheap labor force with limited rights, thus allowing them to define the conditions of migration in accordance with market demands.

The GCM has also attracted some left-wing criticism, which views the GCM as a symptom of neo-liberal globalization that opportunistic capitalists can exploit, and implicitly calls for the closure of borders and the halt of migrations.

Among the supporters, international institutions and multilateral organizations have underlined several benefits for economic growth and social development, deriving from organized migration, while groups belonging to the no-border movement finally see the beginnings of an acknowledgment of free movement. Yet, the real issue is not the free movement or the right to circulate, but rather a two-fold matter. Firstly, the deep and structural causes of migration (forcing people to leave their country, thus not "the right to flee" but rather "the duty to flee"). Secondly, the unequal conditions and rights of migrants in the receiving countries, despite open borders and free movement.

Conclusion

The GCM appears to represent a tool to manage migration in the context of a globalized economy and international migrations taking place across the world in an era of structural crisis. Despite this complex milieu, it endeavors to balance two social forces. On one hand, the interests of the market and of national States, and on the other, the rights and interests of migrants. The section on the rights of migrants is mainly the result of the mobilization, resistance and the struggle of migrants, associations, and social movements. It attempts to extend equality, rights and the protection of migrants as much as possible. The section on economic and State interests is limited, due to structural factors, in the extension of rights and equality because of the central role of the market. In the next few months and years, when the GCM will be implemented, we will have a chance to observe how such matters will develop.

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Torture: An Expert's Confrontation with an Everyday Evil, by Manfred Nowak.

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Hans Draminsky Petersen*

Manfred Nowak, the author of this book, is an expert with outstanding experience in the fight against torture. Among many international commitments, he was the UN Special Rapporteur on Torture (SRT) for six years from 2004 and the book is predominately based on this experience. Nowak aims to make the unfathomable more comprehensible and to clarify the causes and dynamics of the routine nature of torture; to enhance empathy for the forgotten detainees; and to point to ways of preventing torture. Putting existing knowledge into practice will, however, only work if enough people become outraged and place moral and political pressure on authorities to end torture.

The book consists of two parts: "Phenomenon of torture in the twenty-first century" (part one) and "Torture in individual states" *(*part two*)*, based on the author's visits in his capacity as SRT. Many of the reflections in part one are also based on observations from his country visits and it describes contemporary torture and its purpose; it explains how the UN system works—and why it sometimes does not work—and the role, mandate and working methods of the SRT.

The SRT visits countries after being invited and the mandate provides the SRT with access to all closed institutions, and to interview all relevant persons in private. After a visit of one to two weeks, the SRT debriefs with authorities and publishes a report with observations and recommendations for changes.

Ideally, an SRT visit should be viewed as the expert consultant's cooperation with the authorities to prevent torture and ill-treatment. Nowak, however, is outspoken and unafraid of pointing to the United States' war on terror as being detrimental for human rights in general, blaming states for blatant human rights violations in country reports (e.g., Jordan), or requesting criminal charges against high ranking individuals for their responsibility in torture. This must have yielded numerous enemies, possibly explaining the many obstructions to his work. The outcome was not always satisfactory. In the case of Jordan, for example, only the torturers (not their superiors) were punished—not for torture, but for disobedience.

His approach is, nonetheless, commendable and it is necessary for experts to express their knowledge and what international law stipulates, regardless of whether this is agreeable to national or politicised international contexts. Ultimately, he has raised awareness and thereby contributed to a realistic basis for further discussions on how to prevent torture and punish torturers.

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His observations help to illuminate how the international community works; e.g., his report on Equatorial Guinea describes how horrendous conditions in detention and widespread torture did not lead to condemnation of the country in the UN Human Rights Council. According to the author, this is because African countries protect each other against UN criticism. Moreover, many examples are given of states attempting to impede the SRT's objective investigations—including last-minute changes to visiting dates, impediments to accessing places of detention and privacy when interviewing detainees, and threats to team members by police officers.

The chapter entitled *Are fact-finding missions dangerous?* provokes the reader to contemplate investigators' risk of being assaulted by violent prisoners. However, neither he nor his team members have ever been attacked by detainees, but they have been threatened by staff in places of detention. Nowak also emphasises the issue of the SRT's lack of control over authorities' reprisals against detainees who have cooperated with the SRT.[1]

Nowak considers his mandate to encompass violence in homes and schools and female genital mutilation (FGM). In light of the general progressive shift in public opinion on violence in homes and schools in many countries over the past 30 years, he finds hope for a similar development in torture.

Corporal punishment exists in some countries, some of which refer to the Sharia and argue that Article 1 in the UN Convention against Torture excludes pain and suffering arising from lawful sanctions from falling under the definition of torture. The author argues that taking this argument literally would undermine the intentions of the convention; states would only have to put their illegal practices into national law. One could view this in the same light as the Bush Administration's attempts to manipulate international law through the introduction of new concepts, such as taking "illegal enemy combatants" and "renditions" to secret places where torture can exist unnoticed. In 2010, three years after the UN convention on protection from enforced disappearances came into force, 66 countries used secret detentions in the fight against terrorism.

Capital punishment is an extreme form of corporal punishment and Nowak views the abolishment of capital punishment in a large number of the world's countries as a major achievement for human rights in general, and one that elicits hope for its total abolishment along with the eradication of torture.

Contemporary torture is explored and the issues of obtaining a confession, information or intelligence are dealt with. Obtaining a confession by way of torture is a shortcut to "solving" crimes, particularly when the investigating police authority is incompetent. "A little torture" is useful to make suspects "tell the truth", as expressed by a police officer in Nepal. The fundament being that confessions are accepted as the only evidence in courts; however, intelligence obtained through torture is very rarely valid or useful.

Nowak also considers how prison walls keep the public at bay and limits information regarding extreme overcrowding, lack of hygiene and meaningful daily activities, corruption, exploitation, and violence from reaching

1 Corruption in the justice system is frequently mentioned and the author calls torture and imprisonment "the privilege of the poor", but the issue is not analysed in depth.

them. Therefore, the public awareness needed to foster the necessary moral outrage and political pressure to facilitate a conceptual development of the justice systems, from progressive retribution to re-socialisation, is suppressed. The eradication of torture requires a general commitment of governments to materialise, inter alia, by opening the walls of prisons to transparent and public scrutiny.

Detention in extremely overcrowded prisons and police detentions for extended periods are particularly relevant issues that the author has witnessed; in extreme cases (e.g., Nepal) the detainees in a cell had to sleep in shifts on the concrete floor because there was insufficient room for everyone to lie down at the same time. One contributing reason for this is a slow-acting judiciary. Persons accused of minor crimes often stay longer in pre-trial detention than is prescribed in law as the maximum sentence. Clearly, this could be remedied without allocation of large funding.

Part two analyses states' approaches to prevention of torture in 19 countries, predominately based on information from SRT visits. Most countries were characterised by horrific conditions in places of detention and widespread torture and ill-treatment. During some visits, particularly noteworthy observations were made:

- In Georgia, a new government led by Saakashvili appointed independent commissions to inspect places of detention. The police department was reformed, and corruption and the prevalence of torture significantly reduced.[2]
- With a population of 6 million and inhabitants from 800 different ethnic groups, Papua New Guinea had 1,200 poorly trained and, in general, brutal police officers while private security companies had well-trained and -equipped personnel. One British-based company alone had 4,800 staff. A serious challenge are the clashes between multinational oil and mining companies and violent demonstrators, which are contained with brutality by police officers and private security companies operating outside of the state's control.[3]
- Denmark is heralded as a country where the government's will to abolish torture has been efficient. Detainees are regarded as clients in a system of normalisation, and life in prisons is made as similar as possible to life outside with the objective of reintegrating prisoners into society after they have served their sentences.[4]

The author concludes that the means to prevent torture exist which include the right of a detainee to have a lawyer and a medical examination, to be heard by an

2 A follow-up visit revealed that the prison population had grown by a factor of three during six years. There was a 0.01 percent acquittal rate in criminal cases and four-fifths of cases were settled through plea-bargaining. This incentivised those accused to confess regardless of whether they had committed the crime, as this would be more favourable in terms of sentence length. This mechanism renders the use of torture unnecessary to obtain a confession or "to solve the crime".

3 Another challenge are the clashes between widely used customary or traditional justice and modern human rights based justice, which, partly because of understaffing, cannot interfere in all traditionally treated cases. The author comments that, at least, the state should not accept that traditional justice leads to torture and lynching.

4 However, Nowak did not engage with two controversial issues: Denmark's widespread use of lengthy isolation in pre-trial detention, and the country's possible role in US renditions by letting CIA flights use Greenlandic airspace and airports.

independent court within 48 hours, and to not be returned to police custody after the court hearing. Raising awareness about the conditions in places of detention and a genuine political will to abolish torture, e.g., through visits by the mechanism under the Optional Protocol to the Convention against Torture (OPCAT), are requirements. Complaints and indications of torture must be investigated by independent bodies. Courts must be proactive in referring detainees who might have been tortured to expert medical examinations. A tough prison system, building on the philosophy that criminals must suffer like their victims, leads to a violent prison system that will make society more violent and will lead to public endorsement of torture in the fight against crime. The United States, with the world's highest number of imprisoned persons per 100,000 inhabitants, is mentioned as a negative example.

All measures to eradicate torture are already in international law and most do not require large funding. A shift in the criminal justice system from revenge and retribution to rehabilitation and reinsertion into society cannot be expected overnight. However, Nowak is optimistic; corporal punishment and the death penalty are regarded as unacceptable in most countries today and the same can be achieved for torture.

The author is a fine storyteller. The many anecdotes from his enormous experiences are reflected upon, analysed, and put into a wider context, leading to well-founded conclusions. There is a lot to be learned from this book. It is recommended to all who are interested in the promotion of human rights and, in particular, those who work for the prevention of torture and ill-treatment in places of detention.

Torture and Its Definition in International Law—An Interdisciplinary Approach, by Metin Başoğlu.

Published by Oxford University Press. 2017. New York.
(ISBN 978-0-19-937462-5)

Alejandro Moreno, MBBS, MPH, JD, FACP.*

Torture and Its Definition in International Law—An Interdisciplinary Approach was edited by Metin Başoğlu, and written by him and another sixteen experts in the medico-legal aspects of torture and cruel, inhuman, or degrading treatment or punishment (CIDT/P).[1] The book has 506 pages and 16 chapters, which are organised into four parts: "Behavioral Science Perspectives"; "International Law Perspectives"; "Enhanced Interrogation Techniques: Definitional Issues"; and "Discussion and Conclusions". The book is for health, legal and human rights professionals, beyond just those just working with victims of torture

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and CIDT/P, and is of interest to those who work with victims of other violent crimes, such as child abuse, interpersonal abuse, and forced displacement. The book raises many important questions.

The first chapter—"A Theory- and Evidence-Based Approach to the Definition of Torture"—plays an anchoring role and is frequently referenced throughout the book. Here, Başoğlu proposes an interesting learning theory formulation of torture. Most victims find testifying about their torture re-traumatising, particularly when facing an aggressive cross-examination, even if, at the end, the victim perceives the whole legal process to have been therapeutic. Perhaps the learning theory formulation could limit the scope of the testimony needed in open court by switching the emphasis from the particulars of a case to an account that allows the adjudicator to make a risk stratification (see pp. 29-35).

According to Başoğlu, the learning theory model proposes that torture occurs as a result of the cumulative risk associated with helplessness and hopelessness when a person is subjected to an unpredictable or an uncontrollable environment while under the control of a person in a position of authority. From the public health perspective, it could also be beneficial for victims seeking redress when they have not suffered permanent sequelae, or have yet to experience any adverse effects from the torture. For example, risk stratification models have been used to compensate individuals exposed to asbestos, a substance that has a long latent period and can lead to a wide spectrum of medical conditions, including cancer.[5] From the litigation point of view, a risk stratification approach can pose challenges to the prosecutor or attorney representing the victim.

It would, however, be harder to prove that the perpetrator's actions resulted in a victim's severe pain and suffering when the basis for this formulation (i.e., a multivariate regression model) establishes a measure of association and not of causation.[6] For example, defense attorneys for the tobacco industry, quite successfully, attacked the uncertainty and external validity of epidemiological studies that used such statistical approaches to evidence the latent consequences of the disease.[7] Certainly, the expert witnesses and the attorney conducting the examination would need to be skillful in educating the adjudicator to understand the methodological strengths and limitations of a retrospective non-randomised cohort study so that the proper findings of fact and law can be made during the legal proceedings.

The discussion in part two of the book, regarding the elements that constitute the crime of torture and the evolution of the legal definition, may prompt the reader to realise that torture is, perhaps, the only crime where the victim's severe pain and suffering is an element to be proven during the trial phase rather than the sentencing part. Would the absence of this element hamper its enforceability, as suggested by Ginbar in chapter ten? CIDT/P is also an

5 See Howard Roitman & Associates. Asbestos Trusts Assess and Pay Claims in Accordance with Trust Distribution Procedures. Available at: https://www.hg.org/legal-articles/asbestos-trusts-assess-and-pay-claims-in-accordance-with-trust-distribution-procedures-30324

6 For a clear discussion on these methodologies, please see Alexopoulos EC. Introduction to multivariate regression analysis. Hippokratia. 2010;14(Suppl 1):23-28

7 See Guardino SD, Daynard RA. Tobacco industry lawyers as "disease vectors". Tob Control. 2007;16(4):224-228

enforceable and punishable crime that does not include severe pain or suffering. States and their actors have been found responsible for committing this crime despite it not being formally defined in the United Nations Convention against Torture. Therefore, do we have the moral authority to include severe pain and suffering for some acts when there are others that are, ipso facto, torture, as Méndez and Nicolescu mentioned in chapter nine? One can imagine the public uproar if we were to require severe pain and suffering as elements to prove child abuse or rape, two other abhorrent crimes.

There are two key topics that could have been addressed in more depth in the book. The first is the topic of torture at the hands of non-state actors in nations where the state has completely collapsed or is no longer functional (as occurred at one point in Somalia, Afghanistan and Syria), and where groups, not recognised by the international community, assume official government functions—such as taxation, police, justice, control of movement, and the delivery of other public services—and engage in torture and CIDT/P of the population.[8] The second topic is social pain and whether it amounts to severe pain and suffering. In chapter four, Björkqvist discusses it from an anthropological perspective, but the book does not explore this concept within a legal sphere.[9]

In summary, Başoğlu's book is a welcome addition to the literature about torture and CIDT/P and represents a must read for those who work with victims of violence. The book promises to keep the reader engaged from the beginning to the end and invites them to constantly reflect on current practices, due to the breadth and depth of its content.

8 See Lord R. The Liability of Non-State Actors for Torture in Violation of International Humanitarian Law: An Assessment of the Jurisprudence of the ICTY. Melbourne Journal of International Law 2003;4(1)

9 On this subject, the Inter-American Human Rights Court found Guatemala responsible for committing torture and CIDT/P after state actors destroyed the historical links, cultural traditions, and collective experiences of the Plan de Sanchez community. See Inter-American Court of Human Rights. Case of the Plan de Sanchez Massacre v. Guatemala—Reparations. November 9, 2004

Turkish doctors sentenced to 20-months in prison for an anti-war declaration

Torture Journal Editorial team

11 Central Council members of the Turkish Medical Association (TMA) were given a 20-month prison sentence for a statement they made in January 2018, declaring that war is a public health problem.[1] One of them was additionally sentenced to 1 year, 6 months and 22 days.

The case takes place in a context of political intimidation and attacks on hundreds of doctors, forensic experts, and other health professionals, as well as journalists and academics in Turkey for discharging their ethical and professional duties. In a recent report, for example, Human Rights Watch identified that, in Turkey, "there are over 1,500 lawyers on trial on terrorism charges at time of writing. Their cases underscore the dramatic erosion of defendants' rights and due process in Turkey".[2]

In December last year, Dr Sebnem Korur Fincanci,[3] President of the Human Rights Foundation of Turkey (HRFT) forensic expert and academic author in our journal, was sentenced to two and a half years in prison for signing a peace petition in 2016 organized by a group of Turkish academics. Another case launched against Dr. Şebnem Korur Fincancı, where she has been tried since 2016, for taking part in a solidarity campaign to defend the independence of the newspaper *Özgür Gündem*.

In 2017, Dr Serdar Kuni,[4] a medical doctor working for HRFT in Cizre in Southeastern Turkey, was handed a four-year prison sentence, while several other HRFT founders, staff and volunteers are facing trials and investigations besides the legal personnel at HRFT as a result of their work as human rights defenders.

The TMA is the largest of its kind in Turkey with over 83,000 members representing 80 percent of the country's doctors and is the Turkish affiliate of the World Medical Association. Following the sentence, a large number of organisations spoke out against the decision and in defence of human rights defenders in Turkey. Below is a summary of the Statements:

The International Rehabilitation Council for Torture Victims (IRCT), a network of more than 160 torture rehabilitation centres in over 70 countries and the world's largest membership-based civil society organisation specialised in the field of torture rehabilitation, condemned the sentencing of the 11 members of the TMA

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[1] See http://www.ttb.org.tr/haber_goster.php?Guid=28de85da-00e5-11e8-a05f-429c499923e4

[2] See https://www.hrw.org/world-report/2019/country-chapters/turkey

[3] See https://irct.org/media-and-resources/latest-news/article/980

[4] See https://irct.org/media-and-resources/latest-news/article/913

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and calls on the Turkish courts to overturn the convictions and immediately drop all charges. "*This is an affront to all of us working on health and human rights*," said Jorge Aroche, President of the IRCT. "*Medical professionals play a key role in defending human rights. By providing psychosocial support and redress to victims, we help reconstruct societies, and promote democracy and freedom. We have been witnessing increasing threats, harassment and persecution of medical practitioners around the world. We stand in solidarity with our colleagues*".[5]

Donna McKay, Executive Director of Physicians for Human Rights stated, "*this gratuitous court decision is a new low in the attacks on doctors and the practice of health care, which have now become commonplace in Turkey,*". "*The sentencing of doctors who have bravely spoken out on the impact of war on the wellbeing of innocent civilians is an affront to both freedom of speech and the critical role medical professionals play in highlighting situations that pose risks to public health and the delivery of health care. War has extraordinary health consequences. This unwarranted sentence is clearly intended to silence and intimidate the Turkish Medical Association and any medical professionals in Turkey who dare to speak out*".[6]

The Standing Committee of European Doctors (CPME) joined by the World Medical Association condemn the outcome of the trial against the members of the Council (2016-2018) of the TMA. "*Denouncing violence and supporting human rights and peace is not a criminal offence. We very much regret the outcome of the trial and we stand by the leaders of the Turkish Medical Association in their efforts to respect the ethics of the medical profession*" said the CPME President, Prof. Dr Frank Ulrich Montgomery.[7] The Section on Psychological Consequences of Torture and Persecution of the World Psychiatric Association has also expressed its deepest concern. These are just some of the worldwide voices expressing their opposition to this situation.

5 See https://irct.org/media-and-resources/latest-news/article/991

6 See https://phr.org/news/prison-sentencing-of-turkish-doctors-for-calling-war-a-public-health-problem-is-an-egregious-miscarriage-of-justice/

7 See https://www.wma.net/news-post/statement-on-the-outcome-of-the-trial-against-the-turkish-doctor-leaders/

Documenting torture and ill-treatment of children and adolescents: Current practices and challenges

Mukamel Maya* and Cohen Keren*

Dear editor,
In February 2018, the World Health Organisation (WHO) estimated that 1 billion children aged 2–17 years had experienced physical, sexual, or emotional violence or neglect in the previous year. They also highlighted their commitment to the Target 16.2 of the 2030 Agenda for Sustainable Development to "end abuse, exploitation, trafficking and all forms of violence against, and torture of, children".

Evidently, torture and ill-treatment of children and young people is prevalent and presents a global issue. However, as den Otter, Smith, dela Cruz, Özkalipci and Oral (2013) found in their systematic review of the literature on medical guidelines for the recording cases of child torture or cruel, inhuman or degrading treatment (CIDT), there does not seem to be a comprehensive guideline which incorporates all aspects of the documentation of child torture in the same way that the Istanbul Protocol (IP) does for adults. As a result of their review, they strongly recommend a "child-specific, comprehensive guideline on the documentation of torture and CIDT in children". This was discussed in a recent two-day expert meeting (14-15 April 2019, Tel AVIV), hosted by the Public Committee against Torture in Israel (PCATI) and the Minerva Center for Human Rights at Tel Aviv University.

Attendees came from various backgrounds and brought diverse professional experiences—from legal work relating to children in military detention, to medical assessment of children in conflict and war zones, working with refugee adolescents seeking asylum, and providing psychological therapies to refugee children. The two-day meeting identified a number of key issues.

It became clear that the lack of guidelines on how to document torture and ill-treatment in children and young people meant that practitioners often adjust the IP to be used with children and young people. However, this "adjustment" is not simple or even possible in some cases. When compared to similar work with adults, a plethora of areas were highlighted as distinctive for children and adolescents, such as: the legal and ethical frameworks within which such assessment takes place; prominence of the family within the interaction with children and young people, and the consent process; the consideration of the best interest of the child and young person within a family and community context; the communication (verbal and non-verbal) and its reliability and effectiveness; the assessment of short and long term psychological impact; and the timing of the documentation and its impact, safeguarding concerns and obligations, and more. Although practitioners and organisations have created some local practices, it was frequently noted that these

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were not always sufficient, especially when undertaking documentation in the context of legal proceedings.

If we are to work effectively towards achieving the WHO 2030 target to end torture and ill-treatment of children or to support litigation, advocacy, representation and care for children and young people who have survived such experiences, we must have the right tools to do so. Children and young people are fundamentally different from adults and the guidelines require a different framework to reflect this.

Academic publishing can help in court cases.

Luis Maria de los Santos Castillo*

Dear Editor,
I am writing to inform your readers of the outcome of a case, which was the focus of an article published in the *Torture Journal* when the case was in its preliminary stages.[1]

We must first revisit the events on the 30th November 2007. The Andalusian activist, Agustín Toranzo, together with another colleague, was forcibly extracted from an underground tunnel where he had chained himself to an object inside the tunnel during a protest. He was protesting against the eviction from a building that would be demolished to build luxury homes, located on Calle Antonia Sáenz in the city of Seville, called "Centro Social Ocupado y Autogestionado" or "Casas Viejas" (autonomous social centre).

On the following day, mounting public interest in the event led to a press conference taking place. In the presence of various media representatives, Toranzo detailed the torture techniques employed by the police to extract them from the tunnel. These techniques included the systematic

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1 See Pérez-Sales, P., Fernández-Liria, A., Parras, M., & Engst, G. (2010). Transitory Ischemia as a form of white torture: a case description in Spain. Torture Journal, 20(2), 104–107. https://doi.org/4.2010-05 [pii]

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generation of ischemia in their arms, which consisted of cutting off blood circulation to the activists' wrists using ropes and forcing them to close their hands. The police then wrapped their hands with packing tape, increasing rope-induced ischemia, and preventing the movement of their hands. The tape was in place for approximately fifteen minutes—a critical time period in the induction of complete ischemia in the palms of the hands and fingers.

For one of the activists, the pain became unbearable, and he freed himself from the chains. Toranzo remained in spite of the torture. The police waited ten minutes and, once the pain ceased, began to repeat the entire procedure again. Once Toranzo's hand was strapped, the police then tied his hand to his right foot. The activist resisted the pain of this second ischemia for twenty minutes before finally abandoning the resistance. In total, torture by the generation of ischemia was applied to him for over an hour.

Following these actions, he also expressed his assessment of the treatment he had received, including the following expressions that later became controversial:

> "*We couldn't get them to stop the psychological and physical abuse*"; "*now I am going to talk about the tortures we were subjected to so that we would get out of the tubes (...) the physical tortures were carried out exclusively by national police (...) they were quite refined in the sense that they did not leave any physical traces and they produced a lot of pain (...) They tied a rope to my waist, took it out of the tunnel and between the three of them they started to pull it with the same intention*".

When recounting the intense pain caused by the tying of his hand to his ankles, he said, "*this torture is also carried out by two national police officers who appear in the press photographs with the white coveralls of Emasesa*". He added, "*...when you are being tortured you think of everything (...) we have been in danger*".

Due to these statements, Agustín Toranzo was convicted as an "author of a crime of slander". He was issued with a fine, with a daily quota payment of ten euros, 53 euros in case of non-payment, and was ordered to compensate police officers for damages caused to the value of 1,200 euros. The main argument of the judgement was based on the fact that the police officers' actions did not contain all the elements necessary for the criminal offence provided for in article 174 of the Spanish Criminal Code (torture).

The Seville Criminal Court No. 13 and the Third Section of the Provincial Court considered that Toranzo's statements included the specific allegation that such a crime had been committed, but the courts concluded that no such crime had been inflicted by agents of the authority.

However, the issue was successfully escalated to the European level, and a lawsuit was filed in 2013 for violation of the right to freedom of expression. This resulted in the Kingdom of Spain being convicted for violating Article 10 of the European Convention on Human Rights, and ordered to pay more than 8,000 euros in compensation, moral damages and costs, in recognition of the disproportionate actions of the Spanish police and, most importantly, the ineffectiveness and narrowness of Spain's Criminal Code when defining the criminal type of torture. Indeed, the criminal type of torture defined in the Spanish Criminal Code does not conform to the definitions recommended by the UN Committee against Torture, which is much more extensive than Spain's, which therefore needs to be adapted in order to meet international standards.

The visibility provided to this case through the publication of the aforementioned scientific article in the *Torture Journal*, and its contribution as a form of expert evidence in the Spanish courts, as well as in the ECHR, have helped to ensure that the denunciation of torture does not go unpunished in an EU member state. When a state that is supposed to be democratic and under the rule of law fails to criminalise these behaviours, it discourages political criticism, and makes torture and ill-treatment invisible.

For all this, I thank the journal on behalf of Agustín Toranzo, and the collective that represents his interest in the present cause, for the progress that this demonstrates in the defence of human rights in Andalusia and Southern Europe. This case reaffirms the importance of documenting torture and recognising academic publishing and its power in promoting justice for victims of torture.

Disappearing refugees inside the United States.

Gerald Gray, MSW, MPH*

Dear Editor,
I have been working as a psychotherapist and social worker with refugee survivors of torture since 1990. I am now involved at the Texas-Mexico border, drawn there by the torture of refugee families and their children who are disappeared under the U.S. Administration's phrase, "family separation." In the El Paso Sector, I collaborate with several clinical, legal, and investigative journalism organizations.

We've read of the thousands of children and parents disappeared from one another at the border under that official phrase "family separation." The administration itself has stated that:

> "*The total number of children separated from a parent or guardian by immigration authorities is unknown…. HHS (Department of Health and Human Services) has thus far identified 2,737children in its care at that time who were separated from their parents. However, thousands of children may have been separated….*" (Office of the Inspector General, 2019 January).

In June 2018, NBC News quotes the former acting head of Immigration Customs Enforcement as saying, "some migrant family separations are permanent. You could be creating thousands of immigrant orphans

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in the U.S." (Ainsley, 2018). According to CNN in April 2019, government officials stated in a court filing that it may take two years to identify thousands of separated families (Shoichet et al., 2019). The Los Angeles Times also reported in March, 2019 that, "the total number of children separated from a parent or guardian under Trump remains unknown," in part because children separated from relatives who are not parents (siblings, aunts, uncles, grandparents) were neither counted as "family separation" cases nor separately tracked (O'Toole, 2019).

A March CNN report quotes a former head of the U.S. border security agency, Commissioner Kevin McAleenan, as saying almost 40,000 children will have been taken into federal custody in March 2019 (Sands, 2019). In April 2019, the New York Times reported that U.S. Attorney General William Barr has ordered that even some asylum seekers who have established credible fear and are subject to deportation—which now means virtually anyone because even asylum seekers are charged with an illegal entry—can not be released on bond and may be held in prison indefinitely (Sheer & Benner, 2019).

Like the official federal phrase "waterboarding" that disguises the use of asphyxiation as torture, disappearing people is a well-known form of torture—but not publicly understood as such in the United States, at least not yet. This lack of understanding may be because the U.S. has neither had a recent civil war, nor a current understanding of modern psychological torture. However, it is well understood in Latin America what "family separation" amounts to, as a number of refugees at the border have told me. That is, psychological mass torture, avoiding physical evidence on the body, in an attempt to control a region.

The argument to condemn "family separation" as a form of torture on children (and of parents, relatives, caretakers) has been, thus far, based on physical, psychological, and physiological grounds. It is well laid out in an article by my colleague at the Stanford Mental Health in Trauma Laboratory, law professor Beth Van Schaack (Van Schaack, 2018). She provides direct evidence from official statements that the policy of "family separation" is deliberately used to control refugees on a large scale.

However, enforced disappearance is not called a form of torture anywhere in the body of the International Convention for the Protection of All Persons from Enforced Disappearance (UN General Assembly, 2006). Instead, enforced disappearance is considered a means by which its victims are placed beyond protection of the law, and therefore may be *subject* to torture. This idea must be revisited, just as it was in 1986 that the UN recognized rape as a form of torture (UN Commission on Human Rights, 1986).

As a therapist working with families of the disappeared from Chile, Fiji, Bosnia and elsewhere, in cases involving disappearance, myself and others in the torture treatment movement know there is additional emotional evidence that disappearance amounts to constant torture. It gives rise to a particular set of painful emotions not provoked by PTSD or other trauma symptoms: unending, unrequited grief and related guilt in addition to trauma symptoms. Those not disappeared are kept ignorant of the existence and condition of the disappeared, sometimes for life. They feel guilt for not being unable to protect or help them. They feel guilt if they try to resolve the anguish by giving the disappeared up for permanently lost or dead. We have only to see the small children held weeping in cages at the U.S. border to recognize that, for them, the disappearance of loved ones is immediately felt and

amounts to torture. Therapeutic experience suggests it will remain with them and their families. There is a reason why thousands of Latin American families acknowledge disappearance as torture. Where are they in the writing of this Convention?

In the U.S. "family separation" policy, there is often a double disappearance, so neither parents nor children know if the other is alive or dead, safe or not. An entire region can't be controlled by torturing everyone, but as in many countries or regions, attempts are made to torture a number deemed sufficient to foster the obedience of all others in a region. This use of disappearance, therefore, inflicts torture on everyone, by threats and acts in order to warn refugees and asylum seekers back to the south.

The U.S. government and supporters of the use of torture have tried to focus the U.S. public on justifying the use of torture for interrogation. This deliberately obscures the United States' use of the other main form of modern torture, mass torture—here of a psychological kind—to control a region, a people, a state. U.S. intelligence agencies are shot through with psychologists and others who are informed about the meaning of "disappearance"; advertisements seeking to hire psychologists for the CIA, for instance, appear in professional clinical journals.

Since the U.S. public does not understand from experience how to translate "family separation" as a phrase to disguise torture, and since the U.S. government deliberately misleads its public with phrasing, it is up to the torture treatment movement, law centers, international agencies and some states, to inform the U.S. public that mass torture as "disappearance" is public policy now *inside* the United States.

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Call for papers for the Torture Journal special section on: ‘Long-term effects of interventions: Torture survivors in the Balkans region as a paradigm of reflection’

Background

Torture Journal undertook a Delphi study[1] on research priorities in the field. “Long-term outcomes and effects of interventions” was considered the leading priority by a worldwide representative sample of experts, including research related to chronicity, factors leading to re-traumatisation, and implications for public health and cohort studies with untreated survivors. Identifying what happens with undetected victims and researching effective rehabilitation strategies, their impact, and the unmet need for services is essential for ensuring anti-torture remains a priority for governments, donor agencies, and research institutions. Understanding the repercussions of torture on communities and society at large is also imperative for evidencing the need for comprehensive access to rehabilitation, as defined by General Comment #3. Studies focused on the Balkans region is the object of this call.

It has been just over seventeen years since the peace agreement—‘Agreement on Succession Issues’—was signed in 2001, which saw an end to one of the bloodiest and most protracted wars since WW2—the Balkans wars (1991-2001). The breakup of Yugoslavia resulted in human loss and countless atrocities, including ethnic cleansing, crimes against humanity, torture, and rape. An estimated 140,000 people were killed in the region and 4 million others were displaced during the conflicts.[2] Torture was perpetrated by all actors in the conflict; however, a quarter of a century after the conflict began, there has been scarce information on what happened to torture survivors and their current situation. Therefore, the Torture Journal strives to make a portrait of the long-term outcomes and effects of interventions on torture survivors in the Balkans.

Objective

To gather and disseminate scientific perspectives and experiences developed with torture survivors in the Balkans region with a focus on detection of unmet needs and follow-up studies of programmes.

Call for papers

Torture Journal encourages authors to submit papers with a medical and psychological orientation, including those that are interdisciplinary with other fields of knowledge. We welcome papers on the following:

a. Long-term follow up of torture survivors from any of the 6 former Yugoslavian republics (Slovenia, Bosnia, Croatia, Serbia, Kosovo, and Macedonia) and other countries where there were local refugees (i.e. Albania). We also welcome contributions related to people that were granted refugee status in other third countries.
b. Clinical and non-clinical aspects related to the natural evolution of persons

1 See Pérez-Sales, P., Witcombe, N., & Oyague, D. O. (2017). Rehabilitation of torture survivors and prevention of torture: Priorities for research through a modified Delphi Study. Torture Journal, 27(3). https://doi.org/10.7146/torture.v27i3.103976

2 ICTJ. (2009). *Transitional Justice in the Former Yugoslavia*. New York. USA. Retrieved from: https://www.ictj.org/publication/transitional-justice-former-yugoslavia

who have not followed any type of rehabilitation programme and of persons who have been in such programmes.

c. Implementation and assessment of reparation policies implemented in the area. Assessment of impact on survivors.
d. Current needs of survivors.
e. Peace or reconciliation initiatives and their impact at a societal, community or individual level.
f. Work with specific groups (e.g. children, disabled), especially with reference to short and long-term impact of gender-based torture.
g. Legal, psychosocial, political or other elements that have influenced torture survivors.
h. Development and impact of the International Tribunal for the Former Yugoslavia, especially in relation to the well-being of victims of torture.
i. Impunity and the role of perpetrators where this has happened.
j. Symbolic measures in transitional justice—the process and its potential impact.
k. Developmental disruptions, long-term impact of relatives' torture, and the impact of witnessing torture.

Submission guidelines

Read about the Torture Journal, author guidelines, and how to submit an article here: https://irct.org/global-resources/torture-journal

For more information

Contact Pau Pérez-Sales, the Editor in Chief (pauperez@arrakis.es) or Harry Shepherd, Assistant editor a.i. (hsh@irct.org). For more general enquiries, please write to publications@irct.org

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