

MEDICAL DOCUMENTATION OF TORTURE & OTHER ILL-TREATMENT

Fact Sheet for Judges & Prosecutors

What is medical documentation of torture and other ill-treatment?

Medical documentation of torture and cruel, inhuman or degrading treatment or punishment (other ill-treatment) includes:

- medical records – both physical and psychological;
- photographs of physical injuries; and
- reports written by expert doctors after physical and psychological examinations of alleged victims of torture or other ill-treatment.

Torture and ill-treatment do not always lead to physical and psychological injuries, however often they do. Prompt recording of these injuries is important evidence for any subsequent investigation and prosecution, as well as other legal proceedings.

Why is it important?

Torture and other forms of ill-treatment are absolutely prohibited under the Constitution of the Maldives, the Anti-Torture Act 2013 and international law, particularly the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, torture, by its very nature, is committed by those with power, often behind closed doors. Documenting evidence of torture and other ill-treatment when it occurs is therefore crucial to combating it. Accurate medical records and expert medical and psychological reports provide important supporting evidence that torture or other ill-treatment has occurred, and may be crucial for successful investigations and prosecutions.

What does the Anti-Torture Act say about medical documentation?

The Anti-Torture Act 2013 recognises the importance of medical documentation. **Article 19 of the Act sets out a detainee's right to consultation with a doctor.** It grants a person being detained for more than 24 hours, and a person released from detention, the right to request access to a doctor working in a location other than the place where the person is/was detained. Access to the doctor must be provided within 24 hours. Costs are to be borne by the person seeking access unless the Human Rights Commission of the Maldives finds that the person lacks the financial capacity to pay, in which case the State must pay within the 24 hour period.

The **consulting doctor must produce a medical report**, which is to be included in the person's detention file. Article 20 (c) requires this report to include specific information, including details of any injuries, the estimated period at which such injuries were inflicted, and the suspected cause for such injuries.

What guidelines are there on medical documentation?

The United Nations has recognised a set of guidelines on how investigations into torture should be carried out and how medical evidence of torture and other ill-treatment should be documented to enable states to comply with their international human rights obligations. This is known as the **Istanbul Protocol**.

The Istanbul Protocol sets out specific standards for how medico-legal examinations should be conducted, what procedural safeguards should be in place for such examinations, and what written medico-legal reports should contain. It stresses the importance of ensuring the independence of the medical professional carrying out the medical examination, and the importance of considering both physical and psychological evidence. The Istanbul Protocol also provides detailed guidance on the physical and psychological effects of torture and other ill-treatment.

Other important standards for the medical examination of detainees in particular are provided in the Revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the “**Mandela Rules**”), adopted by the Commission on Crime Prevention and Criminal Justice at the Vienna Crime Commission in May 2015.

What if there is no medical evidence?

The fact that there is no medical evidence **does not mean that a person has not been tortured**. Many forms of torture and ill-treatment do not leave physical marks, and torture and other ill-treatment may have different psychological effects on different people. However, where there is medical evidence this can be important corroborating evidence for the person’s allegations.

What role can prosecutors and judges play?

Prosecutors play an important role in ensuring allegations of torture or ill-treatment are properly documented and that evidence is presented to the Court. If a person they are prosecuting alleges that he or she was tortured or otherwise ill-treated, for example to obtain a confession, the prosecutor should ensure that an effective investigation is carried out. Such an investigation should include examination by an independent medical professional. It is important that public prosecutors are aware of the potential medical and psychological effects of torture and other ill-treatment, and ways in which this evidence may be effectively documented and presented to the Court.

Judges have the ultimate oversight of detention, investigations and prosecutions, and therefore have a very important role to play in ensuring that those facing criminal trial and those held in detention are given their rights. This should include the right to an independent medical examination if requested.

Where individuals are brought before them, judges should pro-actively ask detainees if they have been examined by a doctor, and have any complaints to make about their treatment. If allegations of torture or other ill-treatment are raised judges should order that these are investigated, including ordering an independent medical examination if this has not already been carried out. If there is a reasonable suspicion that torture or other ill-treatment has occurred, judges should order the removal of an individual from the site of alleged torture or other ill-treatment and suspension of the alleged perpetrators pending investigation.

It is helpful for judges to be familiar with the potential physical and psychological effects of torture and ill-treatment, and how these can be effectively documented and evaluated by the Court. In this, the Istanbul Protocol provides a helpful guide.

For further detailed information see: REDRESS (2015) ‘Istanbul Protocol Manual: Standards & tools for medical documentation of torture & other ill-treatment in the Maldives’, June 2015.