



# CARE FULL



**Medico-legal reports and the Istanbul Protocol  
in asylum procedures** **PRINCIPLES AND RECOMMENDATIONS**





# CAREFUL



**Medico-legal reports and the Istanbul Protocol  
in asylum procedures** PRINCIPLES AND RECOMMENDATIONS

# SUMMARY



The following document is part of the CARE FULL project, an initiative of Amnesty International – Dutch section, The Dutch Council for Refugees, and Pharos – Knowledge Centre on Refugees and Health. It is the result of the international expert's meeting 14-15 November 2006 in Amsterdam, the Netherlands. During this meeting more than twenty organizations from eleven European countries, providing legal and/or medical support to asylum seekers, expressed concern that asylum procedures applied in each country leave little room for survivors of torture or ill-treatment to be properly heard.

Medico-legal reports may help to interpret the history of torture and ill-treatment and identify any barriers impeding the asylum seeker from disclosing a coherent and/or comprehensive account of his or her experiences. However, medico-legal reports are often not (sufficiently) taken into account in asylum procedures.

The subscribing organizations support the principles and recommendations laid down in this document. This project addresses primarily EU Member States. The CARE FULL initiative calls upon EU Member States to enhance the protection of survivors of torture and ill-treatment who ask for asylum by giving due weight to medico-legal reports in the asylum procedure. This should be done in accordance with the criteria established by the Istanbul Protocol. Survivors of torture or ill-treatment deserve full care.

In the future, regulations concerning the role and use of medico-legal reports need to be harmonised within the context of a developing common European asylum system in consultation with recognised experts who regularly produce such reports.

*For the purpose of this document 'medico-legal reports' refer to all reports based on a medical, psychiatric and/or psychological examination intended for use within any legal proceeding.*

# TABLE OF CONTENTS

<b>▶▶▶▶</b>	<b>0 Subscribing organizations</b> .....	4
<b>▶▶▶▶</b>	<b>1 Introduction</b> .....	6
	Recognising torture and applying a consistent approach to its documentation .....	7
	The CARE FULL initiative – objectives and approach .....	7
<b>▶▶▶▶</b>	<b>2 Background</b> .....	9
	EU Directives .....	9
	The Istanbul Protocol .....	10
<b>▶▶▶▶</b>	<b>3 Principles</b> .....	13
<b>▶▶▶▶</b>	<b>4 Recommendations</b> .....	16
<b>▶▶▶▶</b>	<b>5 Notes</b> .....	19

# 0

## SUBSCRIBING ORGANIZATIONS



The organizations below subscribe to the principles and recommendations laid down in this document and undertake action to promote them within their own countries and/or at the European and international level.

(Updated list 1 September 2007)

- Amnesty International
- Asociación Comisión Católica Española de Migraciones (Accem), Spain
- ASKV/Steunpunt Vluchtelingen, The Netherlands
- Association for Democratic Initiatives (ADI), Macedonia
- Bundesweite Arbeitsgemeinschaft Psychosozialer Zentren für Flüchtlinge und Folteropfer (BAFF), Germany
- Caritas Luxembourg, Luxembourg
- Centre for the Care of Survivors of Torture (CCST), Ireland
- Centrum45, The Netherlands
- Comisión Española de Ayuda al Refugiado (CEAR), Spain
- Cordelia Foundation for the Rehabilitation of Torture Victims, Hungary
- Dutch Council for Refugees, The Netherlands
- European Council for Refugees and Exiles (ECRE)
- Exil ASBL, Belgium
- Greek Council for Refugees, Greece
- Human Rights Foundation of Turkey (HRFT), Turkey
- Impact Positif, Switzerland
- International Catholic Migration Commission (ICMC)
- International Rehabilitation Council for Torture Victims (IRCT)
- Irish Refugee Council, Ireland
- Jesuit Refugee Service (JRS)
- Johannes Wier Stichting, The Netherlands
- Medical Rehabilitation Centre for Torture Victims (MRCT), Greece
- Medimmigrant, Belgium
- Nederlands Juristencomité voor de Mensenrechten (NJCM – Dutch section of the International Commission of Jurists), The Netherlands
- Pharos – Centre of knowledge on refugees and health, The Netherlands



 **RECOGNISING TORTURE AND APPLYING A CONSISTENT APPROACH TO ITS DOCUMENTATION**

Torture<sup>1</sup> and ill-treatment<sup>2</sup> continue to occur in many parts of the world, even though the right to be free from torture is firmly established under international law.<sup>3</sup> ‘The striking disparity between the absolute prohibition of torture and its prevalence in the world today demonstrates the need for States to identify and implement effective measures to protect individuals from torture and ill-treatment.’<sup>4</sup>

Many survivors of torture or ill-treatment arrive at Europe’s doorstep each year, in search of international protection. Violence may have left physical and psychological sequelae on the victim. Asylum seekers who survived torture or ill-treatment may have difficulty disclosing the specific details of the violence inflicted, or may find it difficult to speak about their experiences at all.<sup>5</sup>

The intensity of the international debate on migration, combined with an increased focus in European countries on accelerated asylum procedures, often leaves little room for asylum seekers, in particular those who suffered torture or ill-treatment, to be heard. Due to lack of time and attention, protection may be denied where it should be granted.

The early identification of survivors of torture or ill-treatment ensures that those survivors receive the appropriate services and treatment. It also contributes to an accurate, fair and efficient asylum determination process which, in turn, enhances the integrity of the asylum system in each Member State. It would improve the decision-making process and hence lead to a decrease in subsequent procedures. It would also prevent unnecessary health complications for asylum seekers (including those who are ultimately granted international protection) who otherwise face delays in accessing the relevant services.

States have a clear obligation under international law to refrain from *refoulement*, i.e. expelling a person to a country in which there exists a real risk of being subjected to torture or ill-treatment. Furthermore, States have an obligation to





ensure that torture survivors are offered rehabilitation and redress.<sup>6</sup> In order to fulfil these obligations States need to determine which asylum seekers are survivors of torture or ill-treatment at the earliest opportunity.

Medico-legal reports can support these efforts. Medico-legal reports can help to interpret the history of torture and ill-treatment and identify any barriers impeding the asylum seeker from disclosing a more detailed and coherent account of his or her experiences. International bodies – among others the European Court of Human Rights – have given weight to medico-legal reports in the processing of asylum claims.<sup>7</sup> The Committee against Torture has issued General Comment no 1, in which it acknowledged the relevance of medical reports in examining complaints under the Convention against Torture: ‘The following information, while not exhaustive, would be pertinent: [...] (c) Is there medical or other independent evidence to support a claim by the author that he/she has been tortured or maltreated in the past?’<sup>8</sup>

However, medico-legal reports are often not given sufficient weight in many European asylum procedures.<sup>9</sup> EU Member States have different regulations, policies and practices regarding the role and use of medico-legal reports in the asylum process.<sup>10</sup> Clearly, if the Common European Asylum System is to become an effective reality, practices concerning the role and use of medico-legal reports need to be harmonised.



## **THE CARE FULL INITIATIVE – OBJECTIVES AND APPROACH**

The CARE FULL project is an initiative of Amnesty International – Dutch section, The Dutch Council for Refugees, and Pharos – Knowledge Centre on Refugees and Health

They share the following objective:

To enhance the protection of survivors of torture or ill-treatment seeking asylum in Europe.

To achieve this objective they formulated the following – general – recommendations:

Member States should provide:

- (i) An asylum procedure which ensures the early identification of survivors of torture and ill-treatment.
- (ii) A decision-making process in which due weight is given to medico-legal reports.



The participating organizations underline the importance of the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1999), also known as the Istanbul Protocol. This Protocol includes principles for the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment and lays down minimum standards for their application. Although these guidelines were intended for medical documentation of torture within criminal proceedings, the Protocol explicitly refers to asylum procedures.<sup>11</sup> The CARE FULL initiative urges an increase in the awareness of the standards laid down in the Istanbul Protocol and affirmative action to promote the use of the Protocol in all stages of any asylum procedure.

Member States should, therefore:

- (iii) Promote the Istanbul Protocol's guidelines as being relevant within the asylum context and provide training for asylum authorities on the Istanbul Protocol.

The subscribing organizations believe that early identification and documentation of the sequelae of torture or ill-treatment will result in:

- better protection of the health of the asylum seeker through his/her referral to specialized services for the provision of necessary treatment and rehabilitation at an early stage;<sup>12</sup>
- an improved quality of the decision-making process based on increased and more professional information;
- a decrease in subsequent procedures to correct previous incomplete asylum determination procedures;
- increased quality of decision-making on the return of rejected asylum seekers, including proper assessment of necessary medical aspects during travel and availability and access to treatment on arrival in countries of origin.

The CARE FULL initiative seeks to promote these outcomes through:

- publication of a reference book, *Care Full – Medico-legal reports and the Istanbul Protocol in asylum procedures*;
- an international experts' meeting on 14-15 November 2006 in Amsterdam, the Netherlands, during which the objectives, principles and recommendations laid down in this document were formulated;
- communicating the principles and recommendations laid down in this document to various international and national authorities and organizations.

# 2

## BACKGROUND

### ▶▶▶▶ EU DIRECTIVES

EU Member States are in the process of harmonizing their national asylum procedures. Within the context of the proposed Common European Asylum System<sup>13</sup> they have adopted various Directives, which are being transposed into national law, for example: the Reception Directive<sup>14</sup>, the Qualification Directive<sup>15</sup>, and the Procedures Directive<sup>16</sup>. These Directives – implicitly or explicitly – refer to the use of medico-legal reports in the asylum procedure.

- The EU Qualification Directive indicates that medico-legal reports put forward in asylum procedures should be taken into account.

Article 4(3): *‘The assessment of an application for international protection is to be carried out on an individual basis and includes taking into account: [...] (b) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm; [...]’*

- From the EU Qualification Directive it can be understood that previous persecution, torture or ill-treatment is an indication for future persecution, torture or ill-treatment. Medico-legal reports can corroborate the alleged torture or ill-treatment.

Article 4(4): *‘The fact that an applicant has already been subjected to persecution or serious harm or to direct threats of such persecution or such harm, is a serious indication of the applicant’s well-founded fear of persecution or real risk of suffering serious harm unless there are good reasons to consider that such persecution or serious harm will not be repeated.’*

- The EU Procedures Directive pays attention to the situation that the asylum seeker is unable to be interviewed.

Article 12(3): *‘The personal interview may be omitted where it is not reasonably practicable, in particular where the competent authority is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances’*



beyond his/her control. When in doubt, Member States may require a medical or psychological certificate.’

- The interviewer must meet certain requirements regarding competence, according to the aforementioned Directive.

Article 13(3): *‘Member States shall take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner. To that end, Member States shall: (a) ensure that the person who conducts the interview is sufficiently competent to take account of the personal or general circumstances surrounding the application, including the applicant’s cultural origin or vulnerability, insofar as it is possible to do so [...].’*

- The EU Reception Directive instructs Member States to identify persons with special needs with regard to reception conditions.

Article 17(1): *‘Member States shall take into account the specific situation of vulnerable persons such as [...] persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence [...].’*

- The EU Reception Directive instructs Member States to identify persons who need treatment of damages caused by torture, rape or other serious acts of violence.

Article 20: *‘Member States shall ensure that, if necessary, persons who have been subjected to torture, rape or other serious acts of violence, receive the necessary treatment of damages caused by the aforementioned acts.’*

- The aforementioned EU Council Directive on Qualification and Status instructs Member States to provide adequate health care to those with special needs who have been granted asylum.

Article 29(3): *‘Member States shall provide, under the same eligibility conditions as nationals of the Member State that has granted the status, adequate health care to beneficiaries of refugee or subsidiary protection status who have special needs, such as pregnant women, disabled people, persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence or minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflict.’*

In the light of these Directive provisions, Member States need to establish agreed practices, codes and regulations for the role and use of medico-legal reports in asylum procedures.



## THE ISTANBUL PROTOCOL

The Istanbul Protocol contains detailed procedures and practical advice for medical and legal experts on how to recognise and document the sequelae of torture. It was submitted to the United Nations High Commissioner for Human Rights in August 1999 and the United Nations Commission on Human Rights (UNCHR) adopted the Principles of the Istanbul Protocol (Annex 1) in 2000<sup>17</sup>. The Istanbul Protocol Implementation Project was launched in 2003 with support of the European Commission.<sup>18</sup>

The CARE FULL initiative underlines the importance of the Istanbul Protocol. Although not drafted primarily with asylum procedures in mind, the Protocol clearly states that *‘Medical evaluations of torture may be useful evidence in legal contexts such as: [...] (b) Support of political asylum applications.’* (par. 121)

The value of the Istanbul Protocol for asylum procedures is threefold.

- 1 It provides for guidelines regarding the circumstances in which an alleged victim of torture should and can be interviewed (procedural aspect).<sup>19</sup>
- 2 It provides for guidelines for the performance of medical examinations and their documentation (medical aspect).<sup>20</sup>
- 3 It refers to the fact that the purpose of medico-legal reports is to provide expert opinion on the degree to which medical findings correlate with the alleged torture or ill-treatment (material aspect).<sup>21</sup>

### Some relevant provisions in the Istanbul Protocol are the following

- *‘Sufficient time should be allotted to interview the alleged torture victim. Investigators should not expect to get the full story during the first interview.’* (par. 93)

- *‘Psychological or counselling services trained in working with torture victims should be accessible [...].’* (par. 94)

- *‘The purpose of the written or oral testimony of the physicians is to provide expert opinion on the degree to which medical findings correlate with the patient’s allegation of abuse and to communicate effectively the physician’s medical findings and interpretations to the judiciary or other appropriate authorities. [...]’* (par. 122)

- *‘Torture, particular sexual torture, is a very intimate subject [...]. Individuals should not be forced to talk about any form of torture if they feel uncomfortable about it.’* (par. 135)





- *‘Torture survivors may have difficulty recounting the specific details of the torture for several important reasons [...]’ (par. 142)*
- *‘Inconsistencies in a person’s story may arise [...]’ (par. 143)*
- *‘To the extent that physical evidence of torture exists, it provides important confirmatory evidence that a person has been tortured. However, the absence of such physical evidence should not be construed to suggest that torture did not occur, since such acts of violence against persons frequently leave no marks or permanent scars.’ (par. 161)*
- *‘Trust is an essential component of eliciting an accurate account of abuse.’ (par. 164)*
- *‘The individual needs to be given an opportunity to request breaks, interrupt the interview at any time and be able to leave if the stress becomes intolerable, with the option of a later appointment.’ (par. 263)*
- *‘Victims of rape have been known to say nothing to non-medical female investigators, but to request to talk to a physician [...] so as to be able to ask specific medical questions.’ (par. 270)*

# 3

## PRINCIPLES

▶▶▶▶ In light of the objective of enhanced protection in EU Member States for survivors of torture or ill-treatment seeking asylum, the following principles have been defined.

▶▶▶▶ **1 Medico-legal reports are given due weight in the decision-making process.** They can ‘render expert interpretation of the findings of medical-legal evaluations and provide expert opinion regarding possible causes of abuse in asylum hearings...’<sup>22</sup> A medical examination and the subsequent medico-legal report can provide an expert opinion on the degree to which medical findings correlate with the alleged torture or ill-treatment. A medico-legal report may thus corroborate the claim of the asylum seeker that he or she was subjected to torture or ill-treatment. Due to the increasing use of different torture methods which leave hardly any visible signs, it is likely that cases where no scars or other physical signs of torture are found will occur. However, this does not mean that a person has not been subjected to torture. In such cases the emphasis in the examination may focus on psychological sequelae.

A medico-legal report is an expert opinion of a clinician, not being the treating physician.<sup>23</sup> The role of the medical expert witness is to give an objective, impartial opinion based upon his or her medical and professional experience. Decision-making authorities should in principle follow the conclusions of the medico-legal report. They should not make medical observations, due to lack of specific expertise. Critical analysis of this opinion should only come from an expert with similar experience (contra-expertise).

▶▶▶▶ **2 The Istanbul Protocol provides a basis and a framework for rules on medical examinations and medico-legal reports within the asylum process and is used to guide practice.**

Although the Istanbul Protocol was intended to provide guidelines on medical documentation of torture within criminal proceedings, it also explicitly refers to asylum procedures. The medical and legal standards derived from the Protocol may give guidance on the role and use of medico-legal reports within the asylum procedure. Medical, refugee and human rights organizations in several



countries already developed guidelines for medical examinations and reports, based on the Protocol, specifically for asylum procedures.



**3 Asylum seekers are given sufficient time and facilities to relate their asylum motives and to support their statements, by – amongst others – a medical examination.**

Asylum seekers who have been tortured or ill-treated are in a potentially vulnerable position. They have specific needs, such as sufficient rest and adequate care, sufficient preparation with respect to the procedure, time to build trust towards the authorities, sufficient time to relate their experiences and substantiate their asylum claim with – amongst other things – a medical examination. Accelerated procedures generally fail to provide adequate opportunities for asylum seekers to substantiate their asylum claims. Due to the lack of time, protection may be denied where it should be granted. Therefore, asylum applications by survivors of torture or ill-treatment should not be rejected in an accelerated procedure.

Asylum seekers who survived torture or ill-treatment may have difficulty recounting the specific details of the torture or ill-treatment, or may find it difficult to speak about their experiences at all. If part of the story, concerning torture or ill-treatment, is told in a later phase, this information must be weighed in the decision-making process as well.



**4 Acknowledgement of health problems takes place as early as possible in the asylum procedure.**

If health problems which may be a consequence of previous torture or ill-treatment are recognized and acknowledged as such in the early phase of the asylum procedure, due account thereof can be taken during the proceedings. The asylum seeker can receive professional medical treatment, which can be of help in preventing retraumatization and unnecessary loss of health. The asylum procedure as such can be more efficient when medical problems are taken into account from the very beginning: there is likely to be an improvement in the quality of the decision-making process with less likelihood of late disclosure of relevant facts.



**5 In case of doubt about the mental health of the asylum seeker, an independent mental health expert provides an opinion on the mental health of the asylum seeker and his or her ability to give accurate and coherent statements during the interview. Asylum authorities are trained to recognize the signs of torture or trauma and request medical and/or psychological expertise.**

Psychological distress, shame and fear may impair the ability of the asylum seeker who is a victim of torture or ill-treatment to relate about his or her experiences and asylum motives coherently and consistently. When taking into account both the relevance of the interview for the asylum proceedings (estab-



lishment of the facts) and the possible risk of retraumatization (when pressure is put upon the asylum seeker to tell his or her story) caution by the authorities is called for. It is important that, in case there is any doubt about the mental health of the asylum seeker and his or her ability to give accurate and coherent statements during the asylum interview, the interviewing authority requests a mental health expert, whose advice should be followed.<sup>24</sup> If this is not intended, the matter should first be discussed with the author of the report and/or be subject to a contra-expertise.

The Istanbul Protocol mentions reasons why survivors of torture may have difficulty recounting specific details of their experiences and explains the possible reasons for inconsistencies in a person's story. The Protocol gives certain guidelines on approaching a victim of torture when he or she is interviewed. Based on those guidelines the EU Commission should develop an Interviewing Protocol or Manual in cooperation with relevant actors in the field. As long as such a protocol has not been produced, EU Member States should draft guidelines for interviewing asylum seekers themselves. These should be made public.

# 4

## RECOMMENDATIONS

Following the afore mentioned 5 basic principles, the most important recommendations have been formulated as stated below.

### ON THE EUROPEAN LEVEL

#### *European Commission*

When performing its task to monitor the implementation process of the Common European Asylum System (CEAS), to take due account of the position of vulnerable persons such as survivors of torture and ill-treatment by:

- 1 monitoring and – if necessary – urging Member States to comply with their obligations with respect to the incorporation of EU legislation into national law;
- 2 proposing an amendment to the EU Directive on Asylum Procedures ex article 42<sup>25</sup> on the role and use of medico-legal reports within the asylum procedure, in accordance with the guidelines laid down in the Istanbul Protocol;
- 3 developing an Interviewing Protocol or Manual, based on the Istanbul Protocol guidelines, and in cooperation with relevant actors in the field.

#### *European Parliament*

Considering its role in the codecision procedure, to ensure that EU-legislation implements the principles and recommendations laid down in this document by:

- 4 calling on the Commission to propose an amendment to EU Directive on Asylum Procedures ex article 42 on the role and use of medico-legal reports within the asylum procedure, in accordance with the guidelines laid down in the Istanbul Protocol.

When examining the Commission's annual programme of work:

- 5 to emphasize the importance of legislation on the role and use of medico-legal reports within the asylum procedure, and the development of an Interviewing Protocol or Manual, based on the Istanbul Protocol guidelines, and in cooperation with relevant actors in the field.





*Parliamentary Assembly of the Council of Europe*

Elaborating on the Parliamentary Assembly Recommendation 1727 (2005),<sup>26</sup> and in accordance with the Rules of Procedures:

- 6 to assign a rapporteur to draw up a report and a subsequent resolution and/or recommendation on the role and use of medical evidence of torture within the European asylum procedures, thereby taking into account the guidelines laid down in the Istanbul Protocol.



## UNITED NATIONS

*High Commissioner of Human Rights*

Promoting and protecting human rights:

- 7 to further promote implementation of the Istanbul Protocol;
- 8 to develop a set of specific principles in an Annex to the Istanbul Protocol on the effective examination and documentation of torture, ill-treatment and trauma in asylum procedures;
- 9 to support training programmes to immigration authorities on the implementation of the Istanbul Protocol in asylum procedures.

*UNHCR*

Supervising the application of the 1951 UN Refugee Convention:

- 10 to draw up guidelines on the relevance of medical aspects with respect to the need of international protection and on the role and use of medical reports within the asylum procedures;
- 11 to include the issue of medical evidence of torture as a priority theme on the agenda of the next session of the Executive Committee and to reach consensus expressed in the form of an ExCom Conclusion.

*UN supervisory treaty bodies*

- Committee against Torture
- Human Rights Committee
- Committee on the Elimination of Discrimination against Women
- International Committee on the Rights of the Child

Supervising the application of, respectively, the Convention against Torture, the International Covenant on Civil and Political Rights, the Convention on the Elimination of Discrimination against Women and the International Convention on the Rights of the Child:

- 12 to draw a General Comment on the guidelines laid down in the Istanbul Protocol;
- 13 to address implementation of the Istanbul Protocol guidelines in State reports.

As far as the Committee against Torture is concerned:

- 14 to give full effect to General Comment 1 of 1997<sup>27</sup> by holding to the view of 12



May 1999: ‘Certainly, past torture is, in the Committee’s view, a major element to be taken into account [...]’.<sup>28</sup>

## **ON THE NATIONAL LEVEL**

### *Governments*

The participating organizations call upon European governments to adhere to the five basic principles as set out in the previous section and to implement them in national law and/or policy.

We further recommend:

- 15** to give effect to article 4(3) of the EU Qualification Directive by acknowledging the importance of medical examination and documentation of torture and ill-treatment within the asylum procedure;
- 16** to give effect to article 4(4) of the EU Qualification Directive, stating that previous persecution is an indication of future persecution;
- 17** to give effect to article 13(3) of the Procedures Directive by training asylum authorities on how to interview asylum seekers with psychological problems and on how to recognise trauma, including referral to medical experts and rehabilitation centres for survivors of torture, who can further investigate the asylum seeker’s ability to accurately convey his/her past experiences;
- 18** to further develop guidelines on the use of medical examinations and medico-legal reports within the asylum process, based on the Istanbul Protocol, in cooperation with civil society organizations, legal and medical experts and professional organizations;
- 19** to consider a claim by an asylum seeker being a victim of torture or ill-treatment in its entirety as stated in paragraph 42 of the UNHCR Handbook;<sup>29</sup>
- 20** to formally acknowledge that asylum applications by survivors of torture or ill-treatment are not rejected in accelerated procedures;
- 21** to invoke the sovereignty clause of the Dublin II Regulation<sup>30</sup> so as to examine asylum applications by traumatized asylum seekers where removal to the responsible Member State would exacerbate the condition and or deny existing medical treatment;
- 22** to ensure that due consideration is given to ‘compelling humanitarian’ reasons in relation to the vulnerable position of survivors of torture or ill-treatment whose reasons for asylum have ceased to exist.<sup>31</sup>

# 5

## NOTES

- 1 'Torture' is defined in the UN Convention against Torture (1984), article 1, paragraph 1: *'[T]he term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person 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, 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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.'*

Relevant for the interpretation of 'torture' are also article 3 of the European Convention on Human Rights (ECHR) and article 7 of the International Covenant on Civil and Political Rights (ICCPR).
- 2 In this document 'ill-treatment' is used as the overall term for 'other cruel, inhuman or degrading treatment or punishment' (see art. 3 ECHR and art. 7 of the ICCPR).
- 3 *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1999). (Istanbul Protocol), par. 1.
- 4 Introduction, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1999).
- 5 See Bloemen, E., Vloeberghs, E. & Smits, C. (2006). Psychological and psychiatric aspects of recounting traumatic events by asylum seekers. In *Care Full. Medico-legal reports and the Istanbul Protocol in asylum procedures*.
- 6 See article 14 of the Convention against Torture and article 29 (3) of the EU Council Directive on Qualification and Status.
- 7 See Bruin, R. & Reneman, M. (2006). Supervising bodies and medical reports. In *Care Full. Medico-legal reports and the Istanbul Protocol in asylum procedures*.
- 8 Committee against Torture, General Comment no 1, Implementation of article 3 of the Convention in the context of article 22, 21/11/97, A/53/44, [www.unhchr.ch](http://www.unhchr.ch).



- 9 See Wijnkoop, M. (2006). Country assessments: how do EU Member States deal with medico-legal reports in asylum procedures? In *Care Full. Medico-legal reports and the Istanbul Protocol in asylum procedures*.
- 10 Ibid.
- 11 Istanbul Protocol, Introduction and paras 92, 121b, 122e, 261 and 291.
- 12 See Article 20 of the EU Council Directive on Reception Conditions: 'Member States shall ensure that, if necessary, persons who have been subjected to torture, rape or other acts of violence receive the necessary treatment of damages caused by the aforementioned acts.'
- 13 At the European Council in Tampere in October 1999, the EU Member States decided that a common asylum policy must be implemented and a *Common European Asylum System* (CEAS) be established.
- 14 Council Directive 2003/9/EC, 27 January 2003, laying down minimum standards for the reception of asylum seekers, *Official Journal (OJ)* L31/18. This Directive should have been implemented before 6 February 2005.
- 15 Council Directive 2004/83/EC, 29 April 2004, on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, *OJ* L304. This Directive should have been implemented before 10 October 2006.
- 16 Council Directive 2005/85/EC, 1 December 2005, on minimum standards on procedures in Member States for granting and withdrawing refugee status, *OJ* L326. This Directive should have been implemented before 1 December 2007.
- 17 The Principles have been annexed to the UNCHR resolution on torture (2000/43) and the resolution (55/89) of the UN General Assembly.
- 18 This project was launched by the International Rehabilitation Council for Torture Victims (IRCT), Physicians for Human Rights (PHR), Redress Trust, and the World Medical Association (WMA).
- 19 Istanbul Protocol, par. 120-160, 163-167, 263-274.
- 20 Istanbul Protocol, par. 173-233, 240-315.
- 21 Istanbul Protocol, par. 120-121.
- 22 Istanbul Protocol, par. 122(e).
- 23 This document does not want to exclude from the asylum procedure medical information provided by a treating physician.
- 24 *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status*, 1979, par. 208: 'The conclusions of the medical report will determine the examiner's further approach.'
- 25 This article states that no later than 1 December 2009, the Commission shall report to the European Parliament and the Council on the application of the Asylum Procedure Directive in the Member States and shall propose any amendments that are necessary.
- 26 Parliamentary Assembly, Resolution 1471 (2005), 7 October 2005, Parliamentary Assembly Recommendation 1727 (2005), 7 October 2005: 'The need for states to process asylum applications in a rapid and efficient manner, however,



*needs to be balanced by the obligation to provide access to a fair determination procedure for those who are in need of international protection.'*

- 27 *'The following information, while not exhaustive, would be pertinent: [...] (c) Is there medical or other independent evidence to support a claim by the author that he/she has been tortured or maltreated in the past?'*
- 28 CAT Communication no 124/1999, May 12 1999, (A. v. the Netherlands).
- 29 *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, 1979, par. 42: '[...] The applicant's statements cannot, however, be considered in the abstract, and must be viewed in the context of the relevant background situation. [...]'*
- 30 Council Regulation (EC) No 343/2003, 18 February 2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.
- 31 Reference is made to the second part of the cessation clause of article 1C(5) of the 1951 Refugee Convention, stating that the cessation clause is not applied to a refugee falling under article 1A(1) *'who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality'*.





### Colophon

This document 'Principles and Recommendations' is part of the Care Full project to promote the use of medico-legal reports and the Istanbul Protocol in asylum procedures. It is published by Amnesty International, Dutch section, the Dutch Council for Refugees and Pharos – Knowledge Centre on Refugees and Health.

#### *Amnesty International*

PO Box 1968 1000 BZ Amsterdam, the Netherlands  
 Telephone +31 (0) 20 626 44 36 Fax +31 (0) 20 624 08 89  
 Email [amnesty@amnesty.nl](mailto:amnesty@amnesty.nl) Website [www.amnesty.nl](http://www.amnesty.nl)  
 Contact Heleen Tiemersma ([h.tiemersma@amnesty.nl](mailto:h.tiemersma@amnesty.nl)),  
 René Bruin ([r.bruin@amnesty.nl](mailto:r.bruin@amnesty.nl)), Theo Wijngaard ([t.wijngaard@amnesty.nl](mailto:t.wijngaard@amnesty.nl))

#### *Dutch Council for Refugees*

PO Box 2894 1000 CW Amsterdam, the Netherlands  
 Telephone +31 (0) 20 346 72 00 Fax +31 (0) 20 617 81 55  
 Email [info@vluchtelingenwerk.nl](mailto:info@vluchtelingenwerk.nl) Website [www.vluchtelingenwerk.nl](http://www.vluchtelingenwerk.nl)  
 Contact Marcelle Reneman ([mreneman@vluchtelingenwerk.nl](mailto:mreneman@vluchtelingenwerk.nl)),  
 Stefan Kok ([skok@vluchtelingenwerk.nl](mailto:skok@vluchtelingenwerk.nl))

#### *Pharos*

PO Box 13318 3507 LH Utrecht, the Netherlands  
 Telephone +31 (0) 30 234 98 00 Fax +31 (0) 30 236 45 60  
 Email [info@pharos.nl](mailto:info@pharos.nl) Website [www.pharos.nl](http://www.pharos.nl)  
 Contact Erick Vloeberghs ([e.vloeberghs@pharos.nl](mailto:e.vloeberghs@pharos.nl)),  
 Evert Bloemen ([e.bloemen@pharos.nl](mailto:e.bloemen@pharos.nl))

For any questions about this document or this project contact any of the above-mentioned persons.

*Photo cover* The photograph was taken when members of the Brazilian national lawyer's association walked in on this man being tortured in a police station in Fortaleza, Ceará, 12 April 1993. He was handcuffed and wrapped in a blanket, beaten and semi-asphyxiated with a rubber inner-tube of a car tyre placed over his head. In the foreground are a palmatoria (wooden bat or club), electric wires and rubber tyre tubing.

© Evilázio Bezerra/O Povo

*Graphic Design* Studio Casper Klaasse, Amsterdam

© 2007, Amnesty International/Dutch Council for Refugees/Pharos, Amsterdam/Utrecht

No part of this publication may be reproduced and/or published by means of print, photocopy or any other means without express prior permission in writing by the publisher.



