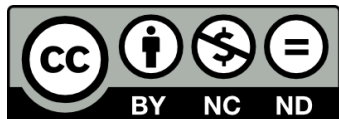




Legal investigation of torture and ill-treatment

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Education and Culture DG


Lifelong Learning Programme

III. Legal Investigation of Torture and Ill-treatment

States are *required* under international law to investigate reported incidents of torture.

The **fundamental principles** of any viable investigation are:

- Competence
- Impartiality
- Independence
- Promptness
- Thoroughness

 When a State is not able or not willing to prosecute an alleged perpetrator, it should extradite him/her to another jurisdiction.

Legal investigation of torture

A. PURPOSES OF AN INVESTIGATION INTO TORTURE AND ILL-TREATMENT

A. Purpose of an investigation into torture and ill-treatment

IP: *“The broad purpose of the investigation is to establish the facts relating to alleged incidents of torture”.*

A. Purpose of an investigation into torture and ill-treatment

Those carrying out the investigation must:

- seek to obtain statements from the victims
- recover and preserve evidence (including medical evidence)
- identify possible witnesses and obtain statements
- determine how, when and where the alleged incidents of torture occurred
- as well as any pattern or practice of the torture.

Legal investigation of torture

B. PRINCIPLES OF AN INVESTIGATION

B. Principles of an investigation

Purposes of effective investigation and documentation:

Clarification of the facts and establishment and acknowledgement of individual and State responsibility;

Identification of measures needed to prevent recurrence;

Facilitation of prosecution or disciplinary sanctions for those being responsible;

Demonstration of the need for full reparation and redress from the State (incl. financial compensation, rehabilitation);

B. Principles of an investigation

States must ensure prompt and effective investigations of cases brought to their attention.

In the absence of complaints, States must start an **investigation *ex officio***, when there are reasons to believe torture might have been committed.

Investigators shall be independent, competent, impartial, equipped with all necessary resources and powers to summon official to testify and carry out the investigation.

Findings must be made public.

B. Principles of an investigation

Victims / Witnesses / those conducting the investigation and their families **must be protected** from violence, threats of violence or any other form of intimidation;

Victims and their lawyers must be informed of / have access to any relevant hearing / information.

B. Principles of an investigation

Medical experts in the investigation should act according to ethical standards. Their **reports** should include at least:

- Circumstances of the interview;
- Background story (methods of torture, etc.);
- Physical and psychological examination;
- Opinion and record of authorship;
- They should also be confidential and transmitted to authorities only with the consent of the victim;
- And communicated to the victim;



See ch. IV, V, VI for more details on reports and assessments

Legal investigation of torture

C. PROCEDURES OF A TORTURE INVESTIGATION

1. Determination of the appropriate investigative body

If public officials are involved or the impartiality of the investigators is questioned a **special commission of inquiry** has to be established with:

- at least the minimum procedural safeguards protected by international law.
- the support of adequate technical and administrative personnel.
- access to objective, impartial legal advice.
- the full scope of the State's resources and powers.
- the power to seek help from international experts.

1. Determination of the appropriate investigative body

State's involvement can be sensed when:

- The victim was seen unharmed in police custody;
- The modus operandi is recognisable (e.g. the instruments used for torture and ill-treatment are ones used recurrently by officials in other cases);
- There are obstructions to the investigation.

2. Interviewing the alleged victim and other witnesses

Because of the special nature of a torture case, the following points need to receive a particular attention:

- The victim has to be strictly informed about every single step of the process / case, and should give an informed consent on the use of information.
- The primary investigator should be chosen based on the victims preferences (e.g. gender, language, cultural background).
- The context of the investigation (place, attendees, atmosphere, consequence).

2. Interviewing the alleged victim and other witnesses

- Safety of victims / witnesses and their families
- Choice of the interpreter;
- (Plan) which information is to be obtained from the victim (e.g. circumstances, dates, places, persons involved, methods, witnesses);
- Recording / transcription of the statement by the victim and if possible by the perpetrator.

3. Securing and obtaining physical evidence

As much physical evidence as possible should be gathered;



Therefore investigators need unrestricted access to any places or premises.

3. Securing and obtaining physical evidence

- Building or area under investigation must be closed



- All evidence must be properly collected, handled, packaged, labelled and placed in safekeeping

4. Medical examination

- Part of any investigation.
- (Very general) critical time medical frame – six weeks (traces vanish – evidence preservation) depending on type of injury
- *In general: the later, the more is lost !*
- A psychological examination is always included and either part of the medical examination or of a separate examination

➡ See also next chapters !

4. Medical examination

Any indicators of false allegation ?

Impact of other stressors (like persecution, flight, displacement)

Physical and psychological findings consistent with the report ?



Time frame as to mental health impact and recovery ?

Physical factors that contribute

Psychological symptoms to be expected in this cultural and social background ?

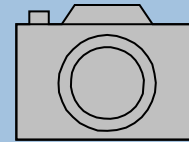
Six principles in the IP medical part

➡ See also later chapters !

5. Photography

Key points:

- Part of any documentation
- Take as early as possible because of changes in injury presentation, healing and colour changes over time, treat as part of chain of custody of evidence.
- Better simple than no pictures, but - quality is better.



➔ *Note: see special up-to date basic and advanced modules and further on in the IP. The IP refers partly to analog technology.*

Legal investigation of torture

D. COMMISSION OF INQUIRY

1-2. Scope of inquiry & power of the commission

Neutral **terms of reference** should precisely define the **scope** of the inquiry while providing for flexibility.

The commission has the **authority** to:

- obtain all information necessary to the inquiry, i.e. testimonies, medical records, etc.
- issue a public report
- conduct on-site visits, including to places where torture is suspected to have occurred
- Receive evidence from witnesses outside the country

3-4. Membership criteria & staff

- **Impartiality – Competence – Independence** are key elements for members of a commission of inquiry;
- The objectivity is better assured with a larger number of commissioners.
- ➔ A commissioner should in general not conduct investigations into torture and ill-treatment by himself/herself;
- **Staff** should include impartial expert counsellors with technical expertise;

5-7. Protection of witnesses, proceedings and notice of inquiry

The commission should:

- keep the identity of witnesses confidential as they could be endangered;
- conduct hearings in public, unless in-camera proceedings or written testimonies are necessary to protect witnesses;
- give wide notice of its establishment and invite people to provide information;

8-10. Receipt & evaluation of evidence, rights of parties

The commission should:

- have power to compel testimony (including from alleged torturers) & order production of documents (i.e. medical records);
- provide alleged victims with access to all information on the proceedings;
- permit legal counsel for witnesses;
- assess all information & determine reliability;
- be sensitive to social, cultural and gender issues that affect the demeanour of witnesses;

11. Report of the commission

The reports should include the following elements:

- Scope of inquiry & terms of reference;
- Procedures & methods to evaluate evidence;
- List of witnesses & exhibits; time and place of each sitting;
- Background of the inquiry (social, political & economic conditions);
- Events that occurred & evidence for such findings;

11. Report of the commission

The reports should include the following elements (cont'd):

- The law upon which the commission relied;
 - Conclusions based on applicable law and findings of fact;
 - Recommendations based on the findings of the commission.
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- ➔ If findings are not unanimously shared, minority commissioners should be able to file a dissenting opinion.
 - ➔ The State should reply publicly to the commission's report.