

# How to combat torture if perpetrators are supported by a religious “justification”

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## Abstract

While there are some examples of legal cases which have resulted in the prosecution of perpetrators and successful reparation for survivors, in countries such as Iran such due procedure is close to impossible since torture is practiced by state officials mostly based on religious codes, and the legal system is controlled by practices that makes it close to impossible to achieve justice. This article discusses the implications of such a situation that also include health care professionals in third party countries who have an obligation to document evidence using the Istanbul Protocol based on a case example of a survivor exposed to different forms of torture.

*Keywords:* Torture, medical examination, prevention, sexual torture, religion, perpetrator psychology.

We know that close collaboration between the health and legal professionals is crucial in the effective investigation of alleged cases of torture and in establishing procedures on how to recognise and document symptoms of torture in order that this documentation can later serve as valid evidence in court

and also be used in international monitoring. The importance of this development is reflected in the dedication of a special standard to this challenge endorsed by the United Nations General Assembly, the “Istanbul protocol” (IP).<sup>1</sup> While there are some few examples of legal cases which have resulted in the prosecution of perpetrators and successful reparation for survivors,<sup>2</sup> in countries such as Iran such due procedure is close to impossible since torture is practiced by state officials and could be described as forming part of the legal system. One of the worst cases of torture is the stoning of humans, that also is “cruel and inhuman punishment” as in the in Article Five of the Universal Declaration of Human Rights and Article 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>3</sup> There have been documented cases of stoning in the last years in this country,<sup>4</sup> and public hangings are well documented.<sup>5</sup> Lashes on the body are also decreed by law and practiced often in public,<sup>6,7</sup> while recent studies have documented further forms of torture.<sup>8-10</sup>

Physical traces as documentary evidence of such incidences can vanish after days, but psychological and some often less easily detectable sequelae can be still identified after longer time intervals. The IP asks for the use of state-of-the-art examination technologies (Annex II) in documentation that so far have

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not been sufficiently used, most probably due to limited availability or due to political barriers such as the danger in providing documentation for both medical professionals and victims. The World Medical Association underlines the importance of support of and by health care professionals in difficult circumstances and in case of apparent “double obligations” (in the case of Iran, see for example a recent WMA statement<sup>11</sup>).

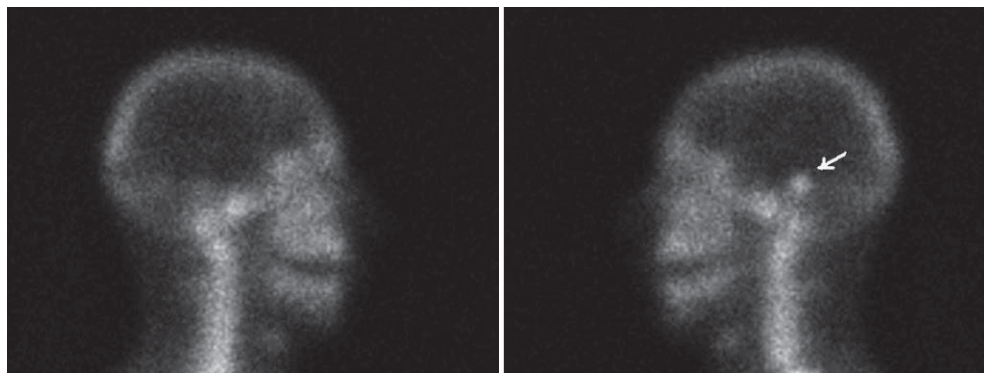
This indicates that at least in case of exile, or if a patient can travel, host countries should take the task of providing such advanced documentation. This constitutes an important protection of evidence procedure as due to the transitory nature of many sequelae even when no immediate court case can be filed; all traces must be recognised and documented for later use in a way following the best available standards.

A man who was examined by our team reported that he was imprisoned and tortured in one of the notorious prisons for political inmates<sup>12</sup> in Iran. Two years later there was still focal tracer enhancement in the bone scintigraphy of the skull (Figure 1) and left foot as signs of traumatic skeletal lesions,<sup>13,14</sup> that were in accordance with the pattern of beatings described by the patient, supporting his report. He further explained that during torture sessions which took one week, he was blindfolded and had no access to a restroom and had been forced to urinate during interrogations. After that he reported having been placed on a chair which was open in the middle and being exposed to sexual torture with a truncheon. His hands were handcuffed, his feet were fixed to the chair and he was threatened “to be inseminated” if he did not cooperate. Before some further violating acts the perpetrators reportedly used religious phrases such as “... my Imam Zahra, accept it for me...” or “... my Imam Mehdi accept it for me...”. Scars

were visible on the head and scrotal area corroborating the alleged blows to the head and injuries inflicted by a pincer to the genital area. An external psychological testing based on ICD 10 criteria by a certified psychologist/psychotherapist yielded diagnosis of panic disorder, severe depressive episode without psychotic symptoms and posttraumatic stress disorder. The overall objective medical findings therefore supported the patient’s description of torture, using the approach outlined in the IP.

The findings reflect a characteristic challenge posed by situations where immediate examination that could confirm or contradict allegations of torture through existence or absence of transient symptoms such as haematoma or local fissures in soft tissue in case of sexual torture<sup>15</sup> is not provided, limited or not possible. Still, a complete examination using IP recommended procedures can be used to evaluate and possibly give credibility to claims of torture, especially if technologically advanced medical procedures can be used.

The case also illustrates a further issue. The patient’s report as well as further diagnostic interviews with exiled survivors from Iran by our group (using information triangulation models) and reports by non-governmental organisations<sup>9</sup> indicate that the perpetrators in the Iranian political prisons might frequently claim or belief that they are following a “superior aim”, an interpretation also supported by the presentation of the issue in public media promoting the present government’s opinions,<sup>16</sup> even if concrete practices might contradict religious and other laws. Homosexual acts for example would be prohibited by law and young individuals have been executed because of such orientation.<sup>17</sup> In the last years we had reports of insulting sexual offence to male inmates in an outwardly “rigorously religious”



**Figure 1.**  $^{99m}\text{Tc}$ -MDP Bone Scintigraphy: Focal pathologic tracer enhancement (elevated bone turnover) in the left temporal region (arrow).

country as described above in the case of a young man.<sup>18</sup> The question which arises is how to combat torture with religious background where the perpetrators are of the opinion that they are doing the “right thing” and the justice system still appears to support these claims. The stoning of women because of adultery, especially, or the hanging of men on reason of homosexual relations in the recent Iran as mentioned above are based on religious codes, which is not the case in a secular state. This matter has been precisely addressed by the UN Special Rapporteur on Torture. Accordingly, the “lawful sanctions” exclusion must necessarily refer to those sanctions that constitute practices widely accepted as legitimate by the international community, such as deprivation of liberty through imprisonment, which is common to almost all penal systems.<sup>19</sup>

Contrary to what might be expected, recent research has demonstrated that torture perpetrators – who most commonly are not “mad psychopaths” as in popular perception, but rather “the neighbour next door” – can build a cognitive system that permits a “double standard” of contradictory values,<sup>20</sup> or create a “doubling” by separate selves as

in Lifton’s conceptualisation.<sup>21</sup> Impact is especially severe if no future social support, safety and access to justice, are given. Clarifying the confusion caused by contradictory standards through restorative justice<sup>22</sup> is a further important aspect of possible answers to the problem. Ethical guidance provided by religion could be an important protector of human rights (e.g. Ayatollah Taleghani),<sup>23</sup> if respected in this way.

As recommended by the UN standards including the IP, a country’s legal or prison system should permit independent experts to examine prisoners at risk before, during and after imprisonment. It could be seen as being in the interest of such countries to follow the procedure to either discredit possible unjustified claims, or alternatively to stop torture and inhuman treatment if they are confirmed through independent expertise. This could also be supported by an invitation to the UN Special Rapporteur on Torture to visit the country, as recommended in earlier discussions.

The psychological and medical evidence of torture may help in the individual case not only in an “immediate” court case but also in specific situations such as the asylum

process or in monitoring the work of UN institutions such as the UN Special Rapporteur on Torture<sup>24</sup> or human rights organisations. It cannot be expected to have an immediate effect on the suspect practice of torture in a country with a strong religious background of legislation.

Shirin Ebadi,<sup>25</sup> Manour Osanloo<sup>26,27</sup> or Jafar Panahi<sup>28</sup> have been celebrated with international awards and they have still been confronted with major repression and imprisonment. In other words – international interest and high level awards do not have any protective impact against governmental based political imprisonment and torture.

The western countries focus their criticism regarding Iran on the nuclear threat using economic embargos against Iran.<sup>29</sup> The system is now, after 30 years, described as a well established, however national democratic movements seem to be immediately oppressed. Thus, international attention seems insufficient and ineffective. There are many examples in history of totalitarian countries, but the image painted by present findings<sup>30</sup> exceeds such examples in regard to human tragedy and it should be in the interest of the country's government to disprove such a perspective. An international effort has been recently been undertaken by the UN Human Rights Council to nominate a special rapporteur on Iran,<sup>31</sup> but whether he will have the possibility of visiting Iranian prisons will remain to be seen, since, until now, no invitation was offered to the UN Special Rapporteur on Torture.

In conclusion, we would hope for the development of an effectual international instrument to bring torture perpetrators to justice independent from any “justification”, especially where the system might not offer balanced justice in an enmeshed juridical-religious background protecting systematic violence.

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