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The importance of *Medicine* in the investigation, documentation and prevention of torture and other cruel, inhuman or degrading treatment

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Abstract

Torture is a relevant issue in human interactions for its pervasiveness, gravity and tremendous consequences. Unfortunately it still remains a reality in many countries of the world.

This presentation aims approach to the concept of torture and the situation of torture in Portugal and worldwide; analyze international laws and ethical principles on documentation and investigation of torture; and address the contribution and importance of clinical forensic medical examination in these situations, how it best can be carried out and what kind of results may provide.

There is no consensus about how to define torture but the most cited definitions in literature are those put forward by the World Medical Association and the United Nations. Both of these definitions include severe physical and psychological forms of suffering and require coercive intent by perpetrators with the consent or acquiescence of state authorities.

The prohibition of Torture is absolute and applies to all times and in all circumstances. This prohibition is present in several international treaties and agreements. In 1984 the United Nations adopted the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment highlighting the particular attention given to this absolute prohibition, creating a legally-binding document and providing additional rules to assist in prevention and investigation of alleged cases of torture.

Nevertheless, between January 2009 and May 2013, Amnesty International received reports of torture and other ill-treatment committed by state officials in 141 countries, and from every world region. This only indicates cases reported to or known by the organization and does not necessarily reflect the full extent of torture worldwide.

Besides forbidding it, International law also obliges states to investigate allegations of torture and to punish those responsible. It also requires that victims are able to obtain reparation. One of the major challenges in accomplishing this is to obtain sufficient evidence in cases against perpetrators. If there is no proof that torture took place, a climate of impunity can come to exist and the practice will endure.

Medico-legal reports are a way of gathering evidence of torture. Even in countries where a fair trial is rare, medico-legal documentation strengthens the victims' position since it becomes more difficult to disregard the complaint.

The area of application of the medico-legal reports is not restricted to medico-legal investigation. It can be broadened to the investigation and documentation of other violations

of human rights in national and international legal proceedings, and monitoring such as cases of asylum seekers, cases of forced confessions through torture, identification of therapeutic needs of victims and the need for reparation and redress by the state. There are also a role for it in activities like research, advocacy and lobbying.

Therefore, participation and support of health professionals are of crucial importance for the abolition of torture and other forms of ill-treatment. Ensuring that doctors are aware of how to perform a medico-legal report and how to use it in legal proceedings is a needed step forward in the prevention of torture.

Because a large of the large number and the severe suffering of many survivors, the question of torture should become a part of health care curricula.

Keywords

Documentation; Istanbul Protocol; Medico-legal Report; Prevention; Torture;

Resumo Alargado

A tortura é uma questão relevante nas interações humanas pela sua perversidade, gravidade e consequências tremendas. Infelizmente ainda continua a ser uma realidade em muitos países do mundo.

O objectivo principal deste trabalho é o de proceder à elaboração de um texto que permita aos profissionais de saúde, adquirirem com a sua leitura uma rápida percepção do que é tortura e os maus tratos, do enquadramento legal destas situações e do potencial que uma adequada abordagem do ponto de vista médico pode proporcionar para uma correta identificação de tais práticas. Neste sentido, o presente trabalho procede inicialmente a uma revisão do conceito de tortura e da situação da tortura a nível mundial e ao nível de Portugal. Seguidamente, efetua uma breve análise das leis internacionais relativas à investigação e documentação de tortura e aborda as questões éticas levantadas por esta temática. Por último analisa o contributo do exame médico-legal nestas situações, como pode ser realizado e quais as mais valias que pode proporcionar.

Não há consenso sobre como definir a tortura mas as definições mais citadas na literatura são as fornecidas pela Associação Médica Mundial e pela Organização das Nações Unidas. Ambas incluem formas físicas e psicológicas graves de sofrimento e exigem uma intenção coerciva por parte dos agressores, com o consentimento ou aquiescência das autoridades do Estado. A definição da Organização das Nações Unidas exige ainda que a agressão seja perpetuada especificamente por membros do, ou ao serviço do, Governo ou por forças militares ou policiais pertencentes ao Estado.

Há também outras práticas que, apesar de não estarem incluídas nas definições de tortura, são um ataque à vida humana em toda a sua dignidade. Este outro tratamento cruel, desumano e degradante, que será referido neste trabalho como "maus-tratos", também tem a intenção de expor os indivíduos a condições que causam sofrimento físico ou mental significativo, mas sem um propósito específico. As pessoas vítimas desta prática, serão neste trabalho equiparadas a vítimas de tortura.

A proibição da tortura e maus-tratos é absoluta e aplica-se a todos os momentos e em todas as circunstâncias. Esta proibição está presente em diversos tratados, acordos internacionais e o direito a estar livre de tortura é contemplado na Declaração Universal dos Direitos do Homem.

Em 1984, as Nações Unidas adoptaram a Convenção Contra a Tortura e Outros Tratamentos Cruéis, Desumanos, Degradantes ou de Punição (CAT) destacando a particular atenção dada a

esta proibição absoluta. Este é um documento juridicamente vinculativo que prevê regras adicionais para auxiliar na prevenção e investigação de alegados casos de tortura.

Apesar de todas as normas e tratados que contemplam a proibição de tortura, esta continua a ser ainda uma prática comum e mundialmente disseminada. Entre Janeiro de 2009 e Maio de 2013, a Amnistia Internacional recebeu relatos de tortura e outros maus-tratos cometidos por funcionários do Estado em 141 países, e de todas as regiões do mundo. Isso só indica casos notificados ou conhecidos pela organização, e não reflecte necessariamente a extensão total da tortura em todo o mundo. Portugal não é excepção a isto.

Além de proibir a prática de tortura, a lei Internacional obriga também os Estados a investigar alegações de tortura e a punir os responsáveis. Requer ainda que as vítimas possam ser ressarcidas da forma mais completa possível. Um dos principais desafios na realização disto é a obtenção de elementos de prova suficientes em casos contra os agressores. Se não há nenhuma prova de que a tortura ocorreu, um clima de impunidade pode vir a existir e a prática será perpetuada.

Relatórios médico-legais são uma forma de apresentar provas de tortura. Mesmo em países onde um julgamento justo é raro, a documentação médico-legal fortalece a posição das vítimas tornando mais difícil ignorar a acusação

Para mais, médicos da área dos cuidados de saúde primários são importantes detectores na identificação das vítimas. Eles podem encontrar sobreviventes de tortura em contextos de cuidados primários ou nos serviços de urgência e emergência médica, e serem quem inicia o encaminhamento para o tratamento destas vítimas e acciona os mecanismos legais necessários.

A área de aplicação dos relatórios médico-legais não se restringe à investigação médico-legal. Estes podem ser utilizados na investigação e documentação de outras violações dos direitos humanos, em processos judiciais nacionais e internacionais. Podem ter ainda um papel importante em casos de requerentes de asilo, na identificação das necessidades terapêuticas das vítimas e da necessidade de reparação e reparação por parte do Estado. Há também um papel para ele em atividades como pesquisa, advocacia e lobby.

Portanto, a participação e apoio de profissionais de saúde é de importância crucial para a abolição da tortura e outras formas de maus-tratos. Garantir que os médicos estão cientes de como executar um relatório médico-legal e como usá-lo em processos judiciais é um passo necessário na prevenção da tortura.

Dado a grande quantidade de pessoas vítimas desta prática e o papel preponderante dos médicos na sua prevenção, a abordagem da tortura e o exame médico-legal deveriam tornar-se parte dos currículos das escolas médicas.

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List of Acronyms

| | |
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| CAT | Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment |
| CPT | European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment |
| EU | European Union |
| GNR | National Republican Guard |
| IGAI | Inspectorate General of Home Affairs |
| ICRC | International Committee of the Red Cross |
| OPCAT | Optional Protocol to the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment |
| MLR | Medico-legal Report |
| UN | United Nations |
| USA | United States of America |
| WMA | World Medical Association |

Chapter 1: Introduction

1.1. Introduction

This work will consider Medico-legal reports (MLR) in relation to the process of investigation and documentation of claims of torture and other cruel, inhuman or degrading treatment. It also looks into the importance of Medicine in the substantiation of these claims and prevention of this phenomenon.

Torture is a relevant issue in human interactions for its pervasiveness and gravity and unfortunately is still a reality for a great number of people in the world(1).

The common intention to frighten, punish or impair the self-esteem and assertiveness of survivors, that can create severe long-term psychological sequelae in survivors and in secondary victims, are important aspects that separate torture from other severe stressors or natural disasters (2).

There is no consensus about how to define torture but the most cited definitions in literature are those put forward by the World Medical Association (WMA) and the United Nations (UN) (3).

In 1975, WMA, in its Declaration of Tokyo, defined torture as: “the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason”(3,4).

The UN adopted in 1984 the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which states in its first article: “the 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” (5).

Both of these definitions include physical and psychological forms of suffering and require coercive intent by perpetrators with the consent or acquiescence of state authorities. The

United Nations' definition requires that the abuse be severe and perpetrated by government authorities (or persons acting as such) (3).

For the purpose of this work, both definitions will be accepted because this will not influence the medical expert's report role, which is the main concern of the work, but only consider a broader spectrum of victims.

There are other practices that, despite not being included in the definitions of torture, are also an attack to human life in all its dignity. This other cruel, inhuman and degrading treatment, that will be refer in this work as "ill-treatment", also has an intent to expose individuals to conditions that cause significant physical or mental suffering, but don't have to be inflicted with a specific purpose (4). Ill-treatment can include the humiliation and debasement of the victim, the deprivation of basic needs like food, water sanitation, medical care and natural light, exposure to aversive environmental conditions, forced stress positions, hooding or blindfolding, restriction of movement, forced nudity, threats and so on (4,6).

A study examined the distinction between various forms of ill-treatment and torture during captivity in terms of their relative psychological impact. It considered psychological manipulations, humiliating treatment and forced stress positions. Ill-treatment does not seem to be substantially different from physical torture in terms of severity of mental suffering they cause, the underlying mechanism of traumatic stress and their long term psychological outcome (6).

For this reason, people subjected to ill-treatment will also be considered in this work as victims. The discussions about the medico-legal reports and the importance of Medicine in the persecution of this situations will refer to both torture and ill-treatment victims.

Torture and ill-treatment have been consistently prohibited in international human rights and humanitarian law, and have been condemned in a number of international conventions, but they continue to be widespread through the world (1,7).

Besides forbidding it, International law also obliges states to investigate allegations of torture and to punish those responsible. It also requires that victims are able to obtain reparation (7). One of the major challenges in accomplishing this is to obtain sufficient evidence in cases against perpetrators. If there is no proof that torture took place, a climate of impunity can come to exist and the practice will endure (8).

Often the required forensic expertise is not available to produce medico-legal reports of sufficient quality or the reports are not taken into account in legal proceedings due to flawed regulations or practice. There is limited awareness among relevant stakeholders, like medical community, about the subject. They lack knowledge about rights and obligations, about the required technical skills and on the appropriated medical and legal procedures (8).

Knowing about that limited awareness and wanting to alert to the existence of a climate of impunity, this work aims to demonstrate the importance of Medicine in the investigation and documentation of torture, ideally empowering it in the prevention of that practice.

For a better understanding of the topics, during some chapters will exist an analysis of the visit's report to Portugal carried by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment(CPT) in 2013.

1.2. Aims of the dissertation

The main goal of this work is to produce a document that allows health professionals to acquire, with a quick and easy reading, the perception of what is torture and ill-treatment, the legal framework of this situations and the potential that, an appropriate approach from a medical point of view, can provide for proper identification of such practices. Regarding that, this work will first review the concept of torture and the situation of torture worldwide and in Portugal; secondly, preform a short analysis of international laws and ethical principles on documentation and investigation of torture; and finally, is going to address the contribution and importance of expert medical examination in these situations, how it best can be carried out and what its results may be.

1.3. Methodology

For the bibliographic research it was resorted to internet search programs such as PubMed and B-on. The search was made with the keywords “forensic medicine” AND “Torture”, “Torture” AND “documentation” and “Medicine” AND “Torture”. The articles selected were written in English and in Portuguese.

There was also recourse to documents from the United Nations database, from the International Rehabilitation Council for Torture Victims and reports from the International Amnesty.

Chapter 2: Torture Worldwide

2.1. Torture Worldwide

Accordingly to the Amnesty International report on Torture, published in May 2014, a comprehensive and categorical statistical assessment of the global scale of torture is impossible. Solid country-by-country statistics are not available and in many countries torture is probably under-reported because many victims are criminal suspects, who often are less able to complain or are easily ignored or dismissed when they do. Other victims are frequently unable or too afraid to report torture, or lack confidence there will be meaningful action (1).

Between January 2009 and May 2013, Amnesty International received reports of torture and other ill-treatment committed by state officials in 141 countries, and from every world region. This only indicates cases reported to or known by the organization and does not necessarily reflect the full extent of torture worldwide (1).

Giving a closer look to world regions, in Africa torture is not punishable by law in more than 30 countries. Torture during detention as a mean of extracting confessions is deeply entrenched in the culture of security forces in many countries, namely in Ethiopia, the Gambia, Kenya, Mali, Mauritania, Nigeria, Senegal, Sudan and Zimbabwe. In countries such as Cameroon, Ghana, Liberia, Mauritania, Mauritius and Nigeria prison conditions are extremely inhuman with severe overcrowding and chronic lack of sanitation. Reports of abuse against prisoners, including beatings and rape, are also routinely documented in Angola and Mozambique, among others. Torture and other ill-treatment in the context of armed conflicts remain widespread across the region, often carried out by militias and other armed groups (1).

In America, the use of torture and other cruel, inhuman or degrading treatment is accepted by many as a response to high levels of violent crime. In many countries, detainees are beaten, given electric shocks, sexually abused and denied access to health services. Extremely poor detention conditions, including severe overcrowding, are common (1).

Even in countries like United States of America (USA), in some maximum security isolation or segregation many inmates are held in solitary confinement in small cells for 22 to 24 hours a day. Torture is also used as a form of punishment against inmates or to extract confessions from criminal suspects (1).

Abuse by the security forces is routine in the policing of public demonstrations, including in Chile, Mexico and Venezuela. In Brazil, reports of police abuse have increased around protests

in advance of the 2014 World Cup. In Mexico, reports of torture have increased since 2006 as violence has spiraled in the context of the government's fight against organized crime (1).

Asia and Pacific Region are far from what is expected in matters of preventing and punishing torture and China and North Korea are among the worst culprits. Police forces in countries like China, Fiji, Indonesia, Malaysia, Myanmar, the Philippines, India, Pakistan and Sri Lanka at times torture individuals during interrogation and pre-trial detention, often forcing detainees to "confess" to a crime. Sometimes prisoners are even tortured to death. Prisons conditions are very harsh in countries like North Korea, Pakistan, Japan and Australia. Countries like Vietnam and China punish activists for their work defending human rights (1).

In North Africa and Middle East exists a significant amount of torture and ill-treatment emerging from conflict situations. In countries like Syria, Iraq and Libya the practice is used routinely against those detained for their suspected involvement in opposition activities. There are recent allegations of torture against detainees in Gulf countries, including Bahrain, Kuwait, Oman, Qatar and United Arab Emirates. In this region of the world, governments have drastically resorted to torture and other ill-treatment to inhibit dissidence or as a response to perceived threats against national security (1).

Despite the introduction of legal provisions banning torture and other ill-treatment, the practice remains widespread across Europe and Central Asia, particularly in countries of the former Soviet Union. In countries across central Asia and Russia, those suspected of membership of Islamist groups or other anti-regime activities are particularly at risk (1).

Torture and ill-treatment have also been documented in parts of the European Union (EU). They are relatively rare occurrences in ordinary criminal justice contexts, but when such abuses do occur, it is by no means uncommon for them to go un- or severely under-punished. Additionally, some of these countries have failed to effectively investigate allegations of complicity in torture carried out in the context of USA-led counter-terrorism operations (1).

2.2. The case of Portugal - analysis of a real case

Like in the rest of the world, there are also a lack of information concerning to torture statistics in Portugal (1). There is no information on the number of cases of alleged ill-treatment by law enforcement officials or prison officers in Portugal, nor of the outcome of investigations into such allegations (9).

Inspectorate General of Home Affairs (IGAI) investigate claims of breaches to regulations, including ill-treatment and torture claims, with a view to make recommendations about disciplinary sanctions and it should return or pass a case to Public Prosecutor's Office whenever is evidence of criminal offence. Nevertheless, IGAI only looks to a very small percentage of ill-treatment cases submitted to it, in 2012 only 25 of the 308 complaints were

investigated. Furthermore remains unclear the criteria used to decide which cases are investigated. Moreover, there appeared to be no proper oversight by IGAI of the investigations carried out by internal control bodies of the law enforcement agencies (9).

The visit to Portugal carried by the CPT in 2013, brought to light the very limited progress from the previous visits, particularly regarding the situation found at Lisbon Central Prison in terms of both material conditions and treatment of inmates by prison staff (9).

The delegation received a number of credible allegations of deliberate, systematic infliction of physical suffering on inmates by prison officers. Inmates describe slaps, punches, kicks and blows with truncheons to the body and/or head. In some cases, the delegation gathered medical evidence records of hematomas on the head, the back or the thighs which were consistent with the allegations made. Several juveniles and young adults, held in individual cells, stated that they had been physically assaulted in their cell by two or more prison officers at lock-up time (in the morning or in the evening), apparently because they had spoken during meal time, had provoked staff verbally or because staff wanted them to confess to having committed an "offence". A similar complaint occurred in CPT's 2012 visit when a number of inmates alleged that they had been taken to "room 80" (sala de espera) on the main corridor, where they had been physically assaulted by officers (9).

In the report are also described some allegations of torture perpetrated by the police. Is described a case of whipping and stabbing of a person by a member of a National Republican Guard (GNR) officer during arrest time. In this case the investigation wasn't prompt or thorough. It lacked medical documentation, clarification of contradictory statements given by GNR members and the case was filed without an independent investigation. No body other than GNR was involved in the investigation (9).

There is also a reference to a case of alleged physical ill-treatment (including electro-shocks) and racial abuse by GNR officers which resulted in three Romani people being hospitalized. This alleged offense, was not initially communicated to the Public Prosecutors Office. This one, only was informed four months after the GNR had filed the case. Therefore did not exist an impartial or independent investigation on this case (9).

In none of the cases described, someone was judge or convicted (9).

Chapter 3: Legal Framework and Ethical Principles

3.1. Legal Framework

The prohibition of Torture is absolute and applies to all times and in all circumstances (4).

The Universal Declaration of Human Rights, a common standard of achievement for all peoples and all nations, states in the Article 5: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” (10).

The right to be free from torture and other ill-treatment is taken up in major international and regional human rights treaties including Article 7 of the International Covenant on Civil and Political Rights (1966), regional conventions such as the Inter-American Convention to Prevent and Punish Torture, Article 5 of the American Convention on Human Rights (1978), Article 3 of the European Convention on Human Rights (1950) and the African Charter on Human and People’s Rights (1981) (4).

As stated before, in 1984 the UN adopted the CAT, highlighting the particular attention given to this absolute prohibition, creating a legally-binding document and providing additional rules to assist in prevention and investigation of alleged cases of torture (5). CAT not only give us one of the most used definitions of torture but also requires each state party to take effective legislative, administrative, judicial or other measures to prevent acts of torture within any territory under its jurisdiction. No exceptional circumstances, such state of war, internal political instability or other public emergency, may be invoked to justify torture (article 2). It specifies the rule of non-refoulement in which no one should be extradited if exist the believe that he would be subjected to torture in their one country (article 3) and requires each state party to include the prohibition of torture in their domestic laws (article 4) and investigate prompt and impartially where are reasonable grounds to believe an act of torture was committed in a territory in its jurisdiction (article 12). It also prohibits the use of statements obtain under torture in legal proceedings, unless it’s to prosecute the perpetrators (5).

In 2006 an optional protocol to CAT (OPCAT) become binding and obligates contract states to establish national commissions to oversee the CAT (5,11). These commissions are given support by the Committee for the Prevention of Torture of the Council of Europe, the UN Special Rapporteur on Torture and International Subcommittee on Prevention of Torture. The national commissions have the right to visit any place where human beings are being held against their will. This includes prisons, psychiatric wards and transit areas in airports (5,11).

Also, this includes international fact finding-missions that occur with the co-cooperation of the government, and on the understanding that there will be unfettered access to all places of detention and private interviews with detainees (12). Furthermore governments are under the obligation to supply the commissions with all requisite information, as for example, for an arrest (5,11).

In Portugal is the Ombudsman who has the responsibility of oversee the human rights abuses. The Ombudsman is a State body elected by the Parliament, who has complete independence in the performance of his duties and whose main duties shall be to defend and to promote the rights, freedoms, guarantees and legitimate interests of the citizens, ensuring, through informal means, that public authorities act fairly and in compliance with the law. He may also act as an independent national institution for monitoring the implementation of international treaties and conventions on human rights. The Ombudsman ensures cooperation with similar institutions and with EU and international organizations for the support and promotion of citizens' rights, freedoms and guarantees (13).

Given the focus of his work, he pays a special attention to penitentiary system and the rights of detainees, to the rights of foreigners and immigrants and also to the rights of children, disabled and elderly (13).

Every citizen, regardless of their age, nationality or place of living have the right to make a complaint to the Ombudsman. That complaint is fully free of charge (13).

The international humanitarian law pertains to the principles that constrains the behavior of belligerents during times of armed conflicts (14). The four Geneva Conventions of 1949 establish rules for the conduct of international armed conflict and, especially, for the treatment of persons who do not, or who no longer, take part in hostilities, including the wounded, the captured and civilians. In the common article 3, it explicitly prohibits violence to life and person, in particular murder of all kinds, mutilation and torture, outrages upon personal dignity and the passing of sentences and execution without previous judgment. The third of these conventions also establish the status of Prisoner of War and the right to be treated as one until his status or innocence can be determined by a fair trial. Parties to the Geneva Convention are required to criminalize breaches of the Convention through their domestic law, however in times of armed conflict there are still a great risk for the captured to undergo torture, even in countries that ratified the treaty. One flagrant case of it was when, in 2002, the President of USA declared that the prisoners during the conflict with the Al-Qaeda in Afghanistan were unlawful combatants, depriving them of the Prisoner of War status and of the rights of the Geneva convention , thus creating a breach in the law for torture to happen (14).

The countries that ratified the CAT, the Geneva Conventions or other international treaties are legally-bound to them and the prohibition of torture is a part of their domestic law (14,15). Whatsoever the prohibition of torture is a concern not only of those countries which have ratified particular treaties, but is also a rule of general or customary international law, which binds all states even in the absence of treaty ratification. In fact, the prohibition of torture is generally regarded as having the special status of a 'peremptory norm' of international law, and states cannot choose to disregard or derogate from it (4).

Furthermore, besides the prohibition of torture and the obligation of the states to investigate and pursue any allegation of torture in its jurisdiction, international law and humanitarian law also guarantees the right of compensation to the victims. CAT in the article 14 states that each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation. That applies to all torture victims (5,16,17).

The compensation should include rehabilitation at a physical, psychological and social level, as well as the official recognition of the damage that was done to the person concerned and guarantees of non-repetition (5,16,17).

3.2. Medical rules and Ethics concerning torture

Medical profession work within ethical codes which provide a statement of the shared values and acknowledge duties, and set moral standards with which they are expected to comply. This codes can be found in UN statements relevant for health professionals, in statements from international professional bodies like WMA and in National codes of medical ethics (7).

WMA have taken an active part in preventing physicians to be involved in human rights violations. In WMA's Declaration of Geneva, in 1948 is stated that "I will maintain the utmost respect for human life from its beginning, even under threat and I will not use my medical knowledge contrary to the laws of humanity." And in "Regulations in Time of Armed Conflict" (1956) it is also stated that "the task of medical profession is to preserve health and save life." Although is not said directly , in both statements the practice of torture and other ill-treatment is prohibited by definition (15).

Tokyo declaration was the first international rule concerning specifically torture, aimed directly to the medical profession and in this declaration any participation in torture is prohibited, including the provision of any premises, instruments, substances or knowledge to facilitate the practice (15).

The WMA declarations are not legally binding but retaliations can take the form of striking off from the medical board (15).

Each country has its national ethics code for medical profession, however they are based in the same basic principle of act always in the best interest of the patient, independently of any limitations, external pressures or job obligations (18). The principles of do no harm, informed consent, confidentiality, impartiality and cultural relativism and respect are common to most of the codes and should always be attended (7,18,19).

Although the medico-legal examination to allege torture victims has a different aim than a normal clinical examination because is intended to collect evidences for law purposes, the ethical principles must always be respected (20). That means that the best interest of the examinee must be considered in all stages of examination, even if that means the prejudice of examination and documentation (7,18).

For the principle of do no harm be respected the alleged victim should be informed that there is no guarantee that the process will reach a successful result in court and also of the potential negative consequences of the examination such as risk for themselves and their relatives (7).

Patients have the right to decide what happens to their bodies so a valid written consent should be obtained. The consent is valid if the patient receives the information, has the mental competence to decide and gives the consent voluntarily. The informed consent is needed not only to examination but to all photographic documentation of injuries, samples collection and audio recordings of the interviews. Because of the nature of the examination, it is advisable to consult a legal practitioner to ensure the consent is valid in future legal proceedings (7,18,19).

The doctor-patient secrecy has a special importance because besides the right of the patient to confidentiality, the breach of this rule can compromise the security of the persons involved. The examination should be conducted in private and information should not be shared with people outside the team (7,18,19).

The physicians must maintain the impartiality and independence. They shouldn't put themselves in situations that may raise doubts about their credibility, so behaviors like socializing with the examinee or his or her associates should be prevented (7,18).

The doctor must respect the religious and ideological options of the patient, furthermore if the medical examination is being done to a foreigner the doctor should approach the patient with a posture of cultural relativism and respect for other cultures (7,18,19).

Some health professionals are in a very sensitive position because they stay between the duty to the patient and the respect to the ethical norms, and the duty to their employers. This is especially true for the doctors working with the police, military and other security forces, as well as in in prisons. They may be under a lot of pressure to ignore allegations of mistreatment or to falsify reports of the findings (4).

However, as a doctor, there is a particular duty to act in conditions that don't compromise the quality of their services, never accepting interference of third parties that goes against their ethical judgments (19). Regarding that, physicians who work in prisons should monitor human rights during their medical work. They can discern signs of abuse even when they have not witnessed the abuse (21,22).

In spite of everything discuss above, medical complicity with torture and abuse of prisoners is common. Physicians devise ways to keep physical scars to a minimum, certify prisoners as fit for abuse, monitor vital signs during mistreatment and give approval to intensify abuse. A third to half of torture survivors report physicians overseeing the abuse. This number does not include those who not see physicians taking part of the abuse and those who die of torture and that a physician either willingly or coercion certifies as dead by natural causes (21,22).

So the evaluation of the health status of a prisoner or every other patient with the goal of facilitate the punishment or torture is clearly against ethical rules (18) and the failure to report cases of ill-treatment or torture is acquiescence in torture, and the falsifying of medical notes or reports is a form of complicity in torture (4).

3.3. The case of Portugal - analysis of a real case

If we look again to the report of the visit to Portugal carried by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 2013, it is possible to observe some important breaches to international law and medical ethics.

The delegation found in prisoners' disciplinary files, certificates established by the prison doctor indicating that an inmate was "fit for punishment" (9).

The production of those certificates is not in the best interest of the inmate, therefore violating the principle of do no harm. Furthermore, the inmate wasn't fully informed about the destiny of the information collected so a fully informed consent was not given. That disclosure of information to prison guards goes against the principles of confidentiality and consent. Besides that, it breaches WMA'S Tokyo Declaration.

Chapter 4: Medico-Legal Reports

4.1. Medico-legal examination

Medico-legal examination is different than normal clinical examination. That difference pertains to the different goals of that type of examination (20,23). The aim of medico-legal documentation is to prove that an incident amounts to torture or ill-treatment (23) so that represents a change from a treatment-oriented point of view towards the need to record injuries and traces of injuries even if they cannot be treated (for example, scars) (20). At the end of the process, the investigator has to assess the degree of consistency between the allegations of torture and the objective findings and has to put forward an interpretation assuming an judgmental role (23).

4.1.1. Screening for victims

Torture survivors are frequently not identified and consequently might not receive the necessary treatment. Torture survivors may avoid speaking of it because stigma, shame and guilt. This is especially true for survivors of sexual torture. Often they don't understand that treatment it's available for their physical, psychiatric and pain disorders. A lack of detection delays the diagnosis and treatment of the sequelae of torture (2,24).

It can also affect their future because they stay deprived of medical information needed to support asylum petitions and to ask for restitution (17,24).

Primary caregivers are points of first contact and important gatekeepers to recognize victims and to initiate or refer for treatment in specialized centers (2). They may encounter torture survivors in primary care settings, emergency departments or while consulting with medical colleagues about patient who have special needs (24).

Although the number of torture survivors is not so high as to warrant population-wide screening, the prevalence of such victims in refugee groups does justified the screening on this setting. Torture victims are more likely to emigrate than their unmolested fellow nationals. Also, torture rates are highest in people asking for political asylum (24).

Screening for torture survivors is reliable. The sensitivity and specificity of screening questions are estimated at 80% and 90%, respectively. It can be used questions that mentions torture specifically like "Some people in your situation have experienced torture. Has that ever happened to you?" or other less direct such as " While in captivity, did you ever experience physical or mental suffering that was deliberately and systematically inflicted by a soldier, policeman or militant?" (24).

If a patient answers “Yes” to a screening question, the doctor should proceed to the documentation of the case by producing a medico-legal report if it’s able to do it or refer the patient to someone who are able to (24).

You can also consider other population groups that are in a particular risk of torture. People belonging to a particular religion or other minority groups like ethnic minorities, lesbian, gay, bisexual, transgender and intersex people and poor people face increased risk. Criminal suspects and detainees are also frequent victims (1). In fact, maltreatment and torture under custody is still a serious problem in many countries (25). Members of armed groups or otherwise deemed to constitute a threat to national security, in many countries are almost sure that are going to be tortured. Considering this, this groups of people also deserve a special attention in the search for torture (1).

4.1.2. Producing a Medico-legal report in adults

The Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhumane or Degrading Treatment or Punishment, so-called Istanbul Protocol, was adopted by the UN in 1999 and since then has become an acknowledged standard for documenting cases of torture and other forms of severe maltreatment (11).

The basic intention of the protocol is to establish guidelines for a thorough investigation of the facts in alleged torture cases so that the findings can provide valid evidence in a court of law (11,18).

The guidelines should not be understood as fixed rules, but rather as flexible recommendations for real life cases which have to be adjusted to the circumstances and available resources. Nevertheless, it lays out standards and methods of investigation that make the precise documentation of torture cases possible and detailed suggestions for the everyday practice of physicians, lawyers and other experts involved in the investigation of cases of torture (11).

The Istanbul Protocol has six chapters and four annexes. The first three chapters, “Relevant International Legal Standards”, “Relevant Ethical codes” and “Legal Investigation of torture” are important for law professionals but they also provide some guiding in legal and ethical matters to health professionals (26). They provide a legal foundation on the basis of which the guidelines and principles of this manual can be implemented. A brief overview of these institutional and legal arrangements can be found in the first chapter, which treats the relevant international legal standards. The second chapter gives special attention to the ethical codes of the relevant professions. The third chapter of the manual discusses procedures and sets out guidelines for a legal or criminal investigation on the suspicion or charge of torture. In addition, numerous suggestions are provided for properly carrying out an

investigation. For medical profession are important the ones about the preservation of evidence and the use of photographs (11).

The fourth chapter, “General considerations for interview”, is of special importance. It applies to all persons carrying out interviews whether they are lawyers, medical doctors, psychologists or any other profession (26). Interviews can be made for judicial or medical purposes as well as documentation however the broad purpose of the investigation is to establish the facts related to alleged incidents of torture (11,18,26). The chapter discusses interview techniques, problems in the use of translators, gender issues and a list of common torture methods (18).

Chapter five deals extensively with the physical examination of a torture victim, and catalogues expected symptoms in relation to the affected region of the body as well as to the type of torture employed. Diagnostic tools are included, as also a possible differential diagnosis (11).

The sixth chapter on the assessment of psychological evidence for torture is the most detailed chapter of the entire manual. First of all, the central role of a psychological evaluation of torture victims is given special emphasis before the possible psychological consequences of torture are named and described (11).

The annexes II through IV are especially relevant to physicians. The second annex returns to the application of different radiological diagnostic procedures as well as the possibility of biopsy in cases of torture by electrical injury. The third annex provides a series of sketches of the human body that can be used in the documentation of torture and other kinds of ill treatment. The fourth annex offers an example template ready to be filled out in a medical inquiry, thereby giving to physicians involved in the evaluation, guidelines for the documentation of the various steps of an inquiry in a convenient form (11).

How is implicit in the text above, an alleged victim of torture should be target of an investigation and should be subjected to a medical examination. This requires a doctor to conduct the interview, analyze possible injury and abuse and document physical and psychological evidence of it. The degree of correlation between examination findings and specific allegations of abuse, and the one between individual examination findings and the knowledge of torture methods used in a particular region and their common after-effects should be establish. The doctor must provide expert opinion regarding possible causes of abuse and use information obtained in an appropriate manner to enhance fact-finding and further documentation. He should also be informed about the conditions where the victim has been held and have the knowledge about usual sequels from torture (18).

The degree of consistency should be defined in terms of: 1- Not consistent: the lesion could not have been caused by the trauma described; 2- Consistent with: the lesion could have been caused by the trauma described, but it is non-specific and there are many other possible causes; 3- Highly consistent: the lesion could have been caused by the trauma described, and there are few other possible causes; 4- Typical of: this is an appearance that is usually found with this type of trauma, but there are other possible causes; 5- Diagnostic of: this appearance could not have been caused in any way other than that described (18).

The medical examination starts with the history of the alleged victim, obtain as impartially as possible (18).

The examinee should be safe and comfortable and the time provided to the examination should be enough (18). That is particularly difficult when the examination is made inside detention centers. Examination facilities may not be ideal with low temperatures and bad light, sometimes lacking privacy, and useful equipment, like laptops and recorders, are routinely confiscated. In some places, the use of camera to document torture is only permitted following a written request by the client's lawyer (27).

The complete medical history should be obtained, including information about prior medical, surgical or psychiatric problems. It's important to document any history of injuries before the period of detention and any possible after effects (18).

All the complains of a torture survivor are meaningful and must be included in the report, even if they don't have any connection with the physical evidence (18).

The individual should be asked to describe any injuries that may have resulted from the specific methods of alleged abuse. The intensity, frequency and duration of each symptom should be noted. The development of any subsequent skin lesions should be described indicating whether or not they left scars (18).

It's also important to elicit information about physical ailments that the individual believes were associated with torture or ill-treatment. Must be registered the severity, frequency and duration of each symptom and any associated disability or need for medical or psychological care. Months or years later, some physical findings may still remain, such as electrical current or thermal burn scars, skeletal deformities, incorrect healing of fractures, dental injuries, loss of hair and myofibrosis. Common psychological symptoms include depressive affect, anxiety, insomnia, nightmares, flashbacks (18).

After medical history, a complete physical examination should be taken.

Where it is possible, photographs must be taken of the lesions, of the premises where torture was allegedly occurred and of any physical evidence found there (18,28). Photographs should

be taken soon as possible. It's also advised to take pictures during follow-up examination (28).

The photo shot shall include full length shots, as well as head and shoulders, pictures of the lesions at close-up from different angles and photographs of the lesion from normal distance. Because lighting can be critical in the appearance of some injuries, pictures should be taken in daylight or with background lighting. There are two elements to establish the authenticity of a picture: to have an "audit trail" which records everything that happens to the image from capture to its presentation in court and in case of digital images, brand or watermark the image at the time of capture and can subsequently show that it's authentic (28).

Starting with the outside, examination should include the entire body surface to detect signs of skin diseases, non-torture-related lesions and torture-related lesions. The description of skin lesions should include: localization (using body diagrams), symmetry, shape, size (using a rule), color, surface appearance, periphery of the lesion, demarcation and the level in relation to the surrounding skin (18,29).

It's supporting of external infliction a lack of symmetry, linear lesions in irregular or crisscross arrangements, a linear zone surrounding extremities and a regular, narrow, hyper pigmented or hypertrophic zone surrounding a scar (18,29).

Different kinds of trauma leave different skin patterns. Blunt trauma may leave ecchymosis, contusions or lacerations with extravasation of blood in the skin and subcutaneous tissue, in some cases reflecting the shape of the instrument used. The hemorrhagic areas often move down the body during the following days and the lesions can change color or even disappear.

Flogging, beating with truncheons or prolonged application of tight ligatures may leave characteristic scars (18,29).

Sharp trauma gives characteristic ulcers and recognizable scars (18,29).

Burning with cigarettes, hot instruments or hot fluids leaves acute burns of various degrees. Burning is the form of torture that most frequently leaves scars, often of diagnostic value. While the shape of the scars reflects the shape of the instrument used, their size relates to the amount of energy transferred to the skin (18,29).

Corrosive injuries, caused by acid thrown against a victim, caused linear scars, a few centimeters wide, with a depigmented center and a regular, narrow, hyper pigmented zone in the periphery, located on the thighs and buttocks. They are arranged in an asymmetric pattern, mostly obliquely directed down the legs (18,29).

The signs of electrical torture in the skin depend of the type of electricity transferred, the amount of energy used and the time after torture when the victim is examined. There can be no skin abnormalities related to the torture and even when, electric torture leaves acute lesions on the skin, they don't reflect the shape of the instrument used. For this reason, even if an examination does not reveal any abnormal findings, the use of electrical torture cannot be excluded (18,29).

Assessment of the musculoskeletal system should in general start with examination of muscles and tendons through inspection, palpation of tone, stretch range, tenderness, changes in tissue texture, and assessment of strength and endurance. Next, examination of peripheral joints, bones and assessment of range of movement and stability should be performed. It is also important to assess and look for lesions in axial skeleton. In the end, a neurological examination of muscle strength, tendon reflexes, and sensibility is important (18,29).

There are many types of positional torture, all of which are directed towards the musculoskeletal system, producing injuries mainly in the soft tissues. Examples include suspension by the limbs, prolonged forced squatting or standing, prolonged back loading positions (the spine being hyperextended or maximally flexed) and restriction of movement during confinement in small cells or cages. Characteristically, these types of torture leave frequently severe, chronic physical disability (18,29).

Symptoms related to the muscle-skeletal system are the most reported physical complaints related to torture. Pain is the dominant symptom. Neurological complains are also frequent and include irradiating neuropathic pain and reduce of strength. Torture can lead to a chronic disability with pain, reduced articular function and permanent neurological damage. Symptoms and findings in the musculoskeletal system, in the later stages, are in general unspecific and cannot, on their own, document exposure to torture (18,29).

The harm produce by torture isn't exclusive of external body so a neurological, cardiopulmonary, gastrointestinal, urological, otorrhinolaryngological, ophthalmological and gynecological examination should also be performed (18,29,30).

Acute central nerve neurological problems are associated with severe beating to the head. Headaches were the most frequently reported symptom and a significant correlation between severe beating to the head and headaches was found. Likewise, there was a significant association with the symptom vertigo (18,29,30).

Violent shaking may produce cerebral injuries identical to those seen in the shaken baby syndrome: cerebral oedema, subdural hematoma and retinal hemorrhages. Acute peripheral nerve symptoms are most often reported as a result of handcuffs or tight ropes at the wrist. Lesions of the brachial plexus, especially the lower roots, have been mentioned after

suspension, and damage to the long thoracic nerve has been reported after “Palestinian hanging” (18,29,30).

Many of the long-lasting symptoms, such as loss of concentration, headaches, memory disturbances and vertigo, could be explained by chronic, organic brain damage and call for a neurophysiological evaluation in order to evaluate the specific symptoms. It should, however, be borne in mind that many of these symptoms are also related to PTSD (18,29,30).

Acute cardiopulmonary symptoms include dyspnea, chest pain, coughing, expectoration and palpitation. Beatings to the chest damage the thoracic wall and can lead to impaired respiration. Torture by drowning can lead to acute lung symptoms, aspiration pneumonia and asphyxia. Electrical torture can produce cardiac arrest. Harsh prison conditions lacking isolation and sanitary conditions can also facilitate respiratory infections like pulmonary tuberculosis (18,29,30).

Acute gastrointestinal symptoms such as abdominal pain, epigastric discomfort, diarrhoea and vomiting are associated with torture and imprisonment. These symptoms have a mixed aetiology with stressful situations and lack of food being an important part. Having an object inserted into the anus is a form of torture that can give rise to pain and bleeding. Fissures, rectal tears, scarring of the anus and perineum and skin tags could be present but the manifestation depends of the time from the torture that the examination has been performed. In these situations, sexually transmitted infections should also be a concern. Furthermore obstipation due to anal pain is often a secondary symptom (18,29,30).

Dysuria is a frequent urological complaint among torture victims, probably caused by torture instruments and by cold and unhygienic conditions. Beating at the scrotum can lead to pain and injured testis with subsequent atrophy (18,29,30).

Haematuria can happen due to severe beating around the kidney and by direct trauma to the urethral mucous membrane by beating in genital area or electrical torture. Haemoglobinuria can occur in falanga as a result of the “footstrike hemolysis” phenomenon. This should be differentiated of myoglobinuria that occurs as a result of rhabdomyolysis, destruction of the muscle tissue and may be cause by severe beating or electrical torture. Myoglobinuria is a dangerous condition that can lead to acute renal failure. The three conditions can be distinguish by analytical analysis of the urine (18,29,30).

Beating, especially in the head, carries a high risk of damaging hearing function. Depending on the trauma, hearing loss can be transitory or permanent. Perforation of the tympanic membrane is common (18,29,30).

Few long lasting eye symptoms that are possibly related to torture have been described, but conjunctivitis due to blindfolding can occur (18,29,30).

Sexual harassment and rape are also common forms of torture, and female victims of torture are raped more frequently than male. When performing a gynecologic examination precaution should be taken to minimize re-traumatization (18,29,30).

Physical signs after sexual violations and rape depend very much on the interval between the assault and the examination. Immediately after the rape of a woman, semen may be detected. She may have injuries all over her body. The vulva, vagina, anus and the urethra should be carefully examined and special attention should be paid to the perineum. The presence and condition of a hymen should be noted. Most acute symptoms disappear over time, and it may not be possible to differentiate scars of the perineum from scars after childbirth or scars following a sexually transmitted disease (18,29,30).

Later, women may present themselves with complaints of vaginal bleeding, decreased sexual desire, genital irritation, pain during intercourse and urinary tract infections. Health care workers should always consider sexually transmitted diseases after rape (18,29,30).

Consequences of pregnancy and delivery, as well as of an unsafe abortion, must be considered. The most frequent complications are incomplete abortion, sepsis, hemorrhage and intra-abdominal injury, such as puncturing or tearing of the uterus (18,29,30).

It is of utmost importance the respect for gender and religious issues when performing such a delicate examination because if the victim is not comfortable, she can relive the trauma (4,29).

The medical expert, after the examination, shall promptly prepare an accurate written report, that should include at least the circumstances of the interview, the history reported by the alleged victim, the objective findings from the physical and psychological examinations, an opinion on the consistency of the findings in relation with the history that was given by the alleged victim and a precise identification of the authorship of the report. Is this report that is going to be used as proof in the various legal proceeding (18,25).

Regardless all time since the implementation of this protocol, when medico-legal documentation is gathered, it is rarely on the basis of the Istanbul Protocol (23). Indeed, there is a lack of knowledge in the medical profession about how to conduct a proper medico-legal examination and how to produce a medico-legal report (2,25).

4.1.3. Producing a Medico-legal report in adults in children

The medical and psychological sequelae of torture and ill-treatment in children can differ substantially from those observed in adults, and will vary accordingly with the age of the child (31).

Children may be secondary torture victims, because of the violence or torture perpetrated against one or more their relatives, and they may also be primary victims. As there are many reports on how children have been subjected to same torture methods as adults, it may be expected that they have similar physical symptoms as adults, still, very little is known about the effects of torture in a growing and developing body (18,29,30).

The Istanbul Protocol outlines minimum standards, which states should meet when they investigate complaints of torture in children, it devotes one chapter where several important points are described (31). These include the importance of a safe environment to conduct the interview, the use of an expert in child abuse when a physical or sexual assault has taken place, consideration for the developmental state of the child, clinical considerations and the role of the family (18,31).

For the safe environment be establish, may be required the presence of someone from the child trust (18).

In the cases of sexual assault, if it's necessary to perform a total gynecological examination, general anesthesia should be considered because the examination itself can trigger memories of the assault (18).

A child's reactions to torture depend on age, developmental stage and cognitive skills. Thence, they should be examine accordingly to their age (18,29,30). The clinician must keep in mind that children do not often express their thoughts and emotions regarding trauma verbally, but rather behaviorally (18).

For children under the age of three, who have experienced or witnessed torture, the reactions of very typically involve hyperarousal, such as restlessness, sleep disturbance, irritability, heightened startle reactions and avoidance. Children over three often tend to withdraw and refuse to speak directly about traumatic experiences. The ability for verbal expression increases during development (18,29,30).

At the age of 8-9 years old, children develop the ability to provide a reliable chronology of events, these new skills are still fragile, and it is not usually until 12 years old that children are consistently able to construct a coherent narrative (18,29,30).

Adolescence is a turbulent developmental period, so the effects of torture can vary widely. Torture experiences may cause profound personality changes in adolescents resulting in antisocial behavior or may have a similar effect to those seen in younger children (18,29,30).

Children may react to trauma with depression, sleep disturbances, nightmares, anxiety, fears, learning problems, post-traumatic stress disorder, and feelings of guilt and shame. Attention should be paid to signs of malnutrition because it may also be a sign of child ill-treatment. Enuresis and less frequently, encopresis can be triggered by stressful events. Organic damages should be excluded before considering this a symptom of ill-treatment or torture (18,29,30).

The relatives have a very important role in the way torture affects the child. The younger is the child, more the experience will be influenced by his caregivers. The child can be overprotected or can be forced to assume a parental role towards their relatives. A child that witness torture may developed malfunctioned ideas of guilt that prevail until adulthood (18).

The medico-legal examination of children is approached in Istanbul protocol and some other guidelines. However, a study that review the existent guidelines and tools specifically for children, did not found a comprehensive guideline that encompassed all aspects of documentation of child torture, as does Istanbul Protocol to adults (31).

Though guidelines on child abuse evaluation have a different focus, they may be useful in the examination of a tortured child, especially in establishing ground rules regarding medical evaluation of child victims and how to interview such children to obtain a credible testimony from the victim (31). It could also facilitate the recognition of physical consequence of torture if health professionals are familiar with other non-accidental injuries in children like the shaken baby syndrome (18,29,30). This guidelines don't replace the need for a guideline concerning specifically children victims of torture but they can help in the development of a comprehensive guideline for the documentation of it (31).

4.1.4. The role of medico-legal report in the investigation and documentation of alleged cases of torture and other ill-treatment

Medico-legal examination and documentation was traditionally developed as a way of gathering evidence to persecute perpetrators (23), however the area of application of the medico-legal reports is not restricted to medico-legal investigation. It can be broadened to the investigation and documentation of other violations of human rights in national and international legal proceedings, and monitoring such as cases of asylum seekers, cases of forced confessions through torture, identification of therapeutic needs of victims and the need for reparation and redress by the state (26). There are also a role for it in activities like research, advocacy and lobbying (23).

Medico-legal reports are a way of gathering evidence of torture. The methods are applied in various forms in court cases around the world and many organizations pursue this strategy although it is often difficult due to malfunctioning legal systems and authorities that hamper investigations. Even in countries where a fair trial is rare, medico-legal documentation strengthens the victims position since it becomes more difficult to disregard the complaint (23). This indicates that the successful prosecution of alleged torturers requires proper forensic investigation and documentation as it entails the resolution of legal and political impediments that render medical documentation non-effective (32).

International criminal tribunals such as International Criminal Court as well as International Human Rights Courts are likely outlets for medico-legal documentation. However, national procedures should be exhausted and the international options should be reserved for those cases that cannot be pursued nationally (23).

Asylum seekers are vulnerable people that have been persecuted in their one country because of race, religion, nationality, political party, membership of a particular social group and so on. Besides that, they often suffer further trauma as they arrive to a new country. Interpersonal violence and lack of food, housing and medical care are real issues (33).

Asylum seekers have to prove a well-founded fear of persecution in their home countries (33) and torture survivors do not have easier access to asylum than other groups (34). In some cases they are arrested, detained and forced to return to their country of origin (33).

Previous subjection to torture does indicate that the person has been persecuted by the authorities and thus faces an increased risk of torture upon return if the regime has not changed (23). That put this people under the article of non-refoulement of CAT and obliges the host state to grant asylum to them. Notably, the principle of non-refoulement can hardly be fulfilled without some sort of medico-legal documentation (20).

In this manner, a more systematic introduction of medico-legal report to the asylum process offers a great opportunity for strengthening the victims application (34).

Nevertheless, asylum cases represent special challenges for conducting medico-legal investigations since there is often suspicion that the asylum seeker has exaggerated or invented the allegations of torture with the aim of obtaining asylum (33).

The information collected for documentation can, especially if it is systematically and meticulously registered, be used for various research purposes. Research enables to identify individuals or groups in particular risk, conduct a quantitative analysis on torture methods in various regions and draw trends and patterns. Also allows identifying places where torture is

more likely to occur. Finally, it permit the evaluation of the effect of medico-legal documentation in the prevention of torture (17,23).

Lobbying activities are another area where medico-legal documentation can be useful to substantiate communications with authorities and others with the ability to change the situation. The process of persuading authorities to change behavior is facilitated if they can be presented with documentation that the problem is real and severe. Medico-legal documentation can also be applied in urgent action appeals where focus is on persuading authorities to intervene on behalf of an individual judge to be in imminent danger (23).

Advocacy efforts as well can be strengthened by medico-legal documentation. Media strategies typically focus on individual case stories, but also on statistics, for instance, the prevalence of different torture methods or where the torture took place could be relevant (23).

Advocacy and community organizing has helped transform victims of torture to a group empowered as a collective to contest, redefine and reinterpret the law. Sometimes, their efforts create enough political pressure to change the law in human rights favor (35).

Besides legal implications and political activities, the Istanbul Protocol is also intended to provide recommendations for the treatment of torture victims and ultimately lead to redress for the victim and his or her family (11).

4.1.5. The role of MLR in rehabilitation of victims

The redress of the victims is a way to compensate for the damage inflicted and has the objective of restoring, as far as possible, the circumstances of life if the victim had not been tortured (16). The redress of a victim include his full rehabilitation (5,17).

Rehabilitation refers to the restoration of function or the acquisition of new skills required as a result of the changed circumstances of a victim in the aftermath of torture or ill-treatment. It seeks to enable the maximum possible self-sufficiency and function for the individual concerned, and may involve adjustments to the person's physical and social environment. Rehabilitation for victims should aim to restore, as far as possible, their independence, physical, mental, social and vocational ability; and full inclusion and participation in society (17).

Rebuilding the life of someone whose dignity has been destroyed takes time and long-term material, medical, psychological and social support is needed (36).

The assessment and documentation of torture is central to decide how best to meet the needs of the torture survivor. Assessment can include writing detailed clinical notes, formal

medical, psychiatric or psychological reports, as well as writing country-based or theme-based reports using findings from medical and psychological reports (17).

The consequences of torture are likely to be influenced by many internal and external factors (36). Also, rehabilitation is important for the individual victim, the family and the torture-struck society (23). Therefore, a holistic approach to rehabilitation, which also takes into consideration the strength and resilience of the victim, is of utmost importance (17).

In this context MLR can identify the medical needs to be address and the psychological sequelae that result from torture trauma. Also, as approached before, can provide a solid proof to be present in court for persecution of perpetrators and asylum requests (17).

4.2. The case of Portugal - analysis of a real case

Looking again to the case of the visit to Lisbon Central Prison, Portugal performed under OPCAT, the physical injuries observed on admission or following a violent incident inside the establishment were recorded by health-care staff in the medical files of the prisoners concerned, together with any statements from the prisoners regarding the causes of the injuries. However, the description of the injuries lacked details and no observations were made by the doctor regarding the consistency between the inmate's statement and the injuries observed (9).

Therefore, Istanbul Protocol wasn't correctly applied and the MLR was not properly constructed. This enables torture and other ill-treatment to occur more easily, impairs the ability to prosecute perpetrators and the ability to give due restitution to the victims.

Regarding this subject, it's important to underlight the lack of teaching and training concerning how to produce MLR, during Medicine course (2). Probably that lack of training is perpetuated to medical doctors, including the ones who work in Prisons. That situation is common to Portugal and to the majority of other countries (26).

Chapter 5: Prevention of Torture through documentation

Traditionally, the focus on torture prevention activities has evolved around the establishment and implementation of effective legal framework and monitoring mechanisms. However, effective legislative frameworks must be supplemented by effective means for investigating allegations of torture. Both in international human rights tribunals and in domestic courts, documentary medical evidence and expert opinions play an essential role in substantiating allegations of torture (37).

The successful substantiation of an allegation of torture or ill-treatment by use of medical evidence requires three crucial elements to be present: Competent and independent medical professionals to conduct the examination and evaluation; a legal procedural framework, which allow the effective introduction of such evidence; and the necessary technical knowledge of judges and prosecutors to enable an effective evaluation of medical evidence in a process ensuring that it is afforded due probative value (37).

Regardless what's stated above, the effect of using medico-legal documentation in the prevention of torture is under researched. A connection between preventing torture and applying high-quality medico-legal documentation in legal proceedings, advocacy and lobbying activities, and asylum cases is widely resumed by both practitioners and scholars in the field, but hardly evidence based. However medico-legal documentation is becoming more and more accepted as a means by which the anti-torture movement can help prevent and alleviate torture worldwide (20).

Documentation is believed to be a highly effective strategy for preventing torture and is applied in different variations by institutions ranging from the International Committee of the Red Cross (ICRC) to small Non-Governmental Organizations. By documenting abuse and maltreatment, facts can be presented to political leaders and persons in position to change practice. Likewise, documentation is essential for persecuting perpetrators legally, another strategy believed to be highly preventive (23). Besides that, documentation can contribute to the protection of torture survivors from refoulement (the forced return of refugees who have a right to be protected as a UN Convention refugee), preventing the further infliction of suffering to that peoples (17).

As mention previously in chapter four, places where peoples are deprived from their liberty have a particularly high risk of being places where torture and ill-treatment happens. In this context, fact finding missions under OPCAT serve the purpose of documenting torture and ill-treatment with a view to future prevention (12). Doctors are an important part of the team

(7), objective medical evidence of ill-treatment can be compelling and sometimes critical to the determination that there has been torture (12). In addition to examining the detainees, the team doctor has a role in assessing the overall conditions of detention and the medical services, as well as participating in the investigative process as a whole (12). The data obtained is used as a basis for entering in dialogue with the authorities and that has been found to be an effective strategy of prevention (23).

Detainee access to a doctor is recognized as one of the safeguards for prevention of ill-treatment and torture since it allows for the medical documentation of it, both functional effects and physical injuries, shortly after ill-treatment and/or torture, when the chance of finding evidence is maximal. Notwithstanding, sometimes may be appropriate not to document ill-treatment of detainees because the situation may be so precarious that, any such documentation would lead to a reprisal against the detainee or the medical doctor (12).

Governments have their share of guilt when it comes to torture, so the use of medico-legal documentation to advocate and lobbying is of utmost importance. Advocacy is one tool to create change in practices, end torture and rehabilitate its victims. To advocate, it's needed a base of compelling and robust arguments with concrete information on the scope of the problem. Medical-documentation can provide that to advocacy (17).

Furthermore, the use of medico-legal documentation to produce statistics on the number of victims can be used to lobbying the government to address impunity and to support health professionals in independent documentation of torture (17).

Sometimes legal prosecution is not enough or doesn't even happen, and sometimes the governments don't take action to prevent torture from happening in their one territory. Awareness-raising for public is key to build understanding of the need to prevent torture and rehabilitate its victims. In these situations medico-legal documentation can be shared through human rights reports, analyses and commentaries. In this use, Web offers an inexpensive, fast and limitless way to distribute information to an audience of human rights advocates and media outlets that extends far beyond borders, membership lists and media distribution. That type of leaking information can lead to moral delegitimization, a bigger pressure to redress the victims, civil sanctions to the perpetrators and an overall pressure within governments to do something, to institute criminal punishment amount perpetrators and to change practices (38).

Either, that kind of unofficial way to distribute information may lead to a raised awareness among clinical staff to how medical documentation can be used to prevent torture by identifying torture patterns and perpetrators (17).

There are a number of human rights outcomes we can gain from the appropriate use of the clinical data and a range of tools where we can use it to fight torture (17). The core for prevention of torture passes by the attack to a climate of impunity (8,38).

Chapter 6: Final Remarks

The strong and unequivocal prohibition of torture means that torture can never be justified, in any situation, including public emergencies and even war. Whatsoever, torture still is a widespread practice, including in first world countries. Portugal is not an exception to that, as can be seen in the report from the visit to Portugal performed by CPT, which is analyzed in this dissertation.

International law prohibits the infliction of torture and other ill-treatment to everyone. Additionally, medical profession has its own ethical rules concerning this topic, which prohibits not only the infliction of torture and ill-treatment but also the provision of materials, drugs, techniques or information to help the perpetrators. Nevertheless, in the world and even in the case analyzed, torture continues to be perpetrated with the help or at least with the acquiescence of doctors.

Regardless, primary caregivers are important gatekeepers to recognize victims and initiate refer for treatment and for legal purposes. They may encounter torture survivors in primary care settings, emergency departments or while consulting with medical colleagues about patient who have special needs. However, it's important to under light the lack of teaching and training concerning how to produce MLR, during Medicine course. Probably that lack of training is perpetuated to medical doctors, including the ones who work in Prisons. That situation is common to Portugal and to the majority of other countries.

The Istanbul Protocol is acknowledge standard for the medical examination of torture and ill-treatment adult victims. But there is still a lack of knowledge in the medical profession about it, about how to conduct a proper medico-legal examination and how to produce a medico-legal report. This was also a flaw detected in the report analyzed.

MLR can be used as a proof for the prosecution of perpetrators, strengthening the victim's position. Equally important, is to use of MRL to help asylum seekers accessing asylum. The information gathered can contribute to raise awareness through advocacy and lobbying. Also, MLR allows the identification of therapeutic needs of victims and the need for reparation and redress. Furthermore, the information can be used to research purposes, helping to define patterns and trends of torture and to identify population groups at risk.

More research on the effect of applying medico-legal documentation to the various purposes listed in this work is thus urgently called for. Also, the inexistence of guidelines for the examination of ill-treated and tortured children are a concern and demands more research.

Therefore, participation and support of health professionals are of crucial importance for the abolition of torture and other forms of ill-treatment. Ensuring that doctors are aware of how

to perform a medico-legal report and how to use it in legal proceedings is a needed step forward in the prevention of torture.

Because a large of the large number and the severe suffering of many survivors, and the lack of knowledge of medical profession, important stakeholders, the problem of torture and the medical examination of torture victims should become a part of health care curricula.

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