



TO: UN Special Rapporteur on Torture Dr. Alice J. Edwards  
FROM: Physicians for Human Rights (PHR)  
DATE: 25 November 2022  
SUBJECT: Contributions to the First Report to the UN Human Rights Council

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Following are highlights of good practices drawn from Physicians for Human Rights' 35 years of field-based experience working against torture and ill treatment and from our observation of partners' good practices. We hope you find them useful as you prepare your submission to the UN Human Rights Council regarding "good practices in national criminalization, investigation, prosecution and sentencing for offenses of torture, and remedies for victims, covering both common criminal and military contexts." The practices focus primarily on **regulatory frameworks, elements of human rights-compliant investigations and prosecutions, victim participation and protection, and evidence collection and innovation**, including in the Democratic Republic of the Congo (DRC), Iraq, Kazakhstan, Kenya, Kyrgyzstan, and Tajikistan.

This intervention focuses on delineating good, not bad, practices. But we would be remiss if we did not underscore that the processes of criminalization, investigation and prosecution of torture are not always beneficial to torture survivors or their understanding of justice. On the contrary, they can be traumatizing or re-traumatizing. And failure to convict can further endanger those who engage the judicial system by exposing victims to reprisal and blackmail.

### Regulatory Frameworks

A good practice, seen in Iraq, is to ensure that unhindered access to detention facilities, particularly those that fall outside the national legal system, is enshrined in law. This helps put more pressure on governments and local authorities to reveal the locations of these detention centers. In general, healthcare should also be among the essential rights of the detainees to ensure their physical and mental well-being. It is also important to develop a human rights-based framework to execute counter-terrorism laws in countries where these laws are being abused and serve as justification for extrajudicial arrest and torture.

Vulnerable populations among detainees must be given particular attention in such legislation. That includes those at higher risk for ill treatment, such as healthcare providers and political prisoners and those at higher risk for sexual violence, including women and children. This can be done by ensuring appropriate documentation of violations as well as a consistent legal representation for victims.

As a positive example, Kenya has put in place robust domestic laws that address sexual and gender-based violence including the Sexual Offences Act, the International Crimes Act, and amendments to the Penal Code, among others. Additionally, Kenya is party to many regional and international legal instruments that prohibit torture, forming part of the laws of Kenya. They have been used to prove Kenya's obligations and that the state violated these laws by failing to undertake prompt investigations and prosecution.

The filing of a Constitutional petition at the domestic court following Kenya's post-election violence in 2007-2008 allowed survivors to fully participate in the proceedings and tested the enforcement of the laws at domestic level. A precedent-setting decision by the High Court demonstrated that the failure of the Kenyan state to conduct effective investigations and prosecutions in this case violated the right to life and prohibition of torture. Four of the eight

petitioners received 4 million KES (about \$40,000 USD) as general damages for violation of their constitutional rights.

## Elements of human rights-compliant investigations and prosecutions

At the heart of PHR's efforts to pursue access to justice for survivors of conflict-related sexual violence and other forms of torture are the multisectoral networks and partnerships built among healthcare professionals, police officers, forensic analysts, lawyers, and judges. Health professionals often are [essential first responders for sexual violence survivors](#). However, professionals in conflict regions require support to build their capacity to properly collect forensic medical evidence – an essential first step in engaging multisectoral partners and seeking accountability for crimes of sexual violence and other forms of torture.

States that are committed to ending torture and ill treatment must facilitate engagement and demonstrate cooperation with civil society organizations, movements, professional organizations, and leaders on anti-torture actions. States should encourage and support a national network of non-governmental medico-legal experts to conduct clinical evaluations of alleged torture, review the quality and accuracy of state evaluations, and participate in policy reform, capacity building, and public education activities. States should also ensure that non-state legal and clinical actors have access to all relevant information, such as case files and investigations, in medico-legal cases of alleged torture as well as deaths in custody.

PHR prioritizes [trauma-informed](#) and survivor-centered, multisectoral trainings and partnerships, particularly to enhance medico-legal processes for survivors that have been proven to be effective. An article about our work in Kenya was [published in August 2022 in the journal \*Violence Against Women\*](#), finding that scaling medico-legal training and strengthening multisectoral networks in areas with high rates of SGBV are promising strategies for increasing collaboration, enhancing the quality of services, and improving justice processes for survivors of SGBV. These approaches have promoted prosecutions and encouraged other survivors to come forward.

An article about our work in the DRC, [published in August 2022 in the journal \*Violence and Victims\*](#), found that participants completing PHR's multisectoral training had improved knowledge of and attitudes about health, law enforcement, and legal professionals and overall, viewed the training as beneficial. This study suggests that such training is effective even in under-resourced, conflict-affected regions. PHR has developed these trainings since 2011, consistently refining our approaches in line with best practices and collaboration with our national partners.

In Iraq, for example, PHR has been working for the past six years to strengthen the capacities of the legal, judicial, and medical sectors to document, analyze and preserve evidence of torture and sexual violence crimes, including conducting trainings for clinicians. International and national entities should continue to focus on strengthening the capacity of medical, legal, and judicial sectors as well as civil society organizations, especially survivor-led organizations. Multisectoral collaboration is key to understanding the aspects of science, medical documentation, and psychological evidence in court and is essential to establishing safeguards to prevent torture and ill treatment.

In countries emerging from authoritarian rule, a major challenge is ending often widespread and systematic torture and ill treatment. Between 2011 and 2019, PHR, in collaboration with the Open Society Foundations (OSF), the Open Society Justice Initiative (OSJI) and regional and local partners, worked to establish effective torture investigation and documentation practices

in Kazakhstan, Kyrgyzstan and Tajikistan. Our approach consisted of activities in three sequential phases: (1) assessment, (2) capacity building, and (3) policy reform. In such efforts, a crucial first step is to train health professionals and legal experts in effective legal and clinical investigation and documentation practices in accordance with the Istanbul Protocol (IP) and its Principles. We outlined key lessons from this implementation initiative in an article published in 2022 from which key lessons learned are summarized below.<sup>1</sup>

#### Phase One: Assessment

Activities in this phase need to: 1) Assess prevailing country-specific conditions and challenges; 2) Raise awareness among relevant civil society and government stakeholders of IP standards; and 3) Develop partnerships with civil society and government stakeholders as well as international human rights organizations.

#### Phase II: Capacity building

Once awareness of IP standards and partnerships among key stakeholders has been created, it is necessary to build capacity on IP investigation and documentation standards and policy reform activities. Phase II goals included: 1) Developing a framework for sustained and comprehensive capacity building for medical and legal experts; 2) Policy reform to ensure effective investigation and documentation of torture and ill-treatment; and 3) Developing a national Istanbul Protocol Plan of Action in each country.

#### Phase III: Instituting policy reforms

Having established a framework for sustained capacity building and providing recommendations on necessary policy reform, Phase III goals from 2015 to 2019 included: 1) Transferring capacity building and policy reform activities to local civil society and state actors; 2) Integrating best practices into government practice; 3) Enhancing regional networking and collaboration; and 4) Monitoring the implementation process including the quality and accuracy of forensic and medico-legal evaluations of alleged torture and ill treatment.

Necessary conditions for effective torture investigation and documentation processes include:

1. Ratification of relevant international treaties to establish state obligations with respect to torture prevention, accountability, and redress.
2. Political will and good governance in the process of implementing IP standards; they also often serve as the remedy to the conditions that facilitate torture and ill treatment. Successful remedial anti-torture actions depend on a government's capacity for transparency, accountability, functional institutions, capacity building, having checks and balance of institutions of control, and active participation of civil society organizations, movements, and leaders to engage with state actors. In the same vein, commitments must be required from actors within institutions - such as police, forensic and medical services, judiciary, prisons, and governmental departments - to implement administrative, legislative, and judicial reform.
3. An effective criminal justice system. The ability of a state to conduct effective investigation and documentation of torture and ill treatment often depends on a functional criminal justice system. Key elements include a law that makes torture a criminal offence, defined in compliance with the UN Convention against Torture. There

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<sup>1</sup> Iacopino, Haar, Heisler et al. *Forensic Medicine*, 2020.

also must be criminal procedure rules and rules of evidence that respect the rights of detained and accused persons, a demonstrated willingness and ability to eradicate corruption, and formal and practical separation between law enforcement, medical personnel, and judicial personnel. State forensic services should be independent of law enforcement, prosecution, and/or military authority. Non-governmental clinical experts should be empowered to assess physical and psychological evidence in accordance with IP standards. The principles and guidelines included in the IP represent a normative framework for legal systems, particularly criminal justice systems, in ensuring torture prevention, accountability, and redress.

4. Adequate financial and human resources. This is essential to maintain progressive implementation of IP standards and the conditions necessary for effective implementation. These include qualified legal and medico-legal personnel and an adequate number of health professionals with appropriate clinical qualifications, including mental health experts, and commitment to medical ethics. Ensuring such human resources usually requires sustained financial support over a number of years.
5. Cooperation and active civil society participation. Taking action to end torture practices involves cooperation among national, international, United Nations, and other multilateral organizations and non-governmental organizations. Cooperation agreements such as through memoranda of understanding (MOUs) and partnerships help to establish trust and a common understanding of challenges and remedial actions that need to be undertaken. Such cooperation allows for a wide range of technical assistance activities, including identifying practices and policies that facilitate torture and ill-treatment, establishing an official national plan of action for torture prevention, accountability and redress, comprehensive capacity building of relevant target groups, and monitoring of the effectiveness of implementation efforts.

Key content for necessary measures is in this Table

Figure 1: Key Components and Specific Steps to promote implementation of IP Norms at the State level

<b>Legal, Administrative and Judicial Reforms</b>	<b>KEY COMPONENTS</b>	<b>Legal Reforms</b>	<b>Judicial reforms</b>	<b>Administrative reforms</b>
	<b>SPECIFIC STEPS</b>	<p><i>Define and criminalize acts of torture in accordance with CAT</i></p> <p><i>Adopt and ratify international treaties</i></p> <p><i>Create national laws to protect victims and criminalize persecutors and defend whistleblowers</i></p> <p><i>Ensure civil proceedings are independent of the outcome of criminal proceedings</i></p> <p><i>Provide different forms of reparation within the domestic law</i></p>	<p><i>Give equal consideration to State and non-State evaluations</i></p> <p><i>Train judges on IP standards</i></p> <p><i>Ensure appropriate use of criminal statutes on torture and ill-treatment</i></p> <p><i>Ensure judges exclude the admission of evidence found through torture, ill-treatment or other legal violations</i></p> <p><i>Require that self-incriminating statements must be conducted in the presence of a judge and independent legal counsel</i></p> <p><i>Do not rely predominantly on confessions for prosecution of crimes.</i></p>	<p><i>Develop a system of mandatory health evals. for all detained persons (before, during and after)</i></p> <p><i>Medico-legal experts must have prompt access to victims</i></p> <p><i>All personnel (law enforcement officials, prison staff, lawyers, judges, and other health professionals must be trained on their respective professional obligations and ethics</i></p> <p><i>Abide by national and international law on the treatment of prisoners (including the Mandela Rules), the rules for interrogation and reporting procedures for violations of the law</i></p>
<b>State Forensic and Health Profession Reform Steps</b>	<b>KEY COMPONENTS</b>	<b>Reform forensic policies</b>	<b>Ensure safeguards</b>	<b>Provide training and support to health professionals</b>
	<b>SPECIFIC STEPS</b>	<p><i>Ensure independence of forensic evaluations</i></p> <p><i>Align domestic law with procedural safeguards</i></p>	<p><i>Ensure prompt evaluations (less than 48 hours from the allegation)</i></p> <p><i>Investigate all allegations or torture and ill-treatment</i></p> <p><i>Consider standardized report forms based on the IP</i></p> <p><i>Ensure evaluations comply with informed consent and ethical principles</i></p> <p><i>Develop a cadre of independent non-governmental clinicals</i></p>	<p><i>Provide authority and funds for adequate training of State and non-State health professionals</i></p> <p><i>Train all clinicians who may encounter alleged victim</i></p> <p><i>Mandate training for State employees (State employees should receive specific training on conflicting obligations)</i></p> <p><i>Ensure pathways to report concerns and receive support</i></p> <p><i>Ensure that training is sustainable and training capacity is available at the national level</i></p>
<b>IP Implementation Monitoring and Accountability</b>	<b>KEY COMPONENTS</b>	<b>Establish groundwork for effective monitoring</b>	<b>Conduct Effective monitoring programs</b>	<b>Report monitoring activities and ensure accountability</b>
	<b>SPECIFIC STEPS</b>	<p><i>Establish an independent monitoring body</i></p> <p><i>Develop stands, procedures, and structured for various professionals</i></p> <p><i>Establish subsidiary medical and legal committees for technical assistance</i></p>	<p><i>Monitor training programs</i></p> <p><i>Monitor the national documentation system,</i></p> <p><i>Monitor access to investigations without discrimination</i></p> <p><i>Monitor documentation of allegations and torture and ill-treatment</i></p>	<p><i>Provide recommendations on and guidance on specific issues</i></p> <p><i>Ensure individual, professional and state-level accountability</i></p> <p><i>Report data to UN anti-torture and other human rights bodies</i></p> <p><i>Work closely with civil society on reporting violations of human rights</i></p> <p><i>Utilize disciplinary and criminal investigations</i></p> <p><i>Protect whistleblowers</i></p>

## Victim participation and protection

PHR also conducts [trainings on evidence documentation](#) in Iraq and Kenya, creating new networks among medical professionals involved in the prosecution of sexual violence and other forms of torture. In addition to empowering clinicians and supporting survivors, PHR has worked to hold perpetrators of conflict-related sexual violence accountable for their crimes, deter would-be abusers and offer solace to victims.

In Syria, and due to the complexity of the political landscape, PHR stresses the urgency to heed the call of survivors, their families, and family members of the missing to ensure that survivor-led short- and long-term plans for peace and accountability are the main drivers of decision-making. In December 2020, after seven years of strategic litigation and robust advocacy, PHR along with its co-petitioners-- three Kenyan NGOs and eight survivors of election-related sexual violence—won a landmark victory in the High Court in Nairobi. For the first time, a Kenyan court found the government of Kenya failed in its responsibility to investigate and prosecute the sexual violence that took place during the 2007-2008 post-election period of violence. For the first time, these torture survivors were awarded compensation for the harms they suffered at the hands of state security forces. A Constitutional petition at the domestic court allowed survivors to fully participate in the proceedings and strengthened the enforcement of the laws at the domestic level. This case was the first of its kind to be litigated at the national level.

The precedent-setting decision by the High Court<sup>2</sup> held that the government failed to conduct effective investigations and prosecutions of SGBV-related crimes during post-election violence, a violation of the positive obligation on the Kenyan state to investigate and prosecute violations of the right to life and the absolute prohibition of torture. In the end, the court awarded four of the eight petitioners Kshs. 4,000,000 each (about USD \$40,000) as general damages for violation of their constitutional rights, a substantial penalty that sets a high bar for future such cases. Despite this progress, the court did not acknowledge the state's responsibility to protect those survivors who were not able to report their cases to the police. Thus, in February of this year PHR and our co-petitioners launched a partial appeal to correct that portion of the decision.

Through multisectoral partnerships, PHR professionals and partners have helped achieve justice for survivors of sexual violence by helping bring cases to trial. One notable example of this has been in the [South Kivu village of Kavumu in the DRC](#). In 2013, more than 40 young girls, some as young as 18 months old, were kidnapped from their homes, raped, and then left in the fields surrounding Kavumu. To support the girls and their families' in the fight for justice, PHR worked with multisectoral professionals to gather forensic evidence from the survivors, coordinate the investigation, and provide technical assistance to professionals. This work was integral for the eventual conviction in December 2017 of the perpetrators including Frederic Batumike, a regional legislator in DRC, and 10 other militia members of crimes against humanity by rape and murder and sentenced to life in prison.

A multisectoral network convened by civil society organizations from Kavumu, local clinicians, police officers, and NGOs ensured that the girls and their familiars were kept informed at each stage of the legal process and frank conversations were held around security concerns, which were particularly acute in this case. Their feedback was integrated into the monthly meetings and mitigating measures were taken by partners, including providing training and support on how to enhance their protection. Through these efforts, the mobile military court heading this

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<sup>2</sup> [Petition 122 of 2013 Decision](#)

case adopted several aspects of a trauma-informed participation strategy, including allowing recordings of the children's testimony instead of having to be questioned in open court. Witnesses appeared in court identified only by coded pseudonyms; they stood behind a protective screen; used a special voice modification device (see below); and were covered from head to toe in fabric to shield their identities from the public.

## Evidence collection and innovation

All too often, efforts to prosecute perpetrators of torture fail in the courts due to inadequate or missing evidence. Partners in Kenya and the DRC working in collaboration with PHR have largely overcome this challenge by developing and putting into practice an innovative web application called MediCapt. This award-winning app makes it possible to capture reliable and secure documentation of forensic evidence necessary to support sexual violence cases. MediCapt provides a digital platform to facilitate the complete collection of evidence, including forensic photography of injuries sustained by victims of torture and sexual violence, in conformity with Istanbul Protocol norms. MediCapt also allows forensic evidence to be securely shared with multisectoral professionals, including in law enforcement, and improves access to justice for survivors of torture.

The app prevents the loss of collected evidence by taking a forensic photograph directly through the application and saving this data in the cloud, subverting any possible efforts to tamper with evidence or the chain of custody. To date, MediCapt has been piloted successfully in one facility in the DRC and three facilities in Kenya. MediCapt has standardized and improved the quality of information collected compared to the paper-based form. Furthermore, MediCapt introduced new features that enhanced the quality of evidence collected and the survivor-centered nature of the process, while increasing the accuracy and efficiency of forensic documentation. [Our published report](#) provides evidence of the effectiveness of MediCapt, and our [article in the journal \*Global Health Science and Practice\*](#) discusses the process PHR used to collaboratively design and develop MediCapt with clinicians in Kenya and the DRC.

Another relevant technological innovation is [ViVoMo](#), a voice modification system developed by PHR that empowers and protects victims and witnesses of sexual violence by allowing them to testify without being identified by the defendants, witnesses, or members of the public. This good practice was used successfully in the Kavumu case in the DRC.