

Incommunicado detention and torture in Spain, Part II: Enhanced credibility assessment based on the Istanbul Protocolⁱ

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Abstract

Background: The Istanbul Protocol (IP) is the key instrument in the documentation of allegations of torture. However, few scientific studies have evaluated its effectiveness as a tool to assess credibility of allegations of ill-treatment or torture. **Objective:** Present data on the credibility of allegations of torture in a sample of 45 Basque people held in short-term incommunicado detention between 1980 and 2012, using a modified version of the Standard Evaluation Form for Credibility Assessment (SEC), a new tool to assess credibility based on the IP. **Method:** Each case was evaluated by two psychiatrists, a psychologist and a physician through a layered system of simultaneous, independent assessments, blind audits and peer-review processes. Clinical interviews following the IP were contrasted with psychometric tests and external documentary evidence by independent experts. All available data were structured using the SEC and cases were

accordingly classified as having Maximum consistency, Highly Consistent, Consistent or Inconsistent. **Findings:** According to the SEC, 53% of allegations of torture were considered to have Maximum Consistency, 31% Highly consistent, 15% Consistent and 0% Inconsistent. The items that most contributed to the overall credibility assessment came from the psychological evaluation, including the description of alleged torture, emotional reactions, objective functional changes, changes in identity and worldviews and clinical diagnosis. There was little contribution from previous medical reports. **Interpretation:** When applied competently, the IP is an essential tool in the documentation of torture. Our study shows: (a) evidence that allegations of ill-treatment and torture in the Basque Country are consistent and credible, being ascertained beyond reasonable doubt and aside from any political debate; (b) the wider use of the IP as a tool to assess credibility of allegations of ill-treatment and torture; and, (c) the usefulness of the SEC as a tool. The SEC can help as a tool for documenting torture in contexts where there are political differences and figures are distorted as a result of polarized political debates, and where legal documentation is needed for judicial purposes. Forensic science can help by providing an objective assessment of the credibility of allegations.

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Introduction

The Istanbul Protocol (IP) is the key instrument in the international documentation of ill-treatment or torture allegations.¹ Since its beginnings in 1999, the IP has been supported and promoted by the United Nations system that has adopted it as the international standard of reference.^{2,3} It has been recognized by human rights bodies as a benchmark with which to measure the quality and effectiveness of the investigation and documentation of torture allegations.⁴⁻⁶ The IP is a tool to assist physicians and psychologists in recognizing, documenting and reporting the evidence of torture. One of the main objectives of the IP is to make a judgment concerning credibility, defined as the evaluator's impression of the accuracy of the survivor's statement, and whether or not it leads the evaluator to believe that the events occurred as the survivor claims. The focus, thus, is not on whether the person is telling the truth or not (something that would entail complex moral considerations), but whether the narrative is accurate according to a set of criteria. A credibility analysis uses both objective and clinical criteria to determine whether a person's claim that he or she has been tortured occurred as he or she states. The IP does not devote a special section to credibility analysis, but there are many helpful ideas throughout the text that have been condensed in Table 1.

The IP does not give clear guidelines on how to make an overall assessment of credibility but suggests that medical symptoms are evaluated according to four possible categories: 'Not Consistent' (lack

of consistency between alleged facts and forensic examination), 'Consistent with' (nonspecific findings that may have been produced by the events described), 'Highly Consistent' (the findings could have been caused by the events described, and there are few other possible causes) and 'Maximum consistency' (the findings of the forensic examination could not have been caused in any way other than that described). Although the IP has received UN endorsement, there is a lack of effective implementation of the IP worldwide and very few scientific studies have assessed the usefulness of the IP as a research tool in general,^{5,6} and none specifically as a tool for credibility assessment.

Torture is a debated concept in the Basque Country. The main aim of the present study is to assess the credibility of

Table 1: *Credibility analysis in the Istanbul Protocol: Epistemological basis*

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- Empathy in an open and horizontal setting characterised by listening.
 - No time pressure on the interviewee.
 - Knowledge of human rights and political context. External sources of verification.
 - Interview focused not on clinical symptoms but on personal biographical history, with data collation by third-party sources.
 - Coherence in the events described.
 - Consistency between verbal and nonverbal communication.
 - Consistency between the events described and the emotion and resonance with which they are expressed.
 - Known coping patterns in adverse situations and in the assessed situation.
 - Analysis of changes in personality structure. Plausibility of torture as the likely reason for changes (cause-effect relationship) due to the nature of changes and a likely temporal association. Discarding other causes.
 - Complementary test: psychometric measures, image and others.
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allegations of ill-treatment or torture in a sample of people under incommunicado detention (considered as implying the greatest risk of ill-treatment), using the IP as tool of analysis. In order to assess credibility in a consistent way and to standardize the final decisions of the forensic experts, a simplified version of the SEC was used. This is a newly developed tool that enhances the IP with a set of 19 criteria previously used for forensic reports, but not as a research tool.⁷ As a secondary objective, we therefore intended to test the usefulness of the SEC as a tool for research.

Method

Definition of torture

The definition of torture in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is also the definition adopted in the IP, was used.

Participants

We selected a purposive group of Basque people (N=45) held under short-term incommunicado detention in application of anti-terrorist legislation between 1980 and 2012 in Spain and who had reported ill-treatment or torture (whether or not such allegations were presented in court). The sample was recruited through a snowball sampling method using a Latin Square methodology to balance for gender, year of detention and state security force involved.

Instruments and Procedure

Building Consistency Analysis: A system of blind and independent assessments and peer-review processes and audits

The methodology of assessment of each case describing the successive layers of the study and the role of each expert involved is detailed in Table 2.

The forensic examination was compartmentalized into independent levels with a combined system of blind analysis and peer review processes that involved five different professionals. Briefly, each case was evaluated by two psychiatrists or clinical psychologists (a 'pair') who conducted extensive clinical interviews following a semi-structured script based on the IP. The interviews were recorded on video or audio (as chosen by the interviewees) and transcribed. The participants undertook a battery of tests (Vital Impact Assessment Questionnaire (VIVO), Beck Depression Inventory (BDI), Post-traumatic Stress Disorder (PCL-C), and Social Support, Guilt and Forgiveness) (see Part IV). Two psychologists, blind to the forensic assessment, analyzed the results of the tests. A third group sought and analysed external documentary evidence related to each arrest (see Table 3). With all these data, the two persons responsible for the IP completed the credibility analysis. All examinations were subsequently compared for consistency and cross-checked by a supervisor, a psychiatrist with significant experience in forensic assessment of torture allegations, who additionally supervised the results and overall conclusions of the SEC Scale.

The team put together a final IP report which included the description of torture and ill-treatment, symptoms in relation to torture, psychological and medical examination, results of psychometric tests, psychiatric diagnoses following the tenth version of the International Classification of Diseases (ICD), the SEC (see below) and an official statement of the level of credibility of allegations for legal purposes.

Credibility assessment: a proposal of an extended set of indicators

The Istanbul Protocol specifically asserts that one must 'establish the credibility of

Table 2: *Assessing credibility: independent analysis and audit systems*

Layers of the study	Expert	Role
1. Collecting data	Psychiatrist or psychologists with excellent knowledge of the political history and context from the Basque Country.	Informed consent. Extensive clinical interview, following a semi-structured script based on the Istanbul Protocol. Psychometric Assessment including Impact on Human Worldviews, Posttraumatic Stress Disorder, Depression, Social Support, Guilt and Forgiveness
2. Contrasting data	Psychiatrists or clinical psychologists from places outside the Basque Country, with experience in the documentation of torture.	External ‘partner’ (or ‘pair’), who acts as a source of contrast. Sometimes he/she would decide to go to the Basque Country and personally attend the interviews. In other cases, he/she worked with recordings and/or transcripts of the testimony and the expert’s notes.
3. Draft IP report	The two experts who take part in layers 1 and 2 (‘pair’).	Both were joint signatories of the IP and had the responsibility of establishing a system of agreement in cases of doubt with support from a technical supervisor.
4. Analysis of complementary sources (psychometric)	Two independent psychologists.	Blind analysis of the questionnaires and all psychometric data producing an independent report for each case.
5. Analysis of complementary sources (medical)	Independent group of physicians and forensic doctors.	Blind independent analysis of external documentary information available for each case (see table 3). They produced an expert opinion on credibility using the SEC.
6. Overall supervision.	Experienced Psychiatrist.	Peer Review and Credibility Analysis of all the material arising from steps 1 to 5 on a case-by-case basis, validating the results and proposing criteria of improvement or contrast through several individual and group feedback sessions with each pair of forensic experts. Validates the results of the SEC.
7. Consultation by an independent international source.	Expert from the Independent Forensic Expert Group (a group facilitated by the International Council for the Rehabilitation of Torture Victims (IRCT)).	Meetings in Madrid and Bilbao conducting interviews with some of the examinees, individually and in groups. The expert also collated recordings, met with some of the psychiatrists or psychologists and analysed a random sample of IP.

the person’ and that establishing consistency is a fundamental tool in doing so.² When the protocol speaks of ‘credibility’ it is not referring to evaluating the person’s honesty, but rather to the credibility of past

and present core facts (Objectively assessed, is all or part of the claimant’s story of torture, which he or she presents as a factual background to their case, accepted as “credible”?). The person’s credibility is

Table 3: *Methodology: external sources of data contrasted*

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- Documentation presented as part of the judicial procedure arising from the allegations of ill-treatment/torture (in those cases in which there had been legal complaints).
 - Testimonies of allegations of ill-treatment/torture provided in judicial complaints, public denunciations or complaints to human rights organizations.
 - Rights violations statements made to the Central Instruction Judge.
 - Forensic assessments issued during the period of incommunicado detention and any other forensic report in relation to the case.
 - Medical and psychological assessments carried out by health centres, hospitals, or prison professionals etc., during or after the arrest. Any other documentation or medical tests that would provide information on the finding of possible injuries or sequels.
 - Documentary reports by human rights organizations, or victim associations.
 - Interviews of potential witnesses to the facts (relatives, other people detained at the same time etc).
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not being analyzed, but rather the set of events that s/he refers to.

In order to assess the credibility of allegations of ill-treatment on objective grounds, a modified version of the SEC was used. The SEC complements the IP, enabling credibility to be assessed in a consistent and reliable way. It helps the evaluator to search for potential sources of credibility and systematize information, to make his or her final decision more objective and to have comparable results among experts and studies. It is based on a set of 19 criteria that includes a consistency analysis, clinical data and analysis, and triangulation of available sources of information.⁷ The study used a shortened form that included a set of 14 criteria (see Appendix A).ⁱ The global assessment of credibility is not derived from a numerical sum-up of criteria. The matrix is

merely an aid to reaching a final consensual decision. Establishing cut-off points would not be theoretically logical in any event because: (a) some of the criteria depend on the availability of external sources (criteria 11 and 12), or having by-proxy information (criteria 8); (b) not fulfilling certain criteria does not erode credibility, for instance, not having sequels (criteria 5), a clinical diagnosis (criteria 6), or persistent personality changes (criteria 10); and, (c) the conceptual weight of each of the 14 criteria is too dissimilar for a simple sum-up.⁷ The global assessment of credibility was coded in one of the four categories proposed in the IP and adopted by the SEC. The SEC was filled in for each case according to the data obtained in clinical interviews, psychometric test and external documentation.

Statistical Analysis

In addition to descriptive statistics, a Chi-square test was used to assess the differences in the distribution of the three categories of global assessment of credibility, (maximum consistency, highly consistent, and consistent) in relation to gender, age at the time of forensic evaluation and period of detention. The level of significance was set at $p < 0.05$. All the analyses were performed using the Statistical Package for Social Sciences (SPSS 17.0).

Results

Description of the study population

The socio-demographic and socio-political characteristics of the sample are detailed in Table 4. Essentially, the typical examinee is a man (58%) or a woman (42%) between 21 and 30 years of age when detained (69%), with university studies (53%),

ⁱ A copy of the full SEC scale is available from the corresponding author.

Table 4: *Sociodemographic and socio-political characteristics*

Description of population (N = 45)		n (%)
Gender	Male	26 (58)
	Female	19 (42)
Age at the time of arrest	≤ 20	8 (17)
	21-30	31 (69)
	31-40	5 (11)
	≥ 41	1 (2)
Age in the moment of forensic evaluation	21-30	18 (40)
	31-40	13 (29)
	≥ 41	14 (31)
Educational Level	Basic Education	2 (4)
	Secondary studies	19 (42)
	University studies	24 (53)
Marital status	Single	13 (29)
	Cohabitation	22 (49)
	Married	6 (13)
	Separated	4 (9)
Children	Yes	7 (16)
	No	38 (84)
Militancy at the time of arrest	Armed Group Member or collaborator	2 (4)
	Nationalist Youth Group Member	17 (38)
	Member of Nationalist political group	19 (42)
	Member of non-nationalist Social Group or non-specified militancy	6 (13)
	No link with activism or militancy	1 (2)
Security body responsible for the arrest and interrogation	Guardia Civil	24 (53)
	Policía Nacional	14 (31)
	Ertzaintza	7 (15)
Days under Incomunicado detention	1	2 (4)
	3	14 (31)
	4	2 (4)
	5	24 (53)
	10	3 (7)
Further Measures	Freedom Without Charges	4 (9)
	Freedom with Charges	4 (9)
	Pre-trial imprisonment	37 (82)
Year of Detention	Before 1998	9 (20)
	1998-2002	12 (27)
	2003-2007	7 (16)
	2008 or after	17 (38)
Time between arrest and Forensic assessment	Less than 1 year	4 (9)
	Between 1 and 2 years	9 (20)
	Between 2 and 5 years	6 (13)
	Between 6 and 10 years	15 (33)
	11 or more years	11 (24)

married or in a joint household situation (62%), with no children. He or she is a member of a nationalist political or social group (80%) with strong collaborative links with the Basque political independence project through militancy (protests or political actions, social mobilization, solidarity and/or support of political prisoners or their relatives, etc.). About half (53%) were arrested by the 'Guardia Civil' and were held in incommunicado detention of five days duration and 82% of the subjects were transferred to prison to await trial. The forensic assessment using the IP is generally carried out, on average, between five and 10 years after incommunicado detention.

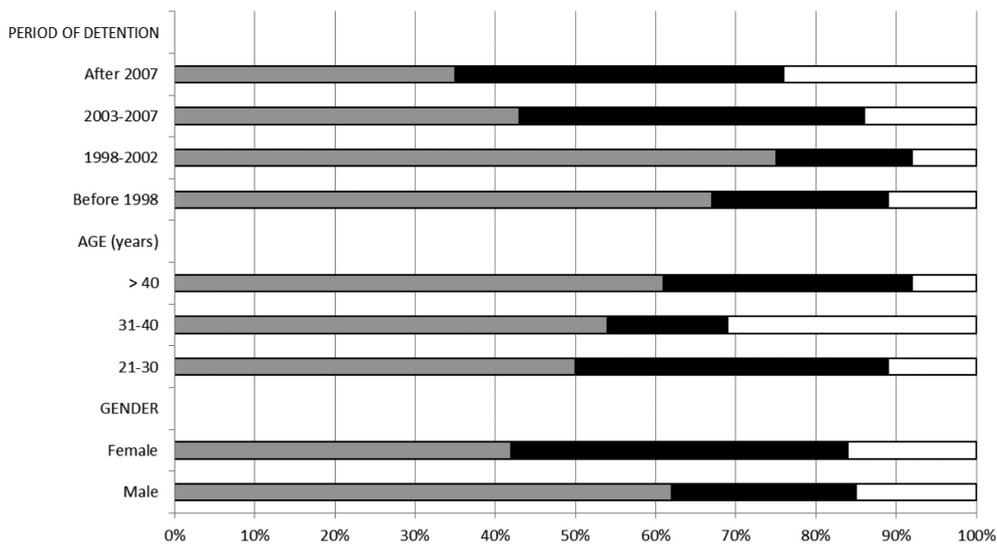
Credibility assessment and consistency of allegations of torture

The data about overall level of credibility and about each criteria of the SEC can be found in Table 5. About half of the examinees received the highest level of credibility; a third was considered 'Highly Consistent' and 15% 'Consistent'. None of the cases were considered 'Inconsistent'. The criteria that most contributed to the overall decision were: the internal consistency in the description of alleged torture (criteria 1); psychological/psychiatric evaluation, including consistency between narrative, emotions and clinical symptoms (criteria 3 and 4); psychological and functional changes and long-term sequelae after torture (criteria 2, 5

Table 5: *Global level of credibility and Level of consistency by credibility criteria*

Items	Maximum consistency	Highly consistent	Consistent	Not consistent
	N (%)	N (%)	N (%)	N (%)
Global level of credibility	24 (53)	14 (31)	7 (16)	0
[1] Torture allegation	16 (36)	18 (40)	11 (24)	0
[2] Expected Psychological Reaction	11 (24)	23 (51)	11 (24)	0
[3] Emotions-facts consistency	11 (24)	24 (53)	8 (18)	2 (4)
[4] Verbal-Nonverbal Consistency	12 (27)	21 (47)	12 (27)	0
[9] Functional changes (work. family...)	12 (27)	19 (42)	14 (31)	0
[10] Persistent personality changes	10 (22)	20 (44)	15 (33)	0
Items	Yes	No	Not applicable	
	N (%)	N (%)	N (%)	
[5] Consistent sequels	41 (91)	0	4 (9)	
[7] Experts agreement	45 (100)	0		
[8] Facts contrasted with other informants (family, etc.)	10 (22)	35 (78)		
[11] Medical tests or evaluations	6 (13)		39 (87)	
[12] Medical assessments	6 (13)		39 (87)	
[13] Court sentence in favour of the examinee	1 (2)		44 (98)	
[14] Human Rights entity report	8 (18)	0	37 (82)	

Figure 1: Global level of credibility according to gender, age at the time of the evaluation and period of time in which arrest occurred



Representation of the percentage of each category of the Global Level of Credibility (maximum consistency, highly consistent; and consistent) in relation to socio-demographic characteristics (gender, age at time of evaluation and period of detention). The grey segment of each bar represents the percentage of “maximum consistency”; the black segment those considered “highly consistency”; and the white segment those considered as “consistent”.

and 6); and, concurrent agreement of experts (criteria 7). The external sources of data available to triangulate information were interviews with relatives or acquaintances (22%), cases previously collected by human rights organizations (18%), medical assessments (13%), medical tests done shortly after the detention (13%), and court sentences (2%). Detailed data for each of the 45 participants are available in the final report.⁸

We did not find significant differences in the level of credibility by gender, age or period of detention (see Figure 1).

Discussion

Documenting torture in Europe is a challenge. Torture is mostly based on psychological methods and methods that do not leave

visible external injuries. In addition, in some countries, as in Spain, official forensic examinations during detention do not follow the proper procedural safeguards.^{9,10} The absence of safeguards for the rights of detainees and the inactivity on the part of the courts with respect to the investigation and prosecution of torture-related crimes are also matters of concern.^{11,12}

Despite the development of the IP, few scientific studies have assessed its effectiveness with regard to the investigation and documentation of torture specifically regarding credibility analysis. In a pioneering study in Mexico,⁵ 39 cases were analyzed that allegedly used the IP, noting important deficiencies that precluded the effective documentation of torture.

The procedure in this study followed IP

standards and involved about 30 professionals (psychologists, psychiatrists and medical doctors) in a system of blind audits and peer review processes and contrasted information with external sources when available. Our work shows that, when applied by a multidisciplinary team of experts, the IP is an essential tool in the investigation of torture.

The IP as proof of evidence for judicial procedures

The IP puts a strong emphasis on credibility assessment and tries to fill the gap left by the lack of witnesses and physical findings by using, among other things, a rigorous, extensive and intensive psychiatric and psychometric assessment that has forensic probative value. This study shows the importance of the psychological assessment in the evaluation of allegations of torture, as well as the importance of the use of the SEC to evaluate credibility in a consistent manner. SEC is a tool that clearly enhances the IP in the assessment of allegations of ill-treatment and torture.

In the analysis of credibility, the items that contributed most to the global assessment were psychological, namely, expected psychological reaction, consistency between facts and emotions, consistency between verbal and nonverbal elements, functional changes and persistent personality changes temporally linked to the alleged events (Table 5). This is mainly due to two facts: (a) the methods of torture reported in the Basque Country leave no chronic physical sequels; and (b) the fact that a long time had generally elapsed between alleged torture and the IP evaluation. The blind use of psychometric tests was also an invaluable tool, complementing the clinical interview, especially the measures of impact on identity and human worldviews (see Part IV).

The usefulness of medical documenta-

tion as an external source of contrast and corroboration in the analysis of credibility was quite poor overall. The IP is not integrated to official medico-legal practice in Spain and forensic doctors do not use a formal protocol in line with the recommendations of the CPT.¹³ Finally, other external documentation that could be cross-checked, especially police and judicial records, was also deficient, largely due to the difficulties for human right groups in obtaining primary sources.

The findings demonstrate a high level of consistency between the allegations of torture and the result of the assessments made by the forensic experts trained in the IP. It can be concluded that there is ill-treatment and torture during *incommunicado* detention in Spain and that it is unlikely to be a matter of a few isolated cases.^{14,15} We have documented at least 45 cases using basic snowball sampling, and discarding many potential cases to adjust for socio-demographic variables according to the Latin Square procedure.

In contrast to statements made by the Spanish Government affirming that torture does not exist at all, the international institutions that have addressed the reliability of the allegations of police ill-treatment of people arrested under *incommunicado* detention have concluded that torture claims are credible. For example, after its visit to Spain in 2011,¹³ the Committee for the Prevention of Torture determined that the allegations of ill-treatment from 10 of the 11 people with whom they had had interviews were credible and consistent. Importantly, a recent court sentence absolved 40 young people who alleged torture during *incommunicado* detention, of belonging to ETA. The judges were surprised that none of the accused detained in France had made a self-incriminating statement, while most of

those detained by the Spanish police did. They also accepted the IP reports of some of the detainees presented in the trial as a forensic probe of ill-treatment and decided not to admit self-incriminating statements.

Limitations of the study

An official register of Basque people alleging torture during detention is being finalized. This will allow for a population-based study using random sampling to be carried out in the future, something that was not possible with respect to the current study which involved working with a convenience sample stratified by key socio-demographic variables. Selection bias and slight variations cannot be ruled out. However, the study does not claim to be epidemiological and provide an estimate of the prevalence of torture allegations among the thousands of Basque people that have undergone incommunicado detention during the last decade. Given the register under development, future studies by the same team will be able to do so.

Considering the poor official medico-forensic documentation and the deficient judicial investigation of torture conducted so far, it would be advisable to investigate allegations of torture using the IP, and more specifically, the SEC. Only then, would it be possible to get a real picture of the magnitude of the problem. To do this, it is mandatory to train professionals in the implementation of the IP in Spain. Likewise, we think that our procedure can provide ideas for other similar contexts in which allegations of torture or ill-treatment are disputed, and that it can help as a tool for the implementation of the IP when credibility is the core aspect to be assessed.

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Appendix A

Modified version of the Standard Evaluation Form for Credibility Assessment based on the IP.⁷

Criterion	Coded
1) Description of alleged torture (circumstances, type, methodology, duration, etc.) according to that described in previous reports from the same context by human rights organizations, international organizations, or entities associated with or recognized by United Nations agencies working on preventing or denouncing torture.	1. Maximum consistency 2. Highly consistent 3. Consistent with 4. Not consistent
2) Expected or typical psychological reactions to extreme stress, within the cultural and social context of the examinee.	1. Maximum consistency 2. Highly consistent 3. Consistent with 4. Not consistent
3) Consistency between the description of events and the emotions with which these are expressed.	1. Maximum consistency 2. Highly consistent 3. Consistent with 4. Not consistent
4) Consistency between verbal and nonverbal communication in the statement of events.	1. Maximum consistency 2. Highly consistent 3. Consistent with 4. Not consistent
5) Medium/long term sequelae consistent with the alleged events.	1. Yes 2. No 3. Not applicable
6) At the time of the expert assessment, evaluatee's principal clinical diagnosis related to the events is consistent with allegations.	Write codes ICD-11
7) Coincidence of two forensic experts and/or an external evaluator regarding the credibility assessment.	1. Yes 2. No 3. Not applicable
8) Events and physical and psychological consequences independently contrasted with one or more other informant's testimony (family, friends, co-detainees or others). Consistent versions from different sources regarding the signs and symptoms before and after the events and the hypothetical sequelae.	1. Yes 2. No 3. Not applicable
9) Functional changes (in work, studies, personal relationships, etc.) after the events described which are attributable to such events.	1. Maximum consistency 2. Highly consistent 3. Consistent with 4. Not consistent
10) Objective and verifiable personality changes that can be temporally associated with the alleged events.	1. Maximum consistency 2. Highly consistent 3. Consistent with 4. Not consistent

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| 11) Tests or medical reports (x-rays, blood tests, or other tests) which are consistent with the alleged events. | 1. Yes
2. No
3. Not applicable |
| 12) Previous medical or forensic assessments evidencing sequelae or injuries consistent with the events described. | 1. Yes
2. No
3. Not applicable |
| 13) Court sentence in favour of the examinee recognizing degrading treatment, ill-treatment, or torture during the arrest. | 1. Yes
2. No
3. Not applicable |
| 14) Case previously described in an independent human rights report. Congruency between sources. | 1. Yes
2. No
3. Not applicable |
| OVERALL LEVEL OF CREDIBILITY (According to the Istanbul Protocol and external sources of verification). | 1. Maximum consistency
2. Highly consistent
3. Consistent with
4. Not consistent |
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