

Protocol on medico-legal documentation of threats

Pau Pérez-Sales¹, Marie Brasholt², Olena Podolian³, Yulia Honchar⁴, Ergun Cakal⁵ and Elna Søndergaard⁶

Key points of interest

- This Protocol summarises the relevant conceptual (health and legal) factors regarding threats as a method of coercion and it outlines an interview protocol for eliciting and assessing information from persons to whom coercive threats have been made.
- This Protocol complements the Istanbul Protocol when documentation of threats is required.

Abstract

Introduction. The use of threats remains prevalent in law enforcement practices in many parts of the world. In studies with torture survivors, credible and immediate threats have been considered a distinctly harmful method of torture. Notwithstanding this prevalence, there is a considerable degree of difficulty in legally substantiating and establishing harms

produced by threatening acts. It is also generally difficult to clearly identify the harms that go beyond the fear and stress inherent (therefore not unlawful) in law enforcement practices. We present a Protocol on Medico-Legal Documentation of Threats. The aim of the Protocol is to improve documentation and assessment of harms so that stronger legal claims can be submitted to local and international complaints mechanisms.

Methods. The Protocol has been developed based on a methodology initiated by the Public Committee against Torture in Israel (PCATI), REDRESS and the DIGNITY - Danish Institute against Torture (DIGNITY) involving: compilation and review of health and legal knowledge on threats; initial drafting by the lead author; discussion among the members of the International Expert Group on Psychological Torture; pilot-testing in Ukraine by local NGO Forpost; adjustments were made according to the results of the pilot study.

Results. We present the final Protocol and a Quick Interviewing Guide. This Protocol is cognisant of the significance of the specific social, cultural, and political contexts in which threats are made and might be subjected to adaptations to specific contexts. We hope that it will improve the documentation of threats as a torture method or as part of a torturing environment, as well as inform efforts on their prevention more broadly.

1) MD, PhD, Psychiatrist, Clinical Director at SiRa Center (Madrid), Editor in Chief.

Correspondence to: pauperez@runbox.com

2) Senior medical officer. Dignity. Copenhagen.

3) Psychologist. FORPOST. Kiev.

4) Legal Advisor. FORPOST. Kiev.

5) PhD Fellow. University of Copenhagen.

6) Senior Legal Advisor. Dignity. Copenhagen.

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Introduction

This Protocol on Medico-Legal Documentation of Threats (hereafter “the Protocol”) originates from a joint project regarding documentation of psychological torture initiated by the Public Committee against Torture in Israel (PCATI), REDRESS and the Danish Institute Against Torture (DIGNITY) in 2015 after the Copenhagen Conference on Psychological Torture. The project is a vehicle to establish a common understanding between health and legal professions as to how to ensure the most accurate documentation of torture.

Building on the Istanbul Protocol (IP) and experience among the authors, the aim of this Protocol is to improve medico-legal documentation of threats as torture or ill-treatment so that – inter alia – legal claims submitted to courts and complaints mechanisms can be better corroborated by medical evidence. This Protocol focuses mainly on threats used in law enforcement, namely by the police and other officials during policing, arrest, interrogation, and detention.

Although it can be used as a stand-alone tool, the Protocol should be better viewed as a supplement to the IP, with specific guideline on how to document threats when this is allegedly the main or a very significant torture method. Therefore, some questions related to describing the events might overlap with those of the IP.

The generic content of threats as described in this Protocol should be assessed in light of the socio-cultural, legal, and political context of that country and person. The context will determine the factual circumstances of each case.

The United Nations *Convention against Torture and Other Cruel, Inhuman or Degrading*

Treatment or Punishment (UNCAT) recognizes and prohibits threats as a method of torture and ill-treatment (articles 1 and 16). There is neither a universally accepted definition of a threat nor an authoritative list of what constitutes a threatening act which violate the prohibition of torture and ill-treatment. The IP, however, mentions various examples, including among others threats of death, harm to family, further torture, imprisonment, attack by animals, and verbal sexual threats.

Methodology

The Protocol has been developed based on an interdisciplinary methodology developed by DIGNITY - Danish Institute against Torture, Public Committee Against Torture in Israel (PCATI) and REDRESS involving the following steps: compilation and review of health and legal knowledge on threats; initial drafting by the lead author; discussion among the members of the International Expert Group on Psychological Torture¹, and pilot-testing (cf. Søndergaard et al. 2019). This follows the same methodology as the protocols on sleep deprivation (Pérez-Sales et al. 2019) and solitary confinement (this issue) produced by the same authors.

The pilot-testing of this Protocol, which was planned to take place in Ukraine from November 2021 - May 2022, was undertaken by Forpost, an organisation working with victims of torture or other forms of violence, and supported by DIGNITY. Both organisations developed an informed consent form, as well as

1 The group includes the following experts and organizations in addition to the authors of this Protocol: Nora Sveaass, Nimisha Patel, Brock Chisholm, Ahmed Benasr, REDRESS (Rupert Skilbeck and Chris Esdaile), Freedom from Torture (Angela Burnett and Emily Rowe), IRCT (Asger Kjærnum), and University of Essex (Carla Ferstman).

specific inclusion criteria to be used in the selection of cases. Inclusion criteria included (a) the alleged victim had been subjected to threats, as per the definition adopted by the Protocol, and that threats were an important aspect of the torture; (b) the acts occurred no later than three years ago; (c) the case occurred within a criminal law setting; (d) the case involved an alleged victim above the age of 18; and, (e) the person was able and willing to provide informed consent to participate in an interview. The cases were to be selected by Forpost among its clients and within its referral network that included two partner organisations (SICH and Alliance of Ukrainian Unity). It was planned to test the Protocol on a total of ten cases; initially on six cases and then after an evaluation of the first testing, to use the Protocol on four more cases.

Three cases were selected for interviews to be conducted in November - December 2021. The cases related to persons who had been detained and received threats during police interrogation. Subsequently, they had been released from detention. In one case the threats continued after release from detention.

The three persons selected (one woman and two men) were middle age (25 to 37 years-old). The plan to select more cases was abandoned due to the outbreak of the war in Ukraine in late February. However, Forpost continues to use the Protocol to document threats and at the time of writing, the organisation is preparing two court submissions regarding threats.

The three interviews were conducted jointly by a lawyer and a psychologist using the Protocol. They wrote an analysis of the implementation of the Protocol in each case.

The results of the pilot phase showed that: 1) using the same tool for documentation of threats created a common understanding of the matter among the lawyer and the psychol-

ogist that also facilitated better collaboration about the specific case; 2) there was a general recognition that the police practice of using threats should not be perceived as a normal procedure; 3) for the lawyer, using the Protocol created a more solid case and facilitated collecting evidence that would not have been considered otherwise; and 4) from the alleged victim's perspective, participation in the interview made the person understand that threats might violate his/her rights and should not be perceived as a "private matter" to be managed with by the person alone.

The pilot phase also gave the following results specifically regarding the contents and structure of the Protocol: (1) practitioners would prefer a practically oriented Protocol; (2) it should be emphasized that the Protocol's questions supplement the IP rather than substitute parts of it; (3) the purpose of each section of the Protocol should be made more clear; (4) the Protocol should state explicitly that the interviewer is not required to seek answers for each question, but should rather use the Protocol as a general guideline for the interview; (5) clinical experience is essential for parts of the Protocol; and (6) the psychological and psychiatric sections of the Protocol should illustrate to the extent possible the causal links between the acts and the consequences.

Two sections follow: I. Conceptual and Legal and Medical/Psychological Considerations; and II. The Protocol itself.

I. Conceptual and Legal and Medical/Psychological Considerations

This section provides a summary of the conceptual, legal, and medical aspects of threats, specifically concerning their nature and consequences. It draws substantially from two more expansive articles (Pérez-Sales, 2021 and Cakal 2021).

(1) Conceptual aspects

The following section details the definition of threats and its three key elements: 1. Nature; 2. Purpose; and 3. Credibility.

A threat, in brief, sends a message that danger is coming, and it might subsequently evoke intense aversive emotions that might force persons to act against their will. Thus, threats have a sender and a receiver and must be understood as interactive and relational. We can define threats as *“the explicit or implicit expression of intentionally harming someone, in order to coerce to change opinions, intentions, or behaviours or to punish a person, through the production of mental suffering, usually intense fear and anxiety”* (Pérez-Sales, 2021).

1. Nature: Threats might be linked to announce physical sufferings (e.g., “Nobody has survived without water”, “We will beat you and your son”) or be linked to psychological sufferings through manipulation of expectations, cognitions, and emotions (e.g., “We might detain your wife and kids”). There is a unique subjective element in how specific content affects each person depending on past and present personal, cultural, and sociological elements.

To describe the nature of a threat we might consider four elements:

a. Directness and contextuality: The human brain processes a direct threat (e.g., a gun pointing at your head) and a contextual threat (e.g., a blood spatter on an interrogation room left unwashed) differently. Fear related to context does not need to be rational or conscious, as the human brain processes contextual information automatically. The person might recall an environment as threatening, without being able to detail the specific

elements that triggered fear or terror.

- b. Explicitness and implicitness:** Threats do not need to be overt. In other words, threats might be *explicit* (e.g., “We will kill you” “We will beat your family”) or *implicit* (e.g., “Your brother is in the university, isn’t he?”, “It is difficult to get insulin in this area”; “The authorities have never come for a visit here in years”, “We have all the time in the world”). Thus, threatening expressions must be analysed beyond what they literally indicate.
- c. Immediacy and delay:** Threats that are immediate produce mental suffering, but not exclusively. It is important to consider that threats which are *gradual* (increasing with non-compliance), *delayed* (the threat will be acted upon in the immediate future) or *remote* (permanent damage or death as an ultimate consequence in an ambiguous future) can also produce severe mental suffering. The idea that a threat to produce severe mental suffering must be immediate, as some jurisprudence suggests (Cakal, 2021) is thus only partially right. Gradual, delayed, or remote threats can also activate the anxiety and shame or guilt circuits and produce severe mental suffering and long-lasting physical and mental health damage.
- d. Predictability and unpredictability:** Predictability and perceived control have long been considered key elements in explaining the impact of torture experiences (Başoğlu et al., 2007). A threat is considered to be *predictable* when it is possible to anticipate when and how it will occur (e.g., facing day and night random interrogations versus interrogations in fixed days and times). There are different patterns of response towards predictable versus unpredictable threats, although both can produce high levels

of fear and anxiety. Predictable threats produce *phasic fear*: fear increases at the moment where pain or damage approaches. By contrast, unpredictable threats that can happen at any given time tend to produce *sustained levels of fear and anxiety*. Predictable threats are linked to (a) focused attention to the menace, (b) lack of attention to the surroundings, and (c) generalized fear. By contrast, unpredictable threats are linked to (a) general and sustained hyper-vigilance (b) attention to surroundings to detect signals of alarm, and (c) fear dependent on the detection of potential threatening cues. Furthermore, a predictable threat allows for developing coping strategies to face the threat and strategies for emotional regulation when the threat is close to happen. Both coping methods allow a sense of control that can sometimes mitigate the impact of the threat. On the opposite, unpredictable and unescapable threats will more likely produce mental defeat and depression (Pryce et al., 2011)

2. **Purpose:** Threats as communication messages pursue a purpose. There are two broad categories of purposes that should be taken into account here:
 - a. **Threats linked to compliance.** The threatening person focuses on their demands, and the person threatened focuses on the costs of compliance or non-compliance of the demands (e.g., giving information). An essential element here is the differential way that the sender of the threatening message as contrasted with their receiver perceive the threat.
 - b. **Punitive or discriminatory threats.** The main aim of threats is to produce

mental suffering through creating aversive cognitive and emotional states to produce short and/or long-term damage. Thus, the threats are unconditional to being compliant or not, and the purpose is to infringe mental pain in the person to whom the threats are made.

3. **Credibility of the threat:** As a relational construct, both if the threat is linked to compliance or if it is punitive or discriminatory, it is essential that the receiver perceives the threat as credible. Credibility highly depends on the particular interaction between the sender and the receiver. There are four key psychological elements and five key contextual elements related to the credibility of a threat to be considered in the forensic assessment:

Psychological elements

- a. **Proportional:** A threat is more credible when proportional. For instance, paradoxically, a very severe threat associated with a minimal demand tends to be incredible, "*I shall kill you if you do not try to sleep*" (Milburn, 1977). A threat that is proportional to the demand, tends to be more credible.
- b. **Irrationality:** A threat is perceived as more dangerous when there is a component of irrationality. If the person making the threat is out of control (or seems to be), it makes the menace more uncontrollable, dangerous and credible. This is part, for instance, of the good guy/bad guy threatening method.
- c. **Plausible:** A threat is more credible when the person explains the *plans and steps* that will follow to make it real, and they are seen as feasible. ("*We will take you in the evening to the XX military unit where they*

will deal with your case from now on”).

- d. Perceived result of compliance and non-compliance:** Credibility is also related to the perception that the menacing person will keep their word if the person is compliant. There is a lack of credibility if the person receiving the threat thinks that being compliant with demands will not mean relieving the threat. For example, if providing any kind of information will ultimately increase and not decrease pressure and threats. The threatened person fears that compliance will make things worst.

Contextual elements:

- a. Historical or political context,** including the evidence or the perception by the alleged victim that threats are being regularly used as a method of social control, punishment or discrimination in the place where the person is held.
- b. Context of impunity,** particularly in relation to the political costs of making the threats real and the perception of permissibility and impunity among political, military, or judiciary authorities. Moreover, the likelihood that the ill-treatment is authorised and protected by the chain of command.
- c. Lack of legal safeguards,** including access to a lawyer during the process of detention. This is linked, among other elements, to the perception of an absence of the possibility of outside help or to have access to any legally regulated protective measures (i.e. Habeas Corpus).
- d. Conditions and place of detention:** Being held in a clandestine place of detention or being under detention for an indefinite time, apparently giving the detaining body full control over the

threatened person.

- e. Cumulative and chronic:** Research shows that threats are more effective when the person receiving the threat is physically, emotionally, or cognitively exhausted. Other physically exhausting torture methods (e.g., hunger, thirst, temperature) might therefore increase the impact of threats and should be considered.

(2) Legal Norms

This section provides an overview of the international legal framework relating to threats as torture and other forms of ill-treatment. It draws on international treaties and case law in assessing threats as prohibited acts. For a fuller discussion, refer to Cakal (2021).

International law, namely articles 1 and 16 of UNCAT, and article 7 of the *International Covenant on Civil and Political Rights* (ICCPR) prohibit threats when amounting to torture or other forms of ill-treatment. It is crucial to understand the scope and the interpretation of torture and ill-treatment in both conventions and to know when any acts might pass the threshold and be considered prohibited under international law. Documenting threats is no different; the main task for legal professionals is to assess whether the acts and factual circumstances present in the specific case fulfill the elements in the international definition of torture.

The legal qualification of threat(s) as torture or ill-treatment centers on assessing how the person who received the threat perceived it together with the context in which it was made (see above).

For the purpose of qualifying threats as acts of torture, the following four elements in the definition of torture need to be considered:

- a. Severe pain:** The assessment of the

impact of the threat(s) is further discussed in the medical section of the protocol (see below) and will be established by the medical and psychological assessment. Be aware that this can be cumulative.

- b. Intention:** The threat(s) need to be intentionally (i.e., deliberately) or (at least) recklessly made to create a threatening situation against the individual, either directly (explicit threats) or indirectly.
- c. Purpose:** Consider if a specific purpose can be identified, such as to coerce confessions, intimidation, punishment, or discrimination.
- d. Official capacity:** Some level of official involvement is required. Threats are often made by individuals with official capacity whose liability could be linked to the forms of liability mentioned in the definition of torture (article 1 UNCAT)².” Threats can also be made by fellow detainees or inmates, however, these will not satisfy the “official capacity” requirement unless the authorities knew or should have known about the situation and did not act adequately to remedy the situation and thus fall within liability of acquiescence, as stated in the definition of torture.

For the purpose of qualifying threats as other forms of ill-treatment, some level of official involvement is required. However, if one of the other three elements in the definition of torture is missing (i.e., severe suffering, intention or purpose), the act could still amount to other forms of ill-treatment if above the threshold. By way of example, an act causing severe

mental suffering but missing either *intention* or *purpose* would likely amount to cruel or inhuman treatment. Threats with official involvement infringing on human dignity (e.g., humiliation) but missing severe suffering would likely amount to degrading treatment.

There are examples of threats, such as mock executions, which would clearly fall afoul of the prohibition. However, there are some situations in which it may prove difficult to document that threats are above the threshold, particularly those which are implicitly made and those of a manipulative nature. In less overt threats we are compelled to appraise impact more carefully. Moreover, context matters, and the alleged victim should be considered in the specific context in which the threat is made. For instance, strong offensive language to a child in custody may be sufficient whereas it may not be in the context of a maximum-security adult prison.

Several cases from the European region provide useful illustrations of when threats have been considered qualifying as torture or ill-treatment. The first, the *Greek Case* at the European Commission of Human Rights (ECommHR) is arguably the first international case which identified non-physical torture to include: “mock executions and threats of death, various humiliating acts and threats of reprisals against a detainee’s family” (ECommHR, 1969, §186). The European Court of Human Rights (ECHR) further articulated its position on threats in *Campbell and Cosans v. United Kingdom* (ECHR, 1982, §26) where it found that: “provided it is sufficiently real and immediate, a mere threat of conduct prohibited by Article 3 [ECHR] may itself be in conflict with that provision. Thus, it established the rule that to threaten an individual with torture might in some circumstances constitute at least ‘inhuman treatment’” (ECHR, *El Masri v The Former Yugoslav Republic of*

2 “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”.

Macedonia (where the applicant was threatened with a gun), §202; ECHR, *Husayn (Abu Zubaydah) v Poland*, (where the applicant was threatened with ill-treatment), §501).

Gäfgen v. Germany somewhat advanced the discussion. There, the ECHR rendered torture “the real and immediate threats of deliberate and imminent ill-treatment ... [as having caused] considerable fear, anguish and mental suffering” (§103), and considered it noteworthy that the threat “was not a spontaneous act but was premeditated and calculated in a deliberate and intentional manner” (§104). Furthermore, the state of “particular vulnerability and constraint” (the applicant was handcuffed in the interrogation room) and the “atmosphere of heightened tension and emotions” in which the threat took place (the police were under pressure to locate the whereabouts of a kidnapped child) (§106) was also an explicit factor in the Court’s assessment (§§80-81). The Court ultimately prescribed that whether a threat of physical torture amounted to psychological ill-treatment depended on the individual circumstances of a case, primarily “the severity of the pressure exerted and the intensity of the mental suffering caused” (§108). The Court in *Gäfgen v. Germany* ultimately found the violation to amount to inhuman treatment.

The requirement of *real danger* also emerges as a central criterion when surveying Inter-American jurisprudence, where “real danger of physical harm” is held to amount to psychological torture (*Baldeón-García v. Peru*, §119, citing *Maritza Urrutia; Cantoral-Benavides*; see also *Tibi v. Ecuador*, §147).

To conclude on the case law, it is worth noting that courts have found the following categories of threats to violate the prohibition of torture and ill-treatment: threats to life (including non-verbal threats such as a display of torture tools and mock executions); threats to inflict violence; threats to family members;

and, being forced to witness torture, an execution or enforced disappearance.

(3) Medical/psychological considerations

This section will provide an overview of the existing knowledge about medical and psychological aspects of threats with the aim of providing the reader with background knowledge to be used when documenting threats as potential torture. This section draws substantially from a fuller discussion elsewhere (Pérez-Sales, 2021).

Just like when assessing other torture methods, when documenting threats, it is important to understand two different aspects: the method itself and its consequences.

Fear and anxiety are the biological spontaneous mental states that arise as response to a threat. There is a certain confusion resulting from the interchangeable use of these two terms, but most authors propose that the mental state of *fear* be used to describe feelings that occur when the source of harm, the threat, is either immediate or imminent, whereas *anxiety* is used to describe the mental state that occurs when the source of harm is distant in space or time (LeDoux & Pine, 2016). Both fear and anxiety can appear in front of certain and uncertain stimulus. In fact, it has been proposed that *fear of the unknown* may be the fundamental fear in humans and the origin of all other fears (Carleton, 2016). The two conditions are related to different structures and networks of the brain (Gullone et al., 2000; LeDoux 2014, 2020). Basically, fear has its neural nucleus in the amygdala and anxiety in the brain stem. Both interact with the pre-frontal cortex (conscious process) and memory (identification of past instances of danger).

It is often assumed that “it is normal” to be anxious and, for some experts, it does not qualify for “severe mental suffering”. This is a misconception. While it is a normal element

of life to experience moderate levels of anxiety, anxiety that is persistent, seemingly uncontrollable, and overwhelming produces severe suffering and can be extremely disabling.

When documenting and assessing threats as torture, it is important to be aware of the following³:

- a. Fear and anxiety have both physiological and psychological components. Thus, the *conscious* experience of fear or anxiety (what the person “feels”) depends on a set of interacting processes including body response and sensory perception and their resulting emotions, but also on memory, associated feelings and coping mechanisms. It is in the interplay of present and past, and depending on the bodily sensations and the interpretation that the person does, that fear and anxiety appear in the conscious brain. Therefore, a threat will not result in the same reaction in all individuals.
- b. Some individuals are more susceptible to strong fear and anxiety responses than others.
- c. Threats can be presented subliminally (i.e., without the conscious awareness of the person being threatened) *and may still elicit a physiological response* even if the person is unaware of the threat and does not have feelings of fear (LeDoux, 2020; Mertens & Engelhard, 2020). Thus, threats can operate in the background, and the alleged victim might have a bodily reaction without being aware of the reason.
- d. The body has a system of inner receptors that informs the person of negative internal bodily states. For instance, an inner receptor in the heart informs us when the heart is beating too fast. This is how the human being is aware of bodily inner states (hunger, fever, urge to urinate or dyspnea among many others). Perceptions of threats may come from changes in these inner receptors that trigger an alarm in the conscious mind. But there is also the opposite: the perception of a threat might go down from the brain to the receptors and elicit an alarm response that, in turn, potentiates the anxiety and fear response in a *loop process*. A notable example is breathlessness. Experimental evidence shows that just the threat of being submitted to asphyxia elicits a bodily reaction similar to what would be seen if asphyxia actually happened and produces breathlessness. Dry or wet asphyxia are methods of psychological torture in that they trigger this *loop* reaction: fear-breathlessness-fear-more breathlessness.
- e. Threats have a cumulative effect, especially when chronic or combined with other torture methods. There is research, for instance, linking sleep deprivation and the impact of threats (Feng et al., 2018; Tempesta et al., 2020).
- f. Numerous psychophysiological methods to measure body responses to fear and anxiety have been developed (from polygraphs to thermal cameras or special EEG procedures), but so far, they have shown only a low to moderate correlation with the subjective experience of fear. Anxiety is also generally difficult to detect and measure. Psychophysiological methods currently have no place in the forensic documentation of threats as a torture method.

3 The conceptual elaboration of these aspects including academic references can be found elsewhere (Pérez-Sales, 2021).

II. Protocol

This Protocol should be used as a supplement to the IP when specific documentation of threats is required.

It is designed to be used by lawyers and health professionals during interviews in a detention facility or after release. While some information in this Protocol may be collected by both health and legal professionals, some sections of the Protocol require specific clinical qualifications. An organization may consider whether to train staff so that they can be qualified to ask specific questions outside their usual professional skill set. However, this approach has its limitations and should always be guided by the principle of doing-no-harm.

When assessing threats, combined or cumulative effects of the general detention and interrogation context and the various methods used besides threats are of enormous importance. Ill-treatment and torture are often not based on single isolated techniques (which may or may not be damaging if considered one by one) but are the result of the combined interaction of methods or their accumulation in time. Thus, threats are often not an isolated element but part of a wider context that must be also assessed in the interview (see below). Thus, if general information as captured by the IP has already been documented, simply proceed with this Protocol. If not, document the overall context and conditions of the situation in which threats took place following IP guidelines.

The following key aspects of the context should be highlighted in the assessment:

a. Importance of time – Threats over a long period of time: The Protocol is used to assess the consequences of threats after an interval of time following the pertinent event(s). It can be days but more often the interview is undertaken weeks or months after the event(s).

Furthermore, threats can take place over a period of months or years. For instance, a human rights defender may be receiving threats from State actors over several decades. In documenting the case, the evaluator will analyse and decide which is the best approach to take:

- a. Analyse the *main threats* that have been constant over the course of years.
- b. Analyse the *threats by time periods* corresponding to different phases of the person's life.
- c. Analyse threats *by relevant actors* or threatening agents.

In each of these three scenarios, the protocol can be used by adapting the questions to the strategy chosen to best reflect the evolution of threats over time and the combined and cumulative effect.

b. Torturing environment: Threats are usually part of a broad torturing environment. A *torturing environment*, in the context of torture, is defined as “a set of conditions or practices that obliterate the control and will of a person and that compromise the self” (Pérez-Sales, 2017). Examples of elements of a torturing environment are conditions of detention, sleep deprivation, verbal humiliation, deprivation of water/food intake and/or sensory deprivation (e.g., through blindfolding).

c. **Context:** Each country has its specific political and local context, and each detaining institution has its specificities regarding methods. In some contexts, threats may be systematic and last over time, even for years, usually with the aim of intimidation for political purposes (e.g. social leaders, human rights defenders, opposition politicians, etc). The context, then, might also change with time. This should be taken into consideration when applying and interpreting the Protocol, specially to analyse the nature and credibility of the threats.

The Protocol consists of the following six sections:

1. Subjective experience;
2. Medical and psychological consequences;
3. Description of environment;
4. Psychosocial history;
5. Credibility of threats; and
6. Legal assessment.

As the Protocol builds on the IP, it is presumed that informed consent has been obtained and all the ethical requirements of Annex I of the IP have been fulfilled.

Section 1: Subjective experience

This section aims to describe the experience in the person's own words, before introducing specific closed questions in the following sections. Please collect this initial description of events as verbatim as possible.

If the threats have been over a long period of time, consider the best strategy: Analyse the main threats that have been constant over the course of years; analyse the threats by time periods corresponding to different phases of the person's life; or analyse threats by relevant actors or threatening agents.

Both for short term or chronic threats, consider the following questions as a memory aid:

- What were the main threats? Can you provide details about them?
- Who made the threat? In which context or circumstances?
- Which threat affected you the most?

Use the list below as an aid for additional questions during the interview, but not as a questionnaire to be followed to the letter. Please collect responses to your questions as verbatim as possible:

- Did the threat refer to an action that would take place *immediately*?
- Did the person expect or predict the threat and *could be prepared* or have a way to face or cope with it?
- Did the person consider that even if being compliant, there were signs that the alleged perpetrator *would go on with the threat*?

- What did the person think that the alleged perpetrator wanted to achieve with these threats? Which was the alleged *purpose*? (E.g., obtaining information/confession, intimidation, punishment, discrimination).
- How did the alleged victim think that these elements affected them or persons around them? Why?

Please, use the following categories to detail the nature of the threat and whether it was explicit or deduced. Note that these examples are provided only as suggestions of severe threats. They are not meant to be an exhaustive checklist and you might prefer to use a list built for the specific situation of the alleged victim.

- a. Threats against the person.** Note whether the person was threatened with
 - Permanent physical damage or death
 - Severe physical or psychological pain or acts that would produce severe suffering, including torture
 - Prolonged or indefinite detention
 - False charges that would imply an accusation of serious crimes
 - Non-compliance with legal safeguards (i.e., call to family, legal counsel, medical care)
 - Elements that produce mental suffering through deep humiliation and shame, including
 - Threats to use relevant elements of identity in a denigrating, shameful or humiliating way (e.g., ethnic, religious, or political identity)
 - Threats to use cultural taboos relevant to the person (sexuality, food, dressing, prayers, or others)
 - Threats to being exposed or denigrated based on personal characteristics or vulnerabilities (e.g., gender or sexual orientation, physical characteristics, disabilities...)
 - Submission to situations of impossible choice (i.e., forced to harm others)
 - Others (explain)
- b. Threats [communicated to the person] to harm others** including family members, friends, or other inmates
- c. Threats [communicated to the person] to harm property, social standing, livelihood** etc. (Please note if there is use of personal information is of a targeted nature to the alleged victim based on specific knowledge. This is in contrast to general threats where there may not be specific knowledge about the individual.)
- d. Unspecific threats.** Elements that foster fear of the unknown. Including but not limited to the following examples:
 - Darkness, empty rooms, cultural or physical isolation
 - No information – Endless waiting time – Unknown legal status
 - Ambiguous threats that suggest for instance death, pain or unknown but severe consequences (“Better talk and avoid what you have heard from others”; “You will regret what you said”; “The worst is to come”)

Section 2. Medical and psychological consequences

Threats produce negative cognitions and emotions that produce mental suffering. These elements must be explored in order to show the inner logic and causal links between threats and suffering. The following section is to be completed by clinicians only, although basic information can be collected by legal professionals if necessary.

The following issues and questions can assist in making a standard clinical assessment. You do not need to follow them as if it was a questionnaire.

a. Cognitions – thoughts. Explore what came to the mind of the person when they were threatened. Try to reproduce the reasoning from the beginning. Explore if the person

1. Tried to block any reasoning and not think, regardless of whether the person managed or not (coping with threats through Thought Suppression)
2. Tried to keep calm by finding a logic (coping with threats through Reasoning)
3. Was again and again having the same thoughts that ended up being useless (Threats provoking constant Ruminations)

b. Feeling in control.

1. Explore if, in overall, the person felt in control most of the time during the situation or felt like losing control, being defenceless or even giving up (*breaking point*).
2. Explore feelings of helplessness (“I am in their hands, nobody will help”), powerlessness (“There is nothing I can do”) or hopelessness (“There is no hope whatsoever”).
3. Try to determine together the *breaking point* (feeling of being defeated or giving up to any resistance). If that happened, which were the reasons for this feeling.

The following sections are to be completed by clinicians.

Undertake a mental health exploration of the immediate and short-term consequences of the threats. Suggestions of elements to explore:

- Symptoms of fear or anxiety during the events and immediately afterwards and their relation with the threats. Include bodily symptoms if relevant (trembling, shacking, hot and cold sensations...).
- Fear-related symptoms after the situation that can be linked to the characteristics of the threat (e.g., unsurmountable fear of knives or needles if these were used in the context of the threats).
- Unspecific fears that were not present before the situation, not necessarily related to the threat but that were triggered by it (for instance, fear of leaning out of a window or fear of climbing stairs even if this has nothing to do with what happened during the threats)
- Avoidance or conditioned behaviours related to the threats (e.g., avoid films that recall the events).

Explore also long-term symptoms that may include:

- Post-traumatic symptoms related to the threat, especially symptoms of avoidance and hyper vigilance. Collect, if possible, quotations and examples that suggest a causal relationship between threats and the symptoms, including but not limited to:
 - Flashbacks (context and contents)
 - Nightmares (contents and inner logic that the person gives to it)
 - Ruminative thinking
 - Triggering of avoidant behaviours
 - Triggering of emotional fainting / dissociative symptoms
 - Triggering of alarm response or hyperactivity
 - Triggering of panic attacks
 - Contents of delusional symptoms

With all the information collected above, determine if there is one or more of the following categories of consequences:

- a. Sustained anxiety responses including panic attacks
- b. Fear-related symptoms and avoidant behaviours that can be logically linked to the threatening situation
- c. PTSD or Complex PTSD related to the threat, especially symptoms of avoidance and hyper vigilance
- d. Long-term feelings of shame and guilt. Explore suicide ideas linked to these feelings.
- e. Other relevant syndromes (depressive disorder; dissociative or psychotic symptoms) that can be attributed totally or partially to the threats

In all cases, collect verbatim examples that show the connection between contents of the threats and these clinical syndromes.

Formulate a diagnosis according to international psychiatric classifications if this is possible.

(2) Non-clinical consequences

Threats can also have non-clinical consequences, specially in cases of chronic threats. Consider exploring the following:

- a. Changes in cognitions, emotions or attitudes related to activities that the person links to the threats (i.e political or professional activity in activists or human rights defenders). Loss of meaning of their role or activity.
- b. Impact on the relationship with relatives and beloved ones. Impact on parenting, leisure activities and others.
- c. Changes in life priorities. Impact on network of social relationships and significant others.
- d. Changes on worldviews, feelings of security, view of human beings.
- e. Changes in self-esteem and personal sense of value

Section 3. Description of environment

The purpose here is to comprehensively describe the elements of the environment and how the threats interacted with these elements.

Provide a structured description of the main environments in which the person to whom the threats were made was held following a temporal line with a focus on elements that were intimidating, fostered loss of control, or created an atmosphere of fear, including, for instance, the place of initial detention, the mode of transport, and the cell or place of interrogation. Consider drawings and other ways to improve recollection of details.

An abridged version of Section 1 of the Torturing Environment Scale can be used here. The purpose is to describe the conditions in which the threats happened. Tick if any of these apply (Table 1).

Chronic threats. When assessing Chronic or sustained threats, consider a description of how a stressful environment has been created in the person's day-to-day life, including family, professional and community aspects.

Section 4. Psychosocial history⁴

This section is intended to assess the potential psychosocial vulnerabilities plausibly linked to the person's appraisal and reaction to the threat. It is to be completed by a clinician. The purpose is to briefly explore and analyse elements in the life of the person that are potentially relevant in understanding the impact of threats, especially experiences of early loss, trauma, or crisis.

Only describe issues that could help explain the impact of the threats, and do not make a full psychosocial history, as most elements will be unrelated to the purpose of the assessment.

If clinicians are unavailable, legal professionals may choose to ask an open-ended question: *Do you think that there is anything in your past that may explain why you reacted to the threat in the way you did?*

Table 1. Documentation of Torturing Environment		YES
1.	Inhuman conditions of detention according to international standards (e.g. cell size and conditions, overcrowding, lack of hygiene...)	
2.	Environmental conditions (Temperature, humidity, noise, darkness or others)	
3.	Attending basic needs: deprivation of food or liquids	
4.	Sleep deprivation or dysregulation	
5.	Manipulation of the sense of time	
6.	Deprivation of senses (i.e. blindfolds, earmuffs...)	
7.	Medical induction of altered states: use of psychotropic drugs, white noise, monochrome environments, sensory isolation or others	
8.	Other contextual manipulations (specify)	

The following is a list of potential elements to consider. It is focused on elements of vulnerability, although also elements of resilience can be explored and included. Adjust to the needs of the assessment as the list might be too exhaustive for an average report.

- Early childhood traumatic experiences suggesting an insecure or an avoidant attachment style.
- Experiences of trauma, crisis, or loss in adolescence or adulthood that can be logically connected with the fear and anxiety aroused by the situation under analysis.
- Past experiences connected with feelings of fear, terror, or loss of control. Also experiences connected with feelings of feeling in control in front of adversity.
- History of specific phobias (animals, height, blood, needles or others) that might be relevant to the situation assessed.

⁴ [Section IV (Psychosocial history) and VI (History/Psychological Assessment) of Annex IV of the IP

- History of anxiety-related disorders, specifically panic attacks or generalised anxiety disorder.
- Personality traits that are relevant to the impact of threats. Consider giving special consideration to⁵:
 1. Trait and state anxiety
 2. Locus of control under stressful situations
 3. Self-efficacy
 4. Tendency to suppress thoughts
 5. Intolerance to uncertainty
 6. Intolerance to ambiguity
- Worldviews that might impact on fear-processing (e.g., lack of confidence in human beings or institutions due to past experiences)

5 See description of each concept and detailed references in Perez-Sales (2021).

Section 5. Credibility of threats

This section is intended to collect information about what, from the subjective point of view of the person receiving the threat(s), made the threats credible. It is open to be conducted by both clinicians and legal professionals. The information assessed here is to directly inform the legal assessment in the subsequent section. Tick as appropriate (Table 2).

Table 2. Credibility of the threats		YES
1.	The alleged perpetrator seemed out of control and taking irrational decisions – everything seemed possible	
2.	The alleged perpetrator explained the plans and steps that would follow to make it real, and they are seen as feasible	
3.	The alleged perpetrator showed omnipotence and arbitrariness	
4.	The person <i>receiving the threat(s)</i> knew or was made aware of situations in which the threat was in fact carried out	
5.	The person <i>receiving the threat(s)</i> was forced to witness how the threat was carried out in other persons	
6.	Expected result: The person <i>receiving the threat(s)</i> believed that being compliant with the demand would not stop the threat	
7.	If the person says Yes to any of the above, collect verbatim examples if possible.	

Taking as point of departure the information provided in the interview and the knowledge of the context, the professional conducting the assessment can also consider indicators related to the assessment of intentionality and purpose. (Table 3).

Table 3. Intentionality and purpose of the threats.		YES
1.	There is a similar demonstrable pattern of strategies, behaviours, and procedures against other detainees	
2.	Observing the damage or suffering produced by the threats, no measures were taken that would plausibly have reduced that suffering	
3.	The threat is so severe that unintentionality is impossible	
4.	There is persistence, repetition, or prolongation of the threat over a long period of time	
5.	The alleged perpetrator explicitly expresses the intention to harm, humiliate and/or attack dignity in an unambiguous way	
6.	If the person conducting the assessment considers that any of the above happened, collect verbatim examples from the interview, if possible.	

Section 6. Legal assessment

This section is to be completed by legal professionals based on the information collected in the previous sections. This not to be completed together with the person to whom the threat was made. It is informed by the legal framework as outlined in the previous sections.

The legal qualification of threats (torture per Article 1 of the UNCAT, or other forms of ill-treatment per Article 16 of the UNCAT or below the threshold of Article 16 and not falling within the scope of the two provisions) would depend upon the specific circumstances of the case, including whether other forms of ill-treatment occurred or not. The below questions relate to the key elements to be analysed to distinguish torture and other forms of ill-treatment in the legal domain and are an aid for the legal classification of the case.

- a. Official involvement:** Do you have information that the threats were made by a person in an official capacity? Do you have information that the threats were made with the consent or acquiescence of a public official? Do you have information that such a person was somehow involved in the situation? (e.g., by consenting to the threat being made)
- b. Severe suffering:** Do you have documentation that the threat or its consequences were serious enough to amount to torture or ill-treatment? *The clinical assessment of the consequences as made above should be used here.*

1. Objective: What was the nature of the threats?

Note: It is helpful to refer back to the caselaw to appreciate that certain forms of threats are more readily found to be of a serious nature than others. These include but are not limited to threats to kill, torture, or rape the alleged victim or a relative.

2. Subjective: Did the person to whom the threat was made perceive/believe that the person making the threat was willing and able to act upon the threat?

Note: This is an assessment of the person's appraisal of the situation based on their understanding and knowledge of state practice, as informed by any of the following: vulnerabilities, previous experience, membership of a group at particular risk of torture, knowledge of historical patterns, strength of procedural safeguards, credibility and materialisation of threats (see section 5 above), and prospects for impunity.

3. Impact: Does the person report symptoms or has the clinician observed signs that indicate any physical or psychological consequences of the threat? Are they consistent with the threat? (See e.g., section 2 above).

- c. Intention:** Is there any information indicating that the threat was intentionally made? *Note: The question of intentionality is not necessarily linked to explicitness. It may be circumstantial particularly in the case of contextual or non-verbal threats.*
- d. Purpose:** Is there any information indicating that the threat was made for a particular purpose (such as punishment, intimidation, coercion, or discrimination)?
- e. Context:** What were the series of events and stressors present in the environment in which the threat was made?

Note: This alludes to the context and environment in which the threats were made. These circumstances would also help in inferring purpose and intent, if not already explicit (see e.g., section 3 above).

Overall assessment: Is there sufficient credible information at hand to establish that the threats fulfill the requirements set out by the legal definition of torture (Article 1) or fall within the scope of Article 16 (Cruel, inhuman or degrading treatment) of the UNCAT?

Final reflections

It goes without saying that the Protocol might have benefited from being pilot-tested on more individuals. As stated, this plan had to be abandoned due to the war in Ukraine. The Protocol is by no means a fixed document, and in relation to both the questions in the Protocol itself and the conceptual, legal and medical aspects, there is still a lot to be learned. We therefore hope that over time, experience can be collected from those who use the Protocol so that it can be continuously improved.

Annexes

- **Quick Guide:** Annex 1 provides a Quick Guide for Interview. It is a short version, simple, everything in a snapshot guide to the Threats Protocol. The recommendation is to apply the full protocol at the beginning until being confident on its usage, and then resort to the Quick Guide for Interview.
- **Complementary tools:** Annex 2 includes some psychometric instruments that measure specific psychological aspects closely related to vulnerability to or impact of threats. They are included for research purposes or for the forensic documentation of complex cases. Their use exceeds that of a standard threat assessment and are not recommended for regular use.

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Annex 1. Threats as Torture. Quick Interviewing Guide.

1. Fear and anxiety related to threats are enhanced by all other elements of a **torturing environment** involving attacks on cognitive or emotional functions. *Assess threats in the overall framework of the torturing environment and in particular in the interactions with other torturing situations.* Pay special attention to: (a) frightening or intimidating space (b) hunger-thirst and attacks to basic body functions (c) pain-producing conditions including life-threatening conditions (asphyxia...)
2. Ask openly about the **subjective experience** of threats in the alleged victim words: types, relevance, and impacts. Collect answers as verbatim as possible.
 - Who made the threats?
 - What were the main threats?
 - Which one affected the person more?
 - What is the subjective logic behind that?
 - Was it referred to an action that would take place immediately?
 - Could the person somehow prepare or cope?
 - Was there an expectation that the alleged perpetrator would go on and make it real?
 - How affected was the person during the period of torture and at the time of examination?

Chronic threats. When assessing Chronic or sustained threats, consider a description of how a stressful environment has been created in the person's day-to-day life, including family, professional and community aspects.

3. Vulnerabilities:

- Age, physical condition.
- Pay special attention to psychosocial history including experiences of trauma, crisis, or loss that can be logically connected to panic, fear and anxiety responses, and history of phobias.

4. Clinical impacts.

In all cases, collect verbatim examples that show the connection between contents of the threats and clinical symptoms. Assess:

- Sustained *anxiety* responses including panic attacks
- *Fear*-related symptoms and avoidant behaviours that can be logically linked to the threatening situation
- *Postrumatic symptoms* related to the threat, especially symptoms of avoidance and hyper vigilance
- Long-term *shame and guilt* feelings

- Other relevant diagnosis (*depressive disorder; dissociative or psychotic symptoms*) that can be attributed totally or partially to the threats

5. Non-clinical impacts. Threats can also have non-clinical consequences, specially in cases of chronic threats. Consider:

- Changes in cognitions, emotions or attitudes related to activities that the person links to the threats (i.e political or professional activity in activists or human rights defenders). Loss of meaning of their role or activity.
- Impact on the relationship with relatives and beloved ones. Impact on parenting, leisure activities and others.
- Changes in life priorities, worldviews, feelings of security, view of human beings.
- Changes in self-esteem and personal sense of value

6. Legal assessment (not part of the interview):

- Assess direct or indirect official involvement
- Severity of the threat in objective and subjective (alleged victim's perceptions) terms
- Intentionality and purpose of the threats (either explicit or implicit)

7. Credibility

- There is a demonstrable pattern or strategies verified in cases of other detainees
- Observing the damage produced by the threats, no measures were taken by the alleged perpetrator to reduce it
- Threat is so severe that unintentionally is not possible
- Persistence, repetition, or prolongation of the threat over a long period of time
- The alleged perpetrator explicitly expresses the determination to harm or attack dignity.
- The alleged perpetrator seemed out of control
- There was a detailed plan to make the threat happen
- The person was forced to see the threat acted upon others. Collect examples.

Annex 2. Additional questionnaires for experimental use.

The Protocol can be complemented with the following assessment tools.

- *Mental Pain Questionnaire* (Fava et al., 2019). The authors define *Mental suffering* as an intense anguish and despair of ‘feeling broken’, of being emotionally wounded, disconnected or hopeless. It is usually linked to experiences of loss and crisis, quite often with shameful or guilty thoughts, for which the person sees no solution and often thinks in suicide. It is not a clinical disorder, but a measure of psychological and mental pain. A tool linked to the same concept is the *Tolerance for mental pain scale* (Meerwijk et al., 2019)
- *Distress and Control Index; Fear and loss of control scale*: Basoglu suggests elaborating a list of potential torture methods and introducing a measure of distress and control (Başoğlu, 1999).
- *Claustrophobia Questionnaire*: is a 26-item structured questionnaire for the assessment of the fear and anxiety associated to being in closed places. It has been validated in normal and clinical populations. It has two subscales: Fear of Suffocation and Fear of Restriction. The fear subscale has shown to be a good predictor of panic attacks in normal population. There are no studies with survivors of torture. Scores higher than 50 for the overall scale, 27 for Fear of Suffocation, and 23 for Fear of Restriction are highly suggestive of claustrophobic clinical disorder (Radomsky et al., 2001).
- *Anxiety-Sensitivity Index*: is a 16-item questionnaire that measures a general tendency to have fear and anxiety responses in front of a threatening stimulus (Blais et al., 2001). It is associated with a persistent tendency to misinterpret certain bodily sensations catastrophically (anxiety sensitivity) and response with reactions of fear and alarm. It has been widely used in clinical and non-clinical populations. Its last version (ASI-3) has been validated in clinical and non-clinical samples in 5 countries (Taylor et al., 2007). It has 3 subscales: Physical, Cognitive, and Social Concerns.
- *Fear Survey Scale*: The Fear Survey Scale (FSS) is a comprehensive list of 106 items collected amongst the most frequent fears and phobias that appear in the general population (Tomlin et al., 1984). It might be useful as an adjunctive tool to explore comprehensively all possible phobias that a person had previous to torture, and eventually, new fears or phobias appeared and linked to it. (Tomlin, 1984).
- *Fear of Pain Questionnaire* is a measure of the Fear to Physical Pain. It has potential utility as an indicator of persons who have greater psychological suffering with threats. Since the first version, there have been different presentations. A recent 9-item short version, developed from the original 30-item questionnaire, offers strong psychometric properties (Mcneil et al., 2018). It has 3 subscales: Minor Pain, Severe Pain, and Medical Pain.
- *State-Trait Anxiety Inventory*: The State-Trait Anxiety Inventory is a 20-item measure of a general predisposition to anxiety. It is probably the most widely used measure of anxiety responses besides the Hamilton Anxiety Scale. It has been translated to around 30 languages and used in studies all over the

world. It is often included as a routine tool in the forensic assessment of survivors (Spielberg, 1968). However, in the analysis of psychological answer to threats, some evidence suggests that specific measures (like the Anxiety-Sensitivity Index or the Suffocation Fear Scale) might perform better than general measures as the STAI (McNally & Eke, 1996).

- *Feeling Broken or Destroyed Scale*: The concept of mental suffering has been applied to political context. Barber et al. (2016) applied the concept in a mixed-methods study with 68 Palestinian adults from different areas of the OpT. The instrument was then applied to a representative sample (n=1772) of adults. Mental suffering was conceptualized by participants as “feeling that one’s spirit morale and or future was broken or destroyed, and the person is in a situation of emotional and psychological exhaustion”.

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