Filed on behalf of the Claimant
Deponent: Önder Ozkalipci
First Witness Statement of Deponent
Dated: 11 January 2010

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Case No: CO/11949/2008

BETWEEN:-

THE QUEEN
(on the application of
MAYA EVANS)

Claimant

- and -

THE SECRETARY OF STATE FOR DEFENCE

Defendant

WITNESS STATEMENT OF
Dr Önder Özkalipci (MD, Forensic Physician)

I, Önder Özkalipci, Medical Director of the International Rehabilitation Council for Torture Victims (IRCT), Borgergade 13, 1022 Copenhagen, Denmark, WILL SAY AS FOLLOWS:

1. Insofar as the contents of this statement are within my knowledge, they are true; insofar as they are not within my knowledge, they are true to the best of my knowledge, information and belief. I am aware that my primary duty in giving this evidence is to the Court, to assist it to adjudicate the lawfulness of past and current UK Government policy.

The Purpose of this Witness Statement

2. I have been instructed by the Solicitors for the Claimant, to submit a statement setting out the standards of proper medical examination, visiting and interviewing of detainees on allegations of torture and ill-treatment, to enable the Court to adjudicate the lawfulness of the present policy of the UK Government to transfer all prisoners detained by it to the custody of the Afghan authorities and thereafter to carry out periodic visits to those facilities. I shall highlight to the Court the internationally recognised standards and principles of medical ethics as well as the practical considerations that must be taken account of when examining and interviewing detainees. I shall proceed to providing some remarks in relation to conduct of the interview and medical examination of prisoners held in Afghanistan.

Personal and Organisational History and Qualifications

3. My professional background is forensic medicine (MD, Forensic Physician). I have worked on the subject of torture for the past twenty years; since 2007 employed with the International Rehabilitation Council for Torture Victims (IRCT), and from August 2009 with the title of Medical Director.

4. I am co-author and coordinator of the *UN Manual on the Effective Investigation of Torture and Other Cruel Inhuman or Degrading Treatment or Punishment: the Istanbul Protocol* (**Exhibit OO1**). My academic work includes several articles and book chapters on torture, including *Medical Atlas on Torture* (2007). I have delivered presentations and trainings on the documentation of physical findings of torture for health and legal professionals in a broad range of countries including Mexico, Georgia, Serbia, Turkey, Uzbekistan, Israel, Kazakhstan, Zimbabwe and the Sudan (ref. Curriculum Vitae, **Exhibit OO2**).

5. The International Rehabilitation Council for Torture Victims (IRCT) is an independent international health professional organisation which promotes and supports the rehabilitation of torture survivors and works for the prevention of torture worldwide. The IRCT collaborates with rehabilitation centres and programmes throughout the world that are committed to eradicating torture and to assisting torture survivors and

their families. The IRCT works toward the vision of a world without torture. Specifically, the IRCT:

- raises awareness of the need for torture rehabilitation and encourage support for survivors;
- promotes the establishment of treatment facilities around the world;
- works for the prevention of torture;
- fights impunity for torturers and work to ensure the rights of torture victims;
- documents the problem of torture and collect results of research related to torture; and
- works to increase funding for rehabilitation centres, programmes and projects worldwide.

Recognised internationally for its work, the IRCT enjoys special consultative status with the Economic and Social Council of the United Nations and the UN Department of Public Information, and observer status with the Council of Europe and African Commission on Human and Peoples' Rights. The IRCT network today embraces 142 member rehabilitation centres and programmes in 73 countries and territories around the globe, providing support and hope for torture survivors.

6. The following aspects of IRCT's work may be of particular relevance to the Court:

Rehabilitation: The IRCT member centres employ a holistic service approach to address the needs of individual torture survivors as well as their affected family members and communities. The services include treatment of physical and mental disorders alongside psycho-social and legal support.

Medical documentation: The IRCT has over the past decade been increasingly engaged with the promotion of the value and use of high-quality medical documentation of torture as a means to combat impunity and ensure reparations for survivors of torture. Concrete activities embrace provision of training, incl. training-of-trainers, for health and legal professionals on physical and psychological sequelae of torture and medico-legal reporting according to internationally recognised standards (i.e. the Istanbul Protocol); gathering of medical forensic expertise including the establishment of a group of prominent international forensic experts; examination and

medical advice in relation to individual cases; advocacy among decision makers, state authorities, professional organisations and international bodies, as well as broader awareness raising efforts.

Conflict and post-conflict areas: Through its member centres the IRCT is present in many conflict-ridden areas all over the world, including the Sudan, Zimbabwe, and DRC. Since 2004 the IRCT has worked to provide direct assistance to Iraq's torture survivors and established in 2005 a full-scale rehabilitation centre in the city of Basra which offers rehabilitation services to torture survivors and trains Iraqi health and legal professionals on torture survivors' needs and rights. Similar attempts have been made in Afghanistan and a needs assessment survey among Afghan refugees has been carried out in collaboration with the Islamabad-based SACH centre. The survey addresses the levels of exposure to torture and trauma, present health status and functioning, needs and preferences for professional assistance in the coping process and the resulting health effects. The work has so far not materialised in establishment of local rehabilitation services because of infrastructure difficulties, lack of protection and security concerns even among well established NGOs in Afghanistan. SACH however continues to provide rehabilitation services to Afghan refugees in Pakistan transferred to the centre by the UN. The refugees have been subjected to torture by different factions in power or opposition groups in Afghanistan over the past 15 years or by the Pakistan authorities upon entry to Pakistan.

UK Policy in Afghanistan

7. I understand that, at present, all prisoners taken into British custody are handed over to the Afghan authorities at specific facilities, which are then visited by British forces at periodic intervals. I understand that, during such visits, prisoners are interviewed, albeit that some prisoners can go several months without being so interviewed. I also understand that such interviews are usually carried out away from the prisoners' cells, which are only very occasionally inspected, and are often conducted in the presence of prison guards. I further understand that two medical reports have been submitted as documentary evidence and that the remainder of the disclosure does not indicate that there was any subsequent or additional medical examination of other prisoners.

The UK's international obligations in respect of the prohibition of torture

8. The UK has very clear obligations regarding the absolute prohibition of torture, under the European Convention on Human Rights (ECHR), the UN Convention against Torture (UNCAT) and the International Covenant on Civil and Political Rights (ICCPR) and other important instruments such as the Standard Minimum Rules for the Treatment of Prisoners (SMRTP), the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment (Body of Principles on Detention) and the Basic Principles for the Treatment of Prisoners (BPTP). With regard to places of detention, guiding standards have also been developed e.g. by the European Committee for the Prevention of Torture (CPT). The standards for investigations of torture and medical documentation are set by the Istanbul Protocol, particularly in the Principles of Annex I as endorsed by the UN Human Rights Commission and the UN General Assembly and the principles of medical ethics, such as the Principles of Medical Ethics Relevant to the Role of Health Personnel Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Principles of Medical Ethics)

9. The absolute prohibition of torture includes the prevention of torture, investigation of all torture allegations and the holding accountable of perpetrators. The absolute prohibition of torture is also violated if a person is sent to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture (the principle of *non-refoulement*). The existence of monitoring mechanisms, such as regular inspections, procedural safeguards and proper medical examination procedures might, correctly carried out, aid the reduction of torture in places of detention, however they are still no guarantee that torture does not exist. In order to work towards the prevention of torture, proper monitoring mechanisms must be supplemented by other measures such as training and systematic review of interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to detention.

10. The methods I describe can only be effective if they are carried out according to the international standards of medical examinations and interviews such as the ones in the Istanbul Protocol, and the principles of medical ethics. Also, international

detention monitoring mechanisms, such as the CPT or organisations such as the International Committee of the Red Cross have developed detailed guidelines on inspection visits to places of detention that can serve as guiding standards. I exhibit to this statement, as **Exhibit OO3**, a document produced to me disclosed by the UK Government in these proceedings, which according to the manuscript note thereon was generated by the International Committee of the Red Cross. I endorse the principles therein.

11. I wish to state clearly that even with inspection and documentation procedures in place, torture might still exist and each case has to be evaluated carefully on an individual basis. If there is reason to believe that a person has been tortured or might be in danger of being subjected to torture, the detainee should be protected, not be transferred to the institution or transferred to a secure institution and the situation should be fully investigated. Investigation is important not only for the individual care of the tortured prisoner, it is essential so that perpetrators can be brought to justice, policy modified and the transfer of other, future, prisoners to the same authorities averted.

Inspection Procedure

12. As mentioned above there are detailed guidelines on proper inspection visits, which would go beyond the scope of this opinion to repeat in detail. However, I wish to point out to the Court some basic principles and general observations:

    a. Visits should be conducted by investigators, who are able to carry them out and follow them up in a professional way and who have certain tested procedural safeguards for their work. Visits to detention facilities by well-meaning people representing governmental or non-governmental institutions can be difficult, and, worse, can be counter-productive. When done by non-specialists they can cause more harm than good in a country that practices torture. It is essential that the inspection team is independent, impartial and multidisciplinary team. It should be constituted of legal experts and physicians. Further it should be given guaranteed periodic access to visit places of detention (Ref Nr 127 IP). Ideally, such access should be granted without prior notice of the visit. The team should be well-trained, including in

documenting torture and in working with victims of trauma, including torture. Furthermore, issues of gender and cultural background should be taken into consideration to ensure the detainee feels comfortable with the visit.

b. In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias or because of the apparent existence of a pattern of abuse, or for other substantial reasons, governments should ensure that investigations are undertaken through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators, the institutions or other agencies involved. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under the Principles of the Istanbul Protocol.

c. Great care should be applied not to put the detainees in danger. Detainees are in greater potential danger than persons who are not in custody. In medical ethics this principle is reiterated in the *primum non nocere* principle.

d. Detainees might have different reactions to different situations. In one situation, prisoners may put themselves in danger unwittingly by speaking out too rashly, thinking they are protected by the very presence of the "outside" investigator. This may not be the case. In other situations, investigators may come up against a "wall of silence", as detainees are far too intimidated to trust anyone, even when offered talks in private. If the fear of reprisals, justified or not, is too great, it may be necessary to interview all detainees in a given place of custody, so as not to pinpoint any specific person (Ref Nr 96 IP).

e. Investigators should arrange to have enough time and should observe and properly document all details including the physical conditions of the detention place, time frame, areas of the detention facility, names and condition of the persons visited and any other person present, as well as the

interview conditions. If possible photographs should be taken for documenting purposes.

Procedural Safeguards

13. One of the main procedural safeguards is that each detainee must be met in private. Police or other law enforcement officials should never be present in the interviewing or examination room. This procedural safeguard may be precluded only when, in the opinion of the interview or examining doctor, there is compelling evidence that the detainee poses a serious safety risk. In such cases, other persons assisting the doctor should not be affiliated with security or law enforcement personnel and should in all cases remain out of earshot (i.e. be only within visual contact) of the client. The evaluation of detainees should be conducted at a location that the interviewer deems most suitable. In some cases, it may be best to insist on evaluation at official medical facilities and not at the detention facility. In other cases, prisoners may prefer to be examined in the relative safety of their cell, if they feel the other premises may be under surveillance, for example. The best place will be dictated by many factors, but in all cases, investigators should ensure that prisoners are not forced into accepting a place they are not comfortable with (Ref Nr 123).

14. Another essential safeguard is the right of the detainee to access to basic heath care and to consult a doctor of his or her own choice. Medical examination should however never be conducted without the consent of the patient. Detainees themselves, their lawyer or relatives, also have the right to request a medical evaluation to seek evidence of torture and ill-treatment. Further, forensic medical evaluation of detainees should be conducted in response to official written requests by public prosecutors or other appropriate officials. Detainees have the right to obtain a second or alternative medical evaluation by a qualified physician during and after the period of detention.

Interviewing detainees

15. The following standards apply to prisoner interviews:

(a) As mentioned above the interviewer must choose a place for the private interview where the detainee feels comfortable and able to talk freely.

(b) An independent interpreter of the same cultural background as the detainee should be used and not recruited locally. This is mainly to avoid their or their families being put under pressure from inquisitive authorities wanting to know what information was given to the investigators.

Techniques

16. Interviews with people who are still in custody, and possibly even subjected to torture, have to be conducted with great care. Interviews by their very nature may re-traumatize the patient by provoking or exacerbating symptoms of post-traumatic stress by eliciting painful effects and memories. The importance of obtaining the detainees' trust in such situations cannot be stressed enough. However, it is even more important not to, even unwittingly, betray that trust. All precautions should be taken so that detainees do not place themselves in danger. An interview should include the following considerations: (a) assess possible injury and abuse, even in the absence of specific allegations by individuals, law enforcement or judicial officials; (b) document physical and psychological evidence of injury and abuse; c) use the information obtained in an appropriate manner to enhance fact-finding and further documentation of torture and support to the detainee. (Ref Nr 12 IP)

Assessment of the interview

17. A detainee that has been tortured might have difficulties recounting specific details for several reasons, including factors during torture itself; fear of placing oneself or others at risk; a lack of trust in the interviewer or the interpreter; the psychological impact of torture and trauma, such as high emotional arousal and impaired memory secondary to trauma-related mental illnesses, such as depression and post-traumatic stress disorder; neuropsychiatric memory impairment from beatings to the head, suffocation, near drowning or starvation; self-protective coping mechanisms, such as denial and avoidance, or culturally prescribed sanctions that allow traumatic experiences to be revealed only in highly confidential settings. Inconsistencies in a person's story may arise from any or all of these factors and thus do not

automatically imply that the person is fabricating a story. This clearly makes evaluating a prisoner's evidence a difficult process, requiring much experience and skill. Therefore, visits should always be carried out by multi-disciplinary teams, including health professionals. If there is any indication that torture has taken place, qualified medical expertise should be consulted and further investigations initiated.

Medical examinations

18. A detainee's testimony is a crucial component in detecting and documenting torture, however physical examination may also give insight and provides important confirmatory evidence that a person was tortured. However, the absence of such physical evidence should not be construed to suggest that torture did not occur, since such acts of violence against persons frequently leave no marks or permanent scars (Ref Nr 160 IP). Careful regard should also be given to the interval between the possible date of the torture event and the date of the examination in assessing any physical evidence or lack thereof. In all cases where there is a suspicion of torture proper physical and psychological examinations of the detainee should be conducted with objectivity and impartiality.

19. Medical research in the past decades has confirmed the correlation of certain lesions with certain torture methods. Diagnostic tests were developed and specific expertise in examining torture survivors was developed. Medical reports are increasingly used as a source of evidence in torture cases by national and international courts. A detailed and accurate written report should be drafted following examination. This report should cover the areas written in the guidelines for medical evaluation of torture and ill-treatment annexed to the Istanbul Protocol (Ref. Annex IV to the IP). The report should contain the following classes of documentation:

    a. **Background information on the health situation of the prisoner**: The information should include a detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, the time when torture or ill-treatment was alleged to have occurred and all complaints of physical and psychological symptoms.

b. **Allegations of torture and ill-treatment**: including a summary of detention and abuse; the circumstances of arrest and detention; initial and subsequent places of detention (chronology, transportation and detention conditions); a narrative account of ill-treatment or torture (in each place of detention);review of torture methods.

c. **Physical symptoms and disabilities**: describe the development of acute and chronic symptoms and disabilities and the subsequent healing processes.

d. **Physical examination:** The medical examiner should perform detailed medical examination of below areas:

1. General appearance
2. Skin
3. Face and head
4. Eyes, ears, nose and throat
5. Oral cavity and teeth
6. Chest and abdomen (including vital signs)
7. Genito-urinary system
8. Musculoskeletal system
9. Central and peripheral nervous system.

The examiner should note all pertinent positive and negative findings, using body diagrams to record the location and nature of all injuries (IP, p.26 (82-a)).

e. **Psychological history/examination:** If possible the medical reports should also contain information on the below issues relating to psychological examination:

1. Methods of assessment
2. Current psychological complaints
3. Post-torture history
4. Pre-torture history
5. Past psychological/psychiatric history
6. Substance use and abuse history
7. Mental status examination
8. Assessment of social functioning

9. Psychological testing
10. Neuropsychological testing

f. **Photographs:** Photography should be a routine part of the medical examination (IP, p 42)

g. **Diagnostic test results and consultations**: If the medical doctor finds that further diagnostic tests are needed, the results of these and the corresponding expert consultations should be included in the medical report.

h. **Interpretation of findings**: An interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment.

20. The report should be confidential and communicated to the subject or a nominated representative. The views of the subject and his or her representative about the examination process should be solicited and recorded in the report. It should also be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture or ill-treatment. It is the responsibility of the State to ensure that it is delivered securely to these persons. The report should not be made available to any other person, except with the consent of the subject or on the authorization of a court empowered to enforce or review such transfer. (Ref Annex 1 to the IP)

Consideration of Evidence in light of the above

21. I shall now proceed to comment on parts of the allegations materials. I have had produced to me a number of documents compiled in the pdf-file "Evans-Allegations Bundle (117 pages, size 2.937.156 bytes) which appear to include actual or potential cases of mistreatment of UK-detained prisoners post-transfer to the Afghan authorities (principally the National Directorate of Security – the NDS). I exhibit these documents hereto as **Exhibit OO4**. I shall provide the Court with comments on some selected visiting and medical examination reports contained in the above-mentioned file.

22. Generally, I have the following observations:

- Some of the photocopies of the documents are of a very poor quality
- Extensive information in the documents is deleted or made un-readable, sometimes even entire paragraphs. This has limited the understanding and evaluation of the documents
- The majority of the information regarding the identity of prisoners is deleted, sometimes including the UK detention number. It has made it impossible to follow the performed investigations relating to the same individual prisoners.
- At least in one case, there are visit reports with the same date and same prison name and UK detention number (365/08) and same investigator (Cpl Mackenzie) but with different information on the prisoner in question.
- Some of the visit reports state that photographs have been taken. The allegation materials that I have received do however not include those photographs and I can therefore comment on any of these
- In one of the detainee visit reports regarding the prisoner from Pol I Charki Prison KABUL with UK detention number 365/08 prepared by Cpl. Mackenzie on the visit dated 15 June 2009 it is stated, as an answer to question 16 ("Visual check of health, nourishment and presence of any injuries?), that the prisoner is "looking slightly better". However, there is no information on a bad health condition in the visit reports performed on earlier occasions.

23. Medical investigation is one of the major components of effective investigations of torture allegations. The investigation team in all cases should have medical professionals in order to evaluate the allegations by the detainees. There is no evidence that the corporals or sergeants who wrote the visit reports have any medical experience or training on torture.

24. The comments made by several military personnel who are clearly not competent of making any medical evaluation do not have any medical value. Just an example:

In a communication dated 09 October 2007 from PJHQ/J9 POLOPS AUGMENTEE 1 to DJC-AD Pol4 Akiwumi Helena B2 it was stated that "he [the prisoner] claimed to have been electrocuted with a wire from the mains. If this had happened and he had survived then there would have been a lot of burn marks and there weren't any."
One of the reasons why the perpetrators prefer electric torture is that it leaves no visible skin marks! It is quite seldom that the visible electric burn marks can be detected and the likelihood is even smaller if the perpetrators apply gel or water during the electric torture application.

25. There are only two medical reports among the allegation materials which I have received. It is not clear whether the reports relate to the same individual or to two different persons. I am informed that these are the only ones disclosed by the Defendant. I have however reviewed a selection of documents from the UK Government's disclosure which demonstrates that allegations have been made in a significantly larger number of cases. It is therefore alarming to me that the UK Government appear to have failed to investigate these cases further. I wish to reiterate the obligations of States to carry out investigations meeting the minimum standards I have outlined in this witness statement, including an effective medical examination.

26. It is good to see that at least in two instances a medical investigation was carried out. However, the quality of the two reports is not consistent with the standards of the Istanbul Protocol in relation to several aspects which I will touch upon in more detail in the following. Several major and significant pieces of information are missing which is required for proper medical documentation of torture (please see my introductory comments above under point 19) such as the detailed history, findings of full medical examination and psychological evaluation and commenting. I am aware of the challenges in performing appropriate medical examinations in several locations of the world. However, when such challenges are present, these should be noted specifically in the reports. This is not the case in the concerned medical reports

<u>The medical report written by 558926 on 9 October 2007</u>

27. There is no written evidence that the physician performed a full body examination.

28. The doctor states that on general questioning about the respiratory, cardiovascular system, gastro intestinal system or musculoskeletal system there is nothing significant to report. The doctor states that there is nothing to report on cardio vascular system but there is no information on whether he measured the blood pressure, and whether he listened to the cardiac sounds of the patient. Neither is there any evidence whether he performed gastrointestinal system and musculoskeletal system examinations.

Musculoskeletal system

Complaints of musculoskeletal aches and pains are very common in survivors of torture. They may be the result of repeated beatings, suspension, other positional torture or the general physical environment of detention. They may also be somatic (see chapter VI, sect. B.2). While they are non-specific, they should be documented. They often respond well to sympathetic physiotherapy. Physical examination of the skeleton should include testing for mobility of joints, the spine and the extremities. Pain with motion, contracture, strength, evidence of compartment syndrome, fractures with or without deformity and dislocations should all be noted.

Suspected dislocations, fractures and osteomyelitis should be evaluated with radiographs. For suspected osteomyelitis, routine radiographs should be taken, followed by three-phase bone scintigraphy. Injuries to tendons, ligaments and muscles are best evaluated with MRI, but arthrography can also be performed. In the acute stage, this can detect haemorrhage and possible muscle tears. Muscles usually heal completely without scarring; thus, later imaging studies will be negative. Under MRI and CT, denervated muscles and chronic compartment syndrome will be imaged as muscle fibrosis. Bone bruises can be detected by MRI or scintigraphy (extract from IP, p.36)

29. Regarding the electric torture: The prisoner was not asked if the perpetrators applied any gel or water to his body before or during the electric torture. It is not clear where and how the electrodes were applied, where the two ends (the negative and positive poles) of the electric torture device were attached. The limited information provided on the symptoms occurred after the electric torture is not enough for making any evaluation on the consistency of the statement with electric torture.

Electric shock torture

Electric current is transmitted through electrodes placed on any part of the body. The most common areas are the hands, feet, fingers, toes, ears, nipples, mouth, lips and genital area. The power source may be a hand-cranked or combustion generator, wall source, stun gun, cattle prod or other electric device. Electric current follows the shortest route between the two electrodes. The symptoms that occur when electric current is applied have this characteristic. For example, if electrodes are placed on a toe of the right foot and on the genital region, there will be pain, muscle contraction and cramps in the right thigh and calf muscles. Excruciating pain will be felt in the genital region. Since all muscles along the route of the electric current are tetanically contracted, dislocation of the shoulder, lumbar and cervical radiculopathies may be observed when the current is moderately high. However, the type, time of application, current and voltage of the energy used cannot be determined with certainty upon physical examination of the victim. Torturers often use water or gels in order to increase the efficiency of the torture, expand the entrance point of the electric current on the body and prevent detectable electric burns. Trace electrical burns are usually a reddish brown circular lesion from 1 to 3 millimetres in diameter, usually without inflammation, which may result in a hyper pigmented scar. Skin surfaces must be carefully examined because the lesions are often not easily discernible. The decision to biopsy recent lesions to prove their origin is controversial. Electrical burns may produce specific histologic changes, but these are not always present, and the absence of change in no way mitigates against the lesion being an electrical burn. The decision must be made on a case-by case basis as to whether or not the pain and discomfort associated with a skin biopsy can be justified by the potential results of the procedure (extract from IP, annex II.2)

30. Even if the doctor states that the prisoner did not have any discomfort or complaint or pain we do not know if there was any ear drum perforation since he did not perform an ear drum examination. A slap on the ear would easily cause ear drum perforation. On several occasions ear drum perforations can be present without any pain.

31. There is no information on psychological complaints of the prisoner, or about any psychological evaluation carried out.

32. The doctor states that his examination only lasted 15 minutes. This is not enough time for taking a detailed history of the patient and carefully performing the stated medical examinations, not to mention achieving a rapport with the prisoner necessary as a preliminary to any interview or examination. It is not clear if he communicated with the prisoner through an interpreter during the examination or whether the dialogue with the prisoner was in English or in the local language of the prisoner. If the doctor communicated through an interpreter then approximately half of the duration of the examination would be spent on translation.

33. While it is clear from the points raised above, that the doctor does not have specific training on torture documentation or adequate knowledge on torture related issues, he is right to state that he cannot deny the allegation of subjection to electric torture. According to the Istanbul Protocol, the absence of physical, laboratory and psychological evidence does not rule out the possibility that torture has taken place.

34. In addition the absence of further appropriate examinations and investigation and the poor quality of the report do not give any grounds to rule out that the person has been tortured. Please see my comments made under point 25.

<u>The medical report written by 550206 on 30 October 2007</u>

35. There is no written evidence that the physician performed a full body examination. Several pieces of information are missing. For instance, there is no written evidence showing that the doctor performed a detailed examination of face and head, eyes, ears, nose and throat, oral cavity and teeth, chest and abdomen (including vital signs), genito-urinary system, musculoskeletal system, central and peripheral nervous system.

36. There is no written evidence that the medical doctor has asked questions relating to the condition of the ears drums of the prisoner or whether an otoscopic examination of the ear drums was performed. Such an examination is very simple and can be performed in any condition all over the world and enables diagnose of ear drum perforation which can occur after a slap to the ears.

37. Regarding the experiences of electric torture the same as the above applies: The prisoner was not asked if the perpetrators applied any gel or water to his body before or during the electric torture. It is not clear where and how the electrodes were applied, for instance how and where the two ends (the negative and positive poles) of the electric torture device were attached. Were they attached to both ankles at the same time? And if so, the prisoner was not asked what he felt during the electric application. Did he feel any pain or muscle cramps? If the answer is yes, then in which parts of the body? The answers provided by the prisoner would inform experienced forensic experts about the consistency of the statements.

38. There is no written evidence whether the doctor asked any question on acute and chronic symptoms which the prisoner may have had during, just after and several days after the electric application depending on musculoskeletal system injuries which may occur during the electric application or beating. The doctor also did not perform a musculoskeletal system examination.

39. The doctor recorded that he noticed some scars on the feet of the prisoner. There is however no evidence that the doctor asked questions about the cause of those scars to the prisoner. We do not know the explanation of the prisoner about those scars. The medical doctor just commented that "this area was away of the area indicated by the prisoner" (i.e. back and ankle). Among the allegation materials there is a visit report dated 25 Sep. 2007 with reference number Pro J1/06 on the visit to LKG prison Compound on examination of a prisoner with the same UK detention number as the one mentioned in the present medical report (UKSC 00074/AFCM) by Cpl Broadhurst. In this report it is stated that "the only visible marks were to ".... right fore arm and appeared to be old injuries...." If this visit report is related to the same prisoner (which it appears to be since the UK detention number is the same) then the medical doctor did not record the visible marks on right fore arm and the military investigator did not record the marks around ankles. Moreover, the previous examination on 9 October 2007, if it was performed on the same prisoner, failed to note injuries on the feet. In fact the earlier report states the opposite, that "*on examination of [redacted] ankles and feet (including the soles) the skin was intact with no blemishes or evidence of scarring*".

40. The medical doctor seemingly did not feel any need to ask for advanced diagnostic tests like bone scintigraphy, CT and MRI which are very helpful for evaluation of soft tissues and bone traumas. Even if access to appropriate diagnostic tests, like MRI scanners, is very limited, the need for performing such tests should be mentioned in the report.

41. There is no information on psychological complaints of the prisoner, or about any psychological evaluation carried out.

42. Also relating to this report it is apparent that the medical doctor lacks the relevant knowledge on torture documentation.

Photographic evidence

43. There is no information that photographs of the prisoners were taken during the medical examination. I would like to illustrate the importance of photographic documentation by commenting on one of the visit reports in the allegation file that I received: In the report written by Charlotte Dore, Legal Polcy 1, on 22 October 2009 it is stated that the prisoner claimed severe beatings in custody at NDS Lasgkar Gah over the course of approximately 20 days during the transfers between facilities. Scars on his body were the result of these beatings. Charlotte Dore raises the issue that even if the prisoner was visited several times over the last two years, he didn't mention any claim about beatings by NDS staff. She adds that the scars of the prisoner were photographed but concludes that his allegation is incredible without giving any comment about the cause of those scars. If the routine photographs of the full body pictures of prisoners were taken during the first admittance to the prisons it would be easier to clarify the allegations. In any case, without a detailed medical examination by a qualified and trained practitioner consistent with the Istanbul Protocol it is neither possible nor credible to deny allegations of torture.

CONCLUSION

A. I wish to reiterate that the quality of the medical and visit reports is so poor that they cannot give ground to denying allegations of torture made by the prisoners.

B. In light of the above mentioned findings, I conclude that the level and the quality of the investigations of torture allegations in the NDS Prisons in Afghanistan conducted by the UK does not comply with international standards. Based on the documents I have seen, the current system does not seem to be suitable to properly investigate and prevent torture.

C. There appears to be an urgent need to reform the procedures in order to ensure proper investigations of torture allegations and to prevent impunity. This should be supplemented by other measures such as training of UK and Afghan medical and non-medical professionals and systematic review of the interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of prisoners.

D. I wish to particularly point out that the investigations of torture allegations should be performed by impartial, independent and multi-disciplinary teams including trained and experienced health professionals.

STATEMENT OF TRUTH

This statement is true to the best of my knowledge and belief and I am aware that it will be placed before the Court.

Signed .....

Önder Özkalipci, IRCT

Dated 12.01.2010