



Freedom from Torture
Medical Foundation for the Care of Victims of Torture

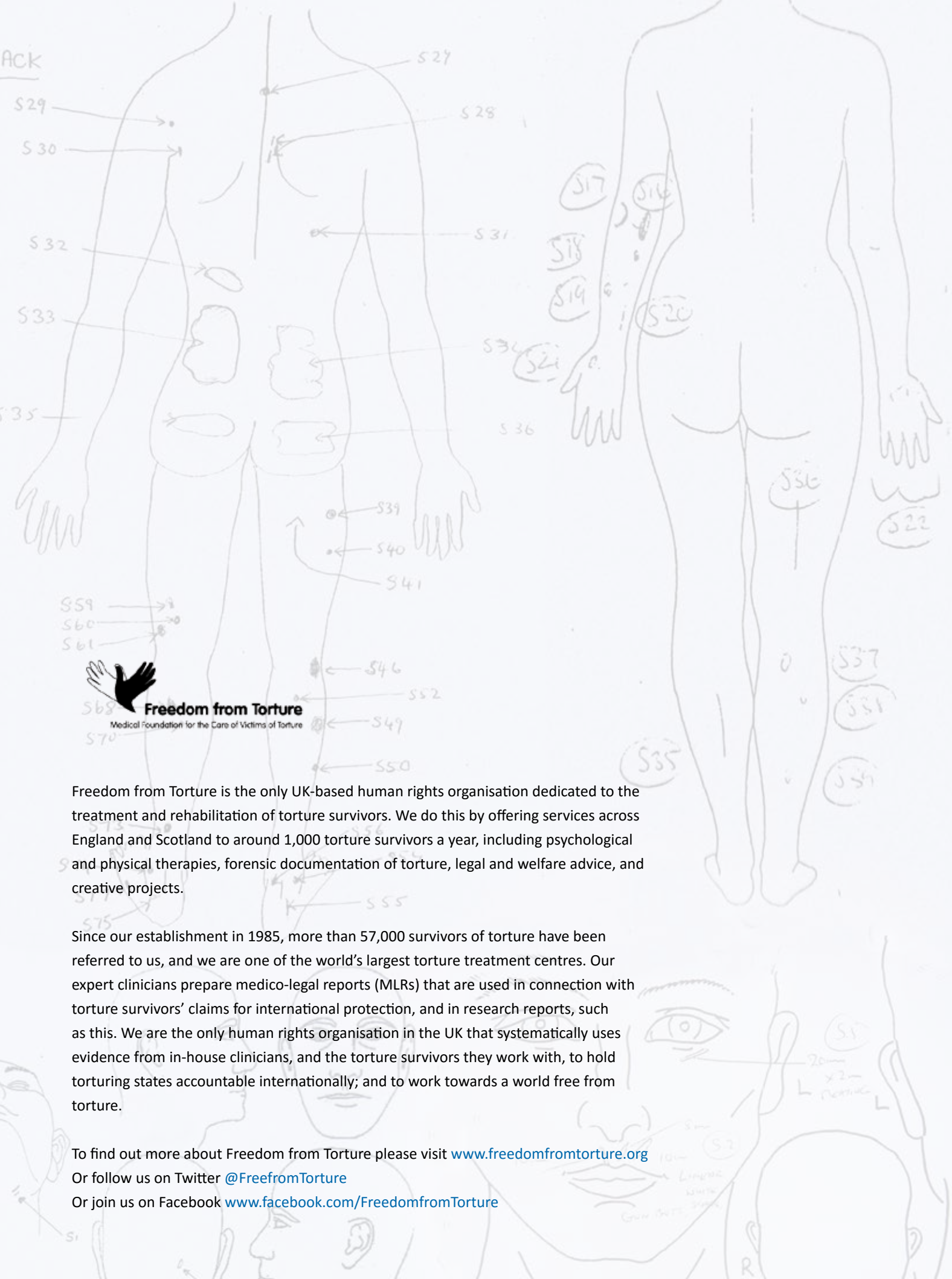
Proving Torture

Demanding the impossible

Home Office mistreatment
of expert medical evidence

Report Summary
November 2016

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Freedom from Torture

Medical Foundation for the Care of Victims of Torture

Freedom from Torture is the only UK-based human rights organisation dedicated to the treatment and rehabilitation of torture survivors. We do this by offering services across England and Scotland to around 1,000 torture survivors a year, including psychological and physical therapies, forensic documentation of torture, legal and welfare advice, and creative projects.

Since our establishment in 1985, more than 57,000 survivors of torture have been referred to us, and we are one of the world's largest torture treatment centres. Our expert clinicians prepare medico-legal reports (MLRs) that are used in connection with torture survivors' claims for international protection, and in research reports, such as this. We are the only human rights organisation in the UK that systematically uses evidence from in-house clinicians, and the torture survivors they work with, to hold torturing states accountable internationally; and to work towards a world free from torture.

To find out more about Freedom from Torture please visit www.freedomfromtorture.org

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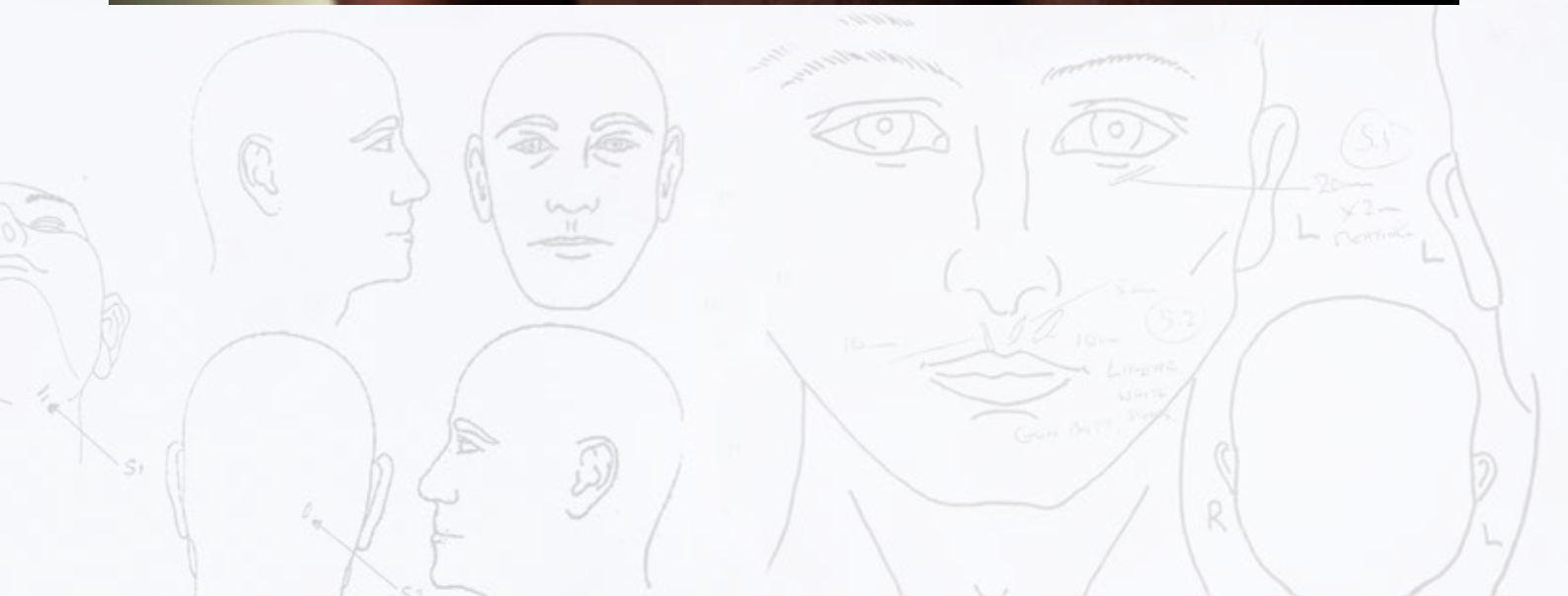


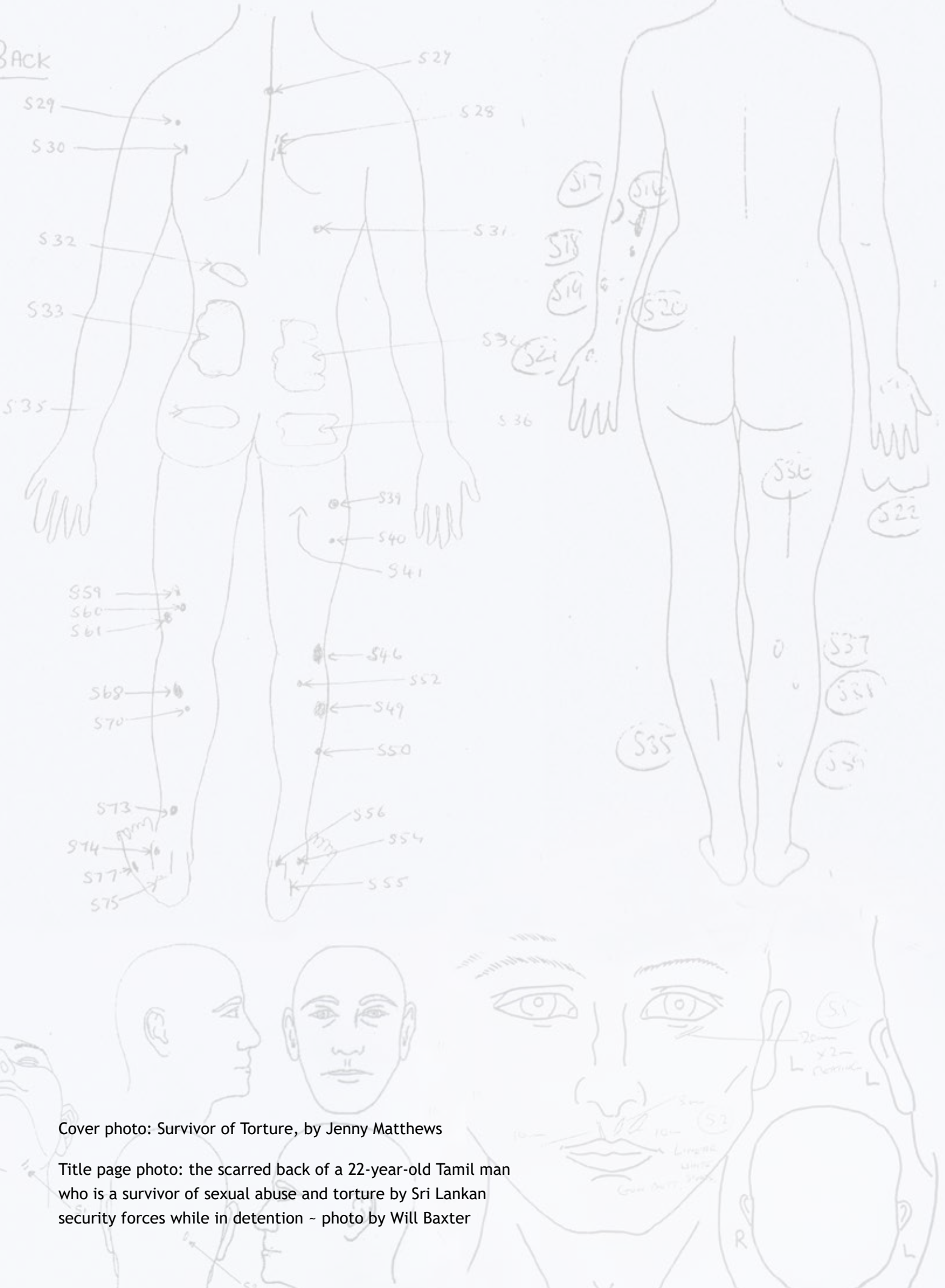
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Cover photo: Survivor of Torture, by Jenny Matthews

Title page photo: the scarred back of a 22-year-old Tamil man who is a survivor of sexual abuse and torture by Sri Lankan security forces while in detention - photo by Will Baxter

KEY POINTS

Survivors seeking asylum in the UK can find it almost impossible to prove to the Home Office that they were tortured

This happens even when they present extensive expert medical evidence, which is often disregarded or mistreated

The Home Office frequently demands a level of certainty in this evidence that is unattainable, going far beyond the legal standard of proof that applies to asylum claims

Being disbelieved and having their medical evidence mishandled can be catastrophic for torture survivors

They know that when the wrong decision is made, they could be forced to return to further torture

Harrowing legal appeals also prolong their psychological trauma which impedes their chances of rehabilitation and social integration

Too many Home Office decisions with medical evidence of torture are poor and have to be corrected by judges - at considerable cost to tax payers

In 76% of cases in our research for which the final outcome is known, the person was granted asylum following a successful legal appeal

The average success rate for asylum appeals is 30%

This indicates a serious problem with Home Office handling of asylum claims by torture survivors

Asylum caseworkers without any clinical qualifications often replace the expert opinion of a medical doctor with their own speculation about clinical matters

Our research suggests that many asylum caseworkers see medical evidence as an obstacle to be "got around" in justifying why the asylum claim should be refused

This undermines basic principles of British justice

This bad practice contravenes a clear Home Office policy on how to handle expert medical evidence of torture

The problem is that this policy is poorly implemented

The Home Office has an excellent training programme to help caseworkers implement it correctly but has never rolled this out

SOLUTIONS

- 1** The Home Secretary should order immediate measures to improve decision-making in asylum cases involving medical evidence of torture, starting with the roll-out to all asylum caseworkers of the full day training module which the Home Office developed but never launched.

Leadership from the Director of Asylum Operations and asylum casework managers is essential as a means of ensuring this training translates into asylum decisions for torture survivors that are “right the first time”.

This leadership should involve regular communications to senior caseworkers and caseworkers about the importance of improved decision-making in cases involving medical evidence of torture, reinforced by systems - including routine oversight, quality audits of decisions and remedial action if problems continue - capable of demonstrating to Ministers, Freedom from Torture and other stakeholders whether practice is improving or not.

- 2** An independent public audit should be undertaken by a body with the requisite legal expertise, such as the UN High Commissioner for Refugees, into the application in practice of the standard of proof in asylum claims in the UK, including cases involving expert medical evidence of torture.

This independent public audit should enjoy the full cooperation of the Home Office. Survivors of torture, those with experience of providing expert evidence in asylum claims and legal and other civil society organisations in the refugee field should be among those given an opportunity to provide evidence.

Other recommendations are set out in the full report.



INTRODUCTION

This Freedom from Torture report provides a detailed analysis of how a cohort of 50 expert medico-legal reports documenting physical and psychological evidence of torture has been treated by asylum caseworkers in the UK Home Office. The research illustrates that existing policy guidance is not being followed and that expert medico-legal reports are poorly handled by caseworkers.

“My concern for safety was very real. Any more delay and the window of opportunity would close. I couldn't stop to collect evidence to prove my age, to prove that I am fleeing from torture to save my life, to prove that I was coming from this particular country, to prove that I was who I said I was saying to be

Member of the Survivors Speak OUT network¹

Medico-legal reports are commissioned by legal representatives on behalf of asylum claimants to assist decision-makers in establishing key factual elements of an asylum claim. For these purposes, the clinician who produces the medico-legal report must comply with the duties of an independent expert. This means, among other things, that they must not simply accept the account given to them by the claimant and must thoroughly and objectively assess this account in line with their clinical experience and the standards that apply to clinical documentation of torture evidence.

Medico-legal reports are often a vital form of evidence for survivors of torture who may have little

else available to prove the fact of their torture and, for reasons stemming from psychological trauma, may find it particularly difficult to give a coherent and comprehensive account of what has happened to them.

Freedom from Torture runs one of the largest and most well-respected forensic torture documentation services in the world. We have over 30 years of experience in this field and contributed to the development of international standards for torture documentation set out in the Istanbul Protocol.² The Home Office accepts in its policy that we produce medico-legal reports with the required level of expertise and impartiality, and that our reports comply with these standards.

The Istanbul Protocol contains the first set of internationally recognised standards for the effective examination, investigation and reporting of allegations of torture and ill treatment. It was primarily developed to support torture prevention by providing states with a tool to document torture effectively in order to hold perpetrators to account through a legal process, but it also applies to refugee status determination and other procedures involving torture claims.

The research presented in this report is based on a detailed and systematic review in 50 cases of: the written reasons given by caseworkers for refusing the asylum claim for which we provided a medico-legal report, the medico-legal report itself, and appeal determinations from the Immigration and Asylum Chamber of the Tribunal where available.

CONTEXT

Europe is in the midst of the largest refugee crisis in history. Many of those on the move as part of these flows are survivors of torture, although there are many reasons why they may be reluctant to disclose this during their journey.³ Some eventually arrive in the UK and seek protection via our national asylum system.

The precise number of torture survivors seeking protection in the UK is unknown.

The Home Office does not collect statistics on the number of asylum claims involving torture allegations. A recent study suggests that 27% of adult forced migrants living in high-income countries like the UK are survivors of torture.⁴

Survivors of torture require specialist care and support upon arrival in the UK. Many have complex physical, psychological, social and legal needs arising from their torture and their often prolonged and dangerous journey to safety.

According to the National Audit Office, 55% of the Syrian refugees who have been given protection in the UK under the Syrian resettlement programme are survivors of torture and/or other forms of violence.⁵ They have been prioritised by the UK government because of their high levels of vulnerability and the opportunities this country can provide to help them rehabilitate.

By contrast, survivors of torture who arrive in the UK by their own means often face a long and painful struggle to secure protection. Survivors in treatment at Freedom from Torture consistently say that securing legal status quickly through the asylum system is the most significant problem they face. While there is often a long road to recovery ahead, the sense of security gained from refugee status or another form of legal protection is a fundamental basis from which a survivor can begin to heal, move on with their lives and contribute positively to their new community here in the UK.

In order to secure legal protection, an asylum claimant must provide evidence to support their case. Those who claim to have been tortured may submit a medico-legal report documenting physical and/or psychological evidence of torture and providing an independent clinical opinion on the consistency between this evidence and the claimant's account of torture.



Pressures from within the asylum system have led to the production of much longer, more detailed medico-legal reports. Yet, as this research shows, these reports are frequently mishandled by asylum caseworkers.

Over the years, the length of our medico-legal reports has risen steadily from approximately five pages in the 1990s to approximately 20 pages in 2016. These highly detailed reports require significant resources to produce. This in itself reduces the number of cases for which we are able to prepare this expert evidence while also slowing down the asylum decision-making process for the Home Office.

KEY FINDINGS

Our research demonstrates recurring and systematic errors in Home Office handling of expert medical evidence of torture resulting in a very high rate of decisions overturned on appeal, with the claimant eventually being granted asylum.

In many cases, the Immigration Judge specifically referred to the strength and high quality of the medical evidence.

Particular examples of poor handling of medical evidence highlighted in the research are set out below.

76%

of cases in the research where the final outcome is known resulted in a grant of asylum following a successful legal appeal

1 Asylum caseworkers fail to apply the correct standard of proof for asylum claims

In order to grant asylum, caseworkers are required to satisfy themselves that a claimant's account is "reasonably likely" to be true, according to the legal standard of proof for asylum claims.

Our research shows that, in practice, asylum caseworkers fail to comply with this by demanding a far higher standard of proof of the medical evidence of torture, in a context where the question of whether torture occurred is a critical element in assessing if the person would be at risk on return and thus entitled to asylum.

For example, asylum caseworkers reject medical evidence because the expert clinician cannot

100%

of cases in the research, on the face of it, involve the asylum caseworker failing to apply the appropriate standard of proof to establish a past history of detention and torture

categorically attribute the injuries to torture. This is grossly inconsistent with the standard of proof. Moreover, such definitive conclusions are generally unusual in forensic medicine.

In other cases, the caseworker wrongly assumes that physical injuries assessed as anything less than "diagnostic" of torture (i.e. no other possible causes) have little or no significance as evidence of torture.

Standard of proof

A low standard of proof ("reasonable degree of likelihood") applies to asylum claims, since the implications for the person of a wrong decision are potentially so serious - a real risk of torture, other types of persecution or even death if they are forced to return to the country they fled from.

This contrasts with criminal cases, where the far higher standard of proof ("beyond reasonable doubt") is intended to minimise the risk of innocent people being deprived of their liberty due to a wrong decision.

2 Asylum caseworkers replace the expert opinion of a clinician with their own opinion on clinical matters or make clinical judgments beyond their qualifications

Because asylum caseworkers are not clinicians, Home Office policy directs them not to “dispute the clinical findings in the report or purport to make clinical judgements of their own about medical evidence or medical matters generally”.⁶

The research shows many such errors are made in practice. Most commonly, the asylum caseworker

74%

of cases in the research involve the asylum caseworker substituting their own opinion for that of the clinician on the cause of injuries

substitutes their own opinion for that of the clinician on the likely causes of different types of scars or psychological symptoms.

Example

Home Office written reasons for refusing asylum (case 48 in our case set):

“... if it were accepted that your injuries were so severe that it was believed you would die, it is inconsistent that these injuries would permit you to escape detention by jumping over a wall. As it is not accepted that you escaped detention it is also not accepted that you were detained a second time... It is concluded that the scarring described in the medico legal report were [sic] not suffered in the context you have described...”

Judge’s determination:

*“... Dr * has considerable experience and expertise in evaluating and assessing potential or actual torture or ill-treatment; her report was prepared in accordance with the Istanbul Protocol... Overall, it seems to me that given the considerable number, type and distribution of the non-accidental injuries identified by Dr * on the Appellant’s body, there is really only one possible conclusion, which is that the Appellant has been subjected to sustained torture or acute ill-treatment.”*

What qualifications do asylum caseworkers need?

Asylum caseworkers are not required to have any clinical qualifications. The Home Office requires⁷ that they have one of the following:

A minimum of two A Levels (A*-E grade) and GCSEs at grade A*-C in both maths and English
OR

Significant experience in a role requiring complex decisions in a regulatory or legislative capacity in a rules based environment, including conducting interviews in order to obtain evidence, analysing evidence, making sound decisions based upon evidence and communicating evidence both orally and in writing.

3 Asylum caseworkers wrongly question the clinical expert's qualifications and expertise in the documentation of torture

The Home Office recognises in its policy that medical doctors and other clinicians at Freedom from Torture are "objective and unbiased" and well trained, experienced and qualified to prepare medico-legal reports relating to torture, including in relation to the assessment of mental health conditions.

Nevertheless, in many cases the asylum caseworker wrongly challenges the qualifications and professional expertise of the clinician who produced the medico-legal report.

30%

of cases in the research involve the asylum caseworker disputing or questioning the qualifications and expertise of the clinician

Example

Home Office written reasons for refusing asylum (case 2 in our case set):

"... Your brother... has claimed that you suffer panic attacks and [sic] often disturbed by flashbacks and talk about committing suicide as a result of the torture you claim to have suffered. It is noted that none of the information provided in this statement has been supported by a person qualified to comment on your state of health, including the [Freedom from Torture] report..."

Judge's determination:

"... It is a lengthy, detailed and balanced report, which, I accept has been prepared by a doctor with suitable qualifications and expertise to provide expert opinion. I find considerable weight in the arguments made... that the respondent [Home Office] has failed to grapple with this report in the reasons for refusal letter..."

4 Asylum caseworkers take the wrong approach to medical evidence when assessing the credibility of the asylum claim

The assessment of a claimant's credibility forms the core of the refugee status determination process and Home Office policy makes clear that expert medical evidence should be considered carefully as part of the process of looking at the evidence "in the round", and that a decision on credibility must not be reached before the medical evidence is fully considered.

Our research demonstrates poor practice by asylum caseworkers in this respect, including failure altogether to consider the clinical

findings, failure to consider parts of the evidence of torture (especially psychological evidence), and findings on credibility reached before the clinical evidence is even considered.

84%

of cases in the research involve the asylum caseworker dismissing the medical evidence because they have already reached a negative credibility finding

Example

Home Office written reasons for refusing asylum (case 26 in our case set):

"... you have scars which you claim were caused by cigarettes whilst you were in detention, and the report states that 'it would be impossible to self-inflict the regular marks she has ... [which are] diagnostic of her claimed attribution of cigarette burns' ... Consideration has been given to the finding, but as it is not accepted that you have been detained in the manner in which you claim, it is not accepted that these scars were caused as a result of this alleged detention."

Judge's determination:

*"... I have... taken into account the medico legal report of Dr * of [Freedom from Torture]. Paragraph 68 of the report confirms that there are 29 scars which are diagnostic of cigarette burns having excluded other possibilities such as chicken pox, insect bites, vaccination scars and accidental injury ... I therefore accept that the marks are cigarette burns caused when the Appellant was detained by the authorities as she describes."*

5 Asylum caseworkers misunderstand the internationally agreed torture documentation methodology and/or the clinical interpretation of findings

Our research highlights poor understanding by caseworkers of how the Istanbul Protocol applies to documenting torture for the purposes of an asylum claim.

For example, the caseworker wrongly criticises the doctor's use of specific terms in the Istanbul Protocol or incorrectly challenges the doctor's compliance with the methodology set out in the Istanbul Protocol for assessing the degree of

consistency between physical injuries (lesions) and the attributed cause of torture given by the individual.

54%

of cases in the research demonstrate poor understanding by the asylum caseworker of how the Istanbul Protocol applies to torture claims

CASE FOR CHANGE

Back

“It is so hard, waiting for the medico-legal report, knowing that it is the only way you can prove what has happened to you, and at the end, if it is not believed, it adds so much stress to your mental state; you lose all hope. You know that there is nothing more you can do about your case because there is no other way for you to prove that you have been tortured”

Member of the Survivors
Speak OUT network

Mistreatment by asylum caseworkers of medical evidence of torture leads to long and costly legal appeals and a need for claimants to be financially supported in the asylum system for many months and even years throughout this process.

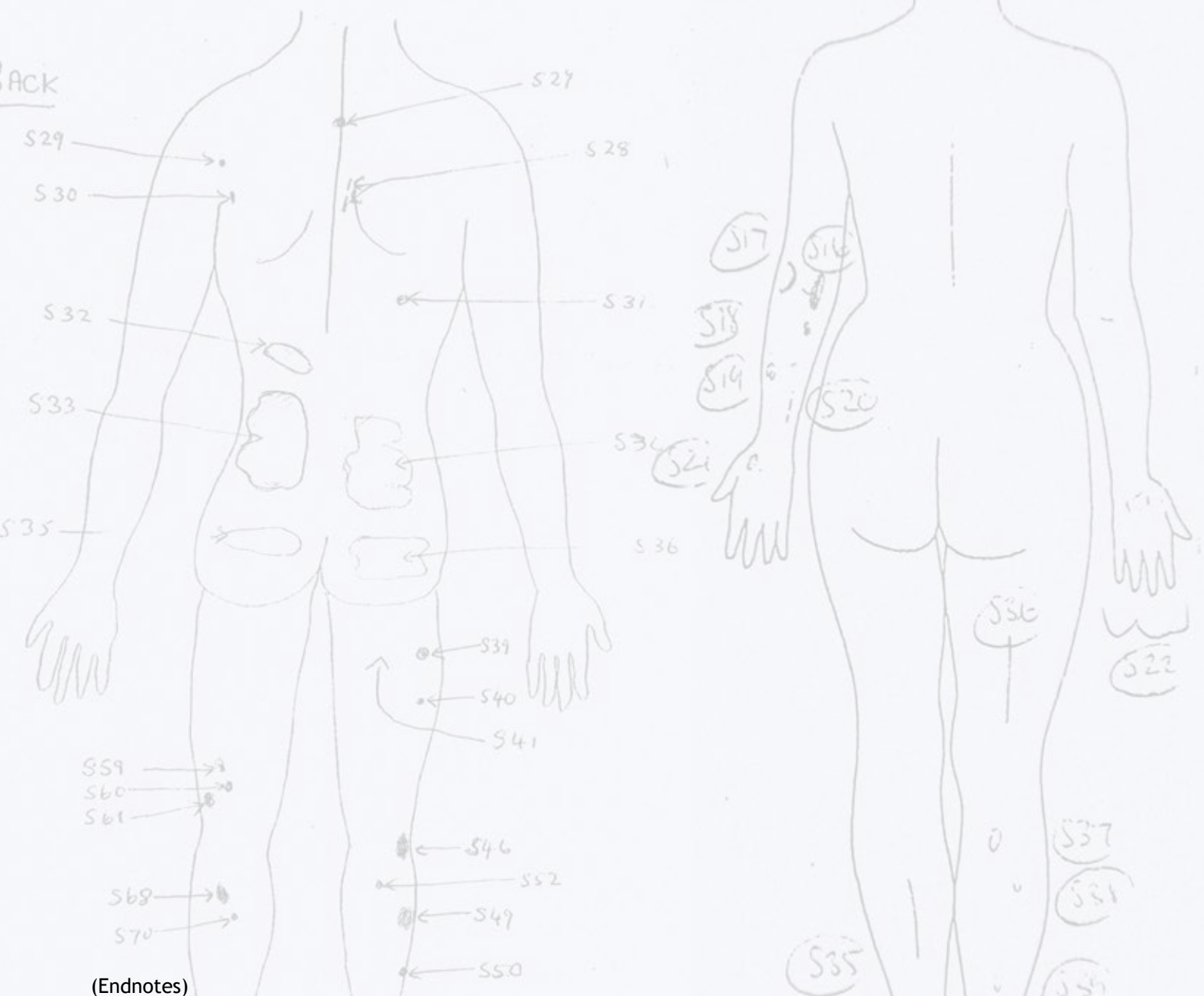
For survivors of torture who need asylum, this experience of legal limbo and the impact of being disbelieved and having their medical evidence mishandled can be psychologically devastating. Until they are granted legal protection, they are kept living in fear of forced removal back to the country where they have been tortured and trapped in a state of insecurity and dependence, all of which impedes their chances of rehabilitation and social integration.

Appeal processes are an essential element of a well-functioning justice system. However, ensuring that

the right decisions are reached the first time around is better both for claimants, especially survivors of torture and others who are highly vulnerable, and taxpayers.

Ministers and taxpayers should therefore be highly concerned about an apparent over-reliance by the Home Office on asylum appeals to correct straightforward failures by caseworkers to comply with Home Office policy on how to handle to medical evidence of torture.

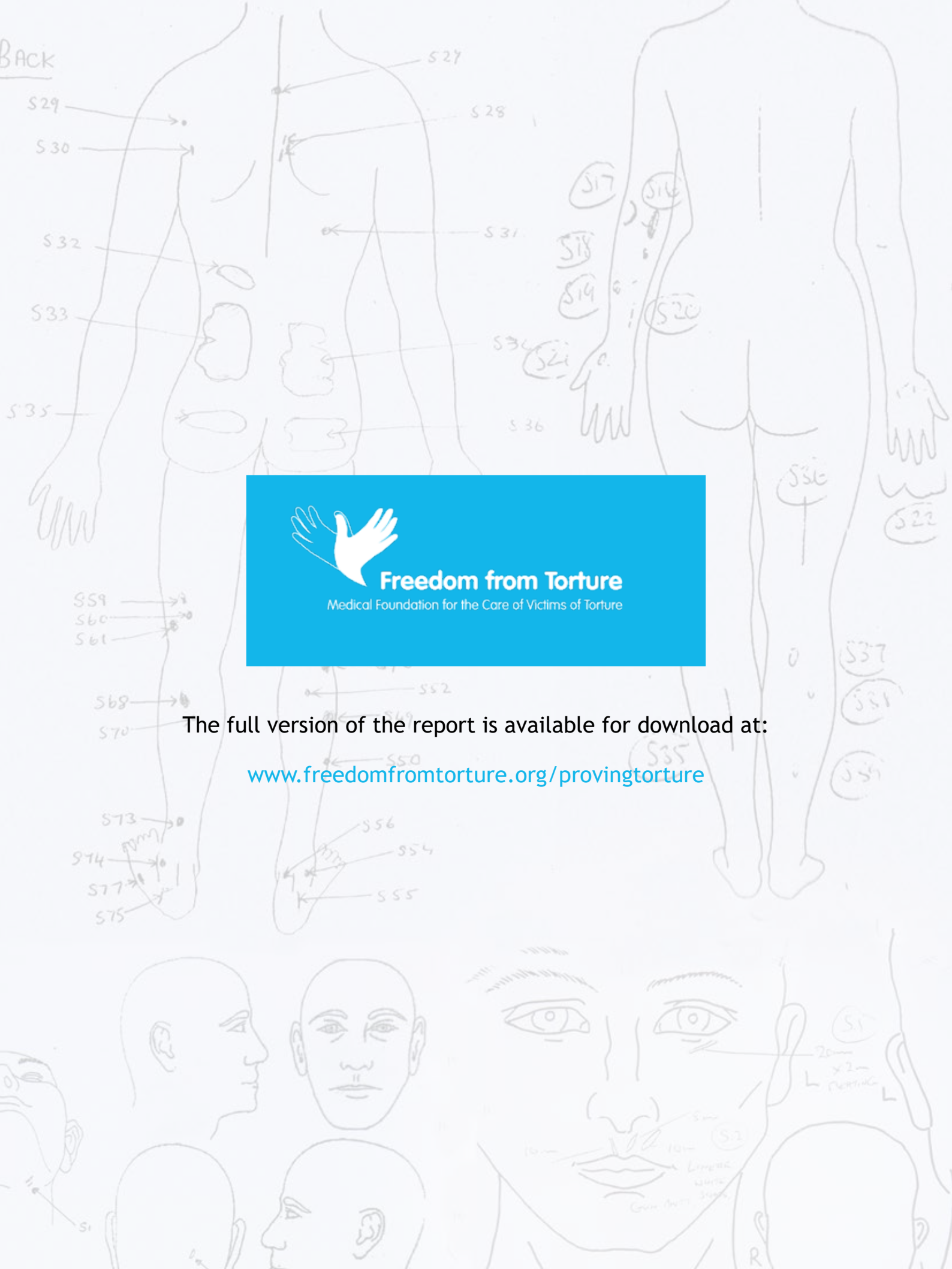
Freedom from Torture wishes to acknowledge the positive signals from senior Home Office officials about the need to tackle these problems. The challenge now is to convert good intentions into changed practice, for the benefit of survivors of torture and in the broader public interest.



(Endnotes)

- 1 The Survivors Speak OUT (SSO) network is the UK's only torture survivor-led activist network and is actively engaged in speaking out against torture and about its impacts. Set up by survivors of torture, for survivors of torture, SSO uses first-hand experience to speak with authority for the rights of torture survivors. The network is supported and facilitated by Freedom from Torture and all network members are former Freedom from Torture clients.
- 2 Office Of The United Nations High Commissioner For Human Rights, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, United Nations, 2004, available at: <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf> (last accessed 19/10/2016).
- 3 Freedom from Torture, *From Torture Cell to Therapy Room - Survivors' Journeys to Rehabilitation*, June 2016, page 10, available at https://www.freedomfromtorture.org/sites/default/files/documents/journeys_to_rehabilitation_-_final.pdf (last accessed 1/11/16).
- 4 Sigvardsdotter E, Marjan Vaez, Ann-Marie Rydholm Hedman, and Fredrik Saboonchi, *Prevalence of torture and other war-related traumatic events in forced migrants: A systematic review*, *Torture* 26 (2) 41-73 at page 47.
- 5 National Audit Office, *The Syrian Vulnerable Persons Resettlement Programme*, September 2016, page 4, accessible at <https://www.nao.org.uk/report/the-syrian-vulnerable-persons-resettlement-programme/> (last accessed 31/10/2016).
- 6 UK Home Office, Asylum Policy Instruction, *Medico-Legal Reports from the Helen Bamber Foundation and the Medical Foundation Medico-Legal Report Service*, Version 3.0, 17 January 2014, at paragraph 3.3. A revised version (Version 4.0) was issued in July 2015 and is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444410/MLR_Foundation_Cases_External_v4_0.pdf (last accessed 19/10/2016). Note that prior to 17 June 2011, Freedom from Torture was known as the Medical Foundation for the Care of Victims of Torture. Our medico-legal report service continues to be known as the "Medical Foundation Medico Legal Report Service" due to the high level of recognition of this name among specialist legal service providers and decision-makers at the Home Office and the Tribunal.
- 7 See: UK Home Office Visas and Immigration, "Candidate Information Pack Asylum Operations - Decision Maker", accessible at <http://www.manpowergroup.co.uk/wp-content/uploads/2016/08/AsylumOperationsDecisionMaker-CandidateInformationPack.pdf> (last accessed 31/10/2016).

BACK



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The full version of the report is available for download at:

www.freedomfromtorture.org/provingtorture

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