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Justice for Torture Victims: Applying a victim-centred approach and ensuring the right to redress and rehabilitation in practice

Recommendations from conference participants
March 2024



Foreword

Despite clear obligations and commitments, including the 2020 OSCE Ministerial Council Decision on the prevention and eradication of torture (MC.DEC.7/20), torture and other ill-treatment are still practiced in the OSCE region, both in times of peace and – as evidenced by Russia’s ongoing war of aggression against Ukraine - in times of armed conflict.

While the ultimate goal has to be the eradication of this grave breach of human rights and humanitarian law, States also have a duty to provide access to redress and rehabilitation for all torture victims. The United Nations Convention Against Torture and other cruel, inhuman or degrading treatment or punishment (UNCAT) provides for an explicit right in this regard. Correspondingly, in the 2020 OSCE Ministerial Council Decision, OSCE participating States recognised that effectively combatting torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) requires an integrated and victim-centred approach encompassing prevention, access to justice, accountability, redress and the enforceable right to a fair and adequate compensation, including the means for as full rehabilitation as possible.

In this context, on 2 June 2023, we organised the international conference “Justice for Torture Victims: Applying a victim-centred approach and ensuring the right to redress and rehabilitation in practice”, with the support of the OSCE 2023 Chairpersonship of North Macedonia and the OSCE Office for Democratic Institutions and Human Rights (ODIHR). The conference was co-sponsored by a total of 42 OSCE participating States: Albania, Andorra, Canada, the 27 EU Member States, Georgia, Iceland, Liechtenstein, Moldova, Montenegro, North Macedonia, Norway, San Marino, Switzerland, Ukraine, the United Kingdom, and the United States of America.

More than 80 participants attended the conference throughout the half-day, and it provided a platform for OSCE participating States, international organisations and civil society to exchange best practices in the field of rehabilitation and redress for acts of torture and other ill-treatment, both in peacetime and in times of war. In addition to relevant OSCE Human Dimension commitments, the discussions drew on, inter alia, ODIHR and Fair Trials’ baseline study on “Eliminating Incentives for Torture in the OSCE Region” and the “Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (Istanbul Protocol 2022).

This publication aims to collate and present the recommendations made by the speakers and participants at the conference in a structured manner. The document is drafted without prejudice and does not endorse any recommendations over others. Our hope is, however, that the document can serve as an inspiration for further dialogue and possible action for relevant stakeholders.

We would like to thank all conference participants for their valuable contributions to the discussion. We look forward to continuing our dialogue on the next possible occasion.



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Recommendations from conference participants

In order to guarantee the right to redress and rehabilitation for acts of torture and other ill-treatment as defined in UNCAT, conference participants stressed that the needs of the victims have to be centred. States should provide redress and rehabilitation independently of criminal proceedings and where the human rights violation took place. Investigations into allegations of torture should be conducted promptly and in accordance with the principles and standards of the Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). When responding to acts of sexual and gender-based crimes amounting to torture it is crucial take into account the specific needs of all victims and alleged victims, including men and boys.

Against the backdrop of Russia's war of aggression against Ukraine, several of the recommendations were centred around redress and rehabilitation for acts of torture and other ill-treatment in armed conflict. In particular, recommendations were focused on difficulties in reaching potential victims and documenting cases. Participants suggested inter alia the creation of mobile

teams and a hotline, as well as establishing the possibility for victims to appear in court via video link.

Participants agreed that while ensuring redress and rehabilitation for acts of torture and other ill-treatment is primarily a responsibility of the state, civil society plays an important and complementary role in documenting cases and providing services to victims, such as psychological support. However, it was also stressed that civil society organizations and other service providers must receive sufficient and continuous funding in order to carry out these important functions.

The recommendations from conference participants will be structured as follows and directed at participating States or OSCE/ODIHR:

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Policy level

To participating States

1 Recognize that effectively combating torture and other cruel, inhuman or degrading treatment or punishment requires an integrated and victim-centred approach encompassing prevention, access to justice, accountability, redress and the enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.ⁱ

2 Provide effective and holistic redress for victims of torture or other cruel, inhuman or degrading treatment or punishment, regardless of where the acts of torture and ill-treatment have taken place. This redress should encompass effective remedy and adequate, effective and prompt reparation, which should include restitution, fair and adequate compensation, rehabilitation, satisfaction and guarantees of non-repetition.ⁱⁱ

3 Adopt a victim-centred approach when responding to acts of sexual and gender-based crimes amounting to torture and take into account the specific needs of all victims and alleged victims, including men and boys.ⁱⁱⁱ

4 Develop policies on victim and witness support that ensure clear referral pathways, and outline the roles of different actors to ensure coordination and complementarity of State institutions, civil society

organisations (CSOs), regional and international organisations, without undue overlap.^{iv}

5 Ensure comprehensive redress in the form of reparations, medical and psychological care, economic and legal support, and societal and community engagement.^v

6 Ensure that detainees are able to make complaints confidentially and without fear of reprisals or other negative consequences, and that protection schemes are available for detainees who allege torture.^{vi}

7 Guarantee the rights of victims and witnesses at all stages of the investigation, including the right to lodge complaints, to participate in legal proceedings, to be protected from threats and harassment by state authorities, and to have their right to privacy respected.^{vii}

8 Protect the rights of victims to security, physical and mental integrity, and take measures to minimize the risk of re-traumatization throughout the course of investigations and other relevant legal proceedings.^{viii}

9 Ensure that alleged victims of torture or ill-treatment and their legal representatives are informed of, and have access to, any hearing, as well as to all information relevant to the investigation, and are entitled to present other evidence.^{ix}

10 Establish centres that provide free legal aid in sufficient number and hotlines to receive requests from people who are not able to visit the centres in person due to internal political instability, a state of emergency or an armed conflict, as well as persons who are deprived of their liberty.^x

11 Ensure that investigations into allegations of torture and other ill-treatment are carried out in a prompt, impartial and effective manner by an independent body, in accordance with the principles and standards of the Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).^{xi}

12 Ensure that service providers, including CSOs, receive sufficient and continuous funding in order for them to efficiently assist all alleged victims that seek their services.^{xii}

13 Ensure that individuals who allegedly experienced torture or ill-treatment are provided with an opportunity to apply for asylum and go through a procedure that determines refugee status or subsidiary protection; such procedure shall be informed by the Geneva Convention on the status of Refugees and the Istanbul Protocol.^{xiii}

14 Ensure that refugee status determination and subsidiary

protection procedures are conducted in a trauma-informed manner and that applicants who experienced torture or other ill-treatment can access rehabilitation services regardless of where these acts have taken place.^{xiv}

15 Promote universal jurisdiction as an efficient tool to hold perpetrators of torture and other ill-treatment, as well as other international crimes, accountable and for victims to seek justice.^{xv}

National legal framework To participating States

16 Define clear compensation mechanisms for torture victims in the law and raise public awareness on such mechanisms to ensure that people are aware of their rights.^{xvi}

17 Ensure that torture victims can seek civil compensation and have access to redress and rehabilitation independently of criminal proceedings against the perpetrator.^{xvii}

18 Ensure that legislation admits the testimonies of torture victims and witnesses provided via video recordings as a way to protect them and avoid re-traumatization caused by a confrontation with the perpetrator.^{xviii}

Practice To participating States

19 Ensure that procedures (civil and criminal) are victim-centred, that the needs of torture victims are prioritized, and that they have the right to be heard on decisions that concern them.^{xix}

20 Embrace a holistic approach to support alleged victims of torture that involves as many stakeholders as possible, including, as appropriate, service providers, human rights organizations, youth associations, religious communities and academics.^{xx}

21 Ensure that procedures relating to alleged torture victims are conducted without lengthy delays, in accordance with their right to an effective remedy.^{xxi}

22 Ensure that reparations are victim-oriented, gender-sensitive, adequate, effective, prompt and comprehensive, tailored to the particular needs of the victim(s) and proportionate to the gravity of the harm suffered.^{xxii}

23 Facilitate the creation of dedicated safe spaces where torture victims can reflect on their needs and realities and services can be provided in a trauma-informed way.^{xxiii}

24 Encourage the inclusion of innovative means in rehabilitation processes, including art therapy.^{xxiv}

25 Take measures to ensure that state authorities and non-state actors who interact with alleged victims of torture and torture victims strictly abide by the “do no harm” principle.^{xxv}

26 Ensure that complaint mechanisms in places of detention are simple and accessible, including through the installation of telephone hotlines or confidential complaint boxes.^{xxvi}

27 Ensure broad dissemination of the Istanbul Protocol (2022 edition) and take measures to encourage its practical implementation, with a special emphasis on sections applicable to health professionals.^{xxvii}

28 Take measures immediately after allegations of torture have been raised in order to avoid any contact of the alleged perpetrator with witnesses, the victim, or the victim’s family, and any interference of the alleged perpetrator(s) in the investigation process.^{xxviii}

29 Ensure that a wide range of independent experts, including medical doctors and psychologists, are involved in court proceedings in cases relating to torture and ill-treatment, in accordance with applicable international and national legal frameworks.^{xxix}

30 Ensure that alleged victims, as well as state and local institutions, are fully aware of the existence of complaint and redress mechanisms and those who need these mechanisms know how to access them.^{xxx}

31 Ensure that stigmatization of victims of torture, including torture of a sexual nature, is prevented on every occasion and take into account the stigmatization that male victims of sexual torture may experience.^{xxxii}

32 Establish communication tools, such as communication centres and information campaigns, so that torture victims who found refuge abroad, notably due to a situation of armed conflict, are fully informed about ongoing investigations and efforts made by prosecutors in their own country.^{xxxiii}

33 Train investigators, judges and prosecutors in trauma-informed communication with and interviewing of victims and witnesses of torture, and draw on the Principles on Effective Interviewing for Investigations and Information Gathering (Méndez Principles) where appropriate.^{xxxiiii}

34 Support the establishment of mobile teams to reach out to torture victims in situations of internal political instability, state of emergency and armed conflict.^{xxxv}

35 Acknowledge the important complementary role that CSOs play in providing rehabilitation services to torture victims.^{xxxvi}

Practice

To the OSCE/ODIHR

36 Encourage participating States to implement the Istanbul Protocol (2022 edition) as an investigative standard to ensure the fulfilment of their obligations under the UNCAT to investigate, prosecute and punish acts of torture and other ill-treatment.^{xxxvi}

37 Encourage and support participating States to fulfil their obligations under international law relating to the right to redress and to uphold the absolute prohibition of torture and other ill-treatment in situations of peace and armed conflict, in accordance with international human rights law and international humanitarian law.^{xxxvii}

38 Integrate victims' perspectives in all aspects of the fight against torture and other ill-treatment.^{xxxviii}

39 Promote the use of a trauma-informed approach when dealing with victims of torture and other ill-treatment and help strengthen the capacity of monitoring mechanisms, such as national preventive mechanisms under the Optional Protocol to the UN Convention against Torture (OPCAT), and CSOs to document torture and other ill-treatment based on such approach.^{xxxix}

References

- ⁱ OSCE Ministerial Council Decision on the Prevention and Eradication of Torture (MC.DEC/7/20).
- ⁱⁱ Partially based on OSCE Ministerial Council Decision on the Prevention and Eradication of Torture (MC.DEC/7/20).
- ⁱⁱⁱ Partially based on Recommendations from conference participants, Fighting impunity for acts of torture: ensuring accountability for perpetrators and justice for victims, February 2023.
- ^{iv} Partially based on Recommendations from conference participants, Fighting impunity for acts of torture: ensuring accountability for perpetrators and justice for victims, February 2023.
- ^v Sexual and Gender-Based Violence in Armed Conflict, factsheet published by ODIHR in 2022.
- ^{vi} Eliminating Incentives for Torture in the OSCE Region: Baseline Study and Practical Guidance, Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and Fair Trials, 2020.
- ^{vii} Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Istanbul Protocol, Professional Training Series No.8/Rev. 2, UN Human Rights Office of the High Commissioner, 2022.
- ^{viii} Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Istanbul Protocol, Professional Training Series No.8/Rev. 2, UN Human Rights Office of the High Commissioner, 2022.
- ^{ix} Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Istanbul Protocol, Professional Training Series No.8/Rev. 2, UN Human Rights Office of the High Commissioner, 2022.
- ^x Recommendation from conference participants
- ^{xi} Eliminating Incentives for Torture in the OSCE Region: Baseline Study and Practical Guidance, Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and Fair Trials, 2020.
- ^{xii} Recommendation from conference participants
- ^{xiii} Recommendation from conference participants
- ^{xiv} Recommendation from conference participants
- ^{xv} Recommendation from conference participants
- ^{xvi} Recommendation from conference participants
- ^{xvii} Partially based on UN Committee against Torture General Comment No. 3 (2012): Implementation of Article 14 by State parties.
- ^{xviii} Recommendation from conference participants
- ^{xix} Recommendation from conference participants
- ^{xx} Recommendation from conference participants
- ^{xxi} Recommendation from conference participants
- ^{xxii} Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Istanbul Protocol, Professional Training Series No.8/Rev. 2, UN Human Rights Office of the High Commissioner, 2022.
- ^{xxiii} Recommendation from conference participants
- ^{xxiv} Recommendation from conference participants
- ^{xxv} Recommendation from conference participants
- ^{xxvi} Eliminating Incentives for Torture in the OSCE Region: Baseline Study and Practical Guidance, Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and Fair Trials, 2020.
- ^{xxvii} Recommendation from conference participants
- ^{xxviii} Partially based on Eliminating Incentives for Torture in the OSCE Region: Baseline Study and Practical Guidance, Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and Fair Trials, 2020.
- ^{xxix} Recommendation from conference participants
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- ^{xxxiv} Recommendation from conference participants
- ^{xxxv} Recommendation from conference participants
- ^{xxxvi} Recommendations from conference participants, Fighting impunity for acts of torture: ensuring accountability for perpetrators and justice for victims, February 2023.
- ^{xxxvii} Recommendations from conference participants, Fighting impunity for acts of torture: ensuring accountability for perpetrators and justice for victims, February 2023.
- ^{xxxviii} Recommendations from conference participants, Fighting impunity for acts of torture: ensuring accountability for perpetrators and justice for victims, February 2023.
- ^{xxxix} Recommendation from conference participants