



association for  
the prevention  
of torture



# **Strengthening the prevention of torture in the OSCE region: Monitoring the use of force and equipment in the criminal justice system**

**Report on the fifth regional meeting of National Preventive Mechanisms (NPMs) and civil society organizations (CSOs) from the OSCE region held in Warsaw, Poland, on 24-25 August 2022**

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## Background

This report summarizes the discussions held during the fifth regional meeting of National Preventive Mechanisms (NPMs) and civil society organizations (CSOs) from the OSCE region, jointly organized by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Association for the Prevention of Torture (APT). The meeting took place on 24 and 25 August 2022 in Warsaw, Poland.

The regional meeting aimed to provide a platform for exchange between NPMs and CSOs in their complementary efforts to prevent the inappropriate use of force and law enforcement equipment in custodial settings in the OSCE region.

Following the methodology of previous editions of the ODIHR/APT regional meeting for NPMs and CSOs, the event aimed to a) encourage the exchange of practices on the monitoring of the use of force in custodial settings in the OSCE region; and, b) strengthening the community of practice in the OSCE region by creating bridges and connections between NPMs and relevant CSOs. After a fourth edition that took place online, the fifth edition was the first regional meeting held in-person since 2019.

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The strengthening of the independent monitoring of all places of deprivation of liberty has been identified as one of the priority areas of ODIHR's anti-torture work. To this end, ODIHR works closely with international and non-governmental organizations active in the field of torture prevention, including the Civic Solidarity Platform, which represents over 90 non-governmental organizations (NGOs) from the OSCE region, OSCE field operations, NPMs, UN agencies, the Council of Europe, European Union institutions, academia, and research foundations. In the Ministerial Council Decision No. 7/20, adopted on 4 December 2020, OSCE participating States pledged to support the efforts of relevant national actors, such as national preventive mechanisms, national human rights institutions or other national bodies or mechanisms, active in preventing torture and other cruel, inhuman or degrading treatment or punishment. For those who have ratified the Optional Protocol to the Convention against Torture (OPCAT), they have an obligation to designate or establish national preventive mechanisms that are independent, adequately resourced and effective.<sup>1</sup>

The APT is a Swiss NGO, which has worked since 1977 to prevent torture and ill-treatment worldwide, for societies free of torture that protect the dignity of persons deprived of liberty.

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<sup>1</sup> [MC Decision 7/20: Prevention and eradication of torture and other cruel, inhuman and degrading treatment or punishment](#), para. 11

The APT is at the origin of the 1987 European Convention for the Prevention of Torture and the 2002 OPCAT.

## Introduction

While torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) continue to be used worldwide for numerous and often interconnected reasons, certain practices and behaviours incentivize and facilitate its use.<sup>2</sup> The use of weapons, tactics and tools that have no purpose other than torture and other ill-treatment – and hence must be prohibited – as well as the misuse of law enforcement equipment – designed with a legitimate purpose – continue to cause numerous deaths and severe injuries in places of deprivation of liberty. In this regard, monitoring the use of force and law enforcement equipment used by states' officials is essential to prevent torture and other ill-treatment effectively in custodial settings.

As of August 2022, there were 42 NPMs in the OSCE region created under the OPCAT. NPMs play a crucial role in monitoring places of deprivation of liberty, and ultimately in preventing risks of torture and other ill-treatment. In their functions, these independent bodies can monitor the use of force and law enforcement equipment in multi-faceted ways. Their mandate includes preventive visits to places of deprivation of liberty, during which they examine the treatment of persons deprived of their liberty, including the documentation of any tools used within these places. Moreover, NPMs have an advisory function, which allows them to draft recommendations to State authorities, provide opinions and review rules concerning detention and personnel-related issues.

Albeit in a different capacity, some CSOs play an equally important role in monitoring the use of force and law enforcement equipment by states' officials. In this role, they safeguard the rights of victims of torture and other ill-treatment by ensuring access to medical and psychosocial support as well as legal and social services. CSOs also make an important contribution in documenting torture and advocating for effective investigations. CSOs' interactions with NPMs are varied and range from playing a watchdog role towards NPMs and the implementation of the OPCAT system, to full-fledged collaboration on joint initiatives and projects, including by being an integral element of the NPM system.

The assessment of monitoring bodies on the use of force in detention settings shall take into account the principles of legality, necessity, proportionality and non-discrimination. First of all, the legitimate conditions and methods available to prison staff to use force must be enshrined and specified within the law and meet the requirements of international law. States must ensure accountability in the form of disciplinary and criminal sanctions for cases of excessive use of force. Furthermore, the use of force must always be proportional to the threat. Here,

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<sup>2</sup> Eliminating Incentives for Torture in the OSCE Region: Baseline Study and Practical Guidance

monitoring bodies have to balance the seriousness of a threat against the application of the use of force. More than this, the use of force should only be applied in the most exceptional cases and in clearly identified situations, such as legitimate self-defence, escape, or refusal to comply with a lawful order. Finally, authorities must take account of the specific profile and needs of persons deprived of liberty and identify possible discriminatory patterns. The role of monitoring bodies is to evaluate state compliance with these principles and to respond when the excessive use of force is suspected.

Therefore, NPMs and civil society organisations play a crucial and complementary role in monitoring the excessive use of force and law enforcement equipment and contribute to a better implementation of the UN Convention Against Torture and other international standards, in particular the revised Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).

The fifth regional meeting that took place in Warsaw brought together NPMs and CSOs from 29 OSCE participating States. In addition, participants included members of the UN Sub-Committee on prevention of torture (SPT), as well as representatives from the European Committee for the Prevention of Torture (CPT).

During the meeting, 42 representatives of NPMs, CSOs and human rights mechanisms shared their experiences in monitoring the inappropriate use of force in custodial settings in the OSCE region and discussed promising practices with a view to strengthening the protection of persons deprived of liberty. This report does not intend to provide a comprehensive analysis of: i) monitoring the use of inappropriate or excessive force in custodial settings; ii) the legal framework related to the use of force in detention; or, iii) practices in the OSCE region. It merely reflects key issues highlighted during the two-day discussions.

## Session 1. Understanding and monitoring the excessive use of force in the OSCE region

This first session identified challenges in monitoring the implementation and compliance of international standards related to the use of force. It also looked at the factors that elevate the risk of an excessive use of force in places of deprivation of liberty in the OSCE region and how to mitigate them. The use of force, weapons and restraints is regulated in various sets of international standards to which we referred during the meeting. Here below are some relevant extracts.

### **The United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)**

The revised United Nations Standard Minimum Rules for the Treatment of Prisoners, known as Nelson Mandela Rules, address instruments of restraint and their adequate use. Rules 47 to 49 cover which instruments should be prohibited and the conditions of authorizing others:

#### *Rule 47*

*1. The use of chains, irons or other instruments of restraint which are inherently degrading or painful shall be prohibited.*

*2. Other instruments of restraint shall only be used when authorized by law and in the following circumstances:*

*(a) As a precaution against escape during a transfer, provided that they are removed when the prisoner appears before a judicial or administrative authority;*

*(b) By order of the prison director, if other methods of control fail, in order to prevent a prisoner from injuring himself or herself or others or from damaging property; in such instances, the director shall immediately alert the physician or other qualified health-care professionals and report to the higher administrative authority.*

#### *Rule 48*

*1. When the imposition of instruments of restraint is authorized in accordance with paragraph 2 of rule 47, the following principles shall apply:*

*(a) Instruments of restraint are to be imposed only when no lesser form of control would be effective to address the risks posed by unrestricted movement;*

*(b) The method of restraint shall be the least intrusive method that is necessary and reasonably available to control the prisoner's movement, based on the level and nature of the risks posed;*

*(c) Instruments of restraint shall be imposed only for the time period required, and they are to be removed as soon as possible after the risks posed by unrestricted movement are no longer present.*

*2. Instruments of restraint shall never be used on women during labour, during childbirth and immediately after childbirth.*

#### *Rule 49*

*The prison administration should seek access to, and provide training in the use of, control techniques that would obviate the need for the imposition of instruments of restraint or reduce their intrusiveness.*

### **The Bangkok Rules**

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (known as Bangkok Rules) consider the specific needs and requirements of women prisoners. In this regard, the Bangkok Rules incorporates gender-sensitive approaches to monitoring the excessive use of force. In particular, Rule 24 prohibits the use of restraints on women during labour, during birth and immediately after birth:

#### *Rule 24*

*Instruments of restraint shall never be used on women during labour, during birth and immediately after birth.*

### **Havana Rules**

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules) provide a guiding framework on monitoring the excessive use of force with a focus on restraints on juveniles. This is covered by rules 63 to 65:

*63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.*

*64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.*

*65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.*

### **The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials**

The Basic Principles are a key reference point and guide for those aiming to ensure human rights compliant use of force and firearms by law enforcements officials, with a special focus on the protection of the rights to life and security of person. Here is an extract (*note that the whole body of Principles is relevant when discussing the use of force by law enforcement officials*):

*4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.*

*5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:*

- ( a ) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;*
- ( b ) Minimize damage and injury, and respect and preserve human life;*
- ( c ) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;*
- ( d ) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.*

6. *Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.*

7. *Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.*

8. *Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.*

### **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) – General Reports**

*Extract from the 19th General Report (CPT/Inf (2010) 28)*

Paragraph 69 of the 19<sup>th</sup> General Report of the CPT outlines that the use of electric discharge weapons should be subject to principles of proportionality, advance warning, precaution, necessity and subsidiarity. In this regard, it also underlines the necessity of training by public officials that receive such weapons. In addition, it proposes to apply the same criteria governing the use of firearms to the usage of electric discharge weapons capable of discharging projectiles.

*Extract from the CPT 2nd General Report (CPT/Inf (92) 3)*

Paragraph 53 of the 2<sup>nd</sup> General Report by the CPT underlines the need of constant and adequate supervision in high-risk situations where prison staff has to use force to control violent prisoners or exceptionally resort to instruments of physical restraint. It also highlights the proportionality of restraints and the need to record the use of force against prisoners.

## **A. Challenges**

Participants agreed that there is a lack of accountability for cases of excessive use of force in criminal justice systems, resulting in a low number of prosecutions related to these cases. In particular, participants noted the absence of mechanisms that ensure the follow-up of such cases in the criminal justice system. In this regard, NPM representatives also underlined the insufficient implementation of their recommendations by government authorities. Relatedly then, there is a lack of accountability of certain authorities towards NPMs, so that the former fail to improve conditions of detention in the criminal justice system.

Participants also discussed the challenges posed by medical examinations. Access to medical files should always be bound by confidentiality. The majority of NPM participants report that they are able to access the medical information of detainees in their monitoring activities, in



line with their mandate.<sup>3</sup> Issues related to the accuracy and independence of examinations by health care professionals were also raised. In addition, participants underlined the vulnerability of detainees in different custodial settings during medical examinations. In solitary confinement, prisoners receive medical examination ahead of being confined, but there is also a need of regular medical check-ups of prisoners in solitary confinement. Some participants, however, stressed the issue of dual loyalty of medical professionals in prisons, e.g. giving legitimacy to a possible extension of solitary confinement by confirming that the prisoners' health is acceptable.

Some NPM representatives also emphasized new challenges posed by social media, particularly in non-custodial settings. While video documentation from third-party bystanders can offer an additional perspective in cases where the use of force is applied in public settings, it may also lead to a skewed perception of the incident. This may perpetuate polarisation of the monitoring work by NPMs in instances where the public opinion counters the perception of monitoring bodies. In addition, an onslaught of negative online reactions to publicized investigations into an alleged excessive use of force may hinder the monitoring work of NPMs.

## B. Risk factors

Participants agreed that the first 24 hours of detention and apprehension are those with the highest risk of a possible excessive use of force. This is because detainees interact with law enforcement officers under limited supervision. In tense situations, staff may need to decide on the right course of action within seconds, leading to possible escalations; tensions can rise particularly quickly, especially when the detained individual is agitated and/or intoxicated. Searches were also mentioned as a situation in which instances of ill-treatment are more likely to occur. Restrictions to legal and procedural safeguards enhance the vulnerabilities faced by detainees in the first hours of detention.

Transfers of detainees represent another high-risk environment. The reasons for this are two-fold. Firstly, detainees are commonly placed under minimal supervision during transfers without installed video cameras; hence reducing the number of eyewitnesses to an excessive use of force. Secondly, the safety of transport vehicles frequently does not comply with international standards because of a lack of security belts and/or because prisoners are frequently handcuffed. Therefore, transfers can place detainees at a particular risk of being exposed to an excessive use of force and harm.

Participants also identified interrogations for investigative purposes as a risk situation conducive to the excessive use of force. With many criminal justice systems being confession-driven, severe and excessive force may be used to gather information and obtain a confession. Indeed, there remains a widespread misconception that torture "works", and that the use of

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<sup>3</sup> See OPCAT, art. 21(2): "Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned."

force is acceptable during interviews. In combination with limited access to lawyers or other safeguards, this misconception creates an environment that further reinforces vulnerabilities of detained individuals since the onset of police custody.

Additionally, institutional culture that encourages the excessive use of force was also named as a key underlying risk factor. Here, institutional culture relates to shared values, practices, symbols, rituals, and language that characterizes law enforcement. In this regard, participants outlined that law enforcement structures continue to be characterized by confession-based criminal justice systems that incentivize the excessive use of force. This is exacerbated by a pervasive culture of impunity.

### C. Mitigating factors

In order to mitigate challenges related to institutional culture, participants pointed to several factors. First of all, regular training sessions are proposed to foster an understanding of incident prevention and response that breaks with choosing violence as a default option. Training sessions may also enable law enforcement and penitentiary staff to agree on a set of shared values and common practices and help them to embrace multi-disciplinary approaches. This is perceived to be a particularly good practice if combined with diverse hiring processes, which ensure an equal representation of people from different backgrounds within the prisons staff workforce. Thirdly, participants identified the need to improve the working conditions for penitentiary staff. Better work environments for staff in prison systems, based on socio-economic stability, can promote the desirability of the employment opportunity and address issues related to staff shortages.

Other factors that may mitigate the excessive use of force in the OSCE region include video monitoring, and more precisely, CCTV cameras. The usage of CCTV cameras in custodial settings is identified as an integral part of evidence collection in assessing an alleged excessive use of force. Therefore, the installation of CCTV cameras may also have a mitigation effect. Notably, the installation of CCTV footage should not be limited only to interview rooms. Rather, participants encouraged a broader usage of CCTV cameras, including in transfer settings. In turn, this is perceived to benefit the monitoring activities of NPMs and CSOs as well, in the absence of other supplementary evidence. Some participants, however, noted that such a broader usage of CCTV would have to be done in compliance with the prisoners' right to privacy, and that CCTV systems could not operate in places where there is a heightened expectation of privacy, such as showers, toilet and healthcare facilities.

## D. Promising practices

To ensure accountability in prosecutions of allegations of torture and other ill-treatment, some participants noted the relevance of persistent and consistent follow-up on investigations and prosecutions in order to ensure that they move forward. Rigorous follow-up by monitoring bodies, therefore, can help strengthen accountability for acts of torture or other ill-treatment.

Secondly, some participants noted the promising practice of implementing effective legislative safeguards for whistle-blowing by law enforcement officials. Putting in place coherent legislative safeguards for whistle-blowers among law enforcement officials may encourage or incentivize police officers to break away from a usually strong *esprit de corps* and speak up against fellow officers who are suspected of having committed infractions against prisoners.

Finally, participants underlined the need to put in place independent payment structures for medical staff working in custodial settings, so that medical staff get a salary from the Ministry of Health rather than from the Ministry of Justice and/or prison authorities. Ensuring the independence of medical staff conducting the medical examinations of individuals that have faced possible torture or other ill-treatment is vital for evidence gathering.

## Session 2: Monitoring equipment and restraints in custodial settings

During this session, NPM and CSO representatives exchanged their views on the main factors that must be taken into account when monitoring the use of weapons and restraints in custodial settings, and shared some promising practices in this regard.

### A. Monitoring

#### **Monitoring the different types of equipment and instruments of restraint<sup>4</sup>**

While some weapons and tools have no other purpose than torture or other ill-treatment and shall be prohibited, other equipment (e.g. handcuffs, batons or leg cuffs) may have a legitimate role in places of deprivation of liberty, but can be easily used for torture and to inflict other ill-treatment, whether intentionally or not, and should be controlled.

Prohibited equipment includes, but is not limited to, electric chairs for the purpose of the execution of human beings, electric shock devices that are intended to be worn on the body by a restrained individual, fixed cuffs, cages, net beds, shackle boards, and shackle beds.

Prohibited equipment shall be distinguished from equipment that has legitimate law enforcement use if used in accordance with international human rights standards but should be controlled. Such equipment includes what we commonly call "less lethal weapons", a term that includes a wide array

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<sup>4</sup> Based on a presentation by the Omega Research Foundation. On the same topic, see Omega Research Foundation's [Visual Guide to Law Enforcement and Security Equipment](#)

of weapons designated to incapacitate, but not kill. These can range from batons to chemical irritants like pepper spray or tear gas, as well as electric shock weapons or kinetic impact projectiles. Means of restraint such as standard handcuffs and leg cuffs also fall within the category of equipment that should be controlled.

### **Monitoring prohibited equipment**

To monitor prohibited equipment in custodial settings, monitoring bodies should document the equipment itself if circumstances allow it, including recording the serial numbers and logos, noting key features and photographing or sketching the equipment. In addition, the regulations and policies surrounding the issuing and use of prohibited equipment should be investigated. Lastly, monitoring bodies should raise any findings with relevant authorities referring to relevant statements from international and regional bodies.

### **Monitoring instruments of restraint**

One of the first steps in monitoring the use of instruments of restraint is to identify whether their usage complies with the Nelson Mandela Rules, and with the European Prison Rules wherever applicable. In addition, monitoring bodies should assess what the restraints are made of (either fabric, soft or metal) and the level of supervision provided. In monitoring the use of restraints, assessing the timing of the removal of restraints is another element to consider.

### **Monitoring less lethal weapons**

Monitoring bodies should investigate whether the regulations specify when less lethal weapons may be used, and to what extent these regulations are applied in practice. In addition, due attention should be placed on the usage of chemical irritants in places of detention, and their usage in enclosed spaces as well as the usage of batons. Other less lethal weapons that can be monitored by relevant bodies are electric shock weapons and kinetic impact projectiles.

Participants agreed that the effective monitoring of the use of weapons and instruments of restraint in custodial settings requires the consultation of a variety of sources. These can range from, but are not limited to, testimonials drawn from interviews or written outputs, CCTV footage, reports and medical certificates. Taking into consideration a broad range of sources allows detention monitors to formulate a comprehensive insight into determining a possible excessive use of weapons and restraints at a systemic level. This is especially true in cases where written testimonies and official police reports do not record the full picture of the possible excessive use of force.

In addition, recording the legality, necessity, proportionality, and non-discrimination of the use of force in police records is another factor that NPMs and CSOs must take into consideration in their monitoring activities. To prevent any abuse, the use of force must respect the principles

of legality, necessity, proportionality and non-discrimination. Consulting records that are clearly outlining the conditions in which it is permissible to resort to force and the type of weapons and restraints used enables monitoring bodies to understand and assess compliance with these standards in places of deprivation of liberty. It was noted that handcuffs and other instruments of restraint are too frequently used in places of deprivation of liberty, particularly in criminal detention facilities and in psychiatric hospitals. Finally, it was noted that an excessive use of restraints negatively impacts the relationship between staff and persons deprived of liberty and the level of trust of the latter towards the former.

## B. Promising practices

Participants underlined the implementation of multi-disciplinary approaches to monitoring the use of weapons and restraints in custodial settings as a best practice. In particular, this implies meeting a variety of different stakeholders, ranging from lawyers and health care staff to family members, as well as consulting a variety of sources including complaints by detainees and records of the use of force. Useful information can also be obtained by interviewing people who have been recently released, or asking pre-trial detainees or prisoners about their experience in police custody. Such an approach enables a holistic perspective in monitoring that aims to understand the proportionality of the use of weapons and restraints in individual cases.

This also extends to the methodology of monitoring visits. While participants agreed that unannounced monitoring visits should be done on a regular basis to check premises, including any storage room, they also pointed to the importance of conducting regular night visits in particular. Indeed, incidents often occur after dark. The rationale for a combined approach allows for a better understanding of the use of weapons and instruments of restraint at different times of the day.

Others shared the practice of monitoring trends and developments based on testimonies and the profiles of interviewees. Here, it is important to acknowledge diverse and intersecting vulnerabilities when approaching possible victims of torture or other ill-treatment. In their interactions within detainees, NPM and CSO representatives noted that they acknowledge not only their vulnerabilities within the criminal justice system, but also the broader vulnerabilities they may face based on their background, ethnicity, race, gender, religion, etc.

Finally, participants underscored the significance of raising the awareness of law enforcement and prison staff as to the permissible, and appropriate use of force. Ensuring adequate use of force and restraints in custodial settings requires a general awareness of the impact of force and restraints and the principles of legality, necessity, proportionality and non-discrimination, as well as an access to a wide variety of equipment. It also requires clear instructions and training on the usage of equipment.

### Session 3: Monitoring the use of force. Recent developments in torture prevention

#### A. Preventing torture through accountability, the role of NPMs and CSOs in implementing the Istanbul protocol

During this session, participants discussed recent trends and developments in torture prevention that focus on monitoring the use of force. The session opened with a presentation of the revised Istanbul Protocol by the International Rehabilitation Council for Torture Victims.

#### **The revised Istanbul Protocol:**

The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, known as the **Istanbul Protocol**, was originally produced in 1999. The Protocol contains a series of principles, which sets out the minimum standards for States to investigate and document torture and other ill-treatment as defined by the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) from 1984.

The original Protocol contains sections on international anti-torture standards, ethical codes for lawyers and health professionals, legal investigation of torture, considerations for interviewing, and physical as well as psychological evidence of torture.

The revised version of the Istanbul Protocol has been published in 2022 and is the product of a six-year process that involved over 180 experts.<sup>5</sup> The new edition of the Protocol incorporates over 20 years of lessons learned and reflects on the most recent developments in jurisprudence on torture prevention, redress and accountability. It offers additional guidance for health professionals in documenting torture and other ill-treatment in non-detention contexts and provides a systematic guide for States on the implementation of the Protocol. It also contains practical annexes that are set out to be used by stakeholders.

Six important developments in the new Istanbul Protocol can be noted:

- *A clarification of the definition and scope of torture and other ill-treatment, including a mention of solitary confinement and its effects;*
- *Updates on relevant ethical obligations for legal and health professionals, including the obligation to report torture;*
- *New guidance on legal investigations and interviewing;*
- *Clear and consistent guidance on the interpretation of physical and psychological evidence of torture and other ill-treatment, and an update on accidental injury and assessing self-injury;*
- *Updates on the issue of credibility and distinction between assessments of clinicians (beyond the scope of the Istanbul Protocol) and assessments of legal experts;*

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<sup>5</sup> Revised Istanbul Protocol, available at <https://www.ohchr.org/en/publications/policy-and-methodological-publications/istanbul-protocol-manual-effective-0>

- *An obligation for states to recognize signs of torture and provide a conclusion on the possibility of torture.*

Participants welcomed the revised Istanbul Protocol and shared their efforts to implement it at the national level. In particular, they see it as a necessary tool for health professionals. The Protocol is also crucial for the identification and reporting of cases of torture. In this regard, representatives from NPMs underlined the importance of ethical codes for health professionals and shared their concerns about balancing the reporting of torture with confidentiality and the 'do no harm' principle. To help addressing such issues, the revised Protocol introduces the new terminology of 'conflicting obligation' to address the specific situation of health workers employed in state institutions and whose employer's and non-medical colleagues' interest might be in conflict with the best interest of the detainee/patient.<sup>6</sup> In such case, the Istanbul Protocol is clear that the best interests of the detainee/patient always have priority. In case of suspicion of torture and possible breaches of confidentiality, the identity of individuals should be protected at all times. Moreover, as part of regular examination, the identification and recognition of injuries should always be recorded.

Some participants raised the importance of managing expectations of alleged victims when documenting torture cases, which often leads to unsatisfactory outcomes and possible re-traumatisation. Participants agreed that, while the risk of re-traumatization must be taken into account, there are significant benefits for torture victims to undergoing medical and legal processes to attempt due investigation and possible prosecution.

#### B. Moving away from interrogation to interviewing, the role of NPMs and CSOs in raising awareness of the Méndez Principles

In this session, participants exchanged their perspectives on effective interviewing and the role of NPMs and CSOs in raising awareness on the Principles on Effective Interviewing for Investigations and Information Gathering, known as the Méndez Principles. The session started with a presentation on the Méndez Principles, which provide a standard for effective and human rights-compliant interviewing by law enforcement and other stakeholders.

##### **What are the 'Méndez Principles'?**

The Principles on Effective Interviewing for Investigations and Information Gathering, also known as the **Méndez Principles**<sup>7</sup>, provide guidance and solutions to States on how to shift from confession-based criminal justice systems to embrace an approach of effective interviewing, while respecting

<sup>6</sup> Revised Istanbul Protocol, para. 173.

<sup>7</sup> <https://interviewingprinciples.com/>

human rights. The objective of the Principles, therefore, is to reduce the risks of coercion, torture and ill-treatment.

The Méndez Principles were created to ensure the protection of fundamental human rights of persons suspected of crime, victims, and witnesses. Moving away from a culture of interrogation, which is often coercive and confession-driven, they promote an approach that takes the pursuit of truth and respect of the presumption of innocence as the fundamental starting point. Thereby, the Principles ensure the collection of more reliable and accurate information, while aligning with the principle of respecting human rights in the criminal justice system, ensuring that convictions against guilty persons are obtained, and, wrongly accused persons are acquitted. They also integrate the implementation of legal and procedural safeguards throughout the process. This serves the ultimate goal of ensuring that justice is served for victims and society at large.

They also suggest to strengthen the role of NPMs and NHRIs through the promotion of independent oversight and monitoring in relation to interviewing, safeguards and associated police and justice-related practices.

Participants praised the Mendez Principles as a useful instrument to prevent torture and other ill-treatment. Moreover, an overreliance on confessions bears the risk of leading to wrongful convictions. Changing the approach to interrogation and the line of questioning in interviews is a necessity. However, participants agreed that the practical implementation of the Mendez Principles remains a key issue. Three factors in particular were noted. Firstly, institutional culture that is shaped by an overreliance on confessions perpetuates a prioritisation of interrogation practices, rather than interviewing, which limits the implementation of the Mendez Principles in practice.

Secondly, institutional and legal barriers limit the capacity of NPMs and CSOs to drive sustainable change in the criminal justice system's institutional culture. The main objective of NPMs is to examine the treatment of persons deprived of their liberty, with a view to strengthening their protection against torture and other ill-treatment. NPMs make recommendations to the relevant authorities on improving the treatment and condition of persons deprived of their liberty, but do not undertake investigations or adjudicate on complaints concerning torture or ill-treatment. Rather, they seek to identify patterns and detect systemic risks of torture and other ill-treatment. The ability of NPMs to drive change within institutions is, therefore, limited to the provision of recommendations and legal opinions, and it requires willingness from state institutions to implement relevant recommendations. This also extends to the Mendez Principles, the implementation of which ultimately lies with authorities. One participant emphasized the significance of the media in shaping attitudes to policing and considered that NPMs should be prepared to speak to them.



Thirdly, some participants noted hindrances in monitoring compliance with the Mendez Principles. They noted that they had to rely on written reports and testimonies from interviews as their baseline for investigation, and the fact that written reports from interviews compiled by authorities may not provide for a holistic account of the possible coercive nature of the interview. This can make it difficult to assess whether excessive use of force was indeed applied, as authorities may underreport the instances. NPMs do not – and should not – be present during interviews, as it would make them part of the criminal investigation. Monitoring video recordings, when they exist, is an option; however, NPMs do not always have access to them. One action monitoring bodies can take, however, is to visit the rooms where interviews take place. They might find unexpected objects likely to be misused for torture and other ill-treatment.

Direct contact with torture victims also needs to be planned and conducted in a careful manner. Some victims of torture may forget aspects of the interview and be unable to give a full account of the event. A few monitoring bodies also raised the issue of possible re-traumatisation of victims of torture in direct interview follow-ups.

Finally, NPM and CSO participants welcomed the acknowledgement in the Mendez Principles of the vulnerability of detainees. They pointed to underlying vulnerabilities of different groups of people from diverse backgrounds that shape attitudes, access and treatment in the criminal justice system, and in particular, treatment and experiences during interviews. Discrimination based on race, age, ethnicity, gender, sexual orientation, gender identity, religion or other factors may shape attitudes during interviews and increase the likelihood for interviewees to be exposed to ill-treatment or torture in interview settings. At the same time, complaints by individuals facing multiple forms of discrimination may be minimized or ignored by authorities within the criminal justice system and are less likely to be investigated and prosecuted. Some participants described this as an 'ecosystem of torture', in which structural vulnerabilities outside of detention settings are part of a broader continuum of intersecting discrimination within the criminal justice system.

## Recommendations for the way forward

With regards to the way forward, participants identified the following recommendations:

- Promote the **use of CCTV cameras**, including in interview rooms and transfer vehicles, and **monitor video-recordings** when available and with due regard to the right to privacy;
- Systematically **visit rooms where interviews take place** and look for any equipment that might be used for the purpose of torture or other ill-treatment;
- Conduct a rigorous **follow-up to investigations and prosecutions** of cases of torture or other ill-treatment;
- Complement regular and unannounced monitoring visits, including **monitoring visits at night time**;
- Implement a **multi-sectoral approach to monitoring the use of weapons and restraints**. This includes meeting a variety of different stakeholders, ranging from lawyers, health care staff and family members to recently released persons, as well as consulting a variety of sources, including records and complaints by detainees.
- Adopt an **intersectional approach** to possible victims of torture to comprehensively assess the possible vulnerabilities faced in individual cases.

In order to strengthen monitoring of the use of force in custodial settings, participants also expressed interest in having further discussions in relation to:

- The role of NPMs and CSOs in monitoring compliance with the Mendez Principles and encouraging positive changes in the institutional culture of criminal justice systems;
- Strategies to effectively follow-up on recommendations addressed to state authorities;
- Monitoring trends and developments related to the use of certain weapons and restraints and its impact based on prisoners' profiles and vulnerability;
- Ensuring a diligent recording on the legality, necessity, proportionality and non-discriminatory nature of the use of force by law enforcement and penitentiary officials;
- Potential strategies to strengthen legal and procedural safeguards in the early stages of police custody;
- Potential avenues to promote training of police and prison staff on human-rights compliant use of law enforcement equipment and restraints.

## Annex I: Background document

### I. Introduction

While torture continues to be performed worldwide for numerous and often intertwining reasons, certain practices and behaviour incentivize and facilitate its use.<sup>8</sup> The use of weapons, tactics and tools that have no purpose other than torture and other ill-treatment as well as the misuse of equipment that may have a legitimate purpose continue to cause numerous deaths and severe injuries in places of deprivation of liberty. In this regard, monitoring the use of force and law enforcement equipment used by states' officials is essential to efficiently prevent torture and other ill-treatment in custodial settings.

Reports published by a wide range of organisations over the years have raised concerns about the misuse of firearms, less lethal weapons, and means of restraint, including for the purpose of torture and other forms of ill-treatment, in various countries around the world.<sup>9</sup> Many bodies and mechanism have documented such concerns, including the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment<sup>10</sup>, the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>11</sup>, the United Nations Committee against Torture<sup>12</sup> or the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment<sup>13</sup>.

The *Code of Conduct for Law Enforcement Officials*<sup>14</sup> and the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*<sup>15</sup> are the two main instruments that set international standards to regulate the use of force by law enforcement and define conditions in which they may resort to force. As for any use of force, when resorting to weapons, law enforcement officials must respect the principles of legality, necessity, proportionality, non-discrimination and accountability. However, too often regulations, policies, internal rules or laws legislating

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<sup>8</sup> Eliminating Incentives for Torture in the OSCE Region: Baseline Study and Practical Guidance

<sup>9</sup> Monitoring Weapons and Restraints in Places of Detention: A Practical Guide for Detention Monitors, Omega Research Foundation

<sup>10</sup> UN SPT (2016) Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Visit to Brazil undertaken from 19 to 30 October 2015: observations and recommendations addressed to the State party. CAT/OP/BRA/3.

<sup>11</sup> UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2017) 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment' Human Rights Council Thirty-fourth session 27 February-24 March 2017

<sup>12</sup> UN CAT (2008) Conclusions and recommendations of the Committee against Torture: Portugal CAT/C/PRT/CO/4

<sup>13</sup> Council of Europe (2010) Press release: 'Council of Europe anti-torture committee calls for strict regulation of electrical discharge weapons', 26 October 2010. Available at: <http://www.cpt.coe.int/en/annual/press/2010-10-26-eng.htm>

<sup>14</sup> Code of Conduct for Law Enforcement Officials (1979), General Assembly resolution 34/169.

<sup>15</sup> Use of Force and Firearms by Law Enforcement Officials (1990), Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

the use of weapons, tools, tactics and equipment at the national level are overlooked and not fully implemented. Failure to comply with these standards inevitably lead to systematic acts of torture and ill-treatment, including cases of death or severe injury. Furthermore, discrimination in law enforcement translate into harmful practices that target some groups who are in situations of vulnerability and marginalisation.

In this context, there is a need for law enforcement agents to better respect and protect human rights in places of deprivation of liberty and strictly follow legislation, rules and procedures applying to the use of their equipment. For example, recent research from Amnesty International has shown that batons are among the most frequently misused weapons in law enforcement. This position paper shows that if their use is not in compliance with international human rights law and standards, it may amount to torture or other cruel, inhuman and degrading treatment.<sup>16</sup>

Although almost any tool or instrument can be used for torture and ill-treatment, monitoring the use of firearms, less lethal weapons, and means of restraint may help National Preventive Mechanisms (NPMs) in preventing torture in places of deprivation of liberty. Such tools and instruments can be classified in two main categories.

- 1) Equipment identified as having no other purpose than torture and ill-treatment (e.g. spiked batons, electric shock belts). Their use should be prohibited including in places of detention. In such situations, NPMs can play a particular role in identifying the equipment and recording their presence and/or use in places of deprivation of liberty, including police stations, pre-trial detention centres and prisons. In doing so, they can recommend their prohibition, in accordance with international norms and standards. Indeed, the mere presence of such equipment implies a direct and higher risk of torture and other ill-treatment for detainees in the facility concerned (and even more for persons in situation of increased vulnerability).
- 2) While some weapons and tools are inherently abusive, other equipment (e.g. handcuffs, batons) may have a legitimate role in places of deprivation of liberty but can be easily misused to inflict torture and other inhuman and degrading treatment and punishment. In such situation, NPMs can play an important role in examining and analysing the use of tools or substances intended for torture or ill-treatment, as well as the misuse of any other device or substance for this purpose. Identifying the misuse of legitimate tools for the purpose of torture or ill-treatment is thus crucial to the effective prevention of torture. In this regard, the ability for NPMs to efficiently gather information on the presence and certain tools use in places of detention, as well as the

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<sup>16</sup> See the Amnesty International investigation "Blunt force", Blunt Force: Investigating the misuse of police batons and related equipment - Amnesty International, 2021

appropriateness of equipment used on detainees, contribute to the prevention of torture. Such analysis will also support monitors in their work to better triangulate information and corroborate accusations of torture and ill-treatment made by detainees.

States have the legal obligation under the UNCAT to take measures to prevent torture and other cruel, inhuman or degrading treatment or punishment.<sup>17</sup> However, in practice, state's agents, including law, enforcement are rarely held accountable. Addressing the issue requires structural changes for a holistic transformative impact. Such change includes measures relating to the composition of the police, profile of police officers, inclusiveness and diversity, independent monitoring bodies as well as accountability (including independent and impartial investigation mechanisms) and strong leadership. It also requires training on the proper use of weapons and equipment and human rights and clear document and reporting procedures when force has been used. Calling for reforms to restrict the use of force, encouraging policing reforms but also urging for the establishment of strong independent oversight outside of police bodies, former United Nations Human Rights Commissioner, Michelle Bachelet, is also reaffirming the commitment of the United Nations to regulate further the use of force by law enforcement across the globe.<sup>18</sup>

NPMs and civil society organisations play a crucial and complementary role in monitoring the excessive use of force and equipment at disposal and contribute to a better implementation of the Convention Against Torture and other international standard, in particular the Nelson Mandela Rules at the national level.<sup>19</sup>

## **II. General objective**

Building on experiences from NPMs and expertise from civil society organisations in the OSCE region, this workshop will help identify and share good practices on how to monitor the use of force and equipment in custodial settings for torture prevention.

## **III. Specific objectives**

1. Identify ways to better protect persons deprived of their liberty from possible abuses, torture and ill-treatment, including when committed through the inappropriate use of force in custodial settings.
2. Provide guidance on monitoring the issue including through methodology and good practices.

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<sup>17</sup> UNCAT, article 16

<sup>18</sup> OHCHR, Human Rights Council Forty-seventh session 21 June–9 July 2021, A/HRC/47/53, Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers, Annexe, [Agenda towards transformative change for racial justice and equality](#)

<sup>19</sup> OPCAT, article 1

3. Allocate space to NPMs for self-led exchanges.

#### IV. Participants

The primary beneficiaries of this workshop are NPMs from OSCE countries.

- **National Preventive Mechanisms:** Representatives of designated NPMs from the OSCE region;
- **Civil society organisations:** Representatives of national CSOs working on preventing and combatting torture in the OSCE region
- **Organisers:** APT and OSCE/ODIHR

## Annex II: Agenda

### Day 1 – 24 August 2022, 09:10 to 17:00 (CET): Monitoring of the use of force and equipment

Time	Topics
8:50 – 9:10	<b>Registration</b>
9:10 – 9:30	<b>WELCOME AND OPENING</b> <i>Audrey Olivier Muralt</i> , Deputy Secretary General, APT <i>Andrea Huber</i> , Head of Human Rights Department, OSCE-ODIHR  <b>Introduction of objectives and methodology</b> <i>Laura Jaffrey</i> , Adviser on Torture Prevention, OSCE ODIHR
09:30 – 10:30	<b>SESSION I - UNDERSTANDING AND MONITORING THE EXCESSIVE USE OF FORCE IN THE OSCE REGION</b>  <b>Introduction by the moderator</b> <i>Laura Jaffrey</i> , Adviser on Torture Prevention, OSCE ODIHR  <b>Setting the scene: <i>When does the use of force become excessive?</i></b> <ul style="list-style-type: none"><li>• Presentation by <i>Nico Hirsch</i>, CPT member</li></ul> <b>Kick off interventions</b> <ul style="list-style-type: none"><li>• <i>Antonella Dionisi</i>, NPM Italy</li><li>• <i>Kalia Kambanella</i>, Dignity</li><li>• <i>Nika Kvaratskhelia</i>, NPM Georgia</li><li>• <i>Mariya Yanakieva</i>, Bulgarian Helsinki Committee</li></ul>
10:30 – 10:50	<b>Coffee break</b>

<p><b>10:50 – 13:00</b></p>	<p><b>Guiding questions for discussion</b></p> <ul style="list-style-type: none"> <li>• What are the challenges in monitoring the implementation of standards?</li> <li>• What is the role of NPMs and CSOs in monitoring and documenting excessive use of force in detention settings?</li> <li>• How can they advocate for better compliance with international standards?</li> <li>• What are the situations and factors increasing the risks of excessive use of force? How to mitigate these risks?</li> </ul>
<p><b>13:00 – 14:00</b></p>	<p><b>Lunch break</b></p>
<p><b>14:00 – 15:20</b></p>	<p><b>SESSION II – MONITORING EQUIPMENT AND RESTRAINT IN CUSTODIAL SETTINGS</b></p> <p><b>Introduction by the moderator</b>  <i>Luce Ahouangnimon, Senior Adviser Detention &amp; Mobilisation, APT</i></p> <p><b>Setting the scene: <i>Monitoring the use of weapons, of equipment/tools and of restraints</i></b></p> <p style="padding-left: 40px;">Presentation by <i>Helen Close, Research Associate, Omega Research Foundation</i></p> <p><b>Kick off interventions</b></p> <ul style="list-style-type: none"> <li>• <i>Anica Tomsic, NPM Croatia</i></li> <li>• <i>Przemyslaw Kazimirski, NPM Poland</i></li> <li>• <i>Ivan Šelih, NPM Slovenia</i></li> </ul> <p><b>Guiding questions for discussion</b></p> <ul style="list-style-type: none"> <li>• How can NPMs and CSOs monitor the use of weapons and restraints in custodial settings?</li> <li>• What are the challenges such monitoring?</li> <li>• Are there good practices regarding follow up (report, recommendations) and strategies to address the risks linked to the use of weapons, equipment and restraints?</li> </ul>



<b>15:20 – 15:40</b>	<b>Coffee break</b>
<b>15:45 – 17:00</b>	<b>Guiding questions for discussion</b> <ul style="list-style-type: none"> <li>• How can NPMs and CSOs monitor the use of weapons and restraints in custodial settings?</li> <li>• What are the challenges such monitoring?</li> <li>• Are there good practices regarding follow up (report, recommendations) and strategies to address the risks linked to the use of weapons, equipment and restraints?</li> </ul>
<b>17:30 – 19:00</b>	<b>Welcome cocktail</b>

**Day 2 – 25 August 2022, 09:15 to 17:00 (CET): Recent development in torture prevention**

<b>Time</b>	<b>Topics</b>
<b>9:15 – 9:30</b>	<b>Restitution of day 1</b>
<b>9:30 – 10:30</b>	<p><b>SESSION III – MONITORING THE USE OF FORCE, RECENT DEVELOPMENT IN TORTURE PREVENTION</b></p> <p><b>Introduction by the moderator</b>  <i>Laura Jaffrey</i>, Adviser on Torture Prevention, OSCE ODIHR</p> <p><b>Preventing torture through accountability, the role of NPMs and CSOs in implementing the Istanbul protocol</b></p> <ul style="list-style-type: none"> <li>• Presentation by <i>James Lin</i>, Istanbul Protocol Program Coordinator, IRCT</li> </ul>
<b>10:30 – 10:50</b>	<b>Coffee break</b>

<p><b>10:50 – 12:45</b></p>	<p><b>Moving away from interrogation to interviewing, the role of NPMs and CSOs in raising awareness on the Méndez Principles</b></p> <ul style="list-style-type: none"> <li>• <i>Presentation by Audrey Olivier Muralt, APT</i></li> </ul>
<p><b>13:00 –14:00</b></p>	<p><b>Lunch</b></p>
<p><b>14:00 – 14:40</b></p>	<p><b>Conclusion and next steps</b> <i>All participants</i></p> <p><b>Closing remarks</b> <i>Laura Jaffrey, Adviser on Torture Prevention, OSCE ODIHR</i></p>
<p><b>14:40 – 15:15</b></p>	<p><b>Coffee break</b></p>
<p><b>15:15 – 17:00</b></p>	<p><b>SESSION IV – PEER TO PEER MEETING FOR NPM ONLY</b></p> <p><b>Introduction by the moderator</b> <i>Audrey Olivier Muralt, Deputy Secretary General, APT</i></p> <p><b>OPCAT + 20 – What is the impact of NPMs and how to best measure it?</b> <i>All participants</i></p> <p><b>NPMs updates and other issues for discussion</b> <i>All participants</i></p> <p><b>Introducing APT and ODIHR tools and resources</b> <i>Audrey Olivier Muralt, Deputy Secretary General, APT</i></p>

### **Annex III. Sources**

- Torture and other cruel, inhuman or degrading treatment or punishment: the roles and responsibilities of police and other law enforcement officials, Resolution adopted by the Human Rights Council on 23 March 2021
- Eliminating Incentives for Torture in the OSCE Region: Baseline Study and Practical Guidance, ODIHR and Fair Trials
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- Code of Conduct for Law Enforcement Officials
- Visual Guide to Law Enforcement and Security Equipment, Omega Research Foundation
- Monitoring Weapons and Restraints in Places of Detention: a Practical Guide for Detention Monitors, Omega Research Foundation
- Monitoring Police custody A practical guide, APT
- Monitoring law Enforcement Agencies : A Guide for Ombuds Institutions, DCAF
- Istanbul protocol (revised version): Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Principles on Effective Interviewing for Investigations and Information Gathering (the Mendez Principles)
- The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela rules)
- Proportionality and reasonableness in the use of coercive means by police officers (in International Yearbook, Faculty of Security, 2021-22
- Briefing Paper for the Workshop "Prevention and eradication of torture in the OSCE region: Implementing para. 21 of MC Decision 7/20" (in annex to the workshop's outcome report)