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Torture Prevention in the Criminal Justice System: The Roles and Responsibilities of Police and other Law Enforcement

Recommendations from conference participants
November 2021

With the support of



Foreword

At the 27th OSCE Ministerial Council in Tirana in 2020, OSCE participating States strongly condemned all forms of torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) as one of the most flagrant violations of human rights and human dignity and reaffirmed that freedom from torture and other ill-treatment is a non-derogable right under international law (MC.DEC.7/20). Despite clear commitments, the use of torture and other ill-treatment continues to be a challenge in criminal justice systems across the OSCE region.

Police and other law enforcement officials play a vital role in the protection of the right to life, liberty and security of a person. They also have an important role in serving the community and protecting all persons against acts of torture and other ill-treatment. Public confidence in police and other law-enforcement officials is paramount to their ability to perform their functions effectively, and depends on the police culture and their respect for human rights, fundamental freedoms and human dignity of all persons.

In this context, on 2 June 2021, we organised the international (online) conference, “Torture Prevention in the Criminal Justice System: The Roles and Responsibilities of Police and other Law Enforcement”, with the support of the OSCE 2021 Swedish Chairpersonship and the OSCE Office for Democratic Institutions and Human Rights (ODIHR). The conference was co-sponsored by a total of 43 OSCE participating States: Albania, Andorra, Armenia, Bosnia and Herzegovina, Canada, the EU and its Member States, Georgia, Iceland, Montenegro, North Macedonia, Norway, San Marino, Switzerland, Turkey, Ukraine, the United Kingdom and the United States of America.

More than 160 participants attended the conference, which provided a platform for OSCE participating States, international organisations and civil society to discuss the implementation of OSCE commitments in relation to torture prevention. In addition to the relevant OSCE Human Dimension commitments including last year’s Ministerial Council Decision on the Prevention and Eradication of Torture

(MC.DEC/7/20), the discussion drew on the recent UN Human Rights Council resolution on “Torture and other cruel, inhuman or degrading treatment or punishment: the roles and responsibilities of police and other law enforcement officials (A/HRC/46/L.27)” and the “Principles on Effective Interviewing for Investigations and Information Gathering” launched in May 2021 by the Anti-Torture Initiative, the Association for the Prevention of Torture and the Norwegian Centre for Human Rights. At the same time, the discussion also drew attention to certain aspects of the criminal justice systems that were identified in the recent publication by ODIHR and Fair Trials on “Eliminating Incentives for Torture in the OSCE Region”.

This publication is our attempt at collecting and structuring the recommendations made by the speakers and participants at the conference. The overview document is drafted without prejudice and does not endorse any recommendations over others. Our hope is, however, that the document can serve as 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. We remain at your disposal should you have any questions or comments.

Yours sincerely,



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Despite significant progress over the past years,
several systemic and cultural incentives
for torture and other ill-treatment
in criminal justice systems continue to exist.
These can include for example an overreliance
on confessions, lack of human rights training on
investigative interviewing techniques,
lack of sufficient resources for adequate investigations
and an inherent 'tough-on-crime' culture.

Recommendations from conference participants

In order to combat the use of torture and other ill-treatment in the criminal justice system, the conference participants highlighted the need to strengthen and ensure proper training of police and other law enforcement officials in effective interviewing and human rights. At the same time, it was acknowledged that the implementation of the global human rights standards needs to be tailored to the specific context, taking into account the legislative and institutional framework in any given country. It was also noted that the needs of women and girls must be taken into specific consideration, as they are at particular risk of torture and other ill-treatment when deprived of liberty.

Participants agreed that while preventing torture and other ill-treatment is primarily the responsibility of the state, civil society can play a crucial role in engaging in

an open and constructive dialogue with police and other law enforcement officials to specify and identify the concrete challenges in a given context.

In the fight against torture and other ill-treatment in the criminal justice system, there are different roles for governments, civil society organisations and the multi-lateral architecture. The recommendations from the conference participants will be structured as follows and directed at participating States or OSCE/ODIHR:

Policy level

National legal framework

Practice



Policy level

To participating States

- 1** Adopt and promote a zero-tolerance policy on torture and other ill-treatment, including in counter terrorism investigations.ⁱ
- 2** Ensure that the zero-tolerance policy translates into a safe and conducive environment where law enforcement officials, victims, medical staff, lawyers, human rights defenders and other actors recognize when torture or other ill-treatment may have occurred and report it.ⁱⁱ
- 3** Put in place clear reporting and independent complaint procedures, such as an external police oversight mechanism, for instances or suspicion of torture or other ill-treatment.ⁱⁱⁱ
- 4** Ensure effective oversight and internal investigation mechanisms within law enforcement agencies.^{iv}
- 5** Promote an institutional culture in police services that strives for the protection of the human rights, dignity and integrity of all persons, fully respecting the principle of non-discrimination, with a particular attention to persons in situations of vulnerability or marginalization, including on the basis of gender, age, physical or mental health, or disability.^v
- 6** Provide for the review of criminal investigation practices, with a view to promoting professional standards and eliminating confessions as the primary or sole evidence necessary for a prosecution and conviction.^{vi}

Recommendations from conference participants



7 Equip police forces with adequate resources, training and equipment to investigate crimes without the need to rely solely on confession evidence.

8 Initiate organizational changes to allow for the effective implementation of structured training for police officers on investigative interviewing such as the PEACE model and the Principles on Effective Interviewing for Investigations and Information Gathering, based on human rights and the presumption of innocence.

9 Incorporate education and information regarding the prohibition of torture and other ill-treatment in the training of law enforcement personnel, including, as appropriate, on the proportionate use of force, all available modern scientific methods for the investigation of crimes and the critical importance of reporting instances of torture or other ill-treatment to superior authorities.^{vii}

Policy level

To participating States

- 10** Abolish numerical targets for arrests and convictions for police forces as a way to measure performance. The main focus of performance assessment should be on crime prevention and public satisfaction with and trust in the police.^{viii}
- 11** Implement effective legal and procedural safeguards throughout all stages of detention, including early stages of police custody.^{ix}
- 12** Adopt a gender-sensitive approach in the fight against torture and other ill-treatment that takes into account such particular risk and specific needs of women and girls at all stages of the criminal justice system.^x
- 13** Ensure that investigations into allegations of torture or 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 ill-Treatment (Istanbul Protocol).

Recommendations from conference participants



14 Ensure that, as a matter of policy, medical examinations are confidential and not conducted in the presence of law enforcement officials.^{xi}

15 Ensure that all relevant personnel (law enforcement officials, prison officials, state forensic experts and other health professionals, prosecutors, defence lawyers and judges) receive training on recognising torture and other ill-treatment as well as the effective legal and clinical investigation and documentation of these acts.^{xii}

16 Improve forensic services, as they are important safeguards against torture and ill-treatment and play a crucial role in the investigation of allegations of torture and other ill-treatment.



National legal framework

To participating States

- 17** Include torture and other ill-treatment as a separate and specific crime and ensure that penalties are commensurate with the gravity of the crime in national legislation and in practice. This includes ensuring that, where public officials have been convicted of torture or other ill-treatment, they are legally prohibited from returning to public service.^{xiii}
- 18** Make it a criminal offence for public officials, including law enforcement, not to report the crime of torture or other ill-treatment where there is evidence to suggest that officials would have had reason to believe that acts of torture or other ill-treatment have occurred or are about to occur.^{xiv}
- 19** Ensure that the fundamental principles of investigation, such as competence, impartiality, independence, promptness and thoroughness are enshrined in legislation and officially recognized among relevant departments and personnel, including prosecutors, defence attorneys, judges, law enforcement personnel, prison and military personnel, forensic and health professionals, and those responsible for detainee health care.^{xv}
- 20** Ensure that officials suspected of torture or other ill-treatment are prosecuted under the specific offence of torture, and not lesser offences, such as “abuse of authority.”^{xvi}

Recommendations from conference participants



21 Prohibit confessions as the sole evidence of guilt.^{xvii}

22 Introduce laws and measures designed to uphold and protect the presumption of innocence, the right to remain silent and the notification about rights.^{xviii}

23 Introduce the legal requirement for, at a minimum, audio recording, and preferably video-recording of all police interviews.^{xix}

24 Enshrine safeguards that are associated with effective interviewing in law and regulations, as well as include, at a minimum, immediate notification of families, access to medical examination and access to a lawyer.

Practice

To participating States

- 25** Provide for the adequate selection, training, remuneration and equipment of law enforcement officials, especially training and equipment to enable police to gather forensic and surveillance evidence.^{xx}
- 26** Ensure training for police services are conducted in different regions in a country, not just in the bigger cities.
- 27** Ensure participation of law enforcement officials when implementing institutional changes relevant to them and highlight the benefits for them.
- 28** Apply specific provisions for particular groups that are more vulnerable during questioning, including children, women and girls, persons with mental health conditions, disabilities, persons belonging to minorities or indigenous groups and non-nationals, including migrants (regardless of migration status), refugees, asylum seekers and stateless persons.^{xxi}
- 29** Ensure that training on investigative interviewing is included as a mandatory component in the curriculum of police academies and other educational institutions for law enforcement, and forms part of continuous professional development.^{xxii}

Recommendations from conference participants



- 30** Invest in equipment for the audio and the audio-visual recording of questioning and interviews from the outset of police custody, including police interviews; and in other control mechanisms and equipment.^{xxiii}
- 31** Promote the use of CCTV in custody buildings.^{xxiv}
- 32** Assess police performance in an independent and transparent manner that involves input from the general public (such as through open surveys), with results being available to the public.^{xxv}
- 33** Engage with civil society organizations (CSOs) and the general public to better assess police performance and inform priority setting.^{xxvi}
- 34** Publish data on how many allegations of torture or other ill-treatment are made against public officials every year, in addition to data on prosecutions and convictions.^{xxvii}
- 35** Make training on the Istanbul Protocol a mandatory component of forensic medical training.
- 36** Assist all victims of acts of torture or other ill-treatment, giving due attention to age, disability, and gender-specific needs.
- 37** Provide victims with adequate and trauma-sensitive support, as well as effective access to compensation and rehabilitation.^{xxviii}

Practice

To participating States

- 38** Introduce a trauma informed and victim-centred approach in investigatory and judicial processes, including during interviewing.
- 39** Ensure that alleged victims of torture and other ill-treatment, their lawyers and/or families are able to request access to a prompt independent forensic examination.^{xxix}
- 40** Work with investigative bodies and judges to promote understanding that psychological evaluation of victims and ensuing evidence is as important as the physical evidence/examination.
- 41** Refrain from conducting remote medical examinations and custody hearings in the context of the COVID-19 pandemic.
- 42** Strengthen the institutional capacity of law enforcement and other information-gathering authorities by ongoing constructive relations with different agencies, researchers and the academic community. A peer-to-peer approach should be encouraged.
- 43** Dedicate adequate resources to conduct research and analyse existing information on the occurrence of sexual and gender-based violence in places of detention, including police stations, pre-trial detention facilities and correctional facilities.

Recommendations from conference participants



- 44** Support research into non-coercive interviewing techniques with academia and civil society highlighting how investigative interviewing is better for obtaining accurate and reliable information, more humane and an effective way to investigate crimes.
- 45** Ensure effective oversight and unrestricted access to all places of detention by National Preventive Mechanisms (NPMs), CSOs, defence lawyers and independent monitoring bodies, including police stations and interrogation facilities - also as way to protect police themselves.
- 46** Ensure that NPMs are able to work effectively, independently and in close cooperation with CSOs.^{xxx}
- 47** Continue to collaborate with National Human Rights Institutions (NHRIs), NPMs and other national organisations working on the prevention of torture and other ill-treatment with law enforcement officials.^{xxxi}
- 48** Provide for a safe environment and inclusion of CSOs and human rights defenders working to fight torture, other ill-treatment and impunity.

Practice To the OSCE/ODIHR

- 49** Continue to closely collaborate with international and regional institutions, NHRIs, NPMs and CSOs working to fight torture, other ill-treatment and impunity in the OSCE region.^{xxxii}
- 50** Integrate victims' perspectives in all aspects of the fight against torture and other ill-treatment.^{xxxiii}
- 51** Encourage cooperation across the three dimensions to ensure human rights are adequately addressed in the first dimension.^{xxxiv}
- 52** Assist in disseminating human rights standards and converting them into practical and operational instructions for law enforcement officials.

Recommendations from conference participants



- 53** Include police and law enforcement officials and their perspectives in implementing projects affecting them with a view to foster ownership.



References

- ⁱ Recommendations from conference participants, *Effective Multilateralism in the Fight against Torture: Trend in the OSCE region and the way forward*, September 2019.
- ⁱⁱ Recommendations from conference participants, *Effective Multilateralism in the Fight against Torture: Trend in the OSCE region and the way forward*, September 2019.
- ⁱⁱⁱ UN Human Rights Council resolution on “Torture and other cruel, inhuman or degrading treatment or punishment: the roles and responsibilities of police and other law enforcement officials (A/HRC/46/L.27).
- ^{iv} *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.
- ^v UN Human Rights Council resolution on “Torture and other cruel, inhuman or degrading treatment or punishment: the roles and responsibilities of police and other law enforcement officials (A/HRC/46/L.27).
- ^{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} OSCE Ministerial Council Decision on the Prevention and Eradication of Torture (MC.DEC/7/20)
- ^{viii} *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.
- ^{ix} OSCE Ministerial Council Decision on the Prevention and Eradication of Torture (MC.DEC/7/20)
- ^x OSCE Ministerial Council Decision on the Prevention and Eradication of Torture (MC.DEC/7/20)
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- ^{xv} *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.
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