

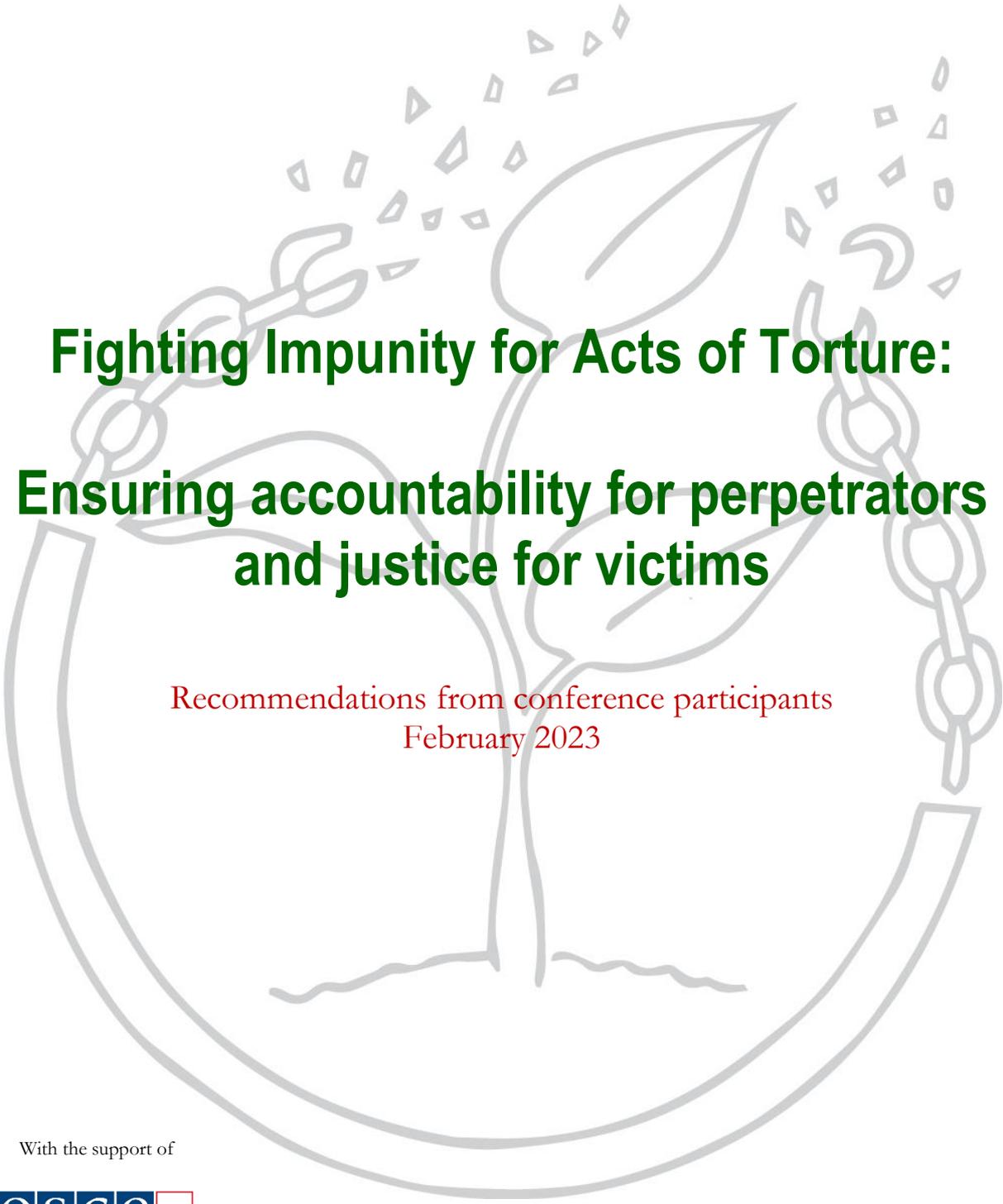


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Fighting Impunity for Acts of Torture: Ensuring accountability for perpetrators and justice for victims

Recommendations from conference participants
February 2023

With the support of



Foreword

At the 27th OSCE Ministerial Council in Tirana in 2020, OSCE participating States agreed by consensus on a Ministerial Decision, which 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 and that no exceptional circumstances whatsoever, whether the state of war or a threat of war, international political instability or any other public emergency may be invoked as justification (MC.DEC.7/20). Despite this decision and other clear commitments, torture and other ill-treatment is 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 war.

Accountability is a key element in combatting torture and other ill-treatment. When states fail to take measures to investigate, prosecute, and punish acts of torture and other ill-treatment, it not only violates victims’ and survivors’ sense of justice, it can also incentivize public officials to continue to commit torture and other ill-treatment. Across the OSCE region, several factors such as inadequate legal frameworks and insufficient complaint measures and investigative mechanisms continue to undermine accountability for acts of torture. At the same time, Russia’s war against Ukraine places centre stage the specific challenges that occur when investigating, documenting and preserving acts of torture and other ill-treatment, incl. sexual violence, in armed conflict.

In this context, on 13 June 2022, we organised the international conference “Fighting Impunity for Acts of Torture: Ensuring Accountability for Perpetrators and Justice for Victims”, with the support of the OSCE 2022 Polish Chairpersonship and the OSCE Office for



Christian Grønbech-Jensen
Ambassador

Permanent Representative of Denmark to the OSCE

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 day, and it provided a platform for OSCE participating States, international organisations and civil society to examine how to overcome the various obstacles to accountability for acts of torture and other ill-treatment, both in peacetime and in times of war. In addition to relevant OSCE Human Dimension commitments, incl. the 2020 Ministerial Council Decision on the prevention and eradication of torture (MC.DEC/7/20), the discussions drew on, inter alia, ODIHR’s fact-sheet on “Sexual and Gender-based Violence in Armed Conflict” and the publication by ODIHR and Fair Trials on “*Eliminating Incentives for Torture in the OSCE Region*”. At the same time, the conference was a welcome opportunity to present and learn from the recently revised “*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.



Raphael Nägeli
Ambassador

Permanent Representative of Switzerland to the OSCE

Recommendations from conference participants

In order to combat impunity for acts of torture and other ill-treatment, the conference participants emphasised the need to strengthen the ability to ensure prompt, effective, impartial and independent investigations into all allegations of torture and ill-treatment in accordance with the updated *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Istanbul Protocol, 2022 edition). In this context, the importance of proper training of all professionals in the criminal justice system was highlighted. At the same time, specific attention was drawn to the general need for adopting and applying a victim-centred and gender-sensitive approach, not least when investigating and prosecuting allegations of sexual and gender-based violence.

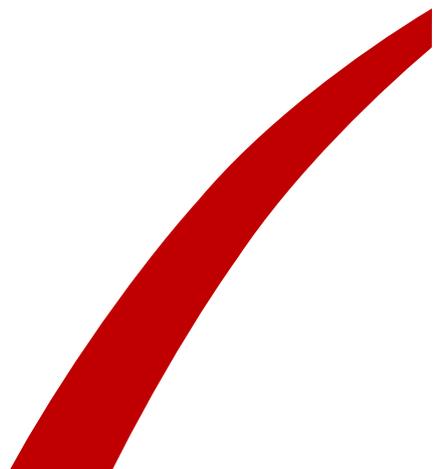
Against the backdrop of Russia's war of aggression against Ukraine, several recommendations centred around accountability for acts of torture and other ill-treatment in armed conflict. This included inter alia the need to hold military commanders criminally responsible for crimes committed by forces under their

effective command and control. At the same time, the creation of unified, cross-country evidence databases was encouraged to avoid duplication and facilitate access to information.

Participants agreed that while ensuring accountability and fighting torture and other ill-treatment is primarily a responsibility of the state, civil society continues to play an important and complementary role in combatting impunity, notably through documenting acts of torture and other ill-treatment and representing victims and survivors.

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 Ensure that those who encourage, instigate, order, tolerate, acquiesce in, consent to or perpetrate acts of torture or other cruel, inhuman or degrading treatment or punishment (ill-treatment) are held responsible, brought to justice, and punished in a manner commensurate with the severity of the offence.ⁱ

2 Ensure that those who violate international humanitarian law are held individually accountable.ⁱⁱ

3 Promote cooperation between domestic courts and international courts, especially when prosecuting high-ranking officials for international crimes.

4 Promote universal jurisdiction as an efficient tool to hold perpetrators of torture and other ill-treatment, as well as other international crimes, accountable.

5 Develop policies on victim and witness support that clearly define the roles of the State, civil society organisations (CSOs), regional and international organisations to ensure coordination and complementarity, without undue overlap.

6 Implement effective legal and procedural safeguards against torture and other ill-treatment throughout all stages of detention.ⁱⁱⁱ

7 Ensure that all 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).^{iv}

8 Review and reform policies and practices relating to relevant health professionals that are not consistent with Istanbul Protocol standards, ensure safeguards for effective clinical evaluations, provide adequate training and support to all relevant health professionals and ensure respect for relevant ethical principles.^v

9 Enhance cooperation between CSOs and prosecution authorities, including by developing guidelines for CSOs on how to collect evidence on torture and other ill-treatment in accordance with criminal justice standards.

10 Develop specific guidelines for interviewing asylum-seekers, refugees and other persons seeking international protection – who are victims or witnesses of international crimes – and for preserving their statements as evidence in line with the principle of informed consent.

11 Adopt a victim-centred approach when responding to sexual and gender-based violence (SGBV) and ensure comprehensive redress in the form of reparations, medical and psychological care, economic and legal support, and societal and community engagement.^{vi}

12 Make a clear commitment to investigating and prosecuting SGBV proactively, including by adopting a comprehensive strategy for SGBV prosecutions.^{vii}

13 Acknowledge the link between corruption and torture and other ill-treatment, and ensure that torture prevention strategies address the issue of corruption.

14 Introduce a trauma informed and victim-centred approach in investigatory and judicial processes, including during interviewing.^{viii}

National legal framework To participating States

15 Make all acts of torture and other ill-treatment, attempts to commit torture, and acts of complicity or participation in torture offences under domestic criminal law, incorporating the definition of torture pursuant to Article 1 of UNCAT and providing for appropriate penalties reflecting their grave nature.^{ix}

16 Enable the prosecution of perpetrators of acts of torture at domestic level under the principle of universal jurisdiction, in accordance with Article 5 of UNCAT.

17 Ensure that all forms of SGBV, as recognised by international standards, constitute an offence in domestic criminal law.

18 Ensure that SGBV cases that amount to torture are charged and prosecuted as such and not as ill-treatment.

19 Align domestic legal frameworks with international standards, providing individual criminal responsibility for crimes against humanity, war crimes and genocide, including express references to SGBV, and abolish immunities and statutes of limitations in relation to conflict-related SGBV.^x

20 Ensure that any person who commits (directly, indirectly or as a co-perpetrator), orders, solicits, or induces the commission of an international crime, is held criminally responsible and liable for punishment.^{xi}

21 Hold military commanders, or persons effectively acting as military commanders, criminally responsible for crimes committed by forces under their effective command and control.^{xiii}

Practice To participating States

22 Ensure full and ongoing co-operation, in line with their respective obligations under international law, with international human rights mechanisms.^{xiii}

23 Ensure capacity for the investigation of SGBV and conflict-related SGBV by national authorities including by drawing on international technical expertise and assistance.^{xiv}

24 Ensure inclusive representation of women, men and minorities in investigation and prosecution teams.^{xv}

25 Ensure that all personnel who conduct interviews, including police and other law enforcement officers, as well as intelligence and military personnel, receives specific training in effective and trauma-informed interviewing.^{xvi}

26 Actively promote the practical implementation of the “*Principles on Effective Interviewing for Investigations and Information Gathering*” (“the Mendez Principles”).

27 Provide systematic and psychological support to victims and witnesses of torture and other ill-treatment throughout the investigation and prosecution.

28 Ensure that victims who testify against perpetrators of torture and other ill-treatment are adequately protected against intimidation and violence.^{xvii}

29 Prioritise the investigation and prosecution of international crimes in armed conflict, including torture and other ill-treatment, based on patterns, gravity, and targeted groups or individual targets.

30 Build capacities of prosecution teams to collect and use evidence obtained via open-source intelligence (OSINT).

31 Encourage the creation of cross-country unified international crimes evidence databases that could be used effectively by all stakeholders in order to avoid duplication.

32 Ensure that data related to international crimes is stored safely while easily accessible to prosecution teams, also in longer terms.

33 Raise public awareness on the absolute prohibition of torture and other ill-treatment and combat “though on crime” rhetoric.

34 Adopt a comprehensive strategy to investigate and prosecute SGBV in armed conflicts.^{xviii}

35 Ensure the timely documentation by medical experts of visible traces of torture and other ill-treatment, including SGBV, to provide high-quality evidence in litigation.

36 Uphold the protection of detainees at all times, refrain from holding them in unregistered facilities, set and ensure compliance with human rights compliant interrogation protocols.^{xxix}

37 Prioritize prosecution of high-level commanders, when patterns of tolerance and encouragement for SGBV are found in investigations of international crimes in armed conflict.

38 Train investigators to prevent re-traumatization when interviewing victims and witnesses of torture and other ill-treatment, including SGBV, and uphold the ‘do no harm’ principle, using a trauma-informed approach.

39 Ensure that all professionals involved in the criminal justice system, including judges, prosecutors, investigative authorities and medical personnel, receive training on effective legal and clinical investigation and documentation of torture and other ill-treatment in accordance with the ‘Istanbul Protocol’.^{xxx}

40 Acknowledge the important complementary role civil society organisations play in combatting impunity for acts of torture and other ill-treatment, notably through documentation, representation of

victims, prompting investigations or legal proceedings, providing evidence and/or expertise to investigative bodies, scrutinizing proceedings or providing legal analyses of the adequacy of ongoing investigations.^{xxxi}

41 Ensure effective oversight and internal investigation mechanisms within law enforcement agencies.^{xxii}

42 Include terms of reference to define the scope of the inquiry when establishing a commission of inquiry on serious violations of international human rights law and international humanitarian law to increase the inquiry’s success and legitimacy.^{xxiii}

43 Set up multi-disciplinary investigations teams that include doctors, members of the police and military, weapons experts, gender experts, and open-source investigators when investigating acts of torture and other ill-treatment in armed conflict.

44 Guarantee the institutional independence, individual independence and impartiality of members of commissions of inquiry.

45 Subject commissions of inquiry to periodic reviews and quality assessments.

46 Allow anonymous reporting channels of international crimes, including torture and other ill-treatment, and develop modern follow-up procedures to maintain communication with whistle-blowers.

Practice To the OSCE/ODIHR

47 Encourage participating States to adopt and implement the ‘Istanbul Protocol’ (2022 edition) as an investigative standard to ensure the fulfilment of their obligation to investigate, prosecute and punish acts of torture and other ill-treatment.^{xxiv}

48 Continue to strengthen the capacity of civil society organisations and monitoring mechanisms, such as national preventive mechanisms under OPCAT, to document torture and other ill-treatment.

49 Encourage and support participating States 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.

50 Integrate victims’ perspectives in all aspects of the fight against torture and other ill-treatment.^{xxv}

51 Promote discussions among relevant actors on the use of universal jurisdiction as a way to combat impunity for acts of torture and other ill-treatment as well as other international crimes.

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- ^x Sexual and Gender-Based Violence in Armed Conflict, factsheet published by ODIHR in 2022.
- ^{xi} Rome Statute of the International Criminal Court (ICC).
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- ^{xvi} Principles on Effective Interviewing for Investigations and Information Gathering (the Mendez Principles), launched in May 2021 by the Anti-Torture Initiative, the Association for the Prevention of Torture, and the Norwegian Centre for Human Rights.
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