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Effective Multilateralism in the Fight Against Torture: Trends in the OSCE region and the way forward

Recommendations from conference participants
September 2019



Foreword

More than seven decades ago, the United Nations General Assembly adopted the Universal Declaration of Human Rights, the first international text prohibiting torture in absolute terms. Its fifth article, approved by unanimous support, unequivocally stipulates, “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Since then, the international community has made significant progress towards the eradication of torture. The ban on torture and other ill-treatment has been incorporated into an extensive legal framework of international and regional human rights commitments, and a vast network of anti-torture mechanisms is monitoring and raising awareness on the torture ban at the international, regional and local level.

Despite these efforts, torture and other ill-treatment are still practiced in the OSCE region and beyond. Impunity remains high, and far too many victims of torture remain unacknowledged. Aside from the appalling physical and psychological harm inflicted on victims, torture and other ill-treatment are counterproductive to States’ security interests. The sense of indignity and injustice that torture and other ill-treatment

create can radicalise individuals, destroy families and harm the community as a whole. Therefore, preventing torture and tackling impunity for perpetrators are integral to fair legal systems and the rule of law, which are essential components of promoting stability and safeguarding our shared security.

We can eradicate torture and other ill-treatment by joining forces, when defining common strategies and ensuring implementation. As such, effective multilateral cooperation within and between international and regional organizations, such as the OSCE, the European Union, the United Nations and the Council of Europe, is crucial to making progress with regards to the remaining challenges. Moreover, active involvement and support of civil society actors who courageously engage against this crime is of key importance.

In this context, on 5 June 2019 we organised the international conference, “Effective Multilateralism in the Fight Against Torture: Trends in the OSCE region and the way forward”, in cooperation with the Slovak OSCE Chairmanship and the OSCE Office for Democratic Institutions and

Human Rights (ODIHR). The conference was co-sponsored by a total of 42 OSCE participating States: Albania, Andorra, Canada, the EU and its Member States, Georgia, Iceland, Liechtenstein, Montenegro, North Macedonia, Norway, San Marino, Serbia, Switzerland, Ukraine and the United States of America.

More than 140 participants attended the conference throughout the day, which provided a platform for OSCE participating States, international organizations and civil society to take stock of existing multilateral initiatives and evaluate their effectiveness, in order to move forward with a collective response in the fight against torture and other ill-treatment. The open dialogue between key stakeholders also allowed participants to identify challenges, ensure complementary ap-

proaches and discuss how to strengthen partnerships with a view to making multilateral efforts in the fight against torture and other ill-treatment more effective.

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 at the next possible occasion.

Yours sincerely,



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Despite the absolute prohibition against torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) in international law and regional human rights commitments, torture and other ill-treatment are still practiced in the OSCE region and beyond.

Recommendations

from conference participants

Impunity remains high and far too many victims of torture remain unacknowledged. Added to this, societies are facing challenges to the very notion of the absolute prohibition against torture, heightened by widespread security concerns.

The eradication of torture and other ill-treatment can be achieved by joining forces, defining common strategies and ensuring effective implementation of shared commitments and obligations.

At this conference, it became clear that there are different but equally important roles for governments, civil society, organizations and the multilateral architecture in the fight against torture.

The recommendations 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, and address root causes and other incentives for torture such as corruption.
- 2** Ensure that the zero tolerance policy translates into a safe and conducive environment to report cases of torture and other ill-treatment for professionals of the security sector, victims, medical staff, lawyers, human rights defenders and other actors.
- 3** Further discuss good practices within the OSCE region of domestic prosecutions of torture and other ill-treatment.
- 4** In order to strengthen the independent monitoring and the prevention of torture and other ill-treatment in all places of detention, consider ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and the establishment of independent national preventive mechanisms (NPMs).
- 5** Consider ratification of the Rome Statute of the International Criminal Court.¹

¹ Article 7 (Crimes against humanity) (f): Torture “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”; Article 8 (War crimes), para. 2: Torture or inhuman treatment, including biological experiments.



- 6** Join the group of friends of the Convention against Torture Initiative (CTI), in order to achieve progress through cooperation and sharing experiences among States parties and non-States parties to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) as well as civil society organizations, international and regional organizations.
- 7** Recognize the competence of the Committee against Torture under Article 22 of the CAT to receive individual communications.
- 8** Strengthen multilateral cooperation on the regional and international level, including by taking part in the Genocide Network, supporting the initiative of a Multilateral Treaty for Mutual Legal Assistance and Extradition for Domestic Prosecution of the Most Serious International Crimes.
- 9** Engage in multilateral discussions on how to monitor the situation of torture and other ill-treatment in conflict areas or occupied territories, in order to develop a universal approach such cases.
- 10** Review OSCE commitments regarding the prevention of and fight against torture and other ill-treatment.
- 11** Give due consideration to the need for multilateral action, for instance in the form of new OSCE commitments, to control the trade in tools of torture which both prohibit inherently abusive goods (e.g. spiked batons) and control goods which are frequently misused (e.g. kinetic impact projectiles).
- 12** Ensure that the fight against torture and other ill-treatment remains high on the OSCE agenda, despite variations in Chair priorities.

National legal framework

To participating States

- 13** Include torture as a separate and specific crime with an appropriate minimum sentence reflecting the grave nature of the crime in national legislation.
- 14** Adopt a definition of torture in accordance with Article 1 of the CAT.²
- 15** Include provisions in national legislation that explicitly prohibit the use of evidence obtained through torture and other ill-treatment and, in line with the exclusionary rule stipulated in Article 15 of the CAT³, declare any evidence or extrajudicial statement obtained under torture or other ill-treatment inadmissible.

² Article 1: 1. For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. 2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

³ Article 15: Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

⁴ The CAT clearly lays out that national legislation should provide for jurisdiction over torture not only committed on a State Party’s territory, but also when its own citizens, including its armed forces, commit torture abroad, when its citizens are victims of torture, or when the perpetrators, are just present on its territory.



- 16** Ensure in law and practice that suspected or convicted offenders of the crime of torture can never benefit from amnesties, pardons and similar mechanisms that lead directly or indirectly to impunity for the crime of torture and other ill-treatment.
- 17** Stipulate in national legislation that the crime of torture is not subject to any statute of limitations.
- 18** Ensure that national legislation provides for adequate and fair redress for victims of torture and other ill-treatment and their families, including full rehabilitation and compensation, also to increase trust in the justice system.
- 19** Take measures to establish jurisdiction over the crime of torture and other ill-treatment whenever alleged offenders are present in their territory.⁴

Practice

To participating States

- 20** Implement the recommendations made by international, regional and national organizations on the prevention of torture and other ill-treatment, including the concluding observations of the Committee against Torture.
- 21** Ensure effective oversight and monitoring of all places of detention, including the first hours of custody by police, through the development and strengthening of independent NPMs as well as through ongoing dialogue on the implementation of their recommendations.
- 22** Ensure that NPMs are able to work effectively, independently and in close cooperation with civil society organizations.
- 23** Establish effective and independent mechanisms to ensure that all allegations of torture and other ill-treatment are promptly, thoroughly and impartially investigated in accordance with the principles and standards of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).



- 24** Ensure that all professionals in the criminal justice system (including judges, prosecutors, investigative authorities and medical personnel) receive appropriate practical training (both initial and in-service training) on the identification, reporting and prevention of torture and other ill-treatment, including training on the Istanbul Protocol.
- 25** Establish or reinforce specialized units with sufficient resources to efficiently investigate and prosecute torture under domestic and universal jurisdiction, including specialized “war crimes” units.
- 26** Actively support ongoing efforts towards the development, endorsement, and implementation of the international set of Guidelines for Investigative Interviewing and associated legal and procedural safeguards, in order to reduce the risks of forced confessions during criminal investigations.
- 27** Ensure the independence of investigative authorities, both functional and financial.
- 28** Build a coalition of States to discuss inter-State complaints in order to uphold human rights.
- 29** Improve coordination on the national level in the investigation process of torture cases, including among investigative authorities and immigration and asylum officers, to enhance the efforts to identify suspected perpetrators, potential insiders, witnesses or victims.

Practice

To participating States

- 30** Enhance cooperation with civil society organizations in the fight against torture by, inter alia, allowing for civil society organizations to be civil parties in international criminal procedures and using the existing high skills and expertise in providing intelligence, evidence and access to experts, witnesses, insiders and victims developed by specialized civil society organizations in this field.
- 31** Ensure that journalists and other media actors can report freely on issues related to torture and other ill-treatment, including from sessions of the Committee against Torture, in order to ensure that the wider population is informed about the issues.
- 32** Adequately contribute to the United Nations Voluntary Fund for Torture Victims to support rehabilitation programmes in the OSCE region.
- 33** Provide for holistic and full rehabilitation and reintegration of survivors of torture.
- 34** Take into account the needs of “indirect victims of torture”, such as relatives or witnesses of acts of torture.
- 35** Integrate victims’ perspectives in all aspects of the fight against torture and other ill-treatment.



- 36** Give greater consideration to the specific protection needs of persons deprived of their liberty, such as women, children, the elderly, the disabled and the LGBTI community.
- 37** Continue the dialogue with participating States and civil society organizations on measures to prevent or control the import, export and transfer of goods used for capital punishment, torture or other ill-treatment.
- 38** Continue to collaborate with National Human Rights Institutions (NHRIs), NPMs and other national organizations working on the prevention of torture and other ill-treatment.
- 39** Provide for a safe environment and inclusion of civil society organizations and human rights defenders working to fight torture, other ill-treatment and impunity.
- 40** Always conform to the relevant OSCE commitments regarding the protection of human rights defenders.



Practice

To the OSCE/ODIHR

- 41** Continue to closely collaborate with international and regional institutions, NHRIs, NPMs and civil society organizations working to fight torture, other ill-treatment and impunity in the OSCE region.
- 42** Integrate victims' perspectives in all aspects of the fight against torture and other ill-treatment.
- 43** Further support OSCE participating States in all the activities above through expert advice, capacity building and the provision of technical assistance, including by continuing to work closely with OSCE field offices.
- 44** Continue to empower and provide space to civil society organizations to pursue their work on combatting torture, other ill-treatment and impunity, including by legitimizing their role through joint work in the fight against torture and other ill-treatment, and by promoting and facilitating dialogue between States and civil society.



- 45** Initiate more cooperation across the three dimensions to ensure human rights are adequately addressed in the first dimension.





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