

## **Current assessment of compliance with the prohibition of torture in OSCE countries (Review<sup>1</sup>)**

In December 2020, the OSCE Ministerial Council adopted Decision No. 7/20 "Prevention and eradication of torture and other cruel, inhuman or degrading treatment or punishment."

This ministerial decision lays down extended commitments to ensure a practical implementation of the prohibition of torture. This Review presents an assessment of countries' compliance with these commitments.

In the Preamble to the Decision, the OSCE participating States emphasize "that the prohibition of torture is a peremptory norm of international law without territorial limitation, which applies at all times and in all places," and the first commitment calls upon States to "uphold the absolute prohibition of all forms of torture and other cruel, inhuman or degrading treatment or punishment as set forth in the UNCAT [United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment], implement fully and in good faith its provisions and act in full conformity with all its principles."

Experts of the Civic Solidarity Platform's Working Group on Fight against Torture have reviewed the Concluding Observations adopted in the three recent years (2019-2021) by the UN Committee against Torture following consideration of the periodic reports submitted by the States Parties to the UN Convention against Torture. The key issues that affect compliance with the commitments set forth in Decision 7/20 are highlighted in the first section of this Review.

As a follow-up, the Civic Solidarity Platform's Working Group on Fight against Torture, based on the findings from periodic measurements of the Prohibition of Torture Index since 2020, has identified a group of problems which must be addressed as a matter of priority through joint efforts of the government and civil society. (These findings mainly concern Russia, Ukraine, Belarus, Moldova, Tajikistan, Kyrgyzstan, Kazakhstan, Poland). These problems are highlighted and presented sequentially in sections two to four of this Review.

Decision No. 7/20 refers for the first time to enforced disappearances and prolonged incommunicado detention or detention in secret places as factors that can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in and of themselves constitute a form of such treatment. The section five of this Review provides a more detailed description of this issue in the OSCE region, with recommendations for needed actions.

The recommendations are presented at the end of this Review.

### **1. Concluding observations of the UN Committee against Torture following consideration of the OSCE region country reports**

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter, the Convention) has been ratified by all 57 OSCE participating States. Of these, only 39 recognized the competence of the UN Committee against Torture to receive and consider communications from States Parties and individuals about alleged violations of the Convention.<sup>2</sup>

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<sup>2</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=_en)

At its 57th session in December 2002, the UN General Assembly adopted Resolution A/RES/57/199, opening the Optional Protocol to the Convention for signature and ratification. The Optional Protocol sets forth a procedure for establishing and regulating a monitoring system to prevent torture, ill-treatment and degrading conditions of detention. As of this writing (January 2022), the Optional Protocol has been ratified by most OSCE participating States, except for four states that have signed but not ratified the Protocol (Andorra, Belgium, Ireland and Slovakia) and another nine that have not signed it (Belarus, Canada, Monaco, San Marino, Russian Federation, United States of America, Tajikistan, Turkmenistan and Uzbekistan).

Between 2019 and 2021, the UN Committee against Torture considered periodic reports submitted by 13 States Parties to the Convention against Torture (Belgium, Germany, Greece, Cyprus, Kyrgyzstan, Latvia, Lithuania, Poland, Portugal, Serbia, the United Kingdom of Great Britain and Northern Ireland, Uzbekistan and Sweden). As of this writing, the Committee's Concluding Observations on eleven country reports can be found on the CAT website (the Concluding Observations on Lithuania and Serbia were not available at the time of this writing). Our review of these documents highlights a series of typical problems which persist in the OSCE region.

Despite the steps that have been and continue to be taken by States to criminalize torture, the Committee notes that the definition of torture in domestic law does not always fully conform to Article 1 of the Convention. In particular, the definition of torture incorporated into national legislation does not contain all the elements set out in Article 1 of the Convention. In most cases, this refers to the absence of a broad reference to discrimination of any kind as ground for torture (Latvia, Portugal, Uzbekistan, Greece, Belgium) or the absence of a direct reference to pain or suffering inflicted by, at the instigation of, or with the tacit consent of a public official (Latvia, Greece, Uzbekistan). In addition, in some countries, the statutes of limitations (Cyprus, Latvia, Portugal, Greece, Germany, Kyrgyzstan, Uzbekistan) and amnesties (Kyrgyzstan and Uzbekistan) continue to apply to the crime of torture.

The absence of clear and accessible statistical data on the number of torture complaints received and investigated remains a concern, noted in particular in the Concluding Observations on Cyprus, Sweden, Kyrgyzstan, Poland and Uzbekistan.

As regards the use of coerced confessions in criminal proceedings, the Committee notes that the Polish Code of Criminal Procedure does not consider such evidence inadmissible unless obtained as a result of murder, deliberate damage to health or deprivation of liberty. In addition, the Committee notes that a number of countries where guarantees are set forth regarding the inadmissibility of evidence obtained by means of torture or ill-treatment have failed to provide the Committee with examples of cases dismissed by courts because of submission of such evidence or testimony, and this failure prevents the Committee from assessing the effectiveness of measures taken to prohibit the practice of extracting confessions. This is noted, in particular, in the Concluding Observations on Greece and Portugal.

As regards the fundamental legal safeguards for persons deprived of their liberty, the Committee often notes obstacles to obtaining legal assistance, including inadequate access to lawyers (Cyprus, Latvia, Uzbekistan, Greece, Poland, Kyrgyzstan, Belgium), problems with confidentiality of lawyer-client communication (Uzbekistan, Poland), and a lack of safeguards to ensure confidentiality of detainees' complaints alleging torture or ill-treatment by officials (Cyprus). Furthermore, the Concluding Observations on the periodic report of Uzbekistan indicate that lawyers are sometimes threatened with physical violence from law enforcement officers. Failure to ensure timely medical examinations of alleged victims of torture remains a concern mentioned by the Committee in its Concluding Observations on the periodic reports of Cyprus and Greece, among others.

Another common problem raised in the Committee's Concluding Observations is that of effective investigation into alleged cases of torture and ill-treatment. The Committee notes inadequate rates of investigation into alleged torture cases or a lack of information on such investigations (Kyrgyzstan, Cyprus, Portugal, Uzbekistan, Greece, Poland, UK), as well as problems with the independence of the body in charge of investigations into reports of torture and ill-treatment (Latvia, Sweden).

With regard to a number of OSCE participating States whose reports have been considered by the UN Committee against Torture in the three recent years, the Committee expresses concern over the conditions of detention, such as overcrowding and poor physical conditions falling short of the international standards (Kyrgyzstan, Belgium, Latvia, Cyprus, Portugal, Greece, Poland, the United Kingdom of Great Britain and Northern Ireland) and inadequate medical care, including the lack of medical personnel and medicines (Kyrgyzstan, Belgium, Latvia, Portugal).

It follows from the Committee's Concluding Observations in respect of the OSCE countries over the three recent years that the training of law enforcement personnel remains a concern. The Committee notes that in countries where the training programmes include modules based on the Convention and the Istanbul Protocol, either no information is available on the impact of these modules (UK, Portugal) or such modules are not part of the mandatory training provided to the law enforcement and medical personnel (Latvia, Poland), while in Cyprus, the periodic and compulsory training programmes do not include modules on non-coercive investigation techniques based on the Convention and the Istanbul Protocol. The Committee was unable to fully assess the training programmes for law enforcement officers and medical personnel in Greece and Germany as only scant information on the matter was provided by these countries.

The OSCE Decision No. 7/20 proclaims a victim-centred approach to efforts aimed at preventing and eradicating torture. This includes, among other things, the right to redress, the availability of compensation, and rehabilitation programmes. Our review of the Committee's Concluding Observations adopted between 2019 and 2021 reveals that the situation with redress and compensation for torture victims is clearly not up to par in the OSCE participating countries both east and west of Vienna. The Committee notes that even in countries where the domestic legislation provides for redress, no specific information is available on actual measures taken in terms of compensations awarded or reparation programmes in place, including rehabilitation programmes and support for NGOs that seek to provide such programmes (Portugal, Uzbekistan, Greece, Germany, Belgium, Sweden). Furthermore, the Committee is concerned that the current law and practices in Cyprus do not make available effective reparative measures for victims of torture and ill-treatment, including rehabilitation programmes, while in Latvia, there is no explicit provision in domestic law to support the right of all victims of torture and ill-treatment to fair and adequate compensation, including the means for as full rehabilitation as possible.

The Committee's Concluding Observations on reports considered over the three recent years also indicate that where the National Preventive Mechanism (NPM) has been set up pursuant to the ratification of the Optional Protocol to the Convention, the main challenge is a lack of financial and human resources to ensure the NPM's effective operation (Cyprus, Portugal, Greece, Poland, Germany, WB, Kyrgyzstan). In Latvia, the Ombudsman is the only human rights-based mechanism that monitors places of deprivation of liberty. In addition to a shortage of resources, the Committee is concerned that this part of the Ombudsman's work is not made public.

### **Ensuring the prohibition of torture and ill-treatment. The key challenges based on findings from the periodic Prohibition of Torture Index measurements**

#### **2. Criminalisation of torture and ill-treatment**

International instruments provide a clear and precise definition of torture and ill-treatment. The definition set out in the Convention captures not only the acts which can be qualified as torture, but also indicates the types of officials who could be found guilty of torture, including not only those who commit torture but also those at whose instigation, with whose consent or acquiescence it is committed.

Article 1 of the 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.

Furthermore, the Convention requires that acts of torture must be punishable by appropriate penalties which take into account their grave nature. Thus, the **definition of torture covers a group of both direct and indirect acts intended to inflict suffering on the victim**, and those responsible for torture include not only the direct perpetrators but also the organisers, instigators and indirect accomplices of torture.

Article 4 of the Convention:

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

The definition of torture set forth in the Convention is comprehensive. Some states have implemented it in domestic legislation as standalone articles of their criminal codes (such as the Prohibition of Torture Index countries of Kazakhstan, Kyrgyzstan, Armenia, Moldova and Ukraine).

But some other States – such as Poland, Belarus and Russia – have instead "broken down" the definition of torture into separate criminal acts included in the Convention definition and have criminalised such constituent elements of torture under different articles of their criminal codes.

On the one hand, such **distributed criminalisation** allows for prosecution and punishment of torture perpetrators as long as the standards of effective investigation are maintained, but on the other hand, it fails to address torture as a separate and independent crime, nor does it capture certain new and emerging forms of torture and ill-treatment.

The specific crime of torture is thus redefined in terms of other criminal offences, e.g. consent or acquiescence to torture by a public official is treated as "negligence" or "involvement" (Belarus, Russia), ill-treatment is prosecuted as an "act of abuse" (Poland), and torture as "abuse of office" (Russia).

However, torture and ill-treatment are precisely defined in relevant international law and enforcement practice. Although international law is always evolving, a large body of UNCAT decisions and European Court of Human Rights judgments provide an exhaustive and current interpretation of the crimes of torture and cruel and inhuman treatment. Allowing these crimes to be absorbed by more general and less specific legal categories such as "negligence," "abuse" or the widespread "abuse of office" undermines the criminalisation of torture and leads away from its recognition as a specific grave crime.

This, ultimately,

**makes it impossible to assess the prevalence of torture in a country, because the criminal investigation authorities and courts do not collect or publish statistics under the specific category of "torture." Thus, torture as a specific offence is not recognised in domestic law or practice.**

Often, distributed criminalisation of torture causes some of its elements to be absent altogether from the codes of criminal offences. Currently in Russia, a bill has been proposed to introduce the term "torture" and its definition into the Criminal Code – not as a separate offence but as an aggravating circumstance ("involving the use of torture") to the crime of "abuse of office." This definition proposed by Russian legislators does not cover torture with the tacit consent or at the instigation of a public official, leaving out an important aspect of the crime.

It is worth noting that Ukraine, having criminalised torture as a separate offence (article 127 of the Criminal Code of Ukraine), also leaves out two important elements of the Convention definition by failing, first, to indicate public officials as torture perpetrators and second, to include the offence of instigation, consent or acquiescence in relation to torture. Generally,

*the current version of article 127 of the Criminal Code of Ukraine does not indicate a person acting in an official capacity as a separate and specific perpetrator of torture. Instead, by Ukrainian law, a torture perpetrator could be anyone whether or not they are a public official. As for a public official's consent or acquiescence in the context of torture, it is absent entirely from the corpus delicti.*

All countries participating in the Prohibition of Torture Index, including those having introduced a separate article on "torture" into their criminal codes, also have an article on "abuse of office" – a legacy of the Soviet legal system still persistent both in the law and enforcement practice.

**Although a number of countries have adopted proper and specific criminal code articles on "torture," the related enforcement practice has yet to fully develop. Most investigations still follow the old pattern of prosecuting offenders under the articles on "abuse of office" or similar ones, instead of "torture."**

*A court of first instance in Yerevan, Armenia, found A. Hovhannisyan, duty officer of the Nubarashen Penitentiary Facility, guilty of abuse of office causing unintended grave consequences, and acquitted him on the original charges of torture. Hovhannisyan beat the newly admitted inmate Aghajanyan who had obvious health problems (a colostomy bag attached to his body). Having convicted the officer, the court immediately amnestied and released him.*

*In Ukraine, where torture is criminalised as a common offence without a specific reference to public officials, criminal investigators tend to prosecute cases of torture committed by persons in power as "official and professional misconduct" rather than "torture."*

A positive exception is Moldova, where torture and inhuman or degrading treatment are criminalised in separate and specific articles of the Criminal Code. In addition to amending the Criminal Code, the lawmakers in Moldova also amended other articles such as "abuse of office" to ensure consistent and unambiguous enforcement of the new provisions on torture and ill-treatment.

*According to local experts, the crime of torture in Moldova applies to all public officials and other persons who effectively perform the functions of a public official (e.g. private security guards). The crime of "torture" in the country's Criminal Code is not subject to statutes of limitations or amnesties. In addition to this, courts are not allowed to give a sentence "below the lower limit," i.e. more lenient than prescribed by law for torture and ill-treatment cases.*

Thus, the criminal legislation in force in almost all countries makes it possible to prosecute acts that fall under the definition of torture. However, most of the time, the perpetrators are **punished for "abuse of office involving the use of violence" – rather than for torture.** But these are "surrogate" legal provisions and enforcement practices. While they can be invoked to punish for acts of physical violence,

these provisions hinder an accurate assessment of the severity of violence and fail to address a broader “repertoire” of potential acts of torture.

We note that so far, none of the countries that participate in the Prohibition of Torture Index and have criminalised torture in accordance with the Convention definition have developed effective enforcement standards in respect of these legal provisions.

*In Moldova, most complaints of torture get dismissed as ill-founded. In more than 90% of cases, complaints of ill-treatment are dismissed without a formal criminal investigation following a fast-track verification procedure regulated by article 274 of the Code of Criminal Procedure of Moldova. Upon receiving a complaint, the prosecutor must first examine the circumstances and then, based on findings, either open a formal criminal case or dismiss the complaint. While some complaints may indeed be manifestly ill-founded, it is unlikely that they account for more than 80% of all reports of ill-treatment and torture.*

*In Armenia, no one has been found guilty and convicted on charges of torture since 2015.*

*In Tajikistan, lawyers defending victims of torture prefer the perpetrators to be charged under other criminal provisions, as before 2021, the article on “torture” in the Tajik Criminal Code carried a lighter punishment than “abuse of office.”*

Another important consideration is that the criminal provision on “abuse of office involving the use of violence and special devices” covers a very broad range of acts but the same maximum sanctions, making it difficult to differentiate punishment for acts of varying severity – for example, unwarranted use of handcuffs during arrest could carry the same penalty as violently assaulting a helpless prisoner.

**When instead of a specific and comprehensive article on "torture" multiple surrogate norms are applied which cover a wide range of diverse acts without differentiation between torture and other types of offences, this practice also falls short of the Convention standards such as prohibiting any statutes of limitations, amnesty of pardon for torture, and establishing penalties proportionate to the grave nature of the offence.**

Both Armenia and Kyrgyzstan, for example, make it possible to reclassify previously investigated cases as less severe offences, resulting in lower or no liability for torture perpetrators.

*Kyrgyzstan's Chui Regional Court reclassified the charges on appeal from "torture" to "abuse of office" and did not impose any punishment due to expiration of the statute of limitations for "abuse of office."*

In addition, no liability exists under "abuse of office" for organisers and instigators of torture.

*In the case of Yevgeny Makarov (Russian Federation), the direct perpetrators of a collective and coordinated beating of the prisoner faced charges. However, their two superiors were acquitted, although the investigators had attempted to have them convicted by adding a broader charge of "complicity in the form of organising a crime."*

In general, whether a country has criminalised torture in strict accordance with the Convention or whether different elements of torture are treated under other provisions following the "distributed criminalisation" approach, none of the countries participating in the Prohibition of Torture Index has yet convicted a public official on charges of instigation, consent or acquiescence regarding torture.

**No enforcement practice has been established in respect of bringing to justice the organisers of torture. According to NGOs active in this sphere, officials involved in acts of torture get away with it and avoid responsibility**

Thus, the identification of organisers, instigators and others involved in torture, adequate investigation and fair punishment for all perpetrators are of key importance. Violence between prisoners is a problem in many OSCE countries. Quite often, such violence is enabled by the administration of the penitentiary facility for its own purposes, so that officials effectively delegate the use of ill-treatment and torture to inmates.

All countries that have inherited the Soviet penitentiary system are affected by the existence of *press-khatas* (prison cells where an inmate is abused by other inmates at the instigation of the administration), "preventive" beatings, etc. (Similar problems also occur in other countries of the OSCE region). Penitentiary officers involved in prisoner abuse often get away with disciplinary sanctions which may never be enforced due to a long investigation period exceeding the statute of limitations for disciplinary liability.

**"Delegating" the use of torture to cellmates is a convenient loophole allowing torture organisers to avoid responsibility. The authorities bring criminal charges against inmates for abusing other inmates and make no further effort to identify those responsible for torture.**

We consider the following to be **priority objectives**:

- for countries criminalising torture as an independent offence
  - to make a clear distinction between the crimes of "torture" and "abuse of office" and ensure that "abuse of office" is inapplicable to cases of torture;
  - remove the statutes of limitations under the article on "torture"
  - introduce legal barriers making it harder to avoid liability for torture
  - introduce legal barriers to disproportionately lenient punishment for torture
  - include both officials and quasi-officials as potential torture perpetrators (as in Moldova)
  - extend the criminal liability for torture to its organisers, instigators, etc., as well as direct perpetrators.
- for countries using the approach of distributed criminalisation of torture
  - abandon this approach, and
  - reform the criminal law and procedure for full and specific criminalisation of "torture" and "cruel and inhuman treatment"

Criminalisation cannot be limited to including criminal provisions aligned with the Convention in domestic law. An integral part of criminalisation is effective enforcement meaning that the said criminal provisions are consistently applied to prosecute alleged cases of torture and a thorough investigation is carried out into every report of torture.

### **Effective investigation and bringing the perpetrators to justice**

No country participating in the Prohibition of Torture Index has fully implemented the standards of effective investigation. Even in those countries where torture is properly criminalised in domestic law, effective enforcement is still a challenge.

First, as discussed above, these offences are often charged under "abuse of office" instead of "torture." But besides frequent misclassification, most investigations fall short of the standards of thoroughness,

timeliness and independence. Only in rare cases the investigating authorities give the victims proper access to the investigation.

*The lack of effective investigations into complaints of torture, together with the incessant flow of this type of complaints to the European Court of Human Rights, caused the Committee of Ministers of the Council of Europe to adopt a rather straightforward decision in respect of Russia. Indicating the lack of progress in the execution of judgments in a group of cases concerning torture in police custody, the CoE CM urged Russia to take prompt measures to prevent torture and expressed grave concern over the absence of major progress in the execution of these judgments, the leading one pending before the Committee for 15 years. The CoE CM notes instead a significant increase in cases from Russia concerning police ill-treatment – namely over 200 new applications pending before the European Court, indicating the State's failure to implement the reforms required to address this problem. See the full text of the CoE CM decision at [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680a4accc](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a4accc)*

Experts offer many reasons why the effectiveness of torture investigations is low. Some of the reasons concern a shortage of resources available to the investigating authorities, including the financial, material and human resources. Some other reasons concern the investigators' motivation and willingness to institute cases into reports of torture; experts also refer to political will and similar factors.

**We find that addressing the following three instrumental challenges could lead to new patterns of professional behaviour for the law enforcement authorities to adopt in dealing with reports of torture.**

**The first challenge** is access to, and documentation of material evidence of torture. Torture and ill-treatment usually occur behind closed doors, where witnesses are either absent or dependent on/connected with the perpetrators, and all evidence is kept inside the institution. In fact, those who could potentially face charges of torture have an effective monopoly on its evidence that they are able to hide, damage, tamper with to fabricate proof of their innocence, put pressure on witnesses, and more. The challenge of evidence collection increases multi-fold in prisons where the torture perpetrators, victims and witnesses are fully under control of the prison administration.

The widely accepted standard for torture documentation is provided in the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment/OHCHR). It offers detailed, hands-on guidance on gathering data that could later be used as evidence of torture, including the requisite assessments and how to appoint them, how to interview the victim, and more.

**The Istanbul Protocol can be used as a basis for developing document templates and guidelines for investigators. This could be done without significant intellectual or financial investment.**

Several countries in the OSCE region (Ukraine, Kyrgyzstan, Moldova, Belarus, Armenia and Tajikistan) have partly or fully implemented the Istanbul Protocol in their domestic legislation, but its consistent practical application is still a challenge. One of the reasons is a shortage of trained professionals.

**The second challenge** is that of getting surveillance cameras installed in all closed institutions and body cameras worn by all employees, and adopting new rules in respect of video recording of official interactions with citizens, archiving the video footage, access to such footage, and liability for tampering with it.



Video documentation is not only a source of reliable evidence in torture investigations, but can be an effective deterrent. The greatest challenge in this respect is not to obtain or install the equipment but to keep the video archives safe from tampering and to ensure access to the footage for investigators, and also for lawyers representing torture victims.

In most countries covered here, penal colonies, police stations and pre-trial detention centres consider video footage from surveillance cameras their institution's property. In Russia, for example, criminal investigators in charge of verification or investigation of an alleged torture case have been denied their formal requests for video footage by penal colony administrations on the ground that video archives are "For Official Use Only."

**New regulations to be adopted should be based on the premise that the archived footage from video surveillance cameras installed at a penal colony or a police station is evidence of their performance as a public service and thus cannot be considered property of the institution or department. The officials of any such institution must be presumed guilty whenever access to video archives is denied or footage is tampered with, and must face sanctions.**

**The third challenge** is to ensure, in practice, the right to file a complaint. Torture survivors must have easy access to a public complaint procedure and must be protected from any pressure, coercion and threats they may face after filing a complaint or providing information on a torture case.

Unfortunately, torture survivors face various forms of pressure, in particular because most of the victims are held in prison or in police custody, which means that they are isolated and under full control of public officials.

Cases of pressure and violence against complainants have been documented by national human rights organisations. When a torture victim is a prison inmate, their complaint in most cases will be stopped by the administration and never allowed to leave the prison. The general absence of complaints from penal colonies clearly indicates the severity of pressure faced by inmates. The fact that most cases are reported via indirect channels – such as video testimonies and reports from members of prison monitoring commissions – really means that written complaints can rarely make it outside of prisons or pre-trial detention centres.

*According to human rights defenders in Kazakhstan, they do not receive complaints from prisoners in the mail, although such complaints are numerous, according to the PMC (Public Monitoring Commission), the NPM (National Preventive Mechanism), family members and lawyers. The most common method whereby cases of torture can become public is a video testimony from a detention facility communicated via Elena Semyonova, member of the Public Monitoring Commission in Pavlodar Region and Head of the "We Are Against Torture" NGO. **Since March 2020, a total of 13 lawsuits have been filed by prisons and detention facilities in Kazakhstan against Semyonova for reporting torture. Most of the lawsuits against her were satisfied by courts.***

In-prison punishments such as strict isolation, often in solitary confinement, are used as a form of pressure on inmates who have filed complaints about torture or assisted in gathering information on other torture incidents in the facility. Nothing can stop a prison from imposing arbitrary punishments on an inmate, because the legally prescribed procedure for in-prison disciplinary measures does not provide for a fair trial. The administration can discipline an inmate at its own discretion based on a formal record of a minor violation of the internal regulations.

*Convicted inmate Alexander Kornev (Yaroslavl Region, Russia) who provided a witness testimony to a lawyer of the Public Verdict Foundation, a Russian NGO defending victims of torture, immediately after meeting with the lawyer was placed in solitary confinement in a punishment cell and stripped of visits and phone calls, food*

*parcels and books. The ground given by the prison administration for placing Kornev in the punishment cell for 15 days was that he had "failed to hold his hands behind his back." At the end of the 15 days, the inmate was not allowed to return to the living quarters but made to stay in the punishment cell for another 15 days. There was no trial or formal procedure; he was simply told that his punishment for "failing to hold his hands behind his back" was extended. A day before the end of his second period of punishment, it was extended once again for 15 days on the same ground of "failing to hold his hands behind his back." To remind, the punishment was imposed immediately after the inmate met with the lawyer.*

Witnesses and victims of police misconduct often face further threats or pressure designed to intimidate them; sometimes, such pressure takes the form of recriminatory prosecution.

*In May 2020 in Kyrgyzstan, local resident Mamir Tashmatov witnessed a police officer verbally abusing a shop assistant with for allegedly violating the quarantine rules. On the same day, officers of the Karasuu District Police Department detained and tortured Tashmatov to intimidate him. Once Tashmatov was released from the police station, he reported the torture to the prosecutor's office. Later, Tashmatov's wife recorded a video appeal to the country's leadership about the incident and shared the video on the internet. In retaliation, the police brought recriminatory criminal proceedings against Tashmatov's wife for allegedly sharing extremist materials.*

*Marina Ruzaeva who was tortured by officers at the police department in Usolye-Sibirskoye (Irkutsk Region, Russia), filed a complaint with the investigating authorities. Her case was not investigated for several years before being reassigned to a different team of investigators who brought it to trial. Once the investigation made progress and the case went to court, a series of incidents occurred, all affecting Ruzaeva and her family. In April 2021, someone set their country home on fire; a year before, a fire destroyed a bath house on their premises, and the family's car was damaged. The officers who had tortured Ruzaeva faced trial and were convicted, but the threats against her family continued, forcing them to relocate.*

*In Belarus, a number of arrested protesters against the 2020 election results complained about torture and ill-treatment and then faced charges under articles 342 (group actions violating public order) and 293 (riots) of the Criminal Code, were accused of resisting arrest, or had their original charges raised to a higher degree.*

The laws of all countries in question make it possible to hold accountable anyone trying to pressure or intimidate complainants, but this is not what usually happens. It appears that in addition to penalties for those who use violence, threats or their official position to intimidate and harass complainants, the following steps are necessary:

**Put in place complaints systems which are accessible and independent of prison administrations and the police. Since virtually all penitentiary institutions in the OSCE region are digitised, a secure online complaints system can and should be set up.**

Those who harass and put pressure on complainants are not only committing a gross violation but also significantly undermine the effectiveness of torture investigations. Anyone wishing to report torture must be supported and encouraged to file a formal complaint and fully participate in the investigation. This is particularly important due to the high latency of the crime of torture. For this reason,

**States that have taken on the obligation to eradicate torture should not persecute those who report it but must instead use various means to encourage people to file complaints**

A torture survivor's testimony makes it possible to formulate and pursue the key lines of inquiry in the investigation, to identify witnesses, to enable a thorough documentation of relevant circumstances and to ensure many other aspects of an effective investigation. Therefore, torture survivors should receive assistance and rehabilitation support as early as possible.

**Timely rehabilitation is essential not only for the torture victim's wellbeing but also for effective investigation and criminalisation of torture in practice**

### **Rehabilitation and compensation**

None of the countries participating in the Prohibition of Torture Index has a systematic rehabilitation programme in place for torture survivors. Most services for torture victims are provided by human rights organisations, but this work is rarely subsidised or funded by the State. Certain progress can be noted with caution in Armenia, where a law on subsidising psychological assistance to torture survivors has been adopted. But such assistance is often delayed.

*In Belarus, according to local experts, there is no question of providing state-supported rehabilitation programmes for torture victims, despite appeals from human rights organisations*

Thus, rehabilitation is usually not available or can only be obtained from human rights NGOs (that cannot assist everyone in need due to limited capacity nor replace state-provided services). As for compensation, the procedure requires the victim to file a separate civil lawsuit to recover it. The victim is responsible for drafting and filing the lawsuit, making his or her case before the court, and substantiating the damages sought. No compensation is awarded automatically in most countries participating in the Prohibition of Torture Index, with the only exception of Kazakhstan.

*In Kazakhstan, a victim claiming compensation in court will be automatically awarded a set amount from the Victim Compensation Fund to which each convicted offender is required to contribute 20 MCI (monthly calculation index), or approximately 100 euro.*

While compensation is guaranteed, there is a two-stage process the victim must go through: first, a criminal trial to establish guilt and convict the perpetrators, and following it, a civil claim for damages.

**This procedure is onerous and exhausting for a torture survivor who is required to take independent legal action and often to prove the harm in court.**

### **3. Statistics**

Crime statistics (the number of persons convicted and prosecuted, the types of punishments, etc.) are published by judicial departments and investigating authorities. Normally, they periodically publish aggregated statistics for cases under different articles of the criminal code. While the aggregated figures are based on primary data, the latter are internal to the agency and do not get published.

Statistics on "torture" are available in countries where it is criminalised as a separate offence. But these statistics are very general and only give an overall idea of the number of cases investigated and perpetrators sentences under this article, but not the details of the public officials convicted such as their rank or affiliation.

In Ukraine, "torture" is a general crime that does not specifically apply to public officials, so it is impossible even to estimate how many officials have been prosecuted for torture.

*The State Judicial Administration of Ukraine only publishes the aggregated data on trial outcomes in torture cases, without making a separate category for cases where the perpetrators are public officials. On the other hand, a report<sup>3</sup> from the State Bureau of Investigations (SBI) reveals the overall number of criminal proceedings against law enforcement officers but does not specify the Criminal Code articles under which the criminal charges were brought.*

*In Armenia, although "torture" is criminalised as a separate offence, "abuse of office" is more commonly applied in torture cases, therefore it is impossible to estimate the number of convictions specifically for cruel and degrading treatment. These statistics are "hidden" among other types of generalised data.*

Russia does not recognise a separate offence of "torture" applicable to law enforcement officers specifically. In absence of a specific article of the Criminal Code, no data is available to generate relevant statistics.

*The most acceptable of all is the situation in Moldova where the criminalisation of "torture" and "ill-treatment" as two separate offences makes it possible to collect and publish statistics on both.*

Given that in many countries participating in the Prohibition of Torture Index, the law enforcement agencies tend to avoid applying the new article on "torture" and continue to rely on their extensive prior experience of investigating "abuse of office" cases (see Section 2 of this Review), the relevant statistics contain data on "abuse of office" cases. One can only guess which of these cases were actually torture cases, and it is impossible to determine from these statistics what categories of public officials were found to have abused their authority and in what way.

Primary data can be provided upon request in some countries in question, but the respective agencies collect such data for their own needs and do not always capture the essential aspects of torture needed to effectively address the problem. Moreover, some countries refuse to disclose primary data even upon request.

*In Russia, government agencies refuse to provide information upon request – either giving the reason that they do not keep this kind of statistics, or giving no reasons at all.*

*In Tajikistan, such data are not disclosed, being classified as state secrets.*

By and large, in most countries participating in the Prohibition of Torture Index, no published statistics are available to make it possible to estimate the prevalence of torture and ill-treatment, the number of complaints filed, the number of initiated criminal cases, etc.

**An urgent measure that could be implemented with minimum effort** is to develop and approve protocols for collecting statistics on cases of torture and ill-treatment and for making such statistics public.

**The absence of published data prevents accurate and transparent statistical reporting – which, in turn, hinders a realistic assessment of the problem by the government as well as efforts to design measures capable of preventing torture and ill-treatment.**

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<sup>3</sup> <https://dbr.gov.ua/report/zvit-pro-diyalnist-derzhavnogo-byuro-rozsliduvan-za-2019-rik>

In late 2021, the CoE Committee of Ministers called upon Russia to take urgent measures to combat torture, specifically requesting statistical information on cases in which criminal charges of “false denunciation” were brought against people who had filed torture complaints, and statistics on torture investigations (the number of complaints, the number of full criminal investigations initiated, the number of charges brought, and the number and details of sentences).

It appears that the types of data requested by the CoE CM can be considered universally applicable and inform the protocols for publishing data on torture.

#### **4. Medical services**

The medical services in closed institutions are of fundamental importance not only as a key instrument for documenting torture but also as an institutional mechanism for its prevention. For both purposes, it is essential that medical professionals are not subordinate to the penitentiary or police authorities.

The way to ensure independence of healthcare personnel is to make them directly subordinate to the Ministry of Health as part of the general healthcare system, while being based inside of a closed institution. A healthcare service permanently based and operating in a prison or a police department while being subordinate to the Ministry of Health is essential to ensure in practice the priority, quality and timeliness of healthcare, because the quality of healthcare provision in this case will fall within the remit of the supervising authority – the Ministry of Health.

**If, instead, an in-house medical service is subordinate to the law enforcement authorities such as the police and the penitentiary, there is a high degree of probability that the latter's interests will have priority over the quality of healthcare considerations.**

A medical service based in a prison or a police department but subordinate to the Ministry of Health will effectively ensure a permanent presence of an external government agency inside these closed institutions. Such presence of an external observer can serve as an effective mechanism for preventing torture and ill-treatment. The responsibility for the wellbeing of persons in state custody will thus be distributed among different government agencies.

**As a result, the situation of prisoners and detainees will be continuously monitored by different government agencies. This alone has the potential of making closed institutions such as prisons or police stations more transparent. This model is based on a combination of distributive responsibility and cross-checking.**

None of the countries participating in Index on Torture have fully removed in-house healthcare providers from subordination to prison or police authorities. Either the medical service is a structural subdivision of the country's prison or police department, or the healthcare professionals are directly subordinate to the administration of the penitentiary or police facilities.

*In Russia, the medical division of the Federal Penitentiary Service is set up as an independent department within the prison authority, which at least prevents situations where a physician is subordinate to the head of the penal colony or prison. In Russia, there is no requirement for medical examination of persons brought to a police station on administrative charges. In a large number of torture cases, the victims were delivered to the police on administrative charges – rather than as criminal suspects for whom a medical examination is required. Making a medical examination obligatory for all persons brought to a police station will ensure better documentation of alleged torture or ill-treatment. This is especially important in Russia where the police use disproportionate force in dispersing public protests. In its *Zakharov and Varzhabetyan v. Russia* judgment (applications 35880/14 and 75926/17), the European Court of*

*Human Rights held that the force used by the police to disperse a political rally was unnecessary and excessive.*

*In Kazakhstan, the prison medical service is set up within the Committee of the Penitentiary System which, in turn, is part of the Ministry of Internal Affairs. According to local experts, the medical workers employed by the Ministry of Interior's Committee of the Penitentiary System are usually aware of all cases of ill-treatment or cruel punishment, but being subordinate to the prison administration, medics are never held accountable for failing to intervene.*

*With respect of Moldova, the UNCAT has recommended introducing mandatory and independent medical examination of all persons brought to police stations. However, the country has failed to follow the UNCAT's recommendation: the national legislation provides for medical examination of criminal suspects, defendants, accused or convicted individuals – but not of all persons delivered to police premises. The UNCAT has also found that the Republic of Moldova fails to guarantee adequate healthcare in its penitentiary system. The fact that medical staff in the penitentiary system are not independent of the prison administration remains a problem.*

## **5. Combating enforced disappearances must become an important part of the implementation of the expanded 2020 OSCE commitment on torture prevention and eradication**

### ***Why the OSCE should take more active steps to end enforced disappearances?***

Holding people in incommunicado detention, i.e. in complete isolation from the outside world, with no information to their families or no access to legal or medical assistance is a gross violation of States' international human rights obligations, including under the International Covenant on Civil and Political Rights. Moreover, enforced disappearance is a form of inhuman and degrading treatment both for the disappeared and their families, thus falling under the scope of the UN Convention against Torture. All OSCE participating States have ratified both the Covenant and the Convention, and some have also ratified the International Convention for the Protection of All Persons against Enforced Disappearances<sup>4</sup>. Enforced disappearances and incommunicado detention, as a form of torture and cruel, inhuman and degrading treatment, are also expressly prohibited in the situations of armed conflicts by 1949 Geneva Conventions. Being serious violations of international humanitarian law, according to the Conventions, they constitute war crimes and can constitute crimes against humanity.

According to the Convention, the term enforced disappearance expresses “(...) the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by the concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”<sup>5</sup>

Enforced disappearances are most often committed in the following situations:

- as a tool of reprisal against political opponents and intimidation of other critics;

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<sup>4</sup> Out of 57 OSCE participating States, 25 have ratified the Convention for the Protection of All Persons against Enforced Disappearances or acceded to it, 15 have signed the Convention but have not ratified it, and 17 have not even signed. See the appendix to this chapter for a table with the status of participation in the Convention by OSCE participating States.

<sup>5</sup> International Convention for the Protection of All Persons from Enforced Disappearance. Adopted by the UN General Assembly Resolution 61/177 on 20 December 2006, entered into force on 23 December 2010. Art. 2. [https://treaties.un.org/doc/Publication/CTC/Ch\\_IV\\_16.pdf](https://treaties.un.org/doc/Publication/CTC/Ch_IV_16.pdf)

- in the course of armed conflicts, both internal and international, by state or non-state actors<sup>6</sup>;
- in the course of “counter-terrorism operations”, both internally and in other countries, including during “sweeping operations” and in the process of extraordinary renditions in secret prisons;
- as a tool of persecution of minorities.

Enforced disappearance may lead to a murder of a victim at hands of the perpetrators or his/her death from torture or inhuman and degrading conditions of custody. In other cases, a victim may languish in incommunicado detention for a long time and sometimes be released after pressure from the international community and local and international civil society.

Ending the ongoing enforced disappearances, their effective investigation, ending impunity of perpetrators and masterminds and holding them accountable, and ensuring justice to the victims and their relatives is an urgent task for the international community. Equally important is effective investigation of the past crimes of enforced disappearances, regardless of how much time has passed since they were committed. This is essential for truth, justice and reparation for the victims and their families, for preserving historical memory, and for prevention of new crimes of enforced disappearance.

In December 2020, OSCE participating States adopted a new, expanded OSCE commitment to prevent and eradicate torture by taking the Ministerial Council Decision 7/20<sup>7</sup>. In this decision, OSCE participating States for the first time unanimously included fighting enforced disappearances in the OSCE commitment to prevent torture and incorporated prolonged incommunicado detention in their definition of what can facilitate torture and other cruel, inhuman or degrading treatment or punishment or can by itself constitute a form of such treatment.

This landmark decision gives OSCE participating States, executive bodies, and institutions additional responsibility to vigorously address the problem of enforced disappearances in the OSCE region, including in the countries and regions where this crime has been perpetrated the most, such as Turkmenistan, Chechnya in the Russian Federation, parts of the Donetsk and Luhansk regions of Ukraine currently under control of the Russian Federation, the occupied Crimea, Belarus, and the region of the former Yugoslavia.

### *An overview of the problem of enforced disappearances in the OSCE region*

In **Turkmenistan**, enforced disappearances in the prison system is a well-documented crime, the scale of which continues to grow. Incommunicado detention and disappearing people in prisons are the

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<sup>6</sup> While the International Convention for the Protection of All Persons from Enforced Disappearances defines enforced disappearances as acts committed “by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State,” another term, “missing”, denotes a broader category that, according to the International Committee of the Red Cross (ICRC), includes individuals “(...) who are unaccounted for as a result of armed conflict, whether international or internal. They might be military or civilian; anyone whose family has no information on their fate or whereabouts.” Therefore, perpetrators in the cases of missing persons in armed conflicts may include both state and non-state actors. For discussion, see: Missing Persons: A Hidden Tragedy (Geneva: ICRC, 2007), <https://shop.icrc.org/personnes-portees-disparues-une-tragedie-oubliee-2619.html>. There are legal distinctions between these two terms arising from the international human rights law and the international humanitarian law, however, both categories of violations are pertinent in some states or regions and should be addressed by States and the international community. In some cases, these two terms have been used interchangeably by different stakeholders, including relatives of the disappeared and family organisations. Sometimes, distinction between these two categories is rendered meaningless in societies affected by these crimes, and “disappearance” has become a generic term that is often used quite loosely and tends to include both “missing” and “enforced disappearance”. For a discussion, see the introduction to “Any Hopes for Truth? A Comparative Analysis of Enforced Disappearances and the Missing in Middle East, North Africa and Caucasus”. Özgür Sevgi Göral. A publication of the **Truth Justice Memory Center** and the Regional Network for Historical Dialogue and Dealing with the Past, 2019. <https://hakitadalethafiza.org/wp-content/uploads/2019/01/Zorla-Kaybetmeler-rapor.pdf>. Page 12.

<sup>7</sup> Decision No. 7/20, Prevention and Eradication of Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment, <https://www.osce.org/chairmanship/473199>

cruellest instruments of political repression among many tools applied by the Turkmen authorities to keep their grip on power and eliminate any real or perceived political challenge. The year 2022 marks the 20th anniversary of the beginning of mass repression in Turkmenistan. Since 2002, hundreds of enforced disappearances have occurred, after people were sentenced to long-term prison terms on political grounds and a variety of trumped-up charges. The Prove They Are Alive! international campaign has documented 162 cases of disappearances in Turkmenistan's prisons since 2002.<sup>8</sup> In the context of severe suppression of civil liberties and denial of access to the country for foreign human rights organisations and international observers, this list is inevitably incomplete. The total number of victims is estimated at several hundred. This is not a matter of history but an ongoing crime: 97 of the documented cases are continuing disappearances. As long as disappeared people remain unaccounted for, the crime continues. 65 cases of people who were subjected to enforced disappearances earlier have been taken off the list of the current cases based on verified and reliable data: 29 died in custody, 10 were released, and 26 continue to serve their sentences but have been granted visits and/or food parcels.

Turkmen criminal legislation does not permit full isolation of prisoners, regardless of the crime committed. Nevertheless, the authorities continue to impose this cruel and illegal punishment on people they consider to be a political threat to their absolute power due to their opinions, influence, or visibility. Widespread use of torture, poor sanitation, extremes of heat and cold, and close quarters in the prison cells provide a dangerous environment for prisoners' health. In an even more despicable violation of human rights, a number of those who are disappeared in Turkmenistan's prisons have not been released after their prison terms ended. Although their terms are over, they continue to be disappeared in a system that routinely tortures inmates and forces them to live in inhumane conditions. This includes at least 11 persons from the list of the disappeared whose terms have already expired. Terms of another dozen people will expire in 2022. There is absolutely no justification for their continued imprisonment, even in the deeply flawed logic of the regime.

The government of Turkmenistan, despite its OSCE commitments, continues to obfuscate or ignore inquiries about the fate of the disappeared, including those who should have been released at the end of their terms. This amounts to a new type of torture, piled on to the years of tortuous treatment of the imprisoned and their families. International civil society has repeatedly called on the OSCE to take vigorous actions to end enforced disappearances in Turkmenistan's prisons.<sup>9</sup>

In **Chechnya**, enforced disappearances have been perpetrated at an extremely high scale for more than 25 years and appear to be a result of a combination of several factors: a brutal war between the Russian government and armed separatists, counter-terrorism operations by Russian troops and Chechen law enforcement bodies, political repression of critics of the regime of Ramzan Kadyrov, and persecution of minorities on the grounds of sexual orientation and gender identity. As a result, Russia appears to be a leader in the number of disappearances in Europe in the 21<sup>st</sup> century.

Enforced disappearances are part of the tragic legacy of Russia's two military campaigns in Chechnya in the 1990s and early 2000s. Memorial Human Rights Centre estimated the number of disappearances

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<sup>8</sup> List of the Disappeared in Turkmenistan's Prisons. A report by the Prove They Are Alive! campaign. November 2021. [https://provetheyarealive.org/wp-content/uploads/2021/12/Disappeared-in-Turkmenistans-prisons\\_report\\_Prove\\_November-2021\\_final.pdf](https://provetheyarealive.org/wp-content/uploads/2021/12/Disappeared-in-Turkmenistans-prisons_report_Prove_November-2021_final.pdf)

<sup>9</sup> Strong International Actions Are Essential to Stop Enforced Disappearances in Turkmenistan. Twenty Years after the Start of Mass Repression, OSCE Participating States Should Launch the Moscow Mechanism with Respect to Turkmenistan to Address Continued Gross Human Rights Violations Civil society appeal to participants of the OSCE Ministerial Council Meeting in Stockholm. 01.12.2021. [https://civicsolidarity.org/sites/default/files/appeal\\_on\\_the\\_launch\\_of\\_mm\\_on\\_turkmenistan\\_stockholm\\_2021\\_0.pdf](https://civicsolidarity.org/sites/default/files/appeal_on_the_launch_of_mm_on_turkmenistan_stockholm_2021_0.pdf)



between late 1999 and early 2005 at between 3,000 and 5,000<sup>10</sup>. Disappearance was used as a systematic strategy by the Russian government for repressing the armed struggle. The detention of thousands of individuals on the pretext of having information on suspected members of armed separatist groups became an ordinary, widespread, and systematic practice during the wars in Chechnya. People were detained and then disappeared through a number of common ways. Sweep operations were crucial for the implementation of enforced disappearances: towns and villages were blockaded while homes and workplaces were searched by the Russian military. Allegedly, the aim was to seize weapons and arrest Chechen rebels after finding them. Therefore, the majority of the disappeared were either detained after large-scale sweep operations or during targeted sweep and special operations. People were also detained at checkpoints or roads, taken from their homes during nighttime raids, and from detention centers and police stations<sup>11</sup>. Human Rights Watch argued that the scale of disappearances in Chechnya at that time was so widespread or systematic as to meet the definition of a "crime against humanity" enshrined in the UN Declaration on the Protection of Persons from Enforced Disappearances<sup>12</sup>.

After 2002, a phenomenon called the "Chechenization" of the conflict occurred when the government policy shifted the conflict from an anti-terrorist operation to the consolidation of local politics in Chechnya. As part of this process, former rebel armed fighters were incorporated into military units through an informal amnesty program. The new disappearances were committed by Chechen law enforcement bodies via door-to-door detentions. Bodies of most of the forcibly disappeared were not found and thousands of individuals were buried in unmarked mass graves around Chechnya, where there are 52 registered sites of mass graves. According to human rights activists, many cases of disappearances went unreported, making it hard to gauge the scale of the problem. People in Chechnya don't want to give statements to the authorities, which is part of what human rights groups describe as a climate of fear held in place by Ramzan Kadyrov and his government. Families of those who vanish – and who are usually assumed to have been detained by Chechen security forces – are frightened that coming forward will only make things worse for their loved ones<sup>13</sup>. Kadyrov, who was appointed by Russian President Vladimir Putin in 2007, has been widely accused of human rights abuses -- including murder, torture, and orchestrating disappearances -- for many years. Citing his oversight of "an administration involved in disappearances and extrajudicial killings," the US Treasury designated Kadyrov for individual sanctions on December 20, 2017, within the framework of the Russia Magnitsky Act of 2012, and on December 10, 2020, designated Kadyrov pursuant to the Global Magnitsky Executive Order "for being a foreign person who is a leader of an organization, the Kadyrovtsy, that has engaged in, or whose members have engaged in, serious human rights abuses."<sup>14</sup> Since 2016-17, human rights organisations registered an alarming increase in the number of Chechens -- both men and women -- allegedly detained or abducted by security personnel, many of whom subsequently

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<sup>10</sup> Чечня, 2004 год. Похищения и исчезновения людей. Доклад Правозащитного центра «Мемориал». 07.02.2005. <https://memohrc.org/ru/reports/chechnya-2004-god-pohishcheniya-i-ischeznoveniya-lyudey>. Page 2.

<sup>11</sup> For detailed information, see, in particular, Last Seen. . . : Continued "Disappearances" in Chechnya. A Human Rights Watch report. April 2002. <https://www.hrw.org/reports/2002/russchech02/chech0402.pdf>, and Russia. Ethno-political anxieties and enduring cruelties: Where did all these people go in such a small place? in "Any Hopes for Truth? A Comparative Analysis of Enforced Disappearances and the Missing in Middle East, North Africa and Caucasus". Özgür Sevgi Göral. A publication of the **Truth Justice Memory Center** and the Regional Network for Historical Dialogue and Dealing with the Past, 2019. <https://hakikatadalethafiza.org/wp-content/uploads/2019/01/Zorla-Kaybetmeler-rapor.pdf>.

<sup>12</sup> Worse Than a War. "Disappearances" in Chechnya—a Crime Against Humanity. A Human Rights Watch Briefing Paper. March 2005. <https://www.hrw.org/legacy/backgrounder/eca/chechnya0305/index.htm>

<sup>13</sup> See, in particular, Чечня: родственники похищенного отказались сотрудничать с правозащитниками из-за давления силовиков. Правозащитный центр «Мемориал». 27.05.2021. [https://memohrc.org/ru/news\\_old/chechnya-rodstvenniki-pohishchennogo-otkazalis-sotrudnichat-s-pravozashchitnikami-iz-za](https://memohrc.org/ru/news_old/chechnya-rodstvenniki-pohishchennogo-otkazalis-sotrudnichat-s-pravozashchitnikami-iz-za), and Relatives Fear Missing Chechen Man Has Joined Thousands of 'Disappeared'. Yekaterina Filippovich, Tony Wesolowsky. Radio Free Europe/ Radio Liberty, 25.10.2019. <https://www.rferl.org/a/chechen-shaikhavev-disappearance-kadyrov-human-rights/30236674.html>

<sup>14</sup> Treasury Sanctions Serious Human Rights Abusers on International Human Rights Day. Designations target human rights abusers in Haiti, Yemen, and Russia. 10.12.2020. <https://home.treasury.gov/news/press-releases/sm1208>

disappeared without a trace. Most cases of disappearances – and often subsequent extrajudicial executions – occur under the pretext of counter-terrorism operations<sup>15</sup>.

In some instances, critics of the regime, including bloggers, disappear in the hands of security officers after being kidnapped from home, other locations in Russia, or after being deported from European countries. Often, they emerge later on video, confessing to crimes under extreme duress. Memorial, which monitors such cases, has faced its own persecution from Chechen authorities. The head of its Grozny office, Natalya Estemirova, was **abducted and murdered** in 2009<sup>16</sup>. The ECtHR ruled that the Russian government failed to hold an effective investigation in the case of Estemirova's disappearance and subsequent murder<sup>17</sup> – as has happened in numerous other cases.

Since 2016, several waves of purges against LGBT people have occurred in Chechnya, when dozens of victims were abducted by security personnel, put in secret detention centres, held incommunicado, and tortured to confess and give away names of other LGBT people. A number of them were allegedly murdered while others were returned to relatives with a recommendation to kill them to “wash off shame from the family.” An official investigation, prompted by international outcry, led nowhere, and was closed. Dozens of cases of enforced disappearances in Chechnya since 2017, both of alleged terrorists and LGBT people, were documented in the OSCE report under the Moscow Mechanism in October 2018<sup>18</sup>.

In the most recent cases, in the end of December 2021, several dozen relatives of five Chechen activists who have dared to criticise the leadership of the Chechen Republic, including two opposition bloggers, a founder of a human rights association, director of a human rights NGO (all reside outside of Russia), and an employee of the human rights organization, Committee against Torture (resides in Russia but outside of Chechnya), were abducted on the territory of the Chechen Republic and in other regions of Russia, and the fate and whereabouts of many of them remains unknown. While the circumstances of these abductions are still emerging in many cases as human rights defenders continue to seek confirmation about the details of what exactly happened, the evidence available to date already indicates that these could be enforced disappearances carried out by agents of the state. It is clear that at least some relatives were taken from their homes, and there are unconfirmed reports that many were brought to local police stations. Some were later released after they had been forced by threats and humiliation to agree to ensure that their relatives will stop all activities that displease Ramzan Kadyrov. The fate and whereabouts of those who have not yet been released remains unknown.<sup>19</sup>

Domestic legal remedies for victims in Chechnya and their relatives are not available, and impunity is a major problem. None of the cases of disappearances has been investigated at the national level, the perpetrators have not been found, and the fate of the disappeared people is still unknown. Not a single official or a member of law enforcement has been held accountable. The situation before the European Court of Human Rights (ECtHR) is very different. The Court has reviewed almost 300 cases of

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<sup>15</sup> Human Rights in Chechen Republic. Oleg Orlov's speech in the Parliamentary Assembly of the Council of Europe, 28.01.2020. <https://memohrc.org/en/publicationstypes/report/human-rights-chechen-republic-o-orlovs-speech-parliamentary-assembly>

<sup>16</sup> Она выбрала Чечню. 11 лет со дня гибели Натальи Эстемировой. Правозащитный центр «Мемориал». 15.07.2020. [https://memohrc.org/ru/news\\_old/ona-vybrala-chechnyu-11-let-so-dnya-gibeli-natali-estemirovoy](https://memohrc.org/ru/news_old/ona-vybrala-chechnyu-11-let-so-dnya-gibeli-natali-estemirovoy)

<sup>17</sup> ЕСПЧ по делу Эстемировой: российские власти не провели эффективное расследование убийства правозащитницы. Правозащитный центр «Мемориал». 31.08.2021. [https://memohrc.org/ru/news\\_old/espch-po-delu-estemirovoy-rossiyskie-vlasti-ne-proveli-effektivnoe-rassledovanie-ubiystva](https://memohrc.org/ru/news_old/espch-po-delu-estemirovoy-rossiyskie-vlasti-ne-proveli-effektivnoe-rassledovanie-ubiystva)

<sup>18</sup> OSCE Rapporteur's Report under the Moscow Mechanism on alleged Human Rights Violations and Impunity in the Chechen Republic of the Russian Federation. By Professor Dr. Wolfgang Benedek. December 2018. [https://www.osce.org/files/Moscow%20Mechanism%20Document\\_ENG.pdf](https://www.osce.org/files/Moscow%20Mechanism%20Document_ENG.pdf)

<sup>19</sup> Joint open letter by international and Russia human rights NGOs to President Putin on mass abductions in Chechnya. 07.01.2022. <https://www.amnesty.org/en/wp-content/uploads/2022/01/EUR4651522022ENGLISH.pdf>

disappearances in Chechnya and has held Russian government accountable for violating the European Convention, in particular for a lack of effective investigation of disappearances. After the ECtHR decision, the investigation of enforced disappearance would usually resume. However, none of the criminal cases of enforced disappearance in relation to which the ECtHR issued judgments have been solved; the perpetrators have not been found; the fate of those gone missing has not been established. ECtHR specified two groups of general measures in order to remedy the systemic failure of the Russian authorities in addressing the issue of enforced disappearances: The first group of measures concerns the situation of the victims' families who suffer a sense of acute helplessness and confusion, and the second group concerns the effectiveness of investigations and the problem of impunity<sup>20</sup>.

**In parts of Donetsk and Luhansk regions of Ukraine, currently under control of the Russian Federation**, hundreds of pro-Ukrainian activists and individuals opposing Russian occupation and actions of the Russia-backed separatist regime have been detained in secret prisons in inhumane conditions and subjected to torture. According to data from the government of Ukraine, 258 people have been reported missing in the occupied part of Donbas since 2014, including 67 servicemen and reservists<sup>21</sup>. The de facto authorities continue to unlawfully deprive civilians of their liberty while concealing their fate and whereabouts for weeks, sometimes months, and subject them to torture and other ill-treatment, without providing them recourse to justice or legal remedies. According to Human Rights Watch and Amnesty International statement in 2020, no steps have been taken to investigate reports of abduction, arbitrary, prolonged detention of civilians, and torture and other ill-treatment of detainees in the non-government-controlled areas of Donetsk and Luhansk regions, and there is no indication that these crimes under international law have stopped<sup>22</sup>. Details of such cases have continued to emerge, while documenting them has become considerably more difficult<sup>23</sup>.

**In the Crimea**, a massive wave of repression against pro-Ukrainian, Maidan, and Crimean Tatar activists has been perpetrated since the annexation by the Russian Federation. Enforced disappearances, along with criminal persecution under trumped-up charges, torture, ill-treatment, and other forms of oppression, began to appear. According to human rights organisations and the government of Ukraine, 44 cases of enforced disappearance have been reported since 2014 in Crimea<sup>24</sup>. The majority of victims of enforced disappearances in occupied Crimea are Crimean Tatars. According to the UN Office of the High Commissioner for Human Rights' Monitoring Mission in Ukraine, 11 individuals remain missing today<sup>25</sup>. The government of Ukraine gives the figure of 15 people. "In the vast majority of cases, facts that indicate the involvement of Russian occupation administration in the disappearances have been revealed," the Foreign Ministry of Ukraine stated in August 2021<sup>26</sup>. In 2017, Ukraine filed a lawsuit

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<sup>20</sup> Human Rights in Chechen Republic. Oleg Orlov's speech in the Parliamentary Assembly of the Council of Europe, 28.01.2020. <https://memohrc.org/en/publicationstypes/report/human-rights-chechen-republic-o-orlovs-speech-parliamentary-assembly>

<sup>21</sup> 258 People Listed as Missing in Donbas, 44 Became Victims of Enforced Disappearances in Crimea - Foreign Ministry. Dasha Zubkova. Ukrainian News. 30.08.2021. <https://ukranews.com/en/news/798042-258-people-listed-as-missing-in-donbas-44-became-victims-of-enforced-disappearances-in-crimea>

<sup>22</sup> Ukraine: Justice Still Needed for Victims of Unlawful Detention in Eastern Ukraine. Joint statement by Human Rights Watch and Amnesty International. 06.08.2020. <https://www.hrw.org/news/2020/08/06/ukraine-justice-still-needed-victims-unlawful-detention-eastern-ukraine>

<sup>23</sup> Ukraine: Torture, Ill-Treatment by Armed Groups in East. Grave Medical Concerns for Detained Women. Human Rights Watch. 05.07.2021. <https://www.hrw.org/news/2021/07/05/ukraine-torture-ill-treatment-armed-groups-east>

<sup>24</sup> 258 People Listed as Missing in Donbas, 44 Became Victims of Enforced Disappearances in Crimea - Foreign Ministry. Dasha Zubkova. Ukrainian News. 30.08.2021. <https://ukranews.com/en/news/798042-258-people-listed-as-missing-in-donbas-44-became-victims-of-enforced-disappearances-in-crimea>

<sup>25</sup> Civic space and fundamental freedoms in Ukraine, 1 November 2019 – 31 October 2021. Report by the UN Human Rights Monitoring Mission in Ukraine. <https://www.ohchr.org/Documents/Countries/UA/UkraineCivicSpace2021-EN.pdf>

<sup>26</sup> Ukrainian MFA addresses Russia on International Day of Victims of Enforced Disappearances. 112.UA new agency. 30.08.2021 <https://112.international/ukraine-top-news/ukrainian-mfa-addresses-russia-on-international-day-of-victims-of-enforced-disappearances-64452.html>

against Russia in the UN International Court of Justice over enforced disappearances in the occupied Crimea<sup>27</sup>.

In **Belarus**, enforced disappearances have been used by the regime of Alexander Lukashenko as a tool of political repression. In the late 1990s, a secret group of former and acting special services officers was created under Lukashenko's orders to assassinate dangerous criminals and political opponents with total annihilation of their bodies or hiding them without trace. Reportedly, about 30 persons were kidnapped and murdered by that group. Victims of disappearances included influential criminals, well-known political opponents of the regime, businessmen supportive of the opposition, and at least one journalist.

The most resonant cases include four enforced disappearances and alleged political assassinations of well-known critics of the regime in 1999-2000: an influential opposition politician, former Minister of Internal Affairs Yury Zakharenka; a popular opposition politician, former Deputy Prime Minister and former head of the Central Electoral Commission Viktor Hanchar; a businessman, writer, publisher, philanthropist, and supporter of the opposition Anatol Krasouski; and an investigative TV journalist Dzmitry Zavadski<sup>28</sup>. Several other political opponents of the Lukashenko regime were not abducted, but died in highly suspicious circumstances, including Deputy Speaker of Parliament Gennady Karpenko and the editor-in-chief of the main opposition media Charter-97 Aleh Bebenin. Official investigation of all the cases was soft-pedaled and suspended (except the case of Zavadski where four former officers of a special force unit of the Ministry of the Interior were sentenced to life for abducting him, but no masterminds of the crime were identified). In the early 2000s, the former head of a special execution squad of the Ministry of the Interior in charge of implementing death sentences Oleg Alkaev fled to Germany and stated that he had evidence that Zakharenka, Hanchar and Krasouski had been murdered on the orders of the top Lukashenko's associates<sup>29</sup>. Former police officers, journalists, human rights defenders, and opposition activists carried out informal investigations and recreated the story of these crimes, including the names of the main participants, but it is impossible to conduct an effective official investigation in Belarus. Lukashenko has publicly admitted several times that he ordered the creation of a special group to assassinate "dangerous criminals" and took full responsibility for enforced disappearances in the country.

The OSCE PA resolution in 2002<sup>30</sup>, the PACE report and resolution in 2004<sup>31</sup>, the OSCE Moscow Mechanism report in 2011<sup>32</sup> and the UN Human Rights Committee concluding observations in 2018<sup>33</sup> called for a thorough, credible and impartial investigation of the cases of enforced disappearances in 1990-2000, ensure that the victims and their relatives are informed of the progress and results of the investigation, identify those responsible and ensure that they are prosecuted and punished with appropriate penalties that are commensurate with the gravity of their crimes, ensure that victims of enforced disappearance and their families are provided with full reparation, including rehabilitation, satisfaction and guarantees of non-repetition. The UN Human Rights Committee reviewed individual complaints by relatives of the disappeared and concluded that Belarus must carry out proper

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<sup>27</sup> Victory for Ukraine means Russia must answer to UN court, including over MH17. Halya Coynash. Kharkiv Human Rights Protection Group. Information Portal "Human Rights in Ukraine". 11.11.2019. <https://khhpg.org/en/1573335216>

<sup>28</sup> Without Trace: Uncovering the Fate of Belarus' "Disappeared". An Amnesty International report. September 2002. <https://www.amnesty.org/en/wp-content/uploads/2021/06/eur490132002en.pdf>

<sup>29</sup> Олег Алкаев: В Беларуси я искал следы пропавших оппозиционеров. DW, 14.12.2012 [shorturl.at/ivGZ9](http://shorturl.at/ivGZ9)

<sup>30</sup> OSCE Parliamentary Assembly Resolution on Belarus, adopted on 10 July 2002, par. 7 and 12, pp.15-16. <https://www.oscepa.org/en/documents/annual-sessions/2002-berlin/declaration-13/220-2002-berlin-declaration-eng/file>,

<sup>31</sup> Disappeared persons in Belarus. Report by Christos Pourgourides, PACE Committee on Legal Affairs and Human Rights, 12.03.2004, and PACE Resolution 1371, 28.04.2004. <https://pace.coe.int/en/files/10456>

<sup>32</sup> OSCE Rapporteur's Report under the Moscow Mechanism on the fulfilment of the provisions of the OSCE human dimension in Belarus. By Professor Emmanuel Decaux. May 2011. <https://www.osce.org/files/f/documents/6/b/78705.pdf>

<sup>33</sup> Human Rights Committee. Concluding observations on the fifth periodic report of Belarus. CCPR/C/BLR/CO/5. 22.11.2018 [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=BLR&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=BLR&Lang=EN)

investigation, bring perpetrators to justice, pay compensation to the relatives, and publish materials of investigations<sup>34</sup>. However, the Belarusian government has repeatedly announced that it does not have a legal obligation to implement views of the Human Rights Committee on individual complaints. No action has been taken by the authorities<sup>35</sup>.

In the region of the **former Yugoslavia**, estimated 40,000 persons went missing during the armed conflicts on the territory of the region in 1991-2001<sup>36</sup>. The victims of enforced disappearances came from all ethnic groups and from all walks of life – civilians and soldiers, men, women, and children. Some 10 thousand persons are still unaccounted for, and their relatives are still awaiting justice<sup>37</sup>. Enforced disappearances are a daily source of pain for the relatives still waiting to learn the fate and whereabouts of their loved ones, still searching for truth, justice, and reparation. Reconciliation in the region of the Western Balkans greatly depends upon resolving that problem. The authorities in the region (Croatia, Bosnia and Herzegovina, Northern Macedonia, Montenegro, Serbia, and Kosovo) need to take more active and consistent steps to investigate enforced disappearances and to ensure the victims and their families receive access to justice and adequate and effective reparation for the harm they have suffered. All six governments have failed to abide by their international legal obligations to effectively investigate and prosecute these crimes. Some perpetrators have been brought to justice by the International Criminal Tribunal for the Former Yugoslavia<sup>38</sup>, but the Tribunal completed its mandate. Domestic courts are slow to abide by their responsibility to seek out, identify and prosecute the remaining perpetrators. The major obstacle to tackling impunity and bringing the perpetrators to justice is a persistent lack of political will in all countries of the region.

## **6. Recommendations**

### **On prevention of torture and cruel treatment**

#### **To the OSCE participating States**

- Develop national Roadmaps or Action Plans for the implementation of the main provisions of the OSCE Ministerial Council Decision 7/20 on Prevention and Eradication of Torture and other cruel, inhuman or degrading treatment or punishment adopted by the OSCE 2020 Ministerial Council. A mandatory part of national action plans should be the reform of clear presentation of statistics on documented cases of torture and ill-treatment (Open Data on the Prevention of Torture).

- Develop and approve protocols with the working title "Open Data for the Prevention of Torture". Open statistical information should include statistical data on documented cases of torture and ill-treatment, including the number of cases of torture, the number of applications filed with the investigating authorities, the number of criminal cases initiated, the number of victims of torture, the number of those prosecuted with distribution by departmental affiliation, the number of cases of false denunciation against those who filed a complaint about torture and other statistical primary accounting data.

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<sup>34</sup> Krasovskaya and Krasovskaya v. Belarus (CCPR/C/104/D/1820/2008) and Zakharenko and Zakharenko v. Belarus (CCPR/C/119/D/2586/2015)

<sup>35</sup> Правозащитница: Дела исчезнувших политиков расследоваться в ближайшее время не будут. Belarusian Documentation Centre. 06.03.2019. <https://bydc.info/news/859-konstitutsionnyj-sud-ne-vidit-problemy-v-otsutstvii-v-ugolovnom-kodekse-nasilstvennogo-ischeznoeniya>

<sup>36</sup> Jeremy Sarkin, Dr. Lara Nettelfield, Max Matthews, Renee Kosalka. Bosnia and Herzegovina Missing Persons from the Armed Conflicts of the 1990s: A Stocktaking. International Commission on Missing Persons (ICMP), Sarajevo. October 2014. [https://www.icmp.int/wp-content/uploads/2014/12/StocktakingReport\\_ENG\\_web.pdf](https://www.icmp.int/wp-content/uploads/2014/12/StocktakingReport_ENG_web.pdf)

<sup>37</sup> Ibid.

<sup>38</sup> Achievements. Website of the United Nations the International Criminal Tribunal for the former Yugoslavia. <https://www.icty.org/en/about/tribunal/achievements>.

- Bring in full compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the scope and content of the articles of the Criminal Code criminalizing torture and the criminal sanctions for acts subject to torture and ill-treatment.

- Develop and approve protocols for the investigation of cases of torture and ill-treatment, which should include a system of interrelated investigative actions that ensure the promptness of the investigation, access to the main sources of evidence of torture and their preservation, as well as strict compliance with the basic standards of effective investigation. Namely: the timeliness of the investigation, the thoroughness of the investigation, the independence of the investigation and exclusion of conflicts of interest, the access of torture victims to the investigation. Protocols should include appropriate measures in relation to cases of intentional damage, liquidation, falsification, fabrication of evidence of torture, in particular, video archives accumulated in closed institutions (police, penitentiary institutions, boarding schools, centers for migrants, etc.).

- Carry out reforms of medical services in the police and penitentiary institutions to ensure in practice their full independence, excluding their departmental affiliation with law enforcement agencies. Develop mandatory protocols for recording evidence of torture and ill-treatment and use them in practice of medical services in accordance with the Istanbul Protocol.

- Develop programs for the rehabilitation of torture survivors and reserve funds from the state budget for their implementation, as well as conduct subsidized assistance programs to support rehabilitation programs for non-state providers.

- Sign and ratify the Optional Protocol to the Convention against Torture

Those OSCE participating States that have not yet ratified OPCAT and have not established National Preventive Mechanism should do so as soon as possible. OSCE participating States should strengthen their National Preventive Mechanisms by providing a firm legal basis guaranteeing their independence and their engagement in effective monitoring.

- Develop and amend training programs for law enforcement officials. Such programs should be based on training practical modules on relevant human rights standards, including the principles of proportionality in human rights interference, as well as include a practical training component aimed at acquiring skills and competencies to minimize harm when using physical force and special equipment.

### **To the OSCE Institutions:**

For many countries the OSCE's actions in the framework of the human dimension acquire key importance as it is only one of the few international institutions of interstate interaction with monitoring mechanisms for the monitoring of human rights. Implementation of the 7/20 Framework Decision requires the development of practical and focused action plans.

- OSCE institutions should consider engaging in the execution of judgments and decisions of international bodies against participating States in cases involving torture and other ill-treatment by law enforcement officials.

- Develop a Roadmap or Action Plan for the implementation of the main provisions of the OSCE Ministerial Council Decision 7/20 on Prevention and Eradication of Torture and other cruel, inhuman or degrading treatment or punishment was adopted by the OSCE 2020 Ministerial Council

- Develop a model protocol setting the standards for the disclosure of statistical data on cases of torture and ill-treatment documented by state bodies

- Develop a model protocol with guidelines for effective torture investigation and preservation of the evidence

- Resume the work of the OSCE ODIHR expert panel on torture prevention that was in place in 1998-2003. The panel would have a vital mandate of monitoring the implementation of the new expanded commitment on torture prevention by OSCE participating States, provide guidance and support to OSCE and participating States in requirable reform efforts.

### **To the OSCE Chairmanship-in-Office:**

- The Chairmanship-in-Office should aim to develop an OSCE Roadmap on implementation of Decision 7/20 on Prevention and Eradication of Torture and other cruel, inhuman or degrading treatment or punishment was adopted by the OSCE 2020 Ministerial Council
- The Chairmanship-in-Office should encourage participating States to develop realistic national action plans on implementation of Decision 7/20 on Prevention and Eradication of Torture and other cruel, inhuman or degrading treatment or punishment was adopted by the OSCE 2020 Ministerial Council
- The Chairmanship-in-Office should aim to restore the OSCE ODIHR expert panel on torture prevention and do practical steps to organize its work on developing model guidelines and other activities for assistance OSCE Institutions and member states.

### **On enforced disappearance**

#### ***MC Decision 7/20 provisions as a basis for action plans to eradicate enforced disappearances in the OSCE region***

It is time for OSCE actors to focus their attention on the problem of enforced disappearances and develop concrete action plans to address it across the OSCE region in cooperation with civil society. For States, this concerns not only eradicating enforced disappearances committed by their governments or their agents in their own countries and elsewhere and effectively investigating their past crimes of disappearances, but also effectively addressing enforced disappearances in all OSCE participating States, based on the Helsinki principle that the human dimension commitments “are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned”<sup>39</sup>.

We believe that the MC Decision 7/20 provides a strong basis for developing such action plans. Based on the language of the following paragraph in the MC Decision 7/20, “Reminding all participating States that *prolonged incommunicado detention* or detention in secret places *can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment*,”<sup>40</sup> we consider that all provisions of the Decision apply to incommunicado detention (enforced disappearances in places of detention) in the same way as they apply to torture and other cruel, inhuman or degrading treatment or punishment in this document. This means that OSCE participating States have committed to the same responsibilities to prevent and eradicate enforced disappearances as they have done in respect of preventing and eradicating torture and other cruel, inhuman or degrading treatment or punishment, as spelled out in the MC Decision. These include:

- the absolute prohibition of [*enforced disappearances*];
- full implementation of their obligations under the 1949 Geneva Conventions [*regarding enforced disappearances*];
- implementation of effective legal and procedural safeguards throughout all stages of detention;
- respect for the safeguards concerning the liberty, security and dignity of the person;

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<sup>39</sup> Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE. Page 2. <https://www.osce.org/files/f/documents/2/3/14310.pdf>

<sup>40</sup> Decision No. 7/20, Prevention and Eradication of Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment. Page 2. <https://www.osce.org/chairmanship/473199>

- make all acts of *[enforced disappearances]*, attempts to commit *[enforced disappearances]*, and acts of complicity or participation in *[enforced disappearances]* offences under domestic criminal law, and providing for appropriate penalties reflecting their grave nature;
- incorporate education and information regarding the prohibition of *[enforced disappearances]* in the training of law enforcement personnel, civil, military and medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest;
- ensure full and ongoing government co-operation, in line with their respective obligations under international law, with applicable international preventive bodies or mechanisms and with relevant national bodies, such as national human rights institutions, including by allowing unrestricted access to places of detention if such access is an obligation for a participating State under the international law;
- fully co-operate with the International Committee of the Red Cross (ICRC) in conformity with the participating States' obligations under international humanitarian law;
- ensure that all allegations of *[enforced disappearances]*, as well as wherever there are reasonable grounds to believe that such an act has been committed, are investigated promptly, effectively, thoroughly, and impartially by competent and independent national authorities and ensuring that complainants and witnesses are protected against ill-treatment and intimidation as a consequence of their complaint or evidence given;
- ensure that those who encourage, instigate, order, tolerate, acquiesce in, consent to or perpetrate acts of *[enforced disappearances]* are held responsible, brought to justice and punished in a manner commensurate with the severity of the offence, including the officials in charge of any place of detention or other place in which persons are deprived of their liberty where the prohibited act is found to have been committed;
- provide redress for the victims of *[enforced disappearances]*, encompassing effective remedy and adequate, effective and prompt reparation, which should include restitution, fair and adequate compensation, rehabilitation, satisfaction and guarantees of non-repetition, taking into full account the specific needs of the victim;
- ensure that appropriate rehabilitation services are promptly available without discrimination to all victims and take effective measures for ensuring a safe and enabling environment for accessing and providing rehabilitation services to victims of *[enforced disappearances]*;
- consider developing measures to support all persons affected by *[enforced disappearances]*, including victims' children and other immediate family members;
- promote dissemination of information for victims about the availability of rehabilitation services and ensure that the procedures for obtaining rehabilitation are transparent;
- support the efforts of civil society organizations working to prevent and combat *[enforced disappearances]*, enable their active contribution, as appropriate, and make use of information provided by them in alleged cases of *[enforced disappearances]*;
- continue to make use of, or consider drawing on, ODIHR's advice, expertise and technical assistance in the field of preventing and combating of *[enforced disappearances]*.

It is both very important and feasible for concerned OSCE participating States, executive bodies, and institutions to get down to work and develop in 2022 concrete action plans to eradicate enforced disappearances in the OSCE region.



**Appendix: Status of participation in the International Convention for the Protection of All Persons from Enforced Disappearance by OSCE participating States<sup>41</sup>**

	State	Signature	Ratification, Accession(a)
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Ratified or acceded			
1	Albania	6 Feb 2007	8 Nov 2007
2	Armenia	10 Apr 2007	24 Jan 2011
3	Austria	6 Feb 2007	7 Jun 2012
4	Belgium	6 Feb 2007	2 Jun 2011
5	Bosnia and Herzegovina	6 Feb 2007	30 Mar 2012
6	Czech Republic	19 Jul 2016	8 Feb 2017
7	Denmark	25 Sep 2007	13 Jan 2022
8	France	6 Feb 2007	23 Sep 2008
9	Germany	26 Sep 2007	24 Sep 2009
10	Greece	1 Oct 2008	9 Jul 2015
11	Italy	3 Jul 2007	8 Oct 2015
12	Kazakhstan		27 Feb 2009 a
13	Lithuania	6 Feb 2007	14 Aug 2013
14	Malta	6 Feb 2007	27 Mar 2015
15	Mongolia	6 Feb 2007	12 Feb 2015
16	Montenegro	6 Feb 2007	20 Sep 2011
17	Netherlands	29 Apr 2008	23 Mar 2011
18	Norway	21 Dec 2007	22 Aug 2019
19	Portugal	6 Feb 2007	27 Jan 2014
20	Serbia	6 Feb 2007	18 May 2011
21	Slovakia	26 Sep 2007	15 Dec 2014
22	Slovenia	26 Sep 2007	15 Dec 2021
23	Spain	27 Sep 2007	24 Sep 2009
24	Switzerland	19 Jan 2011	2 Dec 2016
25	Ukraine		14 Aug 2015 a

<sup>41</sup> Status as of 16.01.2022. Based on the table on the CPED page in the UN Treaty Collection website: [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-16&chapter=4&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-16&chapter=4&clang=en)

<b>Signed but have not ratified or have not acceded</b>			
1	Azerbaijan	6 Feb 2007	-
2	Bulgaria	24 Sep 2008	-
3	Croatia	6 Feb 2007	-
4	Cyprus	6 Feb 2007	-
5	Finland	6 Feb 2007	-
6	Iceland	1 Oct 2008	-
7	Ireland	29 Mar 2007	-
8	Liechtenstein	1 Oct 2007	-
9	Luxembourg	6 Feb 2007	-
10	Monaco	6 Feb 2007	-
11	North Macedonia	6 Feb 2007	-
12	Poland	25 Jun 2013	-
13	Republic of Moldova	6 Feb 2007	-
14	Romania	3 Dec 2008	-
15	Sweden	6 Feb 2007	-

<b>Have not signed</b>			
1	Andorra	-	-
2	Belarus	-	-
3	Canada	-	-
4	Estonia	-	-
5	Georgia	-	-
6	Holy See	-	-
7	Hungary	-	-
8	Kyrgyzstan	-	-
9	Latvia	-	-
10	Russian Federation	-	-
11	San Marino	-	-
12	Tajikistan	-	-
13	Turkey	-	-
14	Turkmenistan	-	-
15	United Kingdom	-	-
16	United States	-	-
17	Uzbekistan	-	-