

United against all forms of torture: Applying a cross-cutting perspective to prevent, prohibit and redress torture globally

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This report aims to capture the discussions and outline the recommendations from the 2016 EU-NGO Human Rights Forum entitled ‘United against all forms of torture: Applying a cross-cutting perspective to prevent, prohibit and redress torture globally’, co-organised by the European External Action Service (EEAS) and the Brussels-based Human Rights and Democracy Network ([HRDN](#)), which gathers over 50 NGOs operating at the EU level in the broader areas of human rights, democracy and peace.

The Forum took place at a key moment for global engagement against torture and ill-treatment. 2016 marked the 10th anniversary of the entry into force of the Optional Protocol to the Convention against Torture (OPCAT),¹ the 32nd anniversary of the adoption of the UN Convention Against Torture (UN CAT)² and the 50th anniversary of the adoption of the International Covenants on Economic, Social and Cultural Rights (ICESCR)³ and on Civil and Political Rights (ICCPR).⁴ Addressing torture and ill-treatment remains as urgent as ever against the backdrop of the global and European migration crises, counter-terrorism efforts and the shrinking space for independent civil society, in particular the repression of human rights defenders (HRDs).

¹ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIndex.aspx>

² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

³ International Covenant on Economic, Social and Cultural Rights, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>

⁴ International Covenant on Civil and Political Rights, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

The report summarises the diverse discussions held during the Forum and includes concrete recommendations for follow up action for the European Union (EU) and civil society in 2017 and beyond. In presenting the exchanges at the Forum, all views expressed with regard to the situation within individual countries are recounted as presented by the participants and do not reflect the views of individual HRDN members nor the network as a whole.

In line with EU and member state commitments in the Treaty of Lisbon and the Strategic Framework on Human Rights and Democracy,⁵ HRDN's vision is that human rights and democracy are placed at the heart of the EU's internal and external policy agenda. This vision should manifest itself in an EU which effectively protects human rights at home and is a force for positive change in the world. In pursuit of this vision, HRDN aims to influence EU and EU member states' foreign and domestic policies and the programming of their funding instruments to promote democracy, human rights and peace.

A core group of the HRDN organisations worked on the preparation of the Forum, led by the HRDN co-chairs, together with Amnesty International (AI), the International Rehabilitation Council for Torture Victims (IRCT), the World Organisation Against Torture (OMCT), the Association for the Prevention of Torture (APT) and the International Federation of Action by Christians for the Abolition of Torture (FIACAT). The report was drafted by Elena Zacharenko in collaboration with the HRDN working group.

⁵ Strategic Framework on Human Rights and Democracy 2012,
https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf

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List of abbreviations

AI	Amnesty International
ACAT	Action by Christians for the Abolition of Torture
APT	Association for the Prevention of Torture
EEAS	European External Action Service
EU	European Union
CAT	United Nations Committee Against Torture
CSO	Civil Society Organisation
ECHR	European Convention on Human Rights
ECtHR	European Court on Human Rights
FGM	Female Genital Mutilation
FIACAT	International Federation of ACAT
GONGO	Government-organised non-governmental organisation
GSP +	Generalised Scheme of Preferences
HRD	Human Rights Defender
ICC	International Criminal Court
IRCT	International Rehabilitation Council for Torture Victims
LGBTI	Lesbian, Gay, Bisexual, Transsexual and Intersex
NGO	Non-Governmental organisation
NHRI	National Human Rights Institution
NPM	National Preventive Mechanism
OMCT	World Organisation Against Torture
OPCAT	Optional Protocol to the United Nations Convention Against Torture
SPT	United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
SRT	United Nations Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
UN	United Nations
UNCAT	United Nations Convention Against Torture
UN HRC	United Nations Human Rights Council
UPR	Universal Periodic Review

Introduction

Despite the considerable legislative progress made at international, regional and national levels in the past decades, in practice, torture and ill-treatment persist worldwide. Indeed, in the context of escalating crises and protracted conflicts in various regions of the world, the challenges of preventing, investigating and prosecuting torture, as well as ensuring redress to its victims, are as relevant as ever.

While 2016 marked several milestones in terms of normative and legislative measures in the efforts against torture, recent global developments demonstrate the need to improve and adapt their implementation to rapidly changing realities and newly emerging challenges. Against the backdrop of global and European migration crises, counter-terrorism measures and the continued shrinking of space for independent civil society,⁶ action against torture and ill-treatment, already declared to be at the top of the EU's political agenda,⁷ must be prioritised.

Today, some individuals and groups remain disproportionately at risk of torture and ill-treatment due to discrimination and marginalisation. At the same time, redress, reparation and rehabilitation available to torture survivors fail to match the scale of the problem and the growing numbers of torture cases. Even when the overall national and international anti-torture framework marks positive steps forward, many are left behind.

'We are facing a climate change on human rights'

Gerald Staberock, Secretary General, World Organisation Against Torture

A rising tide of authoritarianism represents a concern for civil society worldwide. Democratically governed states are not immune to perpetrating torture – as exemplified by the cases of Mexico and the United States of America (USA). With their increasing focus on securitisation in domestic and foreign policies, European governments have also encountered calls to relativise or suspend human rights standards, including the right to freedom from torture. On the international stage, states are beginning to question the importance and added value of institutions such as the International Criminal Court (ICC) and international and regional human rights treaties, and fail to comply with their decisions. Human rights violations, including acts of torture, have never been isolated incidents perpetrated by rogue states but are indicative of systemic issues. Today, they likewise reflect a wider anti-human rights backlash which requires a unified, value-driven response.

⁶ See the report and recommendations from the 2015 EU-NGO Human Rights Forum on Protecting and Promoting Civil Society Space, <http://www.hrdn.eu/2016/03/15/report-protecting-promoting-civil-society-space-15-march-2016/>

⁷ Declaration by High Representative Federica Mogherini on behalf of the European Union on Human Rights Day, 10 December 2014, https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/foraff/146137.pdf

These challenges were discussed extensively at the **18th EU-NGO Human Rights Forum** held in Brussels on December 1-2, 2016. Human rights defenders (HRDs) and anti-torture activists from over forty countries testified to the realities of torture and ill-treatment and reflected together about current policy approaches at national, regional and international levels. The Forum offered EU and member state officials the opportunity to discuss with civil society about strategies on combatting torture and possible ways forward in future. The Forum took place at a timely moment, with its findings being able to contribute to the review of the EU Guidelines on Torture.⁸



HRDN members chose the topic of the 2016 EU-NGO Forum due to their belief that torture and ill-treatment underlie every area of human rights work undertaken by the EU and its member states, as well as intersecting with key foreign and domestic policy issues on the EU agenda today. The Forum was organised into Work Streams addressing torture and ill-treatment in the context of these cross-cutting themes:

- **Work Stream I** focused on groups most vulnerable to torture⁹, the specific risks they face and their needs for protection;
- **Work Stream II** discussed ensuring accountability and redress for victims of torture and ill-treatment;
- **Work Stream III** focused on the fight against torture and ill-treatment in today's foreign and domestic security policy agenda.

The Work Stream discussions pointed to several challenges in the fight against torture, including the impact of the lack of rule of law, the absence or failure of legal safeguards and a misunderstanding of the various forms which torture can take (for example, female genital mutilation – FGM, or the denial of medical services). Existing discrimination can make specific groups within society more vulnerable to torture and ill-treatment. In turn, a weak legal and judicial system, inefficient security and police forces as well as a lack of political accountability all contribute to impunity. This undermines social and political trust and propels forward a vicious circle which leads to more instances of torture. The issue of torture must be therefore viewed in all its complexity and addressed across policy areas and at all levels. It is further crucial that the overall human rights framework be respected in all circumstances,

⁸ Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment, http://eeas.europa.eu/human_rights/guidelines/torture/docs/20120626_guidelines_en.pdf

⁹ For the sake of brevity, the rest of the document will use the expression “vulnerable groups” but refers to groups who are most vulnerable to torture and ill-treatment.

independent of perceived crises; civil society must further be given the space to promote and protect this framework.



The Forum emphasised the need for the EU and its member states to fully exercise their role of standard-bearer to promote international human rights treaties and institutions, both by acting on human rights commitments within the EU and encouraging third countries to likewise ratify and apply their own commitments in practice. Participants agreed that the EU has a key role to play in reinforcing the rule of law, without which there is no

confidence in state institutions, posing challenges to accountability and the fight against impunity. However, it is important that the EU and its member states influence third countries not only to adopt international instruments and standards, but also to act on these commitments in practice. Participants highlighted the many tools at the EU's disposal, including human rights policies as well as policies not primarily designed for this sole purpose, such as the Generalised Scheme of Preferences (GSP+) or the Cotonou Agreement.

The EU faces particular challenges as the world's largest single donor to civil society working against torture in the world, and for human rights activities as such. The changing global political landscape will likely result in NGOs and actors relying ever more on its financial and political backing, as other major donors realign their political and financial objectives. Responding to this global change will require increasingly close cooperation between the EU and civil society at all levels, to protect existing human rights work and to strategically think toward the next steps in responding to human rights challenges. Speaking on behalf of the European Commission Directorate-General for International Cooperation and Development, Jean-Louis Ville stressed that the EU's funding programmes targeting torture and ill-treatment aim to do just that, by supporting a holistic approach to the eradication of the practice, and focusing on the most vulnerable categories of victims.

'The international community has recognised that there can be no sustainable development, when human rights are not fully respected and when people are tortured (...) There is no sustainable security when human rights are not fully respected'

Federica Mogherini, High Representative for Foreign Policy and Security Policy

To ensure its legitimacy and credibility as a human rights actor on the global stage today, the EU must achieve coherence between its external and internal human rights policies. The EU

and its member states will thus be challenged both to address the shortcomings in their internal responses to refugee and migration flows (including reception conditions tantamount to ill-treatment) and to analyse how to quickly and effectively address their root causes, including gross human rights violations such as torture. This particular challenge was acknowledged by both the High Representative for Foreign Policy and Security Policy, Federica Mogherini, and the EU Special Representative on Human Rights, Stavros Lambrinidis, both of whom spoke of a need for security strategies to be sustainable to lead to a more secure world – crucially, by integrating and respecting human rights principles.

Key recommendations

Participants at the 18th EU-NGO Forum agreed that torture and ill treatment must be understood in the broadest possible scope, including setting, targets and acts, in order to best tackle and eradicate them in all their forms.

The key recommendations below are grounded in this fundamental consensus and in the wide-ranging discussions at the Forum. Recommendations are directed to the EU, its member states and third countries on policy and practice at home and abroad, in bilateral relations and finally with the ambition of greater international, multilateral efforts to stop torture worldwide. In addition, detailed recommendations are included at the end of each section of this report, with the aim of assisting civil society, state and EU-level policy makers to ensure that torture and ill-treatment are prioritised throughout their actions both domestically and externally.

To the EU and its member states

- Mainstream EU and member state obligations and commitments¹⁰ on eradicating torture and ill-treatment across all areas of foreign policy, truly demonstrating zero tolerance of (risk of) torture, including in security, counter-terrorism, trade and cooperation agreements with third countries and explicitly addressing (risk of) torture in Foreign Affairs Council discussions;
- Engage third countries to both commit to and implement international human rights norms and agreements by efficiently using existing mechanisms, such as the EU Action Plan on Human Rights¹¹; the full spectrum of EU human rights guidelines, including the guidelines on torture; human rights dialogues and dialogues under the Cotonou Agreement; political dialogues and summits; as well as the Generalised System of Preferences (GSP+);

¹⁰ Throughout this report, the authors will use the terms "obligations" and "commitments", wishing to refer in each instance to: 1) **human rights obligations under international law** (i.e. legally binding hard law, such as covenants, conventions, optional protocols); and 2) **international human rights commitments** (i.e. not legally binding soft law, such as declarations, resolutions, guidelines, basic principles, body of principles, principles, minimum rules, safeguards, codes of conduct).

¹¹ Points 9, 14, 15 and 16 of the Action Plan on Human Rights and Democracy 2015-2019, <http://data.consilium.europa.eu/doc/document/ST-10897-2015-INIT/en/pdf>

- Engage third countries to take action against torture and ill-treatment in policy and practice, including implementation of the Istanbul Protocol and of mechanisms aimed at the protection of specific groups;
- Ensure coherence between the EU's external and internal human rights policies and practices by ensuring that EU and member states' actions comply with international standards, including the ratification and effective implementation of the OPCAT by all EU member states;
- Pro-actively promote the full use of international and regional human rights mechanisms and tribunals such as the ICC, regional human rights courts and bodies, UN Human Rights Treaty bodies such as CAT and the SPT, as well as Special Procedures such as the UN Special Rapporteur on Torture (SRT), fully backing their findings and recommendations and encouraging their full implementation;
- Ensure that the risk and/or occurrence of torture and ill treatment is explicitly addressed and assessed in any EU or member state cooperation on migration management, including designation of "safe third countries", training of border staff, externalisation of asylum procedures and readmission agreements;
- Ease access to grants for anti-torture organisations, especially ones based outside of capitals and/ or in smaller countries; fund holistic programmes providing rehabilitation along with full scale legal aid and access to effective investigation;
- Step up support and legitimise work of HRDs and CSOs working on torture, providing funding as well as critically needed and visible political support to anti-torture organisations by visiting their offices and projects as well as meeting with torture survivors;
- Make full use of the forthcoming issue of the revised EU Guideline on torture in 2017, to adopt Council Conclusions taking up the recommendations resulting from the Forum and committing to intensify EU and member states' action against torture and ill treatment worldwide.

To third countries

- Uphold the absolute ban on torture in line with international human rights law obligations and commitments in all areas of foreign and domestic policy, truly demonstrating zero tolerance against torture;
- Ratify the UN CAT and the OPCAT and ensure the full implement their provisions at domestic level;
- Develop and implement comprehensive anti-torture policies;
- Ensure full human rights training of all detaining authorities and establish effective, independent oversight of all places of detention, through a National Preventive Mechanism (NPM) in full compliance with the OPCAT and civil society monitoring;
- Establish monitoring mechanisms for acts of torture that may take place outside of a detention setting;

- Train judges and prosecutors to raise their awareness concerning torture and ill-treatment and the different forms they can take and strengthen the independence of national judicial systems to better tackle impunity;
- Establish independent complaint mechanisms and implement the Istanbul Protocol to address impunity, while building the capacities of social, medical and psychological professionals in state structures and CSOs to apply the Istanbul Protocol¹² and rehabilitate torture victims;
- Provide holistic, victim centred rehabilitation including medical care and legal aid to those who wish to seek judicial remedies, ensuring sensitivity to gender, age, culture and ethnicity.

¹² Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>

Work Stream I: Most vulnerable groups, specific risks and protection needs

Some individuals are disproportionately at risk of torture and ill-treatment due to the discrimination and marginalisation they suffer on the grounds of their age, gender, sexual orientation or gender identity, ethnicity, caste, cultural or social origin, physical and mental health, or economic situation - especially where several of these factors intersect. Such discrimination renders individuals vulnerable to specific risks when deprived of their liberty, from the point of arrest to placement in prisons, police stations, psychiatric institutions, or other places of detention. Torture and ill-treatment of vulnerable groups can also take place in other contexts, such as education or healthcare settings. Unaddressed cases of violence within families or communities can also be recognised as torture and ill-treatment if the state does not exercise due diligence in protecting victims and addressing impunity.

Specific forms of torture and ill-treatment can be linked to wider issues of discrimination, including through stereotyping, racial profiling, or marginalisation and neglect. However, it is important to stress that vulnerability to torture is contextual: individuals are not vulnerable as such, but become vulnerable when placed in specific situations or settings. For this reason, it is crucial to analyse the specific risks of torture for individuals belonging to discriminated groups within a society more broadly to develop measures for prevention, protection, response and providing rehabilitation and redress.

This section will briefly summarise Work Stream I discussions and list action-oriented recommendations tailored to the experiences and needs of specific vulnerable groups, as well as overarching recommendations for improved policy mechanisms and practices for the EU, governments and NGOs to act to protect people from torture and ill-treatment. Vulnerable categories of people not specifically discussed in the subgroups, such as the elderly, refugees, migrants and foreigners, and persons with disabilities, are also considered in the recommendations.

The gender perspective on torture and ill-treatment: focus on women and girls

In his 2016 annual report, the UN Special Rapporteur on Torture highlighted the lack of gender perspectives in the discussion on torture and ill-treatment, and the tendency to down-play gender-based violence against women and girls in this context. Discussions at the EU-NGO Forum echo these findings and suggest a need for a gender-sensitive lens to properly identify and respond to the threats and needs specific to women and girls.

Traditionally, torture prevention efforts have focused on **detention** and situations of deprivation of liberty in settings such as prisons or police stations. In these settings, gender-based forms of torture and ill-treatment against women and girls can take the form of discrimination and violence – including rape – by the police, or by staff or other inmates in prisons. However, accounts from civil society within this session demonstrated that gender-

based forms of torture can also happen in **healthcare settings** (e.g. degrading and humiliating medical treatment, restrictions in access to reproductive health services) and in the **domestic sphere**, within **communities** and **during public gatherings** if the state does not exercise its due diligence to protect (e.g. domestic violence, or female genital mutilation (FGM) and other intrusive inspections like virginity tests).

The Forum participants highlighted the following issues regarding specific country situations:



In **Brazil**, women represent 6% of the prison population, a number which increases each year. They face a high risk of violence in detention. As police officers and detention staff are mainly male, female detainees are vulnerable to humiliation and sexual abuse, and sometimes forced to perform sexual acts in return for being liberated. Detention centres are not adapted to the needs of women detainees, and regularly deny them access to their rights to education, health, labour and the preservation of the family unit. Women also lack access to legal counsel and abuses are rarely denounced in court as prison guards or police officers accompany women detainees to court rooms.



Torture, including sexual torture, was reported as systematic in **Egypt**, both in detention and in domestic settings. Illegal detention centres are common, and even legal detention centres are not accessible to civil society. Women face particular challenges when participating in public life, such as attending demonstrations: they are vulnerable to gang sexual violence by non-state actors, as well as forced virginity testing carried out by state representatives.



Women in **Uganda**, including female politicians, are targeted at peaceful assemblies and subjected to sexual assault and humiliation by male police officers. In addition, even though FGM has been banned in the country since 2012, the law remains unimplemented and the practice remains widespread.



In **Algeria**, the process of national reconciliation has not addressed accountability for crimes committed during the civil war (1991-2002) including sexual violence, rape and forced pregnancy as weapons of war.



Transgender people who wish to gain legal gender recognition in **Ukraine** are obliged to spend one month in a psychiatric institution to undergo intrusive medical exams. During this period, they live in traumatising conditions (trans women are placed in male rooms and vice versa), deprived of their privacy and are subjected to physical violence and sexual harassment.



The lack of legal protection against crimes such as domestic violence, rape and honour killings, cause women to be at particularly high risk in **Pakistan**. In addition, the weakness and lack of independence of the judicial system contribute to impunity for these violations.



Tanzania is still struggling to adopt laws against torture and violence more generally. Lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals and sex workers are particularly vulnerable to torture and ill-treatment.

The above examples cited by Forum participants demonstrate the gap between policy and practice. Existing laws on torture and ill-treatment fail to be implemented, especially in the cases of vulnerable groups such as women and girls and LGBTI persons. This situation is further aggravated as states fail to address issues such as: the lack of understanding of what constitutes torture, social prejudices (shame and stigma attached to sexual violence, victims' lack of awareness of their rights), and inappropriate attitudes of law enforcement personnel. Violence against women and LGBTI people is particularly prevalent in conflicts, during human rights crises and in medical contexts, or is used as a means to control or silence women HRDs, activists and politicians. The lack of access to lawyers or medical attention in detention is an additional hurdle.

Recommendations on how to ensure **effective protection** for women and girls and LGBTI individuals:

- [States, Civil society organisations (CSOs)] Raise awareness and train authorities, (including traditional ones), police, security forces (including those working in places of detention) and medical personnel on all gender-specific forms of torture faced by these groups, and on how to respond to their specific risks and needs;
- [States] Enforce the Bangkok Rules, reducing the number of women in prison by giving preference to alternatives to imprisonment, such as house arrest;
- [States] Ensure prompt access to gender-sensitive legal counsel;
- [States] Provide access to gender-specific and gender-sensitive healthcare, with full resources and political backing;
- [States] Comply with the Yogyakarta Principles on the application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, particularly Principles 9 and 10

Recommendations to enable women and girls and LGBTI individuals who are victims of torture and ill-treatment to **access justice and reparations**:

- [States] Ensure victims' safety when testifying in judicial settings, for example by removing police and detention staff from court rooms;
- [States, CSOs] Implement the Istanbul Protocol and establish independent complaint mechanisms to address impunity; ensure the collection of documentation (testimonies, medico-legal documentation) to enable victims to submit legal claims;
- [States] Ensure that services available to victims are gender-sensitive, including through the provision of services by female professionals, to avoid secondary traumatising of victims;
- [States] Establish appropriate and gender-sensitive judicial mechanisms for effective and independent investigation of allegations of sexual torture;

- [States, CSOs] Challenge the shame and stigma faced by victims of gender-specific forms of torture which hinder their access to justice - through awareness raising, changing social perceptions through the media and direct engagement with communities, as well as psychological counselling for victims;
- [CSOs] Use strategic litigation to address impunity and promote recognition of torture and ill-treatment faced by vulnerable groups.

Age perspective on torture and ill-treatment: children

Children are particularly vulnerable to all forms of violence, including torture and cruel, inhuman and degrading treatment. In general, the threshold of pain and suffering of children is different from that of an adult, and will vary according to age, the level of maturity and stage of development of the child. Other factors such as gender, ethnicity, caste, and mental and physical disability can make a child even more at risk of torture. While ending violence against children is enshrined in the international human rights legal framework and the Sustainable Development Goals (SDG 16 – end abuse, exploitation, trafficking and all forms of violence against and torture of children), the real implementation of these provisions is still pending in practice today.

Age-specific forms of torture of children can happen in many settings, not only in **formal detention**. Torture and ill-treatment can also occur in other **situations of deprivation of liberty**, including in medical or social services institutions or where they are in de-facto detention, such as migrant and refugee children who are deprived of their fundamental rights. Torture of children can also occur in the **home** and in the **wider community or society**, including acts such as domestic violence, corporal punishment, harmful practices such as FGM and child, early and forced marriage. Risks are heightened if the state does not exercise due diligence to ensure children are protected in line with international law, and safeguard the best interests of the child and their entitlement to special care and assistance.

The Forum participants highlighted the following issues regarding specific country situations:



In the **Occupied Palestinian Territories**, the Israeli military justice system operates in contradiction with international law. Children are arrested in the middle of the night and illegally held without access to a lawyer or their family members. They are subsequently tried before military tribunals which do not apply fair trial standards. Families do not report cases of torture and ill-treatment of children for fear of reprisals.



Children are detained together with adults in the **Ivory Coast** and in all other countries in West Africa – the only country in the region which has separate detention centres for children is Senegal. The staff in detention centres is not trained to work with children, who are often ill-treated, under-nourished and lack access to legal aid and basic hygiene.



In **Turkmenistan**, the government obliges children to perform forced labour in cotton fields. As a result, they are denied their right to education and subjected to

harsh working conditions in high temperatures with no access to clean drinking water. There have been cases of children dying due to poisoning with contaminated water.



The primary place where torture and ill-treatment of children occurs in **Algeria** is the home, as well as educational settings, where corporal punishment is common. The challenges faced by children in detention is overpopulation in places of detention as well as the lack of child-specific criminal legislation, specialised detention centres, and specially-trained personnel.



In the **Philippines**, children involved in organised crime are subjected to torture at much higher rates than adults in the same situation.



Children with disabilities placed in institutions without parental care suffer from a lack of medical care and long-term confinement in cribs in **Serbia**, a practice which was recognised by the UN Committee against Torture (CAT) as tantamount to torture.

Participants' testimonies during this session demonstrate the considerable gap between law and practice with regard to the rights of the child. While the Convention on the Rights of the Child is the most widely ratified international human rights convention in the world, children continue to face practices which amount to torture and ill-treatment: beatings and solitary confinement, prolonged detention or detention with adults, refusal of access to a fair trial, ill-treatment in healthcare settings and forced labour. It was also highlighted that these violations often remain invisible and that any state action that affects children should be guided by the principle of the best interest of the child.

Recommendations for **effective measures to prevent** the torture or ill-treatment of children:

- [States] Enforce the Beijing Rules, legislating for and implementing alternatives to detention in particular;
- [States] Ensure effective safeguards are in place to prevent torture and ill-treatment of children in places where they may be deprived of their liberty;
- [States] Ensure effective preventive mechanisms are in place in educational and healthcare settings that allow victims and others to signal and follow up on signs of torture and ill-treatment occurring in domestic or community settings (domestic violence, corporal punishment, FGM);
- [States, CSOs] Raise awareness and train authorities, including police and those working in places of detention, on the specific risks and needs of children, including the important principle of separation from adults (unless it is considered in the child's best interest not to do so).

Recommendations for child victims of torture or ill-treatment to **access justice and reparations**:

- [States] Create or strengthen a specialised jurisdiction for children;

- [States] Ensure that paediatricians and child psychologists with specialised trauma training are available to all children in detention on a regular basis, and establish specially designed medical screenings inside places of deprivation of liberty;
- [States] Establish child-friendly mechanisms to enable children to report torture and ill-treatment in domestic settings or communities, and to express themselves freely and safely;
- [States, CSOs] Raise awareness of children's rights among police, security forces and personnel working in places of detention, as well as among the general population, through education and media, including information on the rights of children with disabilities, and on what constitutes torture;
- [Governments, CSOs] Provide free-of-charge psychological and legal assistance to child victims of torture and ill-treatment and their family in support of their efforts to access justice.

Acts of torture and ill-treatment targeting minorities and indigenous people

Minorities (understood as national or ethnic, cultural, religious and linguistic minorities) and indigenous peoples experience higher levels of exposure to torture and ill-treatment due to the marginalisation and discrimination they suffer. For instance, both minorities and indigenous peoples often find themselves in **social protests or conflicts over land** which put them at odds with the authorities, thereby exposing them to more institutional violence than other segments of society. The marginalisation and discrimination they suffer is often compounded by **linguistic, geographical and/or economic barriers**. While minorities and indigenous people share many experiences, the particular circumstances of both minorities and indigenous peoples were likewise taken into account during the discussions.

Torture and ill-treatment of persons belonging to minorities and indigenous peoples can happen in **detention** (e.g. ethnic/racial profiling by the police, violence and discrimination by prison staff and inmates or lack of access to information in prisons) as well as in **other situations of deprivation of liberty, including in healthcare and education settings** (forced sterilisations, other forms of violence by medical staff), and in **public places** during demonstrations and protests.

The Forum participants highlighted the following issues regarding specific country situations:

- 10% of the population of Latin America, or 50 million people, are indigenous peoples (over 600 groups). Truth commissions established following civil wars or dictatorships in Guatemala, Peru, Chile or Argentina reveal that indigenous peoples have often been the main targets and victims of extrajudicial killings, enforced disappearances, forced displacement and torture. Indigenous populations in Latin America are particularly vulnerable to torture in situations of repression of social protest related to land claims, territories and environment, often under threat due to the growing impact and presence

of extractive industries. Excessive use of force, which may amount to torture or other ill-treatment, is exerted by either law enforcement or military officers or private security companies hired by mining companies. Repression tends to be much harsher and torture more frequently used in indigenous territories located in remote areas far from critical observers and decision-making centres.

- Afro-descendent populations, which make up almost half the population in Brazil or Venezuela, face the same discrimination as indigenous populations. Indigenous and/or Afro-descendent peoples face prison sentences due to the criminalisation of social protest, designated as offences such as vandalism or disruption of public order. In some countries, such as Chile, anti-terrorism laws are applied to repress indigenous peoples' land claims. In Brazil, over 60% of the prison population is Afro-descendent. Many indigenous inmates face solitary confinement. Discrimination and racism in the region is promoted in part by mainstream media, who picture indigenous peoples as agents opposing progress, and so contribute to impunity for torture and ill-treatment.



Indigenous peoples in **Thailand** face repression in land and resource disputes with the government and private investors. In southern Thailand, a Muslim minority has struggled for independence for the past 12 years. Over 10,000 people have been arrested under martial law applied in the South, with numerous reports of torture and sexual abuse in detention. Detainees lack access to lawyers, who face reprisals for providing them with legal aid.



In **India**, over 200 million people continue to be regarded as untouchables, even though untouchability was abolished in 1955 by the constitution. Due to the stigma, Dalits suffer disproportionate human rights violations, including police brutality, torture, extrajudicial killings and arbitrary deprivation of liberty. Over 55% of pre-trial detainees are Dalits, Muslims or members of other tribal groups; these groups are frequently subjected to inhumane and brutal forms of torture by police to extract confessions. Dalit women are particularly vulnerable to torture and ill-treatment due to the overlaps in discrimination on the grounds of both gender and caste. In north-eastern India, indigenous peoples suffer discrimination as the state refuses to recognise their existence. Certain legal instruments and practices further facilitate torture and extrajudicial killings in India, including the 1958 Armed Special Forces Act, which grants broad powers to the military in the north-east.



The legal and penitentiary system in **Algeria** institutionalises discrimination against minorities such as Berbers, Amazigh and other indigenous peoples. The lack of legal or political recognition of these peoples has an impact on their ability to access justice mechanisms.

Participants in this session stressed how discrimination and marginalisation faced by indigenous peoples and minorities expose them to increased risks and vulnerability to torture and ill-treatment, as well as to impunity and a lack of access to justice for entire social groups. This is especially the case in conflict areas, where exceptional measures increase the risk of torture and ill-treatment and are often used to limit indigenous peoples' rights to freedom of expression and peaceful assembly.

Recommendations for **preventive measures** to address the vulnerabilities of indigenous peoples and minorities to torture and ill-treatment:

- [States] Tackle root causes of discrimination in all areas – social, employment, access to public services and resources; pay attention to intersecting and mutually reinforcing aspects of discrimination, such as gender or sexual orientation;
- [States] Enforce ILO Convention 169, art. 8, 9, 10 and UN Declaration on the Rights of Indigenous Peoples, art. 7, 34 and 40;
- [States] Introduce institutional reforms to protect indigenous peoples: repeal or modify laws criminalising social protest, including relevant sections of anti-terrorism and state of emergency laws; repeal laws allowing the jurisdiction of military courts over human rights violations committed against civilians;
- [States] Task National Human Rights Institutions (NHRIs) with reporting on the impact of businesses (including extractive industries) on indigenous peoples as well as the criminalisation of social protest and the situation of indigenous peoples' rights defenders;
- [States] Address the lack of citizenship of indigenous peoples living in border areas;
- [States] Disaggregate human rights and other statistics on minorities, in particular indigenous peoples, as persons in situations of vulnerability;
- [States, CSOs] Raise awareness and train police, security forces and personnel working in places of detention on human rights and cultural diversity, and the specific risks and needs facing minorities and indigenous peoples, including explicit discussion of risks of torture and ill treatment.

Recommendations to ensure indigenous peoples or minorities who are victims of torture can seek **access to justice and reparations**:

- [States] Reach out to minority and indigenous communities to work out the most appropriate approaches for accessing justice and the provision of reparations, identifying specific protection and rehabilitation needs from an inter-cultural lens and handling complaints through the indigenous justice system whenever possible;
- [States] Build and reinforce victim-centred justice systems catering to the special requirements of indigenous communities, for example by providing translation and interpretation services; providing cost-free access to public defenders familiar with indigenous law or its basic principles; and calling on culturally appropriate support and expertise.

General Recommendations:

- Recognise and speak out about torture and ill-treatment and the different forms to which some groups may be particularly vulnerable, such as sexual torture, abuse in healthcare and domestic settings;
- Make full use of international mechanisms such as the UN Universal Periodic Review (UPR) to promote the recognition of the special risks and needs of vulnerable groups;
- Produce and make available data and statistics on victims of torture and ill treatment disaggregated by gender, age, ethnicity etc., to be able to develop appropriate tailored tools and policies to tackle group-specific issues;
- Develop measures based on EU instruments and policies, to further the recognition of the overlapping and intersecting risks faced by vulnerable groups;
- Implement the provisions of the EU Action Plan on Human Rights¹³ to stress the need for third countries to put in place adequate protection systems for vulnerable groups;
- Document and promote best practices for preventive measures targeting vulnerable groups as regards juvenile justice, gender-sensitive detention and legal systems, anti-discrimination measures, and share them with third countries;
- Strengthen the judiciary in third countries through concerted political engagement on human rights, provision of training and exchange of best practices.

Group-specific Recommendations:

- Recognise the diverse gender-specific forms of torture and ill-treatment suffered by women and girls, including sexual torture, and address them in group-specific policies targeting different settings and practices;
- Support and cooperate with existing mechanisms on LGBTI rights, in particular the newly appointed UN independent expert on sexual orientation and gender identity;

¹³ In particular points 9, 14, 15 and 16 of the Action Plan on Human Rights and Democracy 2015-2019, <http://data.consilium.europa.eu/doc/document/ST-10897-2015-INIT/en/pdf>

- Promote the ratification of the Third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OP3 CRC)¹⁴ both inside and outside the EU;
- Design and implement an EU external policy on indigenous peoples;
- Review security collaboration and direct investment policies and agreements, assessing their impact on minority and indigenous peoples' rights; ensure the strict application of EU commitments on Business and Human Rights¹⁵ and the enforcement of the UN Guiding Principles on Business and Human Rights;¹⁶
- Promote the ratification of the ILO Convention on indigenous and tribal peoples,¹⁷ and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).¹⁸

¹⁴ Optional Protocol to the Convention on the Rights of the Child on a communications procedure, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPICCRC.aspx>

¹⁵ Council conclusions on business and human rights, <http://www.consilium.europa.eu/en/press/press-releases/2016/06/20-fac-business-human-rights-conclusions/>

¹⁶ UN Guiding Principles on Business and Human Rights, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

¹⁷ ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312314

¹⁸ International Convention on the Elimination of All Forms of Racial Discrimination, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>

Work Stream II: Ensuring accountability and redress to victims

Despite being a stated priority of the international community, the fight against impunity for torture remains a challenge, especially in light of the shrinking space for civil society and increasing pressure on human rights defenders. A holistic fight against torture and ill-treatment requires a multidimensional approach and the activation of the entire framework of international, regional and domestic legislation and standards available. The actions taken both by state and civil society actors fighting against torture need to range from prevention to rehabilitation through to response.

While activities of CSOs are often key to ensuring implementation of the various elements of this process, it is essential that states play their role in preventing torture and guaranteeing that full redress and rehabilitation measures are available to victims. Redress in particular has an immediate impact on the quality of life of the individual, but also a broader, often underestimated social impact. Healing wounds and bringing justice can produce significant positive changes within the community and prevent the re-emergence of unresolved areas of conflict.

Especially in the current context of increased migration to Europe, including arrivals of asylum seekers from conflict zones, effective early identification mechanisms at member state level are crucial to recognise torture victims among new arrivals, as there is a high probability that there are primary (those directly affected) or secondary (family members or individuals close to primary victims indirectly affected) torture victims among them. Yet an early identification mechanism will only be effective if it is linked to proper referral mechanisms ensuring the provision of holistic treatment and rehabilitation for torture victims and the pursuit of justice and accountability, including through gathering evidence from witnesses and applying extraterritorial jurisdiction.

Detention monitoring and documentation

Truly accountable authorities need to be fully open to external, independent oversight. **Detention monitoring** helps hold authorities to account, in turn allowing for systems based on the rule of law to be established and reinforced. It sheds light on areas of deprivation of liberty, where torture and ill-treatment can take place behind closed doors, and it allows for independent scrutiny of the policies and practices of detaining authorities and other stakeholders. In this session, participants discussed detention monitoring by CSOs and their cooperation with national authorities in this area, as well as the work of National Preventive Mechanisms (NPMs) designated under the Optional Protocol to the UN CAT to improve monitoring and documentation.

A second area of focus was **documenting cases of torture and ill-treatment**, both in detention and beyond. The documentation of torture cases is a complex exercise requiring specific knowledge and professional expertise. It is key for achieving successful redress, for providing the victim with much-needed support – including rehabilitation – and for seeking justice. Compiling records of medical and psychological evidence, backed up with legal support, is an effective way of dealing with impunity, especially when advanced, multidisciplinary tools such as the Istanbul Protocol are used.

The Forum participants highlighted the following issues regarding specific country situations:



In **Kazakhstan**, there are two institutions monitoring closed facilities: the Public Observation Commission and the NPM, set up in 2005 and 2014 respectively. The Public Observation Commission focuses solely on prisons and pre-trial detention centres but looks at all rights of detainees whereas the NPM monitors other closed facilities (but does not cover e.g. army bases, orphanages or centres for people with disabilities). The NPM consists of the Ombudsman together with members of civil society, under a coordinating body composed of 19 people from academia and NGOs. Any citizen can apply to become a member of the NPM (judges and law enforcement authorities cannot be members but doctors and mental health professionals are allowed). However, the NPM does not have sufficient capacity to respond to torture complaints, and members of the NPM need special permission from the Ombudsman to visit any facility for urgent action.



Malaysia has not ratified the UNCAT and lacks a comprehensive law on torture. While the Penal Code provides protection against grievous body harm, it does not comply with the UNCAT definition of torture or compensate for other pieces of legislation which sanction the use of force by enforcement agencies. However, in 1999 Malaysia established a national human rights institution known as Suruhanjaya Hak Asasi Manusia (SUHAKAM), which is mandated to inquire into complaints regarding infringements of human rights. Unfortunately, thus far SUHAKAM reports have been ignored by the parliament. Malaysia has also established an Enforcement Agency Integrity Commission (EAIC) with more extensive powers to investigate complaints against enforcement agencies – yet it is only tasked with using its findings to provide non-binding recommendations.



In 2006, **Serbia** ratified UNCAT and OPCAT and established an NPM. The function is fulfilled by the Ombudsman and nine CSOs working on human rights. The existence of strong human rights organisations with pre-existing experience of monitoring places of detention has been a great added value; the Ombudsman uses their expertise to monitor non-traditional places of detention and in cases of vulnerable groups (e.g. persons with disabilities, minors in conflict with the law, asylum seekers). Thanks to the wide definition of detention facilities, the NPM can visit all closed facilities, including psychiatric institutions. The existence of the NPM depends on political will and there are some concerns that the authoritarian trends emerging in the country may endanger its function.



While **Ivory Coast** ratified the UNCAT in 1995, it has so far not aligned its laws with the international definition of torture. It has also not yet presented its initial report to the CAT nor ratified the OPCAT; the Mandela rules¹⁹ remain unimplemented. In addition, 40% of detainees are in pre-trial detention, leading to significant overcrowding. As a result, challenging impunity for torture faces many practical hurdles, such the lack of adequately trained medical and psychological personnel to document torture sequelae and of state capacity to investigate cases. In these circumstances, CSO collaboration with the authorities remains key to gain access to places of detention and to facilitate access to justice for pre-trial detainees.

¹⁹ UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

This session discussed a wide spectrum of examples of providing oversight over places and situations where torture may occur, including in public places. The definition of torture was also discussed, for example the perceived aims of torture and the quiet acquiescence of penitentiary staff. Questions arose both about whether and how NPMs can be effective in authoritarian regimes and whether documenting incidents of torture can be effective in the absence of formal oversight or complaint bodies. Participants stressed the need to work with existing, even if imperfect, mechanisms and to advocate for different modes of detention monitoring. Impunity and the lack of political will still represent the main obstacles to accountability for torture.

Recommendations for **improving the treatment of detainees and detention conditions** at national level:

- [States] Improve police investigations and forensic tools; train security agents, police and armed forces on international and national human rights standards and investigative techniques to move away from a confession-centred system that increases the risk of torture;
- [States] Ensure the wellbeing of police working on investigations and staff working in detention centres to reduce potential ill-treatment due to high staff stress levels or need to meet performance evaluation standards;
- [States] Ensure presence of medical staff with adequate space, supplies and training on medical, psychological, legal and other needs involved in providing health care to detainees; in addition, provide medical staff with the right protective gear and frequent health screening to enable them to provide better services to detainees;
- [States] De-institutionalise people with disabilities, and prioritise treatment within their communities, as institutionalisation amounts to detention and in itself represents a form of ill-treatment;
- [States, CSOs] Demonstrate the inefficiency of torture as an investigative method through studies and statistical evidence, backing this up with communication at highest level within state institutions that torture and ill treatment will not be tolerated in places of detention;
- [CSOs] Push for access to monitor detention centres, as this helps reduce instances of torture.

Recommendations for **ensuring accountability for acts of torture and ill-treatment** at national level:

- [States] Ensure that national laws extend the definition of torture to non-state actors;
- [States] Systematically document the physical state of individuals entering a detention centre, regularly check and follow up on these assessments

Ensuring accountability through justice mechanisms

International human rights law explicitly requires that perpetrators of torture and cruel, inhuman and degrading treatment or punishment be held accountable. **Justice mechanisms** are an effective and tested tool to address impunity and promote reconciliation between communities or groups. However, despite explicit obligations to investigate and prosecute allegations of torture, torture remains pervasive around the globe, and impunity of perpetrators remains widespread, contributing to a vicious cycle of violence.

In this session, participants discussed the necessary elements for **effective legislative frameworks against torture**, to prohibit, prevent, investigate and prosecute torture and ill-treatment, and provide redress for victims. They further explored how to ensure compliance with international and national obligations to prosecute allegations of torture in line with the UNCAT, including through using extraterritorial jurisdiction.

The Forum participants highlighted the following issues regarding specific country situations:



The past few years have seen significant legislative gains in the fight against torture in **Kenya**. Although it is still to ratify the OPCAT, the country has ratified the UNCAT and introduced a domestic framework prohibiting the use of torture by police forces. In addition, a new police act was put in place in 2010 which sets the penalty for torture at up to 25 years' imprisonment. However, there have still not been any prosecutions under this law as in practice perpetrators are charged with assault. While a special agency has now been established to investigate these crimes, intimidation of witnesses and harassment of lawyers by the police is common. HRDs and lawyers working on torture cases face risks and require specialised support. In this instance, creating a systematised database of torture cases to identify recurring patterns of violations has been useful to ensure accountability.



Tajikistan has recently amended the provisions on torture in its criminal code in line with international law, including the addition of basic protective provisions for detainees and witnesses. The Ministry of Health has committed to carry out medical examinations of torture victims in line with the Istanbul Protocol. However, the punishment for torture is still not proportional to the gravity of the crime and mechanisms for independent monitoring of places of detention have not yet been adopted. As Tajikistan is not yet party to OPCAT, it does not have an NPM and human rights organisations have no access to detention facilities. Torture cases are investigated by the prosecutor's office and not by any independent mechanism, leading to the persistence of impunity. Perpetrators are often charged with lower level offences, such as negligence. There is still a need for victims and their relatives to be able to access fair reparation, entailing restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.



Repression and violence in **Burundi** have forced 300,000 people to flee the country and seen over 6000 people detained for exercising their right to protest. Sexual violence is rife. As the government fails to condemn the ongoing violations, the NGO ACAT has decided to approach the ICC. Over 200 victims have already joined the submission made to the court, which led the prosecutor to open an initial inquiry. While the country has withdrawn its ratification of the Rome statute, this will not affect ongoing

inquiries. ACAT supplied the court with numerous testimonies, including ones denouncing torture, and the government responded by striking ACAT lawyers from the law register in the country, in line with the wider repression of all critical voices in the country, as currently only GONGOs are allowed to operate. The international community has launched inquiries through UN special procedures and a resolution from the UN Human Rights Council (UN HRC), but the Burundian government refuses to allow for an international inquiry into the situation on the ground.

This session reached a consensus that even the best legislative framework prohibiting torture will fail to succeed if victims do not have recourse to justice. There was agreement on the need to establish effective and independent investigative mechanisms, outside of the jurisdiction of the prosecutorial or police offices, to follow up on torture allegations. Participants underlined the crucial role of civil society in ensuring that proper procedures are respected in practice.

Recommendations on **effective anti-torture legislative frameworks** at national level:

- [States] Establish an adequate legislative framework which ensures freedom from torture, including the respect for the rights of individuals, effective punishment of perpetrators and explicit political commitments at highest level that torture and ill-treatment will not be tolerated.

Recommendations on **effective and independent justice mechanisms** at national level:

- [States] Ensure the accountability and independence of the national justice system by allowing for the monitoring of investigations by civil society;
- [States] Establish justice mechanisms that are independent of prosecutorial offices, which may be wary of opening torture cases against police officers due to their close collaboration;
- [States, CSOs] Collect effective forensic documentation (including through full implementation of the Istanbul Protocol).

Establishing victim-centred approaches through rehabilitation and redress

Despite the state obligation to provide victims of torture and ill-treatment with redress, including access to effective remedy and full reparation, state actors often lack awareness of victims' rights, and how they can be meaningfully and effectively upheld. This includes victims' rights to access justice, to participate and to obtain reparation – including rehabilitation – and to be protected from reprisals. Victims often do not receive information from the authorities about the progress of cases that concern them and at times are not permitted to engage in the process.

As a part of redress, the right to rehabilitation is a state obligation under international law. The CAT General Comment No. 320 explicitly states that the provision of rehabilitation shall not depend on contextual aspects such as the availability of funds or the country in which the victim was tortured. Rehabilitation should be accessible, affordable, and available, of good quality and provided according to need, which still presents a challenge in most countries. However, in the context of shrinking space for civil society, rehabilitation centres may face threats from governments themselves, as they may collect data which is potentially threatening for perpetrators, including state actors.

During this session, participants discussed protection provided for victims of torture and ill-treatment and their impact on **access to justice** and **redress** and **accountability for perpetrators**. Participants exchanged experiences on how rehabilitation centres can contribute to the fight against impunity through data collection and record keeping. Discussions also touched on different methods to allow victims to participate in legal processes, and ways to help protect **victims' rights to participation**.

The Forum participants highlighted the following issues regarding specific country situations:



Torture is widespread in **Turkey**. Since 2005, the number of detainees has almost quadrupled from 55,000 to approximately 200,000 detainees. Since the military coup in the 1980s, some one million people are estimated to have been subjected to torture, and 16,000 of them treated by the Human Rights Foundation of Turkey rehabilitation centres. Torture occurs in a context of a shrinking space for civil society and the repression of the work of HRDs, with no independent legal system to fight impunity. An additional challenge is the Syrian war context and the recently introduced national state of emergency, which places additional pressure on rehabilitation centres and puts staff at risk. Turkey hosts 3 million Syrian refugees, between 5 and 35% of whom have been victims of human rights violations including torture.



There is legal architecture for torture rehabilitation in place in the **Philippines**. The government has ratified the UNCAT and OPCAT and introduced an anti-torture law in 2009. Torture cases are documented in line with Istanbul Protocol standards. The EU funded the training of prosecutors on provision of rehabilitation to survivors. However, several challenges remain: the rehabilitation system is fragmented between different bureaucratic agencies which at times hinders its full implementation; at the same time, victims lack trust in state institutions. Crucially, the war on drugs risks changing in the political climate on human rights, including suggestions to reintroduce the death penalty and government plans to withdraw from the ICC.



In 2012, accounts of wide-scale sexual torture came to light in **Georgia**. As a result, a new government came to power with an anti-torture agenda. Documentation revealing that 84% of former detainees were subjected to psychological torture and 74% to physical torture spurred civil society and the international community into action, and the EU recently allocated €4 million to the rehabilitation of victims of violent crime and torture. Social workers and doctors were trained to detect signs of torture in former prisoners and refer victims to rehabilitation centres or to specialised services within the

²⁰ General Comment No. 3 of the UN Committee against Torture,
http://www2.ohchr.org/english/bodies/cat/docs/GC/CAT-C-GC-3_en.pdf

penitentiary system. However, these achievements are very fragile and could be challenged by a new government. Furthermore, despite the existence of a strong NPM, torture still frequently goes undetected in prisons, demonstrating the need for complementary monitoring mechanisms. At the same time, there have been very few convictions for acts of torture, contributing to feelings of anger and frustration within society as justice has not been granted to victims.

This session concluded that there is an urgent need to reinforce systemic measures of redress and rehabilitation for victims of torture within the legal system to decrease their vulnerability to changes in government and/or political will. Torture rehabilitation centres play a vital role in enabling victims not only to access medical and psychological treatment but also justice and redress. Redress processes should be designed with individuals' best interests at heart, as some victims may not want to participate in judicial or legal processes for fear of secondary traumatisation. Also, victims of torture may not perceive themselves as such, preferring the term 'survivor', so as not to be defined by their experience of torture.

Recommendations on **providing protection and rehabilitating victims** at national level:

- [States] Ensure the safety of staff at rehabilitation centres – both in terms of their work in risky environments and in their role of documenting abuses;
- [States, CSOs] Find ways to reach out to torture victims, as they are not likely to seek out treatment centres pro-actively;
- [States, CSOs] Provide holistic treatment including medical care as well as legal aid to those who want to seek judicial remedies; and ensure sensitivity to gender and ethnicity;
- [States, CSOs] Prioritise victims' safety and security in all rehabilitation and redress processes.

Recommendations to **empower victims to participate in legal processes** at national level:

- [States] Establish independent investigative mechanisms to ensure the sustainability of systems for rehabilitation and redress despite changes in government and/or political will;
- [States] Establish the status of a victim of torture as defined under article 14 of UNCAT in national law to ensure individuals have recourse and can claim their rights;
- [States, CSOs] Document torture through fact-finding missions, data collection and medico-legal reports to address impunity and obtain justice for victims who want to seek legal recourse;
- [States, CSOs] Ensure that victims have the right to make informed choices with regard to the redress and justice-seeking process – they should not be deprived of access to rehabilitation or psycho-social support if they are not willing to go through the legal steps to access redress;

- [CSOs] Involve survivors in advocacy activities, allowing them to provide testimonies and insights on effective methods of redress and rehabilitation.

WS II: Recommendations to the EU and its member states

- *Fully apply existing tools, such as the EU Guidelines on Torture; collect best practices on responding to torture and disseminate these to all EU delegations and member state representations, regularly updating the body of best practice and ensuring a link-in with the Action Plan on Human Rights;*
- *Publicly condemn (including in statements and in meetings at highest level) instances of torture whenever and wherever they occur;*
- *Address individual cases of torture, communicating openly and publicly in human rights dialogues and high-level political meetings alike, and asking governments to report on and deliver justice in these cases;*
- *Support with funding and technical support matched by political backing, the modernisation, reform and reinforcement of state institutions, in particular the judiciary, security and police sectors, to prevent and respond to torture, and to restore and build trust in the state;*
- *Ensure all EU and member state programmes on judiciary, security and police sector reform have political buy-in from the national government to secure full implementation of human rights commitments and are matched by an explicit stance of non-tolerance of torture – if needed, this measure can be achieved through the use of conditionality;*
- *Build likewise the capacities of social, medical and psychological professionals in state structures and CSOs in applying the Istanbul Protocol and rehabilitating torture victims;*
- *Support victims of torture by meeting with survivors, conducting regular visits or meetings with those working on torture and taking visible measures to back work against torture;*
- *Ease access to grants for anti-torture organisations, especially ones based outside of capitals and/ or in small countries; fund holistic programmes providing rehabilitation along with full scale legal aid and access to effective investigation;*

- *Support the work of civil society in third countries to fight impunity and engage with third country governments to stress the state's obligation to proactively act on torture, including through investigations, identification and protection of victims;*
- *Conduct trial observation to ensure that evidence obtained under torture is systematically excluded by courts in third countries;*
- *Explore the use of targeted sanctions towards perpetrators of torture as well as bringing perpetrators before courts outside of their countries when they travel.*

Work Stream III: Closing the gap between the foreign and domestic security policy agenda

Today, key foreign and domestic security policy issues such as counter-terrorism and migration policies inevitably touch on human rights issues. The absolute ban on torture and ill-treatment is enshrined in core UN human rights conventions, and reaffirmed in the Charter of Fundamental Rights of the European Union,²¹ which EU and its members are obliged to respect in law, policy and practice. However, EU and member state cooperation with third countries on security and migration control often raises questions around torture and ill-treatment. Work Stream III explored how the EU and its member states can ensure the prohibition of torture in foreign and domestic security policy and the role of civil society in supporting this process.

In its foreign policy, the EU has committed to place human rights at the centre of all its external action and to use all its available tools of diplomacy and cooperation assistance in this effort, including the eradication of torture. In its 2012 Strategic Framework on Human Rights and Democracy, the EU defines torture as a 'serious [violation] of human rights and human dignity' and commits to 'continue to campaign vigorously against torture and cruel, inhuman and degrading treatment.'²² In addition, the EU Guidelines on torture and other cruel, inhuman or degrading treatment or punishment identify concrete means for the EU and its member states to effectively prevent and respond to torture and ill-treatment in third countries.²³ The EU guidelines on torture were adopted in 2001, revised in 2008, updated in 2012 and are currently in the process of revision, to be concluded with their re-issue and the publication of related Council Conclusions in the course of 2017. In line with the EU Guidelines, the 2015 Action Plan on Human Rights and Democracy (Action 13) sees the EU and its member states commit to 'combatting torture, ill-treatment and the death penalty.'²⁴

This Work Stream aimed to identify concrete ways forward for the EU and its member states to explicitly address torture in foreign and domestic security policy alike, with particular attention to three specific areas identified as major security policy challenges of the moment: counter-terrorism policies, shrinking space for civil society organisations and migration.

²¹ Charter of Fundamental Rights of the EU, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>

²² Strategic Framework on Human Rights and Democracy 2012, https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf

²³ Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment, http://eeas.europa.eu/human_rights/guidelines/torture/docs/20120626_guidelines_en.pdf

²⁴ Action Plan on Human Rights and Democracy 2015-2019, <http://data.consilium.europa.eu/doc/document/ST-10897-2015-INIT/en/pdf>

Torture in the context of counter-terrorism

Globally, recent years have seen an increase in often **restrictive legislation aimed at countering terrorism**, including measures undermining safeguards against, or even actively justifying, the **use of torture and ill-treatment as part of counter-terrorism efforts**. Such policies and practices undermine human rights protections and the absolute prohibition of torture and ill-treatment, which cannot be withdrawn in response to a security threat. Today, the EU and its member states are challenged to maintain their strong human rights commitments and to address the erosion of protections against torture and ill-treatment in rapidly-evolving counter-terrorism efforts in their its foreign and domestic security policy.

In this session, participants testified to how actions and legislative measures in response to (alleged or actual) threats of terrorism have eroded the absolute prohibition of torture and ill-treatment. The discussion analysed how the EU and its member states could ensure that domestic laws (e.g. states of emergency) and foreign policy **actions in response to threats of terrorism do not undermine human rights protections**. Key steps included ensuring that security services are subject to adequate oversight; that any involvement or complicity in renditions, unlawful detention and/or interrogation is effectively investigated; and that the right to the truth is upheld, and all perpetrators are held accountable.



Civil society in **Tunisia** has long worked in a repressive environment. In this context, the 2011 revolution and political transition were a relative success, allowing the country to maintain social cohesion and introduce a new constitution aimed at a more democratic, human rights-based system. Advances have been made toward the criminalisation of torture and the introduction of procedural safeguards in the penal code. Yet while reforms of the police and detention systems have taken place, institutional practices have not changed much. To achieve a complete reform, policy changes must be accompanied by political will as well as social support based on consultations with civil society. At the same time, government responses to the threat of terrorism risk eroding human rights standards, as restrictive security measures are being introduced, undermining the application of the rule of law.



While on paper **Kenya** has made progress towards combatting torture by ratifying the UNCAT in 1997, in practice, torture remains widespread and is being used against both political opponents as well as against people in poor areas who lack resources to claim their rights. The government justifies the militarisation of policing and the use of torture by law enforcement in response to terrorist attacks in the country and the wider region. At the same time, HRDs working to document the human rights abuses by state agents are often branded as security threats and accused of complicity or support of terrorism.

This session highlighted a recurring trend toward branding HRDs and civil society working on human rights issues in counter-terrorism and/or criticising governments in this context, as security threats or supporters of terrorism. Participants commented on how counter-terrorism policies regularly introduce a binary opposition between urgent security concerns

and human rights and rule of law commitments, a false dichotomy that risks being used to justify the suspension of human rights standards. In this context, participants stressed the importance of fair trials as key safeguards to uphold human rights and societal trust in the rule of law.

Recommendations to ensure that **human rights protections are upheld in the response to terrorism** at national level:

- [States] Ensure access to justice and the accountability of the national judicial system, as well as its compliance with international human rights law standards by enforcing procedural safeguards and fair trial standards;
- [States] Address the gaps between law and practice by training personnel on human rights standards, including obligations in security and counter-terrorism efforts;
- [States] Ensure that any counter-terrorism policies are fully compliant with international human rights law standards.

Torture in the context of the shrinking space for civil society

Across the world, in third countries as well as in EU member states, governments place undue **restrictions on legitimate human rights activities of HRDs and civil society**. Restrictive laws, policies and practices in different countries include: laws threatening the rights to freedom of expression, association and peaceful assembly; smear campaigns; harassment; threats; criminalisation of activities resulting in arrests or judicial procedures; and/or NGO laws restricting activities and access to funding.

Attacks against HRDs and civil society have far-reaching impact on the fight against torture and ill-treatment, with the very **existence of anti-torture organisations and their operating space at stake**. At the same time, the closure of civil society space means that **HRDs, activists and media workers are at heightened risk** of physical and psychological torture and ill-treatment, including through arbitrary detention (in many cases with denial of medical treatment) and threats and harassment aimed at themselves and their families.

During this session, participants shared the challenges they face in their work and identified potential counter-strategies, including ways for the EU, member states and other regional bodies to protect civil society space and to explicitly prevent and respond to torture and ill-treatment in this context.



As a result of legislative changes in **Russia**, the vast majority of NGOs have been forced to declare themselves as ‘foreign agents’. The law involves financial expenses for registration, a ban on receiving foreign funding and the criminalisation of foreign donors. It has led to the closure of numerous NGOs due to their inability to comply with these requirements. 126 administrative cases have been brought against NGOs under the law to date. In May 2016, the first case was opened against an anti-torture NGO for failing

to comply with the law – the staff risks up to four years in prison. Since then, at least 17 additional cases have been brought against human rights NGOs. Simultaneously, physical attacks on HRDs, NGO workers and the media have also increased, such as the burning of an NGO office in Grozny while staff was inside it and an attack on a bus carrying journalists in early 2016. Activists are defamed in the media, negatively affecting the public perception of their work. The government keeps the activities of NGOs under surveillance, especially if they are receiving foreign visitors.



In **Bangladesh**, civil society is challenged by a very restrictive NGO law and by restrictions in access to donor funding, while the national legal framework does not allow for independent media. Counter-terrorism policies are being used to restrict freedom and individuals detained in this context are often tortured, as was recently the case with a journalist.

This session focused on the steady and increasingly severe restrictions placed on the operations of civil society organisations worldwide. While participants spoke of the need to step up responses to this trend and to find increasingly creative ways to overcome each new restriction and legislative hurdle, there was also a consensus that in many countries, the focus of NGOs is shifting away from their core human rights mission towards ensuring their own safety and survival.

Participants also noted that the space for civil society activities is not only closing outside the EU, but also within certain EU member states, opening up debates on how the domestic shift in government positions could affect EU external policy and what lessons from third countries could be applied within the EU context.

Recommendations to **provide an enabling space for civil society** at national level:

- [States] Enshrine legal protections for HRDs and CSOs in national law, policy and practice, ensuring in parallel the legal and political recognition of HRDs and civil society groups working on sensitive issues such as counter-terrorism and torture;
- [CSOs] Engage with all justice systems to challenge any repressive laws;
- [States, CSOs] Establish dialogue between the government, HRDs and CSOs at all levels on civil society space and support and protection of HRDs and CSOs and enable regular substantive exchanges on key human rights issues, including foreign and domestic security policies.

Torture in the context of people on the move

Globally, migration is a well-established phenomenon that is increasingly capturing the attention of the media and policy makers because of mounting migration into the EU and across the Americas, Southeast Asia, Africa and Oceania. The **human rights violations suffered by migrants, asylum seekers and refugees** in countries of origin, transit and destination are a

long standing and serious concern of the international human rights community. As people flee conflict, repression and poverty, reports of abuses continue to emerge, making safeguarding the rights of refugees and migrants one of the most pressing issues on today's global human rights agenda.

In this context, governments' increasingly hesitant discourse on human rights, and the deterrence-based approach aimed at reducing migration, now risks overturning the key principles and practices of protection, such as the principle of *non-refoulement* to places where there is a risk of torture. Even as xenophobia, hostility and discrimination are on the rise toward people on the move, both **the impact of torture and ill-treatment and the special needs of survivors remain unknown** and often unaddressed among refugee and migrant populations.

This session discussed the risk of torture and ill-treatment faced by refugees and migrants as a result of securitised and/or deterrence-oriented approaches to migration, inadequate detention conditions, excessive use of force by police to curb migration flows and a lack of specific attention to vulnerable groups. Participants assessed how EU and member state refugee and migration policies affect migrants' rights to freedom from torture and ill-treatment and how these protections could be strengthened.



Despite its criminalisation in 2005, torture remains common in **Morocco**. As national law does not comply with UNCAT standards, prevention measures are not being put into place and instances of torture remain unprosecuted due to a lack of political will, placing NGOs working on torture are under significant pressure. Morocco is a destination and key transit country, where many migrants become blocked on their way to Europe, making those coming from Sub-Saharan Africa in particular extremely vulnerable to torture. However, abuses against migrants are rarely prosecuted or punished. Migrant women and girls in particular are exposed to sexual torture and subsequently denied medical care.



While **Macedonia** prohibits torture in its constitution and national law, there have been numerous instances of excessive use of force and beatings by police of migrants on the country's southern border. In this country of transit, irregular migrants have been banned from using public transport, forcing them to walk across the country, often along rail lines, resulting in deaths. Civil society voiced concern about overcrowding and poor conditions in Macedonia's reception camps that amount to cruel, inhuman and degrading treatment.

Participants in this session insisted on the need to ensure that a rights-based approach supersedes a security approach to migration. Individual states' restrictive policies on migration cannot take precedence over their international obligations to provide protection to asylum seekers or to respect human rights of refugees and migrants.

Today, the EU and its member states are challenged to address torture while regulating migration. Torture is often the root cause of flight of refugees and asylum-seekers, yet can also occur *en route*, in the form of violations by state and non-state actors, excessive use of force by security personnel, detention or reception conditions amounting to cruel, inhuman

and degrading treatment and/or upon return to the country of origin. In order to maintain coherence between its external and internal human rights policies and practices, the EU and its member states should place the human rights of refugees and migrants at the centre of current efforts and fully realise their responsibility in providing international protection.

Recommendations to ensure **protection from torture in the context of migration** at national level:

- [States] Harmonise national laws, including those on migration, with the UNCAT and other international human rights standards; in particular, ensure that legal counsel be present from the beginning of detention of refugees and migrants;
- [States] Address impunity for acts of torture and ill-treatment perpetrated against migrants and asylum seekers, adopting an explicit, public position of non-tolerance of torture by security, police and armed forces;
- [States] Establish independent monitoring mechanisms for places where migrants and asylum seekers are received, housed or detained; allow civil society organisations working on migration access to detention centres;
- [States] Train police and border guards on international human rights and refugee law and the principles of international protection;
- [States] Set up mechanisms to identify and refer victims of torture among migrant and asylum-seeking populations, sensitise border guards, social workers and asylum offices' staff to the specific needs of victims of trauma or torture;
- [States] Provide special accommodation to vulnerable groups such as women and children, the elderly, LGBTI persons and disabled individuals;
- [States] Prioritise the needs and protection of unaccompanied minors, who are more vulnerable to torture, especially in detention settings; speed up family reunification procedures;
- [States] Ensure police and security forces working with refugees and migrants proactively dialogue and liaise with anti-torture organisations;
- [States, CSOs] Raise migrants' awareness of their rights and states' international obligations to ensure that instances of torture are denounced, documented and prosecuted.

WS III: Recommendations to the EU and its member states

In relation to security and counter-terrorism measures

- *Mainstream EU and member state commitments on eradicating torture and ill-treatment across all areas of foreign policy, truly demonstrating zero tolerance of (risk of) torture, including in security, counter-terrorism, trade and cooperation agreements with third countries and explicitly addressing (risk of) torture in Foreign Affairs Council discussions;*
- *Provide support and legitimise the work of HRDs or CSOs branded as a security risk or terrorism supporters; identify best practices for providing support to such individuals, their organisations and their human rights work in the context of shrinking space;*
- *Engage civil society in dialogue on security and counter-terrorism measures, both domestically and in the context of cooperation with third countries;*
- *Mainstream existing guidelines on human rights into work on security and counter-terrorism measures;*
- *Invest in quality analysis on the link between human rights violations (including in counter-terrorism efforts) and radicalization leading to terrorist activity.*

In relation to the shrinking space for civil society

- *Provide visible political support to anti-torture organisations by visiting their offices and projects as well as meeting with torture survivors;*
- *Ensure EU delegations and member state representations in third countries are in regular contact with HRDs and local civil society to be able to swiftly react to reprisals and repressions;*
- *Provide timely diplomatic support to HRDs and CSOs facing repressive actions, including access to funding and emergency visas and visas for purposes of advocacy towards the EU and EU member states; ensure support is flexible and holistic, and available both to entire organisations as well as individuals, their families and their lawyers;*
- *Promote judicial reform in countries where civil society space is shrinking as part of efforts to promote the creation of a more enabling environment;*

- *Engage with parliamentarians in partner countries to ensure legislation remains in line with international human rights standards;*
- *Closely monitor and provide pro-active input on changes in third countries' legal systems, as well as the implementation of laws which could repress civil society;*
- *Explore mediating in dialogues between third country government and local civil society, in particular anti-torture organisations and torture survivors, if requested by CSOs.*

In relation to migration and internal-external coherence

- *Reaffirm explicitly at all opportunities EU and member state commitment to the principle of non-refoulement across all responses to migration, internally and externally;*
- *Include the issue of migrants' rights and the provision of justice to migrants into third country dialogues, mentioning the risk and/or occurrence of torture and ill treatment explicitly, especially with countries with which the EU and/or member states are cooperating on issues of migration management;*
- *Promote the ratification of OPCAT by all EU member states, reinforcing EU credibility and legitimacy to promote OPCAT with third countries worldwide;*
- *Promote training of EU border staff and specialised agencies such as Frontex in identifying individuals who may have suffered from or be at risk of torture;*
- *Review the EU's human rights responsibilities in the externalisation of asylum procedures and readmission agreements, including as regards the risk and/or occurrence of torture and ill-treatment in the third countries involved;*
- *Review the concept of a 'safe third country', which contradicts the principle of an individual examination of the situation of a seeker of international protection;*
- *Document and propagate best practices in response to torture and ill-treatment of migrants and refugees occurring en route as well as in cases of refoulement or return to the country of origin;*
- *Explore research into torture as a root cause of migration and asylum seeker flows, including as a result of ongoing conflicts; ensure that EU member states' peacebuilding and mediation efforts address this issue.*

Conclusions

Two key themes resonated in the discussions during the 18th EU-NGO Forum. One is that the EU already has at its disposal a wide selection of tools and resources to promote efforts against torture and ill-treatment; the other stresses how the EU can enhance its impact in this area by leading by example.



The Treaty of Lisbon, the EU's Strategic Framework on Human Rights and Democracy, its Action Plan on Human Rights and the various human rights guidelines already commit the EU and its member states to following the vast majority of the recommendations made by the participants of the Forum. Unfortunately, as was underlined by a number of testimonies, the

EU and its member states at times fail to implement their own policies in dealing with third countries. While providing substantial financial support toward global anti-torture efforts, the EU's public commitment can sometimes falter at critical moments. The need for the EU and its member states to speak out about occurrences of torture and bring up individual cases in dialogue with third countries, including at the highest levels, was stressed across Work Streams and by participants from all geographical regions. Participants also called for a more ambitious, proactive implementation of the Action Plan on Human Rights and the EU Guidelines on torture, including by training staff at all levels to mainstream anti-torture efforts into all policy areas. Overall, participants sent the EU and its member states a resounding call for greater political will and resources to fully deliver on their human rights obligations and the commitments they have made to combatting torture and ill-treatment.

Crucially, the EU's calls to eradicate torture on the global stage as well as in its bilateral relations must go hand in hand with efforts to apply the same standards domestically. The EU and its member states cannot be perceived as credible human rights actors on the global stage if they not adhere to international laws and norms themselves. Forum participants testified to the loss of the EU's influence in some fora as a result of its disregard for human rights in responding to increased migration flows into Europe. To maintain their relevance and influence internationally, the EU and its member states must redouble their efforts to ensure that all policy and practice fully respect international human rights law and comply with international and regional legal obligations and commitments.

The outcomes of the NGO Forum point to the far-reaching role the EU and its member states can play in combatting torture and ill-treatment in both external and internal policies. Today more than ever, their international human rights law commitments will be tested throughout

policy areas – especially in the domains of migration and security policy. Where the EU and its member states rise to the challenge and prioritise human rights consistently and coherently, they have the opportunity to truly promote and support the eradication of torture and ill-treatment worldwide.

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[Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or](#)

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List of the Core International Human Rights Instruments and their monitoring bodies

Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Available in various languages, including Arabic, Chinese, English, French, Russian, Spanish official translations as well as several unofficial translations.

United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)

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