

The cover image is a photograph of a sunflower painted on a blue wall. The wall is part of a building with a brick section on the left and a blue-painted section on the right. The sunflower has yellow petals and a dark brown center. In the background, there is a snowy field and a building under a cloudy sky.

Supporting Survivors of Torture and Conflict-Related Sexual Violence in Ukraine

How to Improve Medico-Legal Documentation and Access to Justice

Policy Brief

August 2024

Photo: Irpin, Ukraine / Ranit Mishori, 2023

Summary

Survivor-centered, trauma-informed, and rigorous medico-legal documentation is essential to offer survivors a pathway to justice, with standardized forensic medical evaluations playing a key role in documenting and corroborating accounts of sexual violence and torture. To support Ukrainian government officials, civil society, and international partners in building systems to support survivors, Physicians for Human Rights (PHR) assessed the medico-legal documentation pathway in Ukraine to identify opportunities to strengthen systems to center survivors' well-being, autonomy, and access to remedies.

Building on the numerous efforts by Ukrainian authorities and their partners to address challenges to medico-legal documentation, this policy brief outlines current obstacles

that impede justice and healing for survivors and sets forth actionable opportunities for the Ukrainian government and other stakeholders for reform. The recommendations put forward in the brief emphasize the need to expand the pool of qualified professionals authorized to conduct forensic medical evaluations in cases of conflict-related sexual violence and torture. They also call for legislative reforms to empower survivors in the justice process, the development of standardized medico-legal documentation tools, and implementation of capacity-building initiatives to ensure trauma-informed, survivor-centered approaches. Together, these efforts can transform the experience of survivors as they seek remedy and reparation and ultimately facilitate greater accountability and healing.

Introduction

The Need for Effective Pathways to Justice for Crimes of Torture and Sexual Violence

There is strong and growing evidence that torture and sexual violence have been perpetrated on a widespread scale since Russia launched its full-scale invasion of Ukraine in February 2022.¹ As the UN Independent International Commission of Inquiry concluded, "In the context of their full-scale invasion of Ukraine, Russian authorities have committed a wide array of violations of international human rights law and international humanitarian law, as well as war crimes ... of torture, willful killing, rape and sexual violence [...]. The evidence gathered reinforced the Commission's previous findings that Russian authorities had used torture in a widespread and systematic way."² As of August 2024, the Prosecutor General's Office of Ukraine has registered 310 cases of conflict-related sexual violence since the start of the full-scale invasion.³

The thousands of people who have survived this torture and conflict-related sexual violence are entitled to (a) equal and effective access to justice; (b) adequate, effective, and prompt reparation for harm suffered; and (c) access to relevant information concerning violations and reparation mechanisms.⁴ To achieve such accountability, it is essential that effective laws and protocols are in place to guide rigorous documentation and investigation of torture and other cruel, inhuman, and degrading treatment or punishment, including where it takes the form of sexual or other gender-based violence.⁵ The pathways for survivors of these violations to initiate access to justice can vary, with survivors initially reporting the harm they suffered to police officers, prosecutors, non-governmental organization representatives, or health care providers. However, at every stage of the pathway to justice, survivors should receive trauma-informed care and be provided with resources for treatment and support. Trauma-informed approaches to medical care and treatment as well as access to justice must be paramount, centering on the well-being, dignity, and autonomy of the survivor.⁶

This policy brief, developed within the framework of the project "Strengthening capacities to fight impunity for torture and related crimes in Ukraine", implemented by the World Organization Against Torture, the Media Initiative for Human Rights, Human Rights Centre ZMINA and Physicians for Human Rights, draws on an assessment of the capacity for medico-legal documentation of conflict-related sexual violence and torture undertaken by PHR⁷ to provide actionable recommendations for strengthening medico-legal documentation of sexual violence, torture and other cruel, inhuman, degrading treatment or punishment, and other human rights violations in Ukraine. Its purpose

is to guide policymakers, government stakeholders, law enforcement representatives, international justice actors, legal professionals, medical practitioners, and humanitarian aid actors in implementing trauma-informed and survivor-centered practices that enhance the quality and credibility of forensic evidence.

The Critical Importance of Rigorous Medico-Legal Documentation

Medico-legal evaluations are a critical tool, among others, for documenting evidence and corroborating accounts of sexual violence, torture and other cruel, inhuman, degrading treatment or punishment, and other human rights violations. Such evaluation is a systematic medical and psychological evaluation of survivors. A trained clinician conducts a thorough interview with the survivor in which the survivor recounts their pre-trauma social, medical, and psychological history, describes the violent events they experienced, the course of their physical symptoms and signs since the violent events and at the time of the interview. The clinician then performs a physical, mental health, and psychological examination and documents physical and psychological findings and symptoms, collects physical evidence as well as biological samples such as blood or semen as feasible for lab testing, and brings all the findings together to provide an interpretation of their consistency with the reported incident/s. Because poorly conducted evaluations can re-traumatize the survivor and deter the pursuit of justice, it is essential that clinicians conducting them be well-trained in trauma-informed, survivor-centered approaches.⁸

The success of investigations of torture and conflict-related sexual violence depends on the quality of documentation, and collecting medico-legal evidence can be an integral part of this process.⁹ Medico-legal documentation can have a significant value as part of the justice process concerning cases of conflict-related sexual violence and torture even when the evaluations are conducted weeks or months after the alleged criminal acts were carried out. Often, the documentation of mental health harms experienced by the survivor is the only evidence available to show the presence of ongoing trauma and other psychological injuries.

Physical and mental health documentation of these violations can also provide critical evidence that links perpetrators to the crimes they have committed and shows patterns of abuse. Identification of patterns can help establish where crimes are widespread and systematic and prove other important elements such as criminal intent, common purpose, command, or superior responsibility. Forensic reports can further support civil claims, reparations, and other justice efforts.

Current Context for Documentation and Investigation of Torture and Sexual Violence in Ukraine

In 2023, PHR assessed the clinical, legal, and technological capacity in Ukraine to conduct medico-legal documentation of conflict-related sexual violence and cases of torture, cruel, inhuman and degrading treatment or punishment, encompassing trauma-informed and survivor-centered approaches and patient privacy protections.¹⁰ Our assessment and analysis, based on in-person and remote

interviews¹¹ as well as desk research, has mapped the specific and persisting challenges survivors and medical and legal professionals are experiencing in Ukraine in implementing survivor-centered and trauma-informed practices for documenting forensic evidence of sexual violence and torture. It also revealed several promising opportunities for strengthening the forensic documentation system.

Our assessment noted the following challenges:

a

Existing legal, regulatory, and policy limitations in Ukraine restrict the pool of experts permitted to conduct forensic documentation and can create barriers for survivors. Medico-legal documentation in Ukraine happens through the forensic service where **only state-certified forensic experts in state specialized institutions¹² are authorized to conduct forensic evaluations and draw up expert reports based on their results** in several distinct domains: forensic postmortem, medical, and psychiatric examinations.¹³ Because these domains are considered to be distinct in Ukraine, this can lead to fragmentation across different evaluations with the survivor subjected to multiple exams. Furthermore, the resulting need for multiple examinations combined with the limited numbers of state-certified forensic experts can lead to delays and deter survivors from pursuing follow-up.

b

Currently, there is no standardized medico-legal form to guide forensic evaluations to ensure that comprehensive data is documented in a standardized manner.

d

If the survivor's entry point to the justice process is through their health care provider (by a medical professional reporting to law enforcement agencies), the results of the primary evaluation performed and documented by the provider by their very nature cannot be considered admissible evidence because only designated forensic experts who work in state specialized facilities are allowed to conduct forensic exams; while a forensic expert may include a high-quality evaluation as an addendum to their report or it can be added to the case at the request of a survivor for the court's consideration, to date the clinical documentation provided by many first responders in Ukraine, like family doctors and gynecologists, that is submitted to forensic specialists is sometimes perceived as low quality and therefore excluded.

c

Fragmentation of documentation into separate domains and the necessity to establish the severity of bodily injuries can add harmful delay to accountability efforts. For instance, survivors who might take weeks or months to come forward, as is often the case, or who may not have immediate access to law enforcement, will likely not be interviewed by forensic experts. Their cases may also not be reviewed seriously due to the perception by both physicians and survivors that little can be gained medically from an evaluation in the post-acute phase.

e

In the absence of Ukraine using a standardized medico-legal form, clinicians sometimes utilize an existing medical form for documenting the results of medical examinations of survivors of domestic violence or persons who are likely to be survivors of domestic violence for cases of conflict-related sexual violence. Use of this form leads to gaps in documentation of sexual violence and subjects survivors of conflict-related sexual violence to procedural requirements for domestic violence such as mandatory reporting.

While the domestic violence documentation framework includes some forensic elements, it is not designed to capture the comprehensive evidence necessary for the prosecution of conflict-related sexual violence including detailed information about incidents and perpetrators. Moreover, the current domestic violence framework requires evidence of physical harm. Thus, cases of conflict-related sexual violence in which physical signs and symptoms have otherwise been resolved or where other forms of conflict-related sexual violence such as forced nudity are committed may not be recognized. The Prosecutor General's Office has developed new guidelines for the identification of various forms of conflict-related sexual violence. This information is not immediately available to clinicians through the Ministry of Health distribution channels.

The domestic violence framework requires clinicians to mandatorily report domestic violence to law enforcement. No such requirement exists for survivors of conflict-related sexual violence and government policies, particularly the recently adopted Strategic Plan on the Implementation of Powers of the Prosecutor's Office in the Field of Criminal Prosecution for Conflict-Related Sexual Violence,¹⁴ affirm the need to respect such survivors' will and right to informed consent. Yet, where clinicians are utilizing domestic violence protocols for documentation of conflict-related sexual violence, there is confusion amongst providers about whether these survivors must mandatorily be reported.

f

The adoption of a new form entitled the Certificate for the Documentation of Bodily Injuries¹⁵ holds promise in allowing non-forensic expert clinicians to conduct and transmit standardized documentation of all forms of sexual violence and torture, including conflict-related. However, measures are necessary to build support and skills amongst the health and legal sectors to utilize the form effectively. Further, key amendments to the form could significantly improve its usefulness in capturing evidence for prosecution, referrals, and remedies. *See box: Certificate for the Documentation of Bodily Injuries*

g

There is currently a lack of coordination across sectors, with medical, judicial, law enforcement, and legal professionals working in silos. There is also a lack of multi-sectoral training to encourage effective collaboration among these sectors, including building the capacity of lawyers and judges to understand the full scope of information that can be gathered in forensic evaluations and how to interpret forensic evidence.

h

To date, there are insufficient practitioners in Ukraine trained in conducting rigorous, trauma-informed FMEs and individuals trained in trauma-informed practices and survivor-centered approaches at all stages of the pathway to justice.

Current Legislative and Policy Efforts in Ukraine

Since February 2022, Ukrainian authorities have implemented positive steps to improve interaction with survivors and to strengthen the capacity to document crimes, including, for example, the establishment of a new, specialized unit within the Prosecutor General's Office to investigate cases of conflict-related sexual violence as well as a Coordination Center for Victim and Witness Support, and the launch of a reform of the forensic service.¹⁶

In addition to Order No. 278¹⁷, which regulates the documentation of medical exam results for survivors of domestic violence and serves as a significant framework for documentation, the Ministry of Health has also adopted a new standardized form: the Certificate for the Documentation of Bodily Injuries.¹⁸ Based on the Istanbul Protocol, internationally renowned guidelines for documentation of torture, it is supposed to be rolled out to all doctors opening up documentation of sexual violence and torture to non-forensic experts.

Furthermore, certain legislative initiatives are registered in the Verkhovna Rada of Ukraine, which have a direct impact on the specifics of forensic evaluation. For example, the draft law No. 10420 on the implementation of the Istanbul Convention further proposes amendments to Article 242 of the Criminal Procedural Code of Ukraine (grounds for conducting an

evaluation) regarding the immediate evaluation of survivors of criminal offences under Articles 152, 153, 155 and 156 of the Criminal Code of Ukraine at the request of the survivor (not voted by the Verkhovna Rada of Ukraine).¹⁹

The draft laws "On Forensic Expert Activity" No. 6284 from November 5, 2021,²⁰ and its alternatives No. 6284-1, 6284-2 and 6284-3 as well as No. 6285²¹ from November 5, 2021, and its alternative No. 6285-1, are aimed at changing approaches to forensic expert activity, determining the status, rights and duties of forensic experts and relevant institutions. Processing in the committees of the Verkhovna Rada of Ukraine and consideration by the Verkhovna Rada of Ukraine of relevant legislative initiatives will result in changes in the organization and conduct of forensic evaluations.

Civil society initiatives and international organizations are supporting the efforts to improve medico-legal documentation. Together with national and international advisors, the Prosecutor General's Office developed and approved Standards for the Investigation of Torture which include basic guidelines for prosecutors and investigators on forensic evaluations.²² Standard operating procedures are being drafted that would include guidelines for strengthening forensic pathways.²³

International Standards

There are now global standards and benchmarks for forensic medical evaluations for conflict-related sexual violence, torture and other cruel, degrading treatment or punishment developed through robust international consultations and peer-reviewed

evidence. These good practices are all built on the foundation of the principles outlined in three manuals to which PHR and our partners have contributed. These are:

1

The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol),²⁴ which provides guidance for the investigation and documentation of all forms of torture, including sexual torture, and promotes the protection of torture survivors and advocacy work of civil society on behalf of survivors;

2

The International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, which highlights best practices in the medico-legal evaluation of survivors of conflict-related sexual violence;²⁵ and

3

The Murad Code for Gathering and Using Information About Systematic and Conflict-Related Sexual Violence, which focuses on cross-sectoral trauma-informed practices and survivor-centered approaches to engagement with survivors of sexual violence.²⁶

These manuals are widely considered global references for the medico-legal evaluation of survivors and are used in conflict settings worldwide.

According to the Istanbul Protocol, any licensed clinician can be trained to carry out forensic evaluations. The Istanbul Protocol notes (para 303): "Conducting evaluations in accordance with the Istanbul Protocol does not require

certification as a forensic expert, even though this may be the normative practice in some States and is sometimes used to intentionally exclude the testimony of independent clinicians from court proceedings.”²⁷

Similarly, the World Health Organization’s guidelines for medico-legal care for victims of sexual violence explicitly state that “district medical officers, police surgeons, gynecologists, emergency room physicians and nurses, general practitioners, and mental health professionals” should be able to carry out such evaluations.²⁸ According to these guidelines, “It will be of great benefit to the patient if any forensic evidence, if relevant, is collected during the medical examination; ideally, the health worker performing the medical assessment should also provide the forensic or medico-legal service, if properly trained to do this.”²⁹

For effective medico-legal documentation, whether it is an in-depth evaluation according to the Istanbul Protocol or a brief evaluation at the primary level, it is crucial to train front-line clinicians on effective documentation and referral protocols.³⁰ Clinicians should be trained in obtaining informed consent; in documenting current symptoms and signs, and in communicating how patients can report to local, national, or international entities for further investigation.³¹

Along with training, clinicians need standardized documentation tools and procedures, including medico-legal certificates, to ensure that collected evidence can be used in legal processes. Standardized documentation has been shown to lead to better outcomes for survivors in courts.³² Standardized protocols such as the Istanbul Protocol for interviewing and examining survivors should be followed to enhance the quality, comprehensiveness, and accuracy of evidence collected on sexual violence and torture.

It is also important to reinforce that even when it is not possible to secure an evaluation, a strong case for establishing the veracity of a violation can still be made. As the International Protocol declares: “In international criminal practice, the use of medico-legal evidence to prove Conflict and Atrocity-Related Sexual Violence is not necessary. Such a requirement would impose an impossible barrier to justice for most victims who do not have access to medical services close to the time the sexual violence was perpetrated. This is particularly true in cases where the sexual violence has been perpetrated in the context of detention or forcible displacement, sexual slavery, and where ongoing violence makes mobility and access to health services impossible.”³³ While forensic evaluations are helpful when possible and can play an important part in an investigation, their absence should not be on their own an obstacle for survivors, prosecutors, investigators, and judges to proceed with a case.

Recommendations

The Government of Ukraine and Verkhovna Rada of Ukraine, as well as the Prosecutor General’s Office, National Police and other stakeholders should:

- **Take measures to allow forensic medical evaluations from trained clinicians in addition to state-affiliated forensic experts, to be admissible** in cases concerning conflict-related sexual violence as well as torture, cruel, inhuman, and degrading treatment or punishment or punishment brought by the Prosecutor General’s Office or other domestic or hybrid mechanisms. These measures should include allowing clinicians – including non-physicians (for instance, nurses) – to be trained on forensic documentation and permitted to conduct forensic medical evaluations and to allow international non-Ukrainian experts to be authorized to conduct evaluations where national capacity is insufficient.

- Amend Article 7 of the Law of Ukraine "On Forensic Expertise" by deleting the provision: "forensic expert activities related to forensic, forensic medical and forensic psychiatric expertise are carried out exclusively by state specialized institutions" with the aim of increasing health workforce capacity to document and utilize medico-legal evidence of conflict-related sexual violence and torture.

- **Clarify that investigators have discretion to determine when forensic medical evaluations are necessary**, including but not limited to the grounds listed in the Criminal Procedure Code of Ukraine, and ensure survivors’ consent is obtained before performing an examination.

- Review the grounds for mandatory forensic medical examination in war crimes proceedings in the event of the objective impossibility of conducting it in a timely manner to ensure compliance with the criminal procedure during the investigation of war crimes (art. 242, art. 615 of the Criminal Procedure Code of Ukraine). Part 2 of Art. 242 in its current version threatens the parties’ right and opportunity to choose the evidence they wish to present and poses a risk of acquittal of war criminals in the future in case of a failure to carry out an evaluation.

- **Develop, adopt, and roll out comprehensive standardized forensic documentation to support clinicians and forensic experts** in documenting conflict-related sexual violence, torture, cruel, inhuman and degrading treatment or punishment in a trauma-informed and survivor-centered manner, including requiring the use of the Certificate for the Documentation of Bodily Injuries with recommendations made by PHR.

Certificate for the Documentation of Bodily Injuries

The adoption of this form has been a major improvement, but critical provisions still need to be strengthened. The following recommendations have been provided by PHR to the Ministry of Health:

- ***The medico-legal documentation form requires some enhancements to ensure comprehensive and survivor-centered documentation.***
 - First, it should incorporate a section addressing patient informed consent at the outset, aligning with ethical principles and legal requirements.
 - Additionally, to facilitate a thorough understanding of the patient's history, the form should include a dedicated section describing the circumstances of the assault or encounter. This would allow health care professionals to gather pertinent information before proceeding to the physical examination, ensuring a holistic approach to documentation.
 - To streamline the documentation process and accommodate multiple examinations, it is essential to include fields capturing both the examination date and the certificate date. This would align with trauma-informed practices, recognizing that victims may require breaks during examinations.
 - Also, by adding an "Other" category under the "Gender" section, the form can better accommodate diverse patient populations. Similarly, asking for "Nationality" would allow to document wider groups of the population.
- ***Expand the form to encompass psychological assessments and behavioral observations is imperative.*** This expansion would enable health care professionals to document not only physical health complaints but also the psychological impact of the assault or encounter. Additionally, incorporating fields for recording the circumstances of injuries, description of perpetrators, and injury context would ensure the form is aligned with international protocols and ensures thorough documentation.
- ***Relocate the "Diagnosis" section to the end of the form and redefine it as an "Assessment."*** This adjustment would underscore the evaluative nature of the documentation, rather than prematurely assigning diagnoses. Furthermore, leaving descriptions of bruises and abrasions open-ended, rather than restricting them to specific categories, would prevent errors and enhance accuracy in documentation.
- ***Explicitly mention pregnancy and STI (sexually transmitted infections) tests in the form's additional tests and examinations section to ensure comprehensive health care provision for survivors.*** Similarly, considering the inclusion of a children-specific chart would cater to the unique needs of pediatric patients, enhancing the form's applicability across diverse demographics. Furthermore, incorporating sections for referrals and treatment/therapy plans would promote continuity of care and facilitate collaboration among health care providers.
- ***Specify each health care provider's examination role and utilize higher-quality pictograms to enhance clarity and accountability in the documentation.*** It is also advised to expand the circle of those allowed to fill out the form from doctors to (trained) health care workers.

The instructions accompanying the form should reflect all these changes. Clinicians should receive clear guidelines on how to incorporate the evaluation into their routine patient admissions and be trained on its implementation.

- **Prioritize capacity-building for all clinicians, including non-forensics experts, on survivor-centered, trauma-informed forensic documentation of sexual violence, and torture, cruel, inhuman and degrading treatment or punishment** in line with international standards, including through immediate training programs to respond to current cases as well as the adoption of such training into pre-service training for all clinicians. Legislative changes will have limited impact without their practical application, therefore, the National School of Judges, the Higher School of Advocacy, and the Training Center for Prosecutors should be supported

to introduce training programs that would cover expert scientific methodology and how to effectively collaborate with forensic experts and the medical sector.

- **Update the procedure for conducting and documenting the results of medical examinations of survivors by amending the relevant regulations³⁴ or adopting a new bylaw**, defining the specifics of reporting cases of sexual violence in a broad sense (which may fall under the scope of criminal offences against sexual freedom and integrity or conflict-related sexual violence), taking into account informed consent.

*Procedure for Conducting and Documenting the Results of Medical Examination of Victims of Domestic Violence or Persons Who Are Likely to Be Victims of Domestic Violence and Providing Them with Medical Care.*³⁵ The medical certificate documentation form should be revised to include space for detailed injury descriptions, use of pictograms, and comprehensive information about the incident and perpetrator. It should also outline referral plans to ensure proper follow-up care and support. The form needs to account for STIs and pregnancy, ensuring a complete health assessment. While the domestic violence documentation framework is useful, it is incomplete for conflict-related sexual violence and should be adapted.

Other specific legislative changes are recommended to ensure a survivor-centered approach:

- Amend Part 1 of Article 242 of the Criminal Procedure Code of Ukraine, providing the survivor the legal possibility to engage an expert in criminal proceedings.
- Amend clauses 1 and 2 of Part 1 of Article 243 of the Criminal Code of Ukraine, giving the survivor the right to apply to the investigating judge in the presence of the circumstances provided for in Part 1 of Article 243 of the Criminal Code of Ukraine.
- Include the survivor among the parties that can independently collect samples, petition the investigator, and investigating judge for the collection of biological samples.
- Amend Part 1 of Article 244 of the Criminal Procedure Code in terms of conducting a forensic evaluation at the expense of the State Budget for survivors of war crimes without the need to prove the fact impossibility of attracting an expert independently due to lack of funds.

The international community and civil society actors should provide technical and financial resources to support the national efforts outlined above, as well as:

- Support the introduction and dissemination of standardized forms for forensic documentation that align with international best practices and national regulations.
- Support multisectoral and advanced specialized training to introduce standardized forensic documentation forms, build skills in high-quality survivor-centered forensic documentation and how to interpret such evidence, and promote collaboration, cooperation, and clarity concerning roles and protocols.
- Introduce training for clinicians, social workers, and other providers across the system on vicarious trauma, as well as ensure the necessary resources for ongoing support.

Conclusion

Supporting survivors in their healing, recovery, and pursuit of justice requires innovative approaches and collaboration across sectors and among stakeholders. Addressing this crisis demands collective effort, particularly in strengthening medico-legal documentation, to ensure that survivors have access to comprehensive care and justice they deserve.

Endnotes

1. Human Rights Council, Report of the Independent International Commission of Inquiry on Ukraine, U.N. A/HRC/55/66, March 18, 2024, para. 86, <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/a-hrc-55-66-aev.pdf>.
2. See footnote 1.
3. “310 cases of wartime sexual violence documented in Ukraine,” Mezha, August 8, 2024, <https://mezha.net/ua/bukvy/v-ukraini-zadokumentovano-310-faktiv-seksualnoho-nasylstva-vchynenoho-v-umovakh-viiny/>.
4. Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 on Gender-Based Violence Against Women, U.N. Doc. CEDAW/C/GC/35 (2017); Committee on the Elimination of Discrimination against Women, General Recommendation No. 30 on Women in Conflict Prevention, Conflict, and Post-Conflict Situations, U.N. Doc. CEDAW/C/GC/30 (2013); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment arts. 13-14, Dec. 10, 1984, 1465 U.N.T.S. 85; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/147, 15 December 2005, VI. Treatment of victims, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation#>.
5. The prohibition on torture and CIDT has been recognized as including sexual and other forms of gender-based violence by numerous UN human rights bodies and international courts. Sexual and gender-based violence can amount to torture and cruel, inhuman, and degrading treatment where the requisite elements are met (severity, purpose, public official involvement and intent). It can also include “acts or threats as forced nudity, verbal sexualized threats, sexualized degrading or humiliating mocking and other verbal or physical treatment, sexual assault by touching intimate parts of the body, digital penetration, forced masturbation, forced insertion of an object into the vagina or anus, oral rape, anal rape and vaginal rape, ejaculation or urination onto the victim, sexual slavery, forced pregnancy and enforced sterilization.” Please see <https://www.ohchr.org/en/calls-for-input/2024/identifying-documenting-investigating-and-prosecuting-crimes-sexual-torture>. This brief will include a discussion of the full breadth of torture and ill-treatment, including where it manifests as sexual or other forms of gender-based violence such as reproductive violence. While we recognize that sexual and gender-based violence is a form of torture and ill-treatment, given that in many sectors torture and sexual and gender-based violence may be handled by different actors, this brief utilizes the term “torture and sexual violence.”
6. General comment no. 3, 2012: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: implementation of article 14 by States parties. See <https://www.ohchr.org/en/documents/general-comments-and-recommendations/catcgc3-general-comment-no-3-2012-implementation>; CEDAW General Recommendation 35, paragraph 28: All measures should be implemented with an approach centered around the victim/survivor, acknowledging women as right holders, and promoting their agency and autonomy, including the evolving capacity of girls, from childhood to adolescence. In addition, the measures should be designed and implemented with the participation of women, taking into account the particular situation of women affected by intersecting forms of discrimination. See https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2467.pdf; UN Security Council Resolution 2467 (2019), S/RES/2467(2019): Strengthens justice and accountability and calls for a survivor-centered approach in the prevention and response to conflict-related sexual violence. See <https://documents.un.org/doc/undoc/gen/n19/118/28/pdf/n1911828.pdf>.
7. The initial assessment was undertaken with the support of the Dr Denis Mukwege Foundation.
8. Office of the United Nations High Commissioner for Human Rights, “Istanbul Protocol: Manual on the Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” HR/P/PT/8/Rev. 2, 2022, https://www.ohchr.org/sites/default/files/documents/publications/2022-06-29/Istanbul-Protocol_Rev2_EN.pdf; Sara Ferro Ribeiro and Danaé van der Straten Ponthoz, “International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Best Practice on the Documentation of Sexual Violence as a Crime or Violation of International Law,” UK Foreign & Commonwealth Office, March 2017, https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/06/report/international-protocol-on-the-documentation-and-investigation-of-sexual-violence-in-conflict/International-Protocol_2017_2nd_Edition.pdf.
9. Office of the United Nations High Commissioner for Human Rights, “Istanbul Protocol: Manual on the Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” HR/P/PT/8/Rev. 2, 2022, https://www.ohchr.org/sites/default/files/documents/publications/2022-06-29/Istanbul-Protocol_Rev2_EN.pdf.
10. “Strengthening Forensic Documentation of Torture and Conflict-Related Sexual Violence in Ukraine: Technical Assessment and Key Recommendations,” Physicians for Human Rights, May 2024, <https://phr.org/wp-content/uploads/2024/07/PHR-Strengthening-Forensic-Documentation-of-Torture-ENG.pdf>.
11. There were 21 semi-structured interviews conducted with stakeholders in Kyiv and Lviv, including health facility representatives, civil society organizations, survivors’ groups, legal experts, law enforcement, and government agencies. Several interviews involved multiple participants or representatives of several departments and were conducted uninterruptedly and are thus counted as one interview.
12. Article 7 of the Law of Ukraine “On Forensic Examination” stipulates that forensic activities that are part of a criminal, medical, or psychiatric forensic evaluation are carried out exclusively by specialized governmental agencies, including by forensic medical experts.
13. The organizational aspects of forensic expert activity are defined in the Law of Ukraine “On Forensic Expertise,” from February 25, 1994, № 4038-XII, <https://zakon.rada.gov.ua/laws/show/4038-12#Text>. Article 7 of the Law stipulates that forensic activities that are part of a postmortem, medical, or psychiatric forensic evaluation are carried out exclusively by specialized governmental agencies, including by forensic medical experts. In addition, psychological evaluations can also be carried out by other experts who are not necessarily part of state agencies but still, as a rule, have to be registered in the State Register of Certified Forensic Experts.
14. Strategic Plan on the Implementation of Powers of the Prosecutor’s Office in the Field of Criminal Prosecution for Conflict-Related Sexual Violence, Prosecutor General’s Office of Ukraine, 2023, <https://www.gp.gov.ua/ua/posts/specializovani-dokumenti>.
15. On Amendments to Clause 1 of the Order of the Ministry of Health of Ukraine No. 110 dated 14 February 2012, Ministry of Health of Ukraine; Order, Certificate, Form [...] from February 2, 2024, No. 186, <https://zakon.rada.gov.ua/laws/show/z0243-24#n4>.
16. “The Government has allocated a subvention for the functioning of forensic services during the transitional period of their reform,” Cabinet of Ministers of Ukraine, June 27, 2023, <https://www.kmu.gov.ua/news/uriad-vydilyv-subventsiiu-na-funktsionuvannia-sudovo-medychnykh-sluzhb-pid-chas-perekhidnoho-periodu-ikh-reformuvannia>; Order of the Ministry of Health of Ukraine dated 29.09.2023 No. 1712 “On Approval of the Action Plan for the Transformation of the Forensic Medicine System of Ukraine”, <https://moz.gov.ua/article/ministry-mandates/nakaz-moz-ukraini-vid-29092023--1712-pro-zatverdzhennja-planu-zahodiv-z-realizacii-transformacii-sistemi-sudovo-medichnoi-ekspertizi-ukraini>. In addition, in 2023, the Ministry of Health called for implementation of training on the Istanbul Protocol – international guidelines for the documentation of medical evidence of torture and its consequences – into the curriculum as part of the educational program “Health Care” at higher education institutions. See Report of the Ministry of Health of Ukraine on the implementation in 2022 of the Action Plan for the implementation

Endnotes

continued

- of the National Human Rights Strategy for 2021-2023, approved by the Order of the Cabinet of Ministers of Ukraine No. 756-r dated June 23, 2021, https://moz.gov.ua/uploads/8/44409-dokument_no118_o_70_23_id3934000.pdf
17. Order 278 "On Approval of the Procedure for Conducting and Documenting the Results of Medical Examination of Victims of Domestic Violence or Persons Allegedly Affected by Domestic Violence and Providing Medical Care to Them," February 1, 2019, <https://zakon.rada.gov.ua/laws/show/z0262-19#Text>.
18. On Amendments to Clause 1 of the Order of the Ministry of Health of Ukraine No. 110 dated 14 February 2012, Ministry of Health of Ukraine; Order, Certificate, Form [...] from February 2, 2024, No. 186, <https://zakon.rada.gov.ua/laws/show/z0243-24#n4>
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