

COMPILATION OF WRITTEN RECOMMENDATIONS

(Covering Working Sessions 8-9)

This compilation contains recommendations submitted to the HDIM Documentation Centre in accordance with the established procedure. The compilation is organized by Working Sessions and by what was submitted by Delegations / International Organizations / NGOs to participating States and, separately, to OSCE Institutions / Field Missions or other International Organizations. Recommendations are compiled in original language.

Please note that the deadline for submitting Recommendations to the HDIM Documentation Centre is Thursday, 12 October 2006.

Friday, 05 October 2006

WORKING SESSION 8 – Rule of Law I, including:

Recommendations to participating States:

Exchange of views on the question of the abolition of capital punishment

International Federation for Human Rights (FIDH):

- Mettre un terme immédiat aux exécutions en adoptant un moratoire, suivi dans les plus brefs délais d'une loi abolissant la peine de mort;
- Rendre publique des statistiques concernant le nombre de condamnés, détenus et les personnes exécutées;
- Ratifier le deuxième protocole additionnel au Pacte sur les droits civils et politiques et le protocole 13 de la Convention européenne des droits de l'Homme visant l'abolition de la peine de mort;
- Coopérer pleinement avec les mécanismes onusiens et européens des droits de l'Homme;
- Procéder aux réformes nécessaires pour améliorer les conditions de vie des personnes détenues, conformément aux normes internationales et régionales;
- Prendre les mesures nécessaires afin que le droit à un procès équitable, tel que consacré par les instruments internationaux et régionaux, soit pleinement respecté;
- Faciliter l'accès aux avocats à toutes les étapes de la procédure;
- Mener des enquêtes indépendantes sur toute allégation de torture et d'autres traitements inhumains ou dégradants, conformément aux articles 12 et 13 de la Convention de l'ONU contre la torture, et poursuivre les responsables de tels faits;

- Assurer que des éléments recueillis sous la torture ou d'autres traitements inhumains ou dégradants ne sont pas admis comme preuves dans le cadre des procédures judiciaires;
- Permettre aux victimes des tels actes de recevoir une réparation.

International Helsinki Federation for Human Rights:

To the governments of **Kazakhstan**, **Kyrgyzstan**, the **Russian Federation**, and **Tajikistan**, all which have moratoria currently in place:

- Take steps to fully abolish the death penalty as a matter of priority;
- Pending full abolition, the authorities of Kyrgyzstan and Kazakhstan should ensure that legislation allows for the commuting of all death sentences into other prison terms. Also, they should disclose the number of persons currently on death row and improve living conditions for death row prisoners, which often fail to meet international standards.

To the government of **Belarus**:

- While taking steps to completely abolish the death penalty, enact an immediate moratorium to end all executions and death penalty sentences;
- Commute all death sentences to other prison terms;
- Release information relating to the current number of death row prisoners, disaggregated information on the number of executions per year, locations of the graves of executed persons, and dates of future executions, amongst others;
- Take measures to improve prison conditions, especially for death row prisoners so as to meet international standards.

To the government of **Uzbekistan**:

- Enact an immediate moratorium to end all executions and death penalty sentences;
- Commute all death sentences to other prison terms pending full abolition of the death penalty;
- Release information relating to the current number of death row prisoners, disaggregated information on the number of executions per year, locations of the graves of executed persons, and dates of future executions, amongst others;

- Ensure that when individual complaints have been filed to the UN Human Rights Committee relating to the right to life, executions are stayed while awaiting a decision of the Committee;
- Take measures to improve prison conditions, especially of those prisoners who will be serving long prison terms once abolition is enacted.

The authorities of the **United States**:

- While taking steps to completely abolish the death penalty, enact an immediate moratorium to end all executions and death penalty sentences;
- Withdraw its reservation to article 6 of the International Covenant on Civil and Political Rights;
- Reduce the number of crimes which carry the death penalty so that only the most serious crimes are punishable by the death penalty;
- Take measures to improve conditions for death row prisoners;
- Take measures to prevent executions of mentally ill persons.

To the **OSCE and its participating States**:

- Actively seek to ensure that commitments regarding the death penalty are upheld by all participating States, in particular with regard to the public availability of information concerning the death penalty.

Mothers against the Death Penalty and Torture

- Наложить мораторий на исполнение смертной казни в Узбекистане до полной отмены наказания виде смертной казни из законодательства Узбекистана.
- Открыть доступ к информации о статистических данных приговорённых к смертной казни и расстрелянных в Узбекистане.
- Открыть родственникам места захоронения, расстрелянных в Узбекистане.

Prevention of torture

Freedom House:

To the Government of Uzbekistan:

- International obligations compel Uzbekistan to prosecute individuals for torture.
- Targeting categories of population in a discriminatory manner, can produce a resentment, which can jeopardize the security of the entire country and the region.
- Torture should not be used as an instrument against religious people or against those suspected of extremism because it is wrong, it is illegal, and it is counterproductive.
- Finally, if there is political will to tackle this problem, the Government of Uzbekistan can rest assured that there are enough international governmental and non governmental organizations that can assist any effort to improve legislation and practice with regards to torture.

To the International Community

- The further failure by the Government of Uzbekistan to tackle torture and other grave human rights violations must be accompanied by an appropriate action from the international community, including sanctions.

International Helsinki Federation for Human Rights:

To the government of **Germany**:

- Call on the US authorities to thoroughly investigate the allegations that Murat Kurnaz was subjected to torture and ill-treatment while detained at Guantánamo Bay with a view to bringing to justice those guilty of such abuse and repeat previous calls to the US government to close its detention facility at Guantánamo Bay and promptly release those detained there unless they can be prosecuted with recognizable offences and granted trials consistent with international due process standards;
- Make representations to the Syrian government to treat Mohammed H. Zammar fully in accordance with international standards and charge him with recognizable offences and grant him a prompt and fair trial or, else, release him.

To the government of **Sweden**:

- Call on the Egyptian authorities to protect Ahmed Agiza and Muhammad El-Zary from any further human rights violations, including by granting Agiza a new, fair trial in a civil tribunal or allowing him to be heard by a Swedish court;
- Lift the prohibition on returning to Sweden imposed on the two men and actively press the Egyptian government to allow the men to leave Egypt;
- Grant Ahmed Agiza and Muhammad El-Zary just compensation for the human rights violations they have suffered as a result of the decision by the Swedish government to expel them to Egypt.

To the government of the **United Kingdom**:

- Revoke the so-called memoranda of understanding that have been agreed with the governments of Jordan, Lebanon and Libya and halt any ongoing negotiations about similar agreements with other countries that have well-established records of torture and ill-treatment;
- Refrain from deporting the Algerian terrorist suspect known as “Y” on grounds that he would be at risk of torture and ill-treatment if returned to Algeria.

To the government of the **United States**:

- Ensure that all agencies of government, including the intelligence services, are strictly bound by rules consistent with international standards prohibiting torture and other forms of ill-treatment in the interrogation and treatment of detainees at all locations under US control;
- Make sure that all US officials or other persons acting on behalf of the government can be prosecuted before national courts for any treatment violating the international ban on torture and cruel, inhuman or degrading treatment, irrespective of where such acts have been perpetrated;
- Investigate all allegations that individuals held in US custody have been subjected to treatment proscribed under international law in a prompt, thorough and impartial manner, and ensure that the perpetrators – irrespective of their rank – are brought to justice and punished in accordance with the seriousness of the crimes they have committed;
- Discontinue the program of secret detention facilities operated by the intelligence services and grant everyone apprehended in the “war on terror” prompt access to courts, lawyers and family members as well as the right to visits by independent monitoring bodies.

To the **OSCE participating States:**

- Reaffirm the absolute character of the prohibition on torture and other cruel, inhuman or degrading treatment and recognize that they are strictly bound by this prohibition, as established by international law, in the implementation of all their counter-terrorism activities;
- Ensure that no foreign intelligence information allegedly obtained through torture or ill-treatment is admitted as evidence by courts unless it can be proven beyond reasonable doubt that it was not extracted through coercion;
- Never send anyone to a country where torture and ill-treatment are routinely used, even if they have obtained so-called diplomatic assurances for their safety;
- Refrain from participating in any joint counter-terrorism activities where there are grounds to believe that these activities, in direct or indirect ways, may promote, facilitate, contribute to or serve to condone the use of torture or other forms of ill-treatment prohibited by international law;
- Investigate, in an effective, open and transparent manner, any alleged cases of past counter-terrorism cooperation undermining the prohibition on torture and ill-treatment with a view to holding accountable any officials guilty of complicity or participation in acts of torture or ill-treatment and to preventing such illegal cooperation from re-occurring in future;
- Promptly ratify/accede to the Optional Protocol to the UN Convention against Torture if they have not yet done so.

International Rehabilitation Council for Torture Victims:

- There is an urgent need to expand the Fund's donor base and to increase existing contributions. The IRCT urges all OSCE member States to increase their financial support to the UNVFVT in order to enable the Fund to provide sustainable, long-term funding to rehabilitation centres and programmes worldwide with a special focus on the South.
- Moreover, OSCE member states must ensure the financial viability of rehabilitation centres and programmes within their own borders. States have the responsibility to ensure that the torture survivors receive rehabilitation, an adequate form of reparation and that the perpetrators are brought to justice. Furthermore, we wish to recall EU States the EU 2003/9/EC minimum standards of reception of asylum seekers which establishes that States shall ensure necessary medical treatment for victims of torture and other forms of ill treatment.

- The IRCT calls on all OSCE's member countries' governments to do everything in their power to ensure that all detainees and prisoners are treated humanely according to the standards set out in international law.
- In particular we strongly encourage those members who have not yet done so to ratify the OPCAT so as to ensure that medical and other experts have unhindered access to detainees and prisoners in all places of detention at any time. By signing the Protocol, States demonstrate their commitment to preventing torture and upholding their obligation to respect the inherent dignity of the human person.
- The IRCT encourages the prompt implementation of the OPCAT and the establishment of independent national visit mechanisms.
- The IRCT further encourage States to include medical forensic experts as part of such mechanisms in order to diagnose and document symptoms of torture and ill-treatment. In this connection the IRCT stresses that the Istanbul Principles, which has been recommended by the UN General Assembly (GA Res. 55/89 of 2000), is an essential tool in the investigation and documentation of alleged cases of torture.

Kharkiv Human Rights Group:

The Government of Ukraine should do the following:

- To start the work on creating national preventive mechanisms provided by the Optional Protocol to the UN Convention against Torture;
- To determine in the legislation the starting point of detention and not to tie the determination of that moment with a formal action by an executive authority;
- To provide clear procedure of immediate notification of relative and close friends of a detained person;
- To abolish legislative provisions that limit a circle of people, who can be notified about suspect's detention; refusal in notifying a person, pointed out be a detainee, must be substantiated with reference to the legal grounds;
- To abolish legislative provisions, which stipulate meetings of a detained person with his lawyer for the discretion of the prosecution at access of a lawyer to his or her client must be streamlined as much as possible, while practical issues of lawyer's access to a detainee must be dealt with by an independent person;
- To widen a circle of people eligible for free legal aid and set up clear criteria for determination of indigent status of accused persons;

- To set up fair fees for lawyers, who provide legal aid at the expense of the state finances;
- To allocate sufficient funds for reimbursement of free legal aid;
- To abolish from the legislation any provisions that directly or indirectly allow delays in the bringing to a judge longer than it is prescribed by the Constitution;
- To clearly define in the criminal legislation elements of crime “unlawful taking into custody, detention, or arrest;
- To introduce amendments to the Ukraine’s Code of Administrative Offences, which would provide accused in the offences entailing administrative arrest, with the guarantees of fair court procedure;
- To provide in the legislation a possibility for detained person’s access to a physician at his or her own choice;
- To introduce in the legislation provisions that validate as evidence conclusions prepared by experts at “detained person’s own choice equal as those prepared by experts assigned by the prosecution;
- To clarify in the law a subject matter of consideration at first appearance in court, as well as during the following detention hearings;
- To provide in the legislation the right for a detainee to initiate a periodical judicial review of the legality of his or her detention during the whole period of his or her being in custody;
- To authorize a judge to initiate investigation of detained person’s claims about torture, if in the course of any court consideration, the detainee claims about the use of tortures, or other circumstances point to it;
- To carry out training of investigators on methods of effective investigation of tortures;
- The legislation and court practice should not tie the decision on admissibility of confessions with the decision on personal responsibility of persons, involved in the use of tortures; the admissibility of confessions must be decided on the basis of independent criteria and the obligation to prove voluntary nature of confession must be incumbent on prosecution;
- The legislator and higher judicial authorities should develop, and courts should follow a context-sensitive approach to assessment of the credibility of the statements made by accused persons about their being subjected to torture and other forms of unlawful coercion;

- To create legislative provisions, which make it impossible to apply amnesty and parole for people who have committed actions, which have elements of <<torture>> in the understanding of Article 1 of the UN Convention against Torture;
- To create effective mechanisms of public control over investigations into allegations of torture and ill-treatment, which take place in law enforcement agencies and other closed institutions;
- To establish a clear presumption in favor of a person's release and provide that the onus of providing proof about grounds for detention be shifted to the prosecution;
- To introduce provisions which would exclude remand in custody or its extension on the basis of purely hypothetical assumptions that a person could abscond, hamper the establishment of truth in the case, or continue his or her criminal activity;
- To review the legislative framework of forensic examination in order to provide the involvement of non-state experts and expert bureaus;
- To exclude from legislation those provisions which make it impossible or complicated for victims and their legal representatives to obtain documents containing medical information concerning victims, including conclusions by medical experts, regardless of the title and nature of those conclusions;
- To prepare procedure, this would encourage the use of bail instead of detention.

NGOs of Ukraine should do the following:

- To actively participate in the work on creating national preventive mechanisms provided by the Optional Protocol to the UN Convention against Torture and monitoring how the government fulfill its obligations under this Protocol.

International humanitarian law

International Helsinki Federation for Human Rights:

To the **Russian authorities and the federal side** of the conflict:

- Immediately put an end to arbitrary detentions, torture, ill-treatment, enforced "disappearances," and extra-judicial executions, as well as stop targeting civilian dwellings in their operations.

To the government of the **Russian Federation:**

- Insist on accountability for all atrocities that have taken and are taking place in Chechnya and the adjacent regions. It should ensure independent and meaningful

investigations into all reported crimes allegedly committed by members of security forces against civilians in Chechnya or Ingushetia and publish a detailed list of all current and past investigations into such abuses and indicate their current status. Likewise, it should publish a complete list of all persons who have “disappeared” in the course of the second Chechen war, with a detailed description of what is known about these “disappearances”;

- Desist from coerced returns of internally displaced persons to Chechnya and instead ensure their security and protection in accordance with the Guiding Principles on Internal Displacement⁸ and other relevant international standards;
- Grant a meaningful amnesty for rebel fighters and assist their return to peaceful life. A special representative of either the Russian President or the State Duma should be appointed to oversee the course of the amnesty and ensure the safety of those amnestied;
- Take effective measures to reduce the risk of eruptions of violence and avoid further distabilization in the adjacent regions of Chenchnya (Ingushetia, North Ossetia, Dagestan and Kabardino-Balkaria). Such measures should especially focus on the operation of the Interior Ministry and Federal Security Service officials.

To all groups on the side of the **Chechen rebel fighters**:

- Refrain from all activities, which endanger the civilian population.

Protection of human rights and fighting terrorism

Switzerland:

- Recalling the 2004 *Sofia Ministerial Statement on Preventing and Combating Terrorism*, the *OSCE Charter on Preventing and Combating Terrorism* of 2002 and *The Bucharest Plan of Action for combating terrorism* of 2001, Switzerland urges all participating States to respect international human rights law, international humanitarian law and international refugee law in their struggle against terrorism.
- Switzerland recommends to participating States to ensure that all detainees, including those detained in relation to terrorists acts, have access to justice and enjoy fair trials.
- Switzerland welcomes the Council of Europe 2002 *Guidelines on Human Rights and the Fight Against Terrorism* as a useful framework for States in their fight against terrorism.

Recommendations to the OSCE:

Exchange of views on the question of the abolition of capital punishment

International Helsinki Federation for Human Rights:

To the **OSCE and its participating States:**

- Actively seek to ensure that commitments regarding the death penalty are upheld by all participating States, in particular with regard to the public availability of information concerning the death penalty.

Prevention of torture

Kharkiv Human Rights Group:

OSCE is invited [with regard to Ukraine]:

- To contribute to the work on creating national preventive mechanisms provided by the Optional Protocol to the UN Convention against Torture and efforts on the part of human rights organizations to create such mechanisms and monitoring how the government fulfill its obligations under this Protocol;
- To encourage the government to the quickest creation of such preventive mechanisms.

International humanitarian law

International Helsinki Federation for Human Rights:

To the **OSCE:**

- Demand the return of an OSCE Assistance Group with a relevant mandate to Chechnya;
- Insist on accountability for all atrocities that have taken and are taking place in Chechnya and the adjacent regions, as required above (see point one under recommendations to the government of the Russian Federation).

Protection of human rights and fighting terrorism

Council of Europe:

- To encourage states to react promptly and effectively, including through legal measures, to acts of racism and racial discrimination resulting from tensions generated by the fight against terrorism.

WORKING SESSION 9 – Rule of Law II, including:

Recommendations to the OSCE:

Right to a fair trial, including follow-up to the 3-4 November 2005 SHDM on Role of Defense Lawyers in Guaranteeing a Fair Trial

Worldrights:

Recommendation on Military Commissions Act of 2006 and compatibility with right to fair trial and effective remedies under OSCE standards:

WORLDRIGHTS recommends that the OSCE monitor US implementation of the Military Commissions Act and report in a timely manner as to its compatibility in practice with all OSCE protections under the relevant documents, including Moscow 1991, Copenhagen 1990, and Vienna 1989.