

## INTRODUCTORY STATEMENT

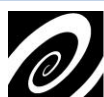


**OPEN SOCIETY**  
JUSTICE INITIATIVE

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OSCE HUMAN DIMENSION IMPLEMENTATION MEETING  
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Chairperson, Excellencies, Ladies and Gentlemen,

It is my honor to address this audience on the Rule of Law, including on the protection of human rights and fighting terrorism, torture, and capital punishment.

The 2012 OSCE Consolidated Framework for the Fight against Terrorism, while recognizing that terrorism remains an issue of significant concern, states that “[t]he OSCE participating States are committed to conducting all measures and to developing co-operation aimed at combating terrorism, in strict accordance with the rule of law, the United Nations Charter and their obligations under international law, including international human rights, refugee and humanitarian law.”

Regrettably, many participating states have not adhered to the rule of law and their international legal obligations in countering terrorism. All too often, counterterrorism operations are marked by extrajudicial killings, enforced disappearances, arbitrary detention, torture and ill-treatment, deprivation of due process, suppression of freedom of expression, association, and assembly, discrimination against minorities, and lack of accountability for these abuses. The instances and states involved are too numerous to exhaustively catalogue. Since time is short, I will provide a few examples from across the OSCE region that are illustrative of broader trends relating to counterterrorism-related human rights violations within the region.

Turkey, for example, has used overly broad antiterrorism laws to subject activists, journalists, and lawyers engaged in peaceful dissent to prolonged arbitrary detention. In 2012, the Committee Against Torture noted in its concluding observations on Russia that “[t]he Committee is concerned at numerous, ongoing and consistent reports of serious human rights abuses inflicted by or at the instigation or with the consent or acquiescence of public officials or other persons acting in official capacities in the northern Caucasus, including the Chechen Republic, including torture and ill-treatment, abductions, enforced disappearances and extrajudicial killings. It is further concerned at the State party’s failure to investigate and punish

the perpetrators of such abuses, despite the establishment of Agency No. 2 of the Chechen Republic investigation department for particularly important cases.”

Similarly, in its concluding observations on Tajikistan in 2012, the Committee against Torture voiced concern “about reports of extradition requests made by the State party of persons alleged to be members of banned Islamic groups, who, upon return to Tajikistan, are reportedly held in incommunicado detention and in solitary confinement, and subjected to torture and/or ill-treatment by law enforcement officials.”

In Spain, terrorist suspects are systematically subjected to incommunicado detention, a practice that has given rise to numerous allegations of detainee torture, and has been extensively criticized by numerous regional and international human rights bodies.

As set forth in the Justice Initiative’s recent report, *Globalizing Torture*, at least 27 OSCE participating states were implicated in the CIA-driven secret detention and extraordinary rendition programs, under the auspices of which numerous individuals were disappeared, illegally detained and ill-treated, and in many instances, tortured. These countries include Albania, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Canada, Croatia, Cyprus, Czech Republic, Denmark, Finland, Georgia, Germany, Greece, Iceland, Ireland, Italy, Lithuania, the former Yugoslav Republic of Macedonia, Poland, Portugal, Romania, Spain, Sweden, Turkey, United Kingdom, and Uzbekistan.

Notwithstanding the scale of the human rights abuses associated with these programs, the United States and most of its partner governments have failed to meaningfully acknowledge or conduct effective investigations into the abuses. The former Yugoslav Republic of Macedonia, recently held by the European Court of Human Rights to have violated rendition victim Khaled El-Masri’s rights under the European Convention, has yet to conduct an effective investigation into its involvement. Poland, Romania, and Lithuania, which hosted secret CIA prisons have similarly failed to conduct effective investigations, and are now facing litigation

before the European Court of Human Rights brought on behalf of individuals who were secretly detained and tortured in these prisons. Italy is the only country where a court has criminally convicted officials for their involvement in extraordinary rendition. Canada is the only country to issue an apology and compensation to an extraordinary rendition victim, Maher Arar. Sweden and the United Kingdom have issued compensation to extraordinary rendition victims, the latter in the context of a confidential settlement that sought to avoid litigation relating to the associated human rights violations.

Another source of concern is the expanding use by some participating states of lethal force to combat terrorism, including through the secret use of “unmanned aerial vehicles” or drones, without any disclosure of who they are killing and why. As US drone strikes are conducted beyond traditional battlefields, in Yemen, Somalia, and Pakistan, it appears that terrorism is increasingly being conflated with a global war that has neither geographic nor temporal limits. President Obama’s May 2013 speech on the subject left critical questions unanswered, such as how does the U.S. define “associated forces” that it claims may be killed. Key legal memoranda relating to the targeted killing program continue to be withheld from the public. Nor do there appear to be effective post-strike investigations into deaths.

As noted in the report of the 2010 UN Special Rapporteur on extrajudicial executions, in summer 2006, the Russian Parliament passed a law permitting the Russian security services to kill alleged terrorists overseas, if authorized to do so by the President. The law appears to place no restriction on the use of military force to suppress international terrorist activity outside the Russian Federation, and defines terrorism (like many other states) extremely broadly. The Russian definition includes “practices of influencing the decisions of government, local self-government or international organizations by terrorizing the population or through other forms of illegal violent action,” and also “any ideology of violence.” The report notes that there is no publicly available information about any procedural safeguards to ensure Russian targeted killings are lawful, the criteria for those who may be targeted, or accountability

mechanisms for review of targeting operations. Troublingly, the report notes that in passing the law, Russian legislators said they were “emulating Israeli and US actions in adopting a law allowing the use of military and special forces outside the country’s borders against external threats.”

There is concern that targeted killing operations may be setting a dangerous precedent for other countries. Significantly, more than 50 countries today possess drones and although most are designed for surveillance, adding missiles or bombs for killing may not be far off. Moreover, there have been reports that some European states may have been involved through intelligence sharing or other means in some U.S. targeted killing operations. Accordingly, it is critical for European states to engage on this issue and to voice their objections to these operations lest their silence be construed as acquiescence to U.S. practice or support for an international norm that encompasses broad authority for such extraterritorial use of lethal force.

There is also an urgent need for OSCE states to ensure that privacy protections are not outpaced by rapidly transforming technology. UN Special rapporteur Frank La Rue observed that “by placing taps on the fibre-optic cables, through which the majority of digital communication information flows, and applying word, voice and speech recognition, States can achieve almost complete control of tele-and online communications.” Recent revelations relating to the United States’ National Security Agency’s surveillance program raise serious concerns that the United States government has breached the privacy rights of individuals in the U.S. and beyond. Reports that the UK’s intelligence agency, GCHQ, has intercepted and collected vast amounts of Internet and phone data raise serious concerns that the UK government has similarly breached privacy rights inside and outside the country. *Le Monde* recently reported that France also runs a mass Internet surveillance program—although the French government disputed these claims, much remains unknown to date about the scope of its surveillance practices and the existence of safeguards for protecting privacy. In Georgia, it has been reported

that “black-box” monitoring of mobile phone and Internet activity apparently provides security services with a real-time feed of all private communications.

Under the European Convention on Human Rights, contracting states must respect the right to private life and any interference with this right must be “in accordance with the law,” proportionate, and “necessary in a democratic society.” In light of the extreme secrecy associated with surveillance operations in most countries, it is difficult to know the full extent of compliance with these standards. Indeed, many participating states maintain secrecy with respect to a broad range of national security policies and practices. Notably, on October 2, 2013, the Parliamentary Assembly for the Council of Europe is scheduled to vote on a resolution to address the need to place reasonable limits on national security as grounds to restrict access to information, taking into account the Global Principles on National Security and the Right to Information, adopted on 12 June 2013 by an assembly of experts.

Significantly, the promotion and protection of human rights and fundamental freedoms in the context of counterterrorism measures is one of the strategic focus areas for OSCE counterterrorism activities. In this context, ODIHR can further assist OSCE participating states in fulfilling this objective by providing technical assistance, legislative support, and independent monitoring services with respect to human rights issues relating to counterterrorism measures.

Torture is systemic and widespread in many OSCE participating states, including in Central Asia, a region which has been the particular focus of the Open Society Justice Initiative. A lack of procedural safeguards—including, *inter alia*, prompt registration of detention from the moment of detention, prompt and effective detainee access to a lawyer and /or a judge, notification of family, effective and timely medical examination and care, and independent monitoring of detention facilities--contribute to the continued practice of torture in these countries. In Kazakhstan, Kyrgyzstan, and other Central Asian countries, detainees are

either registered with significant delay, or in some cases, not registered at all; state-appointed lawyers present during interrogations do not defend their clients' interests and fail to file complaints where detainees have been subjected to torture or ill-treatment; and medical examinations are superficial and not independent. In Kyrgyzstan, the detention and torture of prominent human rights activist Azimzhan Askarov, who is serving a life sentence after being denied many of these safeguards, is a case in point, illustrative of the plight of those sentenced in the aftermath of ethnic violence of 2010. In Tajikistan and Turkmenistan, no independent observer can access detention facilities. In Uzbekistan, in April 2013, the International Committee for the Red Cross (ICRC) took the unusual step of publicly announcing that it would end prison visits on account of the Uzbek authorities denying it access to all detainees of concern as well as the opportunity to meet detainees in private.

Relatedly, in many OSCE states, torture, if criminalized, is investigated by institutions that have an inherent conflict of interest – either by the police themselves or the prosecutor's office that works closely with the police. To eradicate torture, ODIHR should encourage OSCE participating states to institute in law and in practice procedural safeguards with respect to all detainees without exception, and also offer guidelines and best practices on creating effective investigative units that would satisfy the requirements of the Istanbul Protocol.

Finally, since the OSCE last reaffirmed its commitment with respect to the issue of the death penalty in 1994, international consensus against the death penalty has become even more widespread. Juan Mendez, the UN Special Rapporteur on Torture, observed last year that “a customary norm prohibiting the death penalty under all circumstances, if it has not already emerged, is at least in the process of formation,” and that, in any event, “most conditions under which capital punishment is actually applied renders the punishment tantamount to torture. Under many other, less severe conditions, it still amounts to cruel, inhuman or degrading treatment.” Despite this international consensus, Belarus and the United States continue to impose the death penalty, and Kazakhstan, Mongolia, Russia, and Tajikistan retain the death

penalty in law although they do not execute people. Moreover, Poland and Romania currently face litigation before the European Court of Human Rights, *inter alia*, for permitting the transfer of a CIA prisoner from their respective territories despite the substantial risk that he would be subject to the death penalty in U.S. custody.

The time has come for the OSCE to make a new and stronger commitment in favor of abolition while continuing to press States to commit to permanently ending capital punishment.

I thank you for the opportunity to speak before you.

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The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. Our staff is based in Abuja, Amsterdam, Bishkek, Brussels, Budapest, Freetown, The Hague, London, Mexico City, New York, Paris, Phnom Penh, Santo Domingo, and Washington, D.C.