SUPPLEMENTARY
MEETING

SUPPLEMENTARY HUMAN DIMENSION MEETING
on the
Prevention of Torture

FINAL REPORT

Vienna, 6 – 7 November, 2003

CONTENTS

I. EXECUTIVE SUMMARY

The OSCE third Supplementary Human Dimension Meeting for 2003 was devoted to the prevention of torture. The meeting took place on 6-7 November in Vienna, bringing together 224 participants, including 83 delegates representing 57 non-governmental organisations.

The Meeting emphasised that use of torture remains a serious concern in many OSCE Participating States, despite their reiterated commitment to take effective legislative, administrative, judicial and other measures to prevent torture and other forms of ill-treatment. In his opening remarks Ambassador Christian Strohal, Director of the OSCE ODIHR, welcomed the Dutch Chairmanship's attention to this grave problem and called on the Participating States to keep the prevention of torture high on the OSCE political agenda.

The Meeting's particular focus was on the prevention of torture in the course of criminal investigations. The topics selected for discussion in the working sessions included provision of procedural safeguards during detention, prohibition of the use of evidence obtained by torture, as well as effective investigation and prosecution of acts of torture.

Session One dealt with the procedural safeguards against torture and ill-treatment during detention. The participants were reminded of the generally recognised safeguards, such as the right of the detained to inform a third party of their choice of the situation, the right of access to a lawyer, and the right of access to a doctor. The discussion underlined the need to implement these and other guarantees in the domestic legislation of the OSCE Participating States and to ensure effective compliance.

Discussions in Session Two focused around the fundamental problem of ensuring that evidence obtained by torture and other oppressive means is not used in the judicial process against the accused and torture victim. Several interventions pointed out to the widespread use of uncorroborated confessions in criminal proceedings of many Participating States, thus creating an incentive for law enforcement officers to extort confessions from suspects. Another problematic issue brought up in the discussion was the evaluation of police performance based on the number of "solved" cases, which creates additional pressure on law enforcement that may result in the use of illicit means during the pre-trial investigation.

Session Three considered to what extent the OSCE Participating States comply with their commitment to effectively investigate and prosecute acts of torture. The participants discussed factors that hinder compliance with these obligations. One of the key problems identified is a lack of political will to root out torture, which leads to the general tolerance of torture and other ill-treatment at the hands of law enforcement.

The Meeting resulted in the formulation of recommendations, which are included in this report. They are addressed to the Participating States, the OSCE and its institutions and field operations, as well as to other international organisations and NGOs. These recommendations will be a valuable tool for the Participating States and non-state actors striving to combat torture. They will also guide the OSCE ODIHR in the development of future anti-torture activities.

II. RECOMMENDATIONS

This report, just as the Meeting itself, focuses on concrete recommendations arising from the three Working Sessions. These recommendations – from delegations of OSCE participating States and partners for co-operation, international organizations and non-governmental organizations (NGOs) – are wide-ranging and aimed at various actors (OSCE institutions and field missions, governments, NGOs).

It is emphasized that the OSCE cannot implement all of these recommendations. The recommendations have no official status, are not based on consensus, and the inclusion of a recommendation in this report does not suggest that it reflects the views or policy of the OSCE. Nevertheless, the recommendations are a useful indicator for the OSCE in deciding priorities and possible new initiatives aimed at preventing or combating torture practices and for working towards ensuring full compliance with internationally recognized standards on the prevention of torture and inhumane or degrading treatment including standards relating to proper conduct of both criminal investigations and trials in the OSCE area.

General recommendations from all three Working Sessions and the Opening and Closing Plenary

General recommendations to the OSCE participating States

- The OSCE participating States should demonstrate their political commitment to combat torture by publicly denouncing torture and condemning illicit use of force and addressing problems of torture within their own countries.
- The OSCE participating States must ensure that persons are not expelled or extradited to countries where torture is an endemic problem.
- The OSCE participating States must provide for access to detainees and places of detention to increase accountability for acts of torture carried out in places of detention.
- The OSCE participating States should provide long term training programs for law enforcement officials and members of the judiciary on the subject of the prevention of torture.
- The OSCE participating States should bolster and reinforce the role of the media as a tool in creating a culture of absolute non-acceptance of torture. States can be assisted in this task by the OSCE Representative on Freedom of the Media.
- Those OSCE participating States having not already made a declaration of acceptance to Article 22 of the UNCAT should do so immediately.
- The prevention of torture should be given priority by governments and intergovernmental bodies.
- The OSCE participating States should develop a legal framework that clearly prohibits torture
- The OSCE participating States are called upon to follow the example of Albania and Malta in ratifying the second Optional Protocol to the UN Convention Against Torture.
- The OSCE participating States should ensure professional training of all people dealing with persons deprived of their liberty. The curricula of basic as well as on-going training of police officers should include how they can prevent torture and ill-treatment of detained persons. This should be integrated into all operational training regarding police powers.
- There is a need for an autonomous committee to monitor investigations concerning allegations of torture being undertaken by state authorities.
- The media must be invited to events on the prevention of torture.
- The OSCE participating States must also address the questions of the provision of redress and rehabilitation of victims of torture.

- The OSCE participating States must provide for funds to compensate victims of torture.
- Interested participating States are encouraged to develop realistic national action plans on preventing torture which are subject to strict deadlines.
- The OSCE participating States must ensure that the work of doctors in detention facilities is independent. Medical services in detention facilities should not be subordinated to Ministries of the Interior.
- All participating States should engage in fighting impunity of torturers including accomplices and those participating otherwise in torture practices. The OSCE participating States must ensure that torturers are punished: there must be no immunity or amnesty. Punishment for police officers who have been convicted of torture should not be merely symbolic.
- The OSCE participating States should give more attention and focus to link standards with practice; the OSCE is particularly well placed to work with state actors in order to contribute to this process.
- The OSCE participating States should engage in widespread awareness-raising campaigns in schools etc. in order for individuals to know their rights better.
- The OSCE participating States should ratify the Rome Statute of the International Criminal Court and enact the necessary domestic legislation to implement it effectively.

General recommendations to the OSCE, its institutions and field missions

- The ODIHR and OSCE field operations should continue to strengthen co-operation with visiting delegations of the European Committee for the Prevention of Torture.
- The OSCE should actively assist participating States in the implementation of the recommendations of international monitoring bodies and particularly the UN Committee Against Torture and the European Committee for the Prevention of Torture.
- The OSCE should promote the creation of mechanisms to monitor the implementation of national action plans against torture.
- The OSCE should gather and publish detailed and comprehensive statistics on allegations of torture and the response of the States.
- The OSCE should ensure co-operation with other multilateral institutions, such as the EBRD, toward integrating recommendations made by the Committee for the Prevention of Torture and the UN Special Rapporteur on Torture, into their country strategy. This collaboration should be emphasized in countries where the OSCE has a field presence.
- The OSCE should co-operate with the EU Policy on Torture in Third Countries by providing information, particularly in countries where the OSCE has a field presence.
- The OSCE should agree to gather and publish, on a regular basis, comprehensive statistics on torture complaints, investigations, and convictions, and on the nature of the sentences imposed.
- The ODIHR should appoint a member of staff to serve as a **focal point** on the prevention of torture within ODIHR. The focal point could help to mainstream the activities related to torture within the OSCE in general. For example, the focal point could maintain close contacts with the OSCE Strategic Police Matters Unit for instance on related topics such as professional training or in techniques to gather evidences
- The focal point could also work closely with a **multidisciplinary group of active experts or advisors**, who could participate in relevant field activities to combat torture and advise on draft legislation or setting of national preventive mechanisms under the OPCAT. Such a group of active advisors, whose membership would adjust according to the needs of the OSCE member states, would enable the ODIHR to be able to call on the needed expertise without the logistical drawbacks of the more formal panel of experts

- The OSCE should elaborate guidelines on the prevention of torture and ill-treatment in the OSCE participating States. The guidelines should build on existing OSCE commitments and should define concrete steps for states to take in order to prevent torture and could follow the example of the recently adopted Robben Island Guidelines on the prevention of torture in Africa.
- The OSCE/ODIHR and the OSCE participating States should support NGOs dealing with the question of torture as well as the media in order that they remain free and independent and free from intimidation.
- The OSCE/ ODIHR should update the handbook "Preventing Torture: A handbook for OSCE field staff" and revive the Advisory Panel on Torture.
- OSCE field missions in co-operation with the ODIHR have a role in advising the participating States on the prevention of torture and notably in assisting with the implementation of national Action Plans. The drafting of these action plans is a priority.
- In the future, the OSCE could act as a public tribunal for persons who wish to address particular instances of torture.
- The task of monitoring every single case of torture in the OSCE region is too big a task for the ODIHR. An alternative would be for the OSCE/ODIHR to develop a mechanism to monitor the well being of NGOs that deal with torture.
- The OSCE/ ODIHR should organise a 'groupe de reflection' to consider the question of the abuse of power. This would create a forum for participating States, which would be free from political sensitivity.

Outcome of Working Session I

The provision of procedural safeguards during detention

Moderator:
Mr. Annette Lyth, Deputy Head of the Human Rights Section, OSCE/ODIHR
Introducers:

- **Ms. Renate Kicker**, Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Council of Europe,
- **Mr. Paul Bonard**, Deputy Head of the Protection Unit, International Committee of the Red Cross

Session One sought to review whether or not the legal frameworks in OSCE participating States provide sufficient procedural safeguards against torture and ill-treatment during custody. It also sought to examine the extent to which legal safeguards against torture and ill-treatment are complied with in practice by participating States and how the OSCE, its field operations and the ODIHR could help to facilitate compliance with these procedural safeguards.

This session also sought to review whether or not the participating States were implementing their obligation to keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment with a view to preventing torture as agreed in the Copenhagen Document and in particular, how the participating States are ensuring that law enforcement bodies do not compel self-incrimination, as referred to in the Moscow Document.

Other areas that this session intended to focus on were the respective roles of national human rights institutions and civil society in monitoring the treatment of persons deprived of their liberty and

their conditions of detention and in particular of ensuring compliance with procedural safeguards during detention. The session was also looking for concrete examples of ways in which the participating States ensure the independence of the work of national human rights institutions and allow and facilitate the work of civil society in this respect.

Other points for discussion were ways in which the OSCE/ODIHR could provide assistance for the implementation of recommendations of both international and national visiting bodies and examples from the participating States on ways in which they are co-operating with the UN Special Rapporteur on Torture and what steps they are taking to consider the ratification of the Optional Protocol to the UN Convention Against Torture.

The following recommendations were made during Working Session 1:

Recommendations to the OSCE participating States

- All OSCE participating States must ensure that all persons deprived of their liberty are:

Provided with information about their rights and how those rights can be accessed;

Granted access to a lawyer, including during all interrogations, and the opportunity to consult with their lawyer in confidence. National legislation should provide for effective access to a lawyer from the moment of whatever form of detention. In all cases where a detainee may risk any kind of imprisonment he/she should be offered a lawyer, recompensed for his/her work by the state, in the event that they are unable to pay for a lawyer;

Given the opportunity to notify or have notified their family or a third person of the fact of the location of their detention. National legislation should provide for the possibility to inform detainee's relatives or other third parties about his/her whereabouts and conditions of detention immediately upon arrest;

Provided with the opportunity to be examined by a doctor, outside the hearing of law enforcement officials. National legislation should provide access for all people in whatsoever form of detention to independent medical expertise, including by a medical professional of the detainee's choice. The examination should take place under conditions of confidentiality and the expert report should be immediately placed at the disposal of the detainee and his/her lawyer;

Treated with respect for the inherent dignity of the human person.

The OSCE participating States should define torture as a specific crime in their national penal legislation, thereby ensuring that the act of torture is defined in conformity with the definition in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and other international treaties, and the foreseen penalties are commensurate to the gravity of the crime.

The OSCE participating States are called to amend their national penal legislation in a way that rape and sexual harassment by public officials or third parties with the consent or acquiescence of public officials are considered to be acts of torture.

Life imprisonment without a possibility of subsequent release and long-term isolation upon arrest and in detention should be considered as cruel, inhuman and degrading punishment.

Registers in places of detention should be regularly maintained and should contain at a minimum information about the time and reason for the detention, as well as for the release; the time at which the detainee was informed about his/her rights; the detainee's state of health immediately upon arrest and periodically afterwards; the time of contact with the relatives and lawyer; the time of interrogation sessions and a list of confiscated personal belongings.

As the arbitrary exercise of disciplinary power can result in inhuman and degrading punishment, disciplinary proceedings in places of detention should be based on the principles of due process of law.

The OSCE participating States should ensure that torture and ill-treatment do not take place in the process of investigating a crime and should therefore regulate by law:

The time and place of the interrogation, the identity of all people present and the position of the arrested person during the investigation;

The permissible length of the interrogation and the periods of rest between the sessions;

Methods of conducting interrogations with a special emphasis on the interrogation of minors and people under the influence of alcohol or drugs;

Female security personnel should be present during the interrogation of female detainees, and should be solely responsible for conducting bodily searches.

Participating States should adapt the existing safeguards against torture and ill-treatment to the specific needs of vulnerable groups including asylum seekers so that they may, for instance, contact friends and relatives as well as UNHCR, NGO's or legal counselling services.

- Classification in places of detention should take into consideration the needs for protection of vulnerable prisoners.
- Solitary confinement of minors while in detention should be considered as cruel, inhuman and degrading punishment. The treatment of children who come into contact with the law must be in line with international standards on the administration of juvenile justice. Children in custody must be separated from adults, except where this would not be in the best interests of the child.

The OSCE participating States should ensure transparency of detention conditions and should allow for monitoring by national and international bodies.

The OSCE participating States should establish a comprehensive system of frequent periodic visits in places of detention by independent bodies with effective monitoring powers. These bodies should be allowed to visit all facilities at any time and without preliminary notice and be able to speak with detainees confidentially. Human rights NGOs should be allowed to visit detention facilities on the same conditions, but this should not serve to relieve states from their responsibility to establish effective monitoring mechanisms.

The OSCE participating States who have not already done so should sign, ratify or accede to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

All OSCE participating States are called upon to submit timely periodic reports to the UN Treaty Monitoring Bodies and to publish the Conclusions and Recommendations of these bodies as well as the Recommendations of the Special Rapporteur on torture. Governments are also urged to publish their plans for the implementation of these recommendations and regular progress reports on such implementation.

- Those OSCE participating States that have not done so yet, are called upon to ratify the UN Convention against Torture.
- In a number of OSCE participating States, measures providing for the right to habeas corpus should be enacted and implemented within months, not years.
- A number of participating State must ensure the effective investigation and prosecution of all instances of torture.

In an OSCE participating State, the government is called upon to grant access to the country's prisons and pre-trial detention centres to international observers, including the Special Rapporteur on Torture and the Committee of the Red Cross.

A number of OSCE participating States are called upon to provide public control of the penitentiary institutions and to increase legal ways to defend attorneys when being accused of criminal behaviour and kept in custody.

An OSCE participating State that has not yet done so, is called upon to ratify as speedily as possible the European Convention on the Prevention of Torture and Inhuman or degrading Treatment or Punishment and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Recommendations to the OSCE, its institutions and field operations

- The ODIHR, through its net of internal and external experts, is called upon to provide expertise to states having ratified the Optional Protocol to the UN CAT in order to assist them in setting up national monitoring mechanisms.

Recommendations to other inter-governmental and non-governmental organizations

- International monitoring bodies, as well as national governmental and non-governmental monitors should recognize as places of detention and visit, in addition to the places recognized so far, also such institutions of involuntary confinement as: schools or other educational institutions for delinquent children; places for the temporary confinement of alcoholics and other places of involuntary medical treatment; and places of detention as a way of disciplinary punishment in the army.

Outcome of Working Session II

The prohibition on the use of evidence obtained by torture

Moderator:
Ms. Cynthia Alkon, Head of the Rule of Law Unit, OSCE/ODIHR
Introducer:
- **Mr. Daniyar Kanafin**, Professor of Criminal Procedure Law, Kazakhstani Humanitarian Institute of Law,
- **Ms. Tinatin Khidasheli**, Director of the Legal Aid Center, Georgian Young Lawyers Association

Discussions in **Working Session 2** focused on identifying ways to ensure that international norms and standards prohibiting torture and national legislation are observed in daily practice, especially by law enforcement agencies. The discussion further focused around the fundamental problem of how to ensure that evidence obtained by torture and other oppressive means is not used as evidence in the judicial process against the accused and torture victim. Effective prohibitions of the use of evidence obtained by torture will have the effect of reducing incentives and benefits for law enforcement officials who resort to the use of force and torture as an "investigative technique." Several interventions pointed out the fundamental problem of confessions being the main piece of evidence used against the accused in criminal proceedings in many countries. The routine use of confessions as evidence helps to encourage the continued focus on extorting confessions from suspects, rather then the reverse. Another problem raised during this session was that promotion and bonus schemes in police agencies often emphasize the number of "solved" cases which puts pressure on law enforcement officials to solve cases by whatever means, which unfortunately, contributes to them resorting to using force and torture.
In addition, it was also discussed how the OSCE as an organization could improve its performance with regard to the above issues. There was a broad ranging discussion of these two themes. In particular, participants provided many examples of torture in their respective countries and the lack

of action by state organs to fight impunity and making open and official statements declaring torture an unacceptable practice. Participants repeatedly stressed the importance of political will to meet OSCE commitments and comply with the numerous references to the prohibition of torture in the OSCE documents. Some participants also gave examples of best practices on how to deal with these issues. There was recognition that torture is a widespread problem that needs to be addressed appropriately in all countries of the OSCE area. One recurring theme was the important role of the OSCE and ODIHR in mediating and promoting dialogue between governments and civil societies and NGOs.

The following recommendations were made in Working Session II:

Recommendations to the OSCE participating States:

- The OSCE participating States must ensure that (in their laws and legal practice) confessions obtained by torture and inhuman or degrading treatment be excluded as evidence and ruled inadmissible.
- The OSCE participating States must ensure that laws and practice should establish that the inquiry of torture allegations should not depend on the issue being raised by a defendant (who may have been intimidated). Where there are grounds for believing that the defendant, or a witness, has been subjected to torture, inhuman or degrading treatment, this should be investigated by the judge acting *proprio motu* (i.e. of his own volition). It should also be done at the earliest possible stage in the trial, so that the question of how the confession was obtained is not confused with the details of what may have been a horrific crime such as child-murder.
- The OSCE participating States should ensure that detention orders are being issued by courts (or judicial organs) rather than Prosecutorial agencies.
- The OSCE participating States should introduce public monitoring schemes for places of detention that are under the authority of law enforcement agencies.
- The OSCE participating States should ensure access of media to information (on torture and ill-treatment) and conduct training measures for journalists, in co-operation with the ODIHR, the OSCE High Representative for the Freedom of the Media and the OSCE Field Missions[1];
- Participating States should introduce clear prohibitory norms on the use of evidence obtained by torture in their procedure codes.
- Participating States should do everything to open criminal investigations of all allegations of cases of torture, and to supplement the criminal proceedings with immediate disciplinary measures.
- The OSCE participating States are recommended to observe aspects of psychological assistance for its employees in penal execution institutions and include those in its projects developed and implemented in co-operation with the ODIHR and the OSCE field institutions.
- The OSCE participating States should increase their education activities of low and middle staff ranks, through training and capacity building measures.
- The OSCE participating States should open their judges' *collegia* (panels) to civil society monitoring.
- The OSCE participating States should give more importance and attention to the selection and recruitment processes of judges.

[1] Rationale: The OSCE participating should raise awareness that independent media are not only a relevant mechanism for the disclosure of malpractice by state organs, but they also play an important role to increase awareness of the society. Only standards that are deeply rooted in the awareness and consciousness of society can be translated into practice without restrictions.

- The OSCE participating States should commit themselves to proper investigation of torture allegations.
- The OSCE participating States should introduce (free) legal aid for vulnerable parts of society, or parties that do not have sufficient funds available for legal advice while in custody/detention.

Recommendations to the OSCE, its institutions and field operations:

- The OSCE should build on its existing experiences of working with participating States to draft and advise on "national (or state) action plans" that would link international standards and recommendations to country-specific situations (e.g. legal system; legal and political and social culture, economy etc).
- We recommend for ODIHR to annex a list of relevant recommendations of two previous SHDM's, 2000 on the prevention of torture and 2002 on prison reform, to the SHDM report.
- We encourage the ODIHR and the OSCE field missions to step up their activities for the support of national institutions in the fight against torture. Previous experience shows that it is of highest relevance to work through concrete projects involving both state bodies including the police and civil society. These have to encompass capacity building measures including initial and continuing education of employees working in institutions for the execution of penal sanctions;
- The OSCE ODIHR should produce a set of "Guidelines" on torture prevention, which should set out a process by which the OSCE will work with states in constructing action plans and implementing them. Such activities should be seen as a part of the enhancement of the Rule of Law within the OSCE region, as this is the essential background to the construction of a preventive system;
- The OSCE Participating States should ensure access of media to information (on torture and ill-treatment) and conduct training measures for journalists, in co-operation with the ODIHR, the OSCE High Representative for the Freedom of the Media and the OSCE Field Missions;
- The OSCE and its institutions should continue to exert public pressure on governments that fail to implement measures to fight torture practices.
- The OSCE should continue to act as main international watchdog.
- The OSCE should commission an expertise on legislation in force in unrecognized states, especially of (substantive) criminal and criminal procedure codes. This could help to better protect human rights on territories of unrecognized states.
- The OSCE and its institutions should assist participating States in training newly elected judges.
- The OSCE should continue to lobby with states for the importance of public condemnation of torture practices by governments and heads of states as a sign of political commitment and non-tolerance of torture practices.
- The OSCE should reinvigorate procedures to monitor trials and analyze the treatment of allegations of torture. The results should be made publicly available. The OSCE must donate sufficient resources to trial monitoring efforts.
- The OSCE should publicly insist that all allegations of torture revealed at trial receive a full judicial evaluation.

Recommendations to others

- Procedural norms prohibiting the use of evidence obtained by torture (or oppression) are not abstract legal science, but a central means to prevent torture: NGOs should engage deeper in this topical area.

- Co-operation agreements between the European Commission and some OSCE participating States could be used to promote civil society.
- International organizations should facilitate dialogue on the local and international level between NGO's and governments. International organizations should have a transparent system for funding NGOs who are coming to participate in these meetings. International organizations should support creation of an international NGO coalition;

Outcome of Working Session III

The effective investigation and prosecution of acts of torture

Moderator:
Mr. David Diaz Jogeix, Head of the Rule of Law Department, OSCE Mission to Serbia and Montenegro
Introducers:
- **Mr. Christopher Greenwood QC**, Professor of International Law, London School of Economics,
- **Ms. Rachel Denber**, Acting Head, Europe and Central Asia Division, Human Rights Watch

Discussions in **Working Session 3** focused on means and ways of effective investigation and prosecution of acts of torture. In the Budapest Document of 1994, the OSCE participating States committed themselves to investigate allegations of torture and to prosecute offenders. The session considered to what extent the obligation to effectively investigate and prosecute acts of torture is complied with in the OSCE region. The participants identified factors that hinder compliance with these obligations and made a number of recommendations to the participating States and to the OSCE and its institutions and field missions with a view to increasing compliance with these obligations.

The following recommendations were made in Working Session III:

Recommendations to the OSCE Participating States

- The OSCE participating States must ensure that all allegations of torture and ill-treatment are promptly and thoroughly investigated by a truly independent and impartial body, and that complainants and witnesses are protected from harassment and other forms of pressure.

The OSCE participating States must ensure that perpetrators of torture or ill-treatment are promptly brought to justice in proceedings, which respect the suspect's right to a fair trial and the victim's right to be treated with respect and dignity.

The OSCE participating States must ensure that law enforcement bodies are trained in the proper investigation and detection of crime in order to reduce the reliance on confessions.

The OSCE participating States should be proactive in the investigation of acts of torture. The authorities must initiate an investigation whenever evidence is presented that an act of torture has taken place. The initiation of an investigation should not depend on the receipt of a formal complaint.

The OSCE participating States must ensure that acts of torture are not dealt with solely by internal disciplinary bodies: free standing and independent bodies must be established in all OSCE participating States to investigate allegations of torture against law enforcement bodies.

The OSCE participating States should ensure that their legislation permits courts to exercise universal jurisdiction, so that suspected torturers in their territory can be brought to justice in

their own courts, or extradited to a State able and willing to do so, in a fair trial and without the possibility of facing the death penalty. Alleged torturers should be brought to justice wherever they may be, whatever their nationality or position, regardless of where the crime was committed and the nationality of the victim, and regardless of how much time has elapsed since the crime was committed.

The OSCE participating States should not allow for pardoning or clemency of torturers before the truth is revealed and perpetrators are sentenced in a prompt and fair trial.

The authorities of an OSCE participating State should amend the Criminal Code to include a crime of torture supported by an adequate penalty.

The authorities of an OSCE participating State should investigate allegations of widespread torture used against alleged Muslim extremists, including Hizb ut-Tahrir.

The authorities of a relevant OSCE participating State should conduct impartial and thorough investigations into the allegations of torture used against alleged participants of the armed attack on 25 November 2002 and bring the responsible persons to justice.

Recommendations to the OSCE, its institutions and field operations:

- The OSCE should be active in training and bringing clinicians together to train them on the identification and documentation of torture which can be used as material evidence in the prosecution of perpetrators of torture.

The OSCE should render technical assistance to participating States to train police officers in methods for investigating crimes, in attempt to reduce reliance on confession evidence.

The OSCE should render technical assistance to participating States to train specialist investigators in the investigation of acts of torture.

The OSCE should insist upon and facilitate the forensic examination of all deaths in custody and assist in criminal procedure reform to remove obstacles to forensic medical testing and to ensure the independence of forensic evidence centres.

In cases of suspicious deaths in custody in countries where the OSCE has a field presence the OSCE should insist upon and facilitate independent forensic examinations of the bodies, and make the results publicly available.

When numerous torture complaints emanate from particular police precincts, the OSCE should encourage the government to undertake an investigation of the precinct without waiting for a further individual complaint.

The OSCE should publicly condemn governments of participating States when they fail to investigate and sanction law enforcement officials that engage in torture.

The Chairman in Office of the OSCE should form a working group with the mandate of making recommendations regarding whether the OSCE should issue statistics of filed torture complaints.

III. ANNEXES

1. Agenda

SUPPLEMENTARY

M E E T I N G

SUPPLEMENTARY HUMAN DIMENSION MEETING
on the
Prevention of Torture

6-7 November, 2003
Hofburg, Vienna

Day 1 **6 November 2003**

15.00 - 16.00 Opening Session:

Moderator: Ambassador Justus de Visser,
Chairman of the OSCE Permanent Council

Introductory remarks: Ambassador Christian Strohal,
Director of the OSCE/ODIHR

Keynote speeches:

Jens Modvig
Mr. Jens Modvig, former Secretary-General of the "International Rehabilitation Council for Torture Victims", Associate Professor, Institute of Public Health, University of Copenhagen, Denmark,

Mark Thompson
Secretary-General
Association for the Prevention of Torture

Technical information by the OSCE/ODIHR

16.00 - 18.00 Session 1: The provision of procedural safeguards during detention

Moderator: Sirpa Rautio
Head of the Human Rights Section
OSCE/ODIHR

Introducer: Renate Kicker
European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment

Paul Bonard
Deputy Head of the Protection Unit
International Committee of the Red Cross

18.30 Reception offered by Chairmanship

Day 2 **7 November 2003**

09.00 - 12.00 Session 2: The prohibition on the use of evidence obtained by torture

Moderator: Cynthia Alkon
Head of the Rule of Law Unit
OSCE/ODIHR

Introducer: Daniyar Kanafin
Professor of Criminal Procedure Law
Kazakhstani Humanitarian Institute of Law
Tinatin Khidasheli
Director of the Legal Aid Center
Georgian Young Lawyers Association

12.00 - 14.00 Lunch

14.00 - 16.00 Session 3: The effective investigation and prosecution of acts of torture

Moderator: David DiazJogiex
Head of the Rule of Law Department,
OSCE Mission to Serbia and Montenegro

Introducer: Christopher Greenwood QC
Professor of International Law
London School of Economics

Introducer: Rachel Denber
Acting Head, Europe and Central Asia Division,
Human Rights Watch

16.00 - 16.30 Break

16.30 - 17.30 Closing Session:

Moderator: Ambassador Justus de Visser,
Chairman of the OSCE Permanent Council

Reports by the Working Session Moderators

Comments from the floor

2. Annotated Agenda

SUPPLEMENTARY

M E E T I N G

SUPPLEMENTARY HUMAN DIMENSION MEETING
on the
Prevention of Torture

6-7 November, 2003
Hofburg, Vienna

Annotated Agenda

OVERVIEW

Torture and ill-treatment are prohibited at all times and in all circumstances by the OSCE commitments and international human rights law. The prohibition on torture and ill-treatment cannot be suspended even in times of public emergency or war. Nevertheless, torture and ill-treatment continue to be of great concern in the OSCE region and there are reliable reports that such practices continue to occur in a number of participating States.

The OSCE participating States have strongly condemned all forms of torture as one of the most flagrant violations of human rights and human dignity (Budapest 1994) and have committed themselves to the eradication of torture and cruel, inhuman and degrading treatment or punishment throughout the OSCE region (Istanbul 1999).

To achieve this goal, the OSCE participating States have committed themselves to take effective legislative, administrative, judicial and other measures to prevent and punish torture and ill-treatment (Vienna 1989).

In addition, the OSCE participating States have also committed themselves to assist victims and co-operate with relevant international organizations and non-governmental organizations, as appropriate (Istanbul 1999).

Many of the OSCE participating States are parties to the UN Convention Against Torture and the European Convention for the Prevention of Torture which both provide for a broad variety of measures to prevent and punish acts of torture and ill-treatment. Fifty-three of the 55 OSCE participating States have ratified the UN Convention Against Torture (CAT) and of those, 34 States have recognized the competence to receive and process individual communications of the Committee against Torture under Article 22 of the CAT. Forty-four of the Council of Europe Member States, all of which are OSCE participating States, have ratified the European Convention for the Prevention of Torture (CPT) Article 1 of which established the European Committee for the Prevention of Torture.

This meeting will focus on the measures that have been taken by OSCE participating States under three main headings, and will seek to assess the progress made by the participating States in these areas:

- Working Session I: The provision of procedural safeguards during detention

- Working Session II: The prohibition on the use of evidence obtained by torture

- Working Session III: The effective investigation and prosecution of acts of torture

Recommendations may be addressed to the OSCE as a whole, the participating States, OSCE institutions including the Office for Democratic Institutions and Human Rights and to OSCE field operations.

SESSION 1: The provision of procedural safeguards during detention

The provision of procedural safeguards to be complied with at the point of detention and throughout the period of detention can serve to significantly reduce the incidence of torture.

The participating States have committed themselves to promote legislation to provide procedural and substantive safeguards to combat torture and ill-treatment (Istanbul 1999) and to keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment with a view to preventing torture. (Copenhagen 1990).

Possible discussion topics for this session could be:

- Does the legal framework in participating States provide sufficient procedural safeguards against torture and ill-treatment during custody? If not, what are the reasons for the absence of such safeguards?
- To what extent are legal safeguards against torture and ill-treatment complied with in practice by participating States?
- How can the OSCE, its field operations and the ODIHR facilitate compliance with procedural safeguards?
- In what way are the participating States implementing their obligation to keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment with a view to preventing torture as agreed in the Copenhagen Document? In particular, how are the participating States ensuring that law enforcement bodies do not compel self-incrimination, as referred to in the Moscow Document?
- What are the respective roles of national human rights institutions and civil society in monitoring the treatment of persons deprived of their liberty and their conditions of detention and in particular of ensuring compliance with procedural safeguards during detention? In what way do the participating States ensure the independence of the work of national human rights institutions and allow and facilitate the work of civil society in this respect?
- In what way can the OSCE/ODIHR provide assistance for the implementation of recommendations of both international and national visiting bodies?

- In what way are the participating States co-operating with the UN Special Rapporteur on Torture?
- What steps are OSCE participating States taking to consider the ratification of the Optional Protocol to the UN Convention Against Torture.

SESSION 2: The prohibition on the use of evidence obtained by torture

A common object of torture is to obtain confessions or other statements that can later be invoked as evidence in criminal proceedings. The Moscow Document of 1991 states that, "effective measures will be adopted, if this has not already been done, to provide that law enforcement bodies do not take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, or otherwise to incriminate himself, or to force him to testify against other persons".

The UN Convention Against Torture aims to prevent the incidence of torture by prohibiting all statements made as a result of torture from being invoked as evidence in any proceedings, except against a person accused of torture. The UN Committee Against Torture has stated that procedural legislation should contain detailed provisions on the inadmissibility of unlawfully obtained confessions as one of the essential means of preventing torture.

Possible discussion topics of this session could be:

- To what extent do participating States prohibit in law and in practice the use of evidence obtained by torture in criminal proceedings?
- What safeguards should be put in place to ensure that confessions obtained by torture are not relied upon as evidence in criminal proceedings?
- How can the OSCE, its field operations and the ODIHR assist participating States to comply with the prohibition on the use of evidence obtained by torture?

SESSION 3: Effective investigation and prosecution of acts of torture in the OSCE region

Overcoming impunity is a key element in the eradication of torture. The OSCE participating States have committed themselves to inquire into all alleged cases of torture and to prosecute offenders (Budapest 1994).

The UN Convention Against Torture requires not only that attempts to commit torture and complicity and participation in torture be criminalized, but that these crimes must be punishable by appropriate penalties which take into account their grave nature.

The UN Human Rights Committee, which is the body responsible for interpreting the provisions of the ICCPR, has stated that it is not sufficient to merely prohibit torture or ill-treatment or punishment or to make it a crime, but has stressed the additional need for investigation, punishment and reparation for instances of torture. In particular the Committee has noted that amnesties are generally incompatible with the duty of states to investigate acts of torture, to guarantee freedom from such acts within their jurisdiction and to ensure that they do not occur in the future. Furthermore the UN Committee against Torture has expressed concern about the use of amnesty laws which might extend to the crime of torture and has recommended that such laws “exclude torture from their reach.”

Possible discussion topics of this session could be:

- To what extent are states honouring their OSCE and other international commitments to effectively investigate all complaints and credible reports of torture and to punish torturers?
- What are the causes of failures by States to carry out these commitments?
- How are participating States ensuring the protection of the 'victims' of torture in all alleged cases of torture during the investigation and the prosecution stages?
- To what extent are OSCE participating States honouring their Istanbul commitments to assist victims and co-operate with relevant international organizations and non-governmental organizations?
- What can health professionals do to support the prevention of torture?
- How can the OSCE and its field operations and the ODIHR assist participating States to comply with their obligations to investigate and prosecute acts of torture?

3. Keynote Speeches

A. Mr. Jens Modvig, former Secretary-General of the "International Rehabilitation Council for Torture Victims", Associate Professor, Institute of Public Health, University of Copenhagen, Denmark,

Mr. Chairman, Your Excellencies, Ladies and Gentlemen

Torture and methods of torture

Torture – defined in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment – is no doubt one of the cruellest human rights violations.

The severe pain and suffering inherent in torture may be obtained by the use of physical or psychological torture methods.

Physical torture methods include, *inter alia*, systematic beatings (i.e. repetitive beatings of the same body part), electrocution of sensitive body parts, suspension in arms or legs, near-suffocation by use of plastic bags, gas masks with reduced oxygen, or near drowning in polluted water. Many methods of torture have nicknames, for instance:

- The Parrot (when suspended in the knees on a cane, with the hands tied and locking the suspension)
- The Palestinian Hanging (when suspended in arms tied behind the back)
- The Baby Elephant (when near-suffocated with a gas mask) – allegedly an Eastern European phenomenon,
- The Tortoise (when put in a small cage which only allows you to lie on hands and knees) etc.

Severe suffering may also be inflicted through psychological torture like severe humiliation and threats - threats to kill, rape or torture yourself or your wife or kids, mock execution or sexual humiliations. Experiencing the torture of others, maybe your family, is considered one of the worst forms of torture.

The practice of torture is prohibited according to international law, and the vast majority of OSCE member states have ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading treatment. Still, state-perpetrated torture or ill-treatment is practised in at least half of the 55 OSCE member states.

The practice of torture may be perceived as an effective political tool for the authorities to stay in control, to keep the population in a state of fear, to reduce the power of a political opposition or an ethnic minority or because the eradication of torture is simply not a priority to the government.

By setting examples of destroyed personalities to the rest of the population, a state of fear is created in the population.

What is torture's impact on individual and population health?

Torture is able to completely break down a person. Apart from the physical consequences of torture that may be bad enough by inflicting chronic pain and mutilation of the body in different ways, the mental health consequences are often the worst.

Research has shown that torture is able to put the torture victim into a chronic condition of so-called post-traumatic stress disorder, or PTSD. This condition only occurs if you have been subjected to a severe threat to your life without having any ways out - which is what the situation of torture is about.

This chronic condition is characterised by constant flash-backs of the horrors you went through, i.e. re-experiencing the torture again and again, at night through nightmares, in day-time through intrusive thoughts - flashbacks, and being in a state of hyper-arousal, with outbursts of anger and depression. The victim is marked by a tendency of social isolation, not only from the outside world but also from the closest family. The victim is alone with his flashbacks and cannot cope with any company.

These consequences make it very difficult for the family to function. A 34 year torture victim, a former musician in his country of origin, whom I visited in his home, showed the same behaviour as so many other torture victims. He never left his apartment but stayed all the time in a small bedroom by himself, yelling at his two concerned kids and his caring wife to stay away, trying to sleep or watching tv. Conversation with him was very difficult because he constantly slipped into an introverted autistic state, processing his horrifying flashbacks, and I had to repeat my questions several times and wait for the answer for several minutes. As he said: 'the tv is my best friend' because it helped him to concentrate on something neutral, take him away from his memories and keep him in the present reality. He slept very badly, 2-3 hours at a time, because of nightmares, screaming at night, keeping the wife and kids awake and worried, with severe impact on the kids' health. Actually, the case started with his youngest kid, two years old, being referred to child-psychiatric ward because of sleeping and eating disorders. Only two years later, the child psychiatrists discovered that the father was a torture victim and that this was the cause of the child's problems. He never himself told anybody that he was a torture victim.

The person has certainly been destroyed, and has effectively been put out of the game as an active participant in the societal development. The humiliation is total, and the life of the torture victim is miserable and pathetic. The feeling of shame of the torture victim effectively prevents that the silence is broken - the risk of opening a public case or filing an official complaint is quite low.

The knowledge or suspicion in the population that this may happen to yourself if you are taken in for interrogation or custody is scary. It affects the population and effectively keeps people away from objecting. Rather keep quiet than risk being brought in.

Some people make the mistake of thinking of torture as a little, deserved, beating up of criminals during interrogation. It can't be that bad.

This is indeed a mistake. Considering torture as something that may be acceptable is a huge mistake, with huge consequences for human rights, for human dignity, and for human lives.

Turning to the Concept of Impunity

Why, then, is torture still a big problem in the world, including many OSCE countries? 133 countries in the world have reaffirmed, by ratifying the UN Convention against torture that torture is prohibited, it is a serious crime and it should be punished severely.

Most likely the answer is *the silence*. Torture takes place in clandestine. The torture victim does not complaint about the treatment – he has suffered enough and the family does not have the courage to risk further pain and frustration. If – by any chance – a complaint is filed, it might imply further punishment and may not be processed seriously. What is the word of a former suspect against the law enforcement? It is better to keep quiet, accept the situation as is and not take anymore risks.

In this way, torture continues. The signal to the perpetrators is that it is acceptable to use torture. It might even be positively rewarded because the case was 'solved' - a confession was obtained.

These mechanisms make up the vicious circle of impunity. There is fear and no trust in the judiciary for filing a complaint. Few cases of torture are put before the public authorities for investigation. Few cases are investigated and few perpetrators are prosecuted. Few convictions of perpetrators are made. Torturers go free and continue torture. Fear prevails, silence prevails, torture prevails, and lack of trust in the judiciary prevails.

Impunity continues, torture continues, and publicly, the message is 'There is no torture'.

The role of documentation of torture

The means to break this vicious circle of impunity is documentation of torture and investigation of cases of torture. Prevention of torture starts with the documentation of torture, and the documentation starts with the torture victim. This means putting spotlight of the cases of torture, breaking the silence, and getting the facts on the table.

It also means securing and supporting reporting mechanisms – accepting that documentation of torture is a necessary, commendable and desirable activity and not – as in some countries – considering it subversive activity that should be fought.

Well-documented cases of torture include documentation of the events and documentation of the health consequences as evidence of the torture.

Documentation of the events of torture includes a meticulous description of who did what to whom? When? Where? How? Why? Documentation of the health consequences includes a thorough medical and psychological examination of the torture victim by qualified and specialised health professionals as soon as possible after the torture took place.

Documentation of torture is often undertaken by NGO's and not by governmental bodies. This may result in conflicts between government representatives and civil society, sometimes even leading to sanctions against NGO's which are actually fulfilling an important role in establishing accountability of the government to the civil society. This - accountability of governments to civil society - is what democracy is all about.

International standards for the documentation of torture do exist. These standards are named the Istanbul Protocol, which provide guidelines for the documentation of torture as well as for the investigation of cases of torture. The UN Commission for Human Rights considers this guideline an important instrument in the fight against torture and has recommended its implementation in all countries. The implementation of this tool is an important means in the prevention of torture everywhere.

In short, the Istanbul Protocol provides guidelines for health professionals on how to examine torture victims and make sure that available evidence of torture is credibly reported. And the Protocol provides guidelines to governments on how investigations of possible cases of torture should take place, honouring principles of impartiality, independence, promptness, and competence.

OSCE status on the UN Convention

One of the articles in the UN Convention Against Torture deals with bringing forward individual cases of torture to the international community for further investigation. This is indeed one of the mechanisms to open up for the documentation of torture.

This is article 22, which states that a State Party to this Convention may at any time declare under this article that it recognises the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party, which has not made such a declaration.

Accepting this mechanism is the first step to break the silence. Allowing international bodies to objectively evaluate alleged cases of torture is showing the world that we accept insight – we have nothing to hide, and we accept international accountability.

Unfortunately, many OSCE countries have refused to make such a declaration of acceptance to this article. This includes the countries of Albania, Armenia, Belarus, Estonia, Georgia, Holy See, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, FYRo Macedonica, Moldova, Romania, Tajikistan, Turkmenistan, and Uzbekistan.

Most of these countries practice torture. It is therefore urgent to receive a clear commitment from these countries that the willingness to break the vicious circle of impunity, to break the silence, to implement effective measures against torture is actually present. The lack of acceptance of this mechanism can easily be perceived as a conscious cover-up for serious human rights violations, silent acceptance of torture, and lack of will to change realities to the better.

OSCE perspectives on prevention of torture

If torture is silently accepted, or looked upon with indifference as a matter of low priority, the fight against torture will be a lost battle, and there will remain a veil of secrecy and denial over the torture situation in the country in question.

We can only prevent torture successfully if we give it sufficient priority. This applies to governments and it applies to intergovernmental bodies.

The OSCE, as an intergovernmental body, has made important commitments to the combat of torture, and, through ODIHR, implemented important assistance projects, which has contributed to the strengthening of civil society. The strong field presence of OSCE is a very useful platform for implementation of measures to improve human rights in collaboration with NGO's and public institutions.

While being the most important body for exchange in the 'greater European' region on development of security and human rights, the priority of preventing torture should be reflected more focussed and more clearly in the institutional priorities of the organisation.

The United Nations' Committee against Torture and the Council of Europe's Committee for the Prevention of Torture are international specialised anti-torture bodies of great significance. But in huge parts of the OSCE region, there is a need for functional international mechanism and institutional support for the implementation of national mechanisms against torture.

The will to eradicate torture in the OSCE must be visible. Prevention of torture must be a high priority, as high as the care for minorities and the freedom of the press, effectively reflected in the structures and institutions of the OSCE.

B. Mr. Mark Thomson, Secretary-General of the Association for the Prevention of Torture (APT)

In the name of the Association for the prevention of Torture, I would like to thank the Office for Democratic Institutions and Human Rights (ODIHR) for organising this Supplementary Human Dimension Meeting on the issue of prevention of torture and for giving me the opportunity to introduce the topic.

Torture is certainly a relevant concern of the OSCE States and its citizens. The OSCE was created in 1975 partly to combat torture and better protect the human rights of individuals in OSCE participating States. However, torture and ill-treatment persists in OSCE States and all other regions of the world. Furthermore following the attacks of 11 September, in 2001, the measures taken by States, under the pretext of the fight against terrorism, has resulted in a clear resurgence of this human rights violation. Even more worrying is that very public debates have been opened on the question of whether in some special circumstances a "little" torture could be acceptable. However, the argument is not only very dangerous but also flawed. The justification presented is that as States quite rightly must defend the security of their citizens and the rule of law, they must take exceptional measures against people they presume are guilty of acts of terrorism. However, these measures include detaining persons arbitrarily and indefinitely without any correct judicial procedure. Such detainees are usually denied any access from their families or lawyers and they suffer ill-treatment and torture. These are illegal measures. In committing such violations States are undermining the rule of law, they are violating individuals personal security and are presenting the State in the role of the oppressor rather than the protector of society.

In the face of this dangerous erosion of rights, we must not only strongly reaffirm here the **absolute prohibition of torture** in International law and the fact that no circumstances whatsoever can justify the use of torture or other forms of inhuman or degrading treatment. But also remind States that they have **a positive obligation to take measures to prevent torture.**

What measures can States take to better prevent torture?

There are at least three levels for States to act.

The first level of action is the legal one as it is necessary for States to develop a **legal framework** that clearly prohibits torture. How can torture be fought if it is not defined as a specific crime under criminal law? In the same line, if the criminal system is based on confessions, the risk of resorting to torture in order to obtain confessions is very high. It is even increased when the system of promotion of the police is based on results, on the number of people convicted. We will probably come back to this in the second session where the use of evidence will be discussed. In addition to this, fundamental safeguards should also be set up from the first hours of the deprivation of liberty, and in particular during police custody. These safeguards are: the right to inform a relative about the arrest, the right to have access to a lawyer and to a medical doctor and finally the right to be informed about these rights in a language that can be understood by the person deprived of his/her liberty. A discussion on these safeguards is offered this afternoon.

The second level of action in order to prevent torture deals with **control mechanisms**, i.e. mechanisms to verify the implementation of the legal framework. Control can be exercised through complaint mechanisms. How to assess the level of respect of the prohibition of torture if victims are afraid to file complaints or if complaint mechanisms are not accessible in practice or totally ineffective? For the APT, controls should also be preventive and should take place even in the absence of complaints or of problems. One of the most effective ways to prevent torture is through

regular and unannounced visits to places of detention. At the regional level, the work of the European Committee has already proven to be very effective. At the universal level, a new Optional Protocol to the UN Convention against Torture (OPCAT) has been adopted by the UN General Assembly in December last year. This Protocol proposes a system of regular visits by both an International and national bodies. A new International Sub-Committee able to visit States parties will be established. In addition, States will have to "set up, designate or maintain one or several national preventive mechanisms". We call on OSCE Participating States to follow the example of Albania and Malta, the first 2 States to have ratified the Protocol. In all participating States the debate about the possible setting-up or designation of national preventive mechanisms could start already. Tomorrow lunchtime, the Coalition of International NGOs Against Torture (CINAT) is organising a side-event on this Optional Protocol and we invite you alt to participate.

Finally, the third level of action to prevent torture concerns professional training of alt people to deal with persons deprived of their liberty. This is especially crucial for law-enforcement agents. The curricula of basic as well as on-going training of police officers should include how they can prevent torture and ill-treatment of detained persons. This should be integrated in alt the operational training regarding police powers.

Co-ordination within the OSCE and ODIHR

Although primary responsibility to prevent torture lies with the States what can the OSCE as an intergovernmental body and its specialist office ODIHR do to better tackle the problem? In order for ODIHR to be able to play its role more effectively, I would suggest that one person be appointed as **focal point** on prevention of torture within ODIHR. The focal point could also help mainstreaming the activities related to torture within OSCE in general. It could, for example, have close contacts in particular with the OSCE Strategic Police Matters Unit, based in Vienna. We have seen how crucial the work with law-enforcement agents is, in any preventive action to fight against torture, be it in regard with professional training or in techniques to gather evidences.

Advisors

The focal point on prevention of torture could also work closely with a multidisciplinary group of active experts or advisors, who could participate in relevant field activities to combat torture and advice on draft legislation or setting of national preventive mechanisms under the OPCAT. Such a group of active advisors, whose membership would adjust according to the needs in OSCE member states, would enable the ODIHR to be able to call on the needed expertise without the logistical drawbacks of the more format and rather static panel of experts.

OSCE guidelines

Finally, we would like to propose that the OSCE builds on the commitments made in Vienna in 1989, Budapest in 1994 and Istanbul in 1999 by drawing up guidelines on the prevention of torture and ill-treatment in the OSCE member countries. You could follow the example of the African Union, which recently adopted the Robben Island Guidelines on prevention of Torture in Africa. These practical guidelines define concrete steps for States to take in order to make prevention of torture a reality. These guidelines could be considered at the OSCE Permanent Council where the issue of prevention of torture ought to be a permanent item on the agenda and the guidelines a helpful yardstick on the measures taken by states to combat torture and ill-treatment.

These are therefore some proposals for you to consider during this meeting on how you can act to defend some of the basic shared principles of the OSCE which promote democracy, human rights, the rule of law and social justice.

4. Introductions to Working Sessions

a) SESSION 1: THE PROVISION OF PROCEDURAL SAFEGUARDS DURING DETENTION

A. Ms. Renate Kicker, Member of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on:

"The CPT 's Standards concerning procedural safeguards during detention"

Distinguished delegates,

It is a particular honour for me to be addressing this important seminar on behalf of the European Committee for the Prevention of Torture. The CPT is grateful to the organisers of this meeting for this invitation and for this opportunity to exchange views on a subject of great interest and importance to the CPT's work.

I had the opportunity of addressing a previous meeting of this kind, which focussed on imprisonment and prison reform. This time the discussion should concentrate on police custody and pre-trial detention. In this brief introductory presentation I would like to give some examples of CPT standards and practice in relation to safeguarding suspects during detention and how the CPT has successfully co-operated with OSCE field missions.

The CPT's mandate

As you know the Committee's mandate: is the prevention of all forms of ill-treatment of persons deprived of their liberty by a public authority; that includes abuses of people held in police custody or in pre-trial detention facilities, of the Ministry of Justice. Under the Convention, the CPT has unrestricted access to all such persons and all information relevant to its work and meets with them in private.

At present there are 44 member states and Serbia and Montenegro, who became a member of the Council of Europe in May this year, is expected to ratify our Convention soon. This means that soon 45 states out of 55 member states participating in the OSCE will have accepted the CPT as an independent outside inspection body and its function to make recommendations.

On the basis of these recommendations the CPT has developed procedural safeguards which I would like to highlight briefly.

CPT standards in relation to police custody

The CPT attaches particular importance to three rights for persons deprived of their liberty by the police:

- the right of those concerned to inform a close relative or another third party of their choice of their situation,
- the right of access to a lawyer and - the right of access to a doctor.

The CPT considers that these three rights are fundamental safeguards against the ill-treatment of persons deprived of their liberty, which should apply from the very outset of custody (that is, from the moment when the persons concerned are obliged to remain with the police). The involvement

of a lawyer and a doctor, as well as of the family, mitigates the vulnerability of a person when in the hands of the law enforcement agencies.

The right of access to a lawyer must include the right to talk to him in private. The person concerned should also, in principle, be entitled to have a lawyer present during any interrogation conducted by the police. Naturally, this should not prevent the police from questioning a detained person on urgent matters, even in the absence of a lawyer (who may not be immediately available), nor rule out the replacement of a lawyer who impedes the proper conduct of interrogation.

Whenever persons are detained in a police establishment, for whatever reason or length of time, the fact of their detention should be recorded without delay. We recommend a single and comprehensive custody record to be kept for each person detained.

Clear rules or guidelines should exist on the way in which police interviews are to be conducted. Those rules or guidelines should include a code of conduct for police interviews. The position of especially vulnerable persons (for example, the young and those who are mentally disabled or mentally ill) should be subject to specific safeguards. The CPT considers that the electronic (i.e. audio and/or video) recording of police interrogations represent an important safeguard for detainees, as well as offering advantages for the police.

One important procedural safeguard is the requirement to bring a person held in law enforcement custody before a Prosecutorial or judicial authority within a certain time limit. Ill-treatment is less likely to take place if law enforcement officials know that they must soon (ideally within 4 hours) bring persons in their custody before such an authority, when the opportunity will arise for them to complain about their treatment.

The existence of effective mechanisms to tackle police misconduct is an important safeguard against ill-treatment of persons deprived of their liberty. The CPT considers that, in those cases where evidence of wrongdoing emerges, the imposition of appropriate-disciplinary and/or criminal penalties can have a powerful dissuasive effect on police officers that might otherwise be minded to engage in ill-treatment.

Moreover, the CPT considers that systems for the inspection of police detention facilities by an independent authority are capable of making an important contribution towards the prevention of ill-treatment of persons held by the police and, more generally, of ensuring satisfactory conditions of detention. To be fully effective, the visits by such an authority should be both regular and unannounced, and the authority concerned must be empowered to discuss in private with detained persons.

Our discussions today need to bear in mind the fact that pre-trial custody is the responsibility of different Ministries in different states. Persons initially held at police stations may be transferred to other holding facilities after a short period (which ideally should be limited to 48 hours at a maximum). The second stage holding facilities are usually operated under the authority of the Ministry of Justice, but in some jurisdictions they fall under the Ministry of the Interior.

As far as the CPT is concerned, prevention of ill-treatment requires that the custodial function be carried by staff who see themselves as distinct from the police, regarding their primary responsibility as the duty of care for persons deprived of their liberty and not the obtaining of confessions or otherwise actively assisting the investigation / prosecution process. This separation of functional obligation is often best achieved by separation of the Ministries under whose authority

these functions are performed. If this is not the case, then special care is needed to ensure that the selection, training and operating practices of custodial staff emphasises and safeguards the distinction between the functions of the police and investigators and the functions of custodial staff. This separation of functions should be borne in mind throughout the following discussions.

Abuses in police custody

During the dozen years of the CPT's operation, there has been considerable movement forwards in terms of revision of legislation to reflect many of the elements of international standards which are reflected in the CPT's standards with regard to persons held before trial. The development of national law and regulations in this direction is an important step in the process of ensuring ever-greater protection of the rights of persons in custody. However, even though ill-treatment of persons in pre-trial custody may be prohibited by law and in official policy, it persists in practice.

The guiding principle in relation to all persons held in custody before trial is the presumption of innocence, which should set the framework for how all such persons are treated, for the behaviour of staff and for the obligations of the Ministry responsible for their care.

The CPT's work in relation to pre-trial prisoners has focused in particular upon a number of key areas: torture and other forms of ill-treatment at the very outset of custody, use of force by police and custodial guards, medical screening and recording of injuries, conditions in custody, contacts with the outside world, health care, and complaints and monitoring mechanisms. A broader discussion of standards developed by the CPT in relation to persons deprived of their liberty can be found in the Committee's General Reports. For this brief intervention today, I would like to focus on a few examples of CPT-recommendations; they are inter-related and serve to illustrate the gap between law and practice.

The risk of ill-treatment is often greatest at the very beginning of custody, when a person is first deprived of liberty by the police. This is one of the stages in the custodial process when the CPT finds the most serious and frequent indications, including medical evidence, of abuses.

It is vital that systematic medical screening occurs properly on entry of a person arriving in pre-trial detention facilities. As well as serving the important needs of general health (of prisoners and staff) and prevention of suicide and transmission of communicable diseases, systematic medical screening on entry can be a major safeguard against ill-treatment and an important factor in effective pursuit if those who ill treat persons in their custody. It can also be a protection for custodial staff in pre-trial detention facilities against allegations of ill-treatment. These can be found on the CPT's website at www.cpt.coe.int in twelve languages.

What does this mean in practice? The CPT considers that the duty of care of persons held at pre-trial detention facilities includes an obligation to provide screening by a medically qualified professional of every person arriving from police custody upon reception into the facility, and in any case within 24 hours of entry. The screening should include thorough physical examination to identify any injuries present upon arrival from police custody and precise recording. The record should cover all observations of injuries, any account of how those injuries were sustained and the examining doctor's opinion as to the consistency between the observed injuries and the account given.

Furthermore, there should be a system in place to communicate reports of injuries to the prosecutorial authorities. Prosecutors should in turn act under their ex officio obligation to pursue

all information coming to their knowledge of possible ill-treatment, even in the absence of a formal written complaint from the person injured.

An additional point to mention in this connection is the practice of returning persons in pre-trial detention to police custody for further investigative tasks. This is a practice, which should be very strictly limited. The CPT considers that in most circumstances further investigative work can be carried out without removal of the person from Ministry of Justice premises, or from the care of staff at Ministry of the Interior pre-trial detention facilities in countries where that is the system. If, exceptionally, return to police custody is unavoidable, it should be properly authorised and of short duration and upon return to the pre-trial detention facility the person should again be medically screened for injuries.

Abuses in pre-trial detention facilities

Let me start by saying that the CPT tends to find less frequent and less serious ill-treatment by custodial staff in pre-trial detention facilities than in police custody. However, the incidence tends to be higher in pre-trial detention facilities than in prisons for sentenced prisoners only. With some notable exceptions, it seers that the further from the outset of custody, the less the risk of ill-treatment by staff. I should note, however, that there is still need for vigilance concerning ill-treatment by staff in custodial settings, since it is in the nature of closed institutions for the risk of ill-treatment to Continue.

In that regard it is important that the rules regarding the use of force by custodial staff be carefully spelt out and practice rigorously monitored. The CPT takes the view that the carrying of weapons by custodial staff should be the exception rather than the rule and that any weapons issued for special situations should be carried out of sight, so as not to increase the tension between staff and persons in custody.

Co-operation between the CPT and the OSCE

Under the Convention much of the CPT's work is governed by the principle of confidentiality. Fortunately there is an increasing trend for the states to lift confidentiality by authorising publication of CPT visit reports and the authorities' responses. There is thus a large body of information concerning the CPT's work in the public domain, and the CPT is keen to communicate with its external partners about that material. The present occasion is an example of this.

Additionally there is potential for greater synergy between the CPT and external partners, such as the OSCE, at earlier stages in the process of working on issues of common interest. For example, in the development of the CPT's sequence of visits to FYROM, close communication with OSCE field offices and the exchange of detailed information has made an important contribution to the effectiveness of the visit work of our Committee.

The OSCE field offices are uniquely placed to monitor matters directly relevant to the CPT's mandate on a continuing basis. The unique powers of the CPT, in terms of access to persons deprived of their liberty and to information, including prosecutorial and judicial files, enable the Committee to use the information gained from ongoing monitoring to great effect. This is an example of particularly productive co-operation.

However, we need to work even harder on communication with our external partners. It is, for example, regrettable that the development of the torture prevention programme between the OSCE

and the Georgian authorities did not involve the CPT from the very beginning. The CPT is keen to support all such important initiatives directly relevant to our mandate, by sharing information and expertise.

Thus it is with particular pleasure that I represent the CPT here today. I hope that in the discussion session to follow there will be further opportunity to exchange views and experience. I have brought with me various materials concerning the CPT's work, its standards and the body of jurisprudence developed in the course of the visits over the last fifteen years. The CPT looks forward to working closely and fruitfully with the OSCE in our joint commitment to preventing torture and ill-treatment.

B. Paul Bonard, Deputy Head of the Protection Unit, International Committee of the Red Cross

The establishment of safeguards at point of detention and throughout detention must be established in law. The point of arrest can result in numerous violations.

The aim of the presentation is to give an overview of these standards.

Generally:
- Police cars and officers must be clearly identified.
- Right to explanation of reason of arrest. Interpretation is necessary AT THE TIME OF ARREST.
- Detainees are often ill treated during transit. Therefore detainees must be taken to the initial point of detention without delay. And when they arrive it should be certified that they have arrived in good condition.
- Accurate record keeping is essential. A single and comprehensive custody record should be kept for all persons who have been detained. Records of the reasons and place of detention must also be kept.
- Judicial control must take place promptly after the arrest. This is a key safeguard for the rights of detainees to ensure that detention is lawful and necessary. The judge can also check at this point for signs of ill-treatment.
- During police station detention contact with the outset world is an important way of preventing torture. Incommunicado detention encourages torture.
- Prompt access to legal counsel. SR on torture says this must occur up to 24 hours after arrest.
- Also vital is access to relatives.
- Also important is the *habeas corpus* principle, which not only checks the legality of detention but also to assesses the safety of the detainee.

The most important and developed safeguards concern the period of interrogation.

During interrogation:
- Need presence of a lawyer.
- Identification of all persons present.
- Medical examination after every period of interrogation.
- Audio and video recording of the interrogation.
- Prohibition of hooding.

Of utmost importance are the safeguards on the use of force, which can be only used PROPORTIONALLY when necessary:

- In principle detention facility staff should not possess firearms.
- Instruments of restraint to control dangerous prisoners and prevent escape but they must not be improperly used – they can be painful and even cause death.
- Disciplinary measures and punishments should also be strictly regulated. International standards increasingly question to use of solitary confinement, which in some circumstances can constitute inhuman and degrading treatment.
- Duty to prevent also inter-prisoner violence.
- At the stage of release – precautions should be taken. They should be released in a situation where they will not be subject to reprisals.
- They should also not be returned to countries where they may be subjected to torture, inhuman or degrading treatment

These safeguards are not here to be picked and chosen from, they must be all complied with. I support the suggestion that we develop guidelines on the prevention of torture.

b) SESSION 2: THE PROHIBITION ON THE USE OF EVIDENCE OBTAINED BY TORTURE

A. Daniyar Kanafin, Professor of Criminal Procedure Law, Kazakhstani Humanitarian Institute of Law

Ladies and Gentlemen!

Before I start with my presentation, let me thank organizers for the honour granted to me to speak before this high assembly.

In Article 1 of the Constitution of the Republic of Kazakhstan, our country proclaimed itself as a democratic, secular, rule of law and social state, whose highest values are the human being, his or her life, rights and freedoms. Indeed, during the last twelve years Kazakhstan has gone a long way, from being a fragment of the totalitarian Soviet Empire to a state enjoying full rights of a member of the international community. During these years, much was achieved in terms of humanization and liberalization of the Kazakhstani society, and introducing generally accepted democratic standards of contemporary civilization to the public and social life.

It should be admitted that our state has been gradually rejecting many atavisms of the Communist system, including the inquisitory criminal justice based on uncontrolled infringement of individual rights. The procedure of investigation and trial of criminal cases has been significantly transformed to ensure greater protection of human rights. The existing laws and law-enforcement practice reflect the basic fundamental principles of humane and just criminal procedure: inviolability of the person, the home and property, ensuring the right to defence and to seek qualified legal advice, presumption of innocence, witness immunity, adversarial process, equality of the parties, and others. The RK Law dated 21 December 2002 added a new article to the RK Criminal Code, which provides for criminal sanctions for acts of torture by law enforcement officials.

However, despite the positive changes described above, we unfortunately have to admit that the level of respect for human rights in criminal procedure is far from ideal. The above statement applies equally to the problem of subjecting suspects and defendants to torture and subsequent use of the evidence obtained in such way for handing down convictions.

Based on the vicious practices rooted in the Soviet times, officers of criminal prosecution bodies often continue to treat torture as an effective tool of interrogation and, accordingly, as a way of fight against crime. The system of evaluation of a police investigator is such that the basic criterion of the efficiency of his work is the percentage of solved crimes in proportion to the number of registered crimes. Given a growing crime rate, the lack of time, insufficient material resources and skilled personnel for carrying out full investigation and inquiry, officers of the police and other law enforcement agencies need to quickly obtain confessions from the suspects of alleged crimes and to ground charges on that basis. The most simple, inexpensive and quick way of obtaining a confession is illegal physical or psychological compulsion of such persons. The problem is not only the cruel treatment of persons under investigation, which is dangerous for the health and life of the criminal suspects, but also the completely unlawful use of facts obtained by illegal measures as incriminating evidence in criminal cases!

As the practice shows, torture is committed much more often than official sources state. We are aware of a large number of cases, which were widely publicized in Kazakhstani mass media, of cruel violence used against persons involved in criminal procedure.

So, for instance, the incident with a Kazakhstani citizen, Kanat Beimbetov, had a great public resonance. On 26 October 2001 he was detained by national security officers and three days later was found in grave condition in one of the hospitals of the City of Turkestan. The victim's relatives produced numerous proofs of the fact that K. Beimbetov, who subsequently died, was subjected to torture. In spite of that, this case of alleged torture has never been adequately investigated.

While researching this problem, I found some more instances that were not widely reported and allow to conclude that torture was used. For instance, at about 8 a.m. on 27 June 2001 A.V. Badikov, who had a previous criminal record was brought to one of the District Offices of Internal Affairs (RUVD) of the City of Almaty as a murder suspect. According to eyewitnesses his condition was normal, he walked on his own and had no evident signs of violence on his body. However, at 2:15 p.m. he was taken to a hospital from the RUVD, with numerous bruises, cerebral contusion, and a broken rib. He stayed at the intensive care unit for more than a day. Subsequently, he sought prosecution of the officials who used violence against him. This fact was officially admitted by the Almaty City Court. However, despite the contradictory evidence base, A.V. Badikov was sentenced to 18 years (sic!) of deprivation of liberty.

It should, of course, be noted that use of torture by law enforcement agencies steadily decreases. This fact is acknowledged by both law-enforcement officers and persons familiar with the criminal justice. This is due to the fact that torture has been made a criminal offence under the RK Criminal Code, which contributes to the improvement of the existing situation, along with introducing more guarantees of respect for individuals' rights in criminal procedure, such as the rights to a counsel, to make a phone call, file a complaint, and so on. However, as the introducer's experience as a defence lawyer and researcher on the topic shows, torture is still widely used in various situations, especially often with respect to those having previous criminal record(-s), drug addicts, or persons of low social status, who are unable to use the services of a good counsel or attract public attention to their fate. For instance, my client, A. Ibrayev, told me that after police officers found out that he was a drug addict and had a previous criminal record, they started to beat him. When legal assistance was rendered to A. Zhakenov, he complained that while at the detention facility, he was placed in a cell with prisoners who cooperated with the prison management, and the prisoners beat him, took all of his things, and offered that he should either confess the crime incriminated to him or confess any other unresolved crimes, a list of which was prepared by police officers and

delivered to the cell. Otherwise, he was threatened by yet more cruel violence. The conviction that was handed down subsequently was based on the confession so obtained.

The article of the Kazakhstani Criminal Code, which defines torture as a crime, does not state that such crime may be committed not only by officials, but also at "by their instigation, with their knowledge or acquiescence" by other persons as specified in CAT definition of torture. Consequently, the definition contained in the RK Criminal Code does not reflect the relevant provision of the Convention, which obviously creates favourable conditions for torture by "someone else's hands," for example, by people who are dependent on the criminal prosecution agencies.

The analyses of criminal cases allow us to conclude that courts are unreasonably tolerant with regard to the evidence obtained by using torture and other illegal acts. I would suggest that the main reason of such a state of affairs is the absence of real independence of the court system. Judges of district and regional courts who handle the absolute majority of criminal cases in the Republic of Kazakhstan are appointed by the President and can be dismissed also only by the President. Civil society has no possibility to participate in the formation of the court system and to effectively control its operation. The establishment of jury trial although foreseen in Constitution, is currently discussed but has not been implemented. In this situation judges regard themselves as a part of the state system, and due to their rigid legal conscience that has been formed during the Soviet times, are eager to defend the interests of the state, which in this case they see in instituting rigorous fight against crime, rather than in standing up for the rights and freedoms of the people.

Despite frequent complaints about the use of torture, the percentage of "not guilty" verdicts is extremely low. Yet were the presence of valid suspicions as to the use of torture should be sufficient for finding the evidence inadmissible and for its exclusion from the case and rejection of respective conclusions of the prosecution. Inadmissible evidence continues to be relied on and used as the basis for sentences that are wrongful from the point of view of any civilized law not only because the officers who investigated the case and support criminal prosecution are subjected to disciplinary measures for acquittal of the accused, but also because if the accused will get the right to claim compensation for the damage caused by the criminal prosecution, this threatens with big financial problems for the state. Furthermore, due to corruption in the law-enforcement and court system in the Republic of Kazakhstan, judges do not readily pass verdict of "not guilty" in fear of being suspected in receiving a bribe from the accused. Especially since, until recently, the justice system did not welcome substantial numbers of acquittals rendered by particular judges. With underdeveloped institutions of the civil society, the legal policy is often formed by the instructions of higher authorities (including some unpublicised instructions), than the letter and the spirit of the law.

The ineffective reaction of the Prosecutor's offices to the use of torture is another problem. In my opinion, it can be explained by the following reasons: traditions inherited from the Soviet times, call on the Prosecutor's office to fulfil two, sometimes contradictory functions – the supervision over compliance with the law and state prosecution. Usually they prefer to concentrate on the latter, and more often take the side of investigators rather than the side of people whose rights were infringed as a result of those officers' acts. In court, a prosecutor is trying to prevent the exclusion of illegal incriminating evidence from the case, simply because the fact that the evidence would be excluded would mean that his colleague who was involved in the pre-trial stages of the process and who approved the charges and authorized arrest, etc. acted in breach of the law and procedure. Also, without such evidence, it would be much more difficult to win a case, while in case of

acquittal the prosecutor might be subjected to disciplinary measures by his /her superiors. In such circumstances, efforts of the defenders are often fruitless.

It is necessary to stand for absolute prohibition on torture. No noble purpose can justify the use of this dirty instrument. Torture is unnatural and immoral by nature, because it jeopardizes fairness and humanity, humiliates human dignity and discredits justice, since an officer who applies torture becomes a criminal, akin to those against whom he should stand by virtue of his vocation and civic duty. A state that permits the use of torture by definition does not have the right to call itself democratic. Justice should in no circumstances, rely on facts received through torture.

Dear Ladies and Gentlemen! At today's meeting let us try to discuss the reasons and conditions that are conducive to the use of torture in criminal proceedings, and to develop legal and organizational safeguards for people from this crime, by making them more comprehensive and efficient, founded on the provisions of international law, in particular:

1. To discuss how to improve guarantees that evidence received by means of torture in the criminal proceedings will not be used, namely:
   - to consider the idea of placing the burden of proof that no torture was used on the criminal prosecution bodies, and exclude any evidence, in relation to which the doubts as to its admissibility cannot be removed;
   - to discuss the idea of sanctioning by judiciary of any proceedings intended to limit constitutional rights (arrest, search, attachment of property, tapping telephones, etc.);
   - to discuss introduction of a mechanism of appeal when illegal actions by the investigating agencies directly to court, without appealing them first to the prosecutor, in the OSCE participating states where such provision is not part the law;
   - to consider that each apprehended should be provided with an opportunity to promptly appear before the court to appeal his/her apprehension, in the OSCE participating states where such right is provided;
2. To discuss best practices of public control over non-use of torture by the criminal prosecution bodies and independent medical examination of the detained and arrested;
3. To discuss the issues of transfer of not only pre-trial detention centres (SIZOs) from Ministry of Interior to the Ministry of Justice but also transfer of temporary detention (IVS) and distribution centres under the jurisdiction of civil authorities such as the Ministry of Justice, in the OSCE participating states where this transfer has not been full as these are the facilities where most conducive conditions for using torture exist;
4. To discuss relevant CAT recommendations to the governments of the OSCE participating states taking into consideration that they should be implemented in full, especially the recommendations with regards to improving the independence of judges, defence lawyers, and exclusion of evidence obtained by means of torture, etc.;
5. To discuss the ways and means of influence on the governments of those countries, which do not effectively combat the use of torture.

Thank you for your attention. I wish all of us a productive discussion.

B. Tinatin Khidasheli, Director of the Legal Aid Center, Georgian Young Lawyers Association

Ladies and Gentlemen

Let me firstly express my gratitude to the organizers of this event.

Unfortunately, states practice shows that in spite of all international standards treaties, commitments they take all discussions and conferences, torture is still there and willingness to prevent it is effective only on paper.

There are two levels to the problem.

- On the one hand a society that is rather tolerant to mistreatment and torture in detention and prison facilities. The general perception is that those are criminals and society has more important to take care of rather than protecting criminals.
- On the other hand states are effectively using such an attitude and sometimes you come across the state propaganda against Human Rights groups based exactly on that societal perception. NGOs are protecting criminals, murderers, and terrorists.

Here is the question. Where to start, how to fight rather endemic problem of torture and ill-treatment?

Under the best scenario states are trying their best to bring legislation in conformity with international standards and please the others and IGOs. However, there is little it helps in real life and everyday practice. Again, this is not a universal attitude either and some states find it impossible to have torture defined as to the CAT definition and have criminalized an action that is recognized as torture under the international law. Georgia is unfortunately one of those.

To be specifically mentioned. There is no person born as torturer and enjoying it. This is the system that forces policeman and investigators to act illegally. This is the system that makes them to take several steps and follow certain behaviour.

There are very simple question to be put forward and requested by all human rights community to respond on the side of states members of UN, OSCE and COE.

- What is the standard accountability requirement for the policemen, investigator?
- What are the performance criteria?
- Is the reporting based on the requirements of a “positive balance”, i.e. greater part of opened cases or not?
- How many states provide proper education to investigators and policeman on investigative tools and mechanisms?
- What are the guarantees for checking over confessions? How do the courts examine confessions? What are legislative guarantees for the confessions to be excluded if obtains forcefully?
- How many states provide immediate access to legal and medical aid? What does “immediate” mean under most jurisdictions? What are the guarantees for immediate forensic medical examination?
- What is the access rate for human rights groups to detained and mistreated persons?

Those are fundamental questions. If there is a negative or insufficient answer to any of those it means that torture is possible and it is difficult or almost impossible to document it?

Here we talk about confessions obtained forcefully and illegally. Most of the constitutions and laws provide and clearly outlaw those but what are the mechanisms?

- How do you prove?
- Who has the burden of proof?
- What are the tools used by judges?
- What are the security guarantees in those countries that once a person talks in the court room he will not subjected to a torture again by prison administration or fellow inmates?

And finally, what are the national mechanisms invented and instituted for insurance that torture will not happen? Do we have legislation that absolutely outlaws and makes impossible torture, or that creates torture friendly environment? What are the original ideas coming from national institutions? No state has a problem in confessing that it happens under their jurisdiction, we debate about degree. However, where is the proof that they are trying to combat? Are the states innovative in this respect?

A very trivial question? Are the states really interested in fighting torture?

Practice proves that they are not.

My own country has found it impossible to change criminal code and take proper definition of torture, so to have it punishable. There are numerous problems while defining what is it to have immediate access to legal aid and rights starting immediately as you are detained? Almost in all jurisdictions "immediate(ly)" means "after several hours". Those hours you are under the mercy of a policeman who by himself has only those hours to prove that you are criminal, as he has not been thought other means for investigation than to make you talk and confess. Here the main clash takes place.

On this very conference states requested no pointing, no shaming. They have stressed the need in being general and overreaching. That is exactly the core of the problem. This is the rule using at home, under their jurisdictions. No pointing, meaning no punishment for perpetrators. Condemn torture generally but do not punish perpetrators. Otherwise, there is threat that impunity might be broken and some might even refuse to obey orders.

c) SESSION 3: THE EFFECTIVE INVESTIGATION AND PROSECUTION OF ACTS OF TORTURE

A. Christopher Gerenwood QC, Professor of International Law, London School of Economics

Summary of Introductory Remarks:

These remarks will explore some of the legal difficulties, which are frequently encountered in attempts to investigate and prosecute torture. All OSCE participating States are obliged to effectively investigate and prosecute acts of torture. Accordingly the discussions in this session should seek to identify those factors that prevent effective investigation and prosecution in OSCE participating States and to make recommendations to address them.

The most effective forum for the investigation and prosecution of torture is normally the State in which the acts of torture are alleged to have occurred. This process is, however, sometimes hindered by:

1. A culture in which torture is accepted as part of normal policing;

2. Incompetence on the part of those charged with the investigation;

3. The difficulty of allegations being investigated by the same authorities which are the object of the allegations;

4. Amnesties granted after unrest or conflict.

These problems can be addressed in various ways (see the remarks of Ms Denber). In particular:

1. Assistance in creating and training an effective police force capable of serious detective work helps to address both the first and second problems. A culture of acceptance of torture tends to go hand in hand with the existence of an ineffective detective force which is incapable of solving crime without procuring "confessions";

2. The problem of "who investigates the investigators" can be alleviated by international monitoring mechanisms but in some cases can only seriously be addressed by the use of a separate body to investigate abuse of power by the normal authorities;

3. The maintenance of the principle that there should be no amnesty for torture as an international crime.

As stated above, the most effective forum for the investigation and prosecution of torture is normally in the State in which the acts of torture are alleged to have occurred. However, universal jurisdiction over the crime of torture is a central feature of the UN Convention Against Torture, but it needs to be recognized that:

1. Trial in a State unconnected with the alleged offence is still a great rarity and more difficult to mount in practice than is often realized;

2. Investigation is frequently impossible without some measure of assistance from the State where the events are alleged to have occurred;

3. The law relating to the immunity of an official of one State accused of torture before the courts of another is unsettled – cp. The decision of the House of Lords in *Pinochet* with the decision of the International Court of Justice in *Arrest Warrant*.

With regard to immunity, one partial answer might be that participating States of a body such as OSCE should not assert immunity before the courts of another member State in respect of torture. The immunity is that of the State, not the individual official. The immunity of a serving diplomat or head of State/Government may be in a different category in this respect.

B. Rachel Denber, Acting Head, Europe and Central Asia Division, Human Rights Watch

I would like to thank the Chair for inviting Human Rights Watch to speak on this very important topic. Human Rights Watch has made exposing acts of torture a priority in our work throughout the world, and the Europe and Central Asia division has researched and reported on torture in many OSCE participating states, including Georgia, Russia, Turkey, and Uzbekistan. We have chosen this emphasis because torture is one of the most unconscionable transgressions of OSCE human dimension principles, and because overcoming it should be an urgent priority for the OSCE. And in our work we have found that years of impunity for torture is one of the key factors explaining the persistence and widespread nature of torture in OSCE countries. Conversely, accountability for torture is a key part of the prevention of torture.

The Istanbul Protocol sets out thorough and detailed guidelines for the effective investigation of torture. Rather than review them here, I would like to comment on several shortcomings in states' implementation of the obligation to investigate and punish acts of torture, then turn to recommendations for OSCE action to promote accountability for torture.

I. Structural factors

1. Shortcomings in implementation by member states of their commitment to investigate and punish acts of torture derive from structural and political factors. The first structural factor pertains to the judiciary. It is up to the judiciary to order investigations of claims of torture that come to light either at habeas corpus hearings or at criminal trials. And it is up to the judiciary to hear cases of torturers that come to trial. Due to the lack of procedural protections, which are the topic of a separate seminar, often criminal defendants are willing to come forward with torture claims only when their case goes to trial on the merits. In these and other scenarios, judges do not question criminal defendants about the torture claim, or order a separate investigation of it. When investigations into acts of torture do go to court, convictions are rare.

Accountability for acts by state officials requires a robust, independent judiciary. In many countries, though, particularly in the former Soviet Union, judges depend on the executive for their appointments, and courts depend on the local executive authorities for their financing. Judges are therefore reluctant to take action that will irritate the authorities. In some of these countries, the judiciary's dependence on the executive extends beyond financial or administrative dependence. They are under pressure to implement an unwritten state policy to convict at all costs. This is the case, for example, in Uzbekistan, with respect to those charged with religious extremism. When a judge's actions are questioned by the prosecutors' office this could spell the end of their careers. This may explain their reluctance to respond to torture claims in court.

2. The second factor pertains to the investigative process. In countries of the former Soviet Union in particular, criminal investigations into torture claims are few because too often, initial inquiries are superficial and not done with due diligence outlined in the Istanbul Protocols. When procuracies pursue initial inquiries, they limit their actions to forwarding the alleged victim's written complaint to the police station in question. Usually, they make no effort to interview the victim to gain further information. Police officials deny that the incident ever occurred, and the inquiry comes to an end. Worth mentioning here is the tendency throughout the OSCE region for investigators to dismiss psychological torture, of the sort described at yesterday's session, as acts of torture.

3. Because torture often happens in private, without witnesses, successful prosecution will depend on the presence of material evidence. Police go to great lengths to conceal evidence, by preventing abused detainees from meeting with a prosecutor, judge, or family member, by extending their custody in police precincts, or by bribing other facilities to accept an abused detainee who still bears visible marks of torture.

   Courts tend to attach most credibility to state-run forensic medical testing centres. Yet to access these centres, torture victims must first obtain a referral from an investigator. Detainees face significant obstacles in getting such a referral from their case investigator.

4. This leads to another problem related to the structure of the procuracy, which prosecutes investigates and prosecutes crimes in court and also guarantees the rights of detainees. And since there is no guarantee that the procuracy official tasked with examining a torture claim is not also investigating and prosecuting the detainee's underlying criminal case, there may often be an inherent conflict of interest that impedes torture investigations.

5. Finally, delays in the investigation of torture cause essential evidence to be lost, undermining a successful torture investigation.

II. Political factors

Several reasons explain states' failure to pursue accountability for torture. First is states' failure to acknowledge the scope of the problem. In countries where torture is endemic, governments will acknowledge only that it occurs in individual cases. Even when faced with compelling evidence otherwise, they vehemently deny its endemic nature.

Throughout the region, governments the lack of political will to reform. In many parts of the OSCE region police are implicitly evaluated by the number of crimes they solve and send to court. Faced with a de facto quota system, they are motivated to extract evidence by any means necessary. Few have the political courage to question this system. Few also have the courage to weed out corruption, which also facilitates torture and impedes accountability for it.

On some occasions political incentives have been used to press OSCE states to hold torturers accountable or to undertake reform to prevent torture. These are the exceptions that prove the rule that political will is the crucial element for accountability. For example, as part of the EU Accession Partnership Turkey took a positive step toward restoring the independence of the judiciary, allowing it to pursue accountability for torture. It repealed a law that had given governors the right to block prosecutions of police and other civil servants, and returned this right

fully to the courts. Regrettably, though, convictions of torturers remain rare. And it is rare throughout the region, from the United States to Uzbekistan.

Another case in which there were political incentives to prosecute torturers occurred in Uzbekistan in 2002. Four police officers were convicted and sentenced to twenty years of imprisonment for torturing to death an alleged "religious extremist." In June 2002, three security officers were also sentenced to four to sixteen years for another torture death. But political will was evidently lacking when the government was presented with information about eight torture-related deaths this happened since then.

In some countries, such as Uzbekistan and Turkmenistan, an understanding pervades the criminal justice system that criminal detainees are inherently bad or perverse people, and that they are not deserving of protection from torture. This applies especially to those who are accused of heinous crimes and crimes against the state. Statements by public officials facilitate and serve to justify these perceptions, and ultimately hinder any impulse to hold torturers accountable.

In some parts of the OSCE region, where we believe torture to be a problem of crisis proportions, creating an accountability process requires more than political will to carry out structural or legal reform. It requires an aggressive state initiative to acknowledge the problem, denounce torture as a tool of coercion, and punish perpetrators. This is certainly the case in Chechnya and Uzbekistan. In Chechnya, torture is part of the broader climate of lawlessness. Torture claims are not investigated because there are few if any torture inquiries--detainees are often compelled to sign a statement that they were not harmed in custody as a condition for their release. This severely undermines any future pursuit of accountability in individual cases.

III. No Accountability without Transparency

There can be no accountability for torture where there is no access to detainees and de facto or de jure secret detention. This point has been discussed in the session on procedural guarantees, but it needs to be noted in this context as well. It relates especially to those detained in U.S. custody in Afghanistan, where there is no public access to detainees and ICRC access is limited to those held at Bagram Air Base. Without transparency and access, there is simply no way of knowing whether detainees in the context of the U.S.-led global campaign against terrorism are being tortured and whether perpetrators are being held accountable.

In this regard, I would like to note one issue that is missing in the agenda for this seminar but that should be addressed in forthcoming gatherings. It is the disturbing and developing pattern of OSCE participating states, including the United States and Sweden, rendering terror suspects to countries where torture is endemic, upon questionable diplomatic assurances by the receiving state that the detainee will not be tortured or ill treated. OSCE states that are party to the Convention against Torture and the European Convention are obligated to assess the degree to which these individuals risk torture upon expulsion, extradition, return or repatriation. In countries where torture is found to be endemic, diplomatic assurances are not an adequate form of protection, and countries that make use of them in such instances undermine the absolute nature of the ban on torture.

IV. A strategy to promote accountability for torture.

The OSCE should strive to facilitate transparent and effective accountability process in participating states. In doing so it should draw on its dual strengths: its field presences and its capacity for co-ordination among participating states and other multilateral institutions.

To facilitate transparency, the OSCE should:

- Agree to gather and publish, on a regular basis, comprehensive statistics on torture complaints, investigations, and convictions, and on the nature of the sentences imposed. When numerous torture complaints emanate from particular police precincts, encourage the government to undertake an investigation of the precinct without waiting for a further individual complaint.
- In cases of suspicious deaths in custody in countries where the OSCE has a field presence, the OSCE should insist upon and facilitate independent forensic examinations of the bodies, and make the results publicly available.
- Reinvigorate efforts to monitor trials, and publicly insist that any allegations of torture revealed at trial receive a full judicial evaluation. Keep systematized records of court proceedings, with a view toward analyzing how courts treat torture claims, present this information to the government and make it publicly available. Ensure that trial monitoring efforts have adequate resources to carry out effective work.
- Prioritize Central Asian countries in the promotion and implementation of habeas corpus reform.
- In countries that have adopted a National Action Plan against Torture, promote the creation of an independent mechanism for monitoring the implementation of the plan.

To facilitate effectiveness, the OSCE should:

- Assist in the criminal procedure reform to remove obstacles to forensic medical testing, and to ensuring the independence of forensic evidence centres. Ensure that evidence of torture submitted by private doctors is admissible in court.

- Ensure co-operation with other multilateral institutions, such as the EBRD, toward integrating recommendations made by the Committee for the Prevention of Torture and the UN Special Rapporteur on Torture, into their country strategy. This collaboration should be emphasized in countries where the OSCE has a field presence.

- Co-operate with the EU policy on torture in third countries by providing information, particularly in countries where the OSCE has a field presence.