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**IRCT STATEMENT TO WORKING SESSION 4 – RULE OF LAW II  
PROTECTION OF HUMAN RIGHTS AND FIGHTING TERRORISM  
OSCE HUMAN DIMENSION IMPLEMENTATION MEETING  
Warsaw, 1 October 2008**

The right to be free from torture is a non-derogable right that continues to be violated throughout the world, including in the OSCE region. Yet the United Nations Convention against Torture (UNCAT) is clear: no circumstances, whether act of war, internal instability or national emergency can be invoked as a justification of torture.

Nevertheless, the so-called “war on terrorism” has seen democratic governments resort to torture and ill treatment of persons suspected of involvement in terrorist activities and has reignited the age-old debate about whether torture can be justified if the purpose is to save innocent lives. In this context, prominent opinion and decision-makers as well as members of the general public in leading democratic countries have argued that new forms of trans-national terrorism necessitate a revision of existing legal and moral norms related to torture and ill treatment.

The IRCT expresses grave concern about reports that some OSCE states have been complicit in the torture of terror suspects. Moreover, the IRCT points that these actions have had negative consequences for torture victims worldwide, including those seeking refuge in OSCE states and those who treat them.

**Extraordinary rendition and unlawful detention sites**

The IRCT remains alarmed that some OSCE member states have either practiced or been complicit in the practice of extraordinary rendition – i.e., transferring terror suspects across borders without due process and often to countries known to practice torture and ill-treatment as part of interrogation proceedings. An investigation by the Council of Europe found that in some instances, European states gave silent approval for rendition flights to land in their territory and have impeded investigation of rendition cases. The IRCT urges all states to ban renditions, prohibit rendition flights from landing on their territory, and to fully investigate rendition cases and ensure appropriate justice.

Similarly, the IRCT is deeply concerned that some OSCE member states may continue to operate clandestine detention facilities to house terror suspects. Operating such facilities threatens the rule of law, violates fundamental human rights and put detainees at risk for torture and other abuses.

Likewise, some states do not permit inspections and monitoring of known detention sites, where detainees often are kept in appalling conditions and subjected to torture and ill-treatment. The IRCT reiterates that ratification of the Optional Protocol to the Convention against Torture (OPCAT) – which allows medical and other experts to have unhindered access to places of detention – is a key step in upholding the obligation to prevent torture.



## Fair procedures for receiving asylum seekers

Since the advent of the so-called “war on terrorism”, the plight of persons seeking asylum in the OSCE member states has been a particular concern of the IRCT. Some states have adopted security measures that have diminished the institution of asylum as an effective protection measure.

In some countries, limited or no access to adequate medical, social and legal support services means that torture, persecution and other acts relevant to asylum status go undocumented and victims are left untreated. This can lead to unfair procedures and incorrect findings that endanger the safety and well-being of victims of torture and other abuses. In the worst case scenarios, already traumatised individuals can be re-traumatised by interrogations that do not take into account their existing vulnerability.

The IRCT recommends that civil servants in reception authorities receive training in methods of interrogation that take due care of the vulnerabilities of victims of torture and other violence. Referral to assistance services, especially torture rehabilitation programmes, should occur on a systematic basis.

As far as the extradition of asylum seekers is concerned (such as required by a third state for criminal proceedings), extradition should not be carried out until a full examination of the asylum claim has been carried out. States must respect the principle of *non-refoulement* – i.e. not sending a person to a country where s/he risks torture or other human rights violations. The IRCT emphasises that while some states may seek to revoke refugee/asylum status when there is a danger to national security, this practice too may lead to a breach of the *non-refoulement* prohibition.

Finally, the IRCT has serious concerns about states utilising diplomatic assurances when expelling terror suspects. The UN Special Rapporteur on Torture has stated that diplomatic assurances are unreliable and ineffective in the protection of torture and ill-treatment, as states have no reliable form of post-return monitoring and the person has no recourse if torture does occur, as diplomatic assurances are not legally binding.<sup>1</sup> States therefore should prohibit the reliance on diplomatic assurances when there are grounds to believe that torture and ill-treatment are endemic in the reception country.

## RECOMMENDATIONS

- States should ban the practice of extraordinary rendition flights, prohibit the transit of such flights on their territories and to fully investigate rendition cases to ensure appropriate justice.
- The IRCT urges for all detention facilities to operate according to the rule of law and international human rights standards. States should sign and ratify the Optional Protocol to the Convention against Torture as a way to demonstrate their commitment to preventing torture in places of detention.

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<sup>1</sup> See *Interim report of Mr. Manfred Nowak, Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment (A/60/316)* to the 60<sup>th</sup> UN General Assembly, 30 August 2005.



- Civil servants in reception authorities receive training in identification of and interaction with victims of violence and make referrals to rehabilitation and other support programmes as appropriate.
- States should not extradite asylum seekers before completion of a full examination of their asylum claim, and should never extradite persons at risk of torture or other human rights abuses, in accordance with the principle of *non-refoulement*.
- States should not rely upon diplomatic assurances when expelling terror suspects, as these are not legally binding mechanisms and victims have no recourse should torture and ill-treatment occur.

*The International Rehabilitation Council for Torture Victims (IRCT) is an independent international health professional organisation, which promotes and supports the rehabilitation of torture victims and works for the prevention of torture worldwide. The IRCT collaborates with rehabilitation centres and programmes throughout the world that are committed to eradicating torture and to assisting victims and their families.*