

SUPPLEMENTARY HUMAN DIMENSION MEETING

on the Prevention of Torture

6-7 November, 2003
Hofburg, Vienna

Annotated Agenda

OVERVIEW

Torture and cruel, inhuman and degrading 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). OSCE participating States have also committed to “assist victims and co-operate with relevant international organizations and non-governmental organizations, as appropriate” (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:

- The provision of procedural safeguards during detention
- The prohibition on the use of evidence obtained by torture
- 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 of 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 honoring 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?