

COMPILATION OF WRITTEN RECOMMENDATIONS

(Covering Working Sessions 4-6)

This compilation contains recommendations submitted to the HDIM Documentation Centre in accordance with the established procedure. The compilation is organized by Working Sessions and by what was submitted by Delegations / International Organizations / NGOs to participating States and, separately, to OSCE Institutions / Field Missions or other International Organizations. Recommendations are compiled in original language. This compilation contains recommendations from all documents received at the HDIM Documentation Centre by the end of Working Session 6; documents received after this time will be included later in the Consolidated Summary.

Wednesday, 26 September 2012

WORKING SESSION 4: Rule of Law I

Recommendations to participating States

Soteria International

- Soteria International recommends countries that undergo transition from totalitarian regime towards democratic rule of law, to involve actively, *de jure* and *de facto*, civil society in its legislative process and to step out from the totalitarian pattern, that of “the state knows better what is good for its citizens”. At the judicial level it may be as well expressed by requesting independent qualified expertise from representatives of the civil society, in such cases as described above, taking the example of the Supreme Court of Sweden which involved an independent expert and took into account his report after he had held a series of interviews with the subject, versus the Romanian Court which relied on the expertise of the psychologist appointed by the state, who did not even meet physically the subject of his expert report.

Recommendations to the OSCE

Chernivtsy Regional NGO 'Human Rights'

- К ОБСЕ у меня рекомендація – проводит постійний моніторинг судової влади в Україні, подібний моніторингу судового процесу над бившим прем'єр-міністром Ю. Тимошенко.

Soteria International

- Soteria International recommends OSCE/ODIHR to elaborate and implement an efficient and adequate toolkit of communication between the legislative body and the grassroots society in OSCE member states, and to ensure that the transparency of the legislative process and its feedback is not limited to a set of choices predefined by a majority.

Kylym Shamy

General recommendations:

- To elaborate national standards of human rights defense and securing the citizens in interethnic conflict situation.
- It is necessary to activate formation and implementation of the state national policy. To pass from recognition and analysis of the problem to the improvement of the legislation. And, passing of the Conception of the National policy consolidating the society in Kyrgyz Republic would be the practical step in this direction.
- To elaborate the program of the development of the international relations in the appropriate territory on the local level and the program on securing of the population (the executive bodies of the local self –government); approve and control their implementation (the local councils).
- To provide the implementation of the state national policy with funds from the budget of 2012 provide the laws with necessary financial base.
- It is necessary to have the separate executive body, its main competence will be the national policy, the profile sphere of the activity. The body would concentrate on the implementation of all the tasks and aspects of the national policy.
- It is necessary to conduct systematic monitoring of the national relations, ethno-pological and sub- ethnic situation on the national ground, finding out the issues and prevention of the conflict situations. It is important to establish the network of the specialized research institutions, national organizations, other public unions, which will have the appropriate funds, the status established by the law and effective coordination.
- To form the complex working group on the improvement of the legislation in the sphere of the national policy and the elaboration of the measures of early prevention of the interethnic conflicts and the criminal manifestation connected with them and the mass riots;
- To regulate the authorities (the rights and obligations) in the law and establish the responsibility of the self – governments, the local state administrations, their officials: (a) on prevention of interethnic conflicts and (b) on securing the human rights and the citizens in the interethnic conflict situations.
- To make amendment to the Criminal Legislation, in accordance with any crime, where there national hostility, national discord and hatred will be considered as the signs of extremism or the crime with aggravating circumstances.

Wednesday, 26 September 2012

Side Events

Recommendations to participating States

Kazakhstan International Bureau for Human Rights and Rule of Law

В сложившейся ситуации Коалиция рекомендует принять ряд мер, которые бы существенно улучшил ситуацию в области борьбы с пытками в стране:

- Казахстану следует на законодательном уровне и в правоприменительной практике строго придерживаться обязательств по статье 12 Конвенции ООН против пыток – расследование любого сообщения о пытках всегда должно проводиться независимым органом, таким, например в Казахстане, может стать институт специальных прокуроров или финансовая полиция, при обязательном участии гражданского общества.
- Казахстану необходимо принять Закон о Национальном превентивном механизме, в полной мере соответствующий требованиям Факультативного протокола к Конвенции ООН против пыток: механизм должен быть независимым, иметь достаточно полномочий и человеческих ресурсов. А также не ставить под угрозу исчезновения иных форм общественного контроля закрытых учреждений.
- Казахстану следует в полной мере следовать международным обязательствам по вопросам запрета выдачи в страны, где существует высокая вероятность пыток задержанного. Перед началом процедуры экстрадиции государству следует внимательнейшим образом изучать не только заверения страны в том, что они не собираются пытать выдаваемого, но и изучать документы ООН и других международных организаций о ситуации с пытками в данной стране.
- Казахстану необходимо срочно начать реформу уголовно-исполнительной системы, которая должна находиться в гражданском ведомстве, а также развивать институты общественного контроля, при этом вся пенитенциарная система не должна носить карательного характера, а должна быть направлена на ресоциализацию заключенного.

Wednesday, 26 September 2012

WORKING SESSION 5: Rule of Law II

Recommendations to participating States

Kazakhstan International Bureau for Human Rights and Rule of Law

Республике Казахстан необходимо срочно:

- начать реформу уголовно-исполнительной системы, которая должна находиться в гражданском ведомстве.
- повысить уровень ведомственного, прокурорского и общественного контроля в местах лишения свободы.
- пенитенциарная система не должна носить карательный характер, а должна быть направлена на ресоциализацию заключенных.

Коалиция НПО Таджикистана против пыток призывает власти Таджикистана:

- провести незамедлительное, тщательное, беспристрастное и независимое расследование смерти Хамзали Икромова, а также всех фактов смертей в местах предварительного заключения и лишения свободы, а именно: Сангова С., Шодиева Б., И. Бачаджонова, И. Бобоева, Муродова Д., Бобокалонова Х.
- гарантировать, что предполагаемые виновники будут привлечены к уголовной ответственности;
- уведомлять родственников погибшего и широкую общественность о ходе и результате проведенного расследования.

Russian Federation

- Одновременно призываем власти США провести всестороннее и независимое расследование допущенных правонарушений, привлечь виновных к ответственности, закрыть тюрьму в Гуантанамо, а также отказаться от практики военных трибуналов и бессрочного заключения без предъявления обвинения и судебного разбирательства.

Initiative Group of Independent Human Rights Defenders of Uzbekistan, International Partnership for Human Rights and the Netherlands Helsinki Committee

Recommendations to the authorities of Uzbekistan:

- Stop using repressive measures against Muslim believers who practice their faith peacefully, albeit outside strict state control, including unlawful arrests, fabricated administrative and criminal cases, closed and unfair trials and torture and other illegal treatment.
- Adopt effective measures to implement recommendations made by international human rights bodies with respect to ensuring respect for the rights of detainees, the right to a fair trial and the right not to be subjected to torture and ill-treatment.

Recommendations to other OSCE participating States:

- Do not extradite individuals accused of “religious extremism” by Uzbek authorities to Uzbekistan given the evident risk that these individuals may be subject to torture and other gross human rights violations upon return to that country. When relevant, take adequate and effective measures to provide physical protection to Uzbek refugees living in their countries who have fled Uzbekistan for fear of persecution on the basis of their religious beliefs and practices and/or their criticism of Uzbek authorities.

Recommendation to the authorities of Sweden:

- Make all efforts to bring to justice those responsible for the attempt on the life of Obid Quori Nazarov, including those who possibly ordered it.

Association for the Prevention of Torture:

To make regular, independent monitoring of places of detention, as envisaged by the OPCAT, a reality in the OSCE region the APT recommends the following measures as a matter of priority:

- OSCE participating States should give serious consideration to the ratification of the OPCAT and, thereafter, ensure its effective implementation in practice. The APT believes that these steps will send a strong signal to the international community of the importance which each state attaches to combating torture;
- OSCE participating States are urged to initiate an open, transparent and inclusive dialogue on the implementation of the OPCAT at the national level, as recommended by the UN Subcommittee on Prevention.⁵ These discussions should involve a wide range of relevant national actors, including representatives of civil society and any actors already engaged in the monitoring of places of detention;
- OSCE participating States are encouraged to initiate a dialogue with other OSCE participating States, which have already signed or ratified the OPCAT, in order to facilitate an exchange of information and best practices on the institution and effective functioning of NPMs;
- Civil society actors in the OSCE region (often working in tandem with OSCE field missions) have also shown themselves to be skilled actors at making such international linkages and inviting NPM representatives from other countries to attend their national OPCAT events. The APT urges the continuation of such good practice;
- The many activities of OSCE field missions to promote the ratification and implementation of the OPCAT in an open, transparent and inclusive manner can only be applauded. Several such field missions have played very active roles in this respect in recent years, including in Armenia, Azerbaijan, Bosnia and Herzegovina, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Serbia, Tajikistan and Ukraine. The APT urges the OSCE field missions to continue their work in this respect, particularly when NPMs are in their formative stages of existence and may require external support;
- In recent years OSCE-ODIHR has also proven itself most capable as an institution to facilitate regional and sub-regional exchanges on the implementation of the OPCAT. The exchanges which took place in Prague in November 2008⁶ and Podgorica in April 2009⁷ are very good cases in point, during which an impressive range of actors were brought together from the countries of the former Soviet Union, Eastern and Central Europe and the Balkans. OSCE-ODIHR should explore the possibility of replicating such regional and sub-regional meetings;
- In addition, OSCE-ODIHR has potentially a very useful coordination role to play in supporting the many on-going efforts of OSCE field missions to promote the ratification and effective implementation of the OPCAT by providing them with information and advice relating to the instrument and by referring them to external sources of expertise on the issue;
- More generally, the APT very much welcomes the valuable exchanges of information and experiences on the OPCAT hosted by the OSCE. These include the working sessions on the subject held at past OSCE Human Dimension Implementation Meetings and Supplementary Human Dimension Meetings. Countries chairing the OSCE are strongly encouraged to keep the issue of torture prevention on the agenda of future OSCE meetings with a view to facilitating further exchanges of information and best practices on the OPCAT;

- The aforementioned attempts to counter practices of torture and ill-treatment must take place in a climate of genuine political will both on the part of OSCE participating States and the political structures of the OSCE. In this latter respect there exists a clear necessity for the OSCE Chairman-in-Office and the Permanent Council to attach much greater importance to the need to prevent torture in the region and address the issue on a regular, consistent basis. Without genuine political will at this level, overall progress will be difficult.

Central and Eastern European Initiative for International Criminal Law and Human Rights (ICLHR Initiative)

- To promote and support academic and professional courses and training in international criminal and humanitarian law, particularly for future lawyers and the military. States shall make use of modern teaching methods and ICT tools in order to increase the effectiveness of the teaching process.
- To ensure that judges, prosecutors, investigative judges and similar officers or professionals dealing with violations of international criminal and humanitarian law by the military and other offenders have at their disposal effective tools to investigate and prosecute those violations, such as case management systems and case-law databases, and that they can effectively use them.
- To provide or make easily accessible to the Legal Tools Project (see www.legal-tools.org) relevant documents, in particular through a centralized collection of relevant case law, and to otherwise support, including financially, local and regional partners of the Legal Tools Project, appreciating that the contribution of these kind of projects to the preservation of peace and to the containment of violent behaviour may not be immediate.

Penal Reform International

PRI would like to recommend to states parties:

- To continue granting NGOs access to places of detention, irrespective of whether an NPM has been established;
- For the Russian Federation and Tajikistan to ratify the Optional Protocol to the Convention Against Torture and to establish an independent NPM, following genuine consultation with civil society. The following other OSCE member states have also not ratified yet: Andorra, Austria, Belarus, Belgium, Canada, Finland, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Norway, Portugal, San Marino, Slovakia, Turkey, Turkmenistan, USA and Uzbekistan.
- For Georgia to ensure that unhindered access to places of deprivation of liberty is guaranteed to civil society organisations to conduct monitoring activities as well as to provide training to persons deprived of their liberty.
- For Armenia to properly investigate cases of torture reported by the civil society monitoring boards in places of deprivation of liberty and to hold the perpetrators accountable based on due process.
- For Azerbaijan to guarantee the independence of the NPM and to address the issue of torture in places of detention.
- For Kazakhstan to adopt the NPM law in accordance with the SPT recommendations and with the genuine involvement of civil society in the

draft law discussions and refrain from the idea of forming NPM by state procurement procedures.

- For Kyrgyzstan to guarantee sufficient state funding for the independent and professional functioning of the NPM.
- For Ukraine to make the process of discussing the draft law on a NPM more inclusive and undertake close consultations with civil society.

Recommendations:

The Republic of Belarus and the United States of America:

- To take immediate steps towards abolition of the death penalty by promptly establishing a moratorium on all death sentences and executions with a view to abolishing the death penalty as provided by the Vilnius Resolution on a Moratorium on the Death Penalty and Towards its Abolition, and UN General Assembly Resolution 65/206 which calls for a moratorium on the use of the death penalty.

The Russian Federation and the Republic of Tajikistan:

- To abolish the death penalty in law for all crimes.

The Republic of Kazakhstan:

- To abolish provisions in their national legislation that still allow for the imposition of the death penalty for certain crimes under exceptional circumstances.

All OSCE States:

- To ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) aiming at the abolition of the death penalty, if they have not yet done so.
- To review their policies and practices in relation to those convicted of the worst crimes and to bring them into compliance with international standards and norms.

European Union

EU recommendations under Rule of Law II

- The EU encourages all States, who still practice the death penalty or retain it in law, to abolish it.
- The EU commends the OSCE and ODIHR for their efforts to prevent torture in particular by capacity building efforts at field level, and encourages the OSCE to increase these efforts.
- The EU urges participating States to respect the absolute prohibition on torture and to implement fully the UN resolutions on torture.
- The EU also urges participating States to consider adhering to international instruments for combating torture, the death penalty and enforced disappearances, and to the right of individual complaint under the relevant

international instruments as well as to take steps towards the ratification and effective implementation of OPCAT.

- We commend the efforts of OSCE in providing support to participating States to ensure respect for human rights and the OSCE commitment in countering terrorism. The EU would like to see these efforts expanded, given the continuing violations occurring in various OSCE participating States.

Switzerland

En conclusion, la Suisse aimerait faire trois recommandations:

- Nous appelons les Etats appliquant encore la peine capitale à déclarer un moratoire sur la peine capitale et à commuer en peines d'emprisonnement les sentences de tous les condamnés à mort.
- Nous appelons les Etats où existe un moratoire sur la peine de mort à modifier leur législation en vue d'une abolition totale.
- Nous invitons les Etats participants à ratifier l'OPCAT et à mettre en place un mécanisme national de prévention dans le cadre des critères et des garanties prévus par cet instrument.

Open Society Justice Initiative

The government of Kyrgyzstan is failing to meet its obligations to prevent and redress torture and other violations against human rights defenders and persons of ethnic Uzbek origin. As such, the ODIHR should:

- Monitor the situation for human rights defenders in Kyrgyzstan to ensure that they are able to undertake their activities to promote and protect human rights without fear of restrictions or violations.
- Urge Kyrgyzstan's authorities to immediately release Mr. Azimjan Askarov and provide redress through the following means:
 - Quash his conviction, which followed a trial and appeal process that lacked basic safeguards and contravened international fair trial standards;
 - Provide a full medical examination and treatment to Mr. Askarov, which includes allowing him to travel abroad to obtain treatment for his injuries;
 - Create an independent commission of inquiry to investigate the circumstances of the detention and torture of Mr. Askarov, with the power to initiate criminal prosecution of those found to be the material and intellectual authors of the violations;
 - Pay just compensation for the torture and illegal detention of Mr. Askarov and providing for comprehensive rehabilitation.
- Recommend (and to the extent possible, provide technical assistance and capacity-building in support thereof) that Kyrgyzstan undertake the following measures to introduce specific safeguards and procedures to prevent similar violations from happening in the future, namely:

- Registration of all detainees from the moment of detention;
- Proper monitoring by prosecutors and a to-be-created National Preventive Mechanism as well as independent monitoring by NGOs of detention facilities to prevent and document violations;
- Creation of an independent and secure complaints mechanism for allegations of torture;
- Prompt transfer of suspects from police detention to independent detention facilities;
- Timely, regular, and unimpeded private visits by family members and lawyers to those in detention;
- Independent conduct and review of medical examinations, when requested by detainees or family members; and
- The creation of an independent mechanism entrusted to investigate torture allegations in full accordance with international norms and domestic legislation;
- The creation of an independent commission of inquiry to review all convictions related to the violence in southern Kyrgyzstan in June 2010 with full respect to the fair trial guarantees, and investigate all torture allegations, including those where the victims did not file formal complaints.

Recommendations to the OSCE

Central and Eastern European Initiative for International Criminal Law and Human Rights (ICLHR Initiative)

- To support or launch initiatives consonant with the approach of positive complementarity under the Rome Statute framework by strengthening participating States' capacities in dealing with core international crimes, in particular by making the requisite knowledge and skills more available to key professionals. This can be effectuated by ODIHR, the Conflict Prevention Centre and field operations by following up on activities under the War Crimes Justice project, such as disseminating case-law and developing IC tools, and encouraging the exchange of experiences among participating States;
- To intensify integration of content related to international criminal and humanitarian law within the educational programs, materials, case studies and other resources that the OSCE, in particular through the ODIHR, supports and promotes for use in participating States. This can touch upon such issues as crimes based on discrimination (including genocide and persecution), torture and gender crimes. This can benefit from the experience and expertise of civil society organizations that document violations and run educational initiatives.

Penal Reform International

- To engage in debate and dialogue as to how best to protect the rights of those sentenced to life imprisonment as a vulnerable category of prisoner, including upholding their rights. Reference should be made to the prohibition of life imprisonment without parole, prolonged solitary confinement, and the obligation to equal treatment of prisoners including those serving a life sentence.

Thursday, 27 September 2012

WORKING SESSION 6: Roma & Sinti

Recommendations to participating States

"Azerbaijan Migration Center" Public Union

- Правительство должно подготовить политику, направленную на постепенное уничтожение старых традиций, и добиться реализации данной политики. Также правительство должно создать условия для того, чтобы их дети могли получать образование, семьи могли получать социальную помощь, мальчики были взяты на воинский учет, были здоровы, обеспечены работой и имели хорошее жилье. Эти условия были бы направлены на улучшение жизни романов.

European Roma Rights Centre

- Refrain from carrying out forced evictions in the absence of legal safeguards, including adequate alternative housing;
- Ensure that no Romani individual is made homeless in the process of eviction;
- Develop sustainable, adequate integrated housing solutions for all Roma;
- Refrain from collectively expelling Romani EU citizens from France;
- Introduce clear guidelines on how authorities should safeguard rights in accordance with the requirements of the Directive 2004/38/EC on free movement;
- Ensure that returns to other EU Member States are truly voluntary, accompanied by reintegration assistance and take account of the needs of vulnerable people;
- Ensure independent monitoring of all immigration processes and programmes, including both return and reintegration; and
- Redirect funding earmarked for expulsions and returns to the implementation of long term inclusion policies.

Pavee Point Travellers' Centre

We urge Member States to:

- Uphold their human rights obligations under international frameworks – this includes applying a human rights and gender perspective to all policies and practice in relation to Travellers, Roma and Sinti women.
- Ensure State policies do not serve to marginalise Travellers, Roma and Sinti women.

- Equality proof policy and practice to ensure the inclusion of Roma, Traveller and Sinti women and to address institutional discrimination.
- Ensure austerity measures do not impact disproportionately on Traveller, Roma and Sinti women. Ensure that human rights principles underpin budget decisions and ensure that the most vulnerable do not bear the brunt of austerity measures.
- Include gender budgeting in all programmes.
- Ensure that disaggregated data, according to gender and ethnicity, is collected across all administrative systems and used to inform policy development. Such data collection must be undertaken in line with human rights principles.
- Adopt and targeting and mainstreaming approach – while including Travellers, Roma and Sinti in mainstream policies, also target groups that are particularly marginalised.
- Acknowledge and support the role of Traveller, Roma and Sinti organisations working to promote womens’ empowerment, by ring-fencing funding to support such initiatives.
- Provide spaces for Traveller, Roma and Sinti women to actively engage in policy and decision-making in relation to policies that impact on their lives.
- Develop Roma integration strategies that will have a meaningful impact on Traveller, Roma and Sinti womens’ lives:
 - Explicitly address racism as part of these strategies
 - Ensure a gender perspective as highlighted in the Common Basic Principles on Roma inclusion
 - As per the EU Framework for National Roma Integration Strategies up to 2020, strategies should set achievable national goals with targets for Roma integration and should include time frames, funding mechanisms and strong inclusive monitoring and evaluation methods.
 - Roma, Travellers and Sinti should be actively involved in all stages in the development and implementation of the strategy.

These recommendations are not new and we implore States to take civil society recommendations on board and take action. Such action also needs to be monitored and evaluated for impact.

Recommendations to the OSCE

Pavee Point Travellers’ Centre

- Ensure that Travellers are given visibility in the language being used and in the documentation of this important working session; and that reference is explicitly made to Traveller, Roma and Sinti women.
- We call on the OSCE to use its powers to urge Governments to meet their human rights obligations.
- Many community organisations have based their work and practice on the principle of active participation and have built up expertise in this area. The importance of this is now echoed in the OSCE’s commitment to the ‘active participation’ of Roma and Sinti in policy and all decisions that impact upon their lives. This needs to be backed up with sustainable funding for such organisations and we urge the OSCE to encourage States to take action in this regard.