



## **DEVELOPING OSCE APPROACHES TO PREVENTION OF TORTURE AND ENFORCED DISAPPEARANCES**

### **CIVIL SOCIETY RECOMMENDATIONS FROM THE WORKSHOP IN WARSAW 17-18 SEPTEMBER 2015**

Torture continues to be among the most serious problem in many OSCE participating States. In some countries and regions torture is widespread and systematic and is practiced with impunity. Prosecution rates against perpetrators are shamefully low compared to its incidence. Even where there are bona fide attempts at prosecution, these are often undermined by the lack of adequate safeguards and by corrupt, obstructive and non-transparent investigation mechanisms. Civil society actors believe that OSCE participating States and institutions should do much more to address this major problem.

Civil society actors also believe that special attention should be paid to identifying ways to include the issue of enforced disappearances in the OSCE work. As OSCE and other international organisations have failed to address numerous past cases of enforced disappearances in a number of countries of the region, an atmosphere of impunity prevails and a breeding ground for commission of new crimes is established.

Driven by these concerns, participants of the OSCE Parallel Civil Society Conference in 2013 in Kiev adopted a document called “The Kiev Declaration: The OSCE Should Make Combatting Torture a Priority”, calling for a more resolute OSCE action to address the problem of torture, and recommending several concrete steps. This appeal resonated with the position of the incoming OSCE Swiss Chairmanship which included combatting torture among its thematic priorities for 2014. As a result, the work on torture became more active in OSCE in 2014. In the course of 2014 the Swiss Chairmanship supported four regional civil society workshops, organised by the Civic Solidarity Platform. Recommendations on torture were a common topic at all the workshops, along with other themes relevant for each region and chosen by the participants. Workshops results served as a basis of the chapter on prevention of torture in the Basel Recommendations adopted at the OSCE Parallel Civil Society Conference in the end of 2014. It was most unfortunate that the participants of the Ministerial Council Meeting in Basel in 2014 failed to adopt a decision on combatting torture, though it gained support of an overwhelming majority of participating States.

The Civic Solidarity Platform believes it is necessary to carry on the momentum developed in 2014 and continue focusing on torture in the OSCE framework in the next years. Towards this goal, a thematic workshop “Developing OSCE approaches to prevention of torture and enforced disappearances” was held by Civic Solidarity Platform on 17-18 September 2015 in Warsaw with support of the Troika. The workshop served a purpose of taking the work on torture forward by bringing together specialised NGOs, representatives of the Troika, OSCE/ODIHR and other relevant OSCE bodies to discuss earlier civil society recommendations and draft Ministerial Council meeting decisions, choose the most important and at the same time feasible recommendations among them, and identify ways of implementing them, focusing first and foremost on those that can be implemented through activities that do not require consensus among all participating States in the next 2-3 years. Following is a selected list of recommendations to

OSCE political bodies and institutions and OSCE participating States, elaborated during the workshop. A full workshop report with all recommendations will be produced and distributed by the end of October 2015.

## **GENERAL RECOMMENDATIONS**

### **To the OSCE Chairmanship-in-Office**

- The incoming Chairmanships-in-office should ensure that the fight against torture is a priority on the political agenda of the organisation for the coming years.
- The OSCE Chairmanship should oversee the preparation of updated OSCE commitments on eradicating torture that would include enforced disappearance as a form of grave human rights violation and torture.
- The OSCE Chairmanship should develop an OSCE internal strategy outlining measures it commits to undertake to eradicate torture in participating States, including monitoring of places of deprivation of liberty, prevention, investigation and documentation, prosecution, and ensuring redress, including reparation and the right to rehabilitation.
- The OSCE Chairmanship should task OSCE ODIHR to produce a “white paper” on the situation of torture in participating States and the necessary steps for its eradication, including its prevention, prosecution and redress, including rehabilitation.

### **To the OSCE Institutions**

- The OSCE Secretary General should improve coordination among all OSCE bodies, including the mainstreaming of human rights considerations, and the transparency of all activities conducted by the OSCE institutions and field presences.
- The OSCE ODIHR should establish an expert panel on the fight against torture to support the work of the newly established Focal Point on Torture Prevention, which should meet at least twice a year to assess the relevant laws and practices in participating States, monitor progress, and give advice on implementation by participating State of their commitments on eradication of torture.
- The OSCE ODIHR should conduct a baseline study on the situation of torture in the OSCE participating States, including its occurrence, prevention, prosecution, and redress, including rehabilitation. The baseline study should identify shortfalls and gaps as well as best practices.

## **TRANSPARENCY OF DETENTION PLACES**

### **To OSCE participating States**

- Consider ratification of the OPCAT for those of them which have not yet done so, provided its effective implementation can be guaranteed in practice.
- Effectively implement the OPCAT for those of them which are parties to it, notably by guaranteeing the effectiveness of their National Preventive Mechanisms and ensuring the latter enjoy full functional, institutional and personal independence, and benefit from adequate human and financial resources.
- Ensure that other oversight mechanisms, such as Russian Public Monitoring Commissions, enjoy the functional and personal independence necessary to effectively implement their mandate.

- Ensure, in law and practice, unimpeded access of National Preventive Mechanisms and any other preventive monitoring bodies to all places of deprivation of liberty, persons and information.
- Enter into genuine dialogue with National Preventive Mechanisms and any other preventive monitoring bodies on the implementation of their recommendations.

#### **To OSCE/ODIHR**

- Support the effectiveness of National Preventive Mechanisms by following up on the related commitments of OSCE participating States to ensure they are fully independent, benefit from adequate human and financial resources, and have unimpeded access to all places of deprivation of liberty, persons and information, in compliance with the OPCAT.
- Support the effectiveness of other detention monitoring mechanisms and bodies, including civil society mechanisms and Public Monitoring Commissions, among others by supporting the full independence of their members from any undue governmental influence.
- Facilitate the monitoring of the work and effectiveness of National Preventive Mechanisms and any other preventive monitoring bodies, among others by civil society organisations.
- Contribute to the follow-up of recommendations of international and national torture prevention bodies such as the SPT, the CPT and National Preventive Mechanisms.
- The OSCE should strengthen the capacity and effectiveness of detention monitoring mechanisms by:
  - Collecting baseline data on models, methodologies for monitoring including reprisals mitigation measures, follow-up of recommendations, and impact;
  - Supporting the codification of best practices;
  - Facilitating the dissemination of best practices, including through training;
  - Facilitating annual peer-to-peer exchanges between National Preventive Mechanisms from the OSCE region, and regular meetings between all detention monitoring bodies including National Preventive Mechanisms. Consideration should be given to the establishment of a platform for this purpose;
  - Facilitating regular exchanges between all stakeholders involved in preventive monitoring.

## **TORTURE AND LAW ENFORCEMENT**

#### **To OSCE participating States**

- Take legislative and practical steps to ensure the prevention of torture and ill-treatment during the policing of demonstrations, including introduction of a requirement that officers policing demonstrations wear name tags and mandatory human rights education and training programmes for police and personnel working in places of detention.
- Ensure that use of force by law enforcement officials and detaining authorities is regulated in accordance with law, respecting the principle of proportionality and necessity.

#### **To OSCE/ODIHR**

- To conduct follow-up assessment to see how police at the national level follows recommendations made by OSCE during police training programmes

- To consult with local civil society organisations at the early stages of planning of OSCE programmes on police training
- OSCE Police Training and capacity building programs should analyse the implication of the current refugee crisis in Europe on the capacity of law enforcement bodies to perform their functions based on human rights standards, and develop additional tools and training programs in this respect
- To include work on professional standards of law enforcement performance (analysing best practices, elaborating standards and assisting in introduction them in member states )as one of the task for Expert panel on Torture

## **MEDICO-LEGAL INVESTIGATION AND DOCUMENTATION OF TORTURE AND ILL-TREATMENT**

### **To the OSCE Institutions**

- The OSCE ODIHR should include in its comprehensive baseline study on the situation of torture in participating States, an assessment of the mechanisms existing in participating States to investigate and document torture.
- The OSCE ODIHR should promote the standards and principles of the Istanbul Protocol and apply them throughout its existing human rights, fair trial, and justice reform work, including by focusing on the need for involvement of medical and psychological professionals in the prompt, effective, and impartial investigation of torture cases.
- The OSCE ODIHR should promote full implementation of the Istanbul Protocol in participating States, including:
  - a. recognition and implementation of the Istanbul Protocol standards;
  - b. legal, administrative and judicial reforms, including appropriate complaints mechanisms;
  - c. compulsory training and continuing education for target groups;
  - d. creation of independent forensic institute;
  - e. establishment and enforcement of forensic rules and regulations;
  - f. development and effective use of standardised IP medical evaluation forms;
  - g. monitoring and accountability of implementation of the Istanbul Protocol.

## **REDRESS AND REHABILITATION OF VICTIMS OF TORTURE**

### **To the OSCE institutions:**

- The OSCE ODIHR should include in its comprehensive baseline study on the situation of torture in participating States an assessment of the steps taken by them to ensure full implementation of torture victims' right to rehabilitation.
- The OSCE ODIHR should promote torture victims' rights to holistic rehabilitation as an essential component of the rights and needs of torture victims and apply these standards throughout its existing human rights, fair trial, and justice reform work. Promotion of an effective right to rehabilitation should include that state policies and budgets secure the availability, accessibility, appropriateness of rehabilitation services for all torture victims, including medical and psychological support, social and economic reintegration, legal and judicial remedies.

- OSCE ODIHR should promote full implementation of torture victims' rights to holistic rehabilitation in participating States, in accordance with General Comment 3 on Article 14 of the UN Convention against Torture, including:
  - a. early identification of victims
  - b. early access to services
  - c. no requirement of prior application for judicial remedies
  - d. free choice of service provider
  - e. safety and personal integrity for victims and service providers
  - f. monitoring and evaluation, including data collection on the implementation of rehabilitation programmes

## **ENFORCED DISAPPEARANCES**

### **To OSCE participating States**

- All OSCE participating States should ratify without any further delay the International Convention for the Protection of All Persons from Enforced Disappearance and recognise the competence of the UN Committee on Enforced Disappearances;
- State parties to the International Convention for the Protection of All Persons from Enforced Disappearance should apply the mechanism of universal jurisdiction to apprehend individuals from other countries suspected in or responsible for committing the crime of enforced disappearance, effectively investigate allegations brought against them, and bring perpetrators to justice.
- Effectively cooperate with and fully implement relevant decisions and judgments of existing international human rights mechanisms, including the UN Committee on Human Rights, the UN Working Group on Enforced and Involuntary Disappearances, and the European Court of Human Rights as concerns both individual cases and general measures;
- Enact domestic legislation criminalising enforced disappearances based on the provisions of the International Convention for the Protection of All Persons from Enforced Disappearance;
- Take all necessary practical steps to combat enforced disappearances, effectively investigate allegations of enforced disappearance, bring perpetrators to justice and provide proper compensation to the victims and their families.

### **To OSCE political bodies and institutions:**

- OSCE political bodies, institutions and participating States should start working without delay on drafting an explicit OSCE commitment on enforced disappearances with the aim of adopting such a commitment in the nearest future. The OSCE Chairmanship should take a lead in this process;
- Meanwhile, until the moment an explicit OSCE commitment on enforced disappearances is agreed upon and adopted, the OSCE political bodies, institutions and participating States should immediately review and update the existing OSCE commitments related to torture, and in the process recognize enforced disappearance as a crime and a form of torture. The OSCE Chairmanship should organise the process of preparing updated OSCE commitments on torture that would include enforced disappearance as a form of torture.
- The newly established Focal Point on Prevention of Torture at OSCE/ODIHR should include enforced disappearances in its mandate, including in its monitoring of places of deprivation of liberty.
- The OSCE Chairmanship should take a leading role in raising the cases of enforced disappearances with

participating states in question.

- The OSCE Moscow Mechanism should be used more often as a tool of investigation of allegation of enforced disappearances as part of a human dimension crisis.
- Continued application of the OSCE Moscow Mechanism regarding a human dimension situation in a participating State (or a similar human dimension mechanism, should it be established) should not be considered finished until substantial progress in the implementation of recommendations contained in the already released Moscow Mechanism report has happened. An absolute minimum requirement for continued application of the Moscow Mechanism should be the continuation of such gross violations of human dimension commitments as continued abductions and enforced disappearances, lack of effective investigation of the past cases of abductions and enforced disappearances, continued incarceration of political prisoners, repeated and widespread use of force against participants of peaceful assemblies, and systematic use of torture against political prisoners, victims of abductions and participants of peaceful assemblies. Each incoming OSCE Chairmanship should look into such “open Moscow Mechanism cases”, examine the current situation in a country and organise a follow-up process if needed. Progress in implementing recommendations in the previous report(s) should be documented in subsequent reports by a working group or a rapporteur established by the OSCE Chairmanship or the HDC Chair or a group of concerned participating States (with a more informal status).
- OSCE field missions should play a more active role in addressing the crime of enforced disappearances in the countries of their presence.