

**HDIM 2012****Working Session 5: Rule of law II, including:**

- Exchange of views on the question of abolition of capital punishment;
- Prevention of torture;
- Protection of human rights and fighting terrorism.

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Working session 5 addressed the issues of the abolition of capital punishment, prevention of torture and the protection of human rights in the fight against terrorism.

The Director of ODIHR, Ambassador Lenarčič, recalled that OSCE commitments are unequivocal as regards the prohibition of torture. He added that the prevention of torture requires a multifaceted approach, and that ODIHR supports participating States in the establishment of National Prevention Mechanisms (NPMs), through legal assistance and expertise for training on torture prevention. He underlined the importance of defending human rights while combating terrorism, and alerted against ethnic and religious profiling which occur often on the basis of a vague definition, as well as arbitrary detentions and enforced disappearances used for presumed security reasons. He announced that ODIHR is going to publish a new training tool, in co-operation with the Transnational Threats Department of the OSCE, focusing on the investigation of terrorist crimes.

The introducer, Prof. Roman Wieruszewski, noted that death penalty, torture and terrorism are closely interrelated issues. He referred to the OSCE commitment to keep the death penalty under serious consideration, stressing the continued need to encourage a public debate on its abolition. He said that States are obliged to protect the human rights of all people, referring to the “non refoulement” principle. On the protection of human rights in the fight against terrorism, he underlined the need of putting the emphasis on victims. He referred in this respect to the United Nations Global Counter-Terrorism Strategy, which places the human person at its centre. He also recommended extending article 15 of the United Nations Convention Against Torture (UNCAT), which excludes the use in courts of confessions obtained through torture, so that it should cover intelligence and executive decisions too.

Many speakers called for the abolition of the death penalty, which is still carried out in 2 participating States, and for an immediate moratorium on its use. It was noted that some participating States that do not use the death penalty do not always create humane conditions for prisoners held indefinitely, or that they substitute it for alternative sanctions that amount to torture or cruel, inhuman or degrading punishment. A few speakers mentioned the work of the International Commission against the Death Penalty as well as the forthcoming 5<sup>th</sup> World Congress against the Death Penalty to be held in Madrid in June 2013. Calls were made to support this year’s moratorium resolution in the UN General Assembly as well as to ratify Protocol No. 13 to the European Convention on Human Rights concerning the abolition of the death penalty in all circumstances. Some speakers stated that the OSCE could become a regional model and

advocated for the adoption of an OSCE commitment to stop the practice of capital punishment.

It was noted that although absolutely prohibited under international law, torture still occurs in participating States and partner States. These violations are unjustifiable, even when faced with threats against national security including terrorist activity, and they must be addressed through improved accountability and rehabilitation of the victims. The importance of establishing independent and effective systems of investigation of complaints and prevention of torture, preferably within the framework of the Optional Protocol to UNCAT (OPCAT), with a continued involvement of the civil society, was highlighted. 33 participating States are party to OPCAT, but the most important challenge is its effective implementation. Some speakers gave examples of the work of NPMs. It was recognized that a paucity of human, financial and material resources remains a widespread concern for many NPMs, especially in the current economic climate. It was also noted that even in countries where an NPM has been established civil society, organised as monitoring boards or otherwise, should play an important complementary and supportive role. Some speakers noted that there was a problem of non-application of the law in some countries, and it was argued that media attention was required, as well as more public monitoring and professional training of law enforcement agents and health personnel on preventing torture. Many speakers stressed the need to grant frequent and unhindered access to NGOs and international organizations such as the ICRC in order to monitor places of detention, and that monitors should come unannounced and be able to interview inmates confidentially and without the presence of prison guards. Reference was also made to the work of the European Committee for the Prevention of Torture and the UN Sub-Committee on Prevention of Torture.

It was generally recognized that, in line with OSCE commitments, counter-terrorism measures are to be conducted in accordance with international law and that security should not undermine the protection of human rights. Reference was made of the need to strengthen the capacity of criminal justice institutions to prevent and counter terrorism under a rule of law-based, human rights-compliant framework and in furtherance of the UN Global Counter-Terrorism Strategy. It was noted that the OSCE and ODIHR could provide technical assistance and promote the implementation of good practices, such as those of the Global Counter Terrorism Forum, throughout the OSCE region. Some speakers denounced the alleged use of terror as a State policy in some participating States. References were also made to the critical role played by the ICRC, which should have unimpeded access to detention centres. Critical references were made to the detention facility at Guantanamo Bay. One participating State stated that it remains committed to closing it, though it recognized that the task has proven enormously complex. The use of “renditions” and secret detention programmes was also firmly condemned, with one speaker suggesting that the issue should be a focus of the OSCE.

In his closing remarks, the introducer affirmed that, as seen in many interventions, a lack of effective mechanisms and a lack of transparency continue to be important obstacles to prevent torture. He pointed to the fact that a great number of speakers had focussed their attention on Central Asia, where he thought the OSCE should play a special surveillance role, assisting governments and civil society to establish effective mechanisms to prevent torture, given that this region is not covered by the Council of

Europe. He was encouraged by the readiness of all speakers to implement the OSCE commitments and reiterated that the involvement of civil society in a continuous dialogue is very valuable.

The following recommendations were made:

**To participating States:**

- OSCE participating States which still practice the death penalty should take immediate steps towards its abolition by promptly establishing a moratorium on all death sentences and executions with a view to abolishing the death penalty as provided by the OSCE PA Vilnius Resolution and UNGA Resolution 65/206 which calls for a moratorium on the use of the death penalty;
- OSCE participating States which retain the death penalty should declare a moratorium and commute all death sentences to imprisonment terms;
- OSCE participating States which have in place a moratorium on the death penalty should amend their legislation so as to completely abolish the death penalty;
- All OSCE participating states should ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, if they have not yet done so;
- OSCE participating States should respect the absolute prohibition on torture and fully implement the UN resolutions on torture;
- OSCE participating States should review their policies and practices in relation to those convicted of the worst crimes and bring them into compliance with international standards and norms;
- OSCE participating States should continue granting NGOs access to places of detention, irrespective of whether an NPM has been established;
- OSCE participating States should 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;
- OSCE participating States should give serious consideration to the ratification of the OPCAT and then ensure its effective implementation;
- OSCE participating States are urged to initiate an open, transparent and inclusive dialogue on the implementation of the OPCAT at the national level, with a wide range of relevant actors, including representatives of civil society;
- OSCE participating States should initiate an open, transparent and inclusive dialogue with other OSCE participating States, which have already signed or ratified OPCAT, in order to facilitate an exchange of information and best practices on the institution and effective functioning of NPMs;
- OSCE participating States should guarantee the independence of their NPMs as well as sufficient public funding for their independent and professional functioning;
- OSCE participating States should adopt effective measures to implement recommendations made by international human rights bodies with respect to ensuring respect for the right of detainees, the right to a fair trial and the right not to be subjected to torture and ill-treatment;
- OSCE participating States should ensure that judges, prosecutors and professionals have at their disposal effective tools to investigate and prosecute

- OSCE participating States should make easily accessible to the Legal Tools Project relevant documents and support local and regional partners of the Legal Tools Project.

**To the OSCE:**

- OSCE should expand its efforts in providing support to participating States to ensure respect for human rights and OSCE commitments in countering terrorism;
- OSCE should encourage participating States to ensure access of NGOs to places of detention;
- OSCE should 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;
- OSCE should 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;
- OSCE should 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;
- OSCE should encourage some participating States to better comply with their international commitments, relating to their alleged collusion with rendition and secret detention programs;
- OSCE should address the issue of torture of children in special schools and orphanages;
- OSCE field missions are encouraged to continue co-operation with civil society actors on OPCAT issues;
- OSCE field missions are encouraged to help states establish NPMs;
- OSCE field missions are urged to continue their work on promoting the ratification and implementation of the OPCAT in an open, transparent and inclusive manner, particularly when NPMs are in their formative stages of existence;
- OSCE-ODIHR should continue to conduct the debate with the authorities of States that have not abolished the death penalty, as well as with civil society, highlighting the inhuman aspects of death penalty, discussing criminal procedures and recalling the international instruments on the abolition of death penalty;
- OSCE-ODIHR should explore the possibility of replicating past regional and sub-regional meetings on the implementation of the OPCAT;
- OSCE-ODIHR has potentially a very useful 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;

- OSCE-ODIHR should monitor the situation of human right defenders in some participating States to ensure that they are able to undertake their activities to promote and protect human rights without fear of restrictions or violations;
- Incoming Chairmanships should 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 OSCE Chairman-in-Office and the Permanent Council should attach much greater importance to the need to prevent torture in the region and address the issue on a regular, consistent basis.