



SUPPLEMENTARY HUMAN DIMENSION MEETING

ON

**HUMAN RIGHTS AND INHUMAN TREATMENT
OR PUNISHMENT**

FINAL REPORT

Vienna, 27 March 2000

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I. BACKGROUND

The OSCE held the first of three Supplementary Human Dimension Meetings for 2000 in Vienna on 27 March.¹ The meeting was dedicated to the topic „Human Rights and Inhuman Treatment or Punishment“.

The choice of the topic reflects the fact that inhuman treatment, in pre-trial detention as well as in the penitentiary system, is one of the most persistent and pertinent human rights issues in the OSCE region. It is a serious human rights violation affecting almost all participating States -- developed democracies as well as states in transition. It is often an indicator of systemic shortcomings in the legal structure and the rule of law in a participating State.

While combating and correcting the violation of human dimension commitments, including commitments against inhuman treatment or punishment, is first and foremost the responsibility of the participating States, it is also a pertinent issue in the work of the OSCE and its institutions. The OSCE/ODIHR, as the principal institution responsible for the human dimension, has developed with the assistance of its Advisory Panel for the Prevention of Torture a number of projects in the field of prevention of torture, inhuman treatment or punishment. Such projects include reviews of compliance of domestic legislation with international standards, assistance to prison administrations, training of judges, prosecutors and law enforcement personnel, alternative sentencing, as well as public awareness projects and monitoring efforts.

OSCE field missions are frequently involved in monitoring human rights violations in pre-trial detention. Some of the field missions also undertake visits to detention facilities.

The goal of the meeting was to discuss the key obstacles to the full implementation of the existing framework of standards and safeguards in international law as well as in OSCE commitments. In doing so, the meeting sought to identify good and bad practices in order to provide concrete recommendations to participating States as well as to the OSCE and to its institutions and other structures. The Austrian OSCE Chairmanship would expect that this meeting contributes to a focused follow-up at the annual Implementation Meeting (Warsaw, October 2000). The OSCE Chairmanship would like to thank ODIHR and the field missions for their involvement in the meeting. The Chairmanship would also like to thank the NGOs for their most active participation.

II. EXECUTIVE SUMMARY

The meeting began with an opening plenary session before the participants dispersed to two working groups in order to have a more concrete and focused discussion on the agenda topics. The plenary session started with brief

¹ The meeting was held in accordance with the changed modalities for the OSCE Implementation Meeting on Human Dimension Issues approved in July 1998.

introductions by Ambassador Christian STROHAL of Austria, on behalf of the Austrian Chairmanship of the OSCE, and Ambassador Gérard STOUDEMANN, Director of the OSCE/ODIHR. These were followed by the keynote address given by Sir Nigel RODLEY, UN Special Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, and member of the OSCE/ODIHR Advisory Panel for the Prevention of Torture.

The participants then dispersed into the two working groups.

Working Group 1 addressed the situation of inhuman treatment in pre-trial detention - an issue of continuing paramount concern in the OSCE area.

Working Group 2 focused on inhuman treatment or punishment following trial. It was split into two sessions: the first dealing with inhuman treatment in the penitentiary system and the second with an exchange of information on the abolition of the death penalty.

The meeting closed with a Plenary Session where the recommendations of both groups were presented and discussed.

The following central challenges with regard to inhuman treatment in custody were identified in one or both working groups as well as in the opening addresses and the keynote speech:

- Inhuman treatment or punishment affects the whole OSCE area and the issue requires continuing attention.
- Transparency and accountability in pre-trial detention and in penitentiary systems at large needs to be strengthened.
- Functional separation of authority over custody and investigation is a key conceptual issue for addressing the occurrence of inhuman treatment in pre-trial detention and in penitentiaries.
- An independent judicial oversight of pre-trial detention is often missing.
- Some categories of detainees - such as political activists, human rights NGOs, minorities, juveniles, and medical doctors who treat torture victims - may be especially vulnerable and merit special consideration.
- Change of working culture among responsible officials is one of the main challenges to real improvements with regard to inhuman treatment, in particular a change in the mindset among prosecutors.
- The change of culture is also needed in the penitentiary system where prisoners must be „humanised“ in the eyes of officials.
- For that purpose training on human rights standards and in modern techniques and methodology has been considered as an important starting point for such changes.

- It was stressed that such changes need not be dependent on additional resources. It was also stressed, given certain general social consequences of continuing bad practices and their impact on the national economy, introducing changes and better prison conditions is actually more cost-efficient.
- Prominent among the recommendations was that alternatives to pre-trial detention must be the rule rather than the exception. Equally, establishing alternatives to prison sentences following conviction was repeatedly stressed as an urgent measure for participating States to consider.

Regarding the exchange of information on the death penalty, the introduction to the discussion included, by special invitation of the Austrian Chairmanship, a presentation of the Delegation of Turkmenistan, as one of the countries having most recently abolished the death penalty. The presenter described the detailed studies his country undertook before abolishing the death penalty, and the experience of the one-year moratorium which had preceded total abolition, noting that there had been no appreciable increase in the crime rate during that year. He added that Turkmenistan would appreciate OSCE assistance in reforming its penitentiary system. Responding to a question from the floor the delegate of Turkmenistan promised to provide the OSCE/ODIHR with a detailed statistics and data on the application of the death penalty prior to its abolition.

The exchange of information on the abolition of the death penalty focused in general on the question of strategies to gain public support for the abolition of the death penalty through public awareness and political leadership. In addition the need for stringent safeguards in be put in place was stressed, and the risks of execution following wrongful conviction were highlighted.

III. RECOMMENDATIONS

This report, just as the Meeting itself, focuses on concrete recommendations arising from the working groups. These recommendations from delegates, international organisations (IOs) and non-governmental organisations (NGOs), are wide-ranging and aimed at various actors (OSCE Institutions, Governments, NGOs). The recommendations have no official status, and the inclusion of a recommendation in this report does not suggest that it reflects the views or policy of the OSCE.

It is emphasised that the OSCE cannot implement all of these recommendations. However, they can provide a basis for measuring the degree of follow-up. It should be noted that operational recommendations which were made to existing OSCE structures, but which are not compatible with the mandates of those structures, have not been reproduced here.

Outcome of Working Group 1 – Human Rights and Pre-trial Detention

Moderator:

Ambassador Mary MOSSER, Delegation of Canada to the OSCE

Introducers:

Claudine HAENNI, Secretary-General, Association for the Prevention of Torture (APT)

Donald BISSON, Rule of Law Adviser, OSCE/ODIHR

A. Recommendations mainly for participating States:

General recommendations:

- Political leadership should be exercised. Leaders should ensure that their systems are conducive to effective implementation of international standards on pre-trial detention, to secure the rule of law and the protection of human rights. Ministers of Justice and the Interior should occasionally visit places of detention.
- Alternatives to pre-trial detention should be made the rule, not the exception. Among other reasons, this is important as a reflection of the presumption of innocence.
- The authorities sharing the responsibility for pre-trial detention should discuss their roles in order to define clear lines of responsibility.
- Awareness raising about international standards should be repeated at regular intervals at all levels of state authority as a preventive measure against abuse in pre-trial detention.
- The „right to know one’s rights“ must be fully ensured with regard to pre-trial detention. This requires not only informing the detainee at the moment of arrest, but awareness raising of the general public on the rights of the detainees/accused.
- Participating States as well as non-governmental organisations should make use of available documentation more systematically.² Such information should be translated into domestic languages and widely disseminated by participating States.
- Participating States should exercise political pressure on other participating States with a record of inhuman treatment in pre-trial detention in order to encourage them to develop a policy against torture and inhuman treatment or punishment.

² For example, the OSCE/ODIHR report "Pre-trial detention in the OSCE Area", ODIHR Background Paper 1999/2, prepared for the September 1999 OSCE Review Conference.

- The length of pre-trial detention should be strictly limited to the necessary period taking into account the gravity of the allegation.
- Participating States should ensure that a judicial body enjoying full independence and impartiality from the investigating authority is responsible for authorizing pre-trial detention. Such oversight needs to be repeated at regular intervals.
- Participating States that have introduced such remedies into their legislation need to ensure their effective implementation.
- Awareness raising and training programs should therefore be aimed also at judges and prosecutors in order to increase their competence, to decrease often unconscious discrimination, and to strive against arbitrariness and an old-style mindset.
- The importance of the defence lawyer in protecting the rights of those in detention should be fully recognised. A strong and independent defence lawyer's organisation should be supported and training should be provided on new laws.

Regarding access to pre-trial detention facilities and prisoners:

- Participating States should ensure that incommunicado detention does not exceed 24 hours.
- Access to legal counsel must be fully provided from the beginning of pre-trial detention, i.e. including the access of the defence lawyer to the pre-trial detention facility in which the suspect is held.
- An independent monitoring body with the right to access places of detention without prior notice and the right to report on conditions should be established (or supported, where an institution suitable for such purposes already exists).
- The Ombudsman institution should be strengthened and encouraged to monitor detention facilities to prevent torture and ill treatment. Training on monitoring places of detention should be provided to these institutions.
- NGOs should be trained, encouraged and permitted to monitor places of detention including places of pre-trial detention.
- Monitoring and investigative mechanisms should include medical expertise.

Regarding the establishment of a more professional police force:

- The Police should not rely on a detainee's confession in order to present a case to court.

- Other ways of obtaining evidence should be made known; i.e. training should be given on the variety of means of collecting evidence and on better investigating techniques.
- Police forces should be encouraged to develop and implement a torture prevention policy. In doing so they should consider examples of best practices in other states.³
- Training of the police force should include practical exercises and modern training methodology. Since pre-trial detention is psychologically very stressful, law enforcement officers should be trained on concrete stress situations, in addition to learning about rule of law and human rights in general.
- Codes of conduct should be developed for the police force.⁴

Regarding the reaction to torture allegations:

- The problem of impunity of perpetrators of torture needs to be addressed. Their serious and fair investigation and prosecution needs to be guaranteed.
- The obligation under international law that no statement made as a result of torture can be invoked as evidence in any proceedings should be fully reflected in national law and spelled out in concrete language in the law.
- As an essential measure for implementing this obligation the burden of proof should be shifted to the investigating authorities instead of the complainant/accused.
- The endorsement of the Istanbul Protocol, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Punishment, should be supported.
- Screening measures need to be implemented to ascertain that physicians possess the required knowledge and expertise to assess the medical and mental condition (trauma) of detainees.
- A detainee's right for medical assistance should be supplemented by the right to refuse a police or prison doctor. The detainee should be given a list of doctors from which he/she can choose a physician. It needs to be assured that the physician is independent.

³ A "best practice" example was given from South Africa: the police use an occurrence booklet, where time and further details of arrest are noted in order to assure the possibility for internal cross-checking.

⁴ An example was given from France: a very basic document explains how a policeman should react in any given situation, pointing out the administrative and disciplinary sanctions in case of non-compliance.

- At least one rehabilitation centre for victims of torture should be established in every OSCE participating State.
- The access to independent forensic examination should be facilitated.

Regarding particularly vulnerable groups in pre-trial detention:

- Human rights defenders need to be recognised as a particularly vulnerable group. The creation of the position of a Special Rapporteur within the UN system to ensure the special protection of human rights defenders should be supported.
- International standards on pre-trial detention need to be particularly ensured in regard to foreign nationals. The same holds true for other vulnerable groups: juveniles, women and disabled persons.
- Law enforcement should be equal and impartial without discrimination on any grounds, such as ethnicity, gender, race etc. Participating States should also take steps towards an appropriate representation of such groups in their law enforcement agencies.
- Participating States should focus in particular on finding alternatives to pre-trial detention when juveniles are concerned. When pre-trial detention is unavoidable, juveniles should be kept separate from adult prisoners.

Regarding non-criminal custody/administrative custody:

- Participating States should review their policies with regard to administrative detention of asylum-seekers. Detention should not be mandatory if persons fail to present identity documents. It should be taken into account that the particular circumstances of refugees may justify the absence of such documents. Also, asylum authorities need to be properly trained in order to recognise trauma as a result of torture. Participating States should take account of the concrete recommendations developed by the UNHCR with regard to this particular group.

B. Recommendations for the OSCE and the ODIHR

- The ODIHR together with OSCE field missions should assist in the review of national laws in order to bring domestic laws relating to pre-trial detention into compliance with international law and OSCE commitments.
- The ODIHR together with field missions should provide training and awareness regarding the existence and implementation of new laws relating to pre-trial detention.
- The ODIHR and field missions should support oversight of pre-trial detention facilities by NGOs and Ombudsman Institutions.

- The ODIHR should ascertain best practises in regard to pre-trial detention and use them as a guide.
- International organisations should closely monitor the safety and security for doctors involved in investigating cases of torture and in treatment of torture victims taking into account GA/RES/53/144 ("Declaration on Human Rights Defenders").

C. Recommendations for field missions

- Field missions should increase their monitoring of pre-trial detention cases and visiting places of detention facilities.
- Field missions should also monitor trials to ensure that legal safeguards are fully respected.
- Field missions should also monitor the performance of participating States in instigating legal proceedings against those responsible for torture or inhuman treatment.

Outcome of Working Group 2 – Human Rights and the Penitentiary System

Moderator:

Ian GORVIN, Human Rights Adviser, OSCE/ODIHR

Session 1: Eliminating Cruel, Inhuman or Degrading Treatment or Punishment in the Prison/Penitentiary System

Introducers:

Silvia CASALE, President of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT)

Alan WALKER, Consultant to the OSCE/ODIHR on Prison Services

A. Recommendations for participating States

Compliance with international standards:

- Domestic legislation should be brought into line with international standards and OSCE commitments. Legislation and regulations should in particular reflect the UN Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules that serve as a good point of departure for best practices in the penitentiary.
- In cases where formal compliance is accomplished, the focus should be on policies ensuring actual implementation.

Improvement of prison conditions and best use of resources:

- Participating States should review their prison practices on a regular basis.
- This review should be done with a view to scrutinising more closely best practices and make efforts to copy and adapt them as appropriate to their specific needs. Note should be taken in this regard of the work of the Council of Europe and Penal Reform International.⁵
- The consistent overcrowding of detention facilities in a number of participating States needs to be reduced in a planned way as part of a governmental policy to reform the penitentiary and the criminal justice system (as opposed to ad hoc amnesties to reduce the number of prisoners).
- Participating States should reassess how far their punishment policies and domestic legislation reflect the need for reintegration of detainees into society.
- In this context participating States should promote alternative/non-custodial sentences as a tool to reduce prison population and to facilitate re-integration.
- Participating States should review their punishment policy with regard to gradually shortening long prison terms.
- Participating States should fully respect their obligation to guarantee the health of the prisoners at all times.
- Government policy should take into account that problems not addressed within the prison system, usually in the name of lack of resources, become problems and a burden for the whole society with equally or even more grave cost implications (e.g. untreated tuberculosis spreads into the general population upon the release of infected prisoners, become a public health issue with serious costs). Therefore, awareness needs to be raised that policy changes are often more cost-efficient than continuing bad practices such as overcrowding and lack of sanitary conditions.
- Means to enhance self-sufficiency of prisons should be explored wherever possible (e.g. cultivation of agricultural products, etc.).
- Special attention should be paid to the particular situation of juveniles, women, and other groups with specific needs.

Changing the culture of penitentiary staff:

- Governments should introduce policies targeted to changing the culture in prison and the mindset of penitentiary personnel.

⁵ Another illustration of good practice was the example of "twinning" arrangements between states, such as co-operation between the penitentiary services of certain Nordic countries and their counterparts in Baltic States.

- Training is key to developing civil culture in the penitentiary system with the goal to raise the understanding of the human dignity and rights of convicted persons in order to „humanize“ prisoners in the eyes of officials.
- Such training must be sufficiently complemented by implementation in practice in particular through internal oversight procedures ensuring adherence to staff regulations and other standards.

Strengthening of institutional safeguards:

- Governments need to strengthen transparency and accountability in the penitentiary system as one of the key safeguards against ill treatment of convicted persons.
- This needs to include both regular internal inspection as well as external oversight by a combination of actors.
- The complementary value of oversight by governmental bodies, National Human Rights Institution and Ombudsman as well as NGOs and other civil society actors and international organizations should be recognised and access of these groups to prisons should be granted.
- Medical personnel and legal counsel must be provided access to prisoners.
- Participating States must ensure that those responsible for torture are punished and that existing legislation in this regard is fully implemented in practice.
- Effective complaint procedures should be introduced for convicted prisoners and, where these exist, their actual implementation needs to be fully ensured.
- Functional separation of authority over custody and investigation should be made. In particular, the responsibility for the penitentiary system should be shifted from Ministry of Interior to Ministry of Justice where this is not yet the case in order to ensure such separation of power.

B. Recommendations for the OSCE

- The ODIHR should continue its assistance to the penitentiary systems of participating States, in particular with regard to setting up proper training structures.
- OSCE should raise awareness that existing practices may be having a more detrimental effect on the national economy than if progressive measures such as alternative sentencing and proper medical care in prisons were implemented.

- OSCE should facilitate financial support provided by development organisations aimed at reforming prison systems and to rehabilitation centres.
- The ODIHR and other international organisations should facilitate the exchange of experiences and of best practices among participating States.

Session 2: Exchange of information on Capital Punishment in the OSCE Region

Introducer:

Renate WOHLWEND, Rapporteur on the Abolition of the Death Penalty, Vice-Chairperson of the Sub-Committee on Human Rights of the Parliamentary Assembly of the Council of Europe

A. Recommendations for participating States:

- Participating States should ratify international instruments providing for the abolition of the death penalty such as the 2nd Optional Protocol to the ICCPR and the Protocol No. 6 to the ECHR.
- Participating States that have not abolished the death penalty should scrupulously respect safeguards protecting the rights of those facing the death penalty as laid down in the UN ECOSOC Safeguards.
- As a first step to complete abolition, participating States should limit the scope of death penalty legislation and/or impose a moratorium on capital punishment.
- Participating States should comply fully with their commitment to exchange information on the use of the death penalty and make such information available to the public.
- In line with UN ECOSOC resolution 1989/64, participating States should publish such information for each category of offence for which the death penalty is authorized. If possible this information should be provided on an annual basis, including the number of persons sentenced to death, the number of executions, the number of persons under sentence of death, the number of sentences commuted, and on the extent to which the safeguards referred to above are incorporated into national law.
- Non-abolitionist participating States should launch public discussion with a view to promoting the abolition of the death penalty; in this context:
 - They should raise awareness of the fact that it is not proven that capital punishment deters crime.
 - They should make efforts to educate the public about the issues surrounding the death penalty and the need for its abolition, e.g. by

encouraging respected public figures to make statements against the death penalty as a means of providing moral leadership.

- They should try to determine whether and under what circumstances the public would accept abolition, even where most people believe in the necessity of the death penalty.
- They should make efforts to determine how well public opinion is based on an understanding of criminal justice policy and international human rights standards.

B. Recommendations for the OSCE:

- The OSCE/ODIHR should continue to collect and monitor information regarding the abolition of the death penalty.
- In countries that have recently abolished the death penalty, ODIHR should provide assistance with regard to the reform of the penitentiary system.
- OSCE should consider stability and security aspects of the use of the death penalty especially in political cases, for example in Central Asia.⁶

⁶ The example cited referred specifically to the sentencing to death of members of ethnic minorities, and the potential for this to be a destabilizing factor.

ANNEXES:

1. AGENDA

9:00 – 10:00	OPENING SESSION: REDOUTENSAAL <i>Opening</i> by Moderator - Ambassador Christian Strohal, OSCE Chairmanship <i>Introductory remarks</i> by Ambassador Gérard Stoudmann, Director of the OSCE/ODIHR <i>Key-note speech</i> by Prof. Sir Nigel Rodley, UN Special Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment; <i>Technical information</i> by the OSCE/ODIHR
10.00-12.30	WORKING GROUPS: REDOUTENSAAL & SEGMENTGALERIE 1 <i>Working Group 1</i> <i>Human rights and pre-trial detention</i> <i>Working Group 2</i> <i>Human rights and the penitentiary system</i> <i>Session 1</i> <i>Eliminating cruel, inhuman and degrading treatment in the prison/penitentiary system</i>
12.30 - 14.00	Lunch offered by the Austrian Chairmanship
14.00 - 16.00	<i>Working Group 1 (continuation)</i> <i>Working Group 2</i> <i>Session 2</i> <i>Exchange of information on capital punishment in the OSCE region</i>
16.00 - 17.00	BREAK
17.00 - 18.00	CLOSING SESSION: REDOUTENSAAL <i>Moderators' Reports</i> Comments from the floor

2. ANNOTATED AGENDA

OVERVIEW

The meeting will focus on two areas: first, to identify issues relating to the protection of persons under all forms of detention or imprisonment and develop concrete recommendations for the implementation of provisions in international law and OSCE commitments in this area; second, to foster an exchange of information on capital punishment in the OSCE region. Recommendations may be addressed to the OSCE as a whole, its institutions including the Office for Democratic Institutions and Human Rights, to its field offices, or to the participating States. Discussions will take place in two working groups: one focusing on pre-trial detention and the other on prison/penitentiary systems and capital punishment. For each working group the common questions are:

- What are the key obstacles to the prevention of cruel, inhuman or degrading treatment or punishment of persons in detention or imprisonment?
- What can the OSCE do to overcome these obstacles through its own program and how can it assist governments, national institutions and civil society?

WORKING GROUPS

1. HUMAN RIGHTS AND PRE-TRIAL DETENTION

Context:

In spite of the many legislative improvements and the existence of international instruments and OSCE commitments, the protection of persons held in pre-trial detention continues to be a concern in the OSCE region. A majority of complaints received by ombudsman institutions and human rights groups concern the treatment of persons held in pre-trial detention. Why is this an ongoing problem and what can the OSCE do to ensure that existing legislation and international standards are implemented?

Discussions in this working group will include:

- What safeguards against cruel, inhuman or degrading treatment or punishment exist for persons in pre-trial detention and how can these be implemented?
- What is the role of the prosecutor and other officials involved in pre-trial detention in implementing these safeguards?
- What are the alternatives to pre-trial detention and are they being utilized?
- How can arbitrary or incommunicado detention be prevented?

2. HUMAN RIGHTS AND THE PENITENTIARY SYSTEM

2.1 ELIMINATING CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT IN THE PRISON/PENITENTIARY SYSTEM

Context:

Bearing in mind the economic factors involved in maintaining a prison/penitentiary system, the focus of this group is on the steps that can be taken to improve the conditions and facilities of imprisonment. What steps can

the OSCE take in helping to implement best practices in prison/penitentiary systems?

Discussions in this working group will include:

- What are the key obstacles to the prevention of cruel, inhuman or degrading treatment or punishment of persons in prison?
- What are the obstacles to implementing best practices in training of penitentiary personnel?
- What alternatives to a sentence of imprisonment exist and how can they be implemented?
- What are the current challenges to improving prison facilities and conditions of imprisonment?

2.2 EXCHANGE OF INFORMATION ON CAPITAL PUNISHMENT IN THE OSCE REGION

Context:

There has never been a formal consensus within the OSCE concerning the abolition of capital punishment, and countries that apply the death penalty with stringent procedural safeguards and due process of law do not violate OSCE commitments. Relevant OSCE documents, in particular the 1990 Copenhagen Document, do oblige participating States to keep the question of capital punishment under consideration, to co-operate on the subject within relevant organizations, to exchange information on the question of abolition of the death penalty, and to make available to the public information regarding the use of the death penalty.

Discussions in this working group will include:

- What is the current situation in OSCE participating states that have retained the death penalty, and what safeguards exist in law and practice for persons facing the death penalty?
- How can the availability of statistical and other information on the death penalty be improved?
- What steps can be taken to influence public opinion towards abolition?