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1. As a conclusion of the review of the Guidelines on Torture and other cruel, inhuman and degrading treatment or punishment, the Working Party on Human Rights confirmed its agreement to the updated version of the EU guidelines on Torture, as set out in the annex to this note.
2. The PSC is invited to endorse the updated version of the Guidelines on Torture and other cruel, degrading and inhuman treatment, with a view to its approval by the Council, via Coreper.

## **GUIDELINES TO EU POLICY TOWARDS THIRD COUNTRIES ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

**(An up-date of the Guidelines)**

### **PURPOSE**

The purpose of these guidelines is to provide the EU with an operational tool to be used in contacts with third countries at all levels as well as in multilateral human rights fora in order to support and strengthen ongoing efforts to prevent and eradicate torture and other ill-treatment in all parts of the world. The term "torture" is used in these guidelines in accordance with the definition provided in Article 1 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CIDT). For the purpose of these guidelines other ill-treatment means all forms of cruel, inhuman or degrading treatment or punishment, including corporal punishment, which deprives the individual of its physical and mental integrity. While addressing specific concerns about torture and other ill-treatment is the primary purpose, the guidelines will also contribute to reinforcing the EU's human rights policy in general and the implementation of EU's other human rights guidelines and the European Union Guidelines on promoting compliance with international humanitarian law.

### **INTRODUCTION**

The European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law. These principles are common to the Member States. Respect for human rights features among the key objectives of the EU's common foreign and security policy (CFSP).

Torture and other ill-treatment are among the most abhorrent violations of human rights, human integrity and human dignity. According to the Universal Declaration of Human Rights no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No exceptions are permitted under international law. All countries are obligated to comply with the unconditional prohibition of all forms of torture and other ill-treatment in all circumstances. Despite the efforts by the international community, torture and other ill-treatment persist in all parts of the world. Impunity for the perpetrators of torture and other ill-treatment continues to prevail in many countries.

To work towards the prevention and the eradication of all forms of torture and other ill-treatment within the EU and world-wide is a strongly held policy view of all EU member states. Promotion and protection of this right is a priority of the EU's human rights policy.

In its work towards the prevention and eradication of torture and other ill-treatment, and towards the rehabilitation of torture victims, the EU is guided by relevant international and regional norms and standards on human rights, the administration of justice and the conduct of armed conflict including *inter alia* those contained in the annex.

## **OPERATIONAL GUIDELINES**

The operational part of these guidelines is meant to identify ways and means to effectively work towards the prevention of torture and other ill-treatment within the CFSP.

The EU supports actively the work of the relevant actors (including *inter alia* the UN Committee Against Torture, the UN Subcommittee on Prevention of Torture, the UN Human Rights Committee, the UN Committee on Enforced Disappearances, the Committee for the Prevention of Torture of the Council of Europe, as well as the UN Special Procedures and other relevant actors). The EU will pro-actively contribute to ensure that the existing international and regional safeguards against torture and other ill-treatment are strengthened and effectively implemented.

## **Country strategies**

Torture and other ill-treatment should be adequately reflected and addressed through the EU country human rights strategies. Wherever torture and other ill-treatment has been retained as a priority, this includes conducting in-depth analysis of the situation of torture and other ill-treatment in a given country, and to identify possible preventive actions and mechanisms, as well as necessary steps to counter impunity for torture and other ill-treatment. In this regard and as set out in the Council Conclusions of 2008, the importance of the implementation measures (doc 8407/1/08 ) is stressed, as is active awareness raising measures and cooperation between government bodies and civil society. For the countries where torture and ill treatment has not been retained as a priority, this will be addressed whenever they are relevant occurrences in the country.

## **Monitoring and reporting**

In their reporting, the EU Heads of Mission will address torture and other ill-treatment whenever there are relevant occurrences in-country. In countries where torture or other ill-treatment has been retained as a priority issue under the Human Rights Country Strategy, the EU Heads of Mission will include an analysis of the occurrence of torture and ill-treatment and the measures taken to combat it, as well as provide periodic evaluation of the effect and impact of the EU actions.

## **EU action in relations with third countries**

The EU's objective is to influence third countries to take effective measures against torture and other ill-treatment and to ensure that the absolute and non-derogable prohibition against torture and other ill-treatment is enforced. In its contacts with third countries, the EU will express the imperative need for all countries to adhere to and comply with the relevant international norms and standards and will consequently emphasise that torture and other ill-treatment are forbidden under international law in all circumstances. The EU will make its objectives known as an integral part of its human rights policy and will stress the importance it attaches to the prevention of torture and other ill-treatment with a view to its global eradication.

The EU follows a holistic and proactive approach that encompasses all essential elements to eradicate torture: prevention, protection and rehabilitation focusing on the victims of torture and ill-treatment.

In the fight against terrorism, EU member states are determined to comply fully with international obligations prohibiting torture and other cruel, inhuman or degrading treatment or punishment.

A) To achieve these objectives, the EU will take, inter alia, the following actions:

#### Political dialogue

The human rights component of the political dialogue between the EU and third countries and regional organisations shall include the issue of torture and other ill-treatment. The EU will raise the prohibition of torture and other forms of ill-treatment in its counter-terrorism dialogues with third countries. Capacity building on human rights and the rule of law, including the prohibition of torture and other forms of ill-treatment, should be provided, including encouraging third countries to incorporate human rights into their work countering terrorism.

#### Démarches

The EU will make démarches and issue public statements urging relevant third countries to undertake effective measures against torture and other ill-treatment, including preventive measures. The EU will, where need be, request information on allegations of torture or other ill-treatment. The EU will also react to positive developments that have taken place.

In well documented individual cases of torture and other ill-treatment the EU will urge (by confidential or public démarche) the authorities in the country concerned to ensure the victim's and other relevant persons' safety, prevent abuses, provide information apply relevant safeguards and ensure that a prompt, effective, independent and impartial investigation is taking place with a view to bring the perpetrators to justice and facilitate full and effective reparation. Actions on individual cases will be determined on a case-by-case basis and may form part of a general démarche.

## Bilateral and multilateral co-operation

Combating and preventing torture and other ill-treatment will be considered a priority in all bilateral and multilateral co-operation for the promotion of human rights, inter alia in collaboration with civil society, including in the legal field, health field and the field of education and training. Particular attention should be given to such co-operation within the framework of the European Instrument for Democracy and Human Rights (EIDHR) and in cooperation/bilateral/ regional programmes supporting the rule of law and security reform.

In very severe cases it may be considered to invoke human rights clauses of associations, partnerships, and cooperation agreements. Withdrawal of GSP+ benefits may also be considered where relevant.

## Trial observation

Heads of Mission will strive to send embassy representatives as observers to trials where there is reason to believe that defendants have been subjected to torture or ill-treatment.

B) In its actions against torture the EU will urge third countries to take, inter alia, the following measures:

## Prevent, prohibit and condemn torture and other ill-treatment

- ensure that all acts of torture are offences under domestic criminal law, including attempts, complicity and participation, punishable by appropriate penalties;
- condemn, at the highest level, all forms of torture and other ill-treatment;
- repeal or amend any law that, in purpose or effect, authorize or condone any forms of torture or other ill-treatment.

- take effective legislative, administrative, judicial and other measures to prevent: the occurrence of acts of torture and other ill-treatment in any territory under its jurisdiction; prevent and prohibit the production, trade, export, import and use of equipment which have no practical use other than for the purpose of torture and other ill treatment as well as impose strict controls, with a view to prevent abuses, on the production, trade, export, import and use of equipment that could be used for the purpose of torture or other ill treatment as indicated in the Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.

#### Adhere to and implement international norms and procedures

- accede to the UNCAT and its Optional Protocol, the ICCPR and relevant regional instruments such as the Robben Island Guidelines on the prevention and prohibition of torture in Africa, the Inter American Convention to Prevent and Punish Torture, and the European Convention for the Prevention of Torture; consider acceding to the CPED;
- withdraw reservations incompatible with the purpose and object of the UNCAT, the ICCPR the CPED and other relevant treaties;
- consider withdrawing other reservations to the UNCAT, the ICCPR, the CPED and other relevant treaties;
- consider allowing individual and inter-state complaints under the UNCAT, CEDAW, CPED and ICCPR;
- accede to the Statute of the International Criminal Court
- comply with the requests for interim measures of protection, rulings, decisions and recommendations of international and regional human rights bodies, including the UN;
- co-operate with the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and all other relevant special procedures,
- co-operate with CAT, SPT and other relevant UN treaty bodies including in implementing and following up on treaty body conclusions and views and consent to publication of SPT's visit reports;

- ensure that national laws absolutely prohibit the forcible transfer of any person to any country where there are substantial grounds for believing that he or she would be subjected to torture or other ill-treatment (including the country of origin), or risks being subsequently transferred onward to such a country, as well as access to an effective, independent and impartial review prior to any such decision;
- in countries where the death penalty is still applied, ensure that in addition to the limitations contained in Article 6 ICCPR, executions, as well as death row conditions, must be such as to cause the least possible physical and mental suffering;
- co-operate with the relevant Council of Europe mechanisms, in particular by implementing the decisions of the European Court of Human Rights and recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and consent to publication of the Committee's reports on visits to their countries.
- co-operate with the relevant regional human rights bodies and mechanisms.

#### Adopt and implement safeguards and procedures relating to places of detention

- adopt and implement legal and procedural safeguards against torture and other ill-treatment and ensure that persons deprived of their liberty are brought before a judicial authority without delay and that they have access to and the right of confidential communication with independent lawyers and medical care without delay and regularly thereafter, and to ensure that the persons deprived of their liberty can inform their relatives and other relevant third parties without delay of the fact and place of their detention, as well as any subsequent transfers;
- Establish independent mechanisms to investigate complaints against police or prison officers accused of mistreatment of detainees;
- ban secret places of detention ensuring that all persons deprived of their liberty are held in officially recognised places of detention and that their whereabouts are known, in particular to their family members and legal counsel;

- ensure that procedures for detention and interrogation are in conformity with relevant international and regional standards;
- improve the conditions in places where persons deprived of their liberty are held in order to conform with international and regional standards.
- ensure that persons convicted of torture or other cruel, inhuman or degrading treatment or punishment have no subsequent involvement in the custody, interrogation or treatment of any person under arrest, detention, imprisonment or other deprivation of liberty. and that persons charged with torture or other CIDT have no involvement in the custody, interrogation or treatment of any persons deprived of liberty while such charges are pending; such measures should follow a court order in a legal proceeding or an administrative decision of provisional suspension.

#### Provide rehabilitation and reparation for victims

- ensure that victims of an act of torture obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.
- Ensure that holistic rehabilitation, including medical, psychological, social and other measures are available for torture victims and their families

#### Establish domestic legal guarantees

- ensure in all circumstances that no statement or confession or other evidence obtained as a result of torture may be invoked in any proceedings, except against a person accused of torture or other cruel, inhuman or degrading treatment or punishment as evidence that such statement or confession or other evidence was made or obtained;
- ensure that statements, confessions or other evidence are not relied upon as evidence without sufficient corroborations;
- abolish all forms of corporal punishment;

- ensure that no exceptional circumstances whatsoever, including a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture or ill-treatment;
- ensure that no order from a superior officer or a public authority may be invoked as a justification of torture or other ill-treatment;
- ensure that law enforcement officials, military, medical and other relevant personnel will not be punished for not obeying orders to commit acts amounting to torture or other ill-treatment.

#### Combat impunity

- bring every individual within the state's jurisdiction who is responsible for torture wherever committed in the world, to justice in trials that conform to international norms for a fair trial and which exclude the death penalty, if the individual is not extradited for prosecution in another state where these guarantees are fulfilled;
- conduct prompt, impartial and effective investigations of all allegations of torture, in order to document torture preferably in accordance with the Istanbul Protocol annexed to CHR resolution 2000/43;
- ensure that no amnesty, immunity, or period of limitation or prescription is applicable to any act of torture.

#### Groups requiring special protection

- establish and implement standards and measures relating to detainees, prisoners, women, children, refugees, asylum-seekers, internally displaced persons, migrants, those facing discrimination on grounds of ethnicity, religious or other belief, sexual orientation or gender identity, and other groups requiring special protection against torture and other ill-treatment.

### Allow domestic detention monitoring mechanisms

- allow visits by representatives of civil society and other independent bodies such as NPMs, National Human Rights Institutions and Ombudspersons, who have the right to confidential communication with any individual of their choice to places where persons deprived of their liberty are or may be held;
- Establish, designate or maintain and enhance independent and effective mechanisms with relevant and diverse expertise to undertake effective and unannounced monitoring visits to all places of detention, inter alia with a view to preventing acts of torture or other cruel, inhuman or degrading treatment or punishment;
- implement recommendations of independent detention monitoring mechanisms.

### Provide domestic procedures for complaints and reports of torture and ill-treatment

- establish and operate effective domestic procedures for responding to and investigating complaints and reports of torture and other ill-treatment preferably in accordance with the Istanbul Protocol, including in cases where there is reason to believe such acts have occurred even if there is no formal complaint from a particular victim and ensure that those procedures are sufficiently gender and child sensitive where required;
- ensure that alleged victims of torture or other ill-treatment, witnesses, human rights defenders documenting or reporting cases of torture and those conducting the investigation and their families are protected from violence, threats of violence or any other form of intimidation or reprisal that may arise pursuant to the report or investigation.

### Establish national institutions for the prevention of torture

- consider creating and operating and, where appropriate, strengthening independent national institutions (e.g. human rights ombudspersons or human rights commissions) that can effectively address the prevention of torture and other ill-treatment.

### Strengthen the justice system

- ensure respect for the role that judges, prosecutors and lawyers play in the prevention of torture and other cruel, inhuman or degrading treatment or punishment, including with respect to arbitrary detention, due process safeguards and fair trial standards, and in bringing perpetrators to justice;
- enable the judiciary to exercise its judicial functions independently, impartially and professionally;
- take effective measures for combating corruption in the administration of justice, establish proper legal aid programs and have judges and prosecutors adequately and in sufficient numbers selected, trained and remunerated;
- take effective measures to prevent and combat any unlawful interference of any kind, such as threats, harassment, intimidation and assaults on judges, prosecutors and lawyers, as well as ensure that any such interference is promptly, effectively, independently and impartially investigated with a view to bringing those responsible to justice.

### Provide effective training

- train law enforcement officials, military personnel and all persons, who are involved with persons deprived of their liberty as well as health personnel (civilian and military) to comply with the relevant international standards for the prevention of torture and other ill-treatment;
- train members of NPMs and other detention monitoring bodies
- ensure the training of the judiciary, prosecutors and lawyers on the relevant international, regional and national standards;
- ensure that transfers of equipment and training for military, security or police use do not facilitate torture and other ill-treatment;
- ensure that training programmes for law enforcement personnel include training on the prevention, investigation and prosecution of violence against women, on the rights of the child and on combating discrimination of all kinds, including on such grounds as race and sexual orientation;

- ensure that training programmes for health professionals include training on the early identification of torture victims, on their rehabilitation and on the use of the Istanbul Protocol to document torture.

#### Support the work of health professionals

- enable health professionals to work independently and confidentially when preparing observations on alleged cases of torture and other ill-treatment, and when treating persons deprived of liberty;
- protect doctors, forensic experts and other health personnel who report cases of torture and other ill-treatment;
- ensure that health personnel do not take part under any circumstances in harsh interrogations or other ill treatment of individuals with the purpose of monitoring or prolonging pain and sufferingPromote and recommend the systematic application of the Istanbul Protocol for the documentation of torture cases.

#### Prevent any form of intimidation or reprisal

- ensure that no authority or official orders, applies, permits or tolerates any sanction or other prejudice against any person or organization for having been in contact with any national or international monitoring or preventive body active in the prevention and combat of torture and other cruel, inhuman or degrading treatment or punishment.

#### Conduct autopsies

- ensure that medico-legal autopsies are carried out by trained and independent forensic specialists in accordance with internationally recognised standards;
- provide for proper forensic examination in all cases of serious injury of detained persons.

## Other initiatives

The EU will:

- continue to raise the issue of torture and ill-treatment and reaffirm and strengthen its eradication in multilateral fora, such as the UN, the Council of Europe and the OSCE. The EU will continue to actively support the relevant resolutions at the UN bodies including the General Assembly and the Human Rights Council;
- assist countries in implementing UPR recommendations, which are in line with international and regional human rights law, related to the prevention and combating of torture and other ill-treatment;
- support the relevant international and regional mechanisms (e.g. the Committee Against Torture, the Subcommittee on the Prevention of Torture, the European Committee for the Prevention of Torture, the relevant UN Special Procedures) and stress the need for states to co-operate with the mechanisms, including by proper follow-up to their recommendations;
- discourage reservations to instruments designed to combat torture or other ill treatment and if this fails object to any reservation submitted by third countries which is incompatible with the object and purpose of international human rights instruments;
- offer joint or bilateral co-operation on the prevention of torture and other ill-treatment and on the establishment of rehabilitation services;
- support public education and awareness-raising campaigns against torture and other ill-treatment;
- support the work of relevant national and international NGOs to combat torture and other ill-treatment and maintain a continuous dialogue with them;

- continue to fund projects undertaken to improve training of personnel and conditions in places of detention and will maintain its substantial support for rehabilitation centres for victims of torture across the world.
- maximize its influence by having Member states' laws and practices meet or exceed international standards against torture and other ill-treatment in all respects.

The EU may invoke, where relevant, in its contacts with third countries concerning torture and ill-treatment the following norms and standards and principles.

- Universal Declaration of Human Rights UN International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol
- UN Convention on the Rights of the Child (CRC) and its two Optional Protocols
- UN International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol
- UN International Convention for the Protection of All Persons from Enforced Disappearance (CPED)
- UN Convention on the Rights of Persons with Disabilities and its Optional Protocol
- Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols no.6 and 13 as well as the relevant case-law of the European Court on Human Rights
- Charter of Fundamental Rights of the European Union
- Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence
- Council of Europe Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), as well as the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- Statute of the International Criminal Court
- The Four UN Geneva Conventions of 12 August 1949 and their Protocols as well as customary rules of international humanitarian law.

- UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- UN Declaration on the Elimination of Violence Against Women
- UN Convention and Protocol Relating to the Status of Refugees
- UN Declaration on the Protection of All Persons from Enforced Disappearances
- UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions
- UN Standard Minimum Rules for the Treatment of Prisoners
- UN Basic Principles for the Treatment of Prisoners
- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- UN Rules for the Protection of Juveniles Deprived of their Liberty
- UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders
- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- UN Basic Principles on the Independence of the Judiciary
- UN Basic Principles on the Role of Lawyers
- UN Guidelines of the Role of Prosecutors
- UN Standard Minimum Rules for Non-Custodial Measures
- UN Code of Conduct for Law Enforcement Officials
- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- UN Principles on Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
- UN Basic Principles and Guidelines on the Right to a Remedy and Reparation
- Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) annexed to UN Commission on Human Rights resolution 2000/43

- Safeguards guaranteeing protection of the rights of those facing the death penalty (ECOSOC resolution 1984/50)
- Vienna Declaration and Programme of Action
- General Comments by the UN Committee against Torture, in particular No. 1 on article 3, and No. 2 on Article 2
- General Comments by the UN Human Rights Committee, in particular No. 20
- on Article 7, No. 21 on Article 10, No. 29 on Article 4, and No. 31 on the General Legal Obligation Imposed on States Parties, under the International Covenant on Civil and Political Rights
- General Recommendation no. 12, 14 and 19 of the Committee on the Elimination of Discrimination against Women
- African Charter on Human and People's Rights and its Protocol (Maputo Protocol)
- African Charter of the Rights and Welfare of the Child
- Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines)
- American Convention on Human Rights
- Inter-American Convention to Prevent and Punish Torture
- Inter-American Convention on Forced Disappearance of Persons
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women
- Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas
- Council of Europe Convention on Action against Trafficking in Human Beings CETS No.: 197
- EU Regulation 1236/2005 on trade in torture equipment of July 30 2005.
- EU Code of Conduct on arms export.