

WORKSTREAM III

SPEAKING OF TORTURE AND ILL-TREATMENT EXPLICITLY IN TODAY'S FOREIGN AND DOMESTIC SECURITY POLICY AGENDA

General Overview

Today, key foreign and domestic security policy issues such as counter-terrorism and migration inevitably touch on human rights issues. EU and Member State cooperation with third countries often raises questions around torture and ill-treatment. How can the EU and Member States more explicitly address torture in foreign and domestic security policy? What role can civil society play in this process?

The absolute ban on torture and ill-treatment is enshrined in core UN human rights conventions, and reaffirmed in the Charter of Fundamental Rights of the European Union, which EU Member States are obligated to respect in law, policy and practice. However, despite all efforts by the wider international community, torture and other ill-treatment persist all over the world.

In the 2012 Strategic Framework on Human Rights and Democracy, the EU defined torture as a “serious [violation] of human rights and human dignity” and committed to “continue to campaign vigorously against torture and cruel, inhuman and degrading treatment.”

The EU has committed to use all its available tools of diplomacy and cooperation assistance to eradicate torture. Adopted in 2001, revised in 2008, updated in 2012 and currently in a renewed updating process, the EU Guidelines on torture and other cruel, inhuman or degrading treatment or punishment identify concrete means for the EU to effectively prevent and respond to torture and ill-treatment in third countries.

In line with the EU Guidelines, the 2015 Action Plan on Human Rights and Democracy (Action 13) sees the EU commit to **“Combating torture, ill-treatment and the death penalty: [...] Undertake joint actions to promote the absolute prohibition of torture working in close cooperation with the UN, regional organisations and civil society, including supporting the 10 year global initiative (Convention against Torture Initiative), to achieve global ratification and implementation of the UN Convention against Torture (CAT) by 2024 and to promote the ratification and implementation of its Optional Protocol (OPCAT), and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.”**

With a view to identifying concrete ways forward, this working group aims to:

- ☐ Consider how the EU and its Member States can more explicitly address torture in foreign and domestic security policy with particular attention to three specific areas identified as major challenges for human rights globally: counter-terrorism policies, shrinking space for civil society organisations and migration.
- ☐ Identify the role that civil society can play in this process.

Thursday, 1 December 2016

A – INTRODUCTION AND IDENTIFICATION OF THE ISSUES (11:00-11:30)

In this session, the moderator will set out the objectives of the workshop and provide a general overview of the challenges that the EU and its Member States face when torture or ill-treatment occur in the three contexts set out above. This introduction will frame the discussion by referencing the need for concrete ways forward and for internal-external coherence on human rights.

B – TORTURE IN THE CONTEXT OF COUNTER-TERRORISM (11:30-13:00)

The EU is committed to the idea that the scourge of terrorism can only be overcome by democratic societies which remain committed to the rule of law. This means that the EU fights terrorism as a crime according to the law, and shows full respect to due procedures and fundamental rights within the law. This commitment implies that all preparatory work on new legislation is subject to rigorous impact assessments in order to ensure compliance with the Charter of Fundamental Rights.

Globally we have seen an increase in recent years in legislation being passed purporting to counter the threat of terrorism. We have also seen countries justify the use of torture and ill-treatment as part of counter-terrorism policies. These legislative measures and actions often undermine human rights protections and the absolute prohibition of torture and ill-treatment. We must remember that the prohibition of torture cannot be withdrawn in response to a security threat. As stated in the UN Convention against Torture *“No exceptional circumstances whatsoever, whether 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”*¹. It is therefore important that the EU maintains strong commitments on human rights and addresses the erosion of protections against torture and ill-treatment related to counter-terrorism strategies in the foreign and domestic security policy agenda.

This session aims to:

- ☐ Analyse how actions and legislative measures introduced (purportedly or actually) in response to threats of terrorism can erode the absolute prohibition of torture and ill-treatment;
- ☐ Analyse how the EU and its Member States can create real safeguards and uphold the absolute prohibition of torture and ill-treatment in their foreign and security policy, including in counter-terrorism work and cooperation with third countries. More specifically, the EU and its Member States should ensure that: domestic laws (states of emergency) and actions in response to threats of terrorism do not undermine human rights protections; security services are subjected to adequate oversight [and that any complicity in third states' rendition, detention and interrogation programme is effectively investigated]; the right to the truth is upheld, and all perpetrators are held accountable;
- ☐ Identify practical and policy steps to reinforce EU and Member State efforts to address torture and ill-treatment in foreign and domestic security policy, and insist that the prohibition of torture is absolute, including in the context of terrorist threats;
- ☐ Pinpoint specific ways that civil society can complement and reinforce these efforts.

¹ In this regard see also the non-derogable art 3 of the European Convention on Human Rights and of Art. 5 of the African Charter on Human and Peoples' Rights, as well as Art. 5 of the Inter-American Convention To Prevent And Punish Torture.

C – TORTURE IN THE CONTEXT OF SHRINKING SPACE FOR CIVIL SOCIETY (14:30-16:00)

Throughout the world, in third countries as well as in EU Member States, governments are placing restrictions on civil society's ability to carry out their legitimate human rights activities. Restrictive laws, policies and practices in different countries include: laws threatening the right to freedom of expression, association and assembly; smear campaigns; harassment; threats; criminalisation of activities resulting in arrests or judicial procedures; or restrictive NGO laws thwart specific activities and/or access to funding. Attacks against civil society are taking place at (at least) three different levels that are linked to the fight against torture and ill-treatment:

- Organisational level – the very existence of anti-torture organisations is threatened by measures put in place to shrink the legitimate space of civil society, thereby undermining the ability of civil society to facilitate reform and progress in the eradication of torture;
- Institutional level – civil society faces greater criminalisation of social protest, excessive use of force by the security forces, and restrictions on rights to freedom of expression, association and assembly;
- Individual level – human rights defenders, activists and media workers are at high risk of being subjected to physical and psychological torture and ill-treatment, including through arbitrary detention (in many cases with denial of medical treatment) and constant threats and harassment directed at them and their families.

This session aims to:

- Identify the existing threats and potential counter-strategies for each category of risk facing civil society, drawing on the diverse practical experiences of participants;
- Identify ways for the EU, Member States and other regional bodies to adequately protect the civil society space and to explicitly prevent and respond to torture and ill-treatment in this context.

Friday, 2 December 2016

D – TORTURE IN THE CONTEXT OF PEOPLE ON THE MOVE (09:00-10:30)

Migration is a well-established phenomenon that is increasingly capturing the attention of the media and politicians because of the migration crises in the EU and across the Americas, Southeast Asia, Africa and Oceania. Yet the link between refugees/migrants and human rights violations has long been of concern to the international human rights community due to the various violations suffered by migrants, asylum seekers and refugees in countries of origin, transit and destination. As people flee conflict, repression and poverty, reports of human rights violations continue to emerge, making the human rights of refugees and migrants one of the most pressing issues on today's global human rights agenda.

Governments' increasingly hesitant discourse on human rights, and the deterrence-based approach to reduce migration into their countries, now risks overturning the key principles and practices of protection, such as the principle of *non-refoulement* to places where there is a risk of torture and the concept of "safe third country". Meanwhile xenophobia, hostility and discrimination tend to increase. Moreover, both the impact of ill-treatment and the special needs of those who have

suffered trauma and require access to rehabilitation services remain unknown and often unaddressed among refugee and migrant populations.

In order to better understand and tackle these issues, this session aims to:

- ☐ Identify the risk of torture and ill-treatment faced by refugees and migrants in countries of origin, transit and destination. Key issues here could include: security/deterrence-oriented approaches to migration, inadequate detention conditions, excessive use of force by police to curb migration flows, children deprived of liberty and/or lack of specific attention to vulnerable groups;
- ☐ Assess how the EU and Member State refugee and migration policies affect how people on the move are protected from torture and ill-treatment (i.e. the new Partnership Frameworks with third countries, such as the EU-Turkey agreement, and migration compacts with countries in Africa, Asia and the Middle East);
- ☐ Identify concrete ways for the EU and its Member States to address and prevent torture and ill-treatment of refugees and migrants. Consider political solutions and programmes within the EU and in relations with third countries (e.g. anti-trafficking measures; identification of vulnerable groups, including victims of torture, upon arrival; special procedures and specific follow-up);
- ☐ Discuss the obligation to provide rehabilitation to survivors of torture and to pursue justice and accountability – including in domestic proceedings against perpetrators and gathering evidence from victims – given that victims and perpetrators of torture are arriving in EU Member States;
- ☐ Establish how civil society can help effectively address these questions (and possibly how the EU and its Member States can better support and protect civil society efforts and achievements in this area).

E – SUMMARY AND WAYS FORWARD (11:00-13:00)

This session will be an opportunity to join up discussions from the previous sessions, to explore how they build on each other, and identify practical and innovative ways forward. The moderator will summarise responses and facilitate input to identify and replicate best practice. Key questions will include:

- ☐ What have been the most effective practices used by the EU, Member States and/or civil society (or coalitions between them) to date?
- ☐ What could be done differently? What improvements or innovations could be made? What could facilitate this work?
- ☐ How can the EU ensure that it consistently shows and implements its commitment to human rights and the prohibition of torture in its foreign policy through enhanced coordination with relevant countries and systematically raising concerns throughout its engagement, including in aid and trade agreements.
- ☐ How could civil society better support EU responses and vice versa?