

HDIM 2013

Working Session 15: 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 15 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 Janez Lenarčič recalled that participating States have committed to protect and respect human rights while countering terrorism, firmly rejecting the identification of terrorism with any particular religion. However, he stressed that much remained to be done in a situation where some participating States seem to prioritize security imperatives ahead of human rights. Combating terrorism and respecting human rights should be seen as mutually reinforcing and be pursued simultaneously. In protecting individuals against terrorism, any measures taken must be human rights compliant. The Director underlined the absolute nature of the prohibition of torture but noted that commitments against torture remained unfulfilled in many participating States. He drew attention to ODIHR's just released annual publication on the death penalty in the OSCE region and ODIHR's role in facilitating the exchange of information and documenting the trend of abolition.

The introducer, Ms. Amrit Singh noted that participating States have committed to conduct anti-terrorism measures in strict accordance with the rule of law. But she regretted that many participating States have not adhered to their international legal obligations. She highlighted a number of concerns including extrajudicial killings, enforced disappearances, overly broad anti-terrorism laws, extradition and deportation resulting in individuals being subject to torture, the use of incommunicado detention, extraordinary rendition programmes, the use of lethal force in combating terrorism and threats to the right to privacy as a result of surveillance programmes. Ms. Singh described torture as being systemic and widespread in many participating States and called for the OSCE to make a new and strong commitment in favour of the abolition of the death penalty.

Many speakers described the death penalty as an affront to human dignity and called for its abolition in the two participating States in which it is still carried out. A number of speakers described a global momentum towards abolition and pointed to a growing awareness on all continents of the need to tackle the issue. Where abolition had not yet happened, some speakers called for the imposition of a moratorium. One speaker described the traumatic and extensive impact on children of people sentenced to death.

During the discussion on torture prevention, a number of speakers opined that it was time to put the topic firmly at the top of the OSCE agenda. Speakers described many examples of acts of torture being carried out by law enforcement officials and called for more training and awareness raising to tackle this trend. Examples of torture against children, including the use of disciplinary punishment, were highlighted. Torture in penal and detention facilities was highlighted by a number of speakers. More

generally, there were calls for independent medical investigation into torture allegations, greater transparency of torture investigations to assist public awareness, the active involvement of NGOs in investigations and the need for positive redress including compensation and rehabilitation. Some speakers described worrying examples where law enforcement and judicial bodies did not take allegations of torture seriously leading to impunity. Several speakers noted that the fight against terrorism and defending national security were often used as justification for acts amounting to torture.

Whilst many speakers recognized that protecting citizens was amongst a State's primary and most important obligations, this did not justify the suppression and abuse of fundamental freedoms and human rights. Human rights protection and the fight against terrorism should be seen as complementary rather than contradictory. Speakers highlighted an increasing tendency to resort to actions that undermine human rights principles including the use of intrusive surveillance techniques that breached the right to privacy, illegal transfers and deportation including to countries where people faced the risk of torture, use of excessive armed force and violence, forced confessions, witness intimidation, secret detention and the use of systematic torture. ODIHR's work to support activities aimed at protecting human rights and fundamental freedoms in countering terrorism was praised by many speakers.

Recommendations to the participating States:

- Protect all individuals from acts of terrorism whilst at all times ensuring full compliance with international human rights standards;
- Ensure that any actions that involve interference into people's private lives are fully in line with the law, proportionate and necessary in a democratic society;
- Enhance co-operation and implement best practices in the field of anti-terrorism;
- One participating State should close down what some speakers described as an illegal detention facility;
- Politically support the intention by next year's OSCE Chairmanship to include torture prevention amongst their priorities;
- One State should adopt legislation to fight the use of torture, take measures to prevent the use of corporal punishment, establish mechanisms to uncover acts of torture against minors, build capacity and improve the qualifications of personnel working in juvenile institutions and ban the placing of children in adult prisons;
- Ratify international legal instruments to abolish the death penalty, including Protocol No 13 the European Convention on Human Rights and the 2nd Optional Protocol to the International Covenant on Civil and Political Rights;
- Those States that retain the death penalty should declare a moratorium on executions;
- Pay particular attention to the impact of the death penalty on children;
- Adopt a commitment calling for the ending of the death penalty, abolishing it both in law and practice.

Recommendations to the OSCE and its institutions:

- ODIHR should accord the highest priority towards work against the death penalty;
- ODIHR should work towards the rehabilitation of victims of torture and work to support service providers such as medical, legal, social and psychological services;
- ODIHR should keep torture prevention work high on its agenda;

- OSCE should develop mechanisms to rapidly respond to situations of conflict;
- OSCE should work on guidelines covering the issue of the right to privacy online;
- ODIHR should continue the abolition debate with retentionist States;
- OSCE should research the correlation between terrorism and the death penalty.