

Policy Department External Policies

THE IMPLEMENTATION OF THE EU GUIDELINES ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(Long version)

HUMAN RIGHTS



ЕВРОПЕЙСКИ ПАРЛАМЕНТ PARLAMENTO EUROPEO EVROPSKÝ PARLAMENT EUROPA-PARLAMENTET
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Directorate General for External Policies of the Union
Directorate for Interparliamentary Delegations and Policy Department
Policy Department External Relations

STUDY

The implementation of the EU guidelines on Torture and other cruel, inhuman or degrading treatment or punishment (*Long version*)

Abstract:

The present study contains the result of the work carried out to analyse the level of implementation of the *Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment* (hereinafter referred to as ‘the guidelines’), which were adopted by the General Affairs Council on 9 April 2001 “to provide the EU with an operational tool [...] to support and strengthen ongoing efforts to prevent and eradicate torture and ill-treatment in all parts of the world”. As stated in the Introduction to the guidelines, “[r]espect for human rights features among the key objectives of the EU’s common foreign and security policy (CFSP)”.

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EXECUTIVE SUMMARY

The present study contains the result of the work carried out to analyse the level of implementation of the *Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment* (hereinafter referred to as ‘the guidelines’), which were adopted by the General Affairs Council on 9 April 2001 “to provide the EU with an operational tool [...] to support and strengthen ongoing efforts to prevent and eradicate torture and ill-treatment in all parts of the world”. As stated in the Introduction to the guidelines, “[r]espect for human rights features among the key objectives of the EU’s common foreign and security policy (CFSP)”.

The overall aim of this study is to enhance the implementation of the EU guidelines and their contribution towards the prevention and eradication of all forms of torture and ill-treatment. It is based on a considerable amount of information collected in connection with the missions to *Egypt, Morocco, Uganda* and *Ukraine* and the desk studies made on *Algeria, Bangladesh* and *Georgia*. These countries were selected on the basis of, *inter alia*, their treaty relations with the EU and the fact that they are all confronted with problems of torture and ill-treatment.

Chapter I of the study contains general information on the selected countries, both with regard to their treaty relations with the EU and their human rights situation. It is concluded, in particular, that not only does torture and ill-treatment still exist in these countries, although some modest progress may be perceptible in a couple of them, but this unlawful treatment is facilitated by a lack of stringent punitive and disciplinary measures to deal with the problem. Most of the countries also have special security forces that are responsible for much abuse. Overcrowded prisons, which also lack basic food, hygiene and medical services, are commonplace in all countries.

The level of knowledge of the guidelines among the ECDs and EU Missions in the seven countries, as well as the use thereof, is analysed in Chapter II. It follows from this analysis that there is a serious lack of knowledge or detailed knowledge about these guidelines among diplomats and clear disagreement about their usefulness. In addition, there are numerous challenges to their effective implementation, such as governmental sensitivity, a lack of intra-EU cooperation and a limited capacity for some Missions to act.

Chapter III concerns EU contacts with civil society and it appears clear that no *formal* contacts have been established between the ECD and the EU Missions in the seven countries covered by the study. The informal contacts between them also vary considerably from state to state. In countries where there is a special human rights working group set up under an association agreement or by donor countries, there is, in principle, a structure that also allows for more contacts with civil society.

Although not necessarily based on the guidelines, a wide range of EU actions and projects to promote the prevention and elimination of torture and ill-treatment are analysed in Chapter IV, such as political dialogue, *démarches* and public statements,

intervention in individual cases, support to the creation of effective domestic remedies and prison monitoring mechanisms, support to training, financial and technical assistance, including assistance to particularly vulnerable groups and rehabilitation centres.

In the next place, Chapter V gives an account of the perceived causes of torture and the suggested solutions. Among the major causes are the lack of political will and/or a low prioritisation of human rights by the Government, the absence of democratic governance, and the existence of special security forces. To eliminate torture and ill-treatment it is considered necessary to combine efforts and have a tailored approach. Further, since there is not one strategy fitting all situations, it is necessary to opt for a *multi-pronged approach*.

Chapter VI explores how the EU could cooperate with multilateral human rights fora without duplicating their work. It examines most particularly the EU cooperation with the Council of Europe but also how it could support, *inter alia*, the work of the OSCE – ODIHR as well as the UN treaty bodies and Special Rapporteurs.

Some external aspects of EU internal human rights policies are dealt with in Chapter VII. Numerous stakeholders contacted for this study raised concerns at the compatibility with international law of some aspects of EU's internal human rights policies. The chapter provides examples of problems relating to the extradition of suspected terrorists, the lack of domestic remedies for persons considered to pose a security risk and "rendition" programmes and secret places of detention. It further provides a summary of views expressed by civil society and other stakeholders on EU policies. The EU was in general considered to have an important role to play in the prevention and eradication of torture and ill-treatment, although there is an important potential for improvement. The EU also needed a better and more coherent strategy and should exert more pressure on states to have them eliminate torture and ill-treatment.

Finally, Chapter VIII contains a list of both general and specific recommendations to the EU for future action aimed at eliminating torture and ill-treatment worldwide. At the general level, it is recommended that the EU strengthens its anti-torture work by fostering a common EU identity and that the ECDs and the EU Missions, for instance, work as one entity for purposes of having a greater impact. It is also recommended, *inter alia*, that the EU develops *a clear global vision with a national focus* that takes the local specificities into consideration. The numerous specific recommendations concern, in particular, the knowledge and use of the guidelines, EU contacts with civil society, EU actions and projects, perceived causes of torture and ill-treatment and suggested solutions, EU cooperation with multilateral human rights fora and the external aspects of EU internal human rights policies. Finally, **Annex VII** to the study contains a concise guide for future EU action in the field of prevention of torture and ill-treatment.

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ABBREVIATIONS

ACHPR	African Commission on Human and Peoples' Rights
ACHR	American Convention on Human Rights
APT	Association for the Prevention of Torture
CAT	United Nations Committee against Torture
CFSP	Common foreign and security policy (of the EU)
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CSP	Country Strategy Paper
DRS	Department for Information and Security (Algeria)
EC	European Commission
ECD	European Commission Delegation
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EHRAC	European Human Rights Advocacy Centre
EIDHR	European Initiative for Democracy and Human Rights
ENP	European Neighbourhood Policy
EU	European Union
HOD	Head of Delegation
HOM	Head of Mission
ICCPR	International Covenant on Civil and Political Rights
ICTJ	International Center for Transitional Justice
IRCT	International Rehabilitation Centre for Torture Victims
NGO	Non-governmental organisation
NIP	National Indicative Programme
ODIHR	Office for Democratic Institutions and Human Rights
OHCHR	Office of the United Nations High Commissioner for Human Rights
OMCT	World Organisation Against Torture
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OSCE	Organization for Security and Co-operation in Europe
PCA	Partnership and Cooperation Agreement
PDG	Partners for Democracy and Governance (Uganda)
PRI	Penal Reform International
RAB	Rapid Action Battalion (Bangladesh)
UHRC	Uganda Human Rights Commission
UN	United Nations
UNCAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund

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GENERAL INTRODUCTION

1 Preliminary remarks

The present report contains the result of the work carried out to analyse the level of implementation of the *Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment* (hereinafter referred to as ‘the guidelines’), which were adopted by the General Affairs Council on 9 April 2001 “to provide the EU with an operational tool [...] to support and strengthen ongoing efforts to prevent and eradicate torture and ill-treatment in all parts of the world”. As stated in the Introduction to the guidelines, “[r]espect for human rights features among the key objectives of the EU’s common foreign and security policy (CFSP)”⁽¹⁾.

The overall aim of this study is to enhance the implementation of the EU guidelines and their contribution towards the prevention and eradication of all forms of torture and ill-treatment. It is based on a considerable amount of information collected in connection with the missions to *Egypt, Morocco, Uganda* and *Ukraine* and the desk studies made on *Algeria, Bangladesh* and *Georgia*.

It should be pointed out in this context that an assessment of the implementation of the EU torture prevention guidelines was carried out by the Council Working Party on Human Rights (COHOM) in 2004. However, this assessment has remained confidential.

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The consultant would in the first place like to express her gratitude to the European Parliament for having entrusted her to make this study in association with Mr Eric Sottas, Director, OMCT, as well as to Ms Benita Ferrero-Waldner, Commissioner for External Relations, Ms Danièle Smadja, Director, External Relations DG, Mr Michael Matthiessen, Personal Representative of the Secretary General/High Representative for Human Rights and to the members of the Commission and Council Secretariats for their excellent cooperation. She is in the next place particularly indebted to the Heads of Mission with whom she and Ms Sedou met, and who arranged meetings with their colleagues for purposes of discussing the guidelines with the consultant (in Morocco and Uganda) and Ms Sedou (in Egypt and Ukraine).

¹ Following the adoption of the guidelines, the General Secretariat of the Council prepared a *Working Paper on the Implementation of the EU Guidelines on Efforts to Prevent and Eradicate Torture*, see EU doc. 15437/1/02 REV 1 (COHOM 16, PESC 566), for the text of the paper, see <http://www.consilium.europa.eu/uedocs/cmsUpload/workingpaperTortures.pdf>.

Their efforts and openness are much appreciated. The consultant would then like to express her appreciation to all EU and civil society stakeholders, in the field, Brussels and elsewhere, who accepted to cooperate with her and Ms Sedou and who took the time to meet and discuss for sometimes long hours and often with openness and frankness.

The consultant is also thankful to the European Commission Delegations and European Union (EU) Missions in Bangladesh and Georgia as well as to the European Commission Delegation in Algeria, who filled out and returned the questionnaires sent to them. The civil society actors from these countries also deserve a special thanks. The consultant further expresses her gratitude to the intergovernmental and non-governmental organisations that have received her, as well as to the individual experts who have been willing to meet with her or otherwise discuss the problem of torture and ill-treatment. Finally, she is much obliged to Mr Eric Sottas, Director of OMCT, for support and guidance, and to Ms Laëtitia Sedou for the excellent work carried out by her *inter alia* in connection with the missions to Egypt and Ukraine. Without the help of all these actors, it would have been impossible to carry out this study. A list of the persons and organisations met with, can be found in **Annex I**.

On the other hand, the consultant regrets that the EU Member States represented in Algeria decided not to cooperate with her and that only two of the Member States in Georgia (the Dutch Embassy and the Swedish Consulate) returned the questionnaires sent to them.

2 Terminology

In this report, the terms “torture” or “torture and other forms of ill-treatment” are understood to mean “torture and other cruel, inhuman or degrading treatment or punishment”.

For purposes of simplifying the understanding of the material collected in the course of this study, a distinction is systematically made between the European Commission Delegations (referred to as EC Delegations or ECDs) in the seven countries concerned and the EU Missions. The EC Delegations, which exist in 118 countries, are part of the European Commission structure but also serve EU interests in general throughout the world². With “EU Missions” is meant the Embassies of the Member States of the European Union and the “Head of Mission” (HOM) is the Ambassador of such Mission/Embassy.

² For information on the role of the EC Delegations, see the Commission’s website: http://ec.europa.eu/comm/external_relations/delegations/intro/role.htm

3 Selection of countries, methodology, missions

In view of time constraint and a lack of public materials on the implementation of the guidelines, the work had to be practical and focussed on a few relatively uncomplicated countries. Bearing these restrictions in mind, and for purposes of maximising the positive effect of EU action in the field of torture prevention and victims' rehabilitation, the countries were selected on the basis of the following criteria: (i) problems of torture and other forms of ill-treatment exist in the country concerned; (ii) the country has special links with the EU, such as, for instance, on the basis of the European Neighbourhood Policy (ENP); (iii) the EU is represented in the country concerned; (iv) there is a potential for improvement in the situation and for the EU to play a positive role in this respect; (v) the country is small or medium-sized, to the exclusion of bigger federated states; (vi) the country enjoys a reasonable degree of stability and is not faced with any overall major internal unrest that could render torture prevention measures, including EU action, particularly difficult, and (vii) the study of the country concerned is feasible in view of the existence of relevant materials and stakeholders, such as NGO networks. On the basis primarily of the abovementioned criteria, it was decided to make country visits to *Egypt, Morocco, Uganda* and *Ukraine*, and studies based on documents on *Algeria, Bangladesh* and *Georgia*.

The four country missions were carried out in September and October, with the consultant visiting Uganda (19-25 September 2006) and Morocco (8-15 October 2006) and Ms Laëtitia Sedou of OMCT visiting Egypt (19-25 September 2006) and Ukraine (2-8 October 2006). Prior to these visits basic research was carried out on the countries concerned and relevant stakeholders were identified and contacted. In order to ensure a broad-based approach, meetings were held with ECDs, EU Member States, international organisations and various local stakeholders.

In order to carry out the desk studies, questionnaires were sent to the stakeholders identified, one version with questions to the Heads of the ECDs and EU Heads of Mission and a second version to other actors.

In addition to the seven country studies, the consultant had consultations with the widest possible number of stakeholders and also made the following missions:

- Brussels (12-14 September 2006): Meetings with key persons in the EU (Council, Commission and Parliament);
- Strasbourg (2-4 October 2006): Meetings in the Council of Europe;
- Copenhagen (11-12 December 2006): Meetings in the Danish Foreign Ministry and with an NGO;
- Brussels (12-19 December 2006): Meetings with Permanent Representations, MEPs and NGOs.

On 17 November 2006, the consultant also addressed the UN Committee against Torture in a closed meeting in Geneva. She has also had meetings with two former UN Special Rapporteurs on torture and other cruel, inhuman or degrading treatment or punishment, Professor Theo van Boven and Sir Nigel Rodley, member of the Human Rights Committee. A number of NGOs have also been contacted and the consultant has had meetings with the Association for the Prevention of Torture (APT), ATD Quart Monde, the International Center for Transitional Justice (ICTJ) and the International Rehabilitation Council for Torture Victims (IRCT); she has also had telephone conversations with, *inter alia*, Amnesty International and the Euro-Mediterranean Human Rights Network, both in Brussels.

A list of persons and organisations contacted and met with is attached to the present report.

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The main focus during the missions and desk studies was to explore the knowledge of the EU guidelines among the ECDs and the EU Missions and to assess the extent to which these guidelines are used in, or inspire, their daily work. The knowledge of the guidelines among national actors was also assessed, as was the cooperation between the ECDs and EU Missions, on the one hand, and the local authorities and other relevant stakeholders, on the other. Another purpose was to evaluate the impact on the eradication and prevention of torture and other forms of ill-treatment of projects supported by the EIDHR. However, given the limited time and resources available to the experts, this cannot be but a fragmental assessment. Another concern was to try to see how particularly vulnerable groups have benefited from the implementation of EU support for torture prevention and eradication projects. Again, however, it was not possible within the restricted framework of this study to make a comprehensive assessment of this important question.

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This report will in the first place provide some basic information on the countries selected for this study and the level of implementation of the guidelines therein. It will in this respect *inter alia* focus on the knowledge and use of the guidelines, EU contacts with civil society and EU actions and projects. It will in the next place present a general overview of the perceived causes of torture and the solutions suggested by diplomats in the field for purposes of improving EU torture prevention strategies. The study will further briefly deal with EU cooperation with multilateral human rights fora and some external aspects of EU internal human rights policies. While the final chapter then contains both general and detailed recommendations to the EU for future action to prevent and eliminate torture and other forms of ill-treatment, **Annex VII** to this study provides a concise practical guide for future EU action in this field.

Chapter I – BASIC INFORMATION ON THE SELECTED COUNTRIES

To the extent possible, the study will place the EU actions within the context of EU Association Agreements and the European Neighbourhood Policy, which provide a rich potential for actions in the human rights field in general, and for the prevention of torture and ill-treatment in particular. Hence, a succinct account of the EU-relations with the countries included in this study will follow below. Further, this chapter will highlight the most salient problems linked to torture and ill-treatment in each country. The information provided is in no way exhaustive, but provides a mere basic general framework for the examination of the implementation of the EU guidelines in the seven countries concerned. *In general, each country situation is considerably more complex than might appear from a reading of this report, and for progress to be made, the overall human rights situation, as well as the political, social, economic and cultural contexts also need to be taken into account.* However, such a wide approach would go beyond the parameters of this study.

1 Algeria

The Euro-Mediterranean Association Agreement between Algeria and the EU was signed in 2002 and entered into force on 1 September 2005. Article 2 of the Agreement provides that respect for democratic principles and fundamental human rights, as set out in the Universal Declaration of Human Rights, guides the internal and international policies of the parties and constitutes an “essential element” of the Agreement ⁽³⁾. Part VIII of the Agreement deals with the field of justice and internal affairs, but contains no provision respecting torture and other forms of ill-treatment or the rights of persons deprived of liberty. In this part the Agreement rather focuses on issues such as cooperation to strengthen the institutions and the rule of law, prevention and control of illegal immigration, judicial cooperation, prevention of organised crime, the fight against money-laundering, racism, xenophobia, drugs and cooperation in the field of counter-terrorism and corruption. The Country Strategy Paper (CSP), drawn up in accordance with the MEDA regulations within the framework of the Euro-Mediterranean Partnership, provided a framework strategy for the years 2000-2006. In this paper it was pointed out that “serious human rights violations” continued to be reported, such as arbitrary detentions by law enforcement officials, torture, extra-judicial executions and disappearances; it was also noted that the EU had on several occasions raised these problems with the authorities (in the UN Commission on Human Rights and at ministerial Troika level) ⁽⁴⁾.

According to the CSP for 2007-2013, pluralism and fundamental liberties are guaranteed by the Constitution, although there are problems in practice, caused in

³ On the human rights and democracy provisions of EU’s association and cooperation agreements, see study by Mr Lorand Bartels : *Human Rights and Democracy Clauses in the EU’s International Agreements* (Long version), EU doc. DGExPo/B/PolDep/Study/2005/06, the text can be found at http://www.law.ed.ac.uk/file_download/publications/3_568_humanrightsanddemocracyclausesintheusindf.

⁴ See EU doc. *Algérie – Document de Stratégie 2002-2006 & Programme Indicatif National 2002-2004*, p. 8.

particular by the state of emergency that has been in force since 1992; the independence of the judiciary is also guaranteed by the Constitution but “political pressure” and “reflexes” make it difficult to exercise such independence (⁵). One of the priorities of the National Indicative Programme for 2007-2010 is the reform of the justice system, including the modernisation of the penitentiary sector; the programme will aim at humanisation the obsolete conditions of detention, improve the system of re-education and reinsertion of the detainees and improve the functioning of the security in the detention facilities (⁶).

According to a recent Amnesty International report, torture continues to be perpetrated in Algeria by the Department for Information and Security (DRS), which is an intelligence unit within the military specialising in counter-terrorism. Although the level of serious human rights abuses in the country has decreased as compared to the 1990s, it is, according to the report, “precisely in the context of counter-terrorism measures that serious human rights violations continue to be reported”; the DRS operates with great secrecy and “systematically” holds suspects *incommunicado* in secret places of detention and in conditions which facilitate torture and may in themselves constitute ill-treatment (⁷). The 2005 Human Rights Report on Algeria, published by the Swedish Foreign Ministry, states however that the information relating to alleged torture and ill-treatment by the police is difficult to verify (⁸). In its views adopted in July 2006 in the case of *Ali Medjnoune*, the UN Human Rights Committee found that Algeria had violated various provisions of the International Covenant on Civil and Political Rights (the ICCPR). Mr. Medjnoune was detained *incommunicado* from 28 September 1999 until 2 May 2000, during which time he was subjected to treatment contrary to article 7 of the ICCPR, which proscribes torture and other forms of ill-treatment; the arrest and detention was also arbitrary and illegal under article 9(1) of the Covenant. Finally, the Government had *inter alia* violated article 14(3)(a), since Mr. Medjnoune had not been tried “without undue delay” but had spent almost six years in pre-trial detention and was still detained when the Committee adopted its views (⁹). In its Concluding observations on Algeria from September 2005, the UN Committee on the Rights of the Child stated that, although the Algerian Constitution and Penal Code prohibit torture, it was “deeply concerned” about the number of cases of torture or inhuman and degrading treatment of children reported by the UN Special Rapporteur on torture (¹⁰). Examples of reliable allegations of ill-treatment from Algeria can be found in a recent report of the UN Special Rapporteur (¹¹). - Corruption appears to be commonplace in the country (¹²).

⁵ See EU doc. *Algérie – Document de Stratégie 2007-2013 & Programme Indicatif National 2007-2010*, p. 6.

⁶ *Ibid.*, pp. 28-29.

⁷ See, for instance, Amnesty International report *Unrestrained powers: Torture by Algeria’s Military Security*, 28 pp., at <http://web.amnesty.org/library/print/ENGMDE280042006>

⁸ See www.manskligarattigheter.gov.se/

⁹ See UN doc. CCPR/C/87/1297/2004, *Communication No. 1297/2004 v. Algeria, Views adopted on 14 July 2006 by the Human Rights Committee*, paras. 8.1-9.

¹⁰ UN doc. CRC/C/15/Add.269, *Concluding observations of the Committee of the Rights of the Child: Algeria*, para. 39.

¹¹ UN doc. E/CN.4/2006/6/Add.1, *Torture and other cruel, inhuman or degrading treatment or punishment, Report of the Special Rapporteur, Manfred Nowak, Addendum, Summary of information, including individual cases, transmitted to Governments and replies received*, pp. 8-9.

2 Bangladesh

Article 1 of the 2000 Bangladesh-EU Co-operation Agreement, which entered into force on 1 March 2001, provides that “[r]espect for human rights and democratic principles as laid down in the Universal Declaration on Human Rights underpins the domestic and international policies of the Parties, and constitutes an essential element of this Agreement”. This brief Agreement contains no reference to torture and ill-treatment, but attaches importance to the poorest sections of the population, with special emphasis on women. In the EU CSP on Bangladesh for 2002-2006, it is pointed out, however, that corruption is “widespread in the police force”, and that this corrupt conduct “goes along with frequently reported police brutality and torture of arrested persons in police custody”⁽¹³⁾. It is also explained, however, that EC interventions in the field of human rights and democratic principles would be built around the framework of the Convention on the Elimination of All Forms of Discrimination against Women, “specifically to improve Bangladesh’s record with regards to human rights protection of vulnerable groups”. The specific issues to be addressed by the European Commission (EC) would thus be, for instance, disappearances, kidnappings and trafficking, and to provide support to initiatives on particular target groups such as children and women⁽¹⁴⁾. In the National Indicative Programme of European Community Support 2006 (NIP 2006), human rights and democracy was a priority action with focus on the improvement of the justice system and on the prevention of human trafficking. The NIP pointed out in this respect, for instance, *that* the culture of impunity is a serious problem; *that* the criminal justice system suffers from various shortcomings; *that* the police lacks resources and capacities to maintain public order and conduct accurate forensic investigations; *that* they also lack skills to deal appropriately with women, “who are the overwhelming majority of victims of violent crime”; *and that* there is no independent Public Prosecution Service in the country. It was added that “the EU would be ready to extend its support to the *criminal justice* system if and when the Government is ready to accept foreign assistance in this area”⁽¹⁵⁾. Among future activities, the NIP mentioned training and sensitisation of police, lawyers and judges to deal with cases involving women, and in particular women who are victims of physical abuse and violence⁽¹⁶⁾. A Sub-group on Governance and Human Rights set up under the Co-operation Agreement met for the first time in May 2003.

In the NIP for 2007-2010, “[j]ustice, security and human rights will be addressed through reform programmes in collaboration with other donors, incorporating an access to justice approach as well as tackling key institutional reform, such as reform of the police, the prison service and the judiciary”⁽¹⁷⁾. The objective of this particular

¹² Algeria ranks 84 in the 2006 Corruption Perceptions Index (CPI) prepared by Transparency International, see http://www.transparency.org/policy_research/surveys_indices/cpi/2006

¹³ European Commission, Directorate General External Relations, Directorate Asia, *Country Strategy Paper - Bangladesh, 2002-2006*, p. 12

¹⁴ *Ibid.*, p. 31.

¹⁵ European Commission, Directorate General External Relations, Directorate Asia, *National Indicative Programme of European Community Support 2006 – Bangladesh*, pp. 20-21.

¹⁶ *Ibid.*, p. 23.

¹⁷ EU doc. *Bangladesh - National Indicative Programme 2007-2010*, p. 6.

component of the programme “is to improve human security, give vulnerable groups greater access to justice and to render the judiciary and law enforcement agencies more accountable for their actions” (18). The planned activities comprise: access to justice, institutional reform in justice and law and order, including further support to police and penal reform, rights of minorities and vulnerable groups and human rights defenders “who take considerable personal risk to defend human rights” in the country (19). The programme is heavily focused on the poor and vulnerable, such as women, minorities and the disabled; it is for instance noted therein that both the judiciary and law enforcement agencies are “male-dominated and unsympathetic to the needs of women” (20).

Other sources confirm the complexity of the human rights situation in Bangladesh. Political and religious violence is thus commonplace as are extrajudicial killings and police abuse, including torture. The problem has deteriorated following the creation of the Rapid Action Battalion (RAB), which is a specialised unit dealing with “law and order”. Among other armed units that operate in the country are the “Cheetas” and “Cobras”. Both the RAB and other security units are accused of torture in connection with custody and interrogation. Abuses virtually go unpunished, and according to a report by the Swedish Government, the RAB enjoys in practice total impunity; overcrowded prisons and dismal conditions of detention are also a serious problem, with lack of food, hygiene and medical care (21). Examples of reliable allegations of ill-treatment from Bangladesh can be found in a recent report of the UN Special Rapporteur on Torture(22). - – Corruption is also a considerable problem in the country (23).

3 Egypt

The legal basis of the EU-Egypt relations is the Association Agreement, which entered into force on 1 June 2004. Article 2 thereof contains the usual general wording, according to which respect for democratic principles and human rights constitutes an “essential element” of the Agreement. One chapter of the Agreement is entitled “Dialogue and Cooperation on Social Matters”, a dialogue that “shall notably cover all issues” concerning, for instance, migration and illegal migration (Art. 63). Among the projects and programmes to be carried out for purposes of consolidating the cooperation between the Parties, priority will inter alia be given to “promoting the role of women in economic and social development” (Art. 65). The cooperation is also to comprise money laundering as well as the fight against drugs and terrorism (Arts. 57-59). Egypt is comprised by the ENP, and after long and difficult discussions, that were said to be blocked at the time of the expert’s visit to the country, an Action Plan was finally adopted

¹⁸ *Ibid.*, p. 10.

¹⁹ *Ibid.*, pp. 10-11.

²⁰ *Ibid.*, p. 11.

²¹ See e.g. country report published by the Swedish Foreign Ministry at www.manskligarattigheter.gov.se/ and Human Rights Watch *World Report 2006*, pp. 227-228. See also Amnesty International reports on Bangladesh.

²² UN doc. E/CN.4/2006/6/Add.1, Torture and other cruel, inhuman or degrading treatment or punishment, Report of the Special Rapporteur, Manfred Nowak, Addendum, Summary of information, including individual cases, transmitted to Governments and replies received, pp. 14-15.

²³ Bangladesh ranks 156 in the CPI prepared by Transparency International.

on 6 March 2007. In the Action Plan, no express reference is made to torture or ill-treatment, but the parties have agreed, *inter alia*, to “[c]onsolidate the independent and effective administration of justice and improve prison conditions”. The following actions specified in the Action Plan are among those particularly relevant to this study: (i) the further development of “measures to increase the capacity and efficiency of the justice administration (including prison) and access to justice, including capacity building of bodies entrusted with the implementation of the law”; (ii) support to “Egyptian government policies and programmes aiming at improving places of detention and prison conditions, especially the placement of minors”; (iii) examination of “the relevant UN recommendations and the recommendations of the Egyptian National Council for Human Rights pertaining to security, detention conditions and prison staff with a view to their practical implementation in order to protect the human rights and integrity of detainees and to fight impunity”; and (iv) initiation of “a review of laws and regulations dealing with pre-trial and administrative detention systems taking into consideration the relevant UN recommendations, particularly in order to ensure the prompt access of detainees to legal counsel and family” (24). There is no reference to the Emergency Law in the Action Plan, although the ENP 2005 Country Report cites this Law, which has been in force since 1981, as “a major obstacle” to the full enjoyment of human rights, since it *inter alia* allows for arbitrary arrests, detention without trial and imposes restrictions on the freedom of assembly. On the other hand, among the positive developments the report mentions the convictions of police officers for torture, the release of long-term detainees held without trial and the banning of flogging in prisons (25).

Egypt is a State Party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), and according to the EU Country Report, the provisions of the UNCAT have been transposed into national law, with the exception of the definition of torture which does not fully comply therewith (26). The Report notes, furthermore, that torture is often cited by national and international human rights organisations “as being widespread and the biggest single violation of human rights in Egypt”; furthermore, despite legal guarantees for torture victims, “human rights organisations report several impediments to effective investigation of torture complaints” (27).

According to the CSP for 2007-2013, one of the three key objectives for the EU’s strategy towards Egypt over the period is support for the country’s reforms in the areas of democracy, human rights, good governance and justice (28). It is explained in the paper, that the country has “a fragile culture of democracy and of recognition of civil and political rights”, although there has recently been some progress in the field of human rights protection by the creation of the National Council for Human Rights, for instance; “[i]ssues of concern to the EU are the use of torture, poor prison conditions, corruption

²⁴ See text of the AP at http://www.delegy.ec.europa.eu/en/eu_and_country/Action%20Plan.doc, pp. 7-8.

²⁵ EU doc. SEC(2005)287/3, Commission Staff Working Paper, Annex to: “European Neighbourhood Policy”, Country Report, Egypt, [COM(2005) 72 final], p. 7.

²⁶ *Ibid.* p. 8.

²⁷ *Ibid.*, *loc. cit.*

²⁸ EU doc. *Egypt - Country Strategy Paper 2007-2013 (with National Indicative Programme 2007-2010)*, p. 20.

and gender-based discrimination” (29). With regard to the future EU support for modernising the administration of justice, the National Indicative Programme for 2007-2010 largely refers to the measures detailed in the aforementioned Action Plan.

In its Concluding observations from November 2002, the Human Rights Committee noted “with concern the persistence of torture and cruel, inhuman or degrading treatment at the hands of law-enforcement personnel, in particular the security services, whose recourse to such practices appears to display a systematic pattern”; it was “equally concerned at the general lack of investigations into such practices, punishment of those responsible, and reparation for the victims”; finally it was “concerned at the absence of any independent body to investigate such complaints” (30). In December 2002, the UN Committee against Torture (CAT) raised similar concerns; it was moreover *inter alia* concerned about the many reports of abuse of detained minors “especially sexually harassment of girls, committed by law enforcement officials, the lack of monitoring machinery to investigate such abuse and prosecute those responsible” (31). Examples of reliable allegations of ill-treatment from Egypt can be found in a recent report of the Special Rapporteur (32). - Corruption is an additional problem in the country (33).

4 Georgia

The 1996 EU-Georgia Partnership and Cooperation Agreement (PCA) entered into force on 1 July 1999. According to article 5 thereof, the political dialogue “shall foresee that the Parties endeavour to cooperate on matters pertaining to ... the observance of the principles of democracy, and the respect and promotion of human rights, particularly those of persons belonging to minorities”. Article 71 regulates in general terms the cooperation on matters relating to democracy and human rights on the basis on international law and OSCE principles. An ENP Action Plan is in force since 14 November 2006 following approval of the EU-Georgia Cooperation Council. Priority area 1 of this Action Plan is to “[s]trengthen rule of law especially through reform of the judicial system, including the penitentiary system, and through rebuilding state institutions” and also to “[s]trengthen democratic institutions and respect for human rights and fundamental freedoms in compliance with international commitments of Georgia” (34). One of the specific actions to be taken is to implement the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) “notably to improve detention conditions” (35).

²⁹ *Ibid.*, p. 8.

³⁰ UN doc. CCPR/CO/76/EGY, *Concluding observations of the Human Rights Committee: Egypt*, para. 13.

³¹ UN doc. CAT/C/CR/29/4, *Conclusions and recommendations of the Committee against Torture: Egypt*, para. 5.

³² UN doc. E/CN.4/2006/6/Add.1, *Torture and other cruel, inhuman or degrading treatment or punishment*, Report of the Special Rapporteur, Manfred Nowak, Addendum, Summary of information, including individual cases, transmitted to Governments and replies received, pp. 70-73.

³³ Egypt ranks 70 on the CPI prepared by Transparency International.

³⁴ For the text see <http://www.delgeo.cec.eu.int/en/trade/Booklet%20A4-2.pdf>, pp. 1 and 7.

³⁵ *Ibid.*, *loc. cit.*

With regard to the human rights situation, the CSP for 2007-2013 notes that concern has been voiced by many national and international actors on issues relating to torture and ill-treatment in the penitentiary and law enforcement system and that prison overcrowding, excessive number of pre-trial detainees and “very poor living conditions” in the detention facilities have been documented for “many years” by the CPT and the CAT, among others ⁽³⁶⁾. In line with the aforementioned Action Plan, the cooperation between the European Commission and Georgia will consequently *inter alia* focus on judicial reform, including reform of the criminal justice and penitentiary systems ⁽³⁷⁾.

In its conclusions and recommendations adopted in May 2006, the CAT welcomed the progress made by Georgia to provide protection against torture and ill-treatment (revisions of the definition of torture, elaboration of a Plan of Action against Torture, the adoption of a law on domestic violence, the adoption of measures enabling the creation of visiting mechanisms to places of detention etc.). However, it remained concerned about the persistence of impunity and intimidation in the country, “in particular in relation to the use of excessive force, including torture and other forms of ill-treatment by law-enforcement officials, especially prior to and during arrest, during prison riots and in the fight against organized crime”; there was also a contradiction between domestic law and the UN Convention against Torture, under which the right not to be tortured and ill-treated is non-derogable; the Committee was concerned about the compliance by Georgia with article 3 of the Convention, “in particular the use of diplomatic assurances in adjudicating requests for refoulement, extradition and expulsion of persons accused of criminal activities”; other concerns related to sudden deaths of persons in custody, “the relatively low number of convictions and disciplinary measures imposed on law-enforcement officials in the light of numerous allegations of torture and other acts of cruel and inhuman or degrading treatment”, poor conditions in many penitentiary facilities and overcrowding in many temporary detention centres etc. ⁽³⁸⁾. In the report on his mission to Georgia in 2005, the UN Special Rapporteur concluded, in particular, that torture and ill-treatment by law enforcement officials still exists in Georgia and that “there is a significant disparity between the number of allegations of torture and ill-treatment and the number of investigations and successful prosecutions carried out”; in his view “impunity is the principal cause of the perpetuation of torture and ill-treatment”; the onset of investigations into allegations of torture was also often subjected to delay, in particular with regard to medical examinations; finally, the Rapporteur pointed out shortcomings in the functioning of the prison visiting mechanisms ⁽³⁹⁾.

The CPT has made a detailed report on its visit to Georgia with numerous recommendations to the authorities ⁽⁴⁰⁾. - Corruption is a considerable problem in the country, including among prison staff ⁽⁴¹⁾.

³⁶ EU doc. *Georgia – Country Strategy Paper 2007-2013*, p. 13.

³⁷ *Ibid.*, p. 21.

³⁸ UN doc. CAT/C/GEO/CO/3, *Conclusions and recommendations of the Committee against Torture*, paras. 7, 9 to 12, 17 and 18.

³⁹ UN doc. E/CN.4/2006/6/Add.3, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: Mission to Georgia*, paras. 30, 31, 33 and 39.

⁴⁰ See Council of Europe document CPT/Inf (2005) 12.

5 Morocco

The 1996 EU-Morocco Association Agreement entered into force on 1 March 2000. Article 2 of the Agreement contains the standard reference to the respect for democratic principles and fundamental human rights. No other references to human rights *stricto sensu* is contained in the Agreement, although it deals with the rights of workers and foresees dialogue on migration and illegal migration as well as cooperation to promote the role of women in the economic and social development. However, the ENP Action Plan provides some details of the planned cooperation in the field of human rights and fundamental freedoms. Among the short-term actions, discussions should begin within the Sub-committee on Human Rights, Democratisation and Governance for purposes of ensuring the protection of human rights according to international standards. The first meeting of the Sub-committee was held on 16 November 2006, its task being to monitor the implementation of the Association Agreement. To this end, it will assess the progress realised and suggest possible measures to adopt *inter alia* in the field of good governance and democracy and the continued ratification and enforcement of the main international conventions on human rights. In accordance with an agreement between the EU and Morocco, individual cases can be discussed in the course of the political dialogue, but in the Sub-committee, such cases can only be raised by way of example. The Sub-committee consults, in principle, NGOs both in Brussels and Morocco prior to the meetings held. NGOs cannot, on the other hand, participate in the meetings, unless a decision to the contrary has been taken by both parties. The priorities of the Sub-committee will be linked in particular to the implementation of the recommendations of the Justice and Reconciliation Commission, fundamental freedoms, improvement of the rights of women and children and the basic international human rights conventions.

In the CSP for 2007-2013 it is noted that, although progress has been made, Morocco must continue its efforts towards democratisation, development of human rights, good governance and the rule of law⁽⁴²⁾. Good governance and human rights will be among the five priority areas of the EU-Morocco financial cooperation during this period, and the EU will continue its support to the Government's reform programme of the justice sector, and intend in particular to provide help in two new sectors, namely the penitentiary sector and training of personnel in the justice sector⁽⁴³⁾.

Both the international and national stakeholders who met with the consultant, underlined the importance of the progress made in recent years by the Government of Morocco to confront past human rights abuses, including disappearances, torture and other forms of ill-treatment. This progress is unique in the Arab-Muslim world. The creation of the Justice and Reconciliation Commission, which was competent to examine abuses covering a period of 43 years, was a welcome step in this direction.

⁴¹ Georgia ranks 99 in the 2006 CPI prepared by Transparency International; see also Council of Europe document CPT/Inf (2005) 12, p. 76; the CPT recommended "the Georgian authorities to persevere in their efforts to stamp out corruption among prison staff".

⁴² EU doc. *Maroc – Document de Stratégie 2007-2013*, p. 9.

⁴³ *Ibid.*, pp. 25-26.

It was however also acknowledged that a major shortcoming with its procedures was that it did not allow the victims of abuse to name the perpetrators, with the result that there will be no prosecutions. According to the decision of the Commission, 9280 victims will benefit from compensation. Recommendations were also made concerning medical and psychological rehabilitation, communal reparations and institutional reforms to guarantee a non-repetition of gross human rights violations⁽⁴⁴⁾. The payment of this compensation began in February 2007. – A further positive development was the promulgation of Law No. 43-04 on 14 February 2006, whereby the Penal Code was amended to give effect to the definition of torture contained in article 1 of the UNCAT.

However, in spite of progress, ill-treatment is still common in police stations, and the rehabilitation centres continue to receive new victims of brutalisation. There is also a problem of ill-treatment of persons arrested under the Anti-Terrorism legislation following the 2003 terrorist attacks in Casablanca. However, according to information received, not only political prisoners are affected by police brutality, but to a large extent also ordinary people. The conditions in detention facilities are generally poor, with serious overcrowding and health problems. Many actors also stressed the problem linked to the treatment of detainees during police custody. Such custody is by law limited to a maximum of 48 hours, but may in practice last much longer; during this time, the judge may deny the detainees access to a lawyer and medical doctor. In 2004, the Human Rights Committee expressed concern about “the numerous allegations of torture and ill-treatment of detainees and at the fact that the officials who are guilty of such acts are generally liable to disciplinary action only, where any sanction exists”; it also noted with concern that no independent inquiries were conducted in police stations and other places of detention in order to ensure that no torture or ill-treatment takes place; the Committee further expressed concern about the poor conditions in prisons, lack of medical care and rehabilitation programmes⁽⁴⁵⁾. Examples of reliable allegations of ill-treatment from Morocco can be found in a recent report of the UN Special Rapporteur⁽⁴⁶⁾. – Corruption is generally considered to be a serious problem in the country⁽⁴⁷⁾.

6 Uganda

The present cooperation between the EC and Uganda is based on the principles contained in the Cotonou Agreement, article 8 of which lays down the rules on the political dialogue. According to article 8(4), this dialogue “shall also encompass a regular assessment of the developments concerning the respect for human rights, democratic principles, the rule of law and good governance.” The CSP for 2002-2007 define the EC-Uganda development cooperation in the medium term, and among the *non-focal* sectors for cooperation are rule of law and governance as well as human rights and

⁴⁴ See the IER *Final Report* of 30 November 2005, to be found at: http://www.ier.ma/fr_sommaire.php

⁴⁵ See UN doc. CCPR/CO/82/MAR, *Concluding observations of the Human Rights Committee: Morocco*, paras. 14 and 17. For concerns expressed by the UN Committee against Torture, see UN doc. CAT/CR/31/2, *Conclusions and recommendations of the Committee against Torture: Morocco*.

⁴⁶ UN doc. E/CN.4/2006/6/Add.1, Torture and other cruel, inhuman or degrading treatment or punishment, Report of the Special Rapporteur, Manfred Nowak, Addendum, Summary of information, including individual cases, transmitted to Governments and replies received, pp. 144-147.

⁴⁷ Morocco ranks 79 in the 2006 CPI prepared by Transparency International.

democracy⁽⁴⁸⁾. The EC Delegation and EU Member States participate in the Human Rights Working Group, which is one of four working groups of the Partners for Democracy and Governance (PDG), which consists of donors such as the EU, Norway, Japan, the USA and the UN agencies are part of the PDG.

In its 2005 Annual Report, the Uganda Human Rights Commission (UHRC) noted that “two major discernible reasons for the persistent number of complaints on torture, registered at the Commission, are the increased awareness by the public of their rights and the continued acts of torture committed in conflict related areas⁽⁴⁹⁾. According to the UHRC, it was also observed from the complaints received that the security agents continued to be the major violators of the right not to be subjected to torture or other forms of ill-treatment⁽⁵⁰⁾. Further, the reluctance of the police and prison officials to discipline errant officers had not helped the situation⁽⁵¹⁾.”

The conditions in the local police stations and prisons, in particular, are known for their dismal state (overcrowding, lack of food, sanitation etc.) and have been the subject of much criticism by local NGOs. To improve the situation, the local administration police force was integrated into the Uganda Police Force, the central administration, by virtue of the *Police (Amendment) Act, 2006*. A similar change for the local prison administration was introduced by the *Prisons Act, 2006*. The centralisation of prisons was also said to have greatly to do with donor impact. While this change may not produce any major short-term change, long-term beneficial effects can be expected, provided that the determination for improvement exists and the necessary investment will be forthcoming, so as to allow training of local officials and the refurbishing of prisons and police stations etc.

The persistence of unofficial and secret places of detention was of grave concern to all stakeholders contacted. Torture is frequently practiced in these so called “safe houses”. Some local NGOs believed that the situation in the “safe houses” had improved after EU pressure, but the problem persists. Special security forces and agencies have much liberty and can arrest people without giving reasons for the arrest, and do so with total impunity. The Government’s failure to comply with the decisions of the UHRC to award compensation to persons having been subjected to torture or other forms of ill-treatment also undermines the effectiveness of the UHRC, including, in the long term, its credibility. The UN Human Rights Committee and the CAT have both expressed concerns with regard to, among others, the aforementioned problems⁽⁵²⁾. - As pointed out in the CSP, corruption has become “a critical and pervasive issue” for

⁴⁸ For the text see http://ec.europa.eu/development/body/csp_rsp/print/ug_csp_en.pdf#zoom=100, pp. 20-21.

⁴⁹ See the 8th Annual Report 2005 to the Parliament of Uganda by the Uganda Human Rights Commission, p. 53.

⁵⁰ *Ibid.*, loc. cit.

⁵¹ *Ibid.*

⁵² UN docs. CCPR/CO/80/UGA, *Concluding observations of the Human Rights Committee: Uganda (2004)* and CAT/C/CR/34/UGA, *Conclusions and recommendations of the Committee against Torture: Uganda (2005)*.

the Government (⁵³). Many actors contacted emphasised that corruption continues to be widespread (⁵⁴), a fact that in their view impacts negatively on the administration of justice and the eradication of torture.

7 Ukraine

The EU-Ukraine 1994 Partnership and Cooperation Agreement (PCA) entered into force in March 1998. The general principles underpinning the internal and external policies of the Parties are, as stated in article 2 of the Agreement, respect for “the democratic principles and human rights as defined in particular in the Helsinki Final Act and the Charter of Paris for a New Europe, as well as the principles of market economy, including those enunciated in the documents of the CSCE Bonn Conference” (⁵⁵). Ukraine is also included in the ENP, and with regard to the political dialogue and reform, the agreed Action Plan provides that “Ukraine will continue its internal reforms based on strengthening democracy, rule of law, respect for human rights, the principle of separation of powers and judicial independence, democratic election in accordance with OSCE and Council of Europe norms and standards (political pluralism, freedom of speech and media, respect for the rights of persons belonging to national minorities, non discrimination on grounds of gender, and on political, religious and ethnic grounds)”; with regard to the prevention of ill-treatment and torture more specifically, Ukraine will “[f]urther improvement of the legal basis and practice in the sphere of detention, in particular pre-trial detention, in order to address effectively the problem of arbitrary detentions, detention conditions and ill-treatment of detainees by law enforcement officials, including through provision of training”; Ukraine will also implement the recommendations adopted by the CPT and will effectively implement the judgments of the European Court of Human Rights (⁵⁶). In this respect, the Action Plan appears to correspond well to the concerns expressed in the Country Report (⁵⁷).

According to the NIP for 2007-2010, the EU will provide support to democratic development and good governance and two of the sub-priorities in this regard are the rule of law and judicial reform as well as human rights, civil society development and local government; one of the expected results of this support is improved working methods of law enforcement agencies and prosecution (⁵⁸).

Acts of mistreatment by members of the police force continue to occur in Ukraine, including two fatal beatings in 2005 of persons held in detention. The UN Human Rights Committee recommended therefore in November 2006, that the Government “should ensure the safety and proper treatment of all persons held in custody by the police, including measures necessary to guarantee freedom from torture and from cruel, inhuman or degrading treatment”; the State Party should also, for instance,

⁵³ For the text see http://ec.europa.eu/development/body/csp_rsp/print/ug_csp_en.pdf#zoom=100, p. 6.

⁵⁴ Uganda ranks 105 in the 2006 CPI prepared by Transparency International.

⁵⁵ For the text, see <http://www.delukr.ec.europa.eu/en/Data/pca-eng.pdf>.

⁵⁶ For the text, see http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_final_en.pdf, pp. 3-5.

⁵⁷ EU doc. SEC(2004) 566, Commission Staff Working Paper, ENP Country Report Ukraine [COM(2004)373 final], p. 9.

⁵⁸ EU doc. *Ukraine – National Indicative Programme 2007-2010*, pp. 5-7.

consider establishing an independent police complaints mechanism and provide for the independent inspection of detention facilities; further, the State Party “should not expel or deport aliens to any country where there is a risk of torture or ill-treatment”; the Committee also expressed concern both about the serious state of the prison and detention facilities (overcrowding, lack of sanitation, food, health care etc.) and the existence of domestic violence, which persists in spite of the adoption of a Domestic Violence Act (⁵⁹). - There appears to be a serious problem of corruption in the country (⁶⁰).

8 Conclusions

The abovementioned concise information on the seven countries chosen for this study shows the following distinctive factors, some of which are common to the seven States:

- ▶ Not only does torture and ill-treatment still exist in these countries, although some modest progress may be perceptible in a couple of them, but this unlawful treatment is generally facilitated by a lack of stringent punitive and disciplinary measures to deal with the problem. The consequential impunity creates a vicious circle making the eradication of torture and ill-treatment particularly difficult. In some countries this situation is particularly dramatic for women and children.
- ▶ Most of the countries have special security forces that are frequently acting outside the law and responsible for many abuses, including torture and ill-treatment and without there being any real possibility of challenging their actions in a court of law.
- ▶ In all countries the authorities are faced with overcrowded prisons, where lack of basic food, hygiene and medical services to the detainees is commonplace. In these circumstances, prisons and other detention centres are often managed on a crisis basis, and any attempted reforms are unlikely to yield the expected results.
- ▶ Corruption is permeating the society in all seven countries, including the penitentiary system and the police, a fact that adds to the difficulties of implementing the law and of bringing about legal reform.
- ▶ An examination of the text of the various cooperation agreements, CSPs and Action Plans shows that it is easier for the EU to openly and frankly deal with human rights problems with Governments of countries that are also members of the Council of Europe. This is an asset that could, and should, be explored much more effectively.

⁵⁹ UN doc. CCPR/C/UKR/6, *Concluding observations of the Human Rights Committee*, Advanced unedited version, paras. 7 and 9 to 11.

⁶⁰ Ukraine ranks 99 in the 2006 CPI prepared by Transparency International.

- ▶ In connection with the cooperation with the North African countries, it is clearly easier for the EU and Member States to deal with the rights of vulnerable groups such as women, children and migrants than to handle many other more sensitive human rights issues, including, in particular, the question of torture and ill-treatment.

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Chapter II - KNOWLEDGE AND USE OF THE GUIDELINES

1 Preliminary remarks

As explained in the guidelines themselves, their purpose 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 on-going efforts to prevent and eradicate torture and ill-treatment in all parts of the world”. The guidelines are not, consequently, legally binding *per se*, but constitute *a practical tool to help the EU and its Member States promote respect for international legal rules outlawing torture and other forms of ill-treatment at all times, including in times of war or other kinds of public emergencies*. They can also be considered to constitute an important politico-moral obligation for the EU and its Member States to do their utmost to enhance the protection against all forms of torture and ill-treatment in the world.

It is noteworthy that the text of the guidelines is addressed to the “EU” as an entity, without making any institutional distinction with regard to the responsibility for their implementation. This responsibility can thus be considered to be *collective*, applying to an equal degree to all EU institutions, EC Delegations and Member States.

It should finally be pointed out in this respect that, while the definition of “torture” used in the guidelines is based on article 1 of the UNCAT, it is equally important to consider also the texts, case-law and legal opinions on, in particular, article 7 of the ICCPR, article 5 of the American Convention on Human Rights (ACHR), article 5 of the African Charter on Human and Peoples’ Rights (ACHPR) and article 3 of the European Convention on Human Rights (ECHR). For work in the European countries, the recommendations adopted under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment are of particular significance. All these texts are complementary and must be considered jointly in their specific international/regional contexts.

It is further important to underline that, according to article 4(2) of the ICCPR, article 15(2) of the ECHR and article 27(2) of the ACHR, the right not to be subjected to torture or any other form of ill-treatment, cannot be derogated from at any time, not even in wars and other public emergencies threatening the life of the nation. In article 2(2) of the UNCAT, this prohibition is regrettably limited to the prohibition of torture. No similar derogation provision is found in the ACHPR, but the African Commission on Human and Peoples’ Rights has held that this means that the Charter does not allow for the States Parties to derogate from their treaty obligation in emergency situations ⁽⁶¹⁾.

There is now moreover important international jurisprudence recognising the peremptory nature of the prohibition of torture. Suffice it to mention in this context that the International Criminal Tribunal for the Former Yugoslavia (ICTY) has held that “the prohibition of torture imposes upon States obligations *erga omnes*, that is, obligations

⁶¹ See reasoning in ACHPR, *Commission Nationale des Droits de l’Homme et des Libertés v. Chad*, *Communication No. 74/92*, decision adopted during the 18th Ordinary Session, October 1995, paras. 40-54.

towards all the other members of the international community, each of which then has a correlative right” (62). In addition, the principle proscribing torture has also “evolved into a peremptory norm or jus cogens, that is, a norm that enjoys a higher rank in the international hierarchy than treaty law and even ‘ordinary’ customary rules. The most conspicuous consequence of this higher rank is that the principle at issue cannot be derogated from by States through international treaties or local or special customs or even general customary rules not endowed with the same normative force” (63). As explained by the Court, the *erga omnes* nature of this legal principle “appertains to the area of international enforcement (*latu sensu*)”, while its peremptory nature “relates to the hierarchy of rules in the international normative order” (64).

International law is thus clear: Notwithstanding the direness of the circumstances, there can never be any justification for subjecting a human being to torture or any other form of cruel, inhuman or degrading treatment or punishment and all States have a corresponding duty to ensure that people are not put in a situation where there is a risk of such treatment. Finally, they must undertake independent, impartial and effective investigations into allegations of torture and ill-treatment, provide redress to the victims, prosecute the perpetrators, and ensure that such crimes are not repeated.

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For the following two reasons, it is advisable to apply care before drawing too far-reaching conclusions on the basis of the analysis made in this part of the study. *First*, it only concerns seven countries, and the situation may well be different in other countries, although this is not certain. *Second*, the fact that diplomats may not have detailed knowledge of the guidelines, or are not using them on a regular basis, does not mean that they are not taking action to promote the eradication and prevention of torture. *Just as lack of knowledge of the guidelines does not mean that initiatives are not being taken, so the possession of such knowledge does not automatically ensure pro-activeness and effective actions in this field.*

2 Knowledge of the guidelines

Most, but possibly not all, of the *ECDs* contacted were aware of the existence of the guidelines. According to the *ECD* in Bangladesh, for instance, which provided the most detailed information in this respect, country specific guidance on the implementation of the guidelines was sent by the Director General of DG External Relations to all *ECDs* in January 2005 together with a summary of pertinent instruments and suggested points to raise. These instructions were considered helpful in improving background knowledge. The *ECD* in Algeria had received information about the

⁶² ICTY, *Prosecutor v. Anto Furundzija*, Case No. IT-95-17/1-T, judgment, 10 December 1998, para. 151. The relevant convictions and sentences were confirmed on appeal by judgment given by the Appeals Chamber on 21 July 2000.

⁶³ *Ibid.*, para. 153.

⁶⁴ *Ibid.*, *loc. cit.*

guidelines in a document transmitted by RELEX on 12 January 2005 and the ECD in Georgia had received such information from Headquarters after their adoption and then from the RELEX website. The ECDs in Algeria and Georgia had not received any instructions concerning the implementation of the guidelines. The ECD in Uganda stressed that the guidelines are there and that one cannot claim one does not know.

Some of the *EU Member States*, but not all, knew about the guidelines, and few have included them in their daily work routine. Indeed, it is probably possible to conclude that, at least in a couple of countries, most Missions contacted either were not aware of the guidelines prior to being contacted for purposes of this study, or did not have any detailed knowledge thereof. There were also stark differences between the awareness of, and interest in, the guidelines not only among the Missions in the countries examined, but also between the Missions of one and the same Member State in the different countries. It is not clear how the representatives of some of the Member States had learnt about the guidelines. One representative pointed out, however, that they had received a telegram from their capital drawing attention to the guidelines.

The Netherlands appears to have been the most active Member State in this respect. Dutch Ministry of Foreign Affairs has, for instance, published brochures with the text of the guidelines and brought them to the attention of diplomatic staff during conferences. It also organises an annual conference for its personnel working with human rights issues, among others, during which they exchange experiences. It is understood that there was recently a special initiative on torture and ill-treatment in the course of this conference. Yet, not all Dutch diplomats contacted were aware of the guidelines. Irish development cooperation was also said to include references to the guidelines, and in the field of torture and ill-treatment, they were the main defining element of what the EU should do.

Not surprisingly, most *civil society actors* contacted in the seven countries were not aware of the guidelines prior to their participation in this study. Some organisations said that they had heard of the guidelines, but it appeared clear in the course of the conversations that they most likely had not. However, there were examples of organisations who had learnt about the guidelines (*i*) in the course of their work or from colleagues; (*ii*) through Mr. Matthiessen; (*iii*) OMCT; and (*iv*) via internet, such as the site EUROPA. Several torture rehabilitation centres were aware of the guidelines and a couple of centres had heard about them from their colleagues in Europe or through the IRCT. EU information activities and strong NGO networks can, in other words, have a positive impact on the distribution of information about the guidelines.

With regard to *local authorities* contacted, none knew about the guidelines before being contacted for this study. During a meeting with representatives of the Ministry of Justice of Morocco, who did not want to be identified, serious concerns were raised with regard to the guidelines. It was pointed out in the first place, that Morocco is a Member of the UN and should be treated like it; they would respond to questions within the UN, which has the mandate in this field. The situation was different with the EU, if the guidelines meant that the EU intends to police the world. This would be unacceptable. On

the other hand, if it were a question of *cooperation*, they would be happy to do so. In the second place, it was stressed that the way the guidelines are drafted is blessing; it would have been preferable to use terms like “plead” or “encourage”. Representatives of the Foreign Ministry of Egypt considered the effect of the guidelines positive, but the theme was in any case their priority. The fact that torture and ill-treatment was also a priority for the EU was useful because they could learn from it. However, there needed to be respect for each other’s point of view in the course of the dialogue.

3. Use and usefulness of the guidelines

Considering that the level of knowledge of the guidelines varied, the level of inclusion of the guidelines in the daily work of the various EU actors naturally also differed. There was moreover considerable discrepancy in the perceived usefulness or helpfulness of the guidelines. The use and usefulness of the guidelines will be dealt with in separate sub-sections, although they will to some extent inevitably overlap.

3.1 Use of the guidelines

It appears clear from the material collected, that most ECDs and EU Missions have neither entrusted a specific person with the task of ensuring the implementation of the guidelines *per se*, nor set any priorities on the basis of them. *However, this does not mean, of course, that torture prevention is not a priority for some of these ECDs and Missions or that they do not have a person responsible for human rights, which they often do have, albeit not always.* Furthermore, most Missions do not appear to have received any specific instructions in how to use the guidelines. As pointed out by one representative in this respect, no instructions had been issued to the effect that their work should specifically or uniquely be based on the guidelines.

The ECD in *Bangladesh*, which submitted a joint and particularly detailed questionnaire with some EU Missions, pointed out that, while it does not have a specific person in charge of the implementation of the guidelines, its relevant officers are “in regular contact” with the Human Rights and Democracy Unit of DG External Relations (RELEX B1) which ensures that exchanges of information take place on the guidelines “as necessary”. This Delegation had not, however, set any priorities on the basis of the guidelines, although making “regular efforts” to raise issues of concern with the authorities, including in individual cases. Yet, the guidelines had been helpful in consultations between Missions and had served as “useful background information and direction for EU activities”. They had thus inspired EU discussions with civil society. For instance, in October 2005, the ECD and the British High Commission had convened a round table event, which included a presentation of all the EU guidelines relating to human rights; another event for women human rights defenders had been co-organised with the Italian Embassy in April 2006 and included a reference to the EU guidelines on human rights. It is understood that these events must also have embraced at least some basic information on the EU torture prevention guidelines. There is no indication that similar information events for civil society have been organised in any of the other

countries. The ECD in Algeria even doubted that there had been any consultations on the question of torture between the EU Missions in the country.

In the ECD in *Georgia*, on the other hand, the project managers in charge of democracy, good governance and human rights related projects under bilateral cooperation and the EIDHR, and the political section in case of political actions such as the drafting of reports in cooperation with Member States, are entrusted with ensuring the implementation of the guidelines. Although this Delegation had not received any specific instructions or advice to assist it in this work, it considered that the guidelines themselves contain “rather complete instructions, which need to be applied on a case to case basis in operations and political dialogue”. The guidelines had also been helpful in the contacts between the Missions, because they provide “clear instructions and mandate” to EU institutions and Member States to follow up during policy dialogue and in connection with assistance to problems related to torture and other forms of ill-treatment. The guidelines had also been helpful in contacts with government stakeholders and civil society.

Regular formal or informal meetings are organised between the ECD in *Egypt* with other Missions and a sub-group of donor countries (DAG) also have meetings from time to time. It is not clear that the guidelines have been discussed at these meetings. The ECD stated, however, that its work is consistent with the guidelines, but that they would have done this work anyway, since torture and ill-treatment is one of their priorities in this country, for instance in their contacts with civil society.

The guidelines had become “real” to one EU Mission in *Morocco* during their EU Presidency and with the help of the Dutch Government. Although much of the work carried out by the EU in the country was linked to the guidelines, it was not always structured. There appeared to be agreement among several of the diplomats that they had not been very structured in their human rights work in the country and that, more specifically, they had not been active on the question of torture and police brutality. However, while one diplomat wondered whether it was necessary to be proactive in a situation where the country can do the work by itself, another representative pointed out that they had not received any instructions to this effect either. It was finally noted that there was some tension between human rights and counter-terrorism.

Finally, one ECD tried to get inspiration from the guidelines when they make up their programme, although another ECD said that the guidelines were not the reason for the projects included in their calls for proposals.

With regard to the *non-governmental organisations* that were aware of the guidelines, this knowledge had not, in general, helped them define their relations with the EU, nor had they set any priorities for trying to work with the EU to promote the implementation of the guidelines. However, one NGO considered them useful in that one now counts on the EU to exercise pressure on governments having recourse to torture and ill-treatment and a second NGO believed the EU is more concerned and might take more

action. On the other hand, another NGO had used the guidelines to embarrass the EU, adding that it did not have the impression that the guidelines influence EU foreign policy.

3.2 Usefulness of the guidelines

The views on the usefulness of the guidelines vary to a considerable extent among the Heads of Mission and their technical staff. On the positive side, it was noted, in particular, that the guidelines:

- are important or very important;
- are very helpful/useful;
- are useful and provide a universal approach;
- provide a useful coherent and complete basis for their work;
- are a good and relevant tool;
- are a good guide and source of information;
- help the EU explain what it can do and cannot do;
- provide a clear and unambiguous checklist of points that the EU should target, while at the same time allowing sufficient flexibility in the political dialogue;
- push the Embassies to adopt a global approach to include the basic elements of human rights in the political dialogue;
- have been helpful both in general and in consultations with other Missions, donors, international actors and civil society;
- underpin the discussions, and although not directly referred to, they constitute a very useful backdrop;
- provide a useful, coherent and complete basis and do not need to be revised;
- are absolutely necessary as a non-binding EU document.

As an example of a positive initiative, an EU Mission in Georgia pointed out that the guidelines had provided the framework for joint actions, such as the monitoring of a court prison facility in one country that was undertaken by the OSCE and the EU Embassies in 2006. A diplomat in Uganda was of the view that, because of the guidelines, the EU Member States had at least dared to say something.

In a more critical vein it was also pointed out, however, that:

- the guidelines are known, and that is all; they do not really serve as a reference point and they do not have any internal meetings among the Ambassadors and their teams to discuss them;
- the guidelines had not really been helpful in the regular contacts between the Missions;
- the guidelines are too long and detailed to be operational and for this reason they may not be very useful;
- the guidelines are somewhat disconnected from the reality in the country of work
- awareness of the guidelines had not helped them in their work or in their discussions with the local authorities;

- the many different guidelines are sometimes too theoretical and you need more information about how they should work in practice;
- the guidelines are not a living instrument;
- they do not need to refer to the guidelines because they would do the same kind of work anyway;
- unless you have specific deadlines, the guidelines do not force actions, which are coming from events;
- if the guidelines are too detailed it is an extra burden, the work becomes too heavy and will not change anything on the ground;
- there are too many guidelines for small missions, whose agenda is full;
- the guidelines are overlapping and you miss the details; this is the reason why they are not used;
- the guidelines do not *per se* provide criteria, but international law and the country's constitution do;
- with the many staff changes in the Embassy, people are not aware of the guidelines.

An even more pessimistic tone was struck by a representative in Uganda, who strongly questioned that their work to combat torture had to be based on the guidelines. It was pointed out that the torture-prevention work carried out in this country had been done independently of them.

According to an intermediate view, the guidelines are really the expression of common sense and contain values shared by the EU anyway. According to another opinion, the guidelines should be regarded more as a framework to help the EU Member States to work together. However, it was also said that the guidelines are not something that you look at every day; they rather constitute a reference tool when you need ideas, but they should not be a blueprint to be used on a daily basis, or in a unified manner. Another diplomat agreed that the guidelines should not tell the Embassies what to do in the field, because it is all about access and whether your interlocutors will listen to you. In other words, whether an issue can be taken up with a third country depends on the existence of *political will* in that country and also on whether the European Commission decides to take up the issue. “*The most difficult task is your strategy: How are you going to achieve lasting results, in particular when you have such limited resources?*” A similar opinion was expressed by one diplomat who emphasised that the Embassies are the ones that work in the field and see what needs to be done and what is possible for you to do. However, this kind of information is not something that can be dealt with in any guidelines.

The view was finally expressed that the guidelines are useful for *internal* discussion between the EU Missions in order to push those who are hesitating (it was compared to a “safety net” in the back of their heads). The guidelines are thus no longer considered to be peripheral but integrated into all policies. It was however also suggested that their weakness might be that the main point of focus could be blurred, since they are sufficiently general to enable a political balance. Rather than relying on the guidelines, one EU Mission in Ukraine preferred for its part to look at the legally binding

international instruments ratified by the country where they work, such as the CAT and the ECHR.

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Given that the details of the guidelines are relatively little known and used by the majority of the ECDs and EU Missions, and that priorities have not in general been set on the basis of the guidelines, most of the actions and projects to be dealt with in this report, have most likely *not* been inspired by them.

4 **Problems and challenges in the implementation of the guidelines**

This section highlights examples of some of the major problems and challenges that have been raised in the course of the various missions and desk studies. As can be seen throughout this study, these problems and challenges surface at various levels.

4.1 Political sensitivity to the subject of torture and ill-treatment

Numerous stakeholders at different levels, be that in the field or at Headquarters, for instance, stressed the difficulty in dealing with the subject of torture and ill-treatment and the implementation of the guidelines due to political sensitivity. This difficulty contrasted with their experience in promoting the guidelines on the death penalty and the human rights defenders, for instance. The fact of being accused or suspected of having recourse to torture and ill-treatment is not readily accepted by any country, since it implies a particularly negative stigma. It is therefore of primordial importance for the EU to devise clear action plans that will strengthen the EU torture prevention strategies and actions in these particularly delicate situations.

In the course of her work, the consultant has however noted, that also European diplomats are sometimes displaying considerable sensitivity when questioned about actions taken by their own Governments, and which may be - and sometimes have been proven to be ⁽⁶⁵⁾ - in violation of their international legal obligations not to subject any person to torture and other forms of ill-treatment. The European States would however grow in stature by expressly accepting full responsibility for their illegal acts and ensure that they will in the future see to it that their legal duties accruing under the international law of human rights will be strictly respected in *all* circumstances, including in connection with the fight against terrorism.

⁶⁵ See *Communication No. 233/2003, Ahmed Agiza v. Sweden, decision of the Committee Against Torture, adopted on 20 May 2005*; for the text of the decision see [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/4dec90a558d30573c1257020005225b9?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/4dec90a558d30573c1257020005225b9?Opendocument) and see also *Communication No. , Mohammed Alzery v. Sweden, views adopted by the Human Rights Committee on 26 October 2006*, for the text of the views see [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/13fac9ce4f35d66dc12572220049e394?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/13fac9ce4f35d66dc12572220049e394?Opendocument)

4.2 Intra-EU knowledge, communication and cooperation

In the first place, in order for EU efforts to be effective, it is primordial *that* all EU actors in the field have a good basic knowledge about the EU and EU human rights policies, *and that* the communication flows with ease so as to facilitate cooperation between them. Secondly, information and advice must flow efficiently not only from the field to Headquarters but also from the latter to the former. How, then, do people in the field look at these issues?

It was emphasised, for instance, that not all representatives have sufficient *knowledge* about the EU and EU policies, which meant that they do not feel any duty to act on behalf of the Union. It would therefore be necessary to begin to have a more structured approach to the implementation of EU values and norms in general. It would also be essential for the EU to act as an entity, which is now rarely the case at the local level, at least in some of the countries considered.

It was further stressed that so far action had to a large extent depended on the personal involvement and interest of the representatives concerned, and it was therefore important to have *clear instructions* from Headquarters and capitals.

While the *cooperation* between the ECD and the EU Missions sometimes clearly works well, it was pointed out by representatives in a couple of countries that this cooperation could be improved and that they would like to have more information about the ECD's human rights activities. There was also a need for improved cooperation among all Missions, including improved *exchange of information*.

The need for improved information sharing on human rights issues, including torture and ill-treatment, was also expressed at other levels of the EU, including in the EU Secretariat in Brussels.

In order to improve the communication among the various EU actors, including the EC Delegations and the Heads of Mission, the question was raised as to whether it might be possible to develop some guidelines on information sharing within the EU.

Finally, the need for improved *donor coordination* of assistance was emphasised.

4.3 Capacity of EU Missions to act

As previously noted, several representatives stressed that many small Embassies have no or limited project funds and not much contact with civil society. It was also more difficult for smaller Embassies to carry out, and follow up on, instructions received. Furthermore, there were constraints in terms of the human resources available in Delegations and Embassies to cover the issue of torture and ill-treatment and it was difficult to prioritise time-intensive but worthwhile activities, such as trial-observation. They simply were not in a position to deal with everything.

One representative stated more specifically that, as diplomats, they were in a third country to represent their country of origin, being accredited by local authorities; they were thus obliged to show a minimum of restraint and correct conduct. Consequently, the Embassy personnel were not activists and could not work like the UN or NGOs and they were not, in any event, the best placed to change the human rights situation, which could be better done through cooperation. The question was thus asked as to how strong the leverage of one country or group of countries is in terms of bringing about changes in another country? *Démarches* were not enough, and as emphasised by many diplomats, long-term reform projects must accompany *démarches* and interventions in individual cases.

5 Other remarks and suggestions from the field

Since it is impossible to put all the relevant material in a set of guidelines, it was suggested that it might be possible to draft *an annex with good practices and in some way allow colleagues to share experiences*. A similar proposal was to have *a short summary of actions that might be taken in the field*. This could be useful because it is necessary to go through the relevant material every time you get new staff. Yet, it was doubted that the EU Headquarters could help out with this. A similar suggestion was to develop a *vademecum* of good practices and then also to organise *workshops*, including at the regional level, for purposes of exchanging experiences. It was believed that such initiatives could prove useful. According to yet another suggestion, the guidelines should be brought together into sections per right so as not to be overlapping.

It was considered to be useful if the Heads of Mission were regularly requested to evaluate the impact of the guidelines. On the other hand, it would not be sufficient to report, because you also need action. According to another view, however, an evaluation of the impact of the torture prevention guidelines should include more information on the *practical situation* and not only technical aspects as compared to the evaluation of the guidelines on the human rights defenders.

It was finally also suggested that awareness of the guidelines should be strengthened among the representatives of the EU Member States, high officials and Members of the European Parliament who participate in political dialogues with other countries. The need for better awareness among EU Missions in general of EU values and policies was also stressed.

6 Conclusions

- ▶ *General knowledge of the EU:* In general, there is a need for improved knowledge about, and commitment to, EU norms, values and policies among EU diplomatic Missions.
- ▶ *Knowledge of the guidelines:* There is a serious lack of knowledge or detailed knowledge about the torture prevention guidelines, which may at least partly be due to the fact that, with the possible exception of the efforts made by the EC and

the Netherlands, there appears to have been no attempt by either the EU Headquarters or the EU capitals to more systematically inform or train relevant diplomatic staff in international human rights law in general, and the EU guidelines in particular.

- ▶ *Use of guidelines:* Although some ECDs and EU Missions have used the guidelines for inspiration in their work, few – if any - appear to have relied on them *systematically* in order to develop programmes in fields relevant to the elimination of torture and ill-treatment. In other words, whether for want of awareness, policy, interest, financial or human resources, there appears to be comparatively little structured work carried out on the basis of the guidelines to prevent torture and ill-treatment. *However, this lack of structured work can also be attributed to a lack of a practical global vision and express specific instructions from Headquarters and EU capitals.*
- ▶ *Usefulness of guidelines:* There is clear disagreement among the Delegations and Missions contacted about the usefulness of the guidelines. While the reasons for the lack of usefulness vary, it was believed that the level of utility of the guidelines could be enhanced by improved information about good practices or the development of a simple and practical guide.
- ▶ *Civil society knowledge of the guidelines:* Civil society actors in third countries are generally ignorant of the existence of the guidelines. Yet, knowledge about them could possibly help them to better define their relations with the EU for purposes of developing more effective torture prevention and elimination strategies.
- ▶ *Challenges to the implementation of the guidelines I - Governmental sensitivity:* Some so called third states react negatively either to the terms of the guidelines or to EU action aimed at preventing and eliminating torture and ill-treatment and there is therefore good reason for developing strategies and approaches that take this sensitivity into consideration.
- ▶ *Challenges to the implementation of the guidelines II – Intra-EU cooperation:* The work carried out shows that, while the information-sharing, coordination and cooperation work well in some places, this is not always the case. Indeed, there appears to be room for enhanced information-sharing, coordination and cooperation at virtually all levels of the EU, including the ECDs and EU Missions.
- ▶ *Challenges to the implementation of the guidelines III – Limited capacity act:* Limited human and financial resources restrict the capacity of smaller EU Missions to engage in projects against torture and ill-treatment. In addition, self-imposed limits also exist, due to the narrow vision some diplomats have of their professional role.

Chapter III – EU CONTACTS WITH CIVIL SOCIETY

1 Preliminary remarks

The contacts between the EU and the civil society in the seven countries diverge a great deal. There is not only differences between the countries, but also considerable variations in the answers given by local stakeholders in one and the same country. This discrepancy may be due to the fact that the ECDs and EU Missions work more with some organisations than with others. Most NGOs did not know who in the ECD or the EU Missions was in charge of implementing the guidelines, but some knew who was responsible for human rights issues. However, this was far from being the rule. Furthermore, the NGOs have not, in general, perceived any change in the nature or frequency of their contacts with the EU since the adoption of the guidelines in 2001.

2 Meetings and information sharing

The ECD in *Algeria* was not aware of any NGOs working in the field of torture and it did not, consequently, have any contacts with them. - Not surprisingly, the NGOs contacted were not aware of any information meetings organised by the ECD and/or the EU Missions. Only one organisation had rare contacts with the ECD in Algiers and was also contacted by the ECD or EU Missions when the latter prepared their annual reports on the human rights situation in the country. None of the NGOs would spontaneously and regularly provide the EU with information on torture and ill-treatment. One of the organisations presumed that the closeness of the ECD and EU Missions with the Algerian Government, caused the officials to keep a certain distance. On the other hand, one organisation said that it has “sporadic contacts” with Members of the European Parliament and its human rights department.

According to the joint reply submitted by the ECD and some EU Missions in *Bangladesh*, the EU has “regular contacts” with NGOs working in the field of torture and ill-treatment. As “a matter of practice”, the Delegation also organises frequent meetings, such as roundtables, with civil society during visits from Headquarters; there are also “frequent ad hoc meetings with individual organisations ..., including those which are supported by EU funds”. The EU further “regularly” receives information from local human rights NGOs, including monthly bulletins from one organisation. The ECD contacts relevant NGOs for purposes of drafting its annual report and the NGOs also provide information. However, it was noted that it is sometimes difficult to make an assessment of the accuracy of the information; cross-checking is therefore undertaken to the extent practicable. The information submitted by the NGOs had however proved helpful in preparing EU initiatives with the Government. – All NGOs replying had only rare contacts with Missions and/or the Delegation. While one organisation knew that frequent meetings were organised with NGOs, two noted that such meetings were rare. All organisations said that they were not contacted by the ECD or Missions when the latter draft their annual human rights reports. One organisation replied however that it had sent information to the EU on displacement of a group of tribal/indigenous people

and that the EU Ambassador and staff had taken “immediate and firm” steps to stop the eviction.

In *Egypt*, a Sub-Group on Democracy and Governance (DAG) reportedly meets every six weeks with civil society. Several Missions have regular/good relations with NGOs, such as in connection with the DAG meetings, but a couple of them pointed out that there is no formal or institutionalised contacts with the NGOs. One Mission, which only has sporadic contacts with opposition or civil rights organisation wondered how useful the information is that the NGOs provide. Another Mission, which also only occasionally receives information from NGOs, would however like to receive more. While there is generally no problem with the flow of information, one Mission wondered whether the NGOs would not benefit from using the techniques of larger organisations, including improved networking. The NGOs are believed to be afraid of contacting Western countries, because they could be seen to be playing the agenda of Western Governments. Furthermore, the attempt to integrate them into a federation created by the law on NGOs had not helped create trust between the organisations, since the federation is not very independent. It was also submitted that, since the civil society in the country is quite active, you need not make a lot of efforts and the contacts are therefore more of an ad hoc nature. The ad hoc nature of the relations was confirmed by another Mission, which had bilateral meetings with NGOs depending on the events; the relations were more structured in connection with projects.

The answers provided by the Egyptian NGOs seem to reflect the complexities of the situation in the country and the difficulties the EU is facing in promoting a human rights agenda in the political dialogue with the Government. There were thus NGOs that found it easy to have access to the EU. These organisations have many meetings, regular contacts, or constant cooperation with exchanges of information and experience on human rights with the ECD and EU Missions. One NGO noted that it all depends on the person in charge of human rights issues, and that they have more contacts with some Missions than others. There were however also examples of organisations who did not participate in any EU meetings or did not contact the EU on its own initiative, because it was not considered useful, failing effectiveness by the EU. Several organisations did not see that the EU would put any pressure on the authorities. They had expected the EU to counterbalance the USA, but the EU was not viewed as being interested in this, having changed its priorities to security following the 9/11 attacks. It was pointed out, furthermore, that dialogue does not work if one partner feels superior to the other and does not genuinely recognise what the other partner has to offer. Some NGOs said that they send all their information, including annual reports, to the ECD and/or EU Embassies, although the feedback is disappointing.

The ECD in *Georgia* replied that it has frequent contacts with NGOs through projects and consultations. It also organises regular meetings, such as roundtable meetings on the rule of law, penitentiary reform, and human rights (monthly or bi-monthly). Civil society is also regularly consulted during official meetings, project design and expert missions, while the EC “regularly participates in civil society meetings on human rights including torture related issues”. The ECD covers issues relating to torture

and ill-treatment in its monthly reports. NGOs provide information on the situation of torture in the country and this information is useful in order to understand the situation in police stations or prisons, for instance. However, in the view of the ECD, the capacity of NGOs for neutral reporting still needs to be strengthened as does the forensic expertise in the country, this being an issue that had partly been addressed in connection with capacity building on the implementation of the Istanbul Protocol. One EU Mission replied that it has regular contacts and meetings with NGOs at all levels; sometimes the meetings are scheduled at the request of the NGOs, but sometimes the Embassy takes the initiative; it also consults NGOs when drafting its annual human rights reports. According to one EU Consulate, there are however only rare meetings with NGOs, since the participation is limited to donor roundtable discussions and coordination meetings, where there is very little NGO representation. This Consulate would receive NGO information on torture and ill-treatment that was useful and “usually correct”. - A torture rehabilitation centre in the country, which has been financed by an EC grant since 2001, regularly participates in meetings organised by the ECD, which also organises “meetings with NGOs working in the field on a regular basis where EC support policies and plans connected with torture prevention and rehabilitation are communicated to interested parties”. Conversely, the ECD participates in similar meetings organised by other organisations. Two other NGOs from the same country said that they had “frequent” information sharing or contacts with the ECD and/or EU Missions. One of these organisations had however only been invited to meetings about two or three times, and the second said that such meetings are rare, and requested by the NGOs rather than initiated by the Delegation. One organisation noted that it was difficult to identify what feedback had been received on information sent to the ECD and Missions.

In *Morocco*, the newly created Sub-Committee on Human Rights, Democratisation and Governance is expected to consult NGOs in Morocco and Brussels before each meeting in order to have their assessment of the human rights situation in the country. However, there is no formalised structure for this consultation, a matter that has been addressed by some of the major local NGOs, in particular in discussions with the Head of the EC Delegation; the organisations have insisted on an effective follow-up procedure of the Sub-Committee’s work and on a formalisation of their contacts with the Sub-Committee. A diplomat noted that they get a considerable amount of information from NGOs, but that it is difficult to know what is credible or not. Furthermore, they did not have the technical expertise to analyse all the information, and this was not in any event the heart of their mission; it was not an interest (“axe d’intérêt”). – One NGO deplored that the EU gets in touch with them less and less, and that it is rather the NGOs that get in touch with the EU. This contrasted with the situation during the old regime, when they felt some support, which is no longer the case. The organisation expected more from the Europeans, who do not exercise enough pressure. Another NGO said that until about ten years ago, they had an interesting cooperation with the EU, but that for reasons they did not understand, something happened and the cooperation virtually stopped. However, EU Missions still come to them when they draft their human rights reports. This NGO considered that, even among the European Governments, you do not find the same attachment to human rights principles any more; the Governments are too timid. A third organisation agreed that, in contrast with the situation in the 1980s, for

instance, the Europeans no longer seem interested in supporting human rights and the civil society. A fourth NGO noted that the ECD ignores civil society, while the EU Missions have a better presence there; it is also easier to see the EU Ambassadors. Finally, one NGO said that it has good relations with the EU and that it could ask the EU for information with much ease. Conversely, the EU Missions follow the situation in the country quite closely and ask for additional information, when necessary. This organisation is sometimes – but not regularly - invited to meetings by the EU, including the ECD, such as to a recent meeting on women human rights defenders. While relations with the EU are important, this organisation also said that their priorities are elsewhere. Yet, the EU is a place where you can plead for support to help consolidate the gains in the human rights field. This organisation puts its hope in the new Sub-Committee on Human Rights, Democratisation and Governance.

In *Uganda* it was pointed out by one EU Mission that the European countries have good relations with the civil society, and that NGOs are sometimes invited to the meetings of the Human Rights Working Group when it deals with specific issues. However, they are not invited to all of the meetings. In principle, the ECD participates in this Working Group. – A couple of NGOs stated that the EU Embassies call them to ask questions as to how to follow up on issues and ask them for more information for instance. However, one NGO believed that it would have been interesting to be invited to EU meetings and briefings, although suggesting that maybe they could have been more active from their own side as well. Since much of the help to civil society is bilateral in Uganda, the NGOs in the country would appear to have more contacts with the specific donors than with the EU as such, which is generally not perceived to act as an institution on the question of torture and ill-treatment in the country. It was pointed out on behalf of the UHRC that the EU Members States rather sporadically ask them for information and advice as to what to do.

With regard to the situation in *Ukraine*, one EU Mission used to have quite a lot of contacts with one NGO and it also receives information from NGOs. It considered, however, that it is difficult to follow up on this information and to know whether the organisations are reliable. This Mission does not organise regular contacts with civil society because it needs to keep a certain distance. It was pointed out on behalf of another Mission that they were not aware of any specific EU actions based on the guidelines and they had not attended any conferences with NGOs. According to other views expressed by various Missions, there was not the same need for help for NGOs during the new regime and hence there were less contacts. Further, there was no coordination of actions specifically on human rights and nothing formal organised in this respect with the NGOs. The issue of torture and ill-treatment did not come up often, although it did happen and the contacts with civil society were generally based on donor projects. Furthermore, as pointed out by one diplomat, they were not activists and not the best placed to change the human rights situation in the country; it was not because they did not care, but because it was not their mission. More positively, the United Kingdom has in general contacts based on their donor-supported projects, including roundtables and seminars. However, since Ukraine is no longer a priority country, it has limited access to funding. The Netherlands has for its part a civil society program which is “demand-driven” by Ukrainian NGOs,

although the human rights programme contains nothing specific on torture and ill-treatment. - An NGO in the same country considered that the EU offices are very closed and they can only go there if invited; it has some contacts with EU Missions, such as the Netherlands, concerning projects, but it has more contacts with the US, the UN, the UNICEF and the OSCE. Another NGO is however invited regularly by the EU to speak about torture and ill-treatment and they send a bulletin and monthly review to all Western Embassies. According to one organisation, there are some formal relations when the EU provides grants, but it believed that, contrary to the CPT of the Council of Europe, the EU has no real interest. The Office of the Human Rights Ombudsman said that it had lots of contacts with the Council of Europe and CPT. – Finally, an official from the Ministry of Justice considered it to be a paradox that they have no cooperation with the EU; it was much easier to work with the US and Switzerland.

Several organisations in various countries (Egypt, Georgia, Morocco and Uganda) said that the ECD and/or the EU Missions contact them when they draft their annual reports on the human rights situation in the country. Others said this is not being done, although there may still be regular contacts between the EU and the organisations (Bangladesh, Egypt, Georgia).

During meetings with NGOs in Morocco and Uganda, the consultant asked several NGOs whether they themselves had tried to initiate contacts with the respective ECD or EU Missions for purposes of explaining their work, problems and needs. In most cases the answer was negative, but the responsible persons took note, believing that it would be a good idea to follow up.

2 Conclusions

- ▶ *Structure of contacts:* It is clear that no *formal* contacts between the ECD and the EU Missions, on the one hand, and NGOs on the other hand, have been established in any of the seven countries. Indeed, on the basis of the information received, there is no structure at all to these contacts. It can be presumed however that, whenever an NGO receives EU or bilateral funding, there is, by necessity, a more structured relationship.
- ▶ *Nature of contacts:* The contacts between EU actors and NGOs vary considerably from country to country, both in terms of intensity and substance. Contacts can thus be said to be inexistent in the field of torture and ill-treatment in *Algeria*, and virtually inexistent in *Ukraine*. On the other hand, in *Bangladesh, Egypt, Georgia* and *Uganda*, the contacts appear to be more frequent and substantive, including meetings, although the frequency of contacts is not necessarily reflected in the results obtained with regard to the prevention and elimination of torture and ill-treatment.
- ▶ *Support needed:* One important conclusion that can be drawn from the discussions held in *Morocco* and *Ukraine* is that the EU cuts not only its financial but also its moral support to civil society actors in countries where there has been

some progress towards democracy and an improved respect for human rights. With progress, however timid, countries lose their priority status and the funding dries up. Yet, these societies are still in a transitional period, with relatively weak institutions which are not necessarily going to be able to ensure further democratic progress and stability in the long-term without further strong support, including to the civil society.

- ▶ *EU working groups:* In countries where there is a special human rights working group, whether set up under an association agreement (*Morocco*) or by donor countries (*Egypt, Uganda*), a structure is also created that allows, in principle, more consistent contacts with civil society. However, the potential that such structure opens up could with some certainty be better explored, and it will in this respect be particularly interesting to see how the relationship between the EU and the civil society in *Morocco* will evolve.
- ▶ *Information sharing:* Information-sharing is essential, and in their dialogue with the host countries, the ECDs and EU Missions benefit from background material submitted by NGOs. However, this information must be solid and reliable, and there is in this respect room for improvement of the capacity of the NGOs to provide objective reports. Conversely, the ECDs and EU Missions may not always give the feedback that the NGOs need in order to know that their input has been used and been useful. Such constructive feedback could help them improve their work in the future.
- ▶ *Views on EU commitment:* It is significant that several NGOs in the three North African States, questioned the EU commitment to promote human rights in their respective country.

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Chapter IV – EU ACTIONS AND PROJECTS

The limited scope of this study has not made it possible to provide a complete picture of EU actions and projects to promote the prevention and elimination of torture and ill-treatment in the seven countries concerned. Such in depth study would have required more time and means and would also have necessitated a more serious cooperation by in particular some of the ECDs and EU Missions. However, important work is carried out by some ECDs and EU Member States, although not uniformly so, in the seven countries considered, and this work makes it possible to discern certain trends, problems and potentials that hold lessons for the future.

1 Association and Cooperation Agreements (Political dialogue)

The guidelines foresee political dialogue as one of the principal actions for the EU to promote the prevention and elimination of torture. The EU “shall” thus “where relevant, include the issue of torture and ill-treatment” in its political dialogue with third countries and regional organisations. The various agreements between the EU and countries covered by this study, as well as the Cotonou Agreement, contain rules for the political dialogue, including a general reference to human rights and democracy. Since none of the agreements contain any specific undertakings with regard to torture and ill-treatment or prison conditions, it depends on the ensuing dialogue as to how strongly the human rights focus will be, in particular with regard to torture and ill-treatment.

The ENP Action Plan recently agreed upon with *Georgia* is particularly interesting in this respect in that its first priority area is to strengthen the rule of law through reform of the judicial system, including the penitentiary system. As previously noted, one of the specific actions to be taken is to implement the recommendations of the CPT, notably in order to improve prison conditions. The ECD had raised the question of torture and ill-treatment in “numerous” written communications as well as during lower and high level discussions with government officials. It was however noted by one diplomat that, in view of the Government’s sensitivity to international criticism, the strategies implemented by the EU in terms of political intervention are sometimes of a more cautious nature than those provided for in the guidelines. One EU Mission replied that it had not raised the question of torture in political discussions, but suggested that the EU use the Action Plan as an opportunity and a tool to encourage the country to improve its human rights record in general; concrete benchmarks should be developed and torture could be one of the relevant issues to be addressed.

The Action Plan adopted with regard to *Ukraine* is also explicit on the undertakings with regard to, *inter alia*, respect for human rights and the principle of separation of powers and judicial independence. Of particular interest for this study is that the Action Plan specifically mentions (i) the effective implementation of the judgements of the European Court of Human Rights; (ii) the enhancement of training of judges, prosecutors and officials in the judiciary, administration, police and prisons, in particular on human rights issues (and supported by the EC/Council of Europe Joint Programmes); and (iii) the prevention of ill-treatment of torture and ill-treatment by

“[f]urther improvement of the legal basis and practice in the sphere of detention, in particular pre-trial detention, in order to address effectively the problem of arbitrary detentions, detention conditions and ill-treatment of detainees by law enforcement officials, including through provision of training”; the recommendations of the CPT should also be implemented⁽⁶⁶⁾. The ECD in Ukraine encourages donors to see the ENP Action Plan prior to defining their activities, but according to one opinion, there is not much of a political dialogue with the Government.

In the ENP Action Plan for *Morocco*, the pursuit of legislative reform and the application of international human rights provisions is also a priority, although the Subcommittee on Human Rights, Democratisation and Governance was the last subcommittee to be agreed upon. One of the short term objectives was the reform of criminal law with a view to introduction of a definition of torture in line with that found in article 1 of the UNCAT. However, this objective was met with the promulgation on 14 February 2006 of Law No. 43-03. It is, of course, too early to know what impact the new Subcommittee will have on the human rights component of the political dialogue in Morocco, but the mere fact that there is now an agreed formal framework to work within, and a possibility for NGOs to make their views known, holds out some hope for the future.

As previously noted, the EU and *Egypt* Action Plan was finally adopted in March 2007 after what appeared to be difficult negotiations, and the question of torture was said to be a particularly delicate issue to deal with. To judge from the answers given by several actors during the expert’s mission to Egypt last September, discussions on the Action Plan were then blocked, one reason being that Egypt did not want to discuss individual cases. According to the ECD, torture and ill-treatment was however one of the priorities of the cooperation with Egypt, and it had drawn the Government’s attention to this. A note published by the ECD in Egypt on the progress made during the two first years following the entry into force of the Agreement on 1 June 2004 was however entirely trade-focused, and made no mention of the question of democracy or human rights, let alone torture and ill-treatment⁽⁶⁷⁾. Several Missions had raised the question of torture and ill-treatment in bilateral talks with the Government, but without any perceptible progress having been made in the situation (see also section 2 *infra*).

Several NGOs expressed regret at the weak draft Action Plan, where the reference to torture had been replaced by “abuse of prisoners” (which in the finally adopted version was in turn replaced by the more neutral terms “prison conditions”, “detention conditions” and “the human rights and integrity of detainees”)⁽⁶⁸⁾. One NGO stressed the potential of the future Action Plan in addressing human rights problems, but the weakest point thereof was the question of torture and ill-treatment, which was now only mentioned indirectly; in the process many other problems had also been omitted. The EU had said that it knew about the problems but that it would rather try a “soft approach”. It was submitted that the EU should be more proactive, and although the future Action Plan

⁶⁶ See <http://www.delukr.ec.europa.eu/files/Action%20Plan%20Text-final-website.pdf>, pp. 3-5

⁶⁷ See <http://www.delegy.ec.europa.eu/en/doc/AA%202%20years%20anniversary.doc>

⁶⁸ The consultant has not had access to the draft versions of the Action Plan, and she has not, therefore, been able to verify the correctness of any references to it.

might not be very good, it should be strongly interpreted with a time-table for its implementation. The EU was not seen to push enough, although having the legal basis in article 2 of the Association Agreement for doing so and investing a considerable amount of money in the country. There was also a need to promote a role for civil society and for the sub-committee of the Political Committee set up under the Agreement to be open to NGOs; as a minimum, there should be an exchange of information and formal discussions with NGOs before decisions are taken (⁶⁹). In short, human rights should not be sacrificed to the political agenda. Another NGO was ready to declare a significant failure of leadership in the EU even with a Presidency like Finland and the United Kingdom. According to a third NGO, the EU was more concerned with economic issues than with human rights, but it could help improve the situation by exerting pressure under trade agreements.

While the EU in *Bangladesh* is primarily focussed on the protection of vulnerable groups in the country, such as women and children, the ECD and at least some EU Missions are clearly also sensitive to the question of torture and related problems. The NIP 2006 for Bangladesh mentions human rights and democracy as a priority area and provides a list of examples of problems that need to be addressed (see *supra* Part Two, Chapter I, section 2). A certain degree of Government resistance to external support to the criminal justice sector is however perceptible on a reading of the NIP. In its joint reply, the EC Delegation and some EU Missions pointed out that also the question of torture and ill-treatment is “regularly raised in political discussions”, such as in March 2006 in connection with the EC-Bangladesh Joint Commission. The EC then called for the country’s national law to be brought into line with its obligations under the UN Convention against Torture; it further expressed “strong concern” at the continued use of fatal force by the Rapid Action Battalion in so called “cross-fire” incidents and called for the “speedy establishment” of the Human Rights Commission. Denmark raised similar issues in High Level Consultations with the Government in June 2006. However, none of the aforementioned issues had been “satisfactorily resolved” and further follow-up would therefore be made with the Government and also through the Sub-Group on Human Rights.

In *Uganda*, the EC Delegation and EU Member States participate in Human Rights Working Group, one of the four working groups of the PDG. The working group consist of technical experts who decide what issues should be taken up at the PDG ambassadorial level. Donors such as the EU, Norway, Japan, the USA and the UN agencies are part of the PDG. With regard to torture, the PDG mainly acts through the Human Rights Working Group. Donors are however in addition active in the important Justice, Law and Order Sector (JLOS), which also covers police and prisons. EU Ambassadors hold biannual meetings with the Prime Minister, and this dialogue takes place on the basis of the reports that the four Working Groups prepare for the PDG. For each report some issues are chosen, which are then taken up for discussion with the Prime Minister. It is for the Prime Minister to decide, on the basis of the issues selected, which

⁶⁹ According to the agreed AP, one action to be taken is to “[f]oster the role of the civil society and enhance its capacity to contribute more effectively to the democratic and political process as well as to the economic and social progress in accordance with national legislation”.

other Ministers should be present at the meeting. It is not known to what extent torture and ill-treatment has been dealt with in this connection, although it is highly likely that it has, in view of the particular interest in the subject shown by several EU Missions, such as Denmark, Ireland and the Netherlands. The question of the secret places of detention has recently been discussed with the relevant Minister of State, but without much success.

The ECD in *Algeria* had not raised the question of torture during the political discussions with the Government, and the consultant received no replies from the EU Missions in the country.

2 **Démarches and public statements**

In addition to political dialogue, the guidelines mention démarches and public statements as a means of action to achieve the objectives defined therein. There is a considerable interest among the EU Member States in démarches, and each Presidency produces its own round of them on human rights subjects of interest. During the Austrian Presidency about 500 démarches were reportedly made on various human rights issues. In view of their considerable number, it is interesting to find out how diplomats in the field view démarches and public statements and whether they use them in order to promote the prevention of torture and ill-treatment. Further, are civil society actors aware of the various démarches and public statements made by the ECD and/or EU Missions? Over and above all, what impact do these démarches and public statements have at the local level? Have they proved useful? If not, how could they be made useful, if at all?

The ECD in *Algeria* had made no démarches or public statements and in *Ukraine*, several EU Missions could not recall that torture and ill-treatment had been raised with the authorities during the past two to three years. This may be logical given that, as previously noted, there is not much of a political dialogue with the Government. EU démarches had however been made in early 2006 in connection with the expulsion of refugees from a neighbouring country; at least one country (Sweden) moreover made a bilateral démarche to allow some of the refugees to stay in the country. It was pointed out that démarches are usually done in coordination with the Presidency and that it would be a mistake to make them in isolation, unless it was a bilateral issue. There had also been some action with regard to the assassination of a journalist. However, the question of torture and ill-treatment had been somewhat marginalised following the 9/11 attacks. In *Morocco*, one diplomat had no recollection that any démarches had been made on the question of torture in the country itself, although several had been made in the beginning of 2006 on the question of Western Sahara.

The ECD and some EU Missions in *Bangladesh* provided detailed examples of démarches and public statements made during the past year. For instance, an EU troika démarche on torture took place in June 2006 and included the handing over of an *aide mémoire* calling attention to the Government's failure to submit a report under the CAT and requesting it to make the declarations provided for in articles 21 and 22 thereof, further asking it to sign and ratify OPCAT; the EU also expressed "strong concern" at the

growing number of reports of torture by police and the Rapid Action Battalion, the abuse of detention procedures, poor prison conditions, extrajudicial killings and impunity. A troika démarche in May 2006 concerned harassment of human rights defenders, the plight of rohingya refugees and abuses by the Rapid Action Battalion. Finally, the EU had made “strong representations” by letter to the Foreign Secretary in June 2006 in the wake of police attacks on journalists. It was submitted that the regular démarches undertaken by the EU and related actions, “have ensured that the Government pays attention to the issue and helps create the right conditions for progress in this field”. - In the light of this detailed information, it surprises that only one organisation was aware of EU statements on extrajudicial killings and torture of political activists.

The ECD in *Georgia* submitted that the question of torture is very complex and difficult to address by démarches. One EU Mission replied that it had not made any démarches or public statements in this respect, while another Member State was aware that the question of torture and ill-treatment had been raised with a limited but positive reaction from the Government. One UN organisation noted that the Head of the ECD usually underlines in his public speeches, such as in connection with workshops and conferences, the need to pay more attention to the situation in penitentiary facilities in this country.

With regard to *Egypt*, an EC declaration had been made in the end of June 2006 concerning the attacks on journalists. One EU Mission submitted, however, that you may be stopped in this country if you use official démarches, and it was therefore important to find other ways of transmitting messages. The question was whether you just want visibility? An official démarche was not only a public relations exercise and it was therefore important to secure support from within the country. They wanted results, but it was necessary to have a customised approach and try to dialogue rather than teach. The various EU Missions meet regularly to discuss issues and how possibly to address them by making interventions, for instance; then they report back to Headquarters what priorities should be defined in order to be effective. With regard to the publicity issue, one EU Mission pointed out that the more privately you work, the more you learn, and the more public you go, the less you know; officially you are not supposed to speak out and you have to be careful because of counterarguments such as those involving Abu Ghraib and Guantanamo. While some diplomats thus believed that it is possible to improve more by silent diplomacy, one diplomat disagreed, stressing that this is not always the most effective means of having an impact.

One EU Mission had received instructions in March 2006 for démarches and for supporting the UN Special Rapporteur on Torture and a second Mission had raised the issue of torture and ill-treatment regularly in bilateral meetings invoking the country’s international commitments and also urging that the country cooperate with the UN Special Rapporteur. The response to a statement on a human rights issue made by one EU Mission had been negative, the Government replying that it would proceed in its own time and that no one should interfere in its internal affairs. In short, while one Mission would officially raise human rights questions when there are exchanges with the ministers, there had been no intervention on the basis of the guidelines and no progress in

the fight against torture and ill-treatment could be attributed to any EU action. There was simply no evidence that statements by the EU on human rights issues were taken seriously.

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It was emphasised that some governments will not submit to pressure and that you can only be successful if there is a political will and the issue is presented in a way that interests them. Several EU Missions also stressed the importance of démarches and public statements being made mainly through the EU Presidency, or jointly by the ECD and the EU Missions. According to one diplomat, it would even be a mistake to make démarches and public statements in isolation. The unity which joint démarches or public statements would display, could have a considerably greater impact than isolated initiatives. Another advantage with démarches made by the Presidency was that otherwise reluctant individual countries can join in, since the Presidency will take all the criticism. However, a downside with a common/Presidency statement was that agreement has to be forged among a larger number of actors and the result may therefore be a weaker message. In view of the very different approaches among the EU countries, it also takes longer for the EU to react to a problem than for the US for instance. Finally, the importance of consistent follow-up to public statements and démarches was emphasised by several Missions.

In general, the NGOs contacted in the various countries were not aware of any – or only rare - EU démarches or public statements, although in Uganda, several organisations had read press reports about statements made by the Head of the ECD and one Ambassador, who had been particularly outspoken and “ruffled some feathers”. However, one NGO in Uganda believed that it was not helpful that only individual members, *and not the EU as an institution*, had been vocal on issues of torture and ill-treatments. This sent a signal to the local Government. The question was thus raised, whether the EU as an institution could not have done more? It was submitted, moreover, that only one or two Member States are really interested in this subject. According to one Egyptian NGO, there were no elements to show that there had been any pressure on the authorities by the EU with regard to the question of torture and ill-treatment. Because the EU had adopted a soft approach, the question of torture and ill-treatment was not raised directly with the authorities. The EU Presidency had made a strong statement in May 2006, but this was insufficient.

3 **EU intervention in individual cases**

In contrast to the preceding sections, which primarily deal with the generic problem of torture and ill-treatment in the seven countries, the present section will focus on EU interventions in individual cases, where a person may have been at risk of ill-treatment or an unfair trial. The question is thus to what extent, if at all, the relevant ECDs and the EU Missions have tried to use their presence and competence for purposes of preventing torture and ill-treatment in specific cases. Authority for such actions

is found in the guidelines, which provide that “[t]he Heads of Mission will have the possibility of sending embassy representatives as observers to trials where there is a reason to believe that defendants have been subjected to torture or ill-treatment”. They also specify that “[i]n well documented individual cases of torture and ill-treatment the EU will urge (by confidential or public démarche) the authorities in the country concerned to ensure physical safety, prevent abuses, provide information and apply relevant safeguards. Actions on individual cases will be determined on a case-by-case basis and may form part of a general démarche.” The information in this section will however to some extent overlap with information found in earlier sections, since diplomatic efforts at the general and specific levels are closely linked. There is also inevitably some overlapping between the various sub-sections.

3.1 Intervention before local authorities

There are no reported EU interventions in individual cases of torture and ill-treatment from *Algeria* and *Georgia*, although one Algerian NGO had asked Members of the European Parliament to intervene for purposes of obtaining the freedom of a human rights defender. It also remembered that the EU had intervened in the case of a journalist, who had been given a prison sentence. The ECD in Georgia replied that it did not have the professional capacity or mandate to make interventions in individual cases to try to ensure a persons safety or due process. On the other hand, it followed these cases and reported back to Headquarters on specific issues and was also engaged in cooperation and information sharing with organisations such as the Council of Europe and the OSCE. As previously explained, EU interventions were made with regard to some refugees in *Ukraine*, but one diplomat noted that it was not their task, as a foreign Embassy, to intervene on behalf of Ukrainian nationals. Another representative said that there had been suspected cases but that nothing was done because of lack of reliable information. The question was also asked by one Mission as to how to identify the cases where you should make interventions. In October 2005 in *Bangladesh*, on the other hand, the EU raised, through a démarche, the cases of several individual human rights defenders subjected to violence and intimidation.

In *Egypt*, several Missions had brought cases of alleged ill-treatment to the attention of the authorities such as, for instance, a case of a journalist or individuals that had allegedly been ill-treated by security forces. The EU Presidency had recently also tried to intervene in a death penalty case concerning alleged terrorists and torture, but the meeting with the authorities responsible was cancelled, because the matter was considered to constitute an interference in domestic affairs. One EU Mission had adopted the approach of not addressing individual cases, but it now believed that more should be done in this respect. The reluctance of some Missions to intervene in “ordinary” cases was clear in view of the problem of documentation and uncertainty about the eventual outcome. It was considered to be very difficult to follow all ordinary cases and to choose among them. The question was asked, as to what criteria should guide such selection? They needed specific, reliable sources, because often the Government said that the facts were wrong. Finally, there were no reported positive effects of EU interventions in individual cases, and very often the Government did not even reply.

In *Uganda*, the Human Rights Working Group can give attention to individual cases and can then in turn decide to ask the Ambassadors to intervene before the authorities. By contrast, the newly established Sub-Committee on Human Rights, Democratisation and Governance in *Morocco*, is only competent to raise individual cases by way of example. However, such cases can be invoked within the framework of the political dialogue with the government. It is not known to what extent this has been done.

Many of the NGOs contacted had not tried to obtain EU help in individual cases. One NGO in Egypt said however that it *inter alia* had asked Sweden not to extradite Mr. Ahmed Agiza to Egypt, but that they had received no answer (⁷⁰). According to another organisation from the same country, an EU delegation had come to a named village with them to look at the situation and the EU had subsequently informally raised the matter with the authorities (it does not appear what the problem in this village was about). It was believed by one NGO that a lot more could be done in individual cases that are particularly egregious. However, another organisation said that it was not their policy publicly to call the EU to act. While there was room for pressure, the role of the EU or the USA was not to act as a national human rights institution and it could even be counterproductive for human rights if international NGOs would call the EU or the USA to take public position.

3.2 Detention and prison visits

The ECD in *Algeria* had visited two prisons in connection with the presentation of cultural activities. In *Bangladesh*, the ECD does not make prison visits but has information regarding poor prison conditions and has raised this issue with the relevant authorities. In *Georgia*, the responsible project manager in the ECD makes “regular monitoring missions”, while such visits of an EU Mission take place on an “ad hoc and irregular basis”. The OSCE does however make regular prison visits and then briefs the Member States on its findings. In *Egypt*, one EU Mission underlined that they have even difficulties obtaining information about, and having access to, their own imprisoned nationals; the question of access was crucial.

One EU Mission in *Ukraine* had visited the main detention centre at one border of the country, which apparently concerned asylum seekers/migrants. Another Mission had the possibility to visit places of detention, for instance on invitation by the International Organization for Migration, but such visits had not yet been carried out. Other Missions visited exclusively their own nationals who serve prison sentences and one of them felt that they were being treated well. As previously noted, one Mission believed that it was not part of their tasks as a foreign Embassy to intervene on behalf of Ukrainian citizens. – Rather than asking the EU to intervene, one NGO in Ukraine preferred to work with, for instance, the United Nations Committee against Torture and the CPT of the Council of Europe.

⁷⁰ For more information on this case, see Chapter VII.

In *Uganda* one diplomat noted that there was an open dialogue with the authorities and that she was able to meet with prison chiefs, for instance. She could also visit places of detention, adding however that it would not be useful to do so unless such visits would have a value-added. One NGO explained that one EU Ambassador had visited an imprisoned person who had been tortured, and that the health of the person concerned had then improved.

3.3 Trial observation

In August 2005, EU representatives in *Bangladesh* attended a successful bail hearing concerning one of the three human rights defenders in whose favour a démarche was also made in October 2005 (see *supra*, sub-section 3.1). In *Uganda*, European Governments recently observed the trial of the opposition leader, Dr Kizza Besigye. The authorities were informed that the EU was there to ensure that Dr Besigye got a fair trial. He was released on bail in January 2006, although his 22 co-defendants were not. Dr Besigye was still free as of mid-April 2007, but some charges are still pending against him. Some of his 22 co-defendants have subsequently been granted amnesty or been freed on bail, while others were recently granted bail although immediately rearrested on fresh charges when security agents raided the High Court. Following this incident, Ugandan judges went on a weeklong strike to defend its independence and the rule of law⁽⁷¹⁾. It is not known to what extent EU Missions have continued to actively support the independence of the judiciary and the rule of law in this case.

EU diplomats have followed trials in some well-known cases in *Egypt*, such as the trial of the politician Mr. Aiman Nur, the trial following the 2004 Taba bombings in Sinai and the Queen Boat trials. It was submitted by one Mission that such access would have been impossible a few years ago. The view was expressed that it was a question for the Presidency or the ECD to intervene when there is interest in a trial for policy reasons, but that it must not necessarily deal with torture. A problem was, however, that in many cases the trials are not open, in particular if the proceedings have been instituted under the emergency law. With regard to ordinary cases, the situation was also considered more problematic, since the documentation is not always solid and you cannot be sure what effect the intervention would have on the person or persons concerned. - Some organisations regretted that the EU had not attended trials in ordinary cases.

In *Ukraine* the EU Missions had not in general engaged in trial observation, although one representative said that they followed cases involving their own nationals. According to another diplomat, the problems facing the Missions were in this respect a lack of both specific information on cases and human resources. The EU actors in *Georgia* were not aware of any EU actions in this respect. Without providing any details, one NGO stated however that it had asked the EU to intervene in individual cases and that sometimes it had attended trials.

⁷¹ For information on this case, see, e.g. <http://news.bbc.co.uk/2/hi/africa/6436671.stm>, <http://news.bbc.co.uk/2/hi/africa/6422435.stm> and <http://allafrica.com/stories/200703040015.html>.

The majority of the NGOs contacted had not asked the EU to send observers to trials of persons at risk of torture.

4 Safeguards against abuse, domestic remedies and compensation

Among the actions that “the EU will urge third countries to take” are, according to the guidelines, (i) to allow domestic procedures for complaints and reports of torture and ill-treatment; (ii) to provide reparation for the victims of torture and ill-treatment and their and their dependants; and (iii) to allow domestic visiting mechanisms to places of detention. This section will to some extent explore the situation in the seven countries with regard to these issues and to assess the result of the contribution, if any, of the EU. However, for lack of detailed information, care is advised in drawing conclusions with regard to the EU assistance in this particular field.

The ECD in *Algeria* had not provided any support to national actors for the creation or functioning of effective *domestic remedies* to deal with complaints of torture and ill-treatment. It noted, however, that some *compensation* had been paid to families who were victims of *disappearances* during the decade of terrorism. – According to the NGOs concerned, the Government had not paid compensation to victims of *torture*, but these organisations had not approached the EU to try to get help in this respect. Complaints concerning past human rights violations were moreover said to be impossible following the adoption of the amnesty law. Although it was foreseen that families of disappeared persons/victims of terrorism would be compensated, the procedure was very heavy, complex and restrictive, with the result that most families received nothing. The NGOs were not aware of any EU initiative to help improve the protection of persons deprived of their liberty. According to one organisation, it was rather the contrary; even during the height of the civil war, the EU had not done much, just made “timid declarations”.

In *Bangladesh*, a multi-sectorial programme on “Combating Violence against Women” is being implemented by the Government since 2001 with Danish support. The programme aims at redress and prevention of violence against women on the basis of a coordinated inter-ministerial approach. It provides legal assistance and other services through civil society organisations. Sweden is also supporting two organisations respectively called Ain o Salish Kendra and Bangladesh National Woman’s Lawyers Association, both of which work particularly with women and children who are victims of domestic violence but also violence by authorities and degrading treatment in so called “safe custodies”. Their activities include legal aid. The EU had also raised with the authorities the need for the country to implement fully its commitments under the CAT and to ratify the OPCAT, which would ensure scrutiny of places of detention. With regard to the question whether the Government pays compensation awarded to victims of ill-treatment, it was impossible to confirm that such payments take place “as a matter of course”. - The NGOs consulted were not aware of any EU support to create domestic remedies to deal with complaints of torture and ill-treatment. With regard to compensation awarded to victims of torture and ill-treatment, the NGOs submitted that

the Government does not pay such compensation, and that they had not tried to enlist EU help in this respect.

The question of damages awarded to victims of torture and ill-treatment was reportedly a sensitive issue to raise with the authorities in *Egypt*, although discussions were now somewhat easier in private. An analysis of the replies submitted by Egyptian NGOs show that it is sometimes possible for victims of torture and ill-treatment to get compensation by bringing civil proceedings, but that it is more difficult to have criminal proceedings brought against perpetrators of ill-treatment, although it occasionally does happen. Complicating the matter is the existence of the emergency law, which modifies the competence of the ordinary courts. One organisation said that it brings many cases for compensation to the courts, because the money helps the victims' families to survive. Another organisation said that the Government pays "more or less", although also admitting that there is problem in this respect; it had no contact with the EU on this matter.

In *Georgia*, a UN organisation explained that the EU had been the main partner of the Ministry of Justice in drafting an action plan on the implementation of the Strategy on Criminal Justice Reforms, which, if approved, would comprise various types of monitoring and investigation procedures on human rights violations, including in cases of torture and ill-treatment. However, according to the ECD, no sustainability had been achieved with regard to the *monitoring of places of detention*, as monitoring bodies had been created and abolished one after the other since Georgia had become a member of the Council of Europe. Yet, each of these bodies had contributed to opening up the closed prison system to wider scrutiny and it had in that sense been successful. A reason for the weak sustainability of the mechanisms was the lack of both technical expertise of the monitors and appropriate funding. Following the ratification of OPCAT by Georgia, a national monitoring mechanism must be established by June 2007, a process that is closely followed by the ECD, which also supports in this respect relevant stakeholders such as the Ombudsman's Office, the local civil society and international actors, such as Penal Reform International (PRI) and its partners. The question of *remedies* had reportedly been addressed in connection with bilateral technical assistance and also under an EIDHR funded project, the results of which were mixed due to a lack of governmental cooperation with the NGO concerned. - With regard to *visiting mechanisms* it was noted by one organisation that there is an independent council for visiting prisons that has been working closely with the PRI. On the question of *compensation*, the NGOs agreed that such payment is not paid in practice, and a case concerning this issues has therefore been submitted by one of them to the European Court of Human Rights.

In *Uganda* one overarching problem is the Government's refusal to pay *compensation* awarded by the UHRC. In 2005, for instance, the Commission Tribunal heard 22 cases of alleged torture, 17 of which were proved, with the Tribunal awarding 132'278.000 Ugandan Shillings to the victims concerned (⁷²). The majority of cases were against Government officers and, as stressed by the Commission, one of the

⁷² See the 8th Annual Report 2005 to the Parliament of Uganda by the Uganda Human Rights Commission, pp. 56-57.

“biggest challenges” of enforcing the prohibition of torture in the country is that the perpetrators thereof are not personally penalized for their actions, which would have acted as a deterrent measure⁽⁷³⁾. It suggested, therefore, that the law be revised so as to decentralise liability in cases of human rights violations; such change would enhance the discipline and accountability of the public officials who torture⁽⁷⁴⁾. Although the Commission could not report on the number of complainants paid by the Attorney General during 2005, it noted that “if there was any payment at all, it was negligible given the past trends of performance in honouring Awards by the Attorney General’s office”⁽⁷⁵⁾. It is not known to what extent this issue has been raised by the ECD or the EU Missions with the Government concerned. - With regard to *prison visits*, the UHRC regularly inspects prisons, including at the local level. No prior notice is needed with the exception of army prisons, in regard to which a 24 hours’ notice is required. Also various other NGOs are able to visit places of detention, although having to give prior notice. Judges were said to have the right to visit prisons any time, but it is not known whether they do so.

Without providing details, one EU Mission stated that there was very intense cooperation with *Ukraine* in the field of judicial reform, including much bilateral cooperation. Another Mission emphasised however that, because of the corruption in the country, there was no real protection against torture and ill-treatment. In a similar vein, one NGO stressed that it was very difficult to obtain *criminal convictions* of perpetrators of ill-treatment. This was so because of the corrupt court system, which was closely linked to the Government; it would therefore be helpful to have a more independent judiciary. Another NGO had very positive results of the mobile groups that had been created in the Kharkiv region to monitor places of detention, but another NGO emphasised the need for more EU support in this respect. The project of mobile groups had come from a Council of Europe programme based on the UK system of prison monitoring. Several actors expressed their expectations with regard to the monitoring of prisons following Georgia’s ratification of OPCAT. – With regard to detention facilities it was noted by the UNHCR that there were less reports of ill-treatment in Ukraine in 2006 than in previous years and that, thanks to the joint intervention of their own office and the ECD, the person in charge of the facilities had been changed.

With respect to *Morocco*, it was stressed by a few local stakeholders that there were now some cases of successful prosecution of law enforcement officers. However, several actors stressed the urgent need to deal with the situation in the police stations, because if there is no control, and you are not required to give an account of what happens, the result is impunity. As will be seen below, the United Kingdom has financed the work of a local organisation to help it develop a strategy on how to handle complaints from prisoners by a mechanism set up for that particular purpose.

⁷³ *Ibid.*, p. 58. The Commission also considers cases of torture and ill-treatment committed by private individuals.

⁷⁴ *Ibid.*, *loc. cit.*

⁷⁵ *Ibid.*, pp. 62-63.

5 Training

The guidelines provide that “the EU will urge third countries” to provide effective training of law enforcement officials, military personnel, civil and military medical personnel, the judiciary, prosecutors and lawyers. Governments should also “ensure that training programmes for law enforcement personnel include training on the prevention of violence against women, on the rights of the child and on discrimination on such grounds as race and sexual orientation”. During the last years, training has become a favourite awareness raising activity and it has received much support from the EU. However, has the training made a difference? Has it had a visible impact on the situation of torture and ill-treatment in the seven countries?

According to the ECD in *Algeria*, EU projects financed by the EIDHR and MEDA⁽⁷⁶⁾ to support the penal and penitentiary system and to promote reform of the police, partly contained human rights training for the professional groups concerned. – All NGOs knew that the EU had financed training for law enforcement officers and various other groups, such as health professionals and NGOs, and one organisation considered that the training had succeeded in transmitting new knowledge and had sensitised the participants to the problems of torture. A second organisations did not know what the result of the training was, and a third organisation stressed that the results thereof were not visible, adding that, if there was a decrease in human rights violations, it was not because of any EU action.

The ECD and some EU Missions in *Bangladesh* had promoted or financed training for, among others, law enforcement officials, civil and military medical health professionals, public officials in various ministries, NGOs, journalists and teachers. The training was said to have facilitated the process towards increasing professional ethics among the people concerned, and also to have made them more sensitive in dealing with, for instance, women who are victims of violence. A project carried out by a Swedish NGO concerned training of the police in the rights of the child and aimed at sensitising judges and prison personnel on how to approach children. – Only one of the NGOs contacted was aware of EU supported training of law enforcement and public officials as well as NGOs; in its view this training had been successful.

The usefulness of training was to some extent controversial in *Egypt*. On the one hand it was emphasised that, because of the sensitivities involved, the training had to be based on *dialogue*, like the UNDP’s human rights capacity building projects, with training for, in particular, judges, prosecutors, the police and prison personnel. The training for police also included investigative techniques. Denmark, the Netherlands and the United Kingdom were among the financial contributors to the UNDP training, which was intended to be widened to more people within a wider geographical scope and also include universities and other schools. The EU was said to have promised to finance the new phase of the project, which had not yet started as of September 2006. It was considered to be a long process to change peoples’ mind, but the positive effects of

⁷⁶ MEDA is the principal financial instrument of the EU to implement the Euro-Mediterranean Partnership.

the training programme was the strong partnership with the Government, which wanted to continue the cooperation. One EU Mission insisted on the importance of training as a means of changing mentalities and practice; the situation did not only depend on political leadership, which people in the country would change by themselves. France had participated in training of police officers and law enforcement personnel (anti-riot) on deontology and human rights (psychology of the masses) and it believed that this should be renewed. Finally, Finland had provided support to NGO training and education. According to officials in the Ministry for Foreign Affairs, EU funds had been secured to train more than 10.000 police officers and judges until 2009.

The views expressed by the NGOs were significantly less optimistic as to the impact of the training. As stated by one organisation, the UNDP training was the comfortable zone for everybody. Another organisation considered that the UNDP training was good until the relevant ministry began to choose more academic people for the training, people having no knowledge about the human rights situation; then the project became very bad. On the other hand, one organisation believed that training was very good in particular for judges, since their action is more efficient than that of the police. Several NGOs underlined, however, that the problem with torture and ill-treatment in the country was not training but systematic policies and a lack of political will to stop brutalisation; consequently, unless there were structural changes, training would not change the situation. Moreover, the persons who were trained were also the ones responsible for torture; although it helped, training was not enough. Finally, one organisation considered it to be important also to include NGOs in the training and not only public officials.

According to the ECD in *Georgia*, the EU had promoted or financed torture prevention training to key professional groups, and this training had resulted in substantially raised awareness within Government and civil society. However, a challenge for this type of training, and the sustainability of the results, was the high rate of turnover of staff in the relevant services. – According to one NGO, training was successful in general; their own training of health professionals had been “very successful”, because professionals gained “torture specific knowledge and skills which made many aspects of their work more successful”. However, another organisation’s assessment of training was not “very optimistic”; in its view it simply served no purpose unless the Government had set the right priorities. Yet another organisation said that some training was successful, but that most of it was organised in the capital and not in the regions or with regional representatives. An official from the Council of Europe suggested that some groups in Georgia were over-trained.

The need for training/sensitization of the police, prison personnel and judges was emphasised by several actors in *Morocco*. One EU Mission suggested that EU Member States could sponsor such activities. - Two interesting human rights education projects for students and teachers at the *lycée* level have been and are sponsored by Finland and Norway, but the relevant NGO has difficulties obtaining funding for the intended implementation of these projects in all regions of the country; as of October 2006, it had only received funds for training in two regions, although the money required is

comparatively reasonable. Yet, this kind of human rights education, which aims at raising awareness among the public, could also contribute to sensitisation of the prohibition of torture and ill-treatment.

Uganda has for some years been the focus of much training of both police, prisons and other state officials, medical doctors and NGOs. As pointed out by one OHCHR official, people may even be over-trained in some areas. Part of the EU Human Rights Programme in Uganda has been training for prison officials, and the reported intention of the ECD was to continue with this training, while also trying to link it to other gaps that had been identified in the prison administration, such as overcrowding. Following an important reorganisation of the central and local prison administrations in Uganda, training is now foreseen for local officials so that they will have the same knowledge as their colleagues at the central level, where much training had earlier been carried out by various actors. It is expected that some EU support will be provided for this training. An example of training funded by European Governments is, for instance, the seminar held in Entebbe in January 2004 on “State Party Reporting by Uganda to the UN Committee against Torture”. The IRCT implemented this project with the financial support of the Danish Embassy in Kampala (USD 50,000) and the International Commission of Jurists (ICJ) and the ATP provided legal assistance in connection with the seminar. Subsequent to the seminar, the Government of Uganda submitted its initial report under the UNCAT, a report that was 16 years overdue.

According to one EU Mission, the ECD in *Ukraine*, had opened a programme on training but there was a lack of response from the Government. A Government official was however aware of recent training programmes sponsored by the OSCE and the British Council. - One NGO had organised more than ten training seminars for judges within the framework of an EU financed campaign (2003-2006). This experience had proved to be “extremely productive” in conveying knowledge about European standards and finding an acceptable form for their application in domestic practice. The training had also allowed them to create a network of lawyers involved in strategic litigation. In the view of one NGO, the situation with regard to torture and ill-treatment in Ukraine is very complicated and it was too simple to believe that training and money to the police would solve the problem; it would not. You need different help because detainees are forced to sign confessions because of old habits. The authorities ask for a certain percentage of solved case, and this leads people to torture. However, an official from the Ministry of Justice argued that the most important part of cooperation with the EU would be the reform of the penitentiary system, including the training of staff, and the development of skills to implement European and UN conventions. Furthermore, the relations between staff and prisoners should be improved. Finally, one organisation stressed that there were also political obstacles to change, and that without political will, no educational activities would really be successful.

Some actors in the seven countries mentioned training as a positive example of EU action to prevent torture and ill-treatment.

For an EIDHR macro project on training for medical health and legal professionals, implemented by the IRCT in several countries, see section 8 *infra*.

6 Financial and technical assistance

On the basis of the guidelines the EU undertakes, *inter alia*, (i) to “offer joint or bilateral co-operation on the prevention of torture and ill-treatment”; (ii) to “support public education and awareness raising campaigns against torture and ill-treatment”; (iii) to “support the work of relevant national and international NGOs to combat torture and ill-treatment and maintain a dialogue with them”; and (iv) to “continue to fund projects undertaken to improve training of personnel and conditions in places of detention”. The assistance provided by the EU and some of its Member States to human rights projects in a large sense is considerable. However, this section will only provide selected examples of EU financial and technical assistance to projects that directly or indirectly aim to prevent or eliminate torture and ill-treatment in the countries covered by this study. *It is emphasised that these are examples only, and that other relevant projects most likely exist, although they have not been brought to the attention of the consultant.* Assistance to particularly vulnerable groups and rehabilitation centres will be dealt with separately.

6.1 Examples of financial and technical assistance

The ECD in *Algeria* had not co-financed any projects in the field of torture and was not aware of any EU funded projects that had contributed to the implementation of the guidelines in the country. It had, on the other hand, financed various projects to assist *vulnerable groups* (see *infra*, sub-section 6.2). - The replying NGOs could not cite any example of effective EU action in this field. Further, none of them had received any financial help from the EU; two of them had seen their demands refused by the EIDHR, although one of them at a very late stage, when they believed that the project had been approved.

According to the ECD in *Bangladesh*, EU supported projects are aimed at improving the justice system, including police reform. There is also specific anti-torture support, embracing funding under the EIDHR for a torture rehabilitation centre. Projects in this field were also eligible under a recent EIDHR call for proposals, the result of which was still being processed last November; this exercise would be repeated annually, with around 500,000 Euros available under the call.

In *Egypt*, most of the EU donor activities were said to be carried out with the UNDP, which had the expertise and good diplomatic relations with the Government. Micro-projects, which were also having torture as a priority, were in the course of selection at the time of the expert’s visit ⁽⁷⁷⁾. With regard to the ECD programme with the Government for 2005-2006, €5’000.000 had been allotted for projects concerning human rights and democratisation, and a convention had been signed to finance the following

⁷⁷ So called ‘micro-projects’ will in the future be called ‘country-based support schemes’. The term ‘micro-projects’ has been retained in this study to the extent that it concerns older projects.

three pillars of activities: (i) support to the National Council for Human Rights (CNDH) for the creation of an Ombudsman, including mobile units that could travel to regions to do advocacy and collect complaints; (ii) continued support to the National Council for Women; and (iii) support to two UNDP projects on human rights capacity building and the creation of a federation of NGOs.

In 2005, Egypt was not among the EIDHR priority countries and the ECD was therefore free to choose the themes. However, due *inter alia* to procedural problems in connection with their first calls for proposals, it had not been possible to spend all the money. Among the projects approved was one on the treatment of prisoners and legal assistance to one NGO, and this had stimulated other organisations and was evidence of a certain opening. In general, however, EU funding to NGOs did not specifically and directly appear to concern torture. One EU Mission had not had any local budget free for use for NGO projects in recent years; Egypt was too rich, but interest was growing. – The aforementioned NGO, that received funding from the EU for *inter alia* legal advice to prisoners, was comfortable with the idea of submitting applications for funding, and trusted the procedure and evaluation made. The EU had supported them for many projects, including the training of lawyers. However, another NGO did not even want to ask the EU for financial help.

The ECD in *Georgia* explained that technical assistance had for years been provided to improve the management of places of detention (staff and prisoners) through different instruments, including substantial bilateral assistance; it had, for instance, refurbished one prison in the country. Assistance had also been provided to the development of a criminal justice reform policy and implementation action plan, resulting *inter alia* in significant increase in budget allocation to this sector and raised awareness of international standards and best practices. Among relevant EU financed programmes (EIDHR macro or micro projects) ongoing in 2006 were:

- “*Rule of Law for Justice in Georgia*”: Georgian Young Lawyers Association (GYLA); €300.000; the project is aimed at promoting institution-building for rule of law and good governance and includes, *inter alia*, the provision of free legal aid for the most vulnerably population, especially for victims of abuse through law enforcement agencies; it will also promote better access to justice and institutionalisation of a state free legal aid system and increase professionalism and knowledge of human rights of police and the Office of the Prosecutor General, etc.;
- “*Support to the rule of law: Promoting behavioural change among the public and the police forces in Georgia*”; Association of legal and public education (ALPE); €686.395; the projects aims to change the behaviour of law enforcement bodies and increase their respect for human rights;
- “*Improved law-enforcement system and right protected citizens*” (*sic*); Regional Centre of Legal Information and Human Rights Protection; €76.620; aims at

improving the law enforcement system in Adjara and the protection of human rights.

The ECD in Georgia was moreover financing a judicial reform project with the Council of Europe as the implementing agency; this project amounted to a total of €14'000.000.

It was noted that the new Government had a low prioritisation of human rights. – One NGO, that had received EU funding for a project concerning sensitisation, legal aid and court representation of victims of human rights violations, cited the reform of the penitentiary as an example of an *unsuccessful* EU project.

In *Morocco*, the work of the ECD was increasingly based on the Action Plan and support was given to (i) prevention and rehabilitation, (ii) human rights in general and (iii) to the Justice and Reconciliation Commission. The ECD received about €1'000.000 annually for micro-projects of up to €100.000. The ECD also expressed its interest in financing a project on prison conditions with the PRI. Furthermore, in the future EC programme, there would be a section concerning the Ministry of Justice and prison conditions. Apart from the projects relating to vulnerable groups that will be considered in the next sub-section, the following three recent EU financed projects (MEDA and EIDHR; 2005-2006) could possibly have an indirect long-term positive impact on the prevention of torture and ill-treatment in the country:

- “*Programme d’appui au plan national en matière de démocratie et droits de l’homme*”: Centre de Documentation, d’Information et de Formation en Droits de l’Homme (CDIFDH); purpose is to elaborate a human rights National Strategy as well as an Action Plan with a follow-up procedure; €2'000.000;
- “*Activités pour la réforme judiciaire au Maroc*”: ADALA, €69.545; object is to strengthen the professionalism of the actors of the Judiciary in the field of follow-up to legal reform by strengthening the capacity of civil society and to make recommendations and advocate for the application of priority reforms;
- “*Renforcement des capacités institutionnelles de l’ Organisation*”: Organisation Marocaine des Droits Humains (OMDH); €90'000.00; object is to strengthen the investigative structures, fund-raising, follow-up, distribution of information in favour of the protection of human rights etc. by providing training to the members on international human rights instruments and mechanisms.

The United Kingdom Mission in Morocco has for several years been closely involved in penal reform issues. The following projects are particularly relevant for purposes of this study:

- a project implemented by the Observatoire Marocain des Prisons (OMP) and which comprised the following activities: (i) the creation of a functioning structure for an independent centre to receive prisoners’ complaints including

- hiring of personnel; (ii) the development of a legal guide on different complaint mechanisms available to prisoners; (iii) the holding of four workshops on human rights and best practices for three groups of 20 prison governors and warders in collaboration with the Central Prison Administration; the prison chiefs learnt how to run the prisons by also taking human rights into consideration; an evaluation of this project was ongoing during the consultant's visit to the country; the legal guide referred to is in the process of being finalised;
- “*Moroccan prison reforms: reinforcing strategic management capacities for key staff at headquarters and prison levels and improving respect for prisoners' rights*” (2005-2007); £332.464; the project aims at developing and introducing strategic management for the implementation of human rights into the Central Prison Administration both at headquarters and regional level; experts from the International Centre for Prison Studies *inter alia* provide a mixture of hands-on practical training, locally and in the United Kingdom;
 - “*Strengthening Morocco's Judicial and Administrative Reforms*” (2005-2006); £64.880; the project guided the Ministry of Justice through the setting of the infrastructure needed for the implementation of an Alternative Dispute Resolution (ADR) mechanism in Morocco; four workshops were held and one visit to the United Kingdom had been arranged for Moroccan judges selected by the Ministry to act as champions of ADR introduction in Morocco; a Bill on Mediation was expected to be promulgated last year;
 - a project involving PRI (2002), which held a series of training seminars on minimum rules for the treatment of prisoners for prison health staff and warders in juvenile detention centres, with the Minister of Justice attending the health training closing session (1'300.000 dhs).

A manual entitled “*Gérer les prisons dans le souci du respect des droits de l'homme*” (“*A Human Rights Approach to Prison Management*”), published by the International Centre for Prison Studies with the financial help of the United Kingdom Foreign & Commonwealth Office, was used in connection with the projects to introduce new management strategies in the Moroccan prisons (⁷⁸).

Several actors in Morocco agreed that the situation in prisons had improved in the last few years, but that, due to serious overcrowding, they are administered on a crisis basis. There was also agreement among several actors that it is easier to make progress in the field of women's rights and the rights of the child than in other more sensitive areas, such as torture and ill-treatment. The list of recent MEDA (2) and EIDHR (22) projects in Morocco would seem to confirm this view. Of these projects, one was for a rehabilitation centre and none explicitly dealt with reforms of the law enforcement agencies, for instance. One organisation said that, apart from the United Kingdom, no EU Mission had done anything with regard to the question of how to solve conflicts between prison

⁷⁸ This manual exists in several languages, including Arabic, English, Russian and Spanish and can be downloaded from the ICPS website: <http://www.kcl.ac.uk/depsta/rel/icps/publications.html> .

guards and detainees. By learning better techniques of communication, the prison guards would however be the first ones to benefit from better relations with the inmates. One diplomat noted however that Morocco had not been cited as a country that should be a priority in respect of torture. Anyway, it was important to arrive at changes by conviction and not by pressure.

Several NGOs in Morocco pointed out that the EU did not want to deal with torture and that their relations with the EU were not as good as they had been. They were going through “a lean period” and got no money from the EU for their activities. Something did not work any more, but they could not understand the reason for this. Although the EU wanted to appease governments, this was not a reason for being too weak. The European States had been much more interested to help the civil society during the 1980s, but now they did not seem to be interested; they were rather interested in supporting projects for development and the rights of women. It was important that the projects come from within the country, but they still needed external support, not only financial but also strategic help.

Both donor coordination and coordination between donors and the Government was said to be good in *Uganda*. In 2004, more specifically, a report was commissioned by the Uganda Prisons Service in conjunction with the EU to identify human rights violations in prisons including their possible causes as well as to generating a set of recommendations on how these violations could be addressed. As stated in the 2004 *Final Baseline Survey Report*, the aim of the programme was to integrate human rights in Uganda Prisons Service. The following causes of violations of prisoners’ rights in Uganda prisons were identified: infrastructural causes; resource related causes; inadequate staff training; community bias towards imprisonment and exogenous constraints (work of police, judiciary, army etc.). The ECD explained that they would try to help out on some of the issues identified, but not on all, but that they would continue with the training programme and possibly also invest some money into improving prison conditions. For the period 2006-2009, the EU Human Rights and Good Governance Programme in Uganda has a total funding of €7’000.000 to improve the capacity of Ugandan institutions to ensure respect for human rights, the rule of law, access to justice as well as to increase awareness of Ugandan citizens of their human rights. The programme will *inter alia*, support access to justice and include questions such as legal aid, police, prisons and gender based violence.

Some EU Member States are supporting projects that can have a positive impact on the prevention of torture and ill-treatment. For instance, DANIDA (the Danish Development Agency), SIDA (the Swedish Development Agency), Ireland, the United Kingdom, the Netherlands, Austria and the EU are providing financial, logistical and technical support to the activities of the Uganda Human Rights Commission (UHRC), which handles numerous complaints concerning torture and ill-treatment. There is a special donor Basket Fund in Uganda concerning the UHRC and administered by DANIDA. As previously noted, however, the failure of the Government in most cases to pay the compensation awarded by the UHRC undermines the effectiveness of its work. There is also a Basket Fund supporting in particular the African Centre for Treatment &

Rehabilitation of Torture Victims (ACTV); this Fund is led by Irish Aid (for more information on the Basket Funds, see sub-section 6.4 *infra*).

The ECD in *Ukraine* replied that it had numerous micro-projects of up to €100 000 for initiatives relating to violence, trafficking and access to justice. Some of these micro projects involving awareness-raising activities, could in the end indirectly contribute to the prevention of torture and ill-treatment. During the last years, it had also had campaigns against torture and ill-treatment financed within the framework of the calls for proposals (EIDHR macro project). Directly related to this study is the following project:

- “*Campaigning against torture and cruel treatment in Ukraine*” (2003-2006); Kharkiv Human Rights Protection Group; €685.026; among the target groups of this projects were law enforcement agencies, judges, lawyers, medical health professionals and human rights activists, while the direct beneficiaries were suspected and accused persons in criminal proceedings and detainees under police custody.

It was noted that there was intense bilateral technical assistance for purposes of reforming the justice system *inter alia* in order to improve security against torture and ill-treatment; the assistance also concerned reforms of the criminal law, so as to adapt it to European standards. Sweden was thus financing a prison system reform project that runs from 2005 to 2008. This project aims to achieve a reconsideration of the purpose and use of imprisonment on the scale it has been used so far and to continue the introduction and development of alternative measures to imprisonment; a second purpose is to train personnel at all levels in common values and behavioural rules in conformity with the recommendations of the Council of Europe. The project is implemented by the National Swedish Prison and Probation Administration and SIDA contributes with 4’058.000 Swedes crowns. Some of the support to judicial reform, such as the independence of the judiciary, is however channelled through the Council of Europe on the basis of a partnership with the EU (⁷⁹). During 2004 and 2005, several training seminars and meetings concerned the deontology/ethics of the police and more training sessions for judges on the European Convention on Human Rights are foreseen during 2007.

The organisation that received financing for the project “*Campaigning against torture*” said that it had also received ECD contributions for a three year project to enable lawyers to prepare cases to the European Court of Human Rights. As noted by another NGO, the European Court of Human Rights always inspire them. More EU assistance would be welcomed by the national human rights institution in the country, which emphasised that they have much contact with the Council of Europe and the CPT. They were now also in the process of implementing OPCAT, which was ratified in September 2006, and the hope was expressed that the EU would support this process. One organisation pointed out that torture and ill-treatment was the most difficult issue to solve, but that a disproportionate amount of donor money goes to other issues, such as freedom of expression, which was no longer a problem.

⁷⁹ See Council of Europe website: <http://www.jp.coe.int/CEAD/Countries.asp>

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Several smaller EU Member States in different countries pointed out that they did not have enough personnel and funds for local projects/bilateral actions, while they might join EU actions. One UN organisation noted that most donors prefer bilateral cooperation, but in the UN they prefer a coordinated approach, because they have all the control of the spending of money, such as monitoring, evaluation, anti-corruption checks and final auditing. To channel funding through them, would secure an effective costs/benefits approach.

6.2 Assistance to vulnerable groups

According to the guidelines, the EU will, *inter alia*, “urge” third countries to take measures to “establish and implement standards and measures relating to women, children, refugees, asylum-seekers, internally displaced persons, migrants and other groups requiring special protection against torture and ill-treatment”. The question of vulnerable groups has been raised in the course of this study to the extent that assistance to such groups may promote the prevention and elimination of torture and ill-treatment. However, given the short missions and the lack of cooperation in some countries, the analyses does not reflect all the often rich work sponsored by the EU in this regard in the countries concerned. Of course, persons deprived of their liberty are particularly vulnerable, but support to this group has been dealt with in other sub-sections. This sub-section will therefore provide examples of the many projects financed by the EIDHR and EU Member States for the benefit of *other* vulnerable groups.

The ECD in *Algeria* has financed, or is financing, the following relevant programmes:

- “*Anima – programme pour les victimes de violence terroriste*”; CLEF Insertion; €520.448; 2002-2006;
- “*Soutien au système pénal et pénitentiaire algérien*”; PRI; €833.450; 2002-2005;
- “*Femmes pour l’initiative des droits de l’homme et la démocratie en Algérie*”; RACHDA; €49.971; 2005-2006;
- “*Défense des droits des Femmes et des Enfants à l’identité*”; BNAT N’SNOUMER; €90.655; 2005-2008;
- “*Solidarité avec des femmes victimes de discriminations et de violences*”, AFEPEC; €66.363; 2005-2007.

The European Community Humanitarian Aid department (ECHO) has also provided assistance to refugees in the camps at Tindouf. - The NGOs consulted were not aware of any EU action in favour of vulnerable groups in the country.

The ECD in *Bangladesh* had “important initiatives in many of these areas”, but could not provide an exhaustive account thereof. Examples of programmes and actions include:

- funding for major projects on birth registration and adolescent reproductive health with UNICEF; birth registration is instrumental to realising the rights of the child;
- vocal EU support to the rohingya refugees who are housed in camps in very difficult conditions; the EU is also a major source of funding support for services delivered by the UNHCR in the camps; the EU also “regularly” raises the plight of the refugees with the Government and is “fully involved” in efforts to resolve the situation humanely;
- principal financial support to UNDP’s Chittagong Hill Tracts Development Facility and support to bilateral initiatives; this support is accompanied by “intense efforts” to convince the Government to implement the 1997 Peace Accord in order to secure the rights of indigenous communities; last November, the EU Heads of Mission were also scheduled to make a joint visit to the relevant region to examine issues of concern; EU action in June 2006 (letter to Foreign Secretary) also reportedly helped forestall action to undermine key provisions of the legislation protecting indigenous communities; €23’500.000 ;
- project for the “*Support for Victims of Violence*”; €139.079;
- project on “*Advocacy to Combat Trafficking in Women and Children*”; €187.759;
- project on “*Asserting the Human Rights of Brothel Children and their Women in Prostitution (WiP) Mothers*”; €517.896 ⁽⁸⁰⁾.

The Danish Embassy has financed a multi-sectorial programme on “*Combating Violence against Women*”, which is implemented by the Government of Bangladesh since 2001 with its support. This programme aims at improving redress and prevention of violence against women through a coordinated integrated inter-ministerial approach. It also provides legal assistance and other services through civil society organisations. Sweden has in particular supported two organisations working specifically with women and children who are victims of domestic violence, and also victims of violence committed by authorities and degrading treatment because of so called “safe custodies”.

The ECD in *Egypt* had recently supported refugees and street children. In addition, the mainstreaming of women’s issues was very present in their work. Examples of EU projects to improve the situation of vulnerable groups are:

⁸⁰ See <http://www.eudelbangladesh.org/en/projects/goverdemochr.htm>

- programme amounting to €20'000.000, signed in 2004, aimed “to improve the living conditions and the prospects of social re-integration of the most economically vulnerable and socially marginalised groups in the Egyptian society and to enhance the capacity of NGO’s (*sic*) to contribute effectively to social development”; the programme purpose was to improve the social situation of “children at risk” needing “urgent support”, such as street children, disabled children, working children and girls at risk of female genital mutilation (FGM); the purpose was also “to contribute to the facilitation of girls’ access to education by providing assistance to the national action plan for girl’s (*sic*) education”⁽⁸¹⁾;
- a project financed by the Netherlands on FMG through the UNDP;
- a United Kingdom program on vulnerable groups and support for the creation of an Ombudsman in the National Council for Women, who would be the recipient of complaints from women anywhere in the country;
- in 2005, a French judge for children and legal protection had during one week trained Egyptian judges in alternatives to imprisonment (non-custodial measures).

Ireland had micro projects with NGOs but focused on larger areas where they could make a difference, such as on women’s health and empowerment, rather than on human rights issues in the strict sense. One EU Mission had no knowledge of any EU support to vulnerable groups in the country, and a couple of EU Missions had no budget for bilateral projects. – One organisation said that, thanks to EU support to NGO work, the situation of women in prisons had greatly improved. The view was however also expressed that EU help to vulnerable groups was very low, and that assistance to religious minorities was unheard of. The EU had reportedly spent large sums on factories in the countryside, but there were allegedly no positive results with regard to the farmers’ conditions. It was also noted that the EU had become the most important provider of financial support and was now more visible. However, it was still a governmental body and hence there were limits as to what it could do. Further, the administrative burden excluded many NGOs from EU support.

In *Georgia*, a number of projects, mostly under the EIDHR micro-project facility, had addressed the specific problems of vulnerable groups. In 2006, more particularly, one such project implemented by the Association of Women in Abkhazia, supported the promotion and protection of the rights of vulnerable groups in Abkhazia⁽⁸²⁾. The Netherlands, for its part, had supported a prison monitoring project by a local NGO in Armenia and was *inter alia* considering funding a torture prevention project in Georgia and Armenia. In the next place, SIDA of Sweden had financed domestic violence related projects through the UNDP Gender and Politics project in the same countries. The UNHCR collaborated with the EU *inter alia* on the reintegration of returnees to one of

⁸¹ See http://www.eu-delegation.org.eg/en/eu_funded_programmes/programmes3.htm

⁸² See <http://www.delgeo.ec.europa.eu/en/programmesactions/Project%20list%20March%202006.xls>

the break-away regions in South Ossetia, and was aware of EU assistance to Internally Displaced Persons (IDPs), for instance, while the OHCHR knew of at least two projects aimed at vulnerable groups, that is, one concerning the development of monitoring mechanisms for closed psychiatric institutions and the promotion of rights of persons with mental disorders, and a second concerning juvenile advocacy and development. – NGOs in the country noted that EU had provided assistance to projects to support women, including violence against women and trafficking, children, ethnic minorities, IDPs and refugees.

As previously noted, in *Morocco* it is generally considered to be easier to make progress in the field of women's rights and the rights of the child than in other more sensitive areas. The list of MEDA and EIDHR-financed projects for 2005 and 2006 in the country contains, among others, the following projects for vulnerable groups:

- “*Appui aux actions de réparations en faveur des régions touchées par les violations des droits de l’homme*”; Conseil Consultatif des Droits de l’Homme (CCDH); MEDA programme of €3’000.000; purpose is to support the collective reparations recommended by the Justice and Reconciliation Commission; these reparations are aimed at favouring national reconciliation and improving governance at the local level;
- “*Promotion des droits des enfants en situation précaire dans la rue à Marrakech*”, Al Karam; EIDHR; €100.000; aims to promote the rights of street children by applying the Convention on the Rights of the Child; also targets the amelioration of the conditions of detention of children by sensitising the police and prison authorities concerned;
- “*Sensibilisation à la lutte contre le travail des enfants*”; Association Al Amana; EIDHR; €91.000; purpose is to contribute to the fight against labour of children below the age of 15 and to improve the working conditions of children between 15 and 18 years of age;
- “*Promotion de la non-discrimination et de l’égalité des chances*”: Carrefour d’initiatives, de communication et d’information; EIDHR; €21.585; the purpose is to sensitise people to the rights of the child and to reduce the inequality between boys and girls in education in the region of Moulay yacoub (resistance in rural region to girls attending school);
- “*Renforcement des capacités institutionnelles, de plaidoyer et de mise on réseau des organisations de personnes en situation du handicap pour la promotion des droits des personnes handicapées au Maroc*”; Amicale Marocaine des Handicapés; EIDHR; €100.000; aims to strengthen the network of associations representing handicapped persons by creating training opportunities and defending fundamental human rights before public authorities;

- “*Centre d’écoute pour les femmes victimes de violence dans la province de Nador*”; Horizon de Femme et Enfant; EIDHR, €35.100; purpose is to promote the rights of women by creating a centre for receiving victims of violence in Beni Bouifrou; the project will also, *inter alia*, make studies on the question of violence and organise round-table thematic discussions in the 14 cities of the Province.

Finland tries to sensitise people to domestic violence, and supports organisations caring for women in trouble.

In *Uganda*, the EU finances programmes to improve the living conditions of the Acholi and Karamoja peoples ⁽⁸³⁾. At the bilateral level, the Netherlands supports the Windle Trust Uganda (WTU), which is the leading implementing Agency for the Acholi Bursary Scheme within the Acholi Sub Region, covering Gulu, Kitgum and Pader. The overall objective of this project is to facilitate reconciliation, reintegration and reconstruction of the war-affected districts of Acholi, by improving access to education for adolescents to enable them to re-gain self-esteem, confidence and hope as a basis for their participation in national development.

Among the various recent EIDHR projects in *Ukraine* concerning vulnerable groups are:

- “*Defending the rights of Roma in Ukraine and ensuring their access to justice*” European Roma Rights Centre, Budapest; €787.947; the overall objectives of the project are to improve the access of Roma to justice and their capacity to defend their rights;
- “*Enhancing Ukrainian Social Agencies Capacities in Protection of Women and Children from Domestic Violence*”; Kharkiv Centre for Women’s Studies; €99.382; the overall objective is to reduce the number of victims of domestic violence, particularly women and children, and to increase efficiency of their protection by all social institutions;
- “*Protecting and Advocating Rights of Mentally Disabled by Improved Access to Justice*”; Ukrainian Psychiatric Association, Kiev; €77.454; the overall objective is to protect and enhance the rights of people with mental disabilities to exercise meaningful life choices and enjoy social, educational, economic, political and cultural benefits of community living and protecting and advocating the rights of the mentally ill in Ukraine;
- “*Defence and Advocacy of Human Rights for Domestic Violence Victims through the Formation of Local Coalitions*”; Dnipropetrovsk Women’s Information-Coordination Centre; €86.677; the overall objective is to enhance the protection of human rights of people who suffer from domestic violence.

⁸³ For more information on these programmes, see <http://www.deluga.cec.eu.int/en/programmes/index.htm>

Individual EU Member States have also contributed to, or financed, various projects concerning vulnerable groups, such as, for instance: Italy (illegal immigrants, child trafficking, orphans); the Netherlands (homeless women, refugees etc.); Sweden (migration and asylum, gender, human trafficking, children at risk, HIV/AIDS infected detainees, etc.), the United Kingdom (human trafficking). – The UNHCR in Ukraine stressed that the EU and Heads of Mission had been keen to intervene in the area of cross-border co-operation and strengthened the temporary accommodation centres for asylum seekers. The ECD had intervened jointly with them when they had problems implementing the project, and if it had not done so, they would have gone nowhere.

Many NGOs in the various countries were not aware of EU support to vulnerable groups.

6.3 Creation of national human rights institutions

According to the guidelines, the EU will “urge” third countries to “consider creating and operating and, where appropriate, strengthening independent national institutions (e.g. human rights ombudspersons or human rights commissions) which can effectively address the prevention of torture and ill-treatment”. This sub-section will consequently provide a brief account of EU support to such national human rights institutions (NHRIs).

The EU has reportedly provided no assistance to create an independent human rights institution in *Algeria*, and one NGO believed that the Government would not authorise such help. As previously noted in sub-section 6.1, the *Uganda* Human Rights Commission receives considerable support from some EU Member States. In *Bangladesh*, the EU had continued to advocate for the establishment of a national human rights commission in accordance with the UN Paris Principles⁽⁸⁴⁾. The Danish development agency, DANIDA, had also supported a UNDP project on preparatory activities for the establishment of such a Commission in the country by creating public awareness and providing help to draft the necessary legislation. Sweden had for many years tried to encourage the creation of a Children’s Ombudsman; representatives from the Government of Bangladesh had been to Denmark and Sweden to study the issue, and funds had been allocated for the day the Government would initiate a proposal.

According to one diplomat, the National Council for Human Rights (CNDH) in *Egypt* was something that worked. Although it had been criticised, the fact that it was created was already a positive step. The members of the CNDH are appointed by the Government and their first report was very strong, although the second was softer. The Netherlands appears to have been the only EU Member State that helped finance this project through the UNDP. It is unclear whether the ECD also contributed to the project.

⁸⁴ The text of the Principles relating to the Status of National Institutions (The Paris Principles) can be found at: <http://www.ohchr.org/english/law/parisprinciples.htm> ; these Principles, which define the competence and responsibilities of National Human Rights Institutions, were adopted by the UN General Assembly by resolution 48/134 of 20 December 1993.

It was however pointed out by one diplomat that the CNDH was not short of money. Another representative welcomed its creation and its constructive recommendations, which however, had not yet been implemented.

It was submitted with regard to *Georgia* that its Public Defender's Office was probably the only institution in the country that could be considered as a NHRI, and that it over the past years *inter alia* had received EC assistance through cooperation programmes with the Council of Europe and the OSCE/ODIHR.

While it is not known whether the EU provides financial support to the functioning, as such, of the Conseil Consultatif des Droits de l'Homme (CCDH) in *Morocco*, €3'000.000 have, as noted in sub-section 6.2, been earmarked by the EU to pay for collective damages following the recommendation of the Justice and Reconciliation Commission; the CCDH is the agency implementing the recommendations of this Commission. Representatives of the CCDH meeting with the consultant underlined the importance of cooperating with the EU, adding that the country now had an "irreversible opening that strengthens the rule of law".

With regard to *Ukraine*, it would appear that no EU financial support is provided to the Human Rights Ombudsman, although Germany has contacts with the Ombudsman and the German Ombudsman has visited Ukraine. Due to political problems, there would appear to have been some confusion with regard to the Ombudsman's mandate.

6.4 EC Delegations and Basket Funds

It was pointed out in Uganda that EC Delegations are not authorised to participate in so called *Basket Funds*, which are development pooling funds set up to support certain activities or a specific programme. These Funds constitute one practical outcome of the debate on the need to intensify donor coordination, and the idea is to save on transactions costs and ensure that the issues involved are taken seriously by more than just one development partner.

In Uganda, for instance, various Basket Funds exist, including a Basket Fund to support the rehabilitation centre – ACTV - and torture prevention activities; this Fund is led by Irish Aid, and the Netherlands, Denmark and Ireland are among the contributors. Another Basket Fund concerns the UHRC and is administered by DANIDA. There is also, for instance, a Legal Aid Basket Fund. However, although the EU Member States try to cooperate with the EC Delegation, this issue was considered to separate them. It was therefore suggested that the European Union addresses this particular problem, so as to allow ECDs to participate in this kind of funding.

7 Rehabilitation

7.1 EU assistance to rehabilitation centres

Among the many actions that the EU is called upon to "urge" third states to take, is the provision of "reparation for the victims of torture and ill-treatment and their dependants, including fair and adequate financial compensation as well as appropriate

medical care and social and medical rehabilitation”. The question of *compensation* was considered in section 4 above and will not therefore be dealt with in this context, which will be limited to exploring the extent to which EU funds rehabilitation centres in the countries studied for purposes of this report.

While the ECD in *Algeria* was not aware of there being any rehabilitation centres for victims of torture in the country, a torture rehabilitation centre in *Bangladesh* had received EIDHR funding. The Danish Embassy had also supported a rehabilitation centre on “*Establishing Human Rights and Good Governance through Institution Building for Prevention of Torture and Organised Violence (TOV)*”. – This rehabilitation centre explained that the EU had financed a project named “*Operation of Bangladesh Rehabilitation Centre for Trauma Victims (BRCT)*” carried out in 1999-2000. The project comprised activities primarily aimed at the rehabilitation of torture victims; in addition to treatment facilities, it also included fact-finding of incidents of human rights violations, awareness-raising of human rights at the grass-root level and a training programme for health professionals, etc. A second rehabilitation centre had received no EU funding.

The ECD in *Egypt* noted that rehabilitation was a priority among the macro-projects but that the projects were in the process of selection.

The EU had financed or finances two rehabilitation centres in *Georgia* and the ECD maintained a regular dialogue with them. The two present projects supported by the EU are:

- “*Implementation of International Standards for Prevention of Torture in Georgia*”; International Psycho-Rehabilitation Centre for Victims of Torture, Violence and Pronounced Stress Impact “Empathy”; 2006-2007; €50.000; the overall purpose of this project is to monitor and support the implementation of international standards on the prevention of torture in Georgia and to develop a model rehabilitation programme for particularly vulnerable groups; programme themes include the promotion of the implementation of OPCAT and the elaboration of recommendations necessary for introducing legislative changes to the Code of Imprisonment and other relevant laws based on international standards such as those elaborated by the CPT of the Council of Europe and the UN;
- “*The Programme of Rehabilitation of Torture Victims in Georgia*”; International Psycho-Rehabilitation Centre for Victims of Torture, Violence and Pronounced Stress Impact “Empathy”; 2006-2009; €487.500; the aim of the project is *inter alia* to create a non-governmental nationwide system of medical and psycho-social rehabilitation of torture victims, to set up international standards for identification of torture on the basis of the Istanbul Protocol and to promote the creation of torture prevention mechanisms and the implementation of OPCAT.

A different torture rehabilitation centre in *Georgia* replied that it had received financial support of €280.000 under an EIDHR macro project for the period 2001-2003,

the main activities of which included the provision of rehabilitation services, monitoring, prevention and research. This centre was also the beneficiary of a €40.000 grant under a micro project in 2006; among the principal activities of this project was the provision of rehabilitation services to prisoners and those under probation.

The two rehabilitation centres visited by the consultant in Casablanca in *Morocco*, worked in very modest conditions, with most services carried out on a voluntary basis. The need for rehabilitation in the country was said to be “enormous”. In the autumn of 2006, one of the centres received the following financial assistance:

- “*Psychiatric and psychotherapeutic unit for the benefit of victims of torture*”; Medical Association for the Rehabilitation of Victims of Torture (AMRVT); €90.000 over a two year period; the purpose is to create a unit for psychiatric and psychotherapeutic treatment and to put into effect a structure for regional follow-up etc.

AMRVT explained that it had earlier contacted several EU Mission for funding purposes, but had only received negative replies. Only the Netherlands had helped once with a modest sum. With regard to the second rehabilitation centre, both the EU and the UNVFTV were said to have withdrawn support, with the EU getting in touch with them less and less.

During the consultant’s visit to *Uganda* in September 2006, it was stressed on behalf of the African Centre for Treatment & Rehabilitation of Torture Victims (ACTV) in Kampala, that it had not received any funding or technical assistance from the EU *per se*, but a few EU Member States had supported, and continued to support, its work. For instance, the 15-months work plan adopted from the period October 2003 to December 2004 was to 60% funded by the Dutch Embassy (98.000 USD) and DANIDA (54.267 USD), with the Irish Embassy providing a smaller amount (24,250 USD). The aforementioned contribution from DANIDA did not reflect funding for technical assistance, the amount of which is not known. The ACTV had once in vain tried to get funding from the ECD in Kampala. The ACTV Chief Executive Office (CEO) suggested that *the EU should target the needy countries in terms of rehabilitation*. He also raised the question whether the EU would not have mechanisms to provide support in accordance with *need*, adding that “if they just knew how we struggle...”. If a peace-deal would be reached in Northern Uganda in the near future, the need for rehabilitation of both victims of torture and soldiers can be expected to increase considerably. - According to information submitted by the CEO in the beginning of April 2007, the ACTV had however received EC funding in December 2006, when a grant of €957.268 to four rehabilitation centres was approved. The two-year project called “*Cross Cultural Partnership Against Torture*” began in February 2007, and the money is to be shared between the ACTV, IMLU (Kenya), RCVTE (Ethiopia) and BZFO (Germany). ACTV’s share for 2007 is €153.143 (⁸⁵).

⁸⁵ The abbreviations stand for: Independent Medico-Legal Unit (IMLU, Kenya); Rehabilitation Centre for Victims of Torture (RCVTE, Ethiopia) and Behandlungszentrum für Folteropfer Berlin (BZFO, Germany).

The only known rehabilitation centre in *Ukraine*, which noted that it also treats cases from the army and former Gulag victims, had received help from a German NGO; there was no indication that the EU or EU Member States had made any contributions to its activities; the centre considered that the EU system was “very bureaucratic”. With regard to their expectations from the EU, one NGO stressed that they need more realistic help so as to build up more professional NGO work on rehabilitation and emergency structures.

7.2 Prevention and rehabilitation: What to finance and to what extent?

Rehabilitation centres constitute a not only important but indispensable safety valve for people suffering from trauma due to violence. The centres provide basic medical and psychological help and sometimes also social and legal advice to help people put their shattered lives together. Indeed, a closer look at the work of these centres show that no clear line can be drawn between prevention and rehabilitation and that important aspects of rehabilitation also lead to prevention. Rehabilitation centres are unique in that they can generate scientific medical evidence to be used both in legal proceedings against perpetrators of abuse and for advocacy purposes. The information collected can also be used for research purposes to show trends and the impact of torture. In the next place, this information can be used in order to design stakeholder specific awareness programmes on the question of torture and ill-treatment. Some rehabilitation centres are in addition undertaking important training activities for key professions, such as lawyers and medical doctors and may also be involved in advocacy. Their existence is finally *inter alia* crucial as a meeting place, in that victims can gather to discuss with other persons having the same or similar experiences, and do so in a framework of confidence, stability and security.

Some tension has in the last years been perceived in the allocation of EU resources for preventive purposes and rehabilitation. The question was thus asked both in the EC Secretariat and in the Council of Europe, whether it would not be more useful to increase the support for measures of prevention and give less to rehabilitation? How much money should be allocated to prevention and how much to rehabilitation? It was suggested, quite logically, that with more prevention, the need for rehabilitation would decrease. This may be correct in theory, but as explained above, the reality uncovered by the research carried out for this study is infinitely more complex. It might therefore be useful to ask the following questions, among others:

- Have EU-sponsored measures to prevent and eliminate torture and ill-treatment had any positive effect on the incidence of brutalisation?
- Is this effect tangible? Can it be objectively assessed? If not, why is this so?
- If the effect on the incidence of torture and ill-treatment is not clearly tangible, should the funding to rehabilitation centres be cut?

- Could the money be taken from difference sources, so that there would be no “competition” between prevention and rehabilitation?
- Should available funds be better distributed among rehabilitation centres according to their needs?

No simple answers exist, but it would appear clear that, as long as torture and ill-treatment exist, the victims cannot be ignored, and the funding of rehabilitation should continue. What is needed is moreover a more nuanced holistic approach in the debate, free from arbitrary distinctions between prevention and rehabilitation.

8 Are EU sponsored actions or projects effective?

The research carried out for purposes of this study has turned up little specific and reliable information with regard to the positive results of EU torture prevention actions or projects. *No examples of clear success or good practice have been given by the stakeholders contacted.* A problem in this respect is, of course, that it is well-nigh impossible to measure the degree of success of a project with any certainty; such assessment would have required a more in depth analysis that would have gone beyond the framework of this study. It was also made clear by one diplomat that, although you base yourself on the guidelines, it is difficult to measure the impact of actions taken. The result may only come after a while, but the question is, whether this is because of *your* input or actions taken by *other* stakeholders? It is noteworthy, finally, that sometimes perceived progress has been offset by new problems due to adverse governmental policies or simply the lack of firm positive governmental action. Thus, as will be seen in the next sub-section, there appears to be very little of a panacea for eliminating torture and ill-treatment from governments’ agenda.

8.1 Views from the field

Political dialogue: It is virtually impossible to assess the effectiveness of political dialogue in preventing and eliminating torture and ill-treatment. Although torture issues have been readily included in the political agenda of specific ECDs and EU Missions, it appears possible to conclude, on the basis of the research carried out, that there has not in general been a coherent and consistent EU policy to firmly insist on making torture and ill-treatment part of the dialogue with third countries. The opposite rather appears to be true, in particular in countries where the Government has been particularly sensitive to this issue. This has prompted the ECD and EU Missions to adopt a more careful approach, but without any noticeable gains in terms of elimination of torture and ill-treatment. It is interesting to point out that in one of these countries, some diplomats expressed the view that there was room for a more proactive approach and that the EU could, and should, do more in these situations. Political dialogue can thus, in principle, be described as an important tool to promote human rights in third countries, although its potential remains to be fully explored by the EU and its Member States.

Démarches and public statements: With regard to démarches and related actions, the ECD in *Bangladesh* considered that they had ensured that the Government pays attention to the issue and help create the right conditions for progress in this field. However, in other countries it was made clear that démarches would not be well received by the Governments concerned and that the EU might even be stopped if resorting to them. Their impact could therefore presumably even be negative. There is thus some doubt about their effectiveness as a more *general tool* to positively influence the situation of torture and ill-treatment in third countries, although they may be useful in particular cases. What démarches do is at least to show that the EU takes position and makes it clear that it does not tolerate torture and other forms of ill-treatment.

The situation is similar as regards *public statements*. An NGO in *Bangladesh* gave an example of an initially successful action taken by an EU Ambassador in 2005 who, together with his staff, went to a place where a group of indigenous/tribal people had been evicted by government supporters for purposes of grabbing the land that had belonged to them for generations. The Ambassador went to the place of the eviction “and gave a very strong statement against the eviction and demanded rehabilitation and compensation”. As far as this organization knew, there was however neither rehabilitation, nor compensation for lack of follow up. EU statements with respect to one well-known trial in *Egypt* was cited as a positive action, although it eventually “gave negative results”. EU statements on the prolongation of the country’s emergency law was also considered to be positive. Again, however, while these statements made it clear what the views of the EU were, they did not impact on the prevalence of torture in the country or on the existence of the emergency legislation. In *Uganda* an NGO believed that EU statements and actions had improved the situation in the secret places of detention, the so called “safe houses”. However, this is very difficult to assess, and these places of detention are still there, and the use of torture is allegedly frequently committed in them.

Strengthening civil society/funding of NGOs: Some stakeholders mentioned the strengthening of local capacities of civil society, and the fact that the EU supports development of awareness and other actions through many NGOs, as examples of successful actions. To help civil society actors in their work, may well be the potentially most important action that the EU could take, since it is the people in the third countries, rather than the EU, that ultimately will have an impact on the political evolution in these countries. However, this is not an immediate solution but must be seen as part of a long-term important strategy to promote the prevention and elimination of torture.

Training: The importance and success of EU sponsored training has been emphasised by a variety of actors, although a number of in particular Egyptian NGOs, were much less optimistic and even negative towards the effect of training. While, on the one hand, training is in many instances a not only important but necessary tool to change mentalities and break the culture of violence in police stations, prisons, psychiatric hospitals and other relevant institutions, it cannot, on the other hand, be seen as some kind of a universal remedy to prevent and eliminate torture. This is in particular so, where there is a lack of political will to proceed with coherent torture prevention policies. However, even where the political will is lacking, training may have an impact, although

it will be more marginal and slower to show significant results. In Uganda, the police and prison officials have received a considerable amount of training in the last years and some progress may be seen, although there are doubts as to the degree of this progress. A sign of the increased sensitisation of the police to the rights of persons deprived of their liberty is however the pocket guide that was elaborated a couple of years ago entitled “*Ten Basic Human Rights Principles for Police Officers and Other Law Enforcement Officials in Uganda*”. Although this pocket-book was not developed by EU funding, the EU has sponsored training for police and prison officials in the country.

Financial and technical assistance: The provision of funding to support projects relating to legislative reform, penitentiary reform, monitoring mechanisms, reform of the judiciary, domestic violence, awareness raising and so forth are naturally welcome by many actors. As examples of successful actions in the field of torture and ill-treatment, the ECD in *Georgia* mentioned the ongoing cooperation with the Government on penal reforms and the assistance in drafting governmental policy on criminal justice reforms in 2004/2005. However, it was also submitted that the inflationary development of prison population puts the achievements at risk, as the system has to deal more with the immediate result of overcrowding and to the detriment of the implementation of the aforementioned reform agendas. This issue had been raised during the political and cooperation dialogues, but had not yet had any “clear results”. An NGO consequently mentioned this reform programme as an example of an action that had *not* been successful. While financial and technical support to penal or other relevant reforms is in many situations indispensable to the elimination of torture and ill-treatment, tangible positive results of such assistance often require considerable investment that can be compromised by a lack of clear commitment by the government to consolidate the achievements. EU investments should possibly be tied to some kind of undertaking by the Government concerned not to undermine the results thereof by adopting inadequate policies.

Rehabilitation: Several stakeholders mentioned as an example of a successful EU action, EU contributions to local rehabilitation centres for victims of torture. Such help had not only provided valuable support and assistance to the victims, but had moreover given valuable expert advice to doctors and lawyers involved in litigation as well as to domestic courts or other authorities competent to considered complaints of torture. Rehabilitation may appear less important for purposes of prevention, but as explained in the preceding section, its positive *preventive* effects should not be underestimated. This is *inter alia* so in post-conflict or other challenging situations, where appropriate rehabilitation of *both* victims of violence *and* perpetrators of violence, sometimes young children, has an important role to play in ensuring a more stable and peaceful future.

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Although it is difficult to identify *specific* EU actions that have produced a *tangible and undisputed successful result* to prevent and eliminate torture and ill-treatment in the seven countries concerned, many actors agreed that the EU support has a

positive impact that cannot be ignored, although also emphasising with some consistency that *much* more could be done.

8.2 Positive examples of EIDHR funded projects

This section provides two examples of EIDHR funded projects that illustrate well the distinct impact that EU investment may have. The first concerns litigation, training and awareness-raising activities that have had clear success, and the second project primarily relates to training on the investigation and documentation of torture and ill-treatment in ten different countries around the world.

8.2.1 EHRAC's Work in Russia/Chechnya

As explained in a short study made to the European Parliament, the primary objective of the European Human Rights Advocacy Centre (EHRAC) is to “assist individuals, lawyers and NGOs within the Russian Federation to take cases to the European Court of Human Rights (...), whilst working to transfer skills and build the capacity of the Russian human rights community”⁽⁸⁶⁾. The project achieves its aims through the implementation of three core elements: human rights litigation; human rights training, and raising awareness and dissemination of information.

The EIDHR support to EHRAC has *inter alia* enabled the organisation to assist individuals, lawyers and NGOs in Russia to bring cases to the European Court of Human Rights and, by the end of October 2006, the Court had handed down eight judgments in 11 of EHRAC cases, of which all but one were successful. During 2003-2005, EHRAC had either taken on, or provided advise in, over 80 cases. The advice given involved “more than 350 primary victims and their immediate family members who were directly affected by the alleged violations”; approximately half of the cases originated from Chechnya⁽⁸⁷⁾. Three of the judgments have been translated into Russian and most of the 3000 copies have been distributed in Chechnya.

In February 2005, the European Court of Human Rights gave judgments in the three first cases against Russia having their origin in the conflict in Chechnya and in June 2005 it rendered its judgment in a case concerning environmental pollution⁽⁸⁸⁾.

As stressed in the aforementioned study, the judgments of the European Court of Human Rights are important for two reasons: firstly, they provide “individual redress –

⁸⁶ This sub-section is based on the details provided in the following EP document: *STUDY – Implementation of the EIDHR – The Example of EHRAC's Work in Russia/Chechnya* (DGExPo/B/PolDep/Study/2006/35), 6 pp.

⁸⁷ *Ibid.*, p. 3.

⁸⁸ The relevant cases where : *ECtHR, Case of Isayeva v. Russia, judgment of 24 February 2005*; *ECtHR, Case of Isayeva Yusopova and Bazayeva v. Russia, judgment of 24 February 2005*; *ECtHR, Case of Khashiyev and Akayeva v. Russia, judgment of 24 February 2005* (all three concerning Chechnya) and *ECtHR, Case of Fadeyeva v. Russia, judgment of 9 June 2005*; the judgments can be found at the Court's website: <http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database/>.

that in itself can be hugely significant in a war-torn region such as Chechnya” and, secondly because, “beyond individual relief, the decisions demonstrate that there is some level of international oversight and accountability”. Furthermore, a “successful litigation programme at the Strasbourg Court has an important domestic impact, helping to foster democracy, accountability and the rule of law”, and the implementation of the judgments will be supervised by the Committee of Ministers of the Council of Europe ⁽⁸⁹⁾.

In addition to the litigation activities, EHRAC has in particular engaged in training to ensure that human rights practitioners in Russia have an improved understanding in the law and procedure of the European Court of Human Rights and has also tried to raise awareness about human rights abuses among the public, media, international institutions and governmental agencies by disseminating information about the cases brought to the Strasbourg Court via several media, including their English and Russian websites. Finally, in February 2006 they published training manual in Russian on litigating cases before the Court, a manual that has a particular focus on Russian issues ⁽⁹⁰⁾.

8.2.2 IRCT’s “Prevention through Documentation” project

Another interesting EIDHR funded project entitled “*Prevention through Documentation*” is being implemented by the International Rehabilitation Council for Torture Victims (IRCT) in partnership with the World Medical Association, the Human Rights Foundation of Turkey (HRFT), REDRESS Trust, Physicians for Human Rights and a wide range of local partners. This is the continuation of a project implemented in 2003-2005 called “*The Istanbul Protocol Implementation Project (IPIP): Investigating and documenting torture*”. The purpose of these projects is to raise awareness of the existing international guidelines and rules for the investigation and documentation of torture, primarily, but not exclusively, on the basis of the handbook commonly called “the Istanbul Protocol” ⁽⁹¹⁾ and to improve the skills of medical doctors and judges, prosecutors and lawyers so as to enable them more effectively to investigate and document cases of torture and ill-treatment for purposes of criminal proceedings, for instance.

During the autumn 2004, training seminars were thus carried out in Georgia, Mexico, Morocco, Sri Lanka and Uganda, for a total of 244 health professionals and 123 legal professionals. In the course of the seminars, the medical and legal professionals were brought together and could exchange experiences and learn about each other’s needs. Such reciprocal knowledge is of fundamental importance for the rights of the victims to be adequately guaranteed. The consultant participated as a trainer in the seminars conducted in Uganda and Morocco, and although the situations were different,

⁸⁹ *Ibid.*, pp. 3-4.

⁹⁰ *Ibid.*, pp. 4-5.

⁹¹ *Istanbul Protocol – Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Professional Training Series No. 8 Rev. 1, New York/Geneva, UN/OHCHR, 2004, 75 pp.; for the text see <http://www.ohchr.org/english/about/publications/docs/8rev1.pdf>

the impact was important. While Uganda has had much torture-related training, the situation was somewhat different in Morocco, where it was pointed out that it was the first time ever, that medical doctors, judges, prosecutors and lawyers had been able to meet to discuss torture openly. This by itself, was seen as considerable progress. In Uganda, to which the consultant returned in order to make an assessment of the training, the impact thereof was tangible. While the training possibly did not directly and immediately prevent torture, as such, various positive results were perceived, such as:

- the training had a direct positive impact at the individual, group and organisational levels;
- the participants clearly showed that they benefited from the training, were able to digest the information and knowledge transmitted and translate this information and knowledge into practical action both in their individual work as well as within their respective organisation and at a cross-organisational level; for instance:
 - they had increasingly referred alleged cases of torture and ill-treatment to more competent organisations;
 - they had subsequently tried to transmit the information and knowledge received during the seminar to other colleagues;
 - in the North, medical doctors and lawyers had started a radio talk show on human rights in order to sensitise a much wider audience that was largely ignorant about their right not to be tortured, the effects of torture etc.; people could call in to the programme and those with no access to a telephone could send in their questions in writing;
- the training had also led to a positive change of attitude in that the participants had become more sensitive to the traumas caused by torture and other forms of abuse; the training had also improved the participants ability to make trauma assessments; a prison doctor said for instance that he had become much more attentive also to wounds that had healed, rather than simply paying attention to recent injuries;
- the participants' enthusiasm and interest in eradicating torture and ill-treatment in the country was shown *inter alia* by the fact that the ACTV, the rehabilitation centre in Kampala, in turn organised a similar week-long work-shop in Entebbe in October 2005 for 14 lawyers and 15 health professionals from various parts of Uganda.

The second phase of this project will build on the first phase and provide *training-of-trainer* courses in four of the five original countries so as to convey skills necessary for doctors and legal professionals to pursue the training in their turn and to spread knowledge and skills in these countries and beyond. Moreover, the *training-of-users* on

the investigation and documentation of torture will be extended to five new countries, namely, Ecuador, Egypt, Kenya, the Philippines and Serbia.

9 Conclusions

The following main conclusions can be drawn from the facts and submissions synthesised in this chapter:

- ▶ *Action plans I:* The Action Plans for Georgia and Ukraine, countries that are also members of the Council of Europe, would seem to show that it is easier politically to deal with questions of ill-treatment and torture at the European level, although political sensitivity still exists even in this context. The work carried out by the European Court of Human Rights and the CPT becomes a particularly useful tool also for the EU in order to promote the human rights agenda in general and the elimination of torture and ill-treatment in particular.
- ▶ *Action plans II:* The problems in agreeing on Action Plans in the North African countries are particularly complex, and most likely so due to their human rights component, such as the question of torture and ill-treatment. The slow progress in this respect, and the apparent failure of the EU to take a firm stand on fundamental issues, such as torture and ill-treatment, has led to considerable frustration among civil society actors and to doubts about the sincerity of EU policies and its commitment to promoting human rights.
- ▶ *Work of the ECDs:* There is a considerable difference in how the ECD in the various countries deals with the question of torture and ill-treatment, with some Delegations being more likely than others to raise this issue in the political dialogue, although the political context rarely, if ever, appears to be simple. The degree to which the question of torture and ill-treatment is discussed with the host Government appears consequently to a large extent to depend more on the personal interest and devotion to the cause of human rights than on formal instructions from the Headquarters, although such instructions are likely to promote a more proactive attitude of ECDs.
- ▶ *Human rights clauses:* The general human rights clauses in the various association and co-operation agreements may be too general to be truly useful, and it is therefore particularly important that any mutually agreed upon action plan provides clear guidance and understanding as to the issues to be dealt with also in the human rights field, including the prevention and elimination of torture and ill-treatment.
- ▶ *Démarches and public statements I:* There appears also to be a considerable difference in the use of démarches and public statements, with the ECDs in Bangladesh apparently being more likely to use these tools than other ECDs,

thereby also ensuring a certain degree of consistency in EU policy on crucial issues, including torture and ill-treatment in the country concerned, although this is not, in principle, a priority issue for the ECD.

- ▶ *Démarches and public statements II:* Political sensitivity makes it difficult in some countries to have recourse to démarches and public statements, and it is necessary for EU actors to try to deal with questions such as torture in less confrontational ways. The question may be asked, however, whether the EU and its Member States are not themselves somewhat too sensitive to arguments such as that concerning interference with internal affairs? After all, torture and other forms of ill-treatment are prohibited under international law and have thereby also been removed from the “reserved domain” of states. In other words, to try to hold a state up to its international obligations in this respect cannot be considered to be an interference in its internal affairs.
- ▶ *Intervention in individual cases I:* EU intervention to protect specific persons from ill-treatment is mainly carried out in well-known cases that are well documented, but much more rarely so in cases concerning “ordinary” persons. The positive result of such EU efforts appear limited at best, and in one country even inexistent. Differing views on the mandate of an ECD or EU Mission may be part of the reluctance to intervene in specific cases, added to which a lack of resources and availability of reliable information play a considerable role.
- ▶ *Intervention in individual cases II:* The ECD and EU Missions do not, in most countries, visit prisoners except with regard to their own citizens. Indeed, it might well also be so, that such visits would not be useful unless they would have some value-added. In some cases, there may also be national and international mechanisms which could make such visits in a more constructive and for the prisoners safer manner.
- ▶ *Domestic remedies:* The lack of swift, simple and effective domestic remedies is flagrant in all seven countries. The question of compensation to victims of torture and ill-treatment is generally complex and there is no evidence that EU actions have had any palpable positive impact in this respect. Further, it is typically considered difficult to obtain criminal convictions of perpetrators of ill-treatment, although occasionally it may be possible. Poverty, a lack of independence of the judiciary, including widespread corruption, are factors making it particularly difficult for victims of violence to successfully vindicate their rights.
- ▶ *Prison monitoring mechanisms:* Systematic and effective monitoring mechanisms of places of detention are lacking in most countries, although a slow opening of the prison system appears perceptible in some of them. In Uganda, the UHRC, the ACTV and some other NGOs in the country are authorised to visit places of detention, which is a positive development, but they have no access whatever to the secret places of detention, the so called “safe houses”, where much torture and ill-treatment is being committed.

- ▶ *Training:* Some ECDs, and more particularly a rather limited number of EU Member States, sponsor training activities for officials and other relevant actors that are instrumental in preventing and eliminating torture and ill-treatment. However, the immediate impact of training is not always visible, but as with many other initiatives, to be effective, information and sensitisation activities need to be carried out in a sustained manner over time and to a countrywide-audience. Further, failing unstinting political support to eliminate violence by law-enforcement agencies, the *immediate* or *short-term* direct impact of training risks being relatively marginal, yet essential for purposes of conveying new knowledge and skills as well as of changing attitudes that can have a long-term positive effect on the prevention and elimination of torture and ill-treatment.
- ▶ *Financial and technical assistance:* With regard to financial and technical assistance to projects directly aimed at preventing and/or eliminating torture and ill-treatment, the support of EU Member States varies considerable between different countries. While it is of relatively limited importance in Algeria, Egypt and Morocco, it is more generous in Georgia, Uganda and Ukraine, for instance. In Morocco, the United Kingdom is the exception among the European States, having been deeply involved in several recent projects to strengthen prison and judicial reforms. Apart from EIDHR macro and micro funding, a restricted number of EU Member States are the major providers of funds for torture prevention projects in the seven countries concerned.
- ▶ *Vulnerable groups:* EU assistance to vulnerable groups is considerable in most countries, and even in countries where torture is a particularly sensitive issue, assistance to promote projects on women, children, migrants, asylum seekers, domestic violence, human trafficking etc. is much more readily accepted. Such assistance may, of course, also indirectly have a positive effect on the prevention and elimination of torture and ill-treatment by, for instance, raising awareness of human rights in general.
- ▶ *National human rights institutions:* EU assistance to the creation or functioning of national human rights institutions also vary to a large degree depending on the country concerned, with the example of the Uganda Human Rights Commission possibly being the most positive example of a partly EU financed human rights institution that is also widely respected for its work.
- ▶ *Basket Funds:* The ECDs are not able to participate in Basket Funds, an aspect that may result in the Delegations being unnecessarily isolated from the mainstream EU human rights activities in the country concerned.
- ▶ *Effectiveness of EU sponsored actions and projects:* The positive impact of EU sponsored actions and projects on the elimination of torture and ill-treatment cannot be ignored, although it is difficult and even impossible to measure this impact. For lack of examples of clear and tangible success, it is equally difficult to

provide examples of good practices. However, as shown, positive examples exist of EIDHR financed projects in the field of human rights litigation, training and awareness raising.

Chapter V – PERCEIVED CAUSES OF TORTURE AND SUGGESTED SOLUTIONS

This chapter will provide a synopsis of the views expressed in the field with regard to the causes of the persistence of torture and ill-treatment in the seven countries. It will also convey a summary of the suggestions made by a number of diplomats on how best to develop a torture prevention strategy in the countries where they work. Quite importantly, there is significant agreement and consistency in the way the stakeholders view the root causes of torture and ill-treatment and the ways to break this vicious cycle of violence.

1 Selected general problems relating to torture and ill-treatment

This section provides a concise list of the main root cause of torture and ill-treatment and/or obstacles to an effective implementation of the guidelines, that were raised by various stakeholders in the seven countries:

- *Lack of political will and/or determination/low prioritisation of human rights by the Government:* In several countries this was considered to be the main obstacle to an effective implementation of the prohibition of torture and ill-treatment. Although a Government may denounce torture officially, it does not take the necessary steps to prove its determination by launching investigations bringing criminal proceedings etc.; as underlined by one intergovernmental organisation: “Governments have learnt to say the right things, but their actions don’t necessarily follow”, and sometimes they do not even apply the reforms of their own legislation. A related problem was Governments’ tendency to “outsource” problems to the civil society including NGOs, rather than acting on what is a clear state duty.
- *Lack of democratic governance:* The lack of democratic governance with institutional weaknesses was considered to be another core problem; in several countries there is, for instance, a concentration of power in the Executive with a corresponding lack of influence of the Parliament.
- *Special security forces:* The existence in several countries of security forces that act with impunity, and which are often responsible for torture and ill-treatment; for the EU to deal with this issue appears to be a particularly delicate task. Added to this problem was the use by security forces of *secret places of detention*, the existence of which may be difficult to prove. A related problem was the militarization in general of a society.
- *General culture of impunity for law enforcement officials:* A problem generally shared by all countries.
- *Law-enforcement culture and systemic problems:* One of the main problems was deeply rooted structural problems reflecting a certain law enforcement culture and systemic challenges; there was in this respect moreover a lack of adequate

facilities and equipment for investigation and skills in alternative investigation techniques. Lack of forensic expertise and equipment was also emphasised in this respect. Several stakeholders, among them the OIDHR, underlined in this respect the drive for statistics of “solved” crimes in countries previously belonging to the former Soviet Union. Considering that the police performance is primarily assessed on the basis of “solved” crimes, the police develops internal requirements for officers to match these expectations and solve the crimes. This results in abuses of detainees and other violations of the law.

- *Lack of resources in the criminal and justice system:* Makes it difficult and even impossible to implement reform programmes; makes judges and law enforcement officials susceptible to corruption.
- *Lack of access to lawyers, medical doctor and family during pre-trial detention:* Facilitates brutalisation for purposes of obtaining confessions at a time when the persons deprived of their liberty are particularly vulnerable; detainees may often be held *incommunicado*.
- *Lack of due process:* people detained may not be taken to court *at all*, in particular where arrests are carried out under special powers.
- *Deplorable conditions of detention with serious overcrowding:* This is a problem shared by all seven countries where the use of non-custodial measures are not common.
- *Counter-terrorism measures/emergency laws:* The fight against terrorism and emergency laws makes people particularly vulnerable to torture and ill-treatment.
- *Lack of compensation:* There is a general problem for victims of abuse to obtain compensation for torture and ill-treatment and, although this compensation may have been awarded by the competent authorities, it is often not paid.
- *Lack of access to justice and lack of confidence in the judiciary:* In some, and possibly all countries, there is a lack of access to the courts due to poverty and a lack of confidence in the court system because of corruption.
- *Lack of knowledge/awareness:* Lack of knowledge and awareness of human rights, including the right not to be tortured and ill-treated, prevents improvement or slows down progress; this problem concerns, among others, judges, prosecutors, lawyers, law enforcement officials and the public in general, in particular the poor and uneducated.
- *Difficulties in changing peoples’ mentalities:* The necessary process of changing peoples’ entrenched habits and mentalities is slow and difficult. Societal tolerance towards torture and ill-treatment is a reality in some countries.

- *Precariousness of civil society organisations:* In some countries the situation of the non-governmental organisations is not only difficult but precarious, since, for instance, they may only get an annual authorisation to work, which may lead to self-imposed restraint in their activities including a certain degree of self-censorship; in some countries organisations receiving funds from abroad may also be under special pressure.
- *Corruption:* Concern about corruption was consistently mentioned as a serious impediment to improving the situation with regard to human rights, including torture and ill-treatment in all countries; corruption affects the judiciary and its capacity to provide effective protection for victims of abuse; corruption was also considered to constitute a serious problem among the police and in prisons, for instance.
- *Non-respect of the principle of non-refoulement:* Lack of observance of article 3 of the ECHR as well as article 3 of the UNCAT, according to which no person should be forcibly returned to a country where he or she runs the risk of being subjected to torture or other forms of ill-treatment (the latter provision is in this respect restricted to torture, while the former has a wider field of application).
- *Poverty:* People are often unable to pay for a lawyer and legal aid is limited or inexistent. This may prevent them from availing themselves of legal remedies to challenge the lawfulness of their detention or ill-treatment. A couple of diplomats also mentioned the plight of the poor that are forgotten in prison. In general, the condition of being marginalised causes tension between the poor and enforcement officials ⁽⁹²⁾.
- *Fear:* Lawyers may be reluctant to take on cases involving state-sponsored torture for fear of intimidation etc.

One diplomat pointed out with regard to one country that torture still exists there and that there is not much hope for change; this was an issue that should be discussed at Headquarters. The same proposal was made with regard to a country where torture and ill-treatment is not used so much against political activists but as being a widespread means to repress the population. In other words, the authorities are not having recourse to torture in order to extract information from people, but in order to silence them. This fact made it much more difficult for the Missions to deal with the problem. In such complex situations, it would thus appear essential to make arrangements for regular and substantive communication between EU Missions and Headquarters in Brussels and capitals in order to provide help to the people in the field and to explore the possibilities of designing a common EU policy with regard to such complex situations.

⁹² For a study on the link between poverty and torture, see *Attacking the Root Causes of Torture – Poverty Inequality and Violence*, An Interdisciplinary Study, edited by Thomas E. McCarthy, Geneva, OMCT, 2006, 293 pp. The text of the study can be found at: http://www.omct.org/pdf/ESCR/2006/omct_desc_study_2006_cd/pdf/attacking_the_root_causes_of_torture.pdf

2 General suggestions from the field for torture prevention strategies

It was stressed by many EU actors that *a combination of efforts* would be much more useful than bilateral actions that are not taken so seriously. When you discuss human rights in a country you have to ask whether it might not be more important to forego bilateral action in order to work jointly. As rightly pointed out by one diplomat, the result counted more than the ways of getting there. Consequently, you need to have *a customised approach* in that you must work from within and have a dialogue with the authorities rather than teaching them. The problem was, however, how to be able to connect with the authorities without appearing to force your views on others.

A similar view was expressed by another representative who insisted that you must have *a tailored approach* to human rights; there was simply no one strategy that would fit all situations. Further, if you only had a top-down approach, doors and minds would close. In other words, you need to have access and if there is a need for several approaches, then you should go ahead with them all, because actors do not help themselves by applying one unique approach. For instance, if you make strong public statements, doors will close down and your counterpart will also take a hard position. In a similar vein, one diplomat stated that the problem was to know what action could have the best impact and the most important value added. It was necessary to try to identify a useful niche and also to coordinate the approach with the different donors. In view of the danger of too much bilateral-driven action, the question was raised as to how such action could be harmonised.

It was further suggested by one diplomat that the EU does too much work and that it was therefore necessary to rationalise this work and to have a division of labour. However, to be effective you needed *a clear EU policy*, because only if it is clear where the EU stands could Member States begin identifying themselves with the EU and its policy. Once this is done, the work could proceed more efficiently.

As a donor, you would also have to decide what you are going to prioritise in a situation where much has to be done, because you have to focus on certain areas to be effective. Once the priorities have been decided, there should be *a division of labour*. This division of labour means that you have to decide what the ECDs and the Member States should do respectively. Further, rather than having single Missions speak out, all EU Missions should speak with one voice, since unity conveys a significantly stronger message. To this end, a spokesperson could be selected, who would speak for everyone on the relevant issue.

It would also be necessary to choose *a strategy* that does not have negative repercussions. In addition, your actions must be sustained in order to be effective. It was pointed out that, for the moment the Governments know that, when the Heads of Mission speak out, they will not go the whole way. Therefore, *any public statement must be accompanied by continued action and concrete reform proposals*. As stressed by one representative, if publicity is not supported by thorough action, its impact will wither.

In short, since effective work depends on structure and people, you need to choose *the right strategy, the right message, and the right messenger*.

Several representatives emphasised that *démarches* and public statements may be counterproductive, while quiet action may produce better results. Further, as frequently stressed, *démarches or interventions in individual cases must be accompanied by long-term reform projects*. What was needed was thus *a multi-pronged approach*. With regard to *démarches*, it was suggested that you first deal privately with the local authorities and then go public if there is no progress within a reasonable time. – In this respect it was pointed out by a local stakeholder, however, that quiet diplomacy is acceptable provided that it yields results, but that you cannot rely on it when peoples' lives are at stake. You also need to have a timeframe and benchmarks for measuring progress.

A staff member of one ECD was of the opinion that Headquarters need to prioritise differently. Democratic governance should be a priority area in addition to infra-structure and the economic sector, since you also need to focus on human rights to make progress in the economic area. Further, human rights must be dealt with holistically and not just as an isolated issue. As shown in this report, the importance of adopting *a multifaceted approach to torture and ill-treatment* was emphasised by several EU actors.

One ECD delegation believed that there might be space to develop a more coherent approach to the implementation of the guidelines by, for instance, creating a quota of visits to places of detention or regular schedules of trial observation. In its view, it would also be highly pertinent to initiate a closer look at what the security forces are doing, as they are suspected of severe torture before the deaths of their victims. Another EC Delegation pointed out that in order to have a real impact you need time and this is a process; it was already an enormous success to talk about the question of torture in this particular country, something that was not possible ten years ago.

Members of several EU Missions emphasised that the relevant staff at Headquarters in Brussels need to have more contact with the field and with the local conditions in the various countries. The staff should also rely on more varied sources of information and thus also consult the Embassies in the field.

4 **Conclusions**

For purposes of this report, it is sufficient to make the following four overall conclusions on the basis of this chapter:

- ▶ *Causes of torture and ill-treatment*: The principal or contributing causes of the persistence of torture and ill-treatment are manifold, but can to a very large extent be found to have their joint origin in a lack of will and determination of the authorities in the countries concerned to deal firmly, promptly and effectively with alleged or suspected cases of abuse through an independent and impartial justice system.

- ▶ *Access to an independent and impartial judiciary:* The lack of access to an independent and impartial judiciary and the consequential lack of confidence in the justice system, may promote societal tolerance and even support of police violence.
- ▶ *Poverty:* Poverty is a reality that often impedes individual victims from vindicating their human rights and also makes them more likely to suffer abuse.
- ▶ *Lack of knowledge and awareness:* Not only people at the grass-root level, but also legal professionals and law enforcement officials are not sufficiently well informed about human rights in general and the absolute prohibition of torture and ill-treatment in particular, and this in spite of many awareness raising campaigns by the UN and international and national NGOs, for instance.

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Chapter VI – EU COOPERATION WITH MULTILATERAL HUMAN RIGHTS FORA

1 Regional organisations

For purposes of ensuring guidance on how the EU could support the torture prevention work of regional human rights bodies, while avoiding duplication of work, both the African Commission on Human and Peoples' Rights and the Inter-American Commission of Human Rights were invited by the consultant to submit comments and suggestions. None was received. This section will therefore be limited to the Council of Europe and the ODIHR of the OSCE, both of which provided helpful feedback.

1.1 The Council of Europe

From 1 to 4 October 2006, the consultant visited the Council of Europe in Strasbourg, where she met with, among others, Ms. Maud de Boer-Buquicchio, the Deputy Secretary General, and Mr. Thomas Hammarberg, the Commissioner for Human Rights.

The protection of human rights in a democratic society is at the heart of the activities of the Council of Europe and its true *raison d'être*. This organisation has more than doubled its membership in the last about 20 years, and with its 46 Member States (⁹³), it covers a vast geographical area reaching way beyond the EU, which means that, for the Council of Europe, relations with the EU are not external, but of a purely *internal* nature. In the course of its existence, the Council of Europe has developed a considerable human rights expertise, which provides an important potential for cooperation between the two organisations. It was made clear by all persons met with in the Council of Europe, that a close and constructive cooperation with the EU to further human rights in general in Europe, and the prevention and elimination of torture and ill-treatment in particular, would be highly appreciated, on the condition, however, that there would be no duplication of work. It was also emphasised in this respect, that the activities of both organisations were very much complementary in the field of human rights taken in a wide sense, but that the more the EU would valorise the Council's specificity and competence in this area, the better it would be for both organisations.

The present section will therefore highlight some of the areas where cooperation has taken place, occasional problems that have arisen, and the areas where the Council of Europe would like to see a strengthened cooperation with the EU for the aforementioned purposes:

- *Joint programmes between the Council of Europe and the European Commission:* These programmes started in the 1990s and have continued since (⁹⁴). They now go beyond the EIDHR and also include programmes on the judiciary, money

⁹³ Most likely soon 47 Member States; on 17 April 2007, the Council of Europe Parliamentary Assembly recommended to the Committee of Ministers of the Council of Europe that Montenegro becomes the 47th Member State of the Organisation.

⁹⁴ For a list of the programmes see <http://www.jp.coe.int/Default.asp>.

laundering etc. The programmes can be considered to be an expression of the complementary nature of the EU and the Council of Europe in that the EU needs the Council's expertise in order to implement human rights programmes, while the Council needs EU funds and general support for doing so. It would appear, however, that none of the joint programmes is entirely focused on torture and ill-treatment, although article 3 of the ECHR, and the corresponding case-law of the European Court of Human Rights, often form part thereof. – A serious problem with the joint programmes was however that they would stop once a country becomes a candidate to EU membership. This reportedly happened with regard to Rumania and Bulgaria, although these countries still needed considerable help in reforming their justice and penitentiary systems, for instance. It also meant that the Council of Europe had to try to find alternative sources of funding. The view was expressed that the EU was thereby also depriving itself of useful expertise to reform the judiciary and the penitentiary systems, for instance, where the Council has an important contribution to make.

- *The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT):* All persons contacted in the Council emphasised the important role that the EU could play in strengthening its support to the work of the CPT, whose advantage is that that it is an independent, *unpolitical* organ. As underlined by the Commissioner for Human Rights, the CPT was the best example of monitoring of detention centres, and among the reasons for this success was that its members can make surprise visits and are known for their good quality of work. Another advantage of the CPT was that its members are able to talk to people in private when they visit prisons. – It was submitted that, when the EU invests money in penitentiary reform for instance, it should ensure that the money is invested wisely and that there is no duplication. To this end, the CPT reports, which contain detailed recommendations, should be used as a point of reference. There were various reasons, such as lack of funds and competence, why Governments do not implement CPT's recommendations. In a new pilot project involving Albania, Moldova and Georgia, the Council would examine the context of each country and then make concrete proposals as to penitentiary reform. The ECD in these countries had been contacted and it was considered to be particularly useful to have the EU participate in this project. The importance of adequate *follow-up of CPT's recommendations* was also stressed and EU support would be essential in this respect. It was further suggested that the EU in general, and the EP in particular, should encourage European Governments, such as Russia, to *publish the CPT reports*.

With regard to *institutional cooperation* it was noted that the contacts between the CPT Secretariat and the EU Secretariat were merely "sporadic". It was therefore suggested that it would be important to institutionalise this cooperation. It would be particularly important to have a *focal person* in the EU Secretariat with whom the Council could discuss questions concerning the implementation of CPT recommendations and other issues concerning torture and ill-treatment.

- *The European Court of Human Rights:* All EU Member States are of course legally bound to enforce the judgments immediately concerning them. It was pointed out, however, that the EU could also provide assistance to other European countries that are Member States of the Council of Europe for purposes of helping them enforce the judgments delivered by the Court in the field of torture and ill-treatment.
- *The Commissioner for Human Rights:* A major financial grant by the EU to support the office of the Commissioner for Human Rights was considered to be essential by the Council of Europe; such contribution would also be useful in that it would dissipate any confusion that may exist concerning the human rights work of the EU and the Council of Europe.
- *The recommendations of the Committee of Ministers:* It was suggested that the EU should promote the implementation of the recommendations of the Council of Europe, including the Committee of Ministers, and adopt its modern criminological thinking. Many important recommendations, that also directly or indirectly concern torture and ill-treatment, have during the last years been adopted in particular by the Committee of Ministers, which does, of course, comprise also all EU Members States. Examples of recommendations relevant to the question of torture and ill-treatment are:
 - Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules;
 - Recommendation Rec(2006)6 of the Committee of Ministers to member states on internally displaced persons;
 - Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims;
 - Recommendation Rec(2005)9 of the Committee of Ministers to member states on the protection of witnesses and collaborators of justice;
 - Recommendation Rec(2004)10 of the Committee of Ministers to member states concerning the protection of the human rights and dignity of persons with mental disorder;
 - Recommendation Rec(2003)5 of the Committee of Ministers to member states on measures of detention of asylum seekers;
 - Recommendation Rec(2003)17 of the Committee of Ministers to member states on enforcement;

- Recommendation Rec(2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice;
 - Recommendation Rec(2003)22 of the Committee of Ministers to member states on conditional release (parole);
 - Recommendation Rec(2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners;
 - Recommendation Rec(2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics;
 - Recommendation Rec(2000)19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system.
 - Recommendation No. R(2000)21 of the Committee of Ministers to member states on the freedom of exercise of the profession of lawyer.
- *Parliamentary contacts:* It was suggested that the EP and the Parliamentary Assembly of the Council of Europe, together with national MPs, undertake joint actions for purposes of promoting the prevention and elimination of torture and ill-treatment in European and other countries.
 - *The Fundamental Rights Agency (FRA):* The views in the Council of Europe diverged with regard to the FRA. On the one hand, it was acknowledged that the creation of the Agency would be a positive development provided that it would be a domestic remedy, since the EU should care about human rights within its own borders. On the other hand, it was also stressed that the real danger would be if the FRA would end up offering an escape gate whereby the Member States would try to lower the level of their undertakings in the human rights field. In order to avoid duplication of work, the Council of Europe would have to be fully involved in the activities of the FRA. In this respect considerable synergy needed to be developed between the EU and the Council.

1.2 The OSCE/ODIHR

The OSCE/ODIHR submitted comments and suggestions as to how the EU could strengthen its work to prevent and eliminate torture. The suggestions made are based on the organisation's experience drawn in particular from field activities aimed at preventing and eliminating torture and ill-treatment in numerous countries. While the ODIHR input has been woven into other parts of this study, this section will focus on how, in its view, the EU could more specifically provide support to the OSCE/ODIHR work in this field. It was thus suggested that the EU should:

- provide funding for national monitoring initiatives of civil society in third countries;
- exert more political pressure on the Governments to deal with abuses in the criminal justice system, including more assistance to deal with practices that facilitate abuse in the law enforcement area;
- continue, and consider expanding, its support to the anti-torture work of the OSCE specialised institutions and the ODIHR; it was submitted in this respect that the OSCE has a “unique” system of field operations, which guarantees closeness to both events on the ground as well as to relevant governmental and non-governmental actors. This “eyes and ears” system was the best system, which allowed you to gain the necessary understanding of the actual situation for purposes of dealing with torture effectively. Furthermore, as an inter-governmental organisation, they had access to governmental structures that have the primary obligation to (i) respond to allegations of torture and ill-treatment and (ii) set up the necessary mechanisms of prevention. – The need for more human resources for the ODIHR was also emphasised, the present situation not being sustainable given its mandated tasks.

2 The United Nations

2.1 Treaty bodies and special procedures

A list of the treaty bodies and special procedures contacted can be found in Annex I to this report. However, there was virtually no response. On 17 October 2006, the consultant addressed the United Nations Committee against Torture, explaining the study to the members of the Committee and inviting them to submit comments and suggestions. Letters and the text of the guidelines were distributed to all the members of the Committee. – Feedback was however received from two former Special Rapporteurs, that is, Professor Theo van Boven, who has also been a member of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture (UNVFVT) and Sir Nigel Rodley, who is now a member of the Human Rights Committee. Some of their views have been taken into consideration in other parts of this study, and others can be summarised as follows:

The importance of EU efforts to prevent and eliminate torture and ill-treatment *worldwide* was emphasised. It was regarded to be positive to have a group of Governments support the work of the Special Rapporteurs. As to the inter-active dialogue in the General Assembly it had also been helpful that the EU asked questions. There was however a problem in that the EU and its Member States have decided that once a country has become democratic, there is no longer any need for human rights support. This is same concern that was stressed also by stakeholders in the Council of Europe and Morocco. Among other views and suggestions were:

- it was strongly emphasised that, in view of the particular leadership that the EU wants to exercise in the human rights field, Member States of the EU should accept international investigations into the situations in their own countries and assume the results thereof;
- the *information sharing* between the EU and the UN should be improved; one of the experts found it “curious” that, as a Special Rapporteur, he had never received any information about the implementation of the guidelines; it would be “most useful” to know what *démarches* the EU has made and what public statements it has issued so that these measures could be taken into account in policies of urgent appeals made by the UN and other organs;
- the *information sharing* on the implementation of the guidelines should also be improved between the EU and other international and regional mandate holders that deal with torture and ill-treatment; some rules of understanding might in this respect have to be elaborated about the use of this information, such as with regard to the confidentiality thereof;
- the EU could give special attention to the *universal periodic review* set up by the UN Human Rights Council;

2.2 UN regional offices

The EU cooperation with UN regional offices, be that of the UNDP, the OHCHR of the UNHCR seem to differ depending on the country of work, and there might in some instances be a possibility for more intensified joint activities. The unity displayed between various important actors could have a particularly significant torture prevention impact. Examples of success of such joint efforts have been given by a couple of UN organisations in the course of this study. Of particular interest was the example in one country where reported cases of abuse recently decreased, after the person in charge of prisons was replaced following a joint ECD-UNHCR intervention. The same ECD and regional UNHCR office had also intervened together in a project which appears to have dealt with the asylum system. As previously noted, the UNHCR expressed the view that without the help of the ECD in the country concerned, they would have gone “nowhere”.

3 Conclusions

- ▶ *The EU potential to cooperate:* The EU potential to have an important impact on the prevention and elimination of torture and ill-treatment in the world is generally recognized and some significant cooperation is already on-going, such as with the Council Europe, which provided particularly helpful suggestions. The usefulness of EU support to UN mandate holders fighting torture is also not disputed. It is noted, in particular, that where the EC Delegations have worked jointly with UN field offices for specific purposes, positive results have been obtained, although possibly of a relatively limited scope. This shows, nevertheless, that the more unity it is possible to muster in the fight against torture

and ill-treatment, the more likely it is that positive results will be obtained in the short term, as well as in the long term.

- ▶ *Concerns regarding EU capacity and commitment:* On the other hand, the stakeholders contacted also saw what could be described as the EU's underused capacity for having a more significant impact on the eradication of torture and ill-treatment in the world. Of particular concern was the EU's too swift withdrawal of financial support to human rights activities in countries having made progress towards becoming democracies, although these countries still have a considerable need for active help in order to be able to consolidate the progress achieved and further improve it. There was also a clear uneasiness about the EU commitment to the eradication torture and ill-treatment within its own borders, but this issue will be dealt with in further detail in the next chapter.

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Chapter VII – EXTERNAL ASPECTS OF EU INTERNAL POLICIES

1 Relevant internal policies

EU internal policies relating to asylum, immigration, the protection of external borders and counter-terrorism, are giving rise to considerable debate and questions are raised about the compatibility of some of the measures adopted within these particularly sensitive areas with the EU Member States international legal obligations. This study cannot, of course, make an in depth analysis of specific EU internal policies and their compatibility with international law. Such analysis would go beyond the mandate of the Subcommittee of Human Rights. EU internal policies are being dealt with in the Committee on Civil Liberties, Justice and Home Affairs, and have to some extent also recently been considered within the framework of the Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners, whose report was adopted by the European Parliament earlier this year. What appears to be justified and relevant is however to highlight some of the general problems concerning the human rights policies of the EU and its Member States in the light of, for instance, terrorist attacks committed in New York, Madrid, London and elsewhere, and which do raise considerable concerns with regard to the importance that is attached by the EU and its Member States to *a democratic society, the rule of law and human rights, including the absolute prohibition of torture and ill-treatment*. The legitimate concern over some aspects of EU's internal policies is strengthened by the views expressed by numerous local stakeholders in the countries chosen for this study and the international organisations and experts consulted, and whose views will be considered in sections 2 and 3 below. Moreover, there cannot, of course, be any clear and definitive distinction made between internal policies, on the one hand, and external policies, on the other. They are, in fact, to a very large extent intrinsically interdependent. The examples in the following sub-sections suffice to illustrate the problem:

1.1 Expulsion and/or refoulement of suspected terrorists

As is well-known, article 3(1) of the UNCAT prohibits, in absolute terms, the States Parties to “expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”. Although the same express prohibition is not found in article 3 of the ECHR, the protection of the latter provision is even wider in that, according to the consistent jurisprudence of the European Court of Human Rights, the Contracting States may not expel, return or extradite a person to another state “where substantial grounds have been shown for believing that the person concerned [...] faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment”⁹⁵. While article 3 of UNCAT is restricted to torture, article 3 of the ECHR thus also covers inhuman and degrading treatment or punishment, as does article 7 of the ICCPR, which also includes the term “cruel”. Considering the absolute nature of the prohibition of torture and other

⁹⁵ *European Court of Human Rights, Soering Case, judgment of 7 July 1989*, para. 91; this case concerned extradition; the text of the judgment can be found on the Court's website: <http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database/> .

forms of ill-treatment under international law, it must be respected at all times and with regard to all persons, independently of the crimes that they may be suspected of having committed, be about to commit, or otherwise be associated with.

The cases of *Ahmed Agiza* (⁹⁶) and *Mohammed Alzery* (⁹⁷) against Sweden concern the expulsion from Sweden to Egypt of suspected terrorists and they are particularly important in that there was sufficient evidence to find against the expelling country. It is sufficient to note in this context that both Mr. Alzery and Mr. Agiza were removed from Sweden to Egypt in December 2001 with the help of foreign agents which subjected them, while still in Sweden and with the acquiescence of Swedish police, to treatment contrary to article 7 of the ICCPR and article 3 of the UNCAT respectively. The Swedish Government relied on diplomatic assurances given by the Government of Egypt according to which, *inter alia*, the complainants would receive a fair trial and not be subjected to inhuman or degrading treatment of any kind. Following the Government's decision to expel Messrs Agiza and Alzery, they were taken to an airport outside Stockholm and handed over to about ten agents from the United States and Egypt, who were dressed in civilian clothes and with hoods covering their faces. For the Committee against Torture in the *Agiza* case, "a real risk of torture in Egypt in the event of expulsion, was confirmed when immediately preceding expulsion, the complainant was subjected on the State party's territory to treatment in breach of, at least, article 16 of the Convention by foreign agents but with the acquiescence of the State party's police"; the expulsion of the complainant was therefore in breach of article 3 of the UNCAT and the diplomatic assurances, which provided for no enforcement mechanisms, "did not suffice to protect against this manifest risk" (⁹⁸).

In the *Alzery* case the Human Rights Committee referred to the finding of the Swedish Parliamentary Ombudsman, according to which "the treatment suffered was disproportionate to any legitimate law enforcement purpose" and it was therefore "evident" that the use of force was "excessive" and amounted to a breach of article 7 of the ICCPR (⁹⁹). With regard to the diplomatic assurances in connection with the expulsion, also the Human Rights Committee noted that they did not contain any mechanism for monitoring their enforcement, and no arrangements were made "outside the text of the assurances themselves which would have provided for effective implementation"; furthermore, the visits to Mr Alzery by the Swedish Ambassador and staff had only commenced five weeks following his return, and then in conditions which "failed to conform to key aspects of international good practice by not insisting on private access to the detainee and inclusion of appropriate medical and forensic expertise, even after substantial allegations of ill-treatment emerged"; it followed, that the State Party had not shown that "the diplomatic assurances procured were in fact sufficient in

⁹⁶ See UN doc. CAT/C/34/D/233/2003, *Communication No. 233/2003, Ahmed Agiza v. Sweden, decision adopted on 20 May 2005 by the Committee against Torture* (hereinafter referred to as the case of *Agiza v. Sweden*).

⁹⁷ See UN doc. CCPR/C/88/D/1416/2005, *Communication No. 1416/2005, Mohammed Alzery v. Sweden, views adopted on 25 October 2006 by the Human Rights Committee* (hereinafter referred to as the case of *Alzery v. Sweden*).

⁹⁸ See the case of *Agiza v. Sweden*, para. 13.4.

⁹⁹ See the case of *Alzery v. Sweden*, para. 11.6

the present case to eliminate the risk of ill-treatment to a level consistent with the requirements of article 7 of the Covenant”, and Mr Alzery’s expulsion therefore violated this provision (¹⁰⁰).

In the case of *Agiza*, the Government was also in violation of its obligations under article 22 of the UNCAT, since the complainant, who was arrested and removed from the country immediately following the Government’s decision, was unable to lodge a complaint under the UNCAT; the Swedish Government was also in breach of its obligations under article 22 of the UNCAT for having, for instance, failed to disclose relevant information to the Committee against Torture (¹⁰¹). In the *Alzery* case, the Human Rights Committee concluded that the circumstances disclosed “a manifest breach” by the State Party of article 1 of the Optional Protocol to the ICCPR, since Mr Alzery’s counsel, who had previously advised the Government of his intention to bring an international complaint in case of expulsion, “was incorrectly advised after the decision had been taken that none had been reached, and the State party executed the expulsion in the full knowledge that advice after its decision would reach counsel after the event” (¹⁰²). In other words, Mr Alzery had not been able effectively to enjoy his right to submit a communication under the Optional Protocol.

1.2 Effective domestic remedies

A cardinal principle of a democratic society is that the State and all state institutions, including Governments, are subjected to the law, and are not above it. When this essential principle is not fully respected, the door is opened to abuses and authoritarianism, the very antithesis of a democratic society. A democratic State, based on the rule of law, is in particular bound to provide a person, who considers that his or her rights have been violated, with effective domestic remedies, also with regard to acts committed by persons in their official capacity.

The expulsion of terrorist suspects, the freezing of assets, and the alleged kidnapping of terrorist suspects and their detention in secret facilities, have one salient feature in common: the persons subjected to such measures very often either cannot *de facto* avail themselves of the existing domestic remedies to vindicate their rights, or do not have any right *de jure* to such remedies. Indeed, the victims are in a situation which must be considered to be a virtual legal vacuum. Again, the cases of *Agiza* and *Alzery* are used as examples to show the dilemma of ensuring that, in the fight against terrorism, also the Member States of the EU continue to be firmly committed to upholding the most fundamental human rights, including the right not to be subjected to torture or other forms of ill-treatment.

In the case of *Agiza*, the Committee against Torture rightly emphasised that “the right to an effective remedy for a breach of the Convention underpins the entire Convention, for otherwise the protections afforded by the Convention would be rendered

¹⁰⁰ *Ibid.*, para. 11.5.

¹⁰¹ Case of *Agiza v. Sweden*, paras. 13.9 and 13.10.

¹⁰² Case of *Alzery v. Sweden*, para. 11.11.

largely illusory” (¹⁰³). In cases of expulsion or refoulement, for instance, an alleged violation of the right not to be tortured relates to a *future* event, and “accordingly, the right to an effective remedy contained in article 3 [of the Convention] requires, in this context, an opportunity for effective, independent and impartial review of the decision to expel or remove, once that decision is made, when there is a plausible allegation that article 3 issues arise” (¹⁰⁴). In this case, the Government itself took the first and final decision, which allowed for no appeal to the Swedish courts or any other kind of review. Recalling that “the Convention’s protections are absolute, even in the context of national security concerns, and that such considerations emphasise the importance of appropriate review mechanisms [...] the absence of any avenue of judicial or independent administrative review of the Government’s decision to expel the complainant does not meet the procedural obligation to provide for effective, independent and impartial review required by article 3 of the Convention” (¹⁰⁵).

In the *Alzery* case, that Human Rights Committee noted that the States Party was under an obligation under article 2(3)(a) of the ICCPR “to provide the author with an effective remedy, including compensation”; the State Party was also under an obligation to avoid similar violations in the future; without making a formal finding of a violation of article 2(3)(a), the Committee welcomed “the institution of specialized independent migration courts with power to review decisions of expulsion such as occurred in the present case” (¹⁰⁶).

1.3 “Rendition” programmes and secret places of detention

Two recent reports, based on extensive research into the alleged CIA flights around the world, including in Europe, raise further serious concerns about the lawfulness of some counter-terrorism methods adopted by at least some European countries.

It is not necessary to go into any details of these “rendition” programmes, which are well-known to the EP Subcommittee on Human Rights. Suffice it to recall, in the first place that, in his report of June 2006, Mr Dick Marty, the Rapporteur of the Committee on Legal Affairs and Human Rights of the Council of Europe Parliamentary Assembly, asked somewhat rhetorically whether human rights are “little more than a fair-weather option”, and concluded that their analysis of the CIA “rendition” programme had “revealed a network that resembles a ‘spider’s web spun across the globe’”; it was emphasised in the report that, although it was addressed to the Council of Europe Member states, the United States, an observer state of the Organisation, “actually created this reprehensible network”, which they criticised “in light of the shared values on both sides of the Atlantic” (¹⁰⁷). The Committee also believed, however, “to have established

¹⁰³ Case of *Agiza v. Sweden*, para. 13.6.

¹⁰⁴ *Ibid.*, para. 13.7.

¹⁰⁵ *Ibid.*, para. 13.8.

¹⁰⁶ Case of *Alzery v. Sweden*, para. 13.

¹⁰⁷ Council of Europe doc. 10957, *Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states*, Report, Committee on Legal Affairs and Human Rights, Rapporteur: Mr Dick Marty, Switzerland, Alliance of Liberals and Democrats for Europe, p. 8 and p. 59, paras. 280 and 284; for the text of the report, see

that it is only through the intentional or grossly negligent collusion of the European partners that this ‘web’ was able to spread also over Europe”; it was clear, although they were “still far from having established the whole truth – that authorities in several European countries actively participated with the CIA in these unlawful activities. Other countries ignored them knowingly, or did not want to know” (¹⁰⁸).

Although “hard evidence” in the strict sense of the word had not been forthcoming, “a number of coherent and convergent elements indicate that secret detention centres have indeed existed and unlawful inter-state transfers have taken place in Europe”; this assessment reflected “a conviction based upon careful examination of balance of probabilities, as well as upon logical deductions from clearly established facts”; the purpose was not to hold the relevant countries “guilty” for having tolerated secret detention sites, but rather to “hold them ‘responsible’ for failing to comply with the positive obligation to diligently investigate any serious allegation of fundamental rights violations” (¹⁰⁹). It followed, that some member States “could be held responsible, to varying degrees, which are not always settled definitively, for violations of the rights of specific persons”, including, among others, Sweden with regard to the abovementioned Ahmed Agiza and Mohamed Alzery; some of the States could also, *inter alia*, “be held responsible for collusion – active or passive (in the sense of having tolerated or having been negligent in fulfilling the duty to supervise) – involving secret detention and unlawful inter-state transfers of a non specified number of persons whose identity so far remains unknown” (¹¹⁰). Switzerland was then cited as example of a state that “should still show greater willingness and zeal in the quest for truth, as serious indications show that their territory or their airspace might have been used, even unbeknownst, for illegal operations” (¹¹¹).

The international community was finally urged in the report, “to create more transparency in the places of detention in Kosovo, which to date qualify as ‘black holes’ that cannot even be accessed by the CPT”; in the words of the report, this was “frankly intolerable, considering that the international intervention in this region was meant to restore order and lawfulness” (¹¹²).

Bearing all this in mind, it was “urgent ... that all Council of Europe member States concerned finally comply with their positive obligation under the ECHR to investigate”; it was also “crucial” that the proposals in the draft resolution and

<http://assembly.coe.int/Documents/WorkingDocs/doc06/edoc10957.pdf> ; hereinafter referred to as the *Dick Marty Report*.

¹⁰⁸ *Ibid.*, p. 59, paras. 284-285.

¹⁰⁹ *Ibid.*, pp. 59-60, para. 287.

¹¹⁰ *Ibid.*, p. 60, paras. 288-289; Sweden, Bosnia-Herzegovina, the United Kingdom, Italy, Germany and Turkey (responsible for violations of specific persons) and Poland and Rumania (“running of secret detention centres”); Germany, Turkey, Spain and Cyprus (“‘staging points’ for flights involving the unlawful transfer of detainees”); Ireland, the United Kingdom, Portugal, Greece and Italy (“for being ‘stopovers’ for flights involving the unlawful transfer of detainees”).

¹¹¹ *Ibid.*, p. 60, para. 290.

¹¹² *Ibid.*, p. 60, para. 291. The CPT completed however its first visit to Kosovo from 21 to 29 March 2007, see <http://www.cpt.coe.int/documents/srp/2007-04-03-eng.htm> .

recommendation were implemented so that terrorism could be fought “effectively” whilst simultaneously respecting human rights (¹¹³).

In its resolution 1507 (2006) of 27 June 2006, the Parliamentary Assembly stated that the cooperation of the Member States of the Council of Europe in the United States’ “spider web” of disappearances, secret detentions and unlawful inter-state transfers had taken place “in secret and without any democratic legitimacy”, and it had allowed “the development of a system that is utterly incompatible with the fundamental principles of the Council of Europe”; in a ten-point proposal, the Assembly *inter alia* called upon the Member States of the Council of Europe to ensure that “unlawful inter-state transfers of detainees will not be permitted” and that “no one is arbitrarily detained, secretly or otherwise, on a member state’s territory or any territory within the member states’ effective control”; the Member States were also in particular called upon to ensure *that* independent, impartial and effective investigations are carried out into these matters, *that* the persons responsible for the relevant crimes are brought to justice *and that* “all victims of rendition or secret detention have access to an effective remedy and obtain prompt and adequate reparation, including restitution, rehabilitation and fair and adequate financial compensation” (¹¹⁴).

The final *Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners* was published in January 2007 by the aforementioned Temporary Committee, headed by Mr Fava, Rapporteur (¹¹⁵). The report confirms the findings of the Council of Europe. In its detailed and strongly worded resolution of 14 February 2007 on the subject, the European Parliament denounced “the lack of cooperation of many Member States” with the Temporary Committee and called on both “the Council and the Member States to issue a clear and forceful declaration calling on the US Government to put an end to the practice of extraordinary arrests and renditions, in line with the position of Parliament” (¹¹⁶). The Parliament condemned “extraordinary rendition as an illegal instrument used by the United States in the fight against terrorism” and further condemned “the condoning and concealing of the practice, on several occasions, by the secret services and governmental authorities of certain European countries” (¹¹⁷). It further considered that the practice of extraordinary rendition had been shown to be “counterproductive in the fight against terrorism” and “in fact damages and undermines regular police and judicial procedures against terrorism suspects” (¹¹⁸).

¹¹³ See the *Dick Marty Report*, p. 60, para. 292.

¹¹⁴ See paras. 6 and 19 of the resolution at

<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/Eres1507.htm>

¹¹⁵ EU doc. FINAL A6-0020/2007 *Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (2006/2200 (INI))*, for the text see <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2007-0020+0+DOC+WORD+V0//EN&language=EN>.

¹¹⁶ See resolution of the European Parliament at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0032+0+DOC+XML+V0//EN&language=EN>, operative paragraphs 13 and 8.

¹¹⁷ *Ibid.*, para. 39.

¹¹⁸ *Ibid.*, para. 41.

With regard to the question of secret detention facilities, it was pointed out in the resolution that some journalists had been pressured not to disclose the names of Poland and Rumania, where such facilities were said to have existed; the Parliament was “deeply concerned that in some cases temporary secret detention facilities in European countries may have been located at US military bases” (¹¹⁹). Regretting the possible lack of control over US bases by host European countries, the Parliament recalled in this respect that the European States are legally bound under the ECHR “to exercise jurisdiction over their entire territory, including any foreign military bases”, and that “the ECHR also provides that every case of detention must be lawful and must be the result of proceedings prescribed by law, whether national or international” (¹²⁰).

The resolution contained numerous political, legal and administrative recommendations. In so far as these recommendations concerned EU relations with third countries, they are of particular interest to this study. The Parliament thus

- “221. Urges the European Union to stress in its contacts with third countries that the appropriate legal framework for governing the international fight against terrorism is criminal law and international human rights law;
- 222. Stresses the necessity of political dialogue with the United States, as well as with other strategic partners of the European Union, on security matters in order to combat terrorism effectively and by legal means;
- 223. Calls on the European Union to recall that the full application of the ‘democratic clause’ is fundamental in its relations with third countries, especially those with which it has concluded agreements; calls on Egypt, Jordan, Syria and Morocco to provide clarity on their role in the extraordinary renditions programme;
- 224. Strongly believes that it is necessary to promote within the UN framework codes of conduct for all security and military services based on respect for human rights, humanitarian law and democratic political control, similar to the 1994 Code of Conduct on Politico-Military Aspects of Security of the Organisation for Security and Cooperation in Europe.”

The Parliament finally recalled, in particular, “that in light of European Court of Human Rights case law, a signatory State bears responsibility for the material breach of the provisions of the ECHR, and therefore also of Article 6 of the Treaty on the European Union, not only if its direct responsibility can be established beyond reasonable doubt, but also by failing to comply with its positive obligation to conduct an independent and impartial investigation into reasonable allegations of such violations” (¹²¹).

¹¹⁹ *Ibid.*, paras. 151 and 153.

¹²⁰ *Ibid.*, paras. 156-157.

¹²¹ *Ibid.*, para. 230. According to article 6(1) of the Treaty, the EU “is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States” and article 6(2) provides, *i.a.*, that the EU “shall respect” fundamental rights as guaranteed by the ECHR “and as they result from the constitutional traditions common to the

Following these examples showing that problems relating to the respect for fundamental human rights also exist within the EU, the next section will present views on EU policies expressed by various stakeholders contacted in connection with this study. As can be seen, there is a wide range of visions of the EU and its work, and although some of them may be found in different parts of this study, it was considered important also to present them in a synthesised form.

2 Views on EU policies

It is in the first place clear from the discussions held, that the EU is considered to have a significant role to play in the prevention and elimination of torture and ill-treatment, a role that has an important potential for improvement; the European Parliament was also believed to have a vital contribution to make to this objective.

On the other hand, a number of NGOs considered that the EU is very bureaucratic. In particular, the system for applying for funds from the EIDHR was regarded as too complex and the suggestion was made that there should be a simplified way of doing it, possibly by adding some kind of control *ex posteriori* instead. Some organisations had unsuccessfully applied for funds and could not understand the reason why their applications had been rejected. The view was also expressed that smaller organisations are at a disadvantage, since they do not have the required skills and time to draft the application according to the complicated rules. NGOs from several countries said that they would appreciate a less restrictive system for funding.

It was also pointed out that one impediment to the implementation of the guidelines is the EU's unsystematic approach and fragmented actions. The need for a strategy was also emphasised and the EU should, little by little, exert more political pressure on the authorities to eliminate torture and ill-treatment. The EU would further need to mainstream human rights and torture prevention work in its mandate. In order to be influential, the EU would moreover have to improve the coordination between different project units, contractors and local NGOs.

In *Morocco*, the general feeling of the NGOs was that they have less support by the EU today than during the former regime; as expressed by one organisation: "Nos relations avec l'UE ne sont pas au beau fixe". They were unable to understand the reasons for this change, because they still need help, not only financial, but also moral, strategic and technical support. Emphasising that torture has repercussions on several generations, one rehabilitation centre stressed that they expect much more from the Europeans and that the EU does not exercise enough pressure. Although all of the organisations in Morocco recognised the important progress made in the country with regard to human rights, they also expressed fear that this situation may change, since the progress has not yet been institutionalised. As the member of one NGO put it: "We have a concern, we are afraid that we are going to wake up one day and realise that this was

Member States, as general principle of Community law". The EU shall also "provide itself with the means necessary to attain its objectives and carry through its policies" (art. 6(4)).

but a dream...” (“On garde un souci, on a peur de se réveiller un jour et réaliser que ce n’était qu’un rêve...”). Yet another organisation stressed that the EU must ensure consistency between declared values and practice; the interests of human beings had to come before political interests; this was the foundation of European culture but it was not visible at the practical level.

While there was thus a certain level of disappointment and dismay in Morocco about the lack of continued EU support to NGOs, the situation was considerably worse in *Algeria*, where the lack of strong EU interventions to deal with massacres and torture has left deep bitterness. It was even submitted that there was a “criminal deficit” on the part of the EU, since it never denounced the grave human rights violations committed by the organs of the State during the years of terrorism.

There was disappointment with the lack of EU firmness and action also among NGOs in *Egypt*. One organisation thus stated that it was all right to think in diplomatic terms as the EU does, but that they needed more. Another organisation felt in general that, although there had been more talk about human rights in the aftermath of the 9/11 attacks, the EU did not really make it a priority. For instance, there were no elements to show that the EU had exerted any pressure on the authorities in the field of torture and ill-treatment and within the framework of the Anti-Terrorism Act. While there was indirect support to NGOs to combat torture and ill-treatment, there was no pressure on the authorities. The feeling of a third organisation was that the guidelines had not been part of the EU foreign policy, and that they were not, consequently, guiding its regional policy. The same organisation said that it had never heard any EU official speak about the guidelines and that the EP Mashrek Delegation did not mention human rights at all. Further, until the EU would lift the self-imposed limits on what it is willing to do, the guidelines would remain useless.

The policy of a fourth organisation was not to call the EU publicly to act; in view of the EU-Egypt relations, there was room for pressure, but the EU or the US should not have the role of a human rights institution; this would even be dangerous, because this was not their role. It was added that only the EP raised human rights concerns, and that they had no big expectations from the EU. However, one organisation said that EU Missions had a great positive impact that could not be ignored, but because of the weak pressure on the authorities to abide by international law, including the UNCAT, it wondered what was the benefit of ratifying international treaties? The EU had to have a rule: While it would not be necessary to go public, there must be tangible support for human rights activists working on torture. According to yet another view, the EU was more concerned with economic issues than human rights; it was understood that the EU did not want to interfere, but there were other steps that could be taken to improve the situation, such as exerting pressure in connection with trade agreements and then encourage the authorities to accept that the local NGOs supervise the application thereof.

3 Coherence and consistency of EU torture prevention policies

The need for EU torture prevention policies to be *coherent* and *consistent* was emphasised by numerous EU stakeholders both in Brussels and in the field, by officials of intergovernmental organisations, international NGOs, independent experts and civil society actors. Indeed, this question became something of a leitmotiv throughout the work on this study. As emphasised by a person with much experience from the UN, “*in view of the leadership that the EU wants to exercise in this field, all EU institutions as well as the Member States, are themselves held to a particularly high standard of accountability*”. Quite interestingly, in some of the countries geographically close to the EU, many civil society actors also stressed the need for the EU to ensure consistency between declared values and practice. One UN field officer noted that, while it was not difficult to get EU attention, what *was* difficult was that the EU was seen by some actors as having double standards, such as in the field of asylum. The guidelines were important, but the same principles should also be applied *within* the EU. A similar argument was made by a member of one of the UN treaty bodies, who also feared that the guidelines would be used to exert pressure on weaker and poorer states. In the Council of Europe, officials also emphasised that the most important thing for the EU Member States to do, is to harmonise their internal policies with their international obligations. According to one opinion, there is simply not enough support to human rights given by the European Governments, and we were “corrupting the principles by remaining silent”.

4 Conclusions

In so far as the EU human rights policies are concerned, the facts and views summarised in this chapter lead to the following main conclusions, in particular:

- ▶ *Relevant EU internal policies:* The examples concerning expulsion of suspected terrorists, the lack of effective remedies and the “rendition” programmes, which also involved the use of secret places of detention, show that problems affecting the protection of human rights know no borders, and that Europe is not immune to such problems, which often become particularly serious in crisis situations. How the countries in Europe decide to confront real or fictitious threats to their security may have a considerable impact, positive or negative, on their capacity to effectively promote human rights elsewhere.
- ▶ *International remedies and internal criticism:* However, on the positive side it can be concluded that, international remedies, which should only be considered to be a last resort when no domestic remedies exist, worked in the cases against Sweden. Individuals in the 46 Member States of the Council of Europe further have the right to petition the European Court of Human Rights and many of them have the right also to complain to the Human Rights Committee and the Committee against Torture. Procedures thus do exist whereby alleged violations of human rights committed by European States can be subjected to scrutiny by international supervisory bodies. This is an important aspect showing the basic commitment of Europe to the effective implementation of human rights.

Furthermore, notwithstanding the difficulties faced by the committees working on the CIA flights in the Council of Europe and the European Parliament, the procedures were set up, and could submit their final reports. Both committees should, of course, have received full cooperation by the European Governments, but there are at least now two serious and well-drafted reports on the subject and strong parliamentary resolutions, that no European Government should take lightly.

- ▶ *Views on EU policies:* The importance of EU help to enable civil society to promote the elimination of torture and ill-treatment was generally recognised. However, strong concern over EU human rights policies was none the less particularly pronounced among civil society actors in Algeria, Egypt and Morocco, but could also be found elsewhere. The EU potential to have an impact was not seen to be fully exploited, and much more was expected to be done. These concerns should give rise to a careful re-consideration by the EU and its Member States of the policies pursued.
- ▶ *Coherence and consistency:* It is of profound concern, that so many stakeholders questioned the EU commitment to human rights in general, and the elimination of torture and ill-treatment in particular, and that they saw a lack of consistency of coherence and consistency in this respect.

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Chapter VIII - RECOMMENDATIONS TO THE EU FOR FUTURE ACTION

1 General recommendations

The EU and its 27 Member States have a clear capacity to stimulate positive changes in the human rights field, both within and outside its borders. Although it is sometimes impossible to know for what reasons improvement in the respect for human rights occur, in particular in third countries, constant work, pressure and persuasion with regard to Governments, and solid support to civil society, may be contributing factors. Given the seriousness and enormity of the task to eliminate torture and other forms of cruel, inhuman and degrading treatment or punishment, it will however require *coherent, consistent, determined, inventive and patient* action by all actors involved for a long time to come.

Below, detailed recommendations will be made in response to the conclusions reached with regard to the implementation of the EU guidelines against torture and various actions taken by the EU and its Member States in general in order to prevent and eradicate torture and ill-treatment. In addition to those recommendations, the following overarching recommendations are made to provide a general basic framework within which the other more detailed recommendations should be considered:

Firstly, for purposes of strengthening the work of the EU as *one entity*, the EU and Member States should explore means to foster a common EU identity among all its actors. While this must for various reasons be considered to be a long-term, overall goal, the Heads of Delegation and Heads of Mission could immediately be encouraged jointly to promote fundamental EU human values whenever necessary and feasible. Such unity could have a considerable positive impact on EU actions to eradicate torture and ill-treatment.

Secondly, with regard to torture and ill-treatment more specifically, the elimination and prevention of all forms torture and ill-treatment is undoubtedly a fundamental value on which both the EU's internal and external policies are based. This fundamental value, which is also of a universal nature, should be reaffirmed whenever necessary. Heads of Delegation and Heads of Mission should be recommended at all times to identify ways and means to work effectively together to support the prevention and elimination of torture and ill-treatment in their respective country of work. In this respect, concrete actions should be designed based on relevant national and international law. Furthermore, it is presumed that the EU's commitment to the eradication of torture and ill-treatment and other fundamental values, will not, in any circumstances, be undermined by the adoption of adverse policies.

Thirdly, since torture and ill-treatment cannot be combated with one simple model strategy that applies to all situations, it will be essential for the EU to develop *a clear global vision with a national focus*. Inspired by the global EU vision of a world free from torture and ill-treatment, the national strategies must carefully examine the local political, social, cultural, and legal contexts in order to be viable. Such wide examination of

the overall context is essential for progress, since torture cannot be seen in isolation, but must be considered from a holistic approach. Priorities must be defined with realistic timelines and simple benchmarks. However, the national strategies must, of course, be consistent and coherent with relevant international law and the EU's overall human rights policy.

Fourthly, in addition to ensuring that torture and ill-treatment is eradicated within its own borders, the EU should intensify its focus on other European States, which are also Member States of the Council of Europe. To see strong, determined and constructive action to eliminate torture and ill-treatment in these 46, soon 47, States would prove Europe's commitment in this field and would send an important signal to other countries around the world. On the other hand, it is important that such focus would not lead to less support for torture prevention and elimination activities in poor countries.

Fifthly, the EU should urgently strengthen its human rights policy with regard to the North African countries, in particular. The development and consistent implementation of a clear and coherent policy could help dissipate the deep frustration felt by many local stakeholders about the lack of EU efforts to encourage their respective Government to improve their human rights record.

Finally, it is important to bear in mind, that the fight against torture and ill-treatment cannot be seen in isolation, but must be placed in a wider framework aimed at improving the general level of protection of human rights in a society. To vindicate his or her rights, a torture victim and his or her next-of-kin must, for instance, be able effectively to enjoy their right to the freedoms of opinion, expression and correspondence, the right of access to an independent lawyer and medical doctor. There must also in particular be independent prosecutors competent to carry out *effective* investigations into alleged abuse as well as an independent and impartial judiciary competent to examine complaints brought against suspected perpetrators of torture and ill-treatment and so forth. As shown by this simple example, human rights are intrinsically interdependent, and in order to be successful, any strategy to improve human rights, including the right to freedom from torture and ill-treatment, in a country must reflect this interdependence.

2 Specific recommendations

2.1 Knowledge and use of the guidelines

- ▶ *Knowledge of the guidelines:* Both EU Headquarters and the EU capitals should ensure that information about the guidelines be sent out to all Heads of Delegation, Heads of Mission and other relevant diplomatic personnel as soon as possible.
- ▶ *Instructions from EU Headquarters and capitals:* It is recommended that the ECDs and EU Missions be promptly given *specific information or guidance* to

assist them in their complex work on torture and ill-treatment. Updated information and instructions/guidance should at regular intervals be sent to the ECDs from Brussels and to EU Missions from the capitals.

- ▶ *Information about international human rights law:* Concomitant with information on the guidelines, EU Headquarters and the capitals of EU Member States should systematically provide Heads of Mission and other relevant personnel with basic information about torture and ill-treatment and should develop a *brief handbook on basic international case-law or legal views* that explain the texts of the prohibition of torture and other forms of ill-treatment.
- ▶ *Guide on practical action:* It could be useful for in particular young and inexperienced diplomatic personnel to have a *simple guide* with practical advice concerning the following issues, among others:
 - help to identify problems/what to look out for;
 - ideas/suggestions as to how to deal with the respective problem;
 - advice as to how to devise and implement an anti-torture strategy jointly with other EU and local actors;
 - tips as to where to find help, support and expertise, if necessary;
 - suggestions to small Missions with few human, financial and technical resources as to what projects could be supported without undue strain.

In this respect, it is recommended in particular, that the EU uses and further develops, as necessary, the enclosed *Concise guide for action in the field*, which provides a basic practical framework for diplomats in charge of designing strategies for the prevention and elimination of torture and ill-treatment (see **Annex VII**).

- ▶ *Exchange of information:* There should be regular exchange of information between the Head of Delegation, Heads of Mission and other relevant personnel on the existence of torture and ill-treatment in their country of work, projects and actions undertaken to combat such treatment, results achieved, obstacles encountered, suggestions for the future etc.; this information should also flow effectively between the field and Headquarters/capitals, and from the latter back, since it is important for the people working in the field to know how their reports are being received, and possibly followed up.
- ▶ *Regular conferences to exchange experiences etc.:* The EU and its Member States should explore the possibility of organising regular conferences to allow relevant staff to discuss their torture prevention work. Considering that there is no single perfect strategy to combat torture and ill-treatment, the experiences of others may provide new ideas and also encouragement; international organisations such as the OHCHR, the UNHCR, the Council of Europe and the ODIHR, as well as relevant NGOs, could also be invited to some of these conferences, or to part of them.

- ▶ *Training:* It is recommended that the EU and its Member States envisage organising systematic training for their staff on the implementation of the guidelines, including various torture prevention strategies.
- ▶ *Governmental sensitivity:* In working with third countries to prevent and eliminate torture and ill-treatment, the EU should not invoke the guidelines but should *exclusively* base itself on the relevant applicable national and international law.

2.2 EU contacts with civil society

- ▶ *Contacts I:* ECDs and EU Missions should adopt a *significantly* more open and proactive approach to civil society actors in the field of torture and ill-treatment. While ECDs and EU Missions have a crucial responsibility to create positive contacts with relevant NGOs, for instance, the latter should also try to improve their contacts with the EU by taking more initiatives, and strengthen the cooperation between themselves;
- ▶ *Contacts II:* ECDs and EU Missions should focus its networking in the human rights field on NGOs that have the highest possible degree of independence and should also ensure that any contacts are made in a careful way so as not to endanger the security of the organisations and their members. As stated in the *EU Guidelines on human rights defenders*, EU Missions “should [...] be aware that in certain cases EU action could lead to threats or attacks against human rights defenders”, and they should therefore “where appropriate consult with human rights defenders in relation to action which might be contemplated”.
- ▶ *Meetings:* ECDs and EU Missions should thus endeavour to intensify their contacts with civil society actors, including NGOs; periodic formal and/or informal meetings could be organised two to four times a year or when the needs arise; although project funds may be limited for smaller Embassies, such Embassies could provide strategic and moral support.
- ▶ *Information-sharing:* The information-sharing between the ECDs and EU Missions, on the one hand, and civil society actors, on the other, should be strengthened; the EU should explain what information it needs and provide adequate feedback to information submitted by NGOs; the NGOs should try to ensure the submission of objective and reliable information.
- ▶ *Formal structure:* Where, under association and other similar agreements, the EU has the competence to raise human rights issues with the host Government, a formal structure should be envisaged for the contacts with relevant NGOs and other local stakeholders.

2.3 EU actions and projects

- ▶ *European countries:* With regard to third countries that are also members of the Council of Europe, the EU should strengthen its support to the work carried out by the Council. There should in particular be increased emphasis on strengthening the work of the European Court of Human Rights and the CPT. Depending on the specific needs in each case, the EU should provide financial and/or technical assistance in order to facilitate the implementation of the judgments of the Court and the recommendations of the CPT.
- ▶ *Human rights clauses in cooperation agreements:* Given the general terms of the human rights clauses in the cooperation and association agreements concluded so far, the EU should in the future try to have more detailed human rights clauses included in such treaties; it should also try to ensure that the human rights provisions of the mutually agreed Action Plans, and other relevant documents depending on the country, reflect the real needs of the relevant third country. This should be a particular concern with regard to any existing problem of torture and ill-treatment in the country.
- ▶ *Political dialogue:* Problems of torture and ill-treatment should then be firmly and consistently dealt with in the framework of the political dialogue and any human rights working group set up under the cooperation or association agreement. Such working group should be promptly created and should provide a formal framework for communication with national NGOs and other relevant stakeholders.
- ▶ *Démarches and public statements:* Démarches and public statements should be used with discernment. In order to maximise their effect, they should, whenever feasible, be made jointly by the EC, the Presidency and the EU Member States. It is further recommended that démarches and public statements be consistently accompanied by a set of adequate follow-up measures in order to try to ensure that they will have a positive impact.
- ▶ *Individual cases:* The EU should continue to intervene in individual cases where there is a risk that the person(s) concerned may suffer torture or ill-treatment or may not be ensured a due process. Efforts should be made to work jointly with local stakeholders for purposes of obtaining reliable information. However, there may be cases when it would be wiser for the EU not to intervene in order not to further endanger the life of the person(s) concerned. Yet, also in such cases the EU should remain vigilant and closely follow the evolution of each case. Intervention in individual cases should also be accompanied by continued action and reform projects.
- ▶ *Financial and technical assistance I:* It is recommended that the EU and its Member States further strengthen their financial and technical support for reforms of police and prison administrations, including training for law enforcement

- personnel and the refurbishing of prisons. Such support should also go towards strengthening an independent and effective administration of justice.
- ▶ *Financial and technical assistance II:* Until torture prevention actions are successful, the EU should continue to fund rehabilitation centres around the world. Ideally, the money available should primarily go to rehabilitation centres where it is most needed. EU Member States should also realise the importance of supporting rehabilitation in Europe.
 - ▶ *Financial and technical assistance III:* EU Member States should considerably increase their support to mainstream, independent, local NGOs. Relatively small amounts of money could go a long way.
 - ▶ *Financial and technical assistance IV:* The EU should increase the number of small projects available for purposes of preventing and eliminating torture and ill-treatment.
 - ▶ *Financial and technical assistance V:* The EU should look into its rules for in particular small projects to see whether there would be a way of easing the conditions for obtaining such grants and rather create a more in-depth evaluation after the project is finalised.
 - ▶ *Financial and technical assistance VI:* EU support to vulnerable groups should be continued.
 - ▶ *Monitoring of places of detention:* It is recommended that the EU promotes effective independent monitoring mechanisms for places of detention in the countries concerned. It would in this respect be particularly important to promote the ratification of the UNCAT and the Optional Protocol thereto (OPCAT). However, in order to be credible and avoid arguments of double standards, all EU Member States should themselves promptly ratify the OPCAT.
 - ▶ *Effective domestic remedies:* The EU should consistently promote the creation of simple and effective domestic remedies for victims of violence, including torture and ill-treatment committed by law enforcement officials. The EU should strongly encourage Governments to promptly pay compensation awarded to victims by competent domestic or international tribunals.
 - ▶ *National human rights institutions:* The EU could promote the creation and functioning of national human rights institutions. Such institutions can constitute a useful bridge between the civil society and the Government in a third country. However, assistance should only be given to institutions that have a high degree of independence vis-à-vis the domestic authorities.
 - ▶ *Participation in Basket Funds:* It is recommended that the EU modifies the rules so as to allow also ECDs to participate in so called Basket Funds.

2.4 Perceived causes of torture and suggested solutions

- ▶ *Torture prevention strategies I - National focus:* Since torture and ill-treatment cannot be combated with one simple model strategy that applies to all situations, it is recommended that the EU develop *national strategies*, which must be based on a careful examination of the local political, social, cultural and legal contexts in order to be viable. Torture prevention strategies should be considered holistically, and be included in a wider human rights action plan. To the extent possible, priorities should be defined with realistic timelines and simple benchmarks. However, it is essential that the various strategies are consistent and coherent with international human rights law and EU human rights policy.
- ▶ *Torture prevention strategies II – Cooperation and division of labour:* It is further recommended that, whenever feasible, and in order to optimize the investment made, all relevant EU actors proceed to dividing the human rights work, including the work on torture and ill-treatment, by sharing responsibilities and entrusting one Mission to act as the focal point, coordinator and spokesperson for the EU. This task should go to the Mission that has the best overall capacities to effectively carry out the defined strategy in cooperation with the local authorities and civil society.
- ▶ *Torture prevention strategies III – A multi-pronged strategy:* Because of the often complex causes of torture and ill-treatment, strategies to prevent abuses should be multi-pronged and should aim at all levels of society and all relevant sectors and stakeholders. In order to be successful, torture prevention strategies should be based on a dual top-down and bottom-up approach, meaning that, while it is important to work with the Government, it is also essential to work at grass-root level by raising awareness etc.

2.5 EU cooperation with multilateral human rights fora

- ▶ *Council of Europe – CPT I:* The EU should intensify its support to the work carried out by the CPT, and it should, in particular, provide financial help to programmes aimed at implementing the numerous detailed recommendations made by the CPT following country visits, recommendations that are aimed at eradicating torture and ill-treatment, and make conditions of detention more humane; consistent and thorough follow-up of these recommendations constitute a key to the success of the work of the CPT.
- ▶ *Council of Europe – CPT II:* The EU could actively encourage all Member States of the Council of Europe to accept that country reports be published.
- ▶ *Council of Europe/EU – Joint programmes:* Joint programmes expressly focusing on torture and ill-treatment should be designed; joint programmes should be maintained until it is clear that the beneficiary countries have reached a

- satisfactory level of progress in the human rights field, and notwithstanding their being candidates for membership in the EU or even Member States thereof.
- ▶ *Council of Europe/EU - institutional contacts:* The contacts between the EU and the Council of Europe, and in particular between the EC Secretariat and the Secretariat of the CPT, should be intensified and preferably institutionalised; *a focal person* should promptly be appointed in both organisations for purposes of establishing easy and regular contacts.
 - ▶ *Commissioner for Human Rights:* The EU should make a strong financial contribution to the Commissioner in order to prove its commitment to human rights in Europe; the Commissioner's work complements that of the Fundamental Rights Agency (FRA), the mandate of which is limited in that it cannot, in principle, deal with so called "third pillar" issues (police, prisons, criminal law), which are issues that are particularly relevant with regard to torture and ill-treatment.
 - ▶ *European Court of Human Rights:* The Court's jurisprudence under article 3 and other articles should be fully respected at all times by EU Member States and the EU should help ensuring that also non-EU Member States of the Council of Europe comply with the judgments, if necessary by providing technical or other assistance to the reforms that may be required in order to fully implement the judgments.
 - ▶ *The Committee of Ministers of the Council of Europe:* The EU should take strong measures to implement the recommendations adopted by the Committee of Ministers in the field of human rights, including in particular, the recommendations concerning the European Prison Rules and other recommendations relevant to the prevention of torture and ill-treatment, such as those cited in this report.
 - ▶ *The Parliamentary level:* Regular annual or biannual meetings should be instituted between the committees dealing with human rights in the European Parliament and the Council of Europe Parliamentary Assembly; interested members of national Parliaments could also be invited to participate in these meetings; joint efforts should be organised to combat torture and ill-treatment.
 - ▶ *The Fundamental Rights Agency:* In view of its considerable expertise, and for purposes of avoiding a costly duplication of work, the Council of Europe should be closely associated with the activities carried out by the new EU FRA.
 - ▶ *The OSCE/ODIHR:* The EU should provide enough financial help over time in order to make the human rights work of the ODIHR sustainable, including in particular, its work for the prevention and elimination of torture and ill-treatment.

- ▶ *The United Nations field offices:* Whenever feasible, the ECDs and the EU Missions should be encouraged to undertake joint actions and initiatives with the various field offices (OHCHR, UNHCR, UNDP); the unity displayed by such actions are significantly more likely to bring about positive results than isolated actions.
- ▶ *The United Nations – treaty bodies and special procedures I:* The EU should in general continue to provide full support to the UN treaty bodies and special procedures, including in situations where EU Member States might themselves be criticised for not fully complying with the prohibition of torture and ill-treatment. Acceptance of such criticism would significantly strengthen the credibility of the EU commitment and initiatives in this field.
- ▶ *The United Nations – treaty bodies and special procedures II:* The EU should continue to encourage States to accept visits by the Special Rapporteurs, and in particular the Special Rapporteur on torture, cruel, inhuman or degrading treatment or punishment.
- ▶ *The United Nations – treaty bodies and special procedures III:* The EU should further explore ways of providing support to States for purposes of enabling them effectively to implement their legal duties under the relevant treaties and the recommendations adopted by the following treaty bodies in particular, namely, the Committee against Torture, the Human Rights Committee, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women.

2.6 External aspects of EU internal policies

- ▶ *Coherence and consistency:* This study has shown that EU's internal and external human rights policies are intrinsically linked. In order to strengthen and make more credible its overall policies to prevent and eliminate torture and ill-treatment worldwide, the EU should thus ensure that these policies are fully coherent and consistent not only in theory, but also in practice.
- ▶ *Human rights and counter-terrorism:* The EU and its Member States should in the future ensure that all measures adopted to fight terrorism or other societal problems strictly comply with the fundamental principles of human rights, and that their legal obligations under article 3 of both the ECHR and the UNCAT are fully complied with at all times.
- ▶ *Internal and external criticism:* The EU and its Member States should ask themselves what went wrong with some significant aspects of their counter-terrorism strategies, strategies which *inter alia* resulted in the violation of the right not to be subjected to torture and ill-treatment. The concerns and criticism displayed in this study about inconsistencies in EU policies may indeed hold the

seed to the future success of the EU's work in this field, and should therefore be carefully addressed.

2.7 Other recommendations

- ▶ *Personal Representative of the Secretary General/High Representative for Human Rights:* The financial and human resources available to the Personal Representative for Human in the area of CFSP should be strengthened; it is essential that the Personal Representative will have the capacity to consolidate the important work carried out so far both outside the EU (promotion of human rights, spreading knowledge about the guidelines) and inside the EU (mainstreaming).
- ▶ *Human Rights resources in the EC Commission:* It is recommended that, for purposes of allowing it effectively to carry out its important human rights mandate and *inter alia* provide the necessary help and guidance to the EC Delegations around the world, the EC Secretariat in Brussels be swiftly given further financial and human resources.
- ▶ *Field visits:* In order to gain further insight and understanding of the problems linked to torture and ill-treatment in the field, and the possible solutions thereto, it is recommended that the human rights officers at Headquarters be given increased possibilities to visit the ECDs and EU Missions in particular in countries where these problems are particularly serious.
- ▶ *EP Committees and Sub-committees:* Considering that many aspects of EU internal policies also affect its external policies, the EP Subcommittee on Human Rights and the Committee on Civil Liberties, Justice and Home Affairs, in particular, should be able to have joint meetings at regular intervals for purposes of discussing cross-cutting issues.
- ▶ *Members of the EP:* Whenever relevant, Members of the European Parliament should continue to raise the question of torture and ill-treatment during visits to third countries and should also try to enlist support from Members of national Parliaments for effective strategies to prevent and eradicate torture and ill-treatment worldwide.
- ▶ *Mercenaries and arms export:* It is recommended that the EP undertakes a study on the role of mercenaries in torture and ill-treatment. It would be appropriate in such context also to consider the effectiveness of the EU Code of Conduct on Arms Export, to which reference is made in the guidelines.
- ▶ *EU website:* The EU should create a comprehensive but user-friendly website limited to its human rights policies and activities; the website should cut across

the EU institutions and should better explain the practical work that the EU is carrying out in this area.

- ▶ *Amendment of the guidelines:* The text of the guidelines is partly out of date and it is therefore recommended that it be updated.
- ▶ *Review of implementation of recommendations:* The European Parliament should review the implementation of the guidelines in the light of the conclusions and recommendations contained in this report within a period of 18 months.

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CONCLUDING REMARKS

It may not be vain to recall, that those men and women who drafted the Universal Declaration of Human Rights, the two International Covenants and the regional human rights Conventions in the aftermath of the Second World War, “were convinced that international law and the protection of the inalienable rights of all human beings are intrinsically linked to international peace and security”; the result of their work can be considered to be “a legal heritage that even today commands great respect [and which] holds out what is most likely the best promise ever available to Humanity to realise its ancient dream of Peace and Justice for all” (¹²²).

At this point of history, the EU is probably the entity that has the best potential to make a substantive and determined contribution to the realisation of this promise, which concerns most particularly the eradication of torture and ill-treatment. There is no time to lose.

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¹²² See SVENSSON-McCARTHY, Anna-Lena, *The International Law of Human Rights and States of Exception* - With Special Reference to the *Travaux Préparatoires* and Case-Law of the International Monitoring Organs, The Hague/Boston/London, Martinus Nijhoff Publishers, 1998 (International Studies in Human Rights, Vol. 54), p. 728.

Annex I

Stakeholders Contacted

I. Consultant's meetings in Brussels during visits in September and December 2006

September

Council of the EU: Mr Michael Matthiessen, Personal Representative of the Secretary General/High Representative for Human Rights, Ms Anke Martina Heyer, Office of the Personal Representative of the Secretary General/High Representative for Human Rights, Ms Nicole Reckinger, Human Rights, EU Council Secretariat, Ms Ruth Kaufmann-Bühler, Administrator, Relations with Mediterranean Countries, Mr Guillermo Troncoso, Principal Administrator (asylum questions), Mr Gavriil Kampouroglu, Administrator, General Directorate H, Justice and Internal Affairs.

European Commission: Ms Danièle Smadja, Director, External Relations DG, Directorate B, Multilateral relations and human rights, Mr Hugues Mingarelli, Director, External Relations DG, Directorate E, Mr Raphael Fišera, Human Rights and Democratisation, International Relations Assistant, assistant policy desk officer; Mr Patrick Trollet, EIDHR.

European Parliament: Mme Hélène Flautre, MEP, Chairperson, Subcommittee on Human Rights, Mr Charles Tannock, MEP, Vice Chairperson, Subcommittee on Human Rights.

December

EU Member States: Prior to the visit, letters were sent to the Permanent Representatives of all 25 Member States of the EU, inviting them to provide comments on the study and to meet with the consultant. Meetings were held with representatives of the following five Member States: Austria, Czech Republic, Latvia, Netherlands and Sweden. No written comments were received.

Council of the EU: Mr Hans Nilsson, Head of Judicial Cooperation UNIT, EU Council Justice and Home Affairs.

European Parliament: Ms Elisabeth Lynne, MEP and Mr Nick Petre, Parliamentary Assistant to Ms Lynne, Mr Simon Coveney, MEP and Ms Diane Halley, Parliamentary Assistant to Mr Coveney and Ms. Eva San Juan, Parliamentary Assistant to Ms Elena Valenciano, MEP.

II. Meetings in Copenhagen

Danish Government: Meeting with Mr Jens Faerkel, Minister Counsellor, Ministry of Foreign Affairs.

Non-governmental organisation: IRCT.

III. Contacts in connection with the case studies

Algeria

Letters and questionnaires were sent to the following stakeholders:

EU Missions and EC Delegation: Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, the Netherlands, Poland, Portugal, Spain, Sweden, the United Kingdom and the EC Delegation. The EC Delegation completed and returned the questionnaire. Some Missions replied that they were unable to reply thereto.

Non-governmental organisations: The National Human Rights Commission of Algeria, Algeria Watch, Collectif des Familles de Disparu(e)s en Algérie, Ligue algérienne des droits de l’homme (LADH), Ligue Algérienne pour la Défense des Droits de l’Homme (LADDH). Replies were received from Algeria Watch, the Collectif des Familles de Disparu(e)s and LADH.

Bangladesh

Letters and questionnaires were sent to the following stakeholders:

EU Missions and EC Delegation: Denmark, France, Germany, Italy, Netherlands, Sweden and the EC Delegation. The EC Delegation and EU Missions submitted a joint reply.

International organisation: The UNDP Resident Representative.

Non-governmental organisations: Bangladesh Human Rights Commission (BHRC), ODHIKAR – A Coalition for Human Rights, Hotline Human Rights Bangladesh, Bangladesh Rehabilitation Centre for Trauma Victims (BRCT), Centre for Rehabilitation of Trauma Survivors (CRTS), and Rädde Barnen (Swedish Save the Children). Replies were received from the BHRC, the BRCT, the CRTS and Hotline Human Rights Bangladesh.

Egypt

The mission to Egypt was carried out by Ms Laëtitia Sedou from 19 to 25 of September 2006, who met with the following stakeholders:

EU Missions and EC Delegation: the Finnish Presidency organised first a joint meeting with most of the EU Missions (20.09.06), and bilateral meetings were also arranged with Austria (Mr Peter Elsner-Mackay, Deputy Head of Mission), the Czech Republic (Ms Katerina Sequensova, Deputy Head of Mission), Denmark (Mr Christian Gronbech-Jensen, Deputy Head of Mission), Finland (Ambassador Hannu Halinen, Mr Martti Eirola, Deputy Head and Counsellor on Commercial and Development Affairs, and Ms Anna Vitie, Second Secretary), France (Mr Etienne Chapon, Second Secretary), Ireland (Ambassador Gerard Corr and Consul Olivia Leslie), the Netherlands (Ambassador Tjeerd de Zwaan, Mr Carel Richter, First Secretary, and Ms Tessa Terpstra, Second Secretary Press and Political affairs), Slovenia (Ambassador Borut Mahnic and Mrs Sonja Cujovic, Deputy Head of Mission), the United Kingdom (Mr Michael Davenport, Deputy Head of Mission), the European Commission Delegation (Mr Nicola Bellomo, Counsellor - NGOs, Human Rights and Civil Society and Ms Catherine de Borchgrave, Programme Manager - NGOs, HR and Civil Society).

Non-governmental organisations: the Arab Centre for the Independence of the Judiciary and the Legal Profession (ACIJLP), the Cairo Institute for Human Rights Studies (CIHRS), the Egyptian Initiative for Personal Rights (EIPR), the Egyptian Organization for Human Rights (EOHR), the Human Rights Association for the Assistance of Prisoners (HRAAP), the Land Center for Human Rights (LCHR), the Mubarak Centre, the Al Nadeem Centre (a rehabilitation centre).

International organisations: The UNDP (Mr Ahmed Ghamen, Governance Program Officer) and the UNODC (Mr Mohamed Abdul-Aziz).

Others: The National Council for Human Rights, the Human Rights Department of the Ministry of Foreign Affairs (Mr Ahmed Gamaleldin, Director and his assistant Ms Mona El Bahtimy), the Ministry of Justice, the Security Services and the Antiterrorism Department (the Deputy Minister of Justice and Colonel Hisham Abdel Hamid in charge of Human Rights at the Security Services), the Deputy Head of the Prosecutor's Office.

Georgia

Letters and questionnaires were sent to the following stakeholders:

EU Missions and EC Delegation: The EC Delegation, the Czech Republic, Finland, France Germany, Greece, Italy, the Netherlands, the United Kingdom. Replies were received from the Delegation of the EC and the Dutch Mission.

Consulates: Austria, Denmark and Sweden. A reply was received from Mr Eric Jönsson, Honorary Consul of Sweden.

Non-governmental organisations: ALPE Association, “Empathy” - Rehabilitation Centre for Victims of Torture, the Human Rights Information and Documentation Centre (HRIDC), Georgian Women’s Employment Supporting Association “Amagdari”, the Georgian Centre for Psycho-social and Medical Rehabilitation of Torture Victims (GCRT), the Georgian Young Lawyers’ Association (GYLA) and Penal Reform International (PRI). Replies were received from ALPE, HRIDC, GYLA and GCRT. “Amagdari” sent a letter with some general information.

International organisations: UNDP-OHCHR, UNHCR. Replies were received from the UNHCR and the OHCHR.

Other: The Ombudsman Office.

Morocco

The mission to Morocco was carried out by Dr Svensson-McCarthy from 8 to 15 of October 2006, who met with the following stakeholders:

EU Missions and EC Delegation: In Rabat, the expert participated in an ad hoc meeting on 10 October 2006 organised by Mr Ingmar Ström, Chargé d’Affaires a.i. of Finland at the Offices of the Delegation of the European Commission; at this meeting the following Missions were represented: Belgium, Bulgaria, Finland, France, Germany, Italy, Netherlands, Poland, Rumania, United Kingdom, the EC Delegation. Separate meetings were held with: Mr Ström at the Finish Embassy, Mr Kevin Lyne, Deputy Head of Mission and Mr Reda Bajoudi, Projects Manager, at the British Embassy, Ambassador Klas Gierow and Ms Anna Block Mazoyer, Counsellor, at the Embassy of Sweden, Mr Enrique Olmos-Llorens, Chef des opérations, Mr Louis Dey, Chargé de programmes, Justice, migrations et droits humains, Mr Marcello Mori, Chef de section and Ms Fatema El-Kesri, Assistante coordination, of the EC Delegation.

Non-governmental organisations: Le Conseil Consultatif des Droits de l’Homme (CCDH), l’Association Marocaine des Droits Humains (AMDH), l’Organisation Marocaine des Droits Humains (OMDH), Amnesty International – Section marocaine, le Centre d’Etudes en droits humains et démocratie, l’Association Médicale de Réhabilitation des Victimes de la Torture (AMRVT), le Centre d’Accueil et d’Orientation des Victimes de la Torture (CAOVT), Forum Vérité et Justice, l’Observatoire Marocaine des prisons (OMP), Association Relais Prison-Sécurité.

International organisation: Mr Tajeddine Badry, Programme officer, UNDP.

Others: The consultant met with two persons from the Ministry of Justice and Mr Habib Belkouch, a human rights expert.

Uganda

The mission to Uganda was carried out by Dr Svensson-McCarthy from 19 to 25 October 2006, who met with the following stakeholders, in particular:

EU Missions: Dr Alexander Mühlen, Ambassador of the Federal Republic of Germany, also representing Finland, the then holder of the EU Presidency; participating in the meetings was also Ms. Regine Kamp von Hess, Deputy Head of Mission and Ms. Annette Windmeisser. Ambassador Mühlen invited the expert to participate in an hour long meeting with the Heads EU Missions, in the course of which the guidelines were discussed, and which was attended by the following Missions, in particular: the EC Delegation, Belgium, Denmark, France, Germany, Ireland, the Netherlands and Sweden. Separate meetings also took place with: Ms. Esther Loeffen, Legal Sector Advisor, Royal Netherlands Embassy (twice), Ms. Pernilla Trädgård (SIDA), the Swedish Embassy and Ms. Emma Ssali Namuli of the EC Delegation.

Non-governmental organisations:, the Foundation for Human Rights Initiative (FHRI), the African Centre for Treatment and Rehabilitation of Torture Victims (ACTV), Human Rights Network – Uganda (HURINET), the Ugandan Coalition for the ICC.

International organisation: OHCHR Regional Office.

Others: The Uganda Human Rights Commission (UHRC), Lord Justice Patrick Tabaro, High Court Judge, Mr. Emmanuel Kasimbazi, Advocate and Lecturer, and Mr. Gad Tumushabe, Principal Legal Officer, Judicial Service Commission.

The German Embassy tried in vain to arrange for the consultant to meet with the Uganda Ministry of Justice and the Ministry of Foreign Affairs.

Ukraine

The Mission to Ukraine was carried out by Ms. Laëtitia Sedou from 2 to 8 of October, who met with the following stakeholders:

EU Missions and EC Delegation: Austria (Ambassador Markus Wuketich and Ms. Sigrud Berka, Deputy Head of Mission), Belgium (Mr. Frederik Develter, First Secretary), Finland (Ambassador Laura Reinilä and Mr. Jukka Pajarinen, Second Secretary), France (Mr. Guillaume Narjolle, First Secretary), Germany (Mr. Reinhard Hassenpflug, Head of the Legal Section), Greece (Mr. Dimitros Michalopoulos, Consul, and Mr. Andreas Kotsopoulos, Police Liaison Officer), Italy (Mr. Gabriele Papadia de Bottini, First Secretary), the Netherlands (Ambassador Ron Keller and Mr. Jeffry Tchong, First Secretary), Sweden (Ambassador John-Christer Ahlander), United Kingdom (Mr. Daniel

Greznada, Second Secretary), EC Delegation (Mr Dirk Schübel, Head of Political, Press and Information Section, Ms Svitlana Didkivska, Project Manager - Civil Society and Mr. Andriy Spivak, Project Manager - Justice, Security and Freedom)

Non-governmental organisations: The Ukrainian Centre for Common Ground (UCCG), the International Medical Rehabilitation Center for the Victims of War and Totalitarian Regimes (MRC), Kharkiv Human Rights Protection Group, Ms Natalia Maksimova, Teacher and Psychologist, Head of Coordination Committee, Committee for assistance to Child's rights protection.

International organisation: UNHCR (Ms Simone Wolken, Regional Representative, and Mr. Roland Weil, Senior Regional Protection Officer.

Others: Ministry of Interior, Ministry of Justice – Department of Criminal Matters, the Office of the Human Rights Ombudsman, Ms Kateryna Levchenko, MP, Member of Civil Committee and President of the NGO “La Strada-Ukraine” (International Women's Rights Centre).

IV. Consultant's meetings and contacts with regional and international organisations

1. Regional level

Council of Europe: In October 2006, the consultant had meetings in Strasbourg with Ms Maud de Boer-Buquiccio, Deputy Secretary General, Mr Jean-Louis Laurent, Director, Directorate General of Political Affairs, Mr Philippe Boillat, Director, Human Rights Directorate, Ms Hanne Blak Juncher, Human Rights Directorate, Head of Division, Mr Thomas Hammarberg, Human Rights Commissioner, Dr Petya Nestorova, CPT Secretariat, Head of Division 2, Mr Michael Neurauter, CPT Secretariat, Mr Michael O'Boyle, Deputy Registrar, European Court of Human Rights, Mr Andrew Drzemczewski, Parliamentary Assembly, Head of the Secretariat, Committee on Legal Affairs and Human Rights and Mr Günther Schirmer, Committee on Legal Affairs and Human Rights.

African Commission on Human and Peoples' Rights: Letters inviting the ACHPR to submit comments on the issues covered by the study were sent to Ambassador Salamata Sawadago, Chairperson, with copies to all members of the Commission.

Inter-American Commission on Human Rights: Letter sent too Mr Clare K. Roberts, President.

2. International level

United Nations: Letters were sent to all members of the Committee against Torture, Mme Christine Chanet, Chairperson, Human Rights Committee, Professor Manfred Nowak, Special Rapporteur on Torture and Cruel, Inhuman or Degrading Treatment or Punishment, Ms Sigma Huda, Special Rapporteur on Trafficking in Persons, Sir Nigel Rodley, Member, Human Rights Committee and former Special Rapporteur on Torture, Ms Zerragoui, Chairperson, Working Group on Arbitrary Detentions. On 17 November 2006, the consultant addressed the Committee against Torture in a closed meeting, explaining the purpose of the study and inviting the members to provide comments and suggestions. Sir Nigel provided feedback in a meeting with the consultant.

OSCE: Letter sent to Ambassador Christian Strohal, ODIHR/OSCE; feedback received from Mr Berry A. Kralj, Chief, Rule of Law Unit, Democratization Department; documents also sent by Ms Susie Alegre, Counter-Terrorism Adviser.

Others: Professor Theo van Boven, former UN Special Rapporteur on Torture; submitted comments in writing.

3. Contacts with non-governmental organisations

The following non-governmental organisations were invited to submit comments and suggestions, and to meet with the consultant: Amnesty International/EU Office, APT, ATD Quart Monde/EU Office, FIACAT, FIDH/EU Office, Human Rights Watch/EU Office, ICJ, ICTJ/EU Office, IRCT, REDRESS and RMDH Brussels. Meetings were held with: APT, IRCT, ICTJ/EU Office, ATD Quart Monde/EU Office. The consultant had a telephone conversation with the RMDH and Amnesty International; Amnesty International submitted some written information.

Annex II

Lettre du 5 septembre 2006 de Mme Hélène Flautre, Présidente de la sous commission des droits de l'homme du Parlement européenne, à Mme Benita Ferrero-Waldner, Commissaire européenne aux relations extérieures et à la politique européenne de voisinage

Annex III

Lettre du 5 septembre 2006 de Mme Hélène Flautre, Présidente de la sous commission des droits de l'homme du Parlement européen à Mme Johanna Suurpaa, Présidente du Groupe de travail du Conseil de l'Union européenne sur les droits de l'homme (COHOM)

Annex IV

Lettre du 9 novembre 2006 de Mme Benita Ferrero-Waldner, Membre de la Commission européenne, à Mme Hélène Flautre, Présidente de la sous commission des droits de l'homme

Annex V
Questionnaire to EC Delegations and EU Missions

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**QUESTIONNAIRE CONCERNING THE IMPLEMENTATION OF THE
EUROPEAN UNION GUIDELINES ON TORTURE AND CRUEL, INHUMAN
OR DEGRADING TREATMENT OR PUNISHMENT**

This questionnaire forms part of a study commissioned by the European Parliament and carried out by Ms. Anna-Lena Svensson-McCarthy, an independent lawyer and human rights consultant, in association with Mr. Eric Sottas, director of the World Organisation Against Torture (OMCT), Geneva, Switzerland, assisted by Ms. Laëtitia Sédou, OMCT European Coordinator, Brussels.

*The study aims at evaluating the implementation of the **EU guidelines on torture and other cruel, inhuman or degrading treatment or punishment** (hereinafter referred to as “the guidelines”), which were adopted by the General Affairs Council on 9 April 2001. The overall 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 on-going efforts to prevent and eradicate torture and ill-treatment worldwide (see the full text of guidelines attached).*

The scope of the questionnaire covers all forms of torture and cruel, inhuman or degrading treatment or punishment, including torture and ill-treatment against any individual or group of individuals, such as women, children, handicapped persons, refugees, asylum seekers, internally displaced persons (IDPs), migrants, religious or ethnic minorities etc.

Whenever used alone, the term “torture” is understood to cover also cruel, inhuman or degrading treatment or punishment.

Please note that the following questions apply to the country in which you work and that the term ‘EU’ in this questionnaire will refer to both the EC Delegations (ECD) and the Embassies of the different EU member states (EUM: EU mission) acting individually or jointly.

Kindly specify your professional affiliation, the country in which you work and the date:

EU Mission of country EC delegation Country of work

Date

Please fill in this questionnaire either electronically or by typewriter and return it to:

*Ms. Anna-Lena Svensson-McCarthy
8, chemin de la Cleison
CH-1278 LA RIPPE
Switzerland
E-mail: al.svensson-mccarthy@bluewin.ch
Fax : +41 22 367 19 45:*

*Do not hesitate to contact us should you have any questions or problems when filling in this questionnaire. **We thank you for your cooperation and will ensure that those who have contributed to this study will receive a copy of the final text thereof.***

I. THE EU GUIDELINES

1. Did you know about the *EU guidelines on torture and other cruel, inhuman or degrading treatment or punishment* prior to receiving this Questionnaire?

Yes No

- If yes, how where they made known to you?

2. Has your Mission/Delegation entrusted a specific person with the task of ensuring the effective implementation of the guidelines?

Yes No

- If yes, when was the person appointed and what others tasks does she/he have to perform?

If you are the person in charge of the implementation of the guidelines, have your received any specific instructions or advice to assist you in this task?

Yes No

- If yes, please explain whether these instructions were helpful/not helpful.

3. Have you set any specific priorities for trying to implement the guidelines in the country were you work?

Yes No

- If yes, what are those priorities and what is their state of implementation?

4. Have the guidelines been helpful:

a) in the regular consultations between EU Missions at the country level?

Yes No

- Whether yes or no, please specify.

b) in general to inspire your discussions and work with local authorities, the civil society etc.? Yes No

- If yes, for what purpose did you use them, and how were they helpful?

5. In your view, have projects funded by the EC Delegation, the EIDHR or individual EU Member States contributed to the implementation of the guidelines?

Yes No

If yes, please provide details of the projects.

If no, kindly explain.

II. CONTACTS WITH CIVIL SOCIETY: Non- Governmental Organisations etc.

6. What is your experience with coordination and information sharing with human rights NGOs in the field of torture and ill-treatment? For example:

a) Are you in rare regular frequent contact with NGOs working in this field¹²³?

Please give details.

b) Do you organise rare regular frequent meetings with these NGOs?

Please give details.

c) Do you contact these organisations when you draft the annual report on the situation of torture and ill-treatment in your country? Yes No

¹²³ Either NGOs specialised in the eradication and prevention of torture (including rehabilitation centres for torture victims, if relevant) or generalist NGOs with competence in this field.

d) Do the NGOs send you information on the situation of torture and ill-treatment on their own initiative? Yes No

- If yes, is this information accurate/useful? Yes No

- If not, why?

7. Have you ever financed or co-financed projects with civil society in fields related to torture and ill-treatment (including vulnerable groups, conditions of detention, rehabilitation, awareness-raising, domestic violence, etc.)

Yes No

Please give details.

III. EU ACTIONS: Public Statements, Démarches, Financial and Technical Assistance

8. Has your Mission/the EC Delegation ever raised the question of torture and ill-treatment in political discussions with the country's authorities?

Yes No

If yes, please give details, in particular as to what official level(s) this was done and what was the response and/or result. If no, please explain why this has not been done.

9. Has your Mission/the EC Delegation ever made any demarches and/or public statements urging the government in the country where you work to take effective measures to deal with torture and other forms of ill-treatment?

Yes No

If yes, please explain. If not, please explain why this has not been done:

10. Could you give one or more examples of a *successful* action by your Mission or the EU in the area of torture and ill-treatment in the country/region where you work? (It can, for instance, be an action/project in the field of prevention and/or eradication in cooperation with the civil society, the national authorities or both.)

11. Are there any examples of actions taken and/or projects supported in this field that have *not* been successful? Yes No

If yes, please give details.

12. Are you aware of any EU actions (démarches, public statements, technical and financial assistance etc.) to provide support for *vulnerable groups*, such as women, children, handicapped persons, refugees, internally displaced persons, asylum seekers, migrants, religious or ethnic minorities, etc.?

Yes No

If yes, please specify (i) what actions were taken (ii) with regard to what group and (iii) whether they were successful.

13. What steps, if any (financial and/or technical assistance, training etc.), has your Mission or the EU taken for purposes of creating, or providing support to, a national human rights institution?

14. According to your knowledge, has your Mission or the EU promoted/financed torture prevention training for any of the following groups:

- law enforcement officials Yes No
- the military/army Yes No
- civil and military medical health professionals and those working in prisons (including forensic doctors, general practitioners, psychiatrists, psychologists etc.) Yes No

- public officials in various ministries, such as the Ministry of Justice and the Ministry of Interior Yes No
- members of national human rights institutions (ombudsmen, human rights commissions etc.) Yes No
- non-governmental organisations Yes No
- journalists Yes No
- teachers etc. Yes No
- others

If yes, what do you think about the result of the training? Did it succeed in *transmitting new knowledge, create new skills* and *raise awareness* of the problems of torture and ill-treatment? Are there any signs that the training made a difference? If so, what difference did it make? If the training was not successful, kindly explain the reasons for the failure.

IV. EU ACTIONS: Individual Cases, Domestic Remedies and Rehabilitation

15. Have you ever made interventions in individual cases to try ensure a person’s safety and/or due process (such as attending trials, etc)?

Yes No

If yes, what was the result?

If no, have you ever heard about such EU actions in individual cases?

Yes No

If yes, please give details:

16. Does your Mission or the EU provide assistance (technical, financial etc) to national stakeholders in order to establish and operate effective domestic legal procedures for investigating complaints and suspected cases of torture and ill-treatment?

Yes No

- If yes, please give details. If no, kindly explain why this is not being done.

17. Does the Government in the country where you work pay the damages awarded to victims of torture and ill-treatment by the competent local authorities?

Yes No

- If not, what has your Mission or the EU tried to do to convince the government to provide an effective remedy to the victims concerned?

18. What assistance, if any, does your Mission or the EU provide to the rehabilitation centre(s) for victims of torture that exist(s) in the country where you work?

V. EU ACTIONS: Detention

19. Is your Mission or the EU visiting places of detention in the country?

Yes No

- If yes, please give details. If no, kindly explain why this is not being done.

18. Do you know what steps, if any (démarches, public statements etc.), the EU has taken to persuade the state where you work to adopt and implement international legal safeguards for persons deprived of their liberty? Please give details of the safeguards and the possible positive/negative result of the efforts. (*The safeguards might be, for instance: the prohibition of secret places of detention, the introduction of official prison registers, preferably centralised, legal rules for determining the lawfulness of the deprivation of liberty and the continued detention etc., the right to swift access to a lawyer and medical doctor of one's choice, the right to inform one's next of kin or friend of the deprivation of liberty, procedural safeguards for purpose of interrogation, or rules concerning conditions of detention.*)

20. Does your Mission or the EU assist the country where you work with the creation of independent visiting mechanisms to all places of detention?

Yes No

- If yes, please explain what measures have been taken and whether they were successful.

VI. CONCLUSION

21. Which are, in your view, the main obstacles to an effective implementation of the guidelines in the country where you work? How could these obstacles best be overcome?

22. Given your experience, what conclusions can you draw at this stage, and what recommendations would you have, for future EU action in the field of torture and ill-treatment? In particular, how could the EU action in this field be improved? Kindly be as specific as possible.

23. In your view, could, and should, the guidelines and their implementation be improved in some way, and if so, how?

24. Other comments/suggestions:

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Annex VI
Questionnaire to NGOs, National Human Rights Institutions, International Organisations etc.

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QUESTIONNAIRE CONCERNING THE IMPLEMENTATION OF THE EUROPEAN UNION GUIDELINES ON TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

This questionnaire forms part of a study commissioned by the European Parliament and carried out by Ms. Anna-Lena Svensson-McCarthy, an independent lawyer and human rights consultant, in association with Mr. Eric Sottas, director of the World Organisation Against Torture (OMCT), Geneva, Switzerland, assisted by Ms. Laëtitia Sédou, OMCT European Coordinator, Brussels.

*The study aims at evaluating the implementation of the **EU guidelines on torture and other cruel, inhuman or degrading treatment or punishment** (hereinafter referred to as “the guidelines”), which were adopted by the General Affairs Council on 9 April 2001. The overall 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 on-going efforts to prevent and eradicate torture and ill-treatment worldwide (see the full text of guidelines attached).*

The scope of the questionnaire covers all forms of torture and cruel, inhuman or degrading treatment or punishment, including torture and ill-treatment against any individual or group of individuals, such as women, children, handicapped persons, refugees, asylum seekers, internally displaced persons (IDPs), migrants, religious or ethnic minorities etc.

Whenever used alone, the term “torture” is understood to cover also cruel, inhuman or degrading treatment or punishment.

Please note that the following questions apply to the country in which you work and that the terms ‘EU’ in this questionnaire will refer to both the EC Delegations (ECD) and the Embassies of the different EU member states (EUM: EU mission).

Kindly specify the country in which you work, the date and your professional affiliation:

Country Date

Government official Judge Prosecutor Lawyer

- National Human Rights Institution Medical Doctor Police officer
- Army/Military officer Non-governmental organisation
- Torture rehabilitation centre Journalist
- Teacher Other

Please fill in this questionnaire either electronically or by typewriter and return it to:

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Do not hesitate to contact us should you have any questions or problems when filling in this questionnaire.

We thank you for your contribution and will ensure that those who have contributed to this study will receive a copy of the final text thereof.

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I. THE EU GUIDELINES

1. Had you heard about the *EU guidelines on torture and other cruel, inhuman or degrading treatment or punishment* prior to receiving this Questionnaire? Yes No

If no, please go to section **II**.

If yes, how did you learn about them?

2. Have the guidelines helped you define your relations with the EU? Yes No

If yes, please explain.

3. Have you set any specific priorities for trying to work with the EU in order to promote the implementation of the guidelines?
Yes No

If yes, please explain what these priorities were/are.

II. CONTACTS WITH THE EU

4. Do you know who is in charge of the implementation of the *EU guidelines* among the EUM and in the ECD?
Yes No

If yes, could you name that person or persons?

If no, do you know who is in charge of *human rights issues in general* among the EUM and the ECD?

5. What is your experience in terms of coordination and information sharing with the EU in the field of torture and ill-treatment? For example:

Are you having rare regular frequent contacts with EU Missions (EUM) or EC Delegation (ECD)?

Do the EUM and/or ECD organise rare regular frequent meetings with non-governmental organisations and other associations working in the field of human rights?

Do the EUM and/or ECD contact you when they draft their annual report on the situation of torture and ill-treatment and/or human rights in general in your country?

Yes No

Do you and/or your organisation take the initiative of sending regular information to the EUM and/or ECD on the situation of torture and ill-treatment in your country?

Yes No

If yes, what feedback have you received?

6. Has there been any change in the nature and frequency of the contacts with the EU since the adoption of the guidelines in 2001?

Yes No

If yes, please give details of the contacts:

7. Have you ever received funding from the EU for projects related to torture and ill-treatment, including domestic violence etc. (e.g. for purposes of raising awareness, providing training, support for victims, assistance to particularly vulnerable groups (such as women, children, handicapped persons, refugees, asylum seekers, internally displaced persons, migrants, religious or ethnic minorities etc.)?)

Yes No

If yes, please give details of the duration and the contents of the project(s).

III. EU ACTIONS: Public Statements, Démarches, Financial and Technical Assistance

8. Are you aware of any public statements or démarches carried out by the EU in your country on the issue of torture and ill-treatment

Yes No

If yes, please give details:

9. Could you give one or more examples of a *successful action* by/with the EU in the area of torture and ill-treatment in your country/region? (It can, for instance, be an action/project in the field of prevention and/or eradication in cooperation with the civil society, the national authorities or both.)

10. Are there any examples of actions taken and/or projects supported in this field that have *not* been successful?

If yes, please give details.

11. Are you aware of any EU actions (démarches, public statements, technical and financial assistance etc.) to provide support for *vulnerable groups*, such as women, children, handicapped persons, refugees, internally displaced persons, asylum seekers, migrants, religious or ethnic minorities, etc.?

Yes No

If yes, please specify (i) what actions were taken (ii) with regard to what group and (iii) whether they were successful.

12. What steps, if any (financial and/or technical assistance, training etc.), have been taken by the EU for purposes of creating, or providing support to, a national human rights institution?

13. According to your knowledge, has the EU promoted/financed torture prevention training for any of the following groups:

- law enforcement officials Yes No
- the military/army Yes No
- both civil and military medical health professionals and those working in prisons (including forensic doctors, general practitioners, psychiatrists, psychologists etc.) Yes No
- public officials in various ministries, such as the Ministry of Justice and the Ministry of Interior Yes No
- members of national human rights institutions (ombudsmen, human rights commissions etc.) Yes No
- non-governmental organisations Yes No
- journalists Yes No
- teachers etc. Yes No
- others

If yes, what do you think about the result of the training? Did it succeed in *transmitting new knowledge, create new skills* and *raise awareness* of the problems of torture and ill-treatment? Are there any signs that the training made a difference? If so, what difference did it make? If the training was not successful, kindly explain the reasons for the failure.

IV. EU ACTIONS: Individual Cases, Domestic Remedies and Rehabilitation

14. Have you ever asked the EU to intervene in individual cases, including by sending observers to trials of persons at risk of torture?

Yes No

If yes, what was their reply?

If no, have you ever heard about such EUM or ECD actions in individual cases

Yes No

If yes, please give details:

15. Do you know what assistance, if any, (technical, financial etc.) the EU has provided to the country where you work in order to establish and operate effective domestic legal procedures for investigating complaints and suspected cases of torture and ill-treatment?

Yes No

If yes, please give details:

16. Does the Government in your country pay the damages awarded to victims of torture and ill-treatment by the competent local authorities?

Yes No

If not, have you tried to approach the EU for purposes of getting help to convince the Government to pay the victims concerned?

Yes No

If yes, what feedback did you receive?

17. To your knowledge, what assistance, if any, has the EU provided to the rehabilitation centre(s) for victims of torture that exist(s) in the country where you work. Please explain.

V. EU ACTIONS: Detention

18. Are you aware of EUM or ECD visiting places of detention in your country?

Yes No

If yes, please give some details:

19. Do you know what steps, if any (démarches, public statements etc.), the EU has taken to persuade the state where you work to adopt and implement international legal safeguards for persons deprived of their liberty? Please give details of the safeguards and the possible positive/negative result of the efforts. *(The safeguards might be, for instance: the prohibition of secret places of detention, the introduction of official prison registers, preferably centralised, legal rules for determining the lawfulness of the deprivation of liberty and the continued detention etc., the right to swift access to a lawyer and medical doctor of one's choice, the right to inform one's next of kin or friend of the deprivation of liberty, procedural safeguards for purpose of interrogation, or rules concerning conditions of detention.)*

20. Has the EU assisted the country where you work with the creation of independent visiting mechanisms to all places of detention?

Yes No

If yes, please explain what measures have been taken and whether they were successful.

VI. CONCLUSIONS

21. Which are, in your experience, the main obstacles to an effective implementation of the guidelines in the country where you work?

22. In your view, could, and should, the guidelines and their implementation be improved in some way, and if so, how?

23. Given your experience, what conclusions can you draw at this stage, and what recommendations would you have, for future EU action in the field of torture and ill-treatment? In particular, how could the EU action in this field be improved? Kindly be as specific as possible.

24. Other comments/suggestions:

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Annex VII

Prevention of Torture and Ill-Treatment: A concise guide for future EU action in the field

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1 Introductory remarks

In order to be able to design effective torture prevention and elimination strategies in the country where they work, diplomats must have a solid basic knowledge of human rights law and also of the factual situation in the country concerned. To this end, they need easy access to information regarding the national and international law applicable to the country as well as to reliable information on the human rights situation in general and the situation with regard to torture and ill-treatment in particular. It might further be useful for them to have a check-list of basic questions to look into when they first arrive in the country, in order to familiarise themselves with the human rights situation therein and, in particular, any specific problems that may need attention in the short, medium and/or long term, depending on the gravity and potential for change.

For purposes of making its work against torture and ill-treatment more efficient, it is thus recommended that each ECD and EU Mission concerned, with the help, if necessary, of the Headquarters and capitals, *elaborate a simple compendium of laws and factual information that should be continuously updated.*

Below is in the first place a list of suggested laws, legal documents and information that should be included in this compendium as well as a list of questions that can help to identify actual or potential problems that should be given attention. A list of practical handbooks on human rights in general and the question of torture and ill-treatment in particular is finally contained in section 4.

It should be stressed, however, that this is but a an outline with some basic suggestions, that should be expanded and improved depending on the circumstances.

2 Recommendations concerning the collection of basic legal documents and facts

The point of departure is in this respect that, since the prohibition of torture has been recognised as being a *peremptory norm* of international law, all countries must respect this prohibition in *all* circumstances and notwithstanding their not having ratified any international treaties on this issue. Specific national legal provisions outlawing torture and ill-treatment and the ratification of relevant international treaties do however provide particularly useful tools to prevent and eradicate such illegal practices.

2.1 Countries that have ratified the main regional and international human rights treaties

2.1.1 Basic legal texts

Ensure that in each EC Delegation and EU Mission there is a list of all relevant national laws (Constitution, Penal Code, legislation concerning the police and prisons, administrative law etc.) and the international and regional treaties ratified by the State and which concern the question of torture and other forms of ill-treatment. When addressing Governments on a human rights issue, it is important to base the arguments – to the extent possible - on their legal obligations under national and international law. Examples of such treaties are, with the most relevant articles within parenthesis, including provisions concerning effective domestic remedies:

- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002
- The International Covenant on Civil and Political Rights (articles 2, 4, 7 and 10), 1966
- The Optional Protocol to the International Covenant on Civil and Political Rights, 1966 (right for individuals to complain to the Human Rights Committee)
- The African Charter on Human and Peoples' Rights (articles 5 and 7), 1981
- The American Convention on Human Right (articles 5, 25 and 27), 1969
- The Inter-American Convention to Prevent and Punish Torture, 1985
- The European Convention for the Protection of Human Rights and Fundamental Freedoms (articles 3 and 13), 1950
- The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment, 1987
- The Convention on the Rights of the Child (articles 37 and 39), 1989
- The African Charter on the Rights and Welfare of the Child (articles 16 and 17(2)(a)), 1990

2.1.2 International jurisprudence, views, general comments and recommendations

Jurisprudence and legal opinions: The compendium should comprise the most important jurisprudence and other legal opinions concerning torture and ill-treatment regarding the country in which the EC Delegation or EU Mission is situated. Depending on the country of work, legal opinions of the following international monitoring bodies are of particular relevance:

- The Human Rights Committee; views adopted under the Optional Protocol; for country-specific information, see <http://www.unhchr.ch/tbs/doc.nsf> or the Committee's annual reports of the UN General Assembly;
- The Committee against Torture, views adopted under article 22 of the UNCAT; for country-specific information, see <http://www.unhchr.ch/tbs/doc.nsf> or the Committee's the annual reports to the UN General Assembly;
- The European and Court of Human Rights; for its judgments, see <http://www.echr.coe.int/ECHR/>;
- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment: for its reports, see <http://www.cpt.coe.int/en/>;
- The Inter-American Court of Human Rights, for its judgments, see <http://www.corteidh.or.cr/index.cfm?CFID=192459&CFTOKEN=11898676>;
- The African Commission on Human and Peoples' Rights, for information on its work, see <http://www.achpr.org>;

General comments and general recommendations: Secondly, the compendium should comprise the most relevant general comments adopted by the UN treaty bodies. These comments provide important views on the interpretation of the relevant treaty provisions. In so far as the prohibition of torture and ill-treatment and the right to a humane treatment are concerned, the following general comments or recommendations adopted by the Human Rights Committee (HRC), the Committee against Torture (CAT) and the Committee on the Elimination of Discrimination against Women (CEDAW) are particularly relevant:

- HRC: General comment No. 20 - Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment);
- HRC: General comment No. 21 - Article 10 (Humane treatment of persons deprived of their liberty);
- HRC: General comment No. 29 - Article 4 (Derogations during a state of emergency).

HRC's General comments are available at:

<http://www.ohchr.org/english/bodies/hrc/comments.htm>

- CAT: General comment No. 1 - Implementation of article 3 of the Convention in the context of article 22 (Refoulement and communications); for the text see <http://www.ohchr.org/english/bodies/cat/comments.htm>
- CEDAW: General recommendation No. 12 - Violence against Women;
- CEDAW: General recommendation No. 14 - Female circumcision;
- CEDAW: General recommendation No. 19 - Violence against Women.

CEDAW's General recommendations are available at:

<http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html>

The text of the general comments adopted by the various United Nations treaty bodies can also be found in UN doc. HRI/GEN/1/Rev.7, which is available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/ca12c3a4ea8d6c53c1256d500056e56f?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/ca12c3a4ea8d6c53c1256d500056e56f?OpenDocument).

Concluding observations and recommendations: It would further be important to include in the compendium the concluding observations and recommendations adopted by the United Nations treaty bodies following their consideration of the initial and periodic reports submitted by the particular State Party under the various treaties. The most relevant treaty bodies for purposes of torture and ill-treatment are:

- The Human Rights Committee;
- The Committee against Torture;
- The Committee on the Rights of the Child;
- The Committee on the Elimination of Discrimination against Women.

The country specific recommendations adopted by these treaty bodies provide important guidance as to what specific problems a particular State is confronted with in the field of torture and ill-treatment and the measures required to solve these problems. They can be found at: <http://www.unhchr.ch/tbs/doc.nsf> or in the relevant annual reports submitted by the treaty bodies to the UN General Assembly.

United Nations Special Rapporteurs: Both the general and the country specific reports of the United Nations Special Rapporteur on Torture are useful for guidance and can be found at: <http://www.ohchr.org/english/issues/torture/rapporteur/index.htm>.

2.1.3 Information from national international non-governmental organisations

To help constitute a solid file of facts concerning the country of work, information could be obtained from independent local/national and international non-governmental organisations, which often have detailed reports that can provide much help and ideas as to what needs to be done in order to improve the situation in the relevant country.

Sometimes national NGOs submit “shadow” reports to the United Nations treaty bodies for purposes of providing a complementary view of the human rights situation in their country in connection with the treaty body’s consideration of the report of the State Party. If well drafted, such “shadow” or alternative reports can also provide additional useful information to the diplomatic staff.

2.2 Countries that have not yet ratified the basic international or regional treaties

With regard to countries that have not ratified any of the aforementioned treaties, EC Delegations and EU Missions should agree on a strategy to lobby effectively to encourage the States to proceed swiftly to such ratifications, possibly starting with the treaty or treaties that have the most general field of protection, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

3 **Torture and ill-treatment: What to look out for?**

3.1 *General political and legal framework*

A democratic society is a society based on the rule of law and the respect for human rights. Conversely, human rights in a wide sense cannot be effectively protected except in a democratic society. However, a democratic society does not necessarily mean that human rights are always effectively protected and never violated. Yet, there is, in general, but not always, mechanisms whereby alleged victims can try effectively to vindicate their rights and freedoms, such as before independent and impartial courts. The general political and legal framework is thus of considerable importance in assessing the status of human rights in a country. Relevant questions are, among others:

- Are free and fair general parliamentary elections held at regular intervals?
- Does the Constitution permit an effective multiparty system?
- If so, does the multiparty system function in practice, or is their intimidation and harassment of the opposition party or parties, such as in connection elections?
- Is there a strong Presidency with correspondingly less power for the Prime Minister and the Parliament, for instance?
- Are there effective checks and balances between the Executive and the Legislature?
- Is the Judiciary independent and impartial?
- Are prosecutors independent and impartial?
- Are lawyers able to work independently and without being intimidated?
- Is there corruption in the country and is it widespread?
- Are human rights in general effectively guaranteed in law and practice in the country?
- Is torture and other forms of ill-treatment proscribed by both the Constitution and the country’s Penal Code?

In short, where the democratic system is not functioning well, where the opposition parties are having problems, and where the justice system cannot function independently and impartially, there is a considerable risk that brutalisation by law enforcement officers exist in the country.

3.2 Specific questions for assessing the existence of torture

The following are some questions that diplomats in the field should ask in order to try to assess whether, and to what extent, torture and ill-treatment exist in their country of work, and whether there are effective remedies available to alleged victims of violence:

- Are there any reliable reports on the existence of torture and ill-treatment by national and international NGOs or intergovernmental bodies?
- Are their extrajudicial executions, involuntary disappearances and arbitrary detentions in the country?

Where such practices exist, there is a also high risk of torture and ill-treatment.

- Are there any newspaper articles concerning such treatment? If yes, preserve the articles but do *not* rely exclusively on them for purposes of démarches, public statements or any other interventions, because the facts may not be accurate and will need to be verified against safer sources.
- Is there a register, preferably central, where all deprivations of liberty are carefully noted (name of detained person, the reason for arrest and detention, names of arresting officers, time, date and place of arrest and release, place of detention etc.)?
- Are people arrested and detained brought before a judicial officer for purposes of having the legality of the deprivation of liberty examined within 24 or 48 hours?

Where the preceding important safeguards against abuse do not exist, or are not systematically and effectively enforced, there is a high risk of torture and ill-treatment as well as a high risk of involuntary disappearances.

- Are the detainees allowed prompt access to a lawyer of their own choice during this period of time?
- Are the detainees allowed prompt access to a medical doctor of their own choice during this period of time?
- Are the detainees allowed promptly to inform their next-of-kin about their detention *and* exact whereabouts during this time?

When detainees have no right promptly to consult a lawyer and medical doctor and when they are not allowed promptly to inform their family about their arrest and detention, there is also a high risk of abuse.

- Are detainees spending a disproportionately long time in detention without being either released or tried by an independent and impartial court of law?
- What about the penitentiary system in general?
- Is there any systematic and effective monitoring mechanism of places of detention, including military detention facilities?
- What about the conditions in the prisons? Are the prisons overcrowded? Do the detainees/prisoners have easy and effective access to health care? Do they get enough food and adequate clothing etc.?
- In places of detention, are women separated from men, and children and youth from adults?
- In places of detention, are suspects separated from convicted prisoners?
- Is there an independent and effective complaints mechanisms in case of ill-treatment or other problem committed by the police or other law enforcement officers?

Also difficult prison conditions can amount to a violation of international law, and there must be an effective independent complaints mechanism competent to deal with alleged violations of human rights in prisons.

- Are the ordinary courts of law competent to deal with allegations of torture and ill-treatment and can they do so effectively?
- In case a court awards compensation to the victim(s), does the State pay the compensation?
- Does corruption affect the Judiciary, police and prisons?
- Are there special problems concerning the treatment of particularly vulnerable groups, such as women, children, asylum seekers, refugees etc.?
- Are there special security or emergency laws that grant extraordinary powers to the police or other law enforcement officials for alleged crimes against the State's national security etc.?
- Are there special security units that function parallel to the ordinary police?

- Is the conduct of these units subjected to strict controls?
- Are such units official or otherwise tacitly sanctioned by the Government?
- Are alleged victims afraid of bringing complaints? Is there intimidation and harassment of persons trying to bring complaints concerning torture and ill-treatment?
- Does the prosecution base cases on statements obtained by illegal means, including torture and ill-treatment?
- Are judges accepting such illegally obtained statements to convict the victims of the illegal treatment?
- What about private or domestic violence in the country? Does it exist and is the problem addressed adequately by the authorities?
- Are there effective domestic remedies to victims of private abuse?

States have a duty under international law to ensure that remedies exist to deal effectively with allegations of private and domestic violence.

The above list of non-exhaustive questions, can contribute to an improved understanding of the situation with regard to torture and ill-treatment in a country and can thus also help the diplomats concerned to design adequate intervention and/or projects.

4 **Examples of practical guides**

This final section contains a list of selected handbooks that provide useful material for persons involved in projects aimed at the prevention and eradication of torture; others can of course be added to this list. These handbooks can also be particularly helpful to legal professionals, among others, and a couple of them are moreover also specifically aimed at medical health professionals. The cooperation between medical health and legal professions in combating torture and ill-treatment is of considerable importance and should be encouraged by EC Delegations and EU Missions.

4.1 Handbooks on torture and ill-treatment

- *Article 3 of the European Convention on Human Rights: A Practitioner's Handbook*, OMCT Handbook Series Vol. 1, written by Uğur Erdal and Hasan Bakirci, Geneva, OMCT, 2006, 374 pp.;
- *The prohibition of Torture and Ill-Treatment in the Inter-American Human Rights System: A Handbook for Victims and Their Advocates*, OMCT Handbook Series

Vol. 2, written by Diego Rodríguez-Pinzón and Claudia Martín, OMCT, 2006, 294 pp.

- *The Prohibition of Torture and Ill-treatment in the African Human Rights System: A Handbook for Victims and their Advocates, OMCT Handbook Series Vol. 3*, written by Frans Viljoen and Chidi Odinkalu, OMCT, 2006, 163 pp.
- *Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies, OMCT Handbook Series Vol. 4*, written by Sarah Joseph, Katie Mitchell, Linda Gyorki and Carin Benninger-Budel, 514 pp.

The four OMCT Handbooks are available online at: <http://www.omct.org/> .

- *Combating Torture: A Manual for Judges and Prosecutors*, by Conor Foley, Human Rights Centre, University of Essex, 2003, 151 pp.; for the text online, see <http://www.essex.ac.uk/combatingtorturehandbook/> .
- *The Torture Reporting Handbook: How to document and respond to allegations of torture within the international system for the protection of human rights*, by Camille Giffard, Human Rights Centre, University of Essex, 2000, exists in numerous languages online: <http://www.essex.ac.uk/torturehandbook/>.
- *Medical Investigations and Documentation of Torture: A Handbook for Health Professionals*, by Michale Peel and Noam Lubell with Jonathan Beynon, Human Rights Centre, University of Essex, 2005, 122 pp., for the text online see <http://www.fco.gov.uk/Files/KFile/MidHb.pdf>
- *Istanbul Protocol – Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Professional Training Series No. 8, Rev.1, New York and Geneva, UN and OHCHR, 2004, 76 pp.
- *Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment – A Manual for Prevention*, Inter-American Institute of Human Rights (IIHR) and the Association for the prevention of torture (APT), 2004, 272 pp.
- *Monitoring places of detention: A practical guide*, Geneva, APT, 2004, 277 pp.
- *Combating Torture in Europe*, written by Rod Morgan and Malcolm Evans, Strasbourg, Council of Europe Publishing, 2001, 245 pp. – Although not a handbook as such, this publication explains the work of and standards adopted by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

- *Gérer les prison dans le souci du respect des droits de l'homme: Manuel destine au personnel pénitentiaire*, written by Andrew Coyle, London, International Centre for Prison Studies (ICPS), 2002, 166 pp. Exists in several languages online, see <http://www.prisonstudies.org/>.

4.2 Manual on human rights in the administration of justice

Although primarily aimed at judges, prosecutors and lawyers, the following manual provides basic information on a wide spectrum of human rights and the administration of justice, including, for instance, the rights of persons deprived of their liberty, fair trial guarantees, the rights of the child, the rights of women, the freedoms of thought, conscience, religion, opinion, expression, association and assembly, the right to equality and non-discrimination, the protection of victims of crime and human rights violations and the administration of justice during states of emergency. It contains references to both universal and regional standards, including various standards and principles adopted within the United Nations for the protection of prisoners (see Chapter 8, for instance):

- *Human Rights in the Administration of Justice : A Manual on Human Rights for Judges, Prosecutors and Lawyers*, New York and Geneva, UN and OHCHR, 2003, 885 pp.; the text can be found in English online at <http://www.ohchr.org/english/about/publications/training.htm>.

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