



Brussels, 9 June 2011

To:

- Engelbert Theuermann, chair of the Council working party on human rights (COHOM)
- Member states representatives to COHOM
- All EU delegations and local presidencies
- Veronique Arnault, Director of EEAS Human rights and democracy division
- Cc: Olof Skoog, chair of Political and Security Committee
- Cc: Chairs of geographic Council Working Groups
- Cc: Heidi Hautala, chair of the European Parliaments sub-committee on human rights

Re: EU human rights country strategies and the Guidelines to European Union policy towards third countries on torture, and other cruel, inhuman or degrading treatment or punishment ("Torture Guidelines")

Dear Madam/Sir,

As 2011 marks the 10th anniversary of the Guidelines to European Union policy towards third countries on torture, and other cruel, inhuman or degrading treatment or punishment (henceforth "torture and other ill-treatment") we consider it opportune to take stock of the impact of the Torture Guidelines on the ground.

The Torture Guidelines continue in our view to constitute a fundamentally important framework for a comprehensive response to torture and other ill-treatment in the EU's foreign policy. In this regard we welcome the current initiative for a more systematic approach in the EU's human rights policy by developing human rights strategies for third countries based on the respective local situations and needs. The creation of country strategies provides the opportunity to systematically integrate efforts for the prevention and eradication of all forms of torture and other ill-treatment world-wide, as set out by the Torture Guidelines.

In this regard, we would like to recall the European Parliament resolution of 16 December 2010¹, which calls for a "*a consultation process on the development of Country Strategies on human rights encompassing all human rights codified by*

¹ European Parliament resolution of 16 December 2010 on the Annual Report on Human Rights in the World 2009 and the European Union's policy on the matter (2010/2202(INI))

International Covenants and UN Convention" and "stresses the need for civil society organisations to be involved in the consultation." Close consultation with local organisations, in particular those working on torture and other ill-treatment, is essential to identify key issues and tailor-made responses for any given country. We encourage you therefore to ensure an appropriate consultation process with local civil society, and – in particular where this may pose difficulties for local activists – create possibilities for consultation and briefings by international civil society actors. Such consultations should continue throughout the implementation phase of country strategies.

Current situation

As we have frequently witnessed in our work - and as reflected in the EP's assessment reports on the implementation of the Torture Guidelines² - the instrument is often not sufficiently known by EU staff in third countries (EU delegations and member states embassies)³, nor by local civil society⁴, although notable exceptions do exist.

In order to get a better understanding of the implementation of the Torture Guidelines, we urge the EU to carry out, on a regular basis, independent assessments of the local and overall impact EU actions may have had. We believe, such an assessment would have been crucial in view of COHOM's decision to conduct a review of the Torture Guidelines this year and in order for the EU to adjust and improve its efforts on the ground.

The EU has developed a broad range of human rights policy tools (human rights guidelines and human rights dialogues among others) and the efforts to be more systematic and efficient in the application of this diverse 'tool-box' must be welcomed. The fight against torture and other ill-treatment cannot be seen in isolation from other human rights violations, and the importance of the implementation of all EU human rights guidelines, and inter-linkages between these and the Torture Guidelines, must be emphasised.

However, we are concerned that a difference in pace and priority has been accorded to the various EU human rights tools. The implementation of the various guidelines remains often dependent on the commitment and expertise of individual staff members in EU Delegations and EU Member States. Thematic and country-specific experience thus appears to be unevenly distributed, and may affect the substantive quality and prioritisation applied in the country strategies currently being elaborated.

Moreover, the EU's own credibility can present a challenge for the implementation of the Torture Guidelines. The lack of internal – external coherence may impede the raising of sensitive questions of torture and other ill-treatment in political dialogues with third countries, and is perceived as one of the main obstacles for the

² The study commissioned by the Subcommittee on Human Rights delivered in April 2007 entitled *"The Implementation of the EU Guidelines on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment"* and the study commissioned by the Subcommittee on Human Rights delivered in September 2009 entitled *"An update on the implementation of the EU guidelines on torture"*

³ *"There is a serious lack of knowledge or detailed knowledge about the torture prevention guidelines"* (EP study 2007, p.35)

⁴ *"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."* (EP study 2007, p.36)

implementation of the Torture Guidelines to date⁵. By demonstrating that human rights issues, including the prevalence of torture and other ill-treatment, are recognised and addressed also in the EU and its member states, common ground can more easily be found with third countries to advance globally in the improvement of human rights.

The coming into being of the EEAS presents the EU with a unique opportunity to develop a holistic, long-term and more efficient human rights foreign policy. At the same time, EU member states need to remain engaged in the formulation and implementation of EU foreign policy. The EU must ensure that the drive to set the political agenda is maintained and reinforced, and that concrete efforts are made in the area of torture and other ill-treatment. At present, the EU Delegations abroad have not been allocated extra resources and human rights expertise, including on torture and other ill-treatment and on the right to an adequate standard of physical and mental health. This would be necessary to implement their new responsibilities for the EU's human rights policy in third countries. Therefore, a system of responsibility- and burden sharing between the EU Delegation and EU member states represented in a given country continues to be of utmost importance for a credible and effective human rights policy on the ground. We believe that this can only be successful if it goes hand in hand with a gradual upgrading of human rights expertise within EU delegations.

Challenges for EU policy on torture and other ill-treatment

Considering this state of play, we see the following main challenges to the EU human rights policy on torture and other ill-treatment:

- Internally, a lack of knowledge about the Torture Guidelines continues to exist, including among EU representatives in third countries who have now been delegated the responsibility of drawing up a country human rights strategy. There is little experience to build on in the form of existing local strategies, for the staff in charge of this task.
- Externally, far from all civil society organisations in third countries have knowledge about the Torture Guidelines. Victims of torture are often not visible or vocal, sometimes due to fear of safety or reprisals against themselves or their dependants. NGOs working in this field frequently enter into a situation of conflict with national authorities, or risk to be politically and/or socially marginalized.
- In addition, torture and other ill-treatment is a politically sensitive issue, and can be perceived as inconvenient to address, due to the fact that few states are willing to recognize the use of torture and other ill-treatment⁶. This might, in certain circumstances, be felt stronger at capital level than in Brussels.

To respond to the above-mentioned challenges and move towards the EU's stated objective " *to influence third countries to take effective measures against torture and*

⁵ EP study 2007, p.116: "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."*

⁶ EP study 2007, p.33: "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"

ill-treatment and to ensure that the prohibition against torture and ill-treatment is enforced (Torture Guidelines) we would like to provide the following recommendations emphasising the importance of a systematic focus on torture and other ill-treatment within country strategies.

Recommendations:

EU representation in third countries (EU Delegation and Member State representations)

- The situation of torture and other ill-treatment, including preventive measures and mechanisms, and measures to counter impunity for torture should be analysed in the elaboration of the human rights strategy of every country (the implementation measures from the review of the Torture Guidelines in 2008 provide a good starting point).
- Local consultations should be carried out with independent civil society, as well as national medical associations who have expertise on the fight against torture and other ill-treatment and on rehabilitation of torture victims. A mapping of all NGOs active in human rights work should be carried out at national level to this end, with an emphasis on NGOs who are active in this specific field. Consultations must be adapted to the needs and abilities of civil society in each particular country, and contacts should be maintained on a continuous and regular basis and with guarantees of confidentiality where so required.
- EU delegations and member states should pool resources to ensure that staff with expertise in human rights law, including on torture and other ill-treatment and the right to health, as well as staff who possess extensive knowledge of and contacts with local CSO, are responsible for the elaboration and implementation of country strategies.
- In elaborating the country strategy and addressing human rights issues, the relevant observations and recommendations by the UN and regional mechanisms (in particular UN treaty bodies and special procedures, as well as UPR recommendations which are in line with international human rights law) should be used as guidance⁷.

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COHOM together with the EEAS should ensure:

- A global and coherent EU policy against torture and other ill-treatment. Local ownership of the country human rights strategies needs to be accompanied by an adequate level of coordination, support and oversight to ensure that:
 - Torture and other ill-treatment are addressed in all countries, and considered a priority in particular in countries where they are widespread or systematic.
 - Country strategies are based on the international framework on the absolute prohibition of torture and other ill-treatment, and encompass all essential elements (prevention, protection, rehabilitation).

⁷ EP study 2009: *“the implementation of the recommendations of the Treaty Bodies at country level can provide useful guidance to EU Missions in third countries”*.

- All forms of torture and other ill-treatment are addressed in country strategies, including by non-state-actor perpetrators where states instigate, consent or acquiesce to such abuses.
- Due attention is paid to the gender perspective of torture and other ill-treatment, as well as to discrimination as a driving force, both as concerns the infliction of torture and other ill-treatment and as concerns the lack of adequate state response to such abuses.
- A coherent approach is developed which enables the EU to voice the same message in all countries and avoid double standards.
- Transparency of initiatives and actions to allow monitoring of the implementation of the Torture Guidelines and by providing civil society input and/or briefings in the context of the finalization of country strategies.

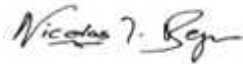
EEAS and EU member states:

Instruct their representations in third countries to

- Train their staff on the EU human rights policy and guidelines in general, and the Torture Guidelines in particular.
- Assume responsibility in the effective implementation of the Torture Guidelines, as per their own commitment spelled out therein.
- Share responsibility in the elaboration and implementation of EU human rights local strategies.
- Report regularly on the measures taken to implement the Torture Guidelines.

We hope that these recommendations will assist you in developing a coherent and consistent global policy on torture that is locally owned and consulted with civil society, and that will lead to vitalized EU action against torture and other ill-treatment.

Yours sincerely,



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