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Spraw Zagranicznych
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Zjednoczonych i Praw Człowieka
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Wą rozdzielnika

Szanowni Państwo,

Przesyłam w załączeniu projekt przeglądu Wytycznych ws. polityki UE wobec krajów trzecich w kontekście stosowania tortur oraz innego okrutnego, niehumanitarnego lub poniżającego traktowania lub karan. Będzie on przedmiotem dyskusji podczas posiedzenia grupy roboczej ds. praw człowieka (COHOM) w Brukseli w dn. 27 marca br.

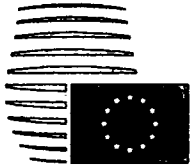
W związku z powyższym, zwracam się z uprzejmą prośbą o przygotowanie ewentualnych uwag do Wytycznych, w miarę możliwości w języku angielskim, do dnia 27 marca br. i przesłanie ich na adres: maria.pawlowska-plawinska@msz.gov.pl.

Z poważaniem,


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Council of the European Union
General Secretariat

Brussels, 22 March 2019

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LIMITE

COHOM

WORKING PAPER

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NOTE

From:	EEAS
To:	Delegations
Subject:	Guidelines on EU Policy Towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - 2019 revision of the Guidelines

Ahead of the COHOM meeting on Wednesday, 27 March, Delegations will find attached the revised Guidelines on EU Policy Towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Written comments are welcome by Friday, 29 March, cob.

**GUIDELINES ON EU POLICY TOWARDS THIRD COUNTRIES ON TORTURE
AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT
(2019 revision of the Guidelines)**

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I. INTRODUCTION

A. Reason for action

1. Torture and other ill-treatment are among the most abhorrent violations of human rights, human integrity and human dignity. According to the Universal Declaration of Human Rights, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No exceptions are permitted under international law. All countries are obligated to comply with the non-derogable prohibition of all forms of torture and other ill-treatment in all circumstances.
2. Despite this absolute prohibition, torture and other ill-treatment persist in many parts of the world. Impunity for the perpetrators of torture and other ill-treatment continues to prevail in many countries, and most victims struggle to obtain redress.
3. The European Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity, respect for democracy and the rule of law. The fight against torture and other ill-treatment is enshrined in the European Union Treaties and Charter of Fundamental Rights¹. It is a priority of EU external action.
4. With these Guidelines, the EU reaffirms its strong commitment to combatting torture and other ill-treatment worldwide, in line with relevant international and regional treaties and standards on human rights, including on the administration of justice and the conduct of armed conflict. In doing so, the EU follows a comprehensive approach that encompasses all essential elements to eradicate torture: prohibition, prevention, accountability and redress.

B. Purpose and scope

5. Since the last revision of the Guidelines in 2012², there have been numerous policy developments in the area of torture and other ill-treatment, both at global and EU level, making the present revision necessary. In particular, the Global Strategy for the EU's Foreign and Security policy³ and the European Consensus on Development⁴ are now at the core of the EU policy framework for the promotion of human rights and human dignity.
6. The purpose of these Guidelines is to provide practical guidance to EU institutions and Member States that can be used in their engagement with partner countries as well as in

¹ Charter of Fundamental Rights of the European Union, Article 4.

² Guidelines to EU policy towards third countries on torture, and other cruel, inhuman or degrading treatment or punishment, adopted by the Council on 9 April 2001, revised in 2008 and 2012 (see doc. 6129/1/12 of 20 March 2012).

³ Shared Vision. Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign and Security Policy". June 2016. https://europa.eu/globalstrategy/sites/globalstrategy/files/eugs_review_web.pdf.

⁴ The new European Consensus on Development Our world, our dignity, our future, OJ C 210. 30.6.2017.

multilateral human rights fora, to support ongoing efforts to eradicate torture and other ill-treatment worldwide.

7. They will also reinforce and be complementary with the EU's human rights policy, the EU's Strategic Framework on Human Rights and Democracy with its Action Plan on Human Rights and Democracy⁵, the EU's policy framework on support to Transitional Justice⁶ (aiming *inter alia* at ending impunity and providing recognition and redress to victims) and the implementation of the other EU Guidelines on human rights⁷. In particular, the present Guidelines have to be seen in conjunction with the EU Guidelines on the Death Penalty⁸. The EU considers that the death penalty constitutes a serious violation of human rights and human dignity and strongly opposes the use of the death penalty at all times and in all circumstances. These guidelines will also be complementary to the EU guidelines on promoting compliance with International Humanitarian Law.

C. Definition and background

8. The term "torture" is defined in Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

"Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions".

For the purpose of these Guidelines, other ill-treatment means all forms of cruel, inhuman or degrading treatment or punishment. The term should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.⁹

9. Torture and other ill-treatment can occur in all places where people are deprived of liberty, such as police stations, pre-trial detention centres, prisons, immigration detention centres as well

⁵ EU Strategic Framework and Action Plan on Human Rights and Democracy, doc. 11855/12, June 2012. Action Plan on Human Rights and Democracy 2015-2019, JOIN(2015) 16 final; Council conclusions, doc. 10897/15.

⁶ EU's support to Transitional Justice - Council conclusions, doc. 13576/15, 16 November 2015.

⁷ All EU Human rights guidelines can be found on https://eeas.europa.eu/topics/human-rights-democracy/6987/eu-human-rights-guidelines_en

⁸ EU Guidelines on the Death Penalty, adopted by the Council on 12 April 2013, doc 8416/13.

⁹ Ref UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by UNGA resolution 43/173 of 9 December 1988; CAT/C/GC/2/CRP.1/Rev.4, 23 November 2007; Regulation (EU) 2016/2134 of the European Parliament and of the Council of 23 November 2016 amending Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel inhuman or degrading treatment or punishment and its reference to European Court of Human Rights case law.

as in psychiatric institutions, child and youth institutions, etc. It is important to recall that poor or overcrowded detention conditions can amount to ill-treatment or even torture¹⁰.

Torture and other ill-treatment can also occur in a variety of other contexts, including by State actors using excessive force against demonstrators, in the context of enforced disappearances, or by non-State actors, including when accountability for acts of violence and abuse, be it domestic, sexual, gender or discrimination-based- is not ensured.¹¹

Some State and non-State actors also use torture, including sexual and gender-based violence, as tools of war during conflict.

10. The above-mentioned Convention and its Optional Protocol, the relevant case-law of the European Court of Human Rights and the recommendations made by treaty-based preventive mechanisms such as the UN Committee against Torture, the UN Subcommittee on Prevention of Torture (SPT) and the Council of Europe's Committee for the Prevention of Torture (CPT) form the basis of EU policy.

11. Major international developments since 2012 include the **UN 2030 Agenda on Sustainable Development** adopted in 2015. Sustainable Development Goal 16 focuses on the promotion of human rights and justice for all, particularly mentioning the need to end abuse, exploitation, trafficking and all forms of violence and torture against children¹². Also in 2015 the United Nations General Assembly adopted revised Standard Minimum Rules for the Treatment of Prisoners (**the Nelson Mandela Rules**¹³), which introduce and reinforce important safeguards against torture and other ill-treatment.

In December 2017, the United Nations General Assembly adopted resolution 72/163 on torture and other cruel, inhuman or degrading treatment or punishment and the United Nations Committee Against Torture adopted its General Comment No.4¹⁴ on the implementation of Article 3 of the Convention. (including preventive measures to guarantee the principle of **non-refoulement**, a ban on expelling, deporting or extraditing a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture).

The New York Declaration for Refugees and Migrants adopted in September 2016 expressed the political will of world leaders to save lives and protect the human rights of all; it has led to the adoption in December 2018 of **the Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration**. The 2016 EU Partnership Framework on Migration

¹⁰ European Court of Human Rights case law, UN Committee against Torture recommendations, Nelson Mandela rules 13,42. The accumulation of poor detention conditions, overcrowding, lack of medical assistance and food can constitute torture (jurisprudence of the UN Human Rights Committee, SPT visit reports, etc.).

¹¹ The language used in Art.1 of the UNCAT concerning consent or acquiescence by a public official extends State obligations into the private sphere and should be interpreted to include State failure to protect persons within its jurisdiction from torture and ill-treatment committed by Non-state actors. Ref CAT General Comment No. 2, UN Doc. CAT/C/GC/2 (2008), para. 18. See also Report of the Special Rapporteur on torture, UN Doc. A/HRC/31/57 (2016), paras. 10-11. Concerning rebel groups in armed conflicts, refer to Art. 7 of the ICC Statute.

¹² EU Guidelines for the Promotion and Protection of the Rights of the Child adopted by the Council on 6 March 2017.

¹³ UN Nelson Mandela Rules adopted by the UN GA on 17 December 2015 *available here*, revising the UN Standard Minimum Rules for the Treatment of Prisoners adopted by the UN in 1955.

¹⁴ Ref CAT General Comment N°4, UN Doc. CAT/CAT-C-GC-4. The full document is available *here*.

defined priorities and results tailored to the circumstances of each country, in full respect of human rights.

12. The **2016 Global Strategy for the EU's Foreign and Security policy** reaffirmed the commitment to mainstreaming human rights across all policy sectors in the context of EU external action and the need to strengthen State and societal resilience in a complex global environment¹⁵. By adopting the new **European Consensus on Development** in 2017, the EU and its Member States also reaffirmed their commitment to promote human dignity.

Applying a **Rights Based Approach to Development Cooperation**¹⁶, the EU adopted in 2015 its second **Action Plan on Human Rights and Democracy** including objective 13 on the fight against torture and abolition of the death penalty, highlighting the links between torture, the death penalty, arbitrary detention and enforced disappearances.

This version of the Guidelines takes into account the conclusions from the **2016 EU-NGO Human Rights Forum** which focused on torture and ill-treatment, addressing the need for a cross-cutting perspective¹⁷.

It also highlights the **Global Alliance for Torture-free Trade**¹⁸, an EU-led initiative (together with Argentina and Mongolia) launched in September 2017 which aims at ending global trade in goods used for torture and capital punishment.

II. EU ACTION

A. Policy guidance

13. The EU is committed to and supports actively the work of the UN and regional actors in this field (including *inter alia* the UN Committee Against Torture, the UN Subcommittee on Prevention of Torture, the UN Human Rights Committee, the UN Committee on Enforced Disappearances, the Committee for the Prevention of Torture of the Council of Europe (CPT), the Committee for the Prevention of Torture in Africa, the African Commission on Human and Peoples' rights, the Inter-American Human Rights System, the ASEAN Intergovernmental Commission on Human Rights (AICHR), as well as the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and other UN Special Procedures and regional mechanisms).

¹⁵ A Strategic Approach to Resilience in the EU's external action (SWD(2017) 226 final), June 2017.

¹⁶ Council conclusions on a rights-based approach to development cooperation, encompassing all human rights, 9987/14, May 2014.

¹⁷ "United against all forms of torture: Applying a cross-cutting perspective to prevent, prohibit and redress torture globally: 18th EU-NGO Human Rights Forum, Brussels, 1-2 December 2016," <http://www.omct.org/reports-and-publications/european-union/2017/04/d24281/>

¹⁸ <http://www.torturefreetrade.org/>.

14. The EU will pro-actively contribute to ensuring that the existing international and regional safeguards against torture and other ill-treatment are strengthened and effectively implemented.

15. At multilateral level, the EU is a strong supporter of the Convention against Torture Initiative (CTI) set up in 2014 with the aim to achieve global ratification and implementation of the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment by 2024 through inter-state cooperation and dialogue. It also promotes the work done by the UN Voluntary Fund for Victims of Torture.

16. The EU's objective is to engage with partner countries to take effective measures against torture and other ill-treatment to ensure that their absolute prohibition is enforced and that victims have access to rehabilitation services, legal support and other forms of reparation. In its contacts with partner countries, the EU will continue to express the imperative need and obligation for all countries to adhere to and comply with the relevant international norms and standards and will consequently emphasise that torture and other ill-treatment are absolutely prohibited under international law in all circumstances. It will also refer to the human rights 'essential elements' provisions and suspension clauses included in many bilateral EU agreements with partner countries which require respect for human rights and fundamental freedoms.

17. The EU makes its objectives known as an integral part of its human rights policy and stresses the importance it attaches to the prevention of torture and other ill-treatment with a view to its global eradication. On this basis, it follows a holistic and proactive approach encompassing all appropriate areas, including awareness-raising, education and training, prevention, monitoring and accountability, protection and redress, including rehabilitation for the victims of torture and other ill-treatment.

18. Most specifically, in the fight against terrorism, EU Member States are determined to comply fully with international obligations prohibiting torture and other ill-treatment, and allowing no exceptional circumstances whatsoever to be invoked as a justification for torture or other ill-treatment.¹⁹ The EU encourages third countries to mainstream safeguards against torture and other ill-treatment in their actions and to fully uphold their human rights obligations under international law, including in counter-terrorism, migration, trafficking in human beings and other crisis management settings, such as the fight against organised crime.

19. At local level, the EU promotes and supports the work of National Human Rights Institutions and the important role of independent **National Preventive Mechanisms** set up under the Optional Protocol of the UN Convention against Torture (OPCAT).

20. It also works closely with civil society organisations and promotes their inclusion in the work on eradication of torture and other ill-treatment.

¹⁹ Ref UNCAT art 2(2).

B. Political and financial tools

To achieve these objectives, the EU will inter alia use the following tools:

Political Dialogues

21. The issue of torture should be addressed in human rights dialogues and counter-terrorism dialogues with partner countries. Furthermore, political dialogues between the EU and third countries and regional organisations shall also include the issue of torture and other ill-treatment as a priority matter when relevant so as to consistently raise this issue with partner countries. Capacity building on human rights and the rule of law, including the fight against torture and other ill-treatment, should be provided, and partner countries should be encouraged to incorporate human rights into their work on countering terrorism. The EU will include matters of torture prevention, accountability, rehabilitation and other reparations for victims of torture in dialogues on migration as appropriate. Fighting torture and other ill-treatment, including sexual torture, is also an important aspect of our dialogues in the context of the fight against organised crime.

Monitoring, Assessing and Reporting

22. In their reporting, EU Delegations and where relevant EU Heads of Mission will address allegations of torture and other ill-treatment whenever there are reasonable grounds to believe that such acts occurred in-country. They will include an analysis of the occurrence of torture or other ill-treatment and the measures taken to combat it, as well as providing periodic evaluation of the effect and impact of the EU actions. Compliance with the UNCAT and, where applicable, the execution of the judgements of the European Court of Human Rights and the effective implementation of the CPT recommendations should form part of the regular reporting within the framework of international cooperation and other actions, e.g. the special incentive arrangement for sustainable development and good governance under the EU's Generalised Scheme of Preferences ("GSP+"). The situation with regard to torture and other ill-treatment is also assessed in the reports on candidate countries and potential candidates for EU membership.

23. Wherever the fight against torture and other ill-treatment has been retained as a priority in the EU Human Rights and Democracy Country Strategies, this includes conducting in-depth analysis of the situation with regard to the use of torture and other ill-treatment in a given country, and identifying possible preventive actions and mechanisms, as well as necessary steps to counter impunity for torture and other ill-treatment and ensure redress, including full rehabilitation for victims of torture. For countries where the fight against torture and other ill-treatment has not been retained as a priority, this will be addressed as a matter of urgency whenever allegations of torture are raised in the country.

Demarches and statements

24. The EU will make demarches and issue public statements to address urgent situations and cases where third countries should undertake effective measures against torture and other ill-treatment, including preventive measures. The EU will, where need be, request information on allegations of torture or other ill-treatment and on the actions taken to investigate and hold perpetrators accountable and to provide reparation to victims. The EU will also react to positive developments that have taken place.

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

26. The EU can also consider means to support and protect local organisations and human rights defenders at risk due to their involvement in the prevention and eradication of torture and other ill-treatment and in the search for or provision of redress, including reparation, for victims.

Visits

27. In some cases, Heads of Missions and other EU high level officials visiting the country can consider visiting human rights defenders and activists at risk including those in prisons or other detention centres, independent from consular activities. Bearing in mind that such visits can be delicate and sensitive, they should preferably take place in close coordination with national and international experts or other recognized bodies aware of the specific country situation, to ensure that the principle of 'do no harm' can be followed. The goal of such visits is to engage with relevant interlocutors, highlight areas for improvements and identify where EU support could be targeted to address shortcomings. Such visits can also serve to facilitate engagement between anti-torture experts and local administrators.

Trial observation

28. The EU Delegation and Heads of Mission will send EU and Embassy representatives as observers to trials where there is reason to believe that defendants or witnesses have been subjected to torture or ill-treatment. Burden-sharing should be considered to maximise the impact of trial observation.

EU cooperation with multilateral bodies and mechanisms

29. Cooperation with international and regional organisations and their human rights mechanisms is essential to move the anti-torture agenda forward, and to ensure ownership and commitment to international and regional laws and principles.

The EU will:

- Continue to raise the issue of torture and other ill-treatment and reaffirm and strengthen its eradication in multilateral fora, including the UN, the Council of Europe and the Organisation for Security and Cooperation in Europe, as well as with relevant regional partners such as the African Union and the Inter-American Human Rights System. The EU will continue to actively support the relevant resolutions at the UN including the General Assembly and the Human Rights Council;
- Assist countries in implementing UPR recommendations and commitments, which are in line with international and regional human rights standards, related to the prevention and combating of torture and other ill-treatment;
- Support the relevant international and regional mechanisms in this field and stress the need for States to co-operate with the mechanisms, including by proper follow-up to their recommendations; and implement the European Court of Human Rights' judgements on Article 3 in the Council of Europe countries;
- Discourage reservations which countries may issue on instruments and Conventions designed to combat torture or other ill-treatment in their countries and, where need be (reservations incompatible with the object and purpose of the Convention), object to the reservations;
- Offer joint or bilateral co-operation on the prevention of torture and other ill-treatment and the redress for victims;
- Give emphasis to the fight against torture in groups discussing human rights where both the host country and EU with its Member States are involved, in order to achieve the strengthening of the justice system.

Bilateral and multilateral co-operation, including financial support

30. Combatting and preventing torture and other ill-treatment including the redress of victims will be considered a priority in all bilateral and multilateral co-operation for the protection and promotion of human rights, inter alia in collaboration with civil society, including in the legal field, security sector reform, migration and health fields as well as in the fields of freedom of expression, education and training.

31. Particular attention should be given to such co-operation within the framework of the current European Instrument for Democracy and Human Rights (EIDHR) and its successor, as well as in all programmes and instruments supporting human rights, the rule of law and security reform.

32. The EU will inter alia continue to fund projects undertaken to improve training of law enforcement officials, including penitentiary staff and other persons working with people deprived of liberty, as well as projects to improve conditions in places of deprivation of liberty. The EU will maintain its substantial support for rehabilitation centres for victims of torture across the world, and monitor its effectiveness and impact.

33. The EU will also support public education and awareness-raising campaigns against torture and other ill-treatment, including on the occasion of the International Day in Support of Victims of Torture (26 June) and the World Day Against the Death Penalty (10 October).

34. In this context, the EU will endeavour to support the work of relevant national and international NGOs to combat torture and other ill-treatment and maintain a continuous dialogue with them; the EU will also continue to support the establishment and effective functioning of independent National Preventive Mechanisms which meet OPCAT requirements and SPT guidelines and facilitate interactions with other anti-torture mechanisms identified as good practices.

35. Furthermore, EU funded projects linked to the fight against torture should be coordinated with other EU action in this field, such as political dialogue with the partner country, which can help enhance and accelerate their impact²⁰.

²⁰ Court of Auditors' special report No 09/2015 on "EU support for the fight against torture and the abolition of the death penalty", recommendation 1 (Target modest resources better) and recommendation 2 (Improve coordination with other EU action).

III. OPERATIONAL SECTION

36. In its actions against torture the EU will urge and support third countries to take, inter alia, the following measures which are important safeguards identified by international and regional organisations as crucial in the fight against torture and other ill-treatment. The actions should be seen as interlinked and not as strictly within the confines of their respective section. For countries to seriously address this issue, there needs to be a combination of legal measures, clear political messages, together with concrete monitoring and follow-up, underpinned by accountability measures, and full rehabilitation and redress provided to victims. These concrete actions can help to support the country to achieve sustainable results in the fight against torture and other ill-treatment.

37. In all actions consideration should be given to women as well as to persons belonging to groups requiring special protection and attention, such as children, refugees, asylum-seekers, internally displaced persons, migrants, migrant workers, those facing discrimination on grounds of sex, race, ethnic or social origin, religion or belief, political or any other opinion, sexual orientation or gender identity, age, disability and any other persons that risk being more exposed to torture and other ill-treatment.

1. Prohibition of torture and other ill-treatment

This section identifies the concrete measures that the EU will urge third countries to take in order to prohibit torture and other ill-treatment in law and in policy.

1.1 Prohibit torture and other ill-treatment in law

1.1.a Adhere to and implement international instruments, norms, and procedures

- accede to (sign, ratify) and implement the UN Convention against Torture (UNCAT) and its Optional Protocol (OPCAT), the International Covenant on Civil and Political Rights (ICCPR), the Convention for Protection against Enforced Disappearances²¹ (CPED), the Geneva Conventions and their Additional protocols²² and relevant regional instruments including i.a. the Inter American Convention to Prevent and Punish Torture, and, where appropriate, the European Convention for the Prevention of Torture; adopt and implement the Robben Island Guidelines on the prevention and prohibition of torture in Africa;

²¹ International Convention for the Protection of All Persons from Enforced Disappearance, art (2) "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection.

²² The Geneva Conventions (1949) and their Additional Protocols form the core of international humanitarian law, which regulates the conduct of armed conflict and seeks to limit its effects.

- implement the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules); Council of Europe's European Prison Rules and Council of Europe's Committee for the Prevention of Torture (CPT) standards and recommendations; The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules); The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules); and other relevant international or regional rules or principles;
- withdraw reservations incompatible with the object and purpose of the UNCAT, the ICCPR, the CPED and other relevant treaties;
- consider withdrawing other reservations to the UNCAT, the ICCPR, the CPED and other relevant treaties;
- allow individual and inter-state complaints under the UNCAT, CPED, ICCPR, CEDAW (Convention on the Elimination of Discrimination against Women) and other relevant ones;
- accede to the Statute of the International Criminal Court;
- comply with the requests for interim measures of protection, rulings, decisions and implement recommendations of international and regional human rights bodies;
- co-operate with the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and all other relevant UN special procedures;
- comply with UNCAT General Comments
- co-operate with UN Committee Against Torture, The Human Rights Committee (HRC), the Subcommittee for the Prevention of Torture (SPT) and other relevant UN treaty bodies including in implementing and following up on treaty body conclusions and views and consent to publication of SPT's visit reports;
- in countries where the death penalty is still applied, ensure that a moratorium is established on all executions with a view to abolishing the death penalty²³
- where appropriate, co-operate with the relevant Council of Europe mechanisms, in particular :
 - execute the decisions and judgments of the European Court of Human Rights
 - fully co-operate with the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in the context of its visits, effectively implement its recommendations, authorise the publication of

²³ Ref UNGA resolution 73/175 on a moratorium on the use of the death penalty adopted on 17 December 2018 and UN ECOSOC resolution 1984/50.

The Committee against Torture, in examining the reports of States Parties, has repeatedly referred to the continuing use of the death penalty as a subject of concern. It has welcomed the abolition of the death penalty and moves towards abolition in several countries, and urged states to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR).

CPT visit reports which are not in the public domain and adopt a procedure for automatic publication of future CPT reports on visits to their countries;

- co-operate with the relevant regional human rights bodies and mechanisms, such as the Committee for the Prevention of Torture in Africa, the Inter-American Human Rights System, the Asia Pacific Forum of National Human Rights Institutions and others;

1.1.b Domestic legislation

- ensure that all acts of torture are offences under domestic criminal law, including attempts, complicity and participation and that these acts are punishable by appropriate deterrent penalties;
- repeal or amend any laws that, in purpose or effect, authorize or condone any forms of torture or other ill-treatment;
- ensure in all circumstances that no statement, confession or other evidence obtained as a result of torture or other ill-treatment may be invoked in any proceedings;
- abolish all forms of corporal punishment;
- ensure that no exceptional circumstances whatsoever, including a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture or ill-treatment;
- ensure that national laws absolutely prohibit the forcible transfer of any person to any country, territory or place where there are substantial grounds for believing that he or she would be subjected to torture or other ill-treatment (including the country of origin), or risks being subsequently transferred onward to such a country, as well as access to an effective, independent and impartial review prior to any such decision;
- ensure that no order from a superior officer or a public authority may be invoked as a justification of torture or other ill-treatment;
- ensure that law enforcement officials, military, medical and other relevant personnel are not punished for refusing to obey orders to commit acts amounting to torture or other ill-treatment;
- ensure that victims' right to protection is enshrined in domestic law;
- ensure that domestic legislation provides for a definition of victim in accordance with international standards and that victims' rights to redress including an effective remedy and reparation (restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition) is enshrined in domestic law.

1.2 Reaffirm the absolute prohibition of torture and other ill-treatment in policy

- condemn, at the highest level, all forms of torture and other ill-treatment;

- strengthen the role and mandate of National Human Rights Institutions in combating torture, establish national institutions for the prevention of torture (National Preventive Mechanisms) and consider creating and operating and, where appropriate, strengthening independent national institutions (e.g. human rights ombudspersons or human rights commissions) that can effectively address torture and other ill-treatment;
- ensure respect for the role that judges, prosecutors and lawyers play in the fight against torture and other cruel, inhuman or degrading treatment or punishment, including with respect to arbitrary detention, due process safeguards and fair trial standards, and in bringing perpetrators to justice;
- take effective measures for combating corruption in the administration of justice, establish proper legal aid programmes (with sufficient funding) and have judges and prosecutors adequately and in sufficient numbers selected, trained and remunerated;
- take effective measures to prevent and combat any unlawful interference of any kind, such as threats, harassment, bribery, intimidation and assaults on judges, prosecutors and lawyers, as well as ensure that any such interference is promptly, effectively, independently and impartially investigated with a view to bringing those responsible to justice;
- Raise awareness of partner countries about the **Global Alliance for Torture-Free Trade**²⁴, whose ultimate aim is to end trade in goods used for torture and capital punishment, with a view to increase the number of participating countries. Inspired by EU legislation²⁵, this EU initiative, co-sponsored by Argentina and Mongolia, is a global effort from countries who commit themselves to take effective measures to prevent, restrict and ban trade of goods intended or which may be used for capital punishment and torture.

2. Prevention of torture and other ill-treatment

38. The EU should encourage countries to take effective legislative, administrative, judicial and other measures to prevent the occurrence of acts of torture and other ill-treatment in any territory under its jurisdiction. This section identifies the concrete measures the EU will urge third countries to take in order to ensure safeguards for those in detention and an effective complaints mechanism, together with detention monitoring and oversight mechanisms in place:

2.1 Comply with safeguards and procedures relating to detention

²⁴ The Global Alliance for Torture-Free Trade was established in September 2017 further to a political Declaration signed by the EU (represented by Commissioner Malmström) and 58 countries in the margins of the UNGA <http://www.torturefreetrade.org/>

²⁵ Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment amended by Regulation (EU) 2016/2134 of the European Parliament and of the Council of 23 November 2016.

- comply with legal and procedural safeguards against torture and other ill-treatment and ensure that persons deprived of their liberty by law enforcement officials are immediately notified of their rights, given access to and the right of confidential communication with independent lawyers and doctors, can inform their relatives and other relevant third parties without delay of the fact and place of their detention, as well as any subsequent transfers, and are brought before a judicial authority without delay (no later than 48 hours) following the taking into custody;
- ban secret places of detention ensuring that all persons deprived of their liberty are held in officially recognised places of detention and that their whereabouts are known, in particular to their family members and legal counsel;
- ensure that official records are kept of the time and place of arrest, identification of arresting persons, and state of health of the detainee;
- ensure that procedures for detention and interviewing are in conformity with relevant international and regional standards, including detainees' right to have their lawyer present during all questioning;
- ensure that further steps are taken to monitor all questioning sessions, including through video and audio recordings;²⁶
- ensure that conditions of detentions in prisons and other penal institutions conform with international and regional standards, such as the Nelson Mandela Rules (revised UN Standard Minimum Rules for the Treatment of Prisoners)²⁷, The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules); the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines) and where appropriate, the European Prison Rules, the European Rules for Juveniles subject to sanctions or measures, as well as the standards established by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- establish and implement standards and measures for the effective protection of persons in police custody, immigration detainees, remand and sentenced prisoners, persons deprived of their liberty in healthcare settings and persons at risk of discrimination including women, children, persons with disabilities, those who may face discrimination on grounds of race, ethnic or social origin, religion or belief, political or any other opinion, sexual orientation or gender identity, victims of trafficking in human beings and other persons requiring special protection against torture and other ill-treatment;

²⁶ Ref visit report of the Special Rapporteur on torture: Spain, UN Doc. E/CN.4/2004/56/Add.2 (2004), para. 68; Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (2014), Guideline 9(e).

²⁷ Notably physical condition, separation of categories of prisoners, sanitation, hygiene, clothing, food and drink, medical care, contact with the outside world, regulation of disciplinary measures.

- ensure that persons convicted or suspected of torture or other ill-treatment have no subsequent involvement in the custody, interrogation or treatment of any person deprived of liberty;
- ensure that training programmes for law enforcement personnel and other personnel of places of deprivation of liberty include training on the absolute prohibition of torture and other ill-treatment, including human rights compliant investigation techniques, on the prevention, investigation and prosecution of violence against women, on the rights of the child and of persons with disabilities, and on combatting discrimination of all kinds, including on such grounds as gender, religion or belief, race and sexual orientation;

2.2 Provide efficient and safe complaints mechanisms

- establish safe channels for victims of torture or other ill-treatment to complain to clearly designated bodies and ensure that there are judicial and other remedies available that will allow persons deprived of liberty to have their complaints promptly and impartially examined;
- to take effective measures to protect complainants against any risk of retaliation, intimidation or other negative consequence as a result of having submitted a complaint;
- establish independent and effective domestic procedures to promptly investigate complaints against police, prison staff or any other officials suspected of torture or other ill-treatment of detainees wherever this has occurred, preferably in accordance with the Istanbul Protocol – including in cases where there is reason to believe such acts have occurred even if there is no formal complaint from a particular victim and ensure that those procedures are sufficiently gender and child sensitive where required;
- train law enforcement officials, military personnel and all persons, who are involved with persons deprived of their liberty as well as health personnel (civil and military) to comply with the relevant international standards for the prevention of torture and other ill-treatment.
- enable and ensure awareness of ways to report suspicions of torture or other ill-treatment by third persons.

2.3 Allow efficient detention monitoring and oversight mechanisms

- Ensure that impartial mechanisms for inspecting and visiting places of detention and confinement are established, for internal and external inspections;
- Establish, designate or maintain and enhance independent and effective mechanisms with relevant multidisciplinary expertise to undertake effective and unannounced monitoring visits to all places of deprivation of liberty, with a view to preventing acts of torture or other cruel, inhuman or degrading treatment or punishment; ensure that

the legal framework allows for these visits and that they are given, in law and practice, unrestricted access to all places, persons and information; ensure that all places where persons are deprived of their liberty are informed of their obligation to allow access to their premises, to speak privately to any detainee and staff member and to ensure that no one who speaks to such mechanisms is at risk of any reprisals;

- encourage all countries to ratify the Optional Protocol to the Convention against Torture (OPCAT) and set up **National Preventive Mechanisms**²⁸. Ensure that these National Preventive mechanisms are fully independent and adequately resourced and trained so that they can operate in line with their mandate under the OPCAT;
- allow visits by representatives of civil society and other independent bodies such as National Preventive Mechanisms (NPM), National Human Rights Institutions (NHRI) and Ombudspersons, who have the right to confidential communication with any individual of their choice to places where persons deprived of their liberty are or may be held and fully cooperate with these mechanisms during their visits;
- conduct meaningful dialogue with independent monitoring mechanisms and implement their recommendations.

3. Combatting impunity

39. Promoting accountability and combatting impunity is necessary to ensure that legal safeguards are implemented and fully respected. It is part of the State's duty to protect all the population under its jurisdiction, including those belonging to the most vulnerable groups. The concrete measures that the EU will urge third countries to take in this respect include:

- enable the judiciary to exercise its functions independently, impartially and professionally;
- bring every individual within the State's jurisdiction who is suspected of being responsible for torture, wherever committed in the world, to justice in trials that conform to international norms for a fair trial and which exclude the death penalty, if the individual is not extradited for prosecution in another State where these guarantees are fulfilled;
- conduct prompt, impartial, independent and effective investigations of, wherever there is reasonable ground to believe that an act of torture has been committed (ex-officio), and document abuses, preferably in accordance with the Istanbul Protocol and its annexed principles; ensure that independent investigations are conducted into all deaths occurring in custody;

²⁸ Ref UN OPCAT art. 17 to 23; UN Doc. CAT/OP/12/5 (2010) Guidelines on National Preventive Mechanisms available here http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/OP/12/5&Lang=en

- ensure that the obligation to report mistreatment is enshrined in national law, with appropriate sanctions for non-reporting and protections for those who report²⁹;
- ensure that no amnesty, immunity, or statute of limitation or prescription is applicable to any act of torture;
- ensure that no authority or official orders, applies, permits or tolerates any sanction or other measures against a detainee or any person or organization for having been in contact with any national or international monitoring or preventive body ;
- ensure the training of the judiciary, prosecutors and lawyers on the relevant international, regional and national standards;
- ensure training and awareness raising for all personnel including health personnel in how to report and contribute to investigations, including on the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) to document torture or other ill-treatment.

4. Redress, including rehabilitation, for victims

40. The State has a duty to provide redress to victims of torture³⁰. Redress includes both reparation (restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition) and procedures that can ensure that victims can obtain reparation and that those responsible are held accountable. The concrete measures that the EU will urge third countries to take in this area include:

- ensure that victims of an act of torture or other ill-treatment obtain redress, including an effective remedy and reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;
- ensure that the right to reparation is guaranteed irrespective of the initiation of and/or successful outcome of an investigation or criminal proceedings against a perpetrator. Reparation must be accessible irrespective from the identification, apprehension, investigation, prosecution or conviction of the perpetrator;
- ensure that the right to redress extends to collective harm, and that collective reparation is provided to communities who suffered collectively, following a full assessment of the nature of the harm and the extent of its effects as well as the specific needs of the persons concerned;
- specific redress measures are required to address barriers preventing access to redress for sexual and gender based violence. These may include for instance criminalising all forms of sexual and gender based violence; identifying the causes and consequences of

²⁹ See e.g. the Code of Conduct for Law Enforcement officials, adopted by UN GA resolution of 17 December 1979.

³⁰ Ref UNCAT article 14 and General Comment CAT No. 3 on article 14.

sexual and gender based violence and taking all necessary measures to prevent and eradicate it; putting in place efficient and accessible reparation programmes and ensuring the participation of victims in the design of such programmes; providing unimpeded and regular access to comprehensive health-care services, including physical rehabilitation, psychological and psychosocial support and socio-economic support;

- ensure that holistic rehabilitation, including medical, psychological, social and other measures are available for torture victims and their families, provided at the earliest possible times after torture occurred, without a requirement for victims to pursue judicial remedies; and ensure that rehabilitation is appropriate, accessible and provided in a way that guarantees the safety and personal integrity of the victims, their families and their care-givers;
- identify and take into consideration persons or groups that run a higher risk of being exposed to torture and other ill-treatment, and ensure they are not discriminated against when it comes to access to redress, including rehabilitation;
- ensure that training programmes for health professionals include training on the rehabilitation of victims;
- ensure that training programmes for law enforcement personnel and the judiciary include the right to rehabilitation and other forms of redress to victims of torture and how this can be obtained
- ensure that medico-legal autopsies are carried out by trained forensic specialists in accordance with the Istanbul Protocol and other internationally recognised standards; and that forensic reports from independent experts that are in accordance with these standards are recognised as valid evidence in Court cases;
- provide for proper forensic examination in all cases of serious injury or death of detained persons;
- ensure that victims of torture or other ill-treatment, witnesses, their families and members of their communities, human rights defenders documenting or reporting cases of torture, investigators, lawyers, health care personnel, monitoring bodies and any other individual or institution assisting victims in accessing redress are protected from violence, threats of violence or any other form of intimidation or reprisal;
- enable health professionals to work independently and confidentially when preparing observations on alleged cases of torture or other ill-treatment, when treating persons deprived of liberty, and when providing rehabilitation services to victims;
- protect doctors, forensic experts and other health personnel from reprisals, who report cases of torture and other ill-treatment or who provide rehabilitation services to victims, for instance by enabling them to report ill-treatment to a responsible body outside the immediate jurisdiction or report it in a non-identifiable manner³¹.

³¹ Istanbul Protocol, para 73.

ANNEX I - List of relevant documents

- UN Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and its Optional Protocol
- UN Convention on the Rights of the Child (CRC) and its two Optional Protocols
- UN International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol
- UN International Convention for the Protection of All Persons from Enforced Disappearance (CPED)
- UN Convention on the Rights of Persons with Disabilities and its Optional Protocol
- The Rome Statute of the International Criminal Court
- The Four UN Geneva Conventions of 12 August 1949 and their Protocols as well as customary rules of international humanitarian law
- UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- UN Declaration on the Elimination of Violence Against Women
- UN Convention and Protocol Relating to the Status of Refugees
- UN Declaration on the Protection of All Persons from Enforced Disappearances
- UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions
- UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)
- UN Basic Principles for the Treatment of Prisoners
- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- UN Rules for the Protection of Juveniles Deprived of their Liberty
- UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)
- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- UN Basic Principles on the Independence of the Judiciary
- UN Basic Principles on the Role of Lawyers
- UN Guidelines of the Role of Prosecutors
- UN Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules)
- UN Code of Conduct for Law Enforcement Officials
- UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- UN Principles on Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment

- UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law
- Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) annexed to UN Commission on Human Rights resolution 2000/43
- Safeguards guaranteeing protection of the rights of those facing the death penalty (ECOSOC resolution 1984/50)
- Vienna Declaration and Programme of Action
- General Comments by the UN Committee against Torture, in particular No. 1 on article 3, No. 2 on Article 2, and No. 3 on Article 14
- General Comments by the UN Human Rights Committee, in particular No. 20 on Article 7, No. 21 on Article 10, No. 29 on Article 4, and No. 31 on the General Legal Obligation Imposed on States Parties, under the ICCPR
- Charter of Fundamental Rights of the European Union, in particular articles 4 and 19(2)
- Regulation (EU) 2016/2134 of the European Parliament and of the Council of 23 November 2016 concerning trade in certain goods which could be used for capital punishment, torture or other cruel inhuman or degrading treatment or punishment
- EU Code of Conduct on arms export
- Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols nos. 6 and 13 as well as the relevant case-law of the European Court on Human Rights
- Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence
- Council of Europe Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)
- Council of Europe Convention on Action against Trafficking in Human Beings CETS No.: 197
- Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence CETS No.: 210
- Council of Europe standards on means of restraint in psychiatric establishments for adults
- African Charter on Human and People's Rights and its Protocol (Maputo Protocol)
- African Charter of the Rights and Welfare of the Child
- Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines)
- Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines)
- American Convention on Human Rights
- Inter-American Convention to Prevent and Punish Torture
- Inter-American Convention on Forced Disappearance of Persons

- Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women
- Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas

ANNEX II – list of abbreviations

- UNCAT – Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment
- CAT - Committee against Torture – body of 10 experts monitoring the implementation of the Convention by its State parties
- CEDAW – Convention on the Elimination of all forms of Discrimination Against Women
- CETS – Council of Europe's Treaty Series
- CFSP – EU's Common Foreign and Security Policy
- (Other) ill-treatment – cruel, inhuman or degrading treatment or punishment
- CPED – the Convention for the Protection of all persons from Enforced Disappearances
- CPT – Council of Europe's Committee for the Prevention of Torture
- CRC – Convention on the Rights of the Child
- CTI – Convention against Torture Initiative (aiming at global ratification by 2024)
- GSP – General Scheme of Preferences
- GSP+ - General Scheme of Preferences, EU Special Incentive Arrangement for Sustainable Development and Good Governance
- ICC – International Criminal Court
- ICCPR – International Covenant on Civil and Political Rights
- ICRC/IFRC-International Committee of the Red Cross/International Federation of the Red Cross and Red Crescent
- NGO – Non-Governmental Organisation
- NHRI – National Human Rights Institutions
- NPM – National Preventive Mechanisms (established under OPCAT)
- OPCAT – Optional Protocol to the Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment
- OSCE – Organisation for Security and Cooperation in Europe, based in Vienna
- SPT – UN Subcommittee for the Prevention of Torture
- UNGA – United nations General Assembly
- UNODC – United Nations Office on Drugs and Crime
- UPR – Universal Periodic Review



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