



Office for Democratic Institutions and Human Rights

HUMAN RIGHTS DEFENDERS IN THE OSCE REGION: CHALLENGES AND GOOD PRACTICES

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Foreword

This year marks the 60th anniversary of the Universal Declaration of Human Rights (UDHR), as well as the 10th anniversary of the United Nations Declaration on Human Rights Defenders. These important documents have much in common with OSCE commitments.

First, they recognize the vital link between security and respect for human rights. The UDHR points out in its preamble: “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. This fact, borne out by the bitter experience of humankind, has been reaffirmed many times by OSCE participating States, and forms the basis for the existence of human dimension commitments within our regional security framework.

Second, whereas the UDHR formed the starting point for the development of the normative framework currently contained in international and regional human rights conventions, the UN Declaration on Human Rights Defenders recognizes the importance not just of upholding these norms, but also of protecting those who stand up for their protection and promotion. Similarly, the OSCE *acquis* not only contains a wide body of rights and freedoms in the human dimension, but it also recognizes the right of everyone to stand up for those rights and freedoms. To put it in the words of the OSCE’s Copenhagen Document, participating States must “ensure effectively the rights of the individual to know and act upon human rights and fundamental freedoms, and to contribute actively, individually or in association with others, to their promotion and protection”. This commitment recognizes that, while states are responsible for respecting and protecting human rights, human rights defenders play an essential role in translating human rights standards and obligations into practice.

This report forms an important part of the work of ODIHR’s focal point on human rights defenders and national human rights institutions. Through the focal point, we have strengthened our co-operation both within the OSCE framework, in particular with OSCE field operations, and with external actors, such as with the Council of Europe’s commissioner for human rights, the United Nations special rapporteur on human rights defenders, and international NGOs operating in this field. It is my firm hope that it will be a helpful tool for them, for participating States, and for human rights defenders themselves, who are working every day to turn the enduring ideals of the Universal Declaration into a reality for us all.

Ambassador Janez Lenarčič

Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR)

Summary

This report identifies patterns of human rights violations affecting human rights defenders in the OSCE area in the period from April 2007 to April 2008. It also identifies a number of good practices with respect to protecting the rights of human rights defenders. It follows ODIHR's 2007 report *Human Rights Defenders in the OSCE Region: Our Collective Conscience*.¹

Reporting is an integral part of the work of ODIHR's focal point for human rights defenders and national human rights institutions. The focal point was created following a number of human dimension meetings where participants expressed concern about the situation of human rights defenders. The focal point's work² can be divided into four main tasks: monitoring the situation of human rights defenders; identifying issues of concern; promoting the interests of human rights defenders; and strengthening co-operation with national human rights institutions (NHRIs).

On the basis of an overview of a number of specific cases, this report identifies four areas of continued concern with respect to human rights defenders: (1) threats to, and attacks on, their physical integrity; (2) restrictions on their right to liberty and freedom of movement; (3) curtailment of their freedom of association; and (4) failure to respect and protect their freedom of peaceful assembly.

During the period under consideration, at least three defenders were killed. Human rights activists were ill-treated in custody, attacked, and injured. They were also threatened – including death threats – harassed, and intimidated. Family members of human rights defenders were also targeted. Defenders were arbitrarily detained, arrested, and fined. There were criminal sanctions for so-called unregistered activities, as well as cases where NGOs were denied registration or were deregistered. The premises of NGOs were subject to raids and attacks. Peaceful assemblies were dispersed violently or not sufficiently protected.

The purpose of this report is to highlight these trends and inspire action to counteract them. Such action should be taken, first and foremost, by governments by upholding their OSCE commitments.

In order to provide examples of steps that can be taken, ODIHR collected a number of good practices from participating States themselves, as well as from other international organizations, NHRIs, NGOs, and OSCE field offices and institutions. The primary means of collecting this information was a questionnaire that was sent to all participating States.³ The questionnaire focused on actions taken by states with regard to four main areas: respecting the rights of defenders to create an open space for action; protecting the rights of defenders; creating an enabling environment for defenders; and listening to, and addressing the concerns of, defenders.

¹ *Human Rights Defenders in the OSCE Region: Our Collective Conscience* (Warsaw: ODIHR, 2007), <http://www.osce.org/odihr/item_11_28760.html>.

² The work of the focal point is based on OSCE commitments, including the 1994 Budapest Document, in which participating States “emphasize the need for protection of human rights defenders”. See “Budapest Document 1994: Towards a Genuine Partnership in a New Era”, CSCE, Budapest, 21 December 1994, <<http://www.osce.org/item/4050.html>>.

³ ODIHR received responses from 21 participating States and the presidency of the European Union.

List of Abbreviations

CPT	Committee for the Prevention of Torture
EU	European Union
HDIM	Human Dimension Implementation Meeting
LGBT	Lesbian, Gay, Bisexual, and Transgender
NGO	Non-governmental organization
NHRI	National human rights institution
OSCE	Organization for Security and Co-operation in Europe
ODIHR	OSCE Office for Democratic Institutions and Human Rights
PACE	Parliamentary Assembly of the Council of Europe
SHDM	Supplementary Human Dimension Meeting
UPR	Universal Periodic Review

Introduction

This report and ODIHR's 2007 report on human rights defenders are a response to recommendations made at the March 2006 Supplementary Human Dimension Meeting on "Human Rights Defenders and National Human Rights Institutions: Legislative, State and Non-State Aspects".⁴ In follow-up to this meeting, ODIHR established a focal point for human rights defenders and national human rights institutions to monitor and report on the situation of human rights defenders in the OSCE region and to strengthen involvement with NHRIs in this regard (see Annex IV of this report).

In addition to its own monitoring and reporting, the focal point carries out a number of other programmatic activities: capacity-building activities for NHRIs; assisting defenders in monitoring the freedom of peaceful assembly on the basis of ODIHR's *Guidelines on Freedom of Peaceful Assembly*;⁵ and developing a guidebook on freedom of association.

The situation of human rights defenders was also discussed at the July 2007 SHDM on the "Promotion and Protection of Human Rights".⁶ Some of the key recommendations made at this meeting included calls for a regular review of whether effective remedies were available to human rights defenders and calls that steps be taken to ensure the independence and functioning of NHRIs.

The issue of human rights defenders was also addressed during the 2007 Human Dimension Implementation Meeting, in particular during the working session on freedom of expression, free media and information, and the working session on freedom of peaceful assembly and association, ombudsmen and independent NHRIs.⁷ Key recommendations made at the HDIM included that steps be taken to ensure that NGO legislation is in line with international commitments and that harassment of defenders be stopped. The March 2007 SHDM on "Freedom of Assembly, Association and Expression"⁸ was also relevant to the issue of defenders, as participants discussed some key rights that are vital for their work.

Structure of the report

Section 1 highlights key issues regarding the situation of human rights defenders across all 56 OSCE participating States during the period from April 2007 to April 2008 based on three main sources of information: information collected in the course of ODIHR's monitoring work; published information; and information submitted by

⁴ "Human Rights Defenders and National Human Rights Institutions: Legislative, State and Non-State Aspects", OSCE Supplementary Human Dimension Meeting, 30-31 March 2006, <<http://www.osce.org/item/18830.html>>.

⁵ *Guidelines on Freedom of Peaceful Assembly* (Warsaw: ODIHR, 2007), <http://www.osce.org/documents/odihr/2007/03/23837_en.pdf>.

⁶ "Promotion and Protection of Human Rights", OSCE Supplementary Human Dimension Meeting, 12-13 July 2007, <http://www.osce.org/conferences/shdm2_2007.html>.

⁷ "OSCE Human Dimension Implementation Meeting: Consolidated Summary", OSCE Human Dimension Implementation Meeting, 24 September-5 October 2007, <<http://www.osce.org/item/31194.html>>.

⁸ "Freedom of Assembly, Association and Expression: Fostering Full and Equal Participation in Pluralist Societies", OSCE Supplementary Human Dimension Meeting, 29-30 March 2007, <http://www.osce.org/documents/odihr/2007/04/24208_en.pdf>.

OSCE field operations and institutions, international organizations, NGOs, and NHRIs.

The four areas of concern described in last year's report remain largely the same this year:

- Threats to, and attacks on, the physical integrity of human rights defenders;
- Restrictions placed on the right to liberty and freedom of movement of defenders;
- The curtailment of the freedom of association of human rights defenders;
- The failure to respect and protect defenders' freedom of assembly.

It should be noted that Section 1 is not intended to provide a complete picture of individual cases; rather, the cases cited serve as illustrations of trends and patterns. The omission from this report of any particular incident should not be interpreted as meaning that ODIHR does not consider the victims in question to be human rights defenders. Similarly, the inclusion of any incident does not necessarily constitute an endorsement by ODIHR of any of the opinions expressed or actions taken by the human rights defenders in question.

Section 2 highlights good practices based on a questionnaire sent to participating States (see Annex XI) and input from international organizations, NGOs, OSCE field operations and institutions, and NHRIs.⁹

Human rights defenders play an important role in promoting and protecting human rights. It is states, however, that bear the primary responsibility for implementing their commitments relating to human rights and fundamental freedoms. A non-exhaustive list of key OSCE commitments related to the work of human rights defenders can be found in Annex III to this report.

Recent developments in the area of human rights defenders

The OSCE's activities in the field of human rights defenders are embedded in a wider international context that emphasizes the need to protect human rights defenders. In 1998, the United Nations General Assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders).¹⁰ Subsequently, in 2000, the UN secretary-general appointed a special representative on the situation of human rights defenders. The representative's mandate was renewed by consensus in March 2008, and the position was transformed into a special rapporteur of the UN Human Rights Council.¹¹

⁹ Participating States, NHRIs, international organizations, OSCE field operations and institutions, and NGOs were also given an opportunity to comment on a draft of this report (see Annex II for a list of comments).

¹⁰ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN General Assembly, Resolution A/RES/53/144, 9 December 1998. See Annex V.

¹¹ "Mandate of the Special Representative of the Secretary-General on the situation of human rights defenders", Human Rights Council, U.N. Doc. A/HRC/7/L.23, 25 March 2008. Margaret Sekaggya commenced her activities as special rapporteur on human rights defenders on 1 May 2008. See "Special Rapporteur on the situation of human rights defenders to start functions on 1 May 2008", United Nations, 30 April 2008, <<http://www.unhcr.ch/hurricane/hurricane.nsf/view01/C51440CA52D3DFB3C125743D0027C00C?op=endocument>>. The former special representative, Hina Jilani, submitted two reports on her visits to South-Eastern Europe. See "Report of the Special Representative of the Secretary-General on the

In February 2008, the Committee of Ministers of the Council of Europe adopted a declaration calling on member states to take effective measures to protect, promote, and respect human rights defenders and to ensure respect for their activities. It also called on Council of Europe structures to mainstream protection of human rights defenders into their work.¹² Member states were asked to co-operate with the Council's human rights mechanisms such as the European Court of Human Rights and the commissioner for human rights, and to take measures to assist and protect defenders in danger in non-EU countries, including through the observation of trials and the issuing of emergency visas.

The declaration also invited the commissioner for human rights to strengthen his own role and his office's capacity to provide strong and effective protection for human rights defenders. The commissioner is requested to report publicly on the situation of human rights defenders and to intervene, as he deems appropriate, in serious situations where there is a need for urgent action. The commissioner is encouraged to work in close co-operation with intergovernmental organizations and institutions, in particular ODIHR's focal point for human rights defenders, the European Union, and the UN special rapporteur on human rights defenders. In this context, in June 2008, the office of the commissioner set up a task force on human rights defenders that consists of the relevant intergovernmental bodies, international NGOs, and human rights defenders working on a variety of human rights issues in various parts of Europe.

The Parliamentary Assembly of the Council of Europe (PACE) appointed a rapporteur on the situation of human rights defenders in the Council of Europe's member states. The new rapporteur, Mr. Holger Haibach of PACE's Committee on Legal Affairs and Human Rights,¹³ which held hearings on this issue in April 2008,¹⁴ is expected to report to the Committee on Legal Affairs and Human Rights and subsequently to the PACE plenary in 2009. In April 2007, PACE established an annual award for outstanding civil society action in defence of human rights as a means of recognizing the significant contribution of civil society, including human rights defenders, to the promotion and protection of human rights.¹⁵

In January 2008, following the adoption by the Council of Europe's Committee of Ministers of a recommendation on the legal status of non-governmental organizations

situation of human rights defenders, Hina Jilani : Addendum : Mission to Serbia, including Kosovo", Human Rights Council, U.N. Doc. A/HRC/7/28/Add.3, 29 February 2008. "Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani : Addendum : Mission to the Former Yugoslav Republic of Macedonia", Human Rights Council, U.N. Doc. A/HRC/7/28/Add.4, 3 March 2008.

¹² "Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities", Council of Europe, Committee of Ministers, Document CM (2008)5 add., 6 February 2008.

¹³ "The Situation of Human Rights Defenders in Council of Europe Member States", Council of Europe, Committee on Legal Affairs and Human Rights, draft report, 6 October 2006, <http://assembly.coe.int/main.asp?Link=/committee/docref/jur_e.htm>.

¹⁴ "Hearing on the protection of human rights defenders", Council of Europe, Committee on Legal Affairs and Human Rights, 14 April 2008, <<https://wcd.coe.int/ViewDoc.jsp?id=1274071&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>>.

¹⁵ "State of human rights and democracy in Europe", Council of Europe Parliamentary Assembly, PACE Res. 1547 (2007), 18 April 2007, <<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/ERES1547.htm>>.

in Europe,¹⁶ the Council's Conference of International Non-governmental Organisations established an Expert Council on NGO Law. The council's mandate is to contribute to the creation of an enabling environment for NGOs throughout Europe by examining national NGO laws and their implementation. Its purpose is to provide advice on how to bring national law and practice into line with Council of Europe standards and European good practice and to propose ways in which those standards could be further developed. The council's first report was discussed at the Conference of International Non-governmental Organisations' plenary session in October 2008.¹⁷

The EU is currently reviewing its guidelines on protecting human rights defenders¹⁸ and the local implementation strategies on human rights defenders that have been developed in several countries. The EU has addressed issues related to human rights defenders in the framework of its political dialogue with some non-EU countries. It is expected that this process, which is being carried out by the European Commission, will further the EU's ability to promote and protect human rights defenders.¹⁹

International and OSCE standards on human rights defenders

2008 marks the 60th anniversary of the Universal Declaration on Human Rights and the 10th anniversary of the UN Declaration on Human Rights Defenders. Despite the adoption of these declarations, in both cases by a unanimous UN General Assembly, there has been repeated lack of consensus by participating States in recent years with regard to adopting additional commitments on human rights defenders at OSCE Ministerial Council meetings. One participating State disagreed with the drafting of this report, arguing that, *inter alia*, ODIHR lacks a mandate to deal with the issue.²⁰ In this context, ODIHR is bound by the fact that the issue of human rights defenders forms an integral part of OSCE commitments, which provide a number of specific standards on the issue.

Since the beginning of the so-called Helsinki Process in the 1970s, participating States have recognized the importance of the Universal Declaration as a normative point of reference. By including a specific reference to it in the Decalogue of the Helsinki Final Act, they committed themselves to protecting human rights and fundamental freedoms, and also highlighted the importance of ensuring that these rights and freedoms are known to everyone and that those involved in promoting human rights would be protected. The recognition of the role that civil society and NGOs play in promoting respect for human rights was first reflected in the 1975 Helsinki Final Act and has been reaffirmed since then in many OSCE commitments.²¹

OSCE documents specifically mention the need for the protection of human rights defenders.²² In 1994, participating States indicated that they were looking forward to the completion and adoption of the then-draft UN Declaration on Human Rights Defenders and that, in the context of participating States' "determination to guarantee

¹⁶ "Recommendation of the Committee of Ministers to the member states on the legal status for non-governmental organisations in Europe", Council of Europe, Committee of Ministers, Recommendation CM/Rec (2007)14, 10 October 2007.

¹⁷ "Conditions of Establishment of Non-Governmental Organisations", Expert Council on NGO Law, first annual report, OING Conf/Exp (2008) 4, 26 September 2008.

¹⁸ See Annex IX of this report.

¹⁹ Information provided by the Slovenian EU presidency, 4 June 2008.

²⁰ Response to ODIHR from the Permanent Delegation of the Republic of Belarus to the OSCE, 6 June 2008.

²¹ See Annex III.

²² Budapest 1994, *op. cit.*, note 2, para. 18.

the effective exercise of human rights and fundamental freedoms”,²³ OSCE commitments contain an obligation for states to “respect the right of their citizens to contribute actively, individually or in association with others, to the promotion and protection of human rights and fundamental freedoms”.²⁴ This closely mirrors the terminology of the UN Declaration on Human Rights Defenders.

This commitment “to ensure effectively the rights of the individual to know and act upon human rights and fundamental freedoms, and to contribute actively, individually or in association with others, to their promotion and protection”²⁵ was reaffirmed later, with participating States committing to “respect the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information”.²⁶ In addition, participating States committed to “respect the rights of everyone, individually or in association with others, to study and discuss the observance of human rights and fundamental freedoms and to develop and discuss ideas for improved protection of human rights and better means for ensuring compliance with international human rights standards”²⁷ and to “ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms, including trade unions and human rights monitoring groups”.²⁸ They also committed to “allow members of such groups and organizations to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts and co-operation with such groups and organizations and to solicit, receive and utilize for the purpose of promoting and protecting human rights and fundamental freedoms voluntary financial contributions from national and international sources as provided for by law”.²⁹

This non-exhaustive list shows that OSCE commitments on human rights defenders are firm and were indeed made well ahead of the adoption of the UN Declaration on Human Rights Defenders. It should be noted that, as with many terms used in the commitments, there is no specific definition of the term *human rights defender*. As mentioned above, commitments on defenders, however, closely mirror the subsequently adopted UN Declaration on Human Rights Defenders. It therefore seems advisable to recall the reference used in the subsequently unanimously adopted UN declaration for an understanding of human rights defenders as those “individually and in association with others, exercising the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels”.³⁰ It is this understanding that has guided ODIHR in the drafting of this report.

²³ “Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-operation in Europe, Held on the Basis of the Provisions of the Final Act Relating to the Follow-up to the Conference”, CSCE, Vienna, 1989, para. 12.

²⁴ *Ibid.*, para. 13.5.

²⁵ “Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE”, CSCE, Copenhagen, 1990, para. 10.

²⁶ *Ibid.*, para. 10.1.

²⁷ *Ibid.*, para. 10.2.

²⁸ *Ibid.*, para. 10.3.

²⁹ *Ibid.*, para. 10.4.

³⁰ UN Declaration on Human Rights Defenders, note 10.

1. Challenges and obstacles faced by human rights defenders

1.1. Challenges faced by human rights defenders

This section focuses on challenges and obstacles faced by defenders in the period from 1 May 2007 to 30 April 2008. It is divided into four broader areas that reflect challenges and patterns of violations:

- Threats to, and attacks on, the physical integrity of human rights defenders;
- Right to liberty and freedom of movement of human rights defenders;
- Freedom of association of human rights defenders;
- Freedom of assembly of human rights defenders.

The information presented in this section was collected in the course of ODIHR's monitoring work, as well as during OSCE human dimension events, in particular the SHDM on the "Promotion and Protection of Human Rights" (July 2007) and the 2007 HDIM. ODIHR also received information from OSCE field operations, international organizations, international NGOs working on defenders' issues, and from NHRIs.

It should be noted that examples of specific threats towards individuals or institutions involved in activities promoting tolerance and fighting discrimination can also be found in the ODIHR report "Hate Crimes in the OSCE Region – Incidents and Responses: Annual Report for 2007".³¹

1.2. Threats to, and attacks on, the physical integrity of human rights defenders

Defenders continued to face serious attacks on, and threats to, their physical and psychological integrity during the period under consideration. At least three defenders were killed. Human rights activists were subjected to abduction, ill-treatment in custody, and poor detention conditions that affected their health. They were attacked and threatened, subjected to harassment and intimidation, and their family members were harassed.

The following examples describe some of the circumstances and challenges affecting human rights defenders.

Killings

- A well-known journalist who had been active in uncovering and reporting on human rights abuses in a neighbouring country was shot and killed by an unknown gunman.³²
- A defender and member of an opposition party was shot by unknown individuals in the stairwell of the block of flats where he lived with his family.³³

³¹ "Hate Crimes in the OSCE Region – Incidents and Responses: Annual Report for 2007", ODIHR, October 2008, <<http://www.osce.org/item/33851.html>>.

³² Case of **Alisher Saipov** (Kyrgyzstan), "Ensure Justice for Murdered Journalist, Bishkek", Human Rights Watch, 25 October 2007.

³³ Case of **Farid Babaev** (Russian Federation), "Urgent Appeal: Dagestani political candidate and human rights defender assassinated", Observatory for the Protection of Human Rights Defenders (Observatory FIDH/OMCT), 5 December 2007. The government of the Russian Federation noted that a criminal investigation was conducted, two individuals were charged with murder, and the case was sent to court in July 2008.

- A defender was arrested by police, without a warrant, and taken to a police station where he was subsequently detained. The following day, he was found dead in his cell, having allegedly committed suicide by hanging himself with his shirt. The preliminary results of a *post mortem* examination revealed that he had died as a result of asphyxiation. However, it was also reported that there were wounds on his body and that he showed signs of having been brutally beaten. He was reportedly arrested for his alleged involvement in persuading high-ranking local-government officials to move to the opposition. He had also participated in a hunger strike along with 50 to 80 other individuals calling for constitutional reforms.³⁴

Abduction

- The head of a human rights NGO and three journalists were abducted by unidentified masked men pretending to be anti-terrorism officers at the hotel where they were staying prior to a demonstration they planned to cover. They were first beaten by their captors and then detained for several hours by police after filing a complaint.³⁵

Ill-treatment in custody

- A journalist and member of an opposition movement was arrested while undergoing a medical examination and was placed in a psychiatric hospital, where she was allegedly beaten, injected with drugs, and tied to a bed. Two weeks after her arrest, the local district court ordered compulsory treatment for her, after which she was placed in a wing for violent patients. Her arrest followed her publication of an article about the ill-treatment of children in psychiatric hospitals. She was released a month later.³⁶

Deterioration of health due to detention conditions

- A freelance journalist who wrote articles about government corruption was kept in a psychiatric hospital for a year and a half. While there, he smuggled a note to his

³⁴ Case of **Bektemir Akunov** (Kyrgyzstan), “Report submitted by the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum, Summary of cases transmitted to Governments and replies received”, Human Rights Council, U.N. Doc. A/HRC/7/28/Add.1, 3 March 2008, para. 1268.

³⁵ Case of **Oleg Orlov, Artem Vysotskii, Karen Sakhinov, and Stanislav Goriachikh** (Russian Federation), “Urgent appeal: Human rights activist and journalists beaten in Ingushetia”, Observatory FIDH/OMCT, 28 November 2007; “Human Rights Activist and Journalist beaten in Ingushetia”, Amnesty International, 24 November 2007; “Choking on bureaucracy: state curbs on independent civil society activism”, Human Rights Watch, February 2008; Human Rights Council, *op. cit.*, para. 1709, for the government’s response, see para. 1712. The government of the Russian Federation informed the ODIHR that a criminal investigation is ongoing.

³⁶ Case of **Larissa Arap** (Russian Federation), “Ongoing arbitrary detention in a psychiatric hospital of Ms. Larissa Arap”, Observatory FIDH/OMCT, 14 August 2007; Human Rights Council, *op. cit.*, note 34, para. 1684, for the government’s response, see para. 1686. The government of the Russian Federation informed the ODIHR that Ms. Arap was treated in a psychiatric hospital twice in 2007 after being examined by qualified psychiatrists and subsequent to two court decisions on involuntary treatment. She was released from hospital in August 2007. It was also noted by the government of the Russian Federation that the relevant prosecutor’s office examined the circumstances of Ms. Arap’s hospitalization and did not find any violations with respect to the hospitalization procedure.

friends in which he reported that his health was worsening, including memory loss, difficulties concentrating, and partial loss of vision.³⁷

- A defender who was sentenced to eight years' imprisonment reportedly spent seven months in solitary confinement and was held in a psychiatric unit for drug addicts and the mentally ill. Her health deteriorated as a result of the conditions in which she was being held. It was reported that she had lost approximately 20 kilograms and was suffering from low blood pressure as well as a kidney-related illness caused by cold.³⁸

Attacks

- In the days following an LGBT pride and equality march, one of the organizers of the march received three text messages with death threats. He was later recognized and attacked by several people. Another march organizer was also attacked.³⁹
- An activist was attacked by an unidentified masked woman outside the house of a former colleague. The assailant allegedly demanded the activist's documents. When she refused to hand them over, the assailant physically attacked her and took her documents and earrings. The activist suffered a concussion as a result of the attack and was treated in hospital for her injuries. The attack took place the day before she was due to testify against a publisher of xenophobic literature who had been accused of inciting ethnic hatred. Prior to the attack, she had allegedly received an anonymous phone call threatening her and her family with death if she testified. An official investigation was opened into the case.⁴⁰
- A correspondent covering issues related to national-minority issues was attacked by unidentified assailants and suffered injuries to his head, hands, and other parts of his body.⁴¹
- A journalist and defender was insulted and beaten up near a mosque after Friday prayers by a man who accused the journalist of criticizing the president of their country. The incident was allegedly observed and filmed by security officers in plain clothes, who did not intervene.⁴²
- The deputy head of an NGO dealing with projects on housing and property rights was attacked by two unidentified assailants in the hallway of his apartment building. He suffered head injuries, including nine open wounds that were apparently caused by a hatchet. The assailants took his files and keys, but not his money or other valuables. Several days prior to the attack, he had received a

³⁷ Case of **Jamshid Karimov** (Uzbekistan), "Journalist forcibly interned in psychiatric hospital subject to inhumane treatment, his health declines", Reporters Without Borders/ International Freedom of Expression Exchange (RSF/IFEX), 13 August 2007.

³⁸ Case of **Mutabar Tadjibaeva** (Uzbekistan), "Uzbekistan: Further ill-treatment of human rights defender Mutabar Tadjibaeva", Front Line, 15 October 2007; Human Rights Council, *op. cit.*, note 34, paras. 1940 and 1972, for the Government's response, see para. 1943.

³⁹ Case of **Franko Dota** and **Viktor Zahtila** (Croatia). Information provided by the International Lesbian and Gay Association (ILGA).

⁴⁰ Case of **Valentina Uzunova** (Russian Federation), Human Rights Council, *op. cit.*, note 34, para. 1680, for the government's response, see para. 1683. The government of the Russian Federation noted that a criminal investigation is ongoing and that this case is being given special attention by the Prosecutor-General's Office.

⁴¹ Case of **Andreas Rompopoulos** (Turkey), "EFJ Calls for Investigation after Attack on Greek Journalist in Istanbul", European Federation of Journalists, 7 December 2007. The government of Turkey noted that a preparatory investigation by the Public Prosecutor's Office of Beyoğlu/Istanbul is under way.

⁴² Case of **Kamil Ashurov** (Uzbekistan), Urgent Appeal, Observatory FIDH/OMCT, 29 May 2007; information was also provided by Human Rights Watch, 15 May 2008.

threatening text message saying that, in the future, he would not be able to help his target group. A police investigation was opened.⁴³

Threats

- A human rights researcher and a member of the council for the civilian control of police received threats by telephone suggesting that photographs would be published exposing him as a homosexual. He was later told that he would be killed. He was also followed by a car without licence plates and filmed from that car; a subsequent investigation failed to find the alleged perpetrators.⁴⁴
- The former director of an organization promoting human rights, including LGBT rights, received an e-mail from someone identified only as “Sharp Knife”. The message contained threats of violence and advised the director’s family to prepare his funeral in the coming fortnight as a consequence of his work.⁴⁵
- A member of an organization supporting LGBT rights received threatening telephone calls, and then graffiti was painted on her house. She received more threatening calls a month later. Then more graffiti appeared near her home with the word “lesbian, her date of birth, and another date presumably intended to indicate the date of her death. She reported this to the police, who took no action to protect her.⁴⁶
- A far-right website posted the home addresses, phone numbers, and photographs of defenders and journalists working on minority issues, racism, and fascism. Authorities launched an investigation into the case.⁴⁷
- The spokesperson of a human rights NGO testified at a trial against an extreme-right newspaper that had published articles in conjunction with the anti-Semitic book by Kostas Plevris. During the trial, the defender was verbally attacked by the author of the book. And after the trial, a journalist from state television insulted him and tried to hit him. In addition, death threats against the defender were posted on the website of an extreme-right party. When the author was convicted and given a suspended sentence of 14 months, more threatening messages were posted on the website.⁴⁸
- A gay-rights advocacy group received a number of threats related to its activities through e-mail and Internet forums that included hate speech and expressions of

⁴³ Case of **Aleksey Suslikov** (Russian Federation), “Choking on bureaucracy: state curbs on independent civil society activism”, Human Rights Watch, February 2008. The government of the Russian Federation noted that a criminal investigation is ongoing.

⁴⁴ Case of **Aleksandar Sasa Zekovic** (Montenegro), “Summary of Amnesty International’s Concerns in the Region, January-June 2007”, Amnesty International; Human Rights Council, *op. cit.*, note 34, para. 1411, for the government’s response, see para. 1414.

⁴⁵ Case of the **Centre for Social Emancipation** in Kosovo. Information provided by Front Line, 3 April 2008.

⁴⁶ Case of a member of the **Gay Straight Alliance** (Serbia). Information provided by Front Line, 3 April 2008.

⁴⁷ Case of **Aleksander Verkhovski, Valentina Uzunova**, and others (Russian Federation), Urgent Appeal, Observatory FIDH/OMCT, 25 April 2008. The government of the Russian Federation noted that the website was technically outside the jurisdiction of Russian law-enforcement agencies; however, as a result of co-operation with relevant agencies abroad, lists of human rights defenders and journalists were deleted from the website. The process of investigating and identifying those responsible for posting the lists is ongoing.

⁴⁸ Case of **Panayote Dimitras** (Greece), “New acts of harassment against the Greek Helsinki Monitor and activists who filed criminal actions against neo-Nazis”, Observatory FIDH/OMCT, 18 January 2008.

xenophobia and homophobia, as well as descriptions of methods to be used to punish activists in the group.⁴⁹

- One of the leaders of an LGBT community fled his home after receiving death threats following a complaint he made about police misconduct. The complaint was related to an incident, whereby police officers stopped four men dressed in women's clothing after an LGBT event and took them to the police station, where they were paraded around and harassed.⁵⁰

Harassment and intimidation

- A woman who headed an NGO and campaigned for farmers' rights was reportedly threatened with eviction for organizing and participating in a peaceful demonstration to protest the lack of heating and electricity in her region. Since then, she and her relatives have been pressured by the authorities to leave the region.⁵¹
- A trade union's office was closed and five of its activists fired by the port they worked for after the union presented its demands for the protection of workers' rights in the course of a restructuring process the port was engaged in.⁵²
- The local authorities in a certain city prevented a journalist from attending a press conference with EU ambassadors because, in their view, he was presenting "too negative a view" of the city. He was also strongly advised by the mayor's bodyguard to apologize for his critical articles.⁵³
- A defender was summoned first to a meeting with a police official and then to a meeting with national-security agents, where he was informed that he should stop his human rights activities. He also started receiving phone calls from unknown people pressuring him to leave the country. He fled the country out of fear.⁵⁴
- A lawyer who defended a person who had spent a year in detention in Syria before he was extradited to an OSCE participating State to stand trial on terrorism charges successfully argued that the evidence obtained in Syria should be inadmissible at trial, as it was obtained under torture. The defendant was sentenced to nine years in prison. The appeals court increased the sentence to 10 years and criticized the lawyer for stating in his written arguments that the investigating judges were complicit in torture, calling this language "slanderous and overstepping the bounds of freedom of speech of the defence". The prosecutor's office asked a disciplinary committee of the bar association to censure the lawyer for making these accusations. Despite the view of the president of the bar that the lawyer's actions were legitimate in the defence of his client, the prosecutor's office took its own disciplinary action against the lawyer. Possible punishment includes temporary or permanent disbarment.⁵⁵

⁴⁹ Case of **Queeria Center** (Serbia). Information provided by the OSCE Mission to Serbia, 23 May 2008.

⁵⁰ Case of the LGBT community in Prishtinë/Pristina. Information provided by the OSCE Mission in Kosovo, 21 May 2008.

⁵¹ Case of **Saida Kurbanova** (Uzbekistan), "Uzbekistan: Acts of intimidation against human rights defender Saida Kurbanova", Front Line, 28 February 2008.

⁵² Case of **Georgian Trade Union Confederation** (Georgia), "Georgia: The end of Freedom of Association", International Trade Union Confederation, 23 November 2007.

⁵³ Case of **Enes Halilovic** (Serbia), "Local authorities in a southern region drew up a blacklist of undesirable journalists ahead of press conference", Reporters Without Borders, 7 September 2007.

⁵⁴ Case of **Yadgar Turlibekov** (Uzbekistan). Information provided by Human Rights Watch, 15 May 2008.

⁵⁵ Case of **Sebastian Bono** (France). Information provided by Human Rights Watch, 15 May 2008.

Retaliation against family members

- A man was sentenced in 2006 to three years in prison for hooliganism, allegedly for the human rights work of his father. The man was beaten up while in detention allegedly to force him to confess to another disciplinary offence. He subsequently allegedly stabbed himself in protest and was refused appropriate medical treatment. His parents were also not allowed to visit him.⁵⁶
- The brother and daughter of an imprisoned woman and human rights defender were harassed and intimidated by the authorities. The defender's brother, who had already been evicted from his apartment, was warned that, if he continued to object to his sister's detention, it would be difficult for him to continue to work and he would be forced to leave the city where he lived. The defender's daughter was also threatened that, if she attempted to see her mother, she would be killed. She had also been followed by individuals she believed were law-enforcement agents.⁵⁷

1.3. Right to liberty and freedom of movement of human rights defenders

Challenges and obstacles to the exercise of the right to liberty observed during the reporting period included prison sentences that might have been motivated by defenders' human rights work, arbitrary detentions, arrests and fines, and restrictions on travel. The following examples describe some of the circumstances and challenges affecting defenders.

Prison sentences, including suspended sentences, that might have been motivated by defenders' human rights work

- A well-known local defender who had spent a number of years uncovering human rights abuses was charged with harming the honour and business reputation of a local politician after he took pictures and attempted to film open discussions of a proposed constitution at the local assembly.⁵⁸
- Three members of a human rights group were sentenced to 32 months in prison for "inciting hatred and hostility" and "praising crime and criminals". After lodging an appeal, they were reportedly released until the next hearing. The charges resulted from the men's criticism of certain military operations in prisons and prison conditions.⁵⁹
- A prominent writer and pro-democracy activist was charged with assault and "insulting and resisting representatives of the government" and sentenced to five

⁵⁶ Case of **Ikhtior Khamroev** (Uzbekistan), Urgent Appeal, Observatory FIDH/OMCT, 11 December 2007; "Uzbekistan: Human rights defender Ihtiyor Hamroev badly beaten in custody", Front Line, 6 December 2007; *Amnesty International Report 2008: State of the World's Human Rights* (London: Amnesty International, 2008), p. 324, <<http://thereport.amnesty.org/eng/regions/europe-and-central-asia/france>>; Human Rights Council, *op. cit.*, note 34, para. 1922, for the government's response, see para. X.

⁵⁷ Case of **Rasul Tadjibaev** and **Mahliyo Akramova** (Uzbekistan), Amnesty International, *op. cit.*, note 56, p. 324, <<http://thereport.amnesty.org/eng/regions/europe-and-central-asia/france>>; Human Rights Council, *op. cit.*, note 34, para. 1942, for the government's response, see para. 1943.

⁵⁸ Case of **Maxim Kuleshov** (Kyrgyzstan), "Confirmation of the sentence against Mr. Maxim Kuleshov", Observatory FIDH/OMCT, 18 October 2007.

⁵⁹ Case of **Ethem Acikalin**, **Mustafa Bagcicek**, and **Hüseyin Beyaz** (Turkey), "Turkey must end the impunity of political violence", Observatory FIDH/OMCT, 13 February 2008; "Arbitrary detention of Mr. Ethem Açikalın", Observatory FIDH/OMCT, 28 January 2008; Human Rights Council, *op. cit.*, note 34, para. 1894, for the government's response, see para. 1897. The government of Turkey noted that the three men were sentenced to 30 months in prison, that the verdict has been appealed and that the decision of the Supreme Court is expected.

years in prison. His son, who was arrested with him, was given a three-year suspended sentence. Both pleaded guilty after reportedly having been tortured during their interrogations. They were arrested after staging a protest against the arrest of their son and brother, who had been detained earlier, tried and sentenced to three years in prison.⁶⁰

- An NGO board member's sentence of 30 months in prison was upheld by a court of appeal. He was sentenced after he had investigated the killing of several people and wrote a report denouncing the killings. Two other cases against him were pending before the court of appeal for "insulting a state agent". In the first case, he was fined for publishing a press release in which he denounced a rape. An appeal is pending. In the second case, he was fined, and an appeal is pending as well.⁶¹
- A human rights activist who had offered to mediate between protesters and the authorities in a rural town was arrested following the protest. He was convicted of fraud and sentenced to six years and three months in prison.⁶²
- A member of an NGO working to protect the rights of doctors and their patients was charged and sentenced to six years in prison for attempting to bring books written by an exiled opposition leader into a particular country. She was also charged with defamation. She was tried, found guilty and fined. Later, her prison term was commuted on appeal to a six-year suspended sentence and she was released from detention.⁶³
- A defender's seven-year prison sentence (for smuggling "extremist" literature into a particular country and for crossing the border illegally) was commuted to a seven-year suspended sentence, with three years of probation. Under the terms of her new sentence, she has to report regularly to the police, notify the authorities about any changes in her profession, and observe a 10 p.m. curfew.⁶⁴
- An activist who helped other activists use information technology and participated in several human rights projects was arrested and charged with embezzlement for activities that allegedly took place in 2004. The objections and petitions of his defence lawyer were not taken into account by the court.⁶⁵

⁶⁰ Case of **Yusuf Juma, Bobur Juma, and Mashrab Juma** (Uzbekistan), "Uzbekistan: Sentencing of human rights defender Yusuf Juma", Front Line, 17 April 2008.

⁶¹ Case of **Ridvan Kizgin** (Turkey), Urgent Appeal, Observatory FIDH/OMCT, 18 March 2008. The government of Turkey noted that there is no provision in Turkish penal law or in other legal documents that proscribes writing such reports and pointed out that, according to the court decision delivered on 7 October 2005, he was sentenced for concealing and destroying the evidence of an offence. The government further pointed out that it is clear that this constitutes a criminal act that has no relation, by definition, to his activities as an NGO board member. The third case against him resulted in a fine of 1,908 Turkish lira. The government noted that, in this case, the Supreme Court overturned the lower court's decision, taking into consideration the amendments to the Code of Criminal Procedure that entered into force following the lower court's decision, and that a new trial is under way.

⁶² Case of **Karim Bozorboev** (Uzbekistan), "Uzbekistan: Arrest of human rights defender Karim Bozorboev", Front Line, 13 December 2007; information also provided by Human Rights Watch, 15 May 2008.

⁶³ Case of **Gulbahor Turayeva** (Uzbekistan), "Uzbekistan: Imprisoned Rights Activist Sentenced Again", Human Rights Watch, 25 April 2007; "Unabated Crackdown on Human Rights Defenders Demands Continued EU Sanctions", Human Rights Watch, 27 April 2007; "Uzbekistan: Activist From Andijan Released on Parole", Human Rights Watch, 15 June 2007; Amnesty International, *op. cit.*, note 56, p. 325; Human Rights Council, *op. cit.*, note 34, para. 1955.

⁶⁴ Case of **Umida Niyazova** (Uzbekistan), "Uzbekistan: Release of Mrs. Umida Niyazova", Observatory FIDH/OMCT, 9 May 2007; "Uzbekistan: Human Rights Defender Released", Human Rights Watch, 8 May 2007; Amnesty International, *op. cit.*, note 56, p. 325; Human Rights Council, *op. cit.*, note 34, para. 1950, for the government's response, see para. 1953.

⁶⁵ Case of **Valery Pal** (Turkmenistan), "Human Rights Watch concerns and recommendations on Turkmenistan", 7 July 2008; information provided by Human Rights Watch, 15 May 2008. He was sentenced on 13 May 2008 to 12 years in prison.

- The Ministry of National Security brought threat of terrorism charges against an editor-in-chief of two newspapers. The man was tried and sentenced to 8 1/2 years in prison. The decision was upheld upon appeal.⁶⁶

Arbitrary detentions

- The head of a human rights group was arrested when he sought access to case files with respect to a claim of slander that was filed against him by a private citizen. The claim was filed in response to a newspaper article the human rights activist had written criticizing a maternity hospital. Since the complaint was lodged, a series of procedural irregularities have reportedly taken place. Since his arrest, he has been kept incommunicado, and his whereabouts were unknown at the time of writing.⁶⁷
- A member of a human rights group went to a local department of the Ministry of Internal Affairs in his town in order to obtain permission to travel to a neighbouring country and did not return home. His relatives later discovered that he had been arrested for hooliganism and sentenced to 15 days in prison.⁶⁸

Arrests and fines

- Several defenders taking part in a peaceful demonstration over election irregularities were arrested by police on the grounds that they were violating laws on freedom of assembly and public order. Several of them were injured in the process. Some of them were sentenced to five to seven days' imprisonment, while others were fined.⁶⁹
- Two defenders and 10 journalists were arrested while attending a demonstration to protest repression and corruption on the part of the government. The demonstration was dispersed by the police, who reportedly surrounded the protesters in armoured vehicles and fired their guns into the air.⁷⁰
- The head of a regional branch of a human rights group was arrested on charges of resisting arrest and attacking a police officer after he had spoken to a resident who had asked him for help regarding his detention. The defender was found guilty of resisting an order and interfering in a criminal investigation. He was fined and released.⁷¹

⁶⁶ Case of **Eynulla Fatullayev** (Azerbaijan). Information provided by the OSCE Office in Baku, 14 May 2008.

⁶⁷ Case of **Sobir Tulaganov** (Uzbekistan), Urgent Appeal, Observatory FIDH/OMCT, 26 September 2007; Human Rights Council, *op. cit.*, note 34, para. 1976.

⁶⁸ Case of **Hurram Berdiev** (Uzbekistan), Human Rights Council, *op. cit.*, note 34, para. 1979.

⁶⁹ Case of **Tolekan Ismailova** and other human rights defenders (on 18 December 2007) and 33 other human rights defenders (on 20 December 2007) (Kyrgyzstan), "Arbitrary detention and subsequent sentencing of eight human rights defenders", Observatory FIDH/OMCT, 16 January 2008.

⁷⁰ Case of **Ekaterina Sokiryanskaya** and **Timur Akiyev** (Russian Federation), "Arrest of human rights defenders and journalists following demonstration in Nazran", Front Line, 27 January 2008. The government of the Russian Federation noted that there was a violation of public order during the unsanctioned meeting; 48 individuals were briefly detained, including Ms. Sokiryanskaya and Mr. Akiyev. The relevant prosecutor's office opened a criminal case into the group violation of public order, and the investigation is ongoing.

⁷¹ Case of **Tursunbai Utamuradov** (Uzbekistan). Information provided by Human Rights Watch, 15 May 2008.

Restrictions on travel

- The head of a regional branch of a human rights group was prevented by authorities from travelling on two occasions to other towns where he was scheduled to meet with other defenders.⁷²
- A defender was summoned to a police station after meeting with a representative of an international human rights NGO. When he was released from prison under amnesty on an earlier occasion, the prison administration told him that his passport had been lost. As a result, he was unable to travel within or outside the country.⁷³
- The head of a regional branch of a human rights group was summoned to a police station, where the police chief told him that he should inform the police about his travels. He refused to co-operate, after which his passport was confiscated and his house was put under surveillance. Plain-clothed officers prevented him from attending his friend's funeral.⁷⁴

1.4. Freedom of association of human rights defenders

Challenges and obstacles to the exercise of the freedom of association continued during the period under consideration and included denial of registration, deregistration, expulsion or threat of expulsion from premises, raids, attacks on offices, defamation campaigns, and abuse of charges.

The following examples describe some of the circumstances and challenges affecting human rights defenders.

Denial of registration

- A well-known human rights NGO was refused registration despite a finding by the UN Human Rights Committee that such refusal constituted a violation of the International Covenant on Civil and Political Rights. One of the reasons cited for rejection was that 20 of the 69 founders of the NGO had convictions for administrative offences. The organization's appeal was rejected.⁷⁵

Deregistration

- A human rights NGO was ordered by a district court to be removed from the official registry for failure to provide a report about its activities to the regional authorities. The NGO claims to have submitted the report in due time to the central authorities, where it had registered previously. The NGO could not attend the court hearing because the notification from the court was sent to the wrong address, as was the court's decision, thus making it impossible for the NGO to lodge an appeal on time.⁷⁶

⁷² Case of **Mamir Azimov** (Uzbekistan). Information provided by Human Rights Watch, 15 May 2008.

⁷³ Case of **Ulugbek Kattabekov** (Uzbekistan). Information provided by Human Rights Watch, 15 May 2008.

⁷⁴ Case of **Ahmadjon Madmarov** (Uzbekistan). Information provided by Human Rights Watch, 15 May 2008.

⁷⁵ Case of Human Rights Centre **Viasna** (Belarus), "Belarus: The authorities refuse to re-register the Human Rights Centre 'Viasna' in spite of UN Human Rights Committee's decision", Observatory FIDH/OMCT, 31 August 2007; Amnesty International, *op. cit.*, note 56, p. 66.

⁷⁶ Case of **Youth Human Rights Movement** (Russian Federation), "Russian Federation: Federal Law on NGOs has led to serious violations of freedom of association", Observatory FIDH/OMCT, 23 August 2007. The government of the Russian Federation noted that the Federal Registration Service

Expulsion or threat of expulsion from premises

- Two trade unions were expelled by the authorities from their premises, and documents were destroyed. The police allegedly appeared without prior notice, and staff were prevented from entering the building. The police were enforcing a court decision involving property seized by the former communist government. The government had promised to find another solution besides expulsion.⁷⁷
- There were allegations that the office (occupied for almost 30 years) of the local union of journalists – an NGO critical of government pressure on independent journalism – was being sold to a private third party.⁷⁸

Raids

- The office of an NGO defending the rights of LGBT people was raided by about a dozen police officers in plain clothes. Their warrant cited suspicion that the organization was facilitating “prostitution, [acting] as a go-between [and providing] a place for [prostitution]”. After a two-hour search, the officers took a list of the organization’s members, along with records of its decisions and other documents. The organization’s property has still not been returned.⁷⁹
- Police raided the offices of a trade union, reportedly without a search warrant; arrested several of its activists; and sealed or confiscated its equipment and documents. The detainees were later summoned to court for alleged hooliganism.⁸⁰
- The offices of a human rights NGO were raided by police, and its computers and software were confiscated. The homes of several of its members were subsequently raided as well.⁸¹

did not attempt to close down the International Youth Movement. However, the case in question concerns another organization called the Youth Human Rights Movement that is registered with the Nizhny Novgorod Department of the Federal Registration Service and that did not provide information about its activities. A warning was sent to the address of the latter organization in November 2006. In May 2007, the Nizhny Novgorod Department of the Federal Registration Service applied to the relevant court with a request to shut down the organization. The court decided in favour of the closure, and the NGO was removed from the registry of NGOs.

⁷⁷ Case of **Confederation of Trade Unions of Albania** and the **Union of Independent Trade Unions of Albania** (Albania), “Albania: Police destroy trade union offices”, International Trade Union Confederation, 3 August 2007.

⁷⁸ Case of **Independent Union of Journalists** (Russian Federation), “Government steps up pressure to close down journalists’ union”, International Freedom of Expression Exchange, 27 February 2008.

⁷⁹ Case of the **Lambda Istanbul Cultural Centre** (Turkey), “Turkey: end harassment of gay rights group”, Human Rights Watch, 16 April 2008.

⁸⁰ Case of the **Belarusian Congress of Democratic Trade Unions** (Belarus), “Urgent appeal: Condemnation of a police raid”, Observatory FIDH/OMCT, 11 December 2007.

⁸¹ Case of the **Nizhny Novgorod Foundation for the Promotion of Tolerance** (Russian Federation), “New acts of harassment against Stanislav Dmitrievsky and two Moscow-based NGOs”, Observatory FIDH/OMCT, 11 April 2008; “Russia: Raid on the office of Nizhny Novgorod Foundation to Support Tolerance”, Front Line, 16 April 2008. The government of the Russian Federation noted that the relevant authorities conduct regular inspections of organizations and companies regarding copyright issues. In 2007, 47 organizations were inspected in Nizhny Novgorod, including the Foundation for the Promotion of Tolerance. The inspection revealed that four computers had unlicensed software installed. The relevant prosecutor’s office opened a criminal investigation into this case.

Attacks on offices

- During a protest, unidentified individuals threw a flare at the doorstep of the office of a well-known human rights NGO, causing damage. Police conducted an investigation into the incident the same night.⁸²
- The office of a human rights NGO was destroyed by a fire that was possibly caused by two unidentified objects that were apparently placed in the ventilation duct.⁸³
- The office of a human rights NGO was picketed by demonstrators who threw eggs and other objects at the office. Police officers were allegedly present but did not intervene.⁸⁴
- There was an attempt to set fire to the offices of an independent news organization during a mass protest. The police prevented protesters from entering the building.⁸⁵
- The office of an NGO offering support and legal advice to migrants, refugees, and asylum seekers was spray-painted with swastikas and nationalist slogans.⁸⁶
- Men in plain clothes broke into the offices of an NGO involved in litigation of sensitive cases and of a human rights movement that were located in the same building. The men, who claimed that the building belonged to them, broke down the iron doors and dismantled the stairs connecting the floors between the two offices.⁸⁷

Defamation campaigns

- A member of a feminist organization was allegedly the target of a media smear campaign against her and her organization.⁸⁸
- The head of a well-known NGO faced backlash from the media and from a number of politicians after she attended a ceremony proclaiming the independence of a province in her country.⁸⁹ A number of politicians made hostile statements against her, some openly encouraging acts of violence, which were broadcast in the media. She was threatened in the street a number of times, and a campaign was launched to collect signatures to formally charge her with treason.

⁸² Case of the **Humanitarian Law Centre** (Serbia), “Serbia: Protect Civil Society and Minorities - Government Should Unequivocally Condemn and Quell Violence”, Human Rights Watch, 27 February 2008.

⁸³ Case of **Ramazán Dyrýldaev** (Kyrgyzstan), Human Rights Council, *op. cit.*, note 34, para. 1271.

⁸⁴ Case of the **Institute for Peace and Democracy** (Azerbaijan), Amnesty International, *op. cit.*, note 56, p. 60; information also provided by Human Rights Watch, 15 May 2008.

⁸⁵ Case of **B92** (Serbia), “Serbia: Protect Civil Society and Minorities”, Human Rights Watch, *op. cit.*, note 82; “Serbia: Threats against human rights defenders and organisations in Serbia following independence of Kosovo”, Front Line, 22 February 2008; “Serbia: Stop attacks on human rights activists and on minorities”, Amnesty International, 20 February 2008.

⁸⁶ Case of **Action for Equality, Support and Anti-racism** (Cyprus), Amnesty International, *op. cit.*, note 56, p. 108.

⁸⁷ The case of the **Centre of International Protection** and of the **For Human Rights** movement (Russian Federation), “New acts of harassment against Stanislav Dmitrievsky and two Moscow-based NGOs”, Observatory FIDH/OMCT, 11 April 2008.

⁸⁸ Case of **Sanja Sarnavka** of the organization Be Active, Be Emancipated (Croatia). Information provided by Front Line, 3 April 2008.

⁸⁹ Case of **Nataša Kandić** (Serbia), “Serbia: Protect Civil Society and Minorities”, Human Rights Watch, *op. cit.*, note 82; Urgent Appeal, Observatory FIDH/OMCT, 26 February 2008; “Serbia: Threats against human rights defenders and organisations in Serbia following independence of Kosovo”, Front Line, 22 February 2008; “Serbia: Stop attacks on human rights activists and on minorities”, Amnesty International, *op. cit.*, note 85.

Three months earlier, she had been verbally insulted by some members of parliament, who also distributed a booklet containing insults against her.⁹⁰

- An NGO consisting of relatives of the victims of the terrorist attack in Beslan was the target of numerous acts of intimidation and defamation campaigns. The NGO advocated for an independent investigation into the attack. An administrative case was brought against one of the leaders of the NGO, along with two other members, for allegedly obstructing the court session that took place earlier in relation to those three individuals. The case was later dismissed. Another administrative case had been opened earlier against the head of the NGO following her participation in a rally. In addition, flyers were distributed in the town where the NGO operates, accusing the head of the NGO of “serving foreign powers”. The prosecutor’s office lodged a suit against the NGO for extremist activities, a charge linked to a statement made by the NGO two years earlier, when it called on the president of the country to launch an independent investigation into the assault that ended the terrorist attack and resulted in the deaths of many of the hostages. The prosecutor claimed that the NGO had made false accusations against the president. The authorities had also claimed earlier that the NGO in fact had a different head, and they therefore tried to re-register the organization under different leadership. There was a court ruling in this respect that was eventually overturned by the Supreme Court.⁹¹
- A gathering took place in front of a government building to protest the deterioration of the security situation in the city of Sarajevo and to call on the prime minister and mayor to resign. Violence broke out, and a member of a human rights movement was arrested and released a few hours later. Two days later, the authorities released a statement accusing two human rights groups of using the protest to destabilize the situation in the city.⁹²

Abuse of charges

- A local office of an international human rights NGO was accused by local authorities of “illegal fundraising”, its bank accounts were frozen, and an administrative fine was imposed on the organization’s chairperson for the same offence. The NGO faced legal proceedings on the basis of its street fundraising (outdoor fundraising campaign) activities and for requesting donations on its website. Both decisions were appealed by the NGO, but the cases remained unresolved.⁹³
- A human rights NGO was given a warning following an *ad hoc* inspection by the authorities. The NGO challenged this in court, but lost the case. The reason for the unplanned check was revealed during the hearing: namely, that the NGO had

⁹⁰ Human Rights Council, *op. cit.*, note 34, para. 1751.

⁹¹ Case of the **Voice of Beslan** (Russian Federation), Urgent Appeal, Observatory FIDH/OMCT, 22 April 2008. The government of the Russian Federation provided additional information about the administrative case in relation to the three members of the NGO and an attempt to institute a criminal case against them for disrespecting the trial proceedings instituted against them earlier, and for violence against a representative of the authorities. The investigation by the relevant prosecutor’s office revealed that there was no reason to institute a criminal case, and the case was subsequently closed. The government of the Russian Federation also noted that a lawsuit against the NGO for extremist activities was suspended, and that the statement published by the NGO was had been sent for an expert assessment in order to establish whether it contained “linguistic features of extremism”.

⁹² Case of **Dosta and Grozd** (Bosnia and Herzegovina). Information provided by the OSCE Mission to Bosnia and Herzegovina, based on information received from NGOs, the published statement of the Canton Sarajevo, (entity of Federation of Bosnia and Herzegovina) and a statement from the activist who was arrested and later released.

⁹³ Case of **Amnesty International** (Turkey), “Legal proceedings against Amnesty International Turkey should stop”, Amnesty International, 22 June 2007; Amnesty International, *op. cit.*, note 56, p. 303.

received funds from abroad, which the authorities claimed could have come from “foreign extremist organizations”.⁹⁴

- An NGO defending the rights of LGBT people suffered harassment throughout the reporting period. The local governor’s office demanded its closure, arguing that the name and objectives of the group were offensive to the “moral values and family structure” of the country the NGO was operating in the country. The prosecutor’s office rejected the complaint, but the governor’s office pursued the case to a higher court.⁹⁵

1.5. Freedom of assembly of human rights defenders

Challenges and obstacles to freedom of assembly continued, including violent dispersal of assemblies and the use of force against human rights defenders exercising the right to peaceful assembly, excessive interference with freedom of peaceful assembly, and a lack of sufficient police protection for demonstrators.

The following examples describe some of the circumstances and challenges affecting defenders.

Violent dispersal of assemblies and use of force against human rights defenders exercising the right to peaceful assembly

- A country’s ombudsman was beaten by police after he protested police actions during anti-government protests, where police beat individuals who were not resisting them.⁹⁶
- A rally to protest kidnappings, police violence, and poor economic conditions was violently dispersed, and some 60 people were arrested.⁹⁷
- A protest organized by a group advocating international freedom of movement was forcibly dispersed by border guards wielding batons and pepper spray, allegedly without any prior warning. Several protesters were allegedly injured.⁹⁸

⁹⁴ Case of the **Chechen Committee for National Salvation** (Russian Federation), “Defamation campaign against international NGOs”, Observatory FIDH/OMCT, 11 April 2008. The government of the Russian Federation noted that, in 2007, an inspection of the Chechen Committee for National Salvation was conducted jointly by the Justice Ministry and the Interior Ministry. The inspection revealed that the NGO did not submit all the necessary documentation according to the law; therefore, a warning was issued to the NGO with a requirement to submit the necessary documentation by 15 January 2008. In January 2008, the NGO temporarily suspended its activities.

⁹⁵ Case of **Lambda Istanbul Cultural Centre** (Turkey), “Turkey: end harassment of gay rights group”, Human Rights Watch, press release, 16 April 2008; Amnesty International, *op. cit.*, note 56, p. 303. In June 2008, the higher court ruled in favour of the complaint and ordered the closure of the group.

⁹⁶ Case of **Sozar Subari** (Georgia), “Authorities must promptly investigate police actions in dispersing demonstrators”, Amnesty International, 8 November 2007.

⁹⁷ Case of a **protest in Nazran** (Russian Federation), Urgent Appeal, Observatory FIDH/OMCT, 28 November 2007. The government of the Russian Federation noted that this was an unsanctioned meeting that resulted in violations of public order and violence against law-enforcement personnel. A criminal investigation was opened into the case, and nine people were briefly detained. The investigation into the case is ongoing.

⁹⁸ Case of **No Border Camps** (United States), “Amnesty International calls for inquiry into force used by the US Border Patrol against ‘No Border Camps’ protesters”, Amnesty International, 15 November 2007.

Excessive interference with freedom of peaceful assembly

- Eleven trade-union leaders were sentenced to 15 months in prison and were fined for violating legislation regulating assemblies. Nine of them received suspended sentences. The alleged violations involved the organization of a peaceful demonstration of teachers that was dispersed by the police, causing 17 injuries and resulting in 10 arrests of teachers.⁹⁹
- A conference organized by a human rights NGO in memory of a journalist who had been killed had to be cancelled after the authorities blocked the funds that the NGO intended to use to organize the event. In addition, a press conference planned in relation to the event had to be cancelled, as the planned venue was reserved by someone else, and several of the hotel rooms booked by conference participants were also reserved by other people. Representatives of several international NGOs who came to attend the conference were detained for about four hours due to alleged visa problems.¹⁰⁰
- Police tried to arrest participants at a meeting of 150 journalists and defenders that was calling on the authorities to end prison sentences for journalists convicted of defamation, to find those responsible for the killing of a journalist, to release an imprisoned journalist, and to cease government attacks on the media. The police stopped trying to arrest people when the participants protested.¹⁰¹
- Two human rights activists were arrested and their banners and flags confiscated after a protest in favour of continued democratic reforms in their country, in spite of the fact that notification requirements had been complied with.¹⁰²
- The European Union's "For Diversity. Against Discrimination." Truck that was travelling around Europe to promote diversity, tolerance and raising awareness about EU legislation prohibiting discrimination was not allowed by authorities to stop on municipal territories due to security risks and a concern that the truck might cause riots by protesters.¹⁰³
- Some 15 defenders picketing a prosecutor's office were attacked by a group of 20 people, some of whom were armed with sticks. A similar incident occurred a week later, after which the police arrested the demonstrators and took them to a police station.¹⁰⁴
- A women's peace march to mark International Women's Day that was to take place in a city square was banned for reasons of public health and order.¹⁰⁵

⁹⁹ Case of 11 trade union leaders - **Ismail Hakki Tombul, Alaaddin Dinçer, Bülent Kaya, Köksal Aydın, Bedri Tekin, Fehmi Kutan, Emirali Simsek, Özgür Bozdoğan, Abdullah Çiftçi, Erkan Sümer and Murat Kahraman** (Turkey), Observatory FIDH/OMCT, "Urgent appeal: Sentencing / Judicial proceedings", 23 April 2007.

¹⁰⁰ Case of **Nizhny Novgorod Foundation to Promote Tolerance** and the **Nizhny Novgorod office of Novaya Gazeta** (Russian Federation), "Civil society in Nizhny Novgorod once more under attack as it gathered in memory of Ms. Anna Politkovskaya", Observatory FIDH/OMCT, 10 October 2007.

¹⁰¹ Case of a **meeting on journalists' rights** (Azerbaijan), "IFJ Raises Alarm over Azerbaijan's Plummeting Record on Press Freedom", International Federation of Journalists, 25 May 2007.

¹⁰² Case of **Tursun and Alisher Islam**, NGO Democracy (Kyrgyzstan), "Police Crackdown on Human Rights Picket in Kyrgyzstan", International Helsinki Federation for Human Rights, 6 August 2007.

¹⁰³ The case of a **pride march in Vilnius** (Lithuania). Information provided by ILGA, August 2007.

¹⁰⁴ Case of **Elena Urlaeva** and others (Uzbekistan). Information provided by Human Rights Watch, 15 May 2008.

¹⁰⁵ Case of **Women in Black** (Serbia). Information provided by the OSCE Mission to Serbia, 8 March 2008.

Lack of sufficient police protection for demonstrators

- Demonstrators at a pride march were protected by police against onlookers whose behaviour ranged from spitting and jeering to throwing Molotov cocktails. Once the event ended and police protection was lifted, however, some 30 to 40 demonstrators were attacked by organized gangs. Furthermore, when some of those who had been assaulted were taken to the police station, they were kept in the same room as their attackers.¹⁰⁶
- Police forces failed to protect demonstrators from attacks by counter-demonstrators during and after a pride march. Counter-protesters threw eggs, bottles, and Molotov cocktails at people taking part in the march, and several people were injured. This attack was condemned by the mayor of the city where the march took place, and charges were pressed against eight alleged perpetrators.¹⁰⁷

¹⁰⁶ The case of a **pride march in Zagreb** (Croatia). Information provided by ILGA, August 2007.

¹⁰⁷ Case of a **pride march in Budapest** (Hungary), Amnesty International, *op. cit.*, note 56, p. 151.

2. Good practices regarding human rights defenders

Defenders do not operate in a vacuum. In order to function well, the state must allow them to operate freely, protect them where necessary, and facilitate and encourage their work. The state must also engage with them, so that their voices are heard and their concerns are taken into account when developing or implementing public policy.

As far as protection of their human rights and fundamental freedoms is concerned, defenders generally do not need different rules from anyone else for expressing views or taking action on matters of public concern. What they need is simply the full application of existing standards of international human rights law.

The following section outlines some of the specific ways in which OSCE participating States have sought to ensure that defenders can operate freely and effectively. It provides an indication of the kinds of policies and practices states have pursued in this regard. It was drawn up on the basis of responses to the questionnaire sent to participating States (see Annex I for the complete list of responses).

The questionnaire was inspired by, *inter alia*, OSCE commitments in the area of human rights defenders (see Annex III) and the work of the UN special representative (now special rapporteur) on human rights defenders. In a recent report, the former special representative set out a number of indicators to assess compliance with the UN Declaration on Human Rights Defenders.¹⁰⁸ These include general indicators, indicators to assess the community of human rights defenders, indicators to assess levels of security of defenders and the level of impunity of human rights violations against defenders, as well as indicators to assess governments' collaboration with regional and international human rights mechanisms.¹⁰⁹ These indicators are included in Annex X to this report.

This section is divided into four parts corresponding to the questionnaire:

- Respecting the rights of human rights defenders: creating an open space for action;
- Protecting the rights of defenders;
- Creating an enabling environment for defenders;
- Listening to, and addressing the concerns of, defenders.

2.1. Respecting the rights of human rights defenders: creating an open space for action

In order to perform their tasks properly, human rights defenders require an open space for action. This means that limitations on the core freedoms related to their work – freedom of association,¹¹⁰ freedom of peaceful assembly,¹¹¹ freedom of movement,¹¹² and freedom of expression¹¹³ – must be kept to a minimum.¹¹⁴ Participating States

¹⁰⁸ See the report by the special representative of the secretary-general on human rights defenders, Hina Jilani, "From action to impact: follow-up to the activities of the Special Representative", U.N. Doc. A/HRC/7/28, 31 January 2008.

¹⁰⁹ *Ibid.*, paras. 75-78.

¹¹⁰ Copenhagen 1990, *op. cit.*, note 25 para. 9.2; "Charter of Paris for a New Europe", CSCE, Paris, 19-21 November 1990, preamble.

¹¹¹ Copenhagen 1990, *op. cit.*, note 25, para. 9.2; Paris 1990, *ibid.*

¹¹² Copenhagen 1990, *ibid.*, para. 9.5; Paris 1990, *ibid.*

¹¹³ Copenhagen 1990, *ibid.*, para. 9.1; Paris 1990, *ibid.*

must ensure that their regulatory framework in these areas is not overly burdensome, and that as few bureaucratic and other burdens as possible prevent defenders from pursuing their activities free from unnecessary government interference.

Participating States submitted to ODIHR a number of examples of practices that help create such an open space for action.

Freedom of association

The right to associate, both formally and informally, is very important for human rights work. Defenders need to be able to meet, discuss issues, and support one another in their work.¹¹⁵ In keeping with OSCE commitments on freedom of association, and barring very specific exceptions (e.g., groups directly calling on individuals to commit acts of violence), the state must leave it to defenders to define their goals and the way they go about achieving these goals. The state must reduce its interference to a minimum on issues such as the requirements and conditions for registration and the bureaucratic activities required to obtain it.¹¹⁶

The freedom of association does not concern itself merely with the foundation and registration of NGOs, but more widely with the right of human beings to unite for a cause of their choosing. The manner in which they choose to do so – the foundation of an association or some other legal person, or purely informally – is not a matter for the state, and is not within the state’s purview to limit or restrict, barring the exceptions provided in international human rights law.

A number of helpful legislative and other methods exist that the state can use to create a field for open action on the part of individuals seeking to associate. These include:

- Not requiring prior registration for the acquisition of legal personality;
- Using simple (re-)registration procedures;
- Making reasoned decisions on (re-)registration; and
- Making it possible to appeal registration-related decisions in court.

Not requiring prior registration for the acquisition of legal personality

A number of OSCE participating States do not require prior registration for informal groups to receive recognition as a legal person.¹¹⁷ Although formal registration may be useful, conferring on informal groups certain benefits such as tax-exempt status or

¹¹⁴ Art. 17 of the UN Declaration on Human Rights Defenders says: “In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

¹¹⁵ See Copenhagen 1990, *op. cit.*, note 25, paras. 10.1-10.4.

¹¹⁶ “Fundamental Principles on the Status of Non-governmental Organisations in Europe”, Council of Europe, Strasbourg, 13 November 2002, Principle 28: “The rules for acquiring legal personality should be published together with a guide to the process involved. This process should be easy to understand, inexpensive and expeditious. In particular, an NGO should only be required to file its statutes and to identify its founders, directors, officers and legal representative and the location of its headquarters. A foundation, fund or trust may be required to prove that it has the financial means to accomplish its objectives.”

¹¹⁷ Portugal’s response to ODIHR’s questionnaire, 25 May 2008; Denmark’s response to ODIHR’s questionnaire, 2 June 2008; Germany’s response to ODIHR’s questionnaire, 30 May 2008.

reduced personal liability of board members, it is not an obligation for defenders acting in association with one another to have their association registered as such in order to be recognized as a legal person.

Sweden: Example of Regulations for NGO Registration¹¹⁸

According to Sweden's Constitution, every citizen is guaranteed freedom of association, which means the freedom to associate with others for public or private purposes. Both NGOs with legal personality and more informal groups can be formed freely without any type of prior registration. Registration is only required for associations that are formed with the purpose of pursuing the economic interests of their members through economic activities. Non-profit organizations can be formed freely and can acquire legal personality freely without registration.

Using simple (re-)registration procedures

Defenders may register their activities with governmental bodies in order to obtain certain advantages conferred by national law on entities with registered status. Human rights NGOs often have limited staff available and funding may be scarce. Thus, devoting time and energy to (re-)registration may divert limited resources from their core activities. This means that, where states do require registration, e.g., to obtain legal personality, the procedure should be simple and inexpensive.

Estonia: Example of a Simple Registration Procedure for NGOs¹¹⁹

In order to register a non-profit association, the association's management board has to submit a petition that is signed by all members of the board. The association's charter, notarized sample signatures of the members of the management board, contact numbers (telephone, fax, etc.), and other documents required by law must be appended to the petition.

Since the work of defenders may involve criticism of the government, this may lead to difficulties re-registering, if required. In many OSCE participating States, no re-registration is required, e.g., Slovakia,¹²⁰ Poland,¹²¹ and Estonia.¹²²

Making reasoned decisions on (re-)registration

If the relevant authority decides not to register an NGO, this decision should be made in accordance with international human rights law. In particular, it should be based on clearly stated reasons, allowing the NGO to understand why the decision was reached, as required by OSCE commitments.¹²³ In the past, defenders have been faced with decisions based on vague statements such as "in accordance with law" or "on the basis of public order", which are clearly insufficient in this regard, and may be seen as

¹¹⁸ Sweden's response to ODIHR's questionnaire, 9 June 2008.

¹¹⁹ Estonia's response to ODIHR's questionnaire, 16 May 2008.

¹²⁰ Information provided by Slovakia's public defender of rights.

¹²¹ Poland's response to ODIHR's questionnaire, 2 June 2008.

¹²² Estonia's response to ODIHR's questionnaire, 16 May 2008.

¹²³ Vienna 1989, *op. cit.*, note 23, para. 13.9: "[Participating States will] ensure that effective remedies as well as full information about them are available to those who claim that their human rights and fundamental freedoms have been violated ... [They] will, *inter alia*, effectively apply the following remedies: ... the right of the individual to appeal to executive, legislative, judicial or administrative organs; ... the right to be promptly and officially informed of the decision taken on any appeal, including the legal grounds on which this decision was based. This information will be provided as a rule in writing and, in any event, in a way that will enable the individual to make effective use of further available remedies."

suppressing the activities of critical defenders through deregistration.¹²⁴ In some participating States, the reasons provided for refusing to register an NGO must include certain information, e.g., the written response from the responsible agency must refer to the corresponding legal regulations on which the refusal is based.¹²⁵ Another technique to ensure clarity is to prescribe that the contents of the written response must include an introduction, ruling, explanation and right to appeal.¹²⁶ This can clarify the situation defenders find themselves in, and make it more difficult for public authorities to base their decisions on spurious grounds or political considerations.

Making it possible to appeal registration-related decisions in court

If registration is refused or discontinued, there should be recourse to effective legal remedies in the form of access to administrative review bodies and ultimately an independent court to test the compatibility of this decision with the law.¹²⁷ An independent judiciary can be a shield for human rights defenders against politically motivated or arbitrary decision-making by public authorities. In their responses to the questionnaire, OSCE participating States generally indicated that registration-related decisions could be appealed to a court. For example, in Portugal, “all decisions by Portuguese Public Entities which refuse requests presented by private persons ... may be appealed in Court”.¹²⁸ In Latvia, in cases where registration has been denied, the

¹²⁴ In its Communication No. 1296/2004 of 7 August 2007, the United Nations Human Rights Committee commented on the case of *Belyatsky et al. v. Belarus*: “The mere existence of reasonable and objective justifications for limiting the right to freedom of association is not sufficient. The State party must further demonstrate that the prohibition of an association is necessary to avert a real and not only hypothetical danger to national security or democratic order, and that less intrusive measures would be insufficient to achieve the same purpose.” See *Moscow Branch of the Salvation Army v. Russia*, European Court of Human Rights, Application No. 72881/01, 5 October 2006, para. 76: “The Court reiterates that the list of exceptions to freedom of religion and assembly, as contained in Articles 9 and 11 of the Convention, is exhaustive. The exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom. In determining whether a necessity within the meaning of paragraph 2 of these Convention provisions exists, the States have only a limited margin of appreciation...” Also see *Gorzelik and Others v. Poland*, European Court of Human Rights, Application No. 44158/98, 17 February 2004, paras. 94 and 95: “The State’s power to protect its institutions and citizens from associations that might jeopardise them must be used sparingly, as exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom. Any interference must correspond to a ‘pressing social need’; thus, the notion ‘necessary’ does not have the flexibility of such expressions as ‘useful’ or ‘desirable’.” See Council of Europe, *op. cit.*, note 16, Principles 31-32: “31. Legal personality should only be refused where there has been a failure to submit all the clearly prescribed documents required, if a name has been used that is patently misleading or is not adequately distinguishable from that of an existing natural or legal person in the country concerned, or if there is an objective in the statutes which is clearly incompatible with the law. 32. Any evaluation of the acceptability of the objectives of an NGO when it seeks legal personality should be well informed and respectful of the notion of political pluralism and must not be driven by prejudices.”

¹²⁵ Information provided by Armenia’s human rights defender; Slovenia’s response to ODIHR’s questionnaire, 1 July 2008.

¹²⁶ Contribution from the OSCE Mission to Bosnia and Herzegovina to this report, 28 May 2008.

¹²⁷ Moscow, 1991, paras. 18.2-18.4: “(18.2) Everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity. (18.3) To the same end, there will be effective means of redress against administrative regulations for individuals affected thereby. (18.4) The participating States will endeavour to provide for judicial review of such regulations and decisions.”

¹²⁸ Portugal’s response to ODIHR’s questionnaire, 25 May 2008, citing Art. 124 of the Portuguese Code of Administrative Procedure.

decision may be contested in a submission to the chief state notary of the register of enterprises. The decision of the notary may be appealed to a court.¹²⁹

Freedom of peaceful assembly

The freedom of peaceful assembly is an important means for defenders to express themselves. Peaceful mass protest can be a means of raising human rights issues with the authorities, of informing and mobilizing the general population in defence of human rights, and of putting pressure on the authorities to rectify human rights abuses. It forms one of the basic pillars of a democratic society.

Defenders may assemble with respect to issues that may be provocative or even offensive to some. In a democratic society, such considerations are insufficient to ban or limit the right to assemble peacefully.¹³⁰ The history of human rights has shown that many protests, initially viewed with suspicion and derision by large segments of society, were later seen as heroic and pioneering efforts to ensure that all human beings enjoy their human rights fully and without prejudice.

Notification versus authorization

As noted above, the cause of defenders may not always be popular or tolerated by society in general, including those in positions of public authority. In this light, a system whereby those seeking to assemble notify the authorities is better than one requiring prior authorization.

The majority of states responding to ODIHR's questionnaire indicated that they require only notification of assemblies, not active approval by a public authority for assemblies to be held, and that they allow spontaneous demonstrations. In Slovenia, for example, the obligation to announce a public assembly and to obtain authorization for it does not depend on the content or purpose of the assembly but on other circumstances. In accordance with the regulations governing public assemblies, the organizer must only announce a public assembly. However, if the organizer intends to

¹²⁹ Latvia's response to ODIHR's questionnaire, 28 May 2008.

¹³⁰ See *Baczowski and Others v. Poland*, European Court of Human Rights, Application No. 1543/06, 3 May 2007, paras. 62-64, and the sources cited there: "62. While in the context of Article 11 the Court has often referred to the essential role played by political parties in ensuring pluralism and democracy, associations formed for other purposes are also important to the proper functioning of democracy. For pluralism is also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. It is only natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively 63. Referring to the hallmarks of a 'democratic society', the Court has attached particular importance to pluralism, tolerance and broadmindedness. In that context, it has held that although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position 64. In *Informationsverein Lentia and Others v. Austria* ... the Court described the State as the ultimate guarantor of the principle of pluralism A genuine and effective respect for freedom of association and assembly cannot be reduced to a mere duty on the part of the State not to interfere; a purely negative conception would not be compatible with the purpose of Article 11 nor with that of the Convention in general. There may thus be positive obligations to secure the effective enjoyment of these freedoms This obligation is of particular importance for persons holding unpopular views or belonging to minorities, because they are more vulnerable to victimisation."

organize a public assembly on a road, they must obtain authorization from the responsible authority. In the process of issuing the authorization, the responsible authority needs to establish whether the organizer provided adequate measures to ensure order; safety of the participants, other people, and the public in general; and traffic safety.¹³¹ ODIHR's *Guidelines on Freedom of Peaceful Assembly* go into greater detail on this issue, describing practices aimed at ensuring that organizers and authorities work together to ensure that freedom of peaceful assembly is respected and protected.¹³²

Providing adequate protection

Because of the nature of their message, defenders often have to deal with counter-protesters during assemblies that they have organized. Some of these can be extremely violent, thus hindering their freedom to assemble peacefully.

As ODIHR's *Guidelines on Freedom of Peaceful Assembly* point out, under OSCE commitments and international human rights law, the state "has a positive duty to take reasonable and appropriate measures to enable lawful demonstrations to take place without participants fearing physical violence".¹³³ The *Guidelines* also note that police protection should be provided and that such protection should be free of charge.¹³⁴

In their responses to the questionnaire, several OSCE participating States said that police protection is provided at assemblies and rallies.¹³⁵ The government of the Russian Federation indicated that such protection is provided by public authorities free of charge.¹³⁶ Individuals who disrupt assemblies may be punished. In Serbia, for example, there is a provision in the Criminal Code that states that whoever uses force, threat, deception, or other means to prevent or hinder a public rally held in accordance with the law, and unless there is no indication of any other more serious offence, shall be fined or sentenced to up to one year in prison.¹³⁷

Sweden: Example of Providing Adequate Protection¹³⁸

The Göteborg Committee¹³⁹ submitted its report to the justice minister in January 2002. The committee's report, including its criticism of the police methods used against large gatherings of people, led to the development of special police tactics that focus on dialogue rather than the use of batons and riot shields.

These tactics comprise several individual components, of which the training of personnel is the most important. Training covers topics such as mental preparation, communication, law, spotting danger, and preventing injuries – without the use of shields and batons. Ethics pervade the entire training process.

¹³¹ Slovenia's response to ODIHR's questionnaire, 1 July 2008.

¹³² *Guidelines on Freedom of Peaceful Assembly*, ODIHR, *op. cit.*, note 5.

¹³³ *Ibid.*, para. 115, p. 56.

¹³⁴ *Ibid.*, in particular paras. 26-29, pp. 29-30.

¹³⁵ The Holy See's response to ODIHR's questionnaire, 30 May 2008; Poland's response to ODIHR's questionnaire, 2 June 2008; Germany's response to ODIHR's questionnaire, 30 May 2008, information provided by the Canadian Human Rights Commission, 2 June 2008..

¹³⁶ Russia's response to ODIHR's questionnaire, 9 July 2008.

¹³⁷ Serbia's response to ODIHR's questionnaire, 17 June 2008.

¹³⁸ Sweden's response to ODIHR's questionnaire, 9 June 2008.

¹³⁹ This is an official committee that was established to look into the actions taken by the police during the 2001 EU summit in Göteborg.

There are 1,800 police officers, divided among the three metropolitan counties, who have been specially trained in the new police tactics. These officers are part of a national reinforcement organization that can be deployed all over the country.

The application of special police tactics is a good illustration of an ongoing organizational learning process within the Swedish police service, which integrates central democratic concepts into operational practices.

All uniformed police officers go through a mandatory training course in everyday tactics to ensure that they will be able to carry out their duties with respect for the rule of law and in a safe manner for all concerned. The communicative component inherent in the everyday-tactics model is aimed at advancing the officers' understanding of conflicts and how they unfold in order to reduce the level of violent exchanges and to defuse volatile situations.

Allowing spontaneous assemblies

Human rights work often requires direct responses to ongoing events, which may mean that it is not always possible to inform the authorities of planned assemblies in accordance with the relevant notification period prescribed in the law. For example, a defender may be arrested for his or her activities, and supporters may want to demonstrate at the prison and call for his or her release. In other cases, individuals may spontaneously gather without any form of organization. The authorities must be tolerant of such peaceful assemblies, and must not disrupt them.¹⁴⁰

A number of participating States informed ODIHR that they recognize the right to hold spontaneous assemblies, and allow them to proceed as long as they remain peaceful.¹⁴¹ In Germany, for example, the duty to register outdoor assemblies, as stipulated in the law on assemblies, is interpreted as not being applicable to spontaneous assemblies.¹⁴² The government of Slovenia noted that the police still protects spontaneous assemblies, defined in Slovenian law as “unorganized assemblies”.¹⁴³

¹⁴⁰ *Guidelines on Freedom of Peaceful Assembly*, ODIHR, *op. cit.*, note 5, paras. 134, 137-140, pp. 61-63. Also see *Oya Ataman v. Turkey*, European Court of Human Rights, Application No. 74552/01, 5 December 2006, paras. 41-42: “where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance”. This was reiterated by the Court in *Bukta and Others v. Hungary*, European Court of Human Rights, Application No. 25691/04, 17 July 2007, para. 36: “In the Court’s view, in special circumstances when an immediate response, in the form of a demonstration, to a political event might be justified, a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly.”

¹⁴¹ Germany’s response to ODIHR’s questionnaire, 30 May 2008; Finland’s response to ODIHR’s questionnaire, 1 June 2008; information also provided by Croatia’s ombudsman, 19 May 2008.

¹⁴² Germany’s response to ODIHR’s questionnaire, 30 May 2008.

¹⁴³ Slovenia’s response to ODIHR’s questionnaire, 1 July 2008.

Freedom of movement

Granting travel visas to human rights defenders to pursue their activities throughout the OSCE region

OSCE participating States are committed to facilitating visits by NGOs from within any of the participating States to observe how OSCE commitments are being implemented.¹⁴⁴ Defenders within the OSCE region and beyond require free movement to work on issues not only in their own countries. They need to attend events and activities elsewhere to raise awareness for issues, provide insights and expertise, and increase their international network and visibility. It is through such exchanges of views, ideas, and expertise that they learn about new issues, and can create common cause with other actors. This means defenders must be allowed to travel as freely as possible, both within their own countries and abroad.

A number of participating States indicated they had policies to make it easier for those who wish to attend human rights conferences to receive a temporary visa.¹⁴⁵ According to the Norwegian Centre for Human Rights, if the purpose of a trip is to attend a conference to promote human rights, there is a good chance that a visa will be granted. The same is true in Switzerland.¹⁴⁶

Granting emergency visas to human rights defenders in trouble

Because of the nature of their activities, human rights defenders can be the target of threats or attacks. They can be persecuted for promoting certain human rights or for the violations they expose. In some cases, they may not receive sufficient protection against parties seeking to silence them. In cases of real danger, it is especially important that they be allowed to enter other states that can offer them refuge and protection. Some countries, such as Portugal and Spain, grant emergency visas to defenders in such situations.¹⁴⁷ This topic is currently under discussion in the EU context, where granting such visas to defenders may be included in a new common code on visas, and it is being explored by the consular departments of a number of EU member states.¹⁴⁸ Similarly, the Declaration of the Council of Europe's Committee of Ministers on action to improve the protection of human rights defenders and promote their activities calls on member states to "provide measures for swift assistance and protection to human rights defenders in danger in third countries, such as, where appropriate, attendance at and observation of trials and/or, if feasible, the issuing of emergency visas".¹⁴⁹

¹⁴⁴ Moscow 1991, *op. cit.*, note 127, paras. 43.2-43.3: "[The participating States will] endeavour to facilitate visits to their countries by NGOs from within any of the participating States in order to observe human dimension conditions"; 43.3 – welcome NGO activities, including, inter alia, observing compliance with CSCE commitments in the field of the human dimension".

¹⁴⁵ Austria's response to ODIHR's questionnaire, 2 June 2008; information provided by the Norwegian Centre for Human Rights, 16 May 2008; Germany's response to ODIHR's questionnaire, 30 May 2008.

¹⁴⁶ Switzerland's response to ODIHR's questionnaire, 23 May 2008.

¹⁴⁷ According to Portugal's response to ODIHR's questionnaire, under Act 23/2007, of 4 July 2007, special visas may be granted to individuals who are not eligible to obtain regular visas, for "humanitarian reasons" (Art. 68). Residence permits can also be granted for such reasons (Art. 123 (1) (b)); the government of Spain also provided information, 29 October 2008.

¹⁴⁸ Information provided by the Slovenian presidency of the EU, 4 June 2008.

¹⁴⁹ "The Situation of Human Rights Defenders in Council of Europe Member States", Council of Europe, *op. cit.*, note 13.

Germany: Example of Regulations on Granting Emergency Visas¹⁵⁰

Section 22 of the German Residence Act stipulates that a foreigner may be granted a residence permit for the purpose of admission from abroad, *inter alia* on urgent humanitarian grounds. Decisions are taken on a case-by-case basis. Depending on the specific case, human rights defenders may be covered by this regulation.

Granting residence permits to human rights defenders

Defenders may need to seek refuge in another country for an extended period of time. States may also grant residence permits to defenders in need of protection. Such regulations exist in a number of OSCE participating States.¹⁵¹ Although such regulations are desirable, they cannot replace proper protection of the rights of defenders in the countries where they operate.

Denmark: Example of Regulations on Granting Residence Permits to Defenders in Trouble¹⁵²

A new law entered into force on 1 July 2008 that creates the legal basis for granting a residence permit in Denmark to authors, journalists, and other writers who participate in the public debate and in the cultural life of their country and who have been offered residence by the Municipal Council through international co-operation or a network of so-called international cities of refuge that have been approved by the culture minister.

The law will apply to those writers who have been the victim of reprisals or censorship because of their literary activities and are therefore unable to express their views in their country of origin or residence. Thus, the law might provide for a temporary right of residence in Denmark to a human rights defender who has written or otherwise expressed his views on certain topics, resulting in, for example, persecution, ill-treatment, or imminent danger necessitating foreign protection.

Freedom of expression

It is also important to ensure that defenders' freedom of expression is protected. Defenders often criticize official bodies or call attention to issues in a way that the targets of the criticism, or the general public, may find disturbing. Such forms of expression are protected under international human rights law and OSCE commitments,¹⁵³ and should not be punishable.

All governments that responded to the questionnaire indicated that censorship was not allowed, and that defenders were free to say what they wished within the bounds of international human rights law. In this context, it should be pointed out that criminal libel and insult provisions that punish an individual after publication can, and often do, target defenders criticizing public officials.¹⁵⁴ As the Council of Europe's

¹⁵⁰ Germany's response to ODIHR's questionnaire, 30 May 2008.

¹⁵¹ Denmark's response to ODIHR's questionnaire, 2 June 2008; Germany's response to ODIHR's questionnaire, 30 May 2008; Finland's response to ODIHR's questionnaire, 1 June 2008.

¹⁵² Denmark's response to ODIHR's questionnaire, 2 June 2008.

¹⁵³ See Art. 19 of the International Covenant on Civil and Political Rights, Art. 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and para. 9.1 of the OSCE's Copenhagen Document of 1990.

¹⁵⁴ For examples of such cases, see the regular reports to the OSCE Permanent Council by the OSCE's representative on freedom of the media at <<http://www.osce.org/fom/documents.html>>.

commissioner for human rights has pointed out: “Factual errors, even minor ones, have sometimes been used to prove that such defenders are irresponsible or act in bad faith. This is not an attitude which promotes a serious dialogue. To require that the reporting of non-governmental human rights must be flawless is not reasonable – considering their limited resources and that governments themselves are sometimes less than forthcoming with basic facts. In fact, most such groups are very serious in their reporting.”¹⁵⁵ The OSCE’s representative on freedom of the media has repeatedly called for the abolition of libel and insult laws.¹⁵⁶

Where such provisions do exist, it is especially important that courts uphold international human rights obligations in the area of freedom of expression over and above such legal provisions. One positive example in this regard was the 18 July 2007 judgement of the Yasamal District Court in Azerbaijan, which dismissed defamation charges against Ganimat Zahidov, editor of the newspaper *Azadliq*.¹⁵⁷ The court explicitly referred to the case law of the European Court of Human Rights, noting that “freedom of expression constitutes one of the essential foundations of a democratic society and that even information that offends, shocks or disturbs should be protected”.

Good practices regarding respecting the rights of human rights defenders:

On the basis of participating States’ responses to the questionnaire, the following good practices regarding respecting the rights of human rights defenders were identified:

Freedom of association:

- Not requiring prior registration for the acquisition of legal personality;
- Using simple (re-)registration procedures;
- Making reasoned decisions on (re-)registration;
- Making it possible to appeal registration-related decisions in court.

Freedom of peaceful assembly:

- Allowing notification rather than authorization to hold assemblies;
- Providing adequate protection for the participants of assemblies;
- Allowing spontaneous assemblies as long as they remain peaceful and providing adequate protection for them.

Freedom of movement:

- Granting travel visas for defenders to pursue their activities
- Granting emergency visas to defenders in trouble;
- Granting residence permits to defenders.

¹⁵⁵ “Human Rights Defenders must be able to criticise”, Council of Europe commissioner for human rights, 12 November 2006, <http://www.coe.int/t/commissioner/Viewpoints/061113_en.asp>.

¹⁵⁶ Specific statements can be retrieved on the representative’s home page, <<http://www.osce.org/fom>>; see in particular “Libel and Insult Laws: A Matrix on Where We Stand and What We Would Like to Achieve” and “Paris Recommendations on Libel and Insult Laws”, <<http://www.osce.org/fom/documents.html?lsi=true&limit=10&grp=288>>. Also see *The Media Self-Regulation Guidebook* (Vienna: OSCE Representative on Freedom of the Media, 2008), <http://www.osce.org/fom/item_11_30697.html>.

¹⁵⁷ Information provided by the OSCE Office in Baku, 14 May 2008.

Freedom of expression:

- Removing criminal libel and insult provisions from national legislation.

2.2. Protecting the rights of human rights defenders

One of the core responsibilities of any government is to protect its citizens from violence or the threat of violence, whether the target is a human rights defender or not. That said, this report and ODIHR's 2007 report show that defenders are often the target of such attacks. In certain cases, defenders may be particularly vulnerable, especially when they deal with or attempt to address controversial issues.¹⁵⁸

This means that governments may, in some cases, have to provide physical protection for defenders under their obligation to protect the right to life and freedom from torture, inhuman and degrading treatment. Participating States should actively and promptly prosecute violent attacks against human rights defenders. It is also important for participating States to make high-level statements that condemn such attacks and show their support for the work of defenders.

Participating States submitted a number of examples of practices that protect the rights of human rights defenders.

Physical protection

Defenders may sometimes need to be offered physical protection. The Human Rights Agenda Association, a Turkish NGO, informed ODIHR that, after the killing of Hrant Dink, a number of defenders, including lawyer Orhan Kemal Cengiz, Prof. Dr. Baskın Oran, and Ali Bayramoğlu, were provided with personal security guards.¹⁵⁹ Certain defenders and institutions, particularly ombudsman institutions, may have a right to protection based on their status as a constitutional body.¹⁶⁰ Protection may also include other measures, such as advising defenders and issuing restraining orders against those who seek to threaten or harm them.¹⁶¹

Using criminal law against those using violence against human rights defenders

Defenders speak out on many different issues, some of which may make them the target of physical attacks by both governmental and non-governmental actors. Individuals criticized by defenders may seek revenge, and those who strongly disagree with them may harass or threaten them in an attempt to get them to stop their activities. In addition to targeting particular defenders, such violence, threats, and intimidation can also have a silencing effect on others, including the wider

¹⁵⁸ For a list of particularly vulnerable groups, see the report by the former UN special representative of the secretary-general on human rights defenders, Hina Jilani, "Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms: human rights defenders", U.N.Doc. A/61/312, 5 September 2006, para. 70,
<<http://daccessdds.un.org/doc/UNDOC/GEN/N06/488/07/PDF/N0648807.pdf?OpenElement>>.

¹⁵⁹ Information provided by the Human Rights Agenda Association (Turkey), 9 May 2008.

¹⁶⁰ Slovakia's response to ODIHR's questionnaire, 26 May 2008; information also provided by Armenia's human rights defender, 28 May 2008.

¹⁶¹ Germany's response to ODIHR's questionnaire, 30 May 2008.

community, especially if such acts go unpunished. Where violent attacks against defenders do take place, they should be vigorously prosecuted.¹⁶²

The Swedish ombudsman against discrimination on grounds of sexual orientation, noting that his office receives information on a regular basis of violence and other types of harassment against LGBT activists by private individuals, suggests that hate-crime legislation be used against alleged perpetrators of such attacks. The ombudsman pointed out that such incidents generally receive due attention from the police and the judicial system (although there have been exceptions in the past), and that existing provisions on homophobic motives as an aggravating circumstance are regularly taken into account by the courts in sentencing those convicted of such crimes.¹⁶³

Germany: Example of the Use of Criminal Law to Protect Defenders¹⁶⁴

Threatening to commit a serious criminal offence (e.g., to cause serious bodily harm or to commit murder) is itself a criminal offence in Germany, and law-enforcement authorities investigate such threats. Germany vigorously prosecutes criminal offences against human rights defenders, and those accused of committing a crime must answer charges in a criminal court. In Germany, the victims of violent offences have special rights in criminal proceedings. Where the Federal Office for the Protection of the Constitution (*Verfassungsschutz*) identifies activities by foreign intelligence services in Germany that indicate a specific threat to defenders of human rights who have sought refuge in Germany, that information is passed on to the relevant police.

Speaking out in support of human rights defenders

Another way to protect defenders is for public authorities, as well as concerned individuals and groups, to speak out in their support. Public statements by government officials set the tone of public discourse and can provide an example for the general public in support of a culture of human rights, including the work of defenders.

A number of governments indicated to ODIHR that they have spoken out on the situation of defenders abroad.¹⁶⁵ Some governments noted that they have used bilateral dialogue¹⁶⁶ and diplomatic demarches¹⁶⁷ as a means of speaking out on and for defenders. The EU presidency pointed to a number of specific examples of statements and declarations it had made on behalf of defenders,¹⁶⁸ as did the government of Germany.¹⁶⁹

¹⁶² “Tenth Meeting of the Ministerial Council”, OSCE, Porto, 2002, Decision no. 6, *Tolerance and non-Discrimination*, para. 9: “The Ministerial Council ... [c]alls on relevant authorities of participating States to investigate promptly and impartially acts of violence, especially where there are reasonable grounds to suspect that they were motivated by aggressive nationalism, racism, chauvinism, xenophobia, anti-Semitism and violent extremism, as well as attacks motivated by hatred against a particular religion or belief, and to prosecute those responsible in accordance with domestic law and consistent with relevant international standards of human rights.”

¹⁶³ Information provided by Sweden’s ombudsman against discrimination on grounds of sexual orientation, 8 May 2008.

¹⁶⁴ Germany’s response to ODIHR’s questionnaire, 30 May 2008.

¹⁶⁵ Information provided by the Slovenian EU presidency, 4 June 2008.

¹⁶⁶ Germany’s response to ODIHR’s questionnaire, 30 May 2008; Finland’s response to ODIHR’s questionnaire, 1 June 2008.

¹⁶⁷ Switzerland’s response to ODIHR’s questionnaire, 23 May 2008; “Ensuring Protection: European Union Guidelines on Human Rights Defenders”, the Council of the European Union, 2004.

¹⁶⁸ Information provided by the Slovenian EU presidency, 4 June 2008.

¹⁶⁹ Germany’s response to ODIHR’s questionnaire, 30 May 2008. Ukraine’s parliamentary ombudsman noted her intervention in a recent case in which a land-rights activist was physically attacked and injured. She personally investigated the case, raised it with the relevant authorities, and organized

Good practices in protecting the rights of human rights defenders:

- Providing physical protection for defenders who are at risk of physical harm;
- Using criminal law, including, where appropriate, hate-crime legislation, against those using violence against defenders;
- Speaking out on behalf of defenders in domestic contexts, as well as in bilateral relations with other countries, and in international relations in general.

2.3. Creating an enabling environment for human rights defenders

At the heart of OSCE commitments lies the recognition that it is only through an active and vibrant civil society that rights in the human dimension can be upheld.¹⁷⁰ Participating States have recognized the vital role of civil society on a number of occasions,¹⁷¹ including the need to facilitate its work.¹⁷²

There are a number of ways to facilitate and enable the work of defenders. First, the work of defenders requires adequate funding. Governments can play a role in providing such funding, directly or indirectly, and in facilitating domestic and international fundraising by defenders. Defenders also require accurate and full information to do their work effectively. Governments should therefore ensure the free flow of information to facilitate their work. International co-operation can also provide valuable opportunities for exchange of practices and lessons learned, material support, and solidarity. Finally, the defenders community also benefits from public recognition acknowledging the value of their work to communities and society at large.

Participating States submitted a number of good practices that support an enabling environment for human rights defenders.

Granting direct government assistance to human rights defenders

Governments may encourage the human rights community by granting defenders direct financial assistance, either of a general nature or for the organization of specific activities. Funding, whether from public or private sources, should be granted in such a manner as to ensure that defenders do not lose their independence.

medical care for the injured activist. Information provided by Ukraine's parliamentary ombudsman regarding an attack on Dmytro Groisman, 21 October 2008.

¹⁷⁰ Copenhagen 1990, *op. cit.*, note 25, preamble: “[The participating States] recognize that co-operation among themselves, as well as the active involvement of persons, groups, organizations and institutions, will be essential to ensure continuing progress towards their shared objectives.”

¹⁷¹ “Istanbul Document 1999”, OSCE, Istanbul, 1999, para. 27: “Non-governmental organizations (NGOs) can perform a vital role in the promotion of human rights, democracy and the rule of law. They are an integral component of a strong civil society. We pledge ourselves to enhance the ability of NGOs to make their full contribution to the further development of civil society and respect for human rights and fundamental freedoms.” Also see Paris 1990, *op. cit.*, note 110, para. 17: “We recall the major role that non-governmental organizations, religious and other groups and individuals have played in the achievement of the objectives of the CSCE and will further facilitate their activities for the implementation of the CSCE commitments by participating States. These organizations, groups and individuals must be involved in an appropriate way in the activities and new structures of the CSCE in order to fulfil their important tasks.”

¹⁷² Moscow 1991, *op. cit.*, note 127, para. 43: “The participating States will recognize as NGOs those which declare themselves as such, according to existing national procedures, and will facilitate the ability of such organizations to conduct their national activities freely on their territories...”

Portugal: Example of Direct Government Assistance to Defenders¹⁷³

A variety of organizations can be granted the status of social partners and thus receive state support, tax exemptions, and other benefits. This recognition implies a second registration with concerned public departments (which often automatically gives the association the status of “public utility legal person”), although registration is never a pre-requisite for operation of non-governmental groups.

Migrant associations are entitled to state support pursuant to co-operation protocols established with the Office of the High Commissioner for Immigration and Intercultural Dialogue. These protocols are concluded upon request and involve the funding of activities developed by the requesting association (up to 70 per cent of the total amount). Support is also granted through activities aimed at improving the skills of members of such associations, including decision-makers, workers, and volunteers (namely training courses and follow-up to project implementation). Furthermore, associations can be given technical support, namely legal or other advice and the provision of documentation and other materials.

Similar support is given to women’s associations (by the Commission for Citizenship and Gender Equality), youth associations (by the Portuguese Youth Institute), and associations of disabled people (by the National Institute for Rehabilitation).

Estonia: Example of Direct Government Assistance to Defenders¹⁷⁴

A civil-society endowment was created in January 2008 that will be funded from the state budget on an annual basis. The endowment will focus on:

- 1) funding the operational costs of non-governmental organizations that have a public benefit;
- 2) supporting projects that create a more favourable environment for non-governmental organizations; and
- 3) supporting local projects that promote civic participation and co-operation between non-governmental organizations.

However, government assistance should not be a condition for the effective functioning of associations in a country.

Assisting human rights defenders in obtaining funding

As mentioned above, funding is often a scarce commodity for defenders within civil society. Human rights work is often aimed at assisting the most vulnerable in society, those who frequently do not have the means to pay for the services provided to them by defenders, whether they be human rights NGOs or lawyers. States should therefore assist defenders by ensuring that they are aware of where and how to obtain funding, both domestically and internationally.

Serbia: Example of Assisting Defenders in Obtaining Funding¹⁷⁵

A team assembled by the deputy prime minister and tasked with the implementation of Serbia’s Poverty Reduction Strategy, in co-operation with the Finance Ministry and partners at home and abroad, has published several editions of a guide for potential

¹⁷³ Portugal’s response to ODIHR’s questionnaire, 25 May 2008.

¹⁷⁴ Estonia’s response to ODIHR’s questionnaire, 16 May 2008.

¹⁷⁵ Serbia’s response to ODIHR’s questionnaire, 17 June 2008.

domestic and foreign sources of funding NGO projects, including from local government and medium-sized and small-scale enterprises in Serbia. This guide provides useful information about the funds of domestic and foreign donors and government institutions that are earmarked for different activities, including funds available to NGOs.

Governments may also actively facilitate the granting of funds by private individuals to defenders.

Poland: Example of Assisting Defenders in Obtaining Funding¹⁷⁶

As part of its efforts to raise awareness about the importance of the work of human rights defenders and the role they play in society, the Polish government grants tax exemptions to certain organizations and allows individual citizens to donate 1 per cent of their income tax to NGOs of their choice.

Foreign funding

In order to carry out their activities, defenders should have access to foreign funding without interference. When referring to “non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms, including trade unions and human rights monitoring groups”,¹⁷⁷ OSCE commitments provide that states are to “allow members of such groups and organizations to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts and co-operation with such groups and organizations and to solicit, receive and utilize for the purpose of promoting and protecting human rights and fundamental freedoms voluntary financial contributions from national and international sources as provided for by law”.¹⁷⁸

In the majority of OSCE participating States that responded to the questionnaire, there are no restrictions placed on receiving foreign funding.¹⁷⁹

Portugal: Example of Regulations Supporting Access to Funding¹⁸⁰

Although NGOs cannot seek profit, it is clear that they are free to receive funding and other resources, including from abroad, in order to be able to carry out their activities. This is one of the basic requirements of Art. 46 (2) of the Portuguese Constitution, which states that: “Associations may pursue their objectives freely and without interference from any public authority, and they may not be dissolved by the State, nor their activities suspended, unless by judicial decision in the circumstances prescribed by law.” Clearly, restrictions on funding would represent interference in an NGO’s activity.

Certain governments also indicated to ODIHR that they gave funding to foreign defenders. The Slovenian EU presidency described the EU’s European Initiative for Democracy and Human Rights, which will provide 16 million euros over the period

¹⁷⁶ Poland’s response to ODIHR’s questionnaire, 2 June 2008.

¹⁷⁷ Copenhagen 1990, *op. cit.*, note 25, para 10.3.

¹⁷⁸ *Ibid.*, para. 10.4.

¹⁷⁹ Responses to ODIHR’s questionnaire from Portugal, , 25 May 2008; Poland, 2 June 2008; Denmark, , 2 June 2008; Slovenia, 1 July 2008; Austria, 2 June 2008; the Holy See, 30 May 2008; Latvia, 28 May 2008; Switzerland, 23 May 2008; Slovakia, 26 May 2008; Germany, 30 May 2008; Finland, 1 June 2008; Estonia, 16 May 2008.

¹⁸⁰ Portugal’s response to ODIHR’s questionnaire, 25 May 2008.

2007-2010 to human rights defenders in order to promote their rights and activities, assist individual defenders in urgent need of protection, and reinforce the status and capacities of organizations specialized in supporting human rights defenders.¹⁸¹

Switzerland: Example of International Funding to Defenders¹⁸²

Switzerland provides financial support to local NGOs operating in foreign countries and international NGOs working in particular in the following capacities: alerting the international community to cases of repression where human rights defenders are among the victims; facilitating access to protection mechanisms for defenders at the global and regional levels; strengthening defenders' capacities and building up networks; and providing international visibility to defenders under threat in their own countries.

Freedom-of-information legislation

Defenders may need to obtain a wide range of information to be able to carry out their work. They may need, for example, access to documents related to prison conditions, government decision-making processes, or scientific or factual data held by government bodies. Such information can assist them in ascertaining facts and identifying areas where human rights abuses occur. It also ensures an informed debate on human rights issues and that governments are held accountable for their actions.

It is therefore vital for the work of defenders that OSCE commitments on the freedom of information be upheld, including through freedom-of-information legislation.¹⁸³

Visits by UN mandates and relevant regional mechanisms

Another way for governments to improve the situation of defenders in their country is to accept visits by relevant UN mandate-holders, especially the UN special rapporteur on human rights defenders. For member states of the Council of Europe, this would include receiving visits from the Council's commissioner for human rights; for member states of the Organization of American States, this would entail visits by the Inter-American Commission on Human Rights. Such visits can serve to ascertain the situation of defenders in the country in question, identify areas of improvement in practice and the regulatory framework, and result in recommendations to improve co-operation between governments and defenders. As an example, the then-UN special representative visited the former Yugoslav Republic of Macedonia in 2003¹⁸⁴ and 2007¹⁸⁵ to study the situation regarding human rights defenders in that country. The

¹⁸¹ Information provided by the Slovenian EU presidency, 4 June 2008.

¹⁸² Switzerland's response to ODIHR's questionnaire, 23 May 2008.

¹⁸³ Moscow 1991, *op. cit.*, note 127, para. 28.9: "The participating States will endeavour to maintain freedom of expression and freedom of information, consistent with their international obligations and commitments, with a view to enabling public discussion on the observance of human rights and fundamental freedoms as well as on the lifting of the state of public emergency. They will, in conformity with international standards regarding the freedom of expression, take no measures aimed at barring journalists from the legitimate exercise of their profession other than those strictly required by the exigencies of the situation."

¹⁸⁴ "Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, on her visit to the former Yugoslav Republic of Macedonia", 27-30 January 2003, E/CN.4/2004/94/Add.2, 15 January 2004, <<http://www2.ohchr.org/english/issues/defenders/visits.htm>>.

¹⁸⁵ "Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, on her visit to the former Yugoslav Republic of Macedonia", 23 to 25

latter report contains a matrix comparing the situation in the country in those two years.

Public acknowledgement of the value of the work of human rights defenders

It is also helpful to create a domestic and international environment in which the work of defenders is publicly acknowledged and encouraged. Governments should ensure that there is public recognition of the value of the work of defenders. As discussed above, this can perform a protective function, and it can also encourage others to join the human rights community through the publicity and inspiration offered by the stories and actions of specific (groups of) defenders. An important way to publicly acknowledge the value of defenders' work lies in the awarding of prizes and awards.

A number of participating States informed ODIHR that they sponsor or collaborate on a number of awards. Examples include the European Parliament's Human Rights Prize,¹⁸⁶ the Sakharov Prize for Freedom of Thought,¹⁸⁷ the Human Rights Award of the German Association of Judges,¹⁸⁸ the Prize of Human Rights of the French Republic,¹⁸⁹ and the René Cassin Prize, which was created to facilitate the teaching of citizenship and human rights in schools.¹⁹⁰

Good practices in creating an enabling environment for human rights defenders:

- Granting direct government assistance to defenders;
- Assisting defenders in obtaining funding;
- Ensuring that defenders and human rights NGOs can receive foreign funding;
- Having effective freedom-of-information legislation;
- Receiving visits by UN mandate holders and representatives of relevant regional human rights mechanisms;
- Giving public recognition to defenders through prizes and awards.

2.4. Listening to, and addressing the concerns of, human rights defenders

Human rights defenders can be found in both the state sector and the private sector. Whether part of the government or not, networks of individuals committed to improving the human rights situation in a particular country can create partnerships and joint campaigns for human rights. Defenders can work more effectively if governments have mechanisms in place to encourage their activities, and if they engage with defenders at various levels. Co-operation and consultation between government officials and defenders can be *ad hoc* or structured and long-term, facilitated by regular meetings and standing mechanisms. This view of co-operative engagement to ensure fulfilment of human dimension commitments is acknowledged in OSCE commitments.¹⁹¹

September 2007, A/HRC/7/28/Add.4, 3 March 2008,
<<http://www2.ohchr.org/english/issues/defenders/visits.htm>>.

¹⁸⁶ Information provided by the Slovenian EU presidency, 4 June 2008.

¹⁸⁷ *Ibid.*

¹⁸⁸ Germany's response to ODIHR's questionnaire, 30 May 2008.

¹⁸⁹ Information provided by the mediator of the French Republic, 18 June 2008.

¹⁹⁰ *Ibid.*

¹⁹¹ Copenhagen 1990, *op. cit.*, note 25, preamble: "[The participating States] recognize that co-operation among themselves, as well as the active involvement of persons, groups, organizations and institutions, will be essential to ensure continuing progress towards their shared objectives." Also see Moscow 1991, *op. cit.*, note 127, para. 43.1: "[The participating States will] endeavour to seek ways of

Participating States submitted a number of good practices regarding listening to, and addressing the concerns of, human rights defenders.

Organizing meetings with human rights defenders

Officials at all levels of government should regularly consult with defenders to ensure that their concerns are heard. The Moldovan parliament, for example, organizes annual meetings with civil-society representatives to discuss co-operation between parliament and civil society.¹⁹²

Setting up standing mechanisms for dialogue with human rights defenders

Governments can engage in *ad hoc* dialogue with defenders, which often proves very useful. The effectiveness of co-operation can often be enhanced by creating standing mechanisms, such as joint committees or advisory boards at various levels to ensure ongoing dialogue across the spectrum of human rights. The German Institute for Human Rights, for example, regularly hosts meetings where there is an active exchange of views between defenders and government. The German government also engages in regular dialogue with the German Human Rights Forum, an amalgamation of the most important NGOs dealing with human rights.¹⁹³ The French National Consultative Commission for Human Rights provides a formal forum for dialogue between the government and human rights groups where defenders can express their concerns regarding the government's domestic policies and practices on human rights issues. It is an institution attached to the Office of the Prime Minister, composed of members of civil society, academics, and representatives of international organizations and public institutions.¹⁹⁴

Through such co-operation, organizations can also advise the government on its foreign policy. This may allow governments to become better informed as to the situation of human rights abroad and to calibrate their policies accordingly.

Finland: Example of Setting Up Standing Mechanisms for Dialogue with Defenders¹⁹⁵

In Finland, there is a regular formal forum for dialogue between the government and human rights defenders. Within the Foreign Ministry, there is an advisory board on human rights, which includes representatives of human rights NGOs. Active since 1988, the board meets regularly and provides a channel for communication between the ministry and NGOs.

Adopting a government strategy for co-operation with human rights defenders

Governments can also develop a national strategy for co-operation with human rights defenders. Such a strategy can allow a government to co-ordinate its engagement with

further strengthening modalities for contacts and exchanges of views between NGOs and relevant national authorities and governmental institutions.”

¹⁹² Information provided by the OSCE Mission to Moldova, 16 May 2008. Finland's parliamentary ombudsman has, for several years, been organizing meetings with Finnish organizations of human rights defenders to share information and to discuss topical human rights related questions in Finland. Information provided by Finland's parliamentary ombudsman, 9 October 2008.

¹⁹³ Germany's response to ODIHR's questionnaire, 30 May 2008.

¹⁹⁴ Information provided by the mediator of the French Republic, 18 June 2008.

¹⁹⁵ Finland's response to ODIHR's questionnaire, 1 June 2008.

civil society in support of human rights, which can help maximize the effectiveness of such co-operation. It is important that there be a clearly identifiable governmental actor that has a co-ordinating role in this process. This allows both defenders and other governmental actors to know who to turn to, and it also ensures continuity and consistency in terms of engagement. In Sweden, for example, the community of human rights defenders is closely involved in the monitoring and follow-up of the government's national action plan for human rights.¹⁹⁶ Similarly, the government of Azerbaijan involved NGOs in hearings in nine regions of the country on its national action plan for human rights.¹⁹⁷ It is also useful to ensure that civil-society actors and local or regional governments interact in a systematic way, as is the goal of the Turkish provincial human rights boards, in which governors and civil-society actors co-operate.¹⁹⁸

The UN special representative on human rights defenders noted in her report on her visit to the former Yugoslav Republic of Macedonia that the government had adopted a strategy for co-operation with civil society.¹⁹⁹

Consultation with human rights defenders in the legislative process

Engaging human rights defenders in the legislative process is an effective way of ensuring that their concerns are heard. This also allows defenders and other actors to ensure that legislation is in line with OSCE and international human rights standards.

Some states have a standing practice of involving defenders in the general legislative process. In Denmark, for example, the Danish Institute for Human Rights and relevant NGOs are generally consulted when new legislation is drafted. Thus, they are given an opportunity to comment on draft legislation, which is an important part of the law-making process.²⁰⁰ In Serbia, representatives of NGOs participate in public discussions prior to the adoption of laws, other regulations, and political documents. In some cases, NGOs themselves draft laws that are presented to parliament by government representatives.²⁰¹

Involving human rights defenders in the drafting of rules affecting them

Consulting human rights defenders in advance about planned rules, policies, or practices that might affect their work is one way of ensuring that the regulation of human rights NGOs does not become overly burdensome and actually facilitates their

¹⁹⁶ Sweden's response to ODIHR's questionnaire, 9 June 2008.

¹⁹⁷ Azerbaijan's response to ODIHR's questionnaire, 12 September 2008.

¹⁹⁸ Information provided by the government of Turkey, 17 October 2008.

¹⁹⁹ The strategy outlines action in seven areas: (a) upgrading of the legal framework for the development of the civil society sector; (b) participation of the civil society sector in decision-making processes, which includes the participation of civil-society organizations in drafting, implementing, and monitoring public policies and national laws; (c) maintaining interinstitutional co-operation; (d) maintaining intersector co-operation; (e) involvement of the civil society sector in the process of EU integration; (f) provision of more favourable conditions for the civil society sector; and (g) continuous development of the civil-society sector. The Unit for Co-operation with Non-governmental Organizations within the government's general secretariat has primary responsibility for co-ordinating, monitoring, and reporting on the implementation of the strategy. In the second year of implementation, an assessment of how the strategy is being implemented was to have been conducted by means of a broad consultation process. Country-visit reports by the special representative can be retrieved at <<http://www2.ohchr.org/english/issues/defenders/visits.htm>>.

²⁰⁰ Denmark's response to ODIHR's questionnaire, 2 June 2008.

²⁰¹ Serbia's response to ODIHR's questionnaire, 17 June 2008.

work, instead of hindering it. Defenders can use such consultations to point out areas of new bureaucratic procedures, for example, that might cause particular difficulties for their work. At the same time, it is important to remember that a lack of commentary from defenders does not necessarily mean they agree with every aspect of proposed legislation. It may therefore be useful to ensure that there is a regular process for consulting with defenders, in addition to having an open legislative process in general.

One example is the Polish system for involving NGOs in the regulation of their own sector, whereby NGOs and other entities are consulted on draft legislation in areas relating to their activities.²⁰²

In another example, the OSCE Mission to Montenegro undertook an assistance project aimed at developing Montenegro's legal-aid system. As part of the project, the justice minister formed a working group of NGO representatives.²⁰³

Involving human rights defenders in the drafting of periodic reports to international bodies

Defenders can also be involved at the national level in the drafting of periodic reports to UN treaty-monitoring bodies. This kind of involvement often brings together governments and NGOs, allowing dialogue on substantive issues and creating contacts between government officials and defenders.

In Serbia, for example, defenders and human rights NGOs are included by the State Agency for Human and Minority Rights in the consultation process regarding the drafting of Council of Europe reports and periodic reports to UN treaty-monitoring bodies. Defenders are included as relevant partners based on their recognized field of expertise.²⁰⁴

A noteworthy development in this area is the Universal Periodic Review (UPR) process within the UN Human Rights Council. In some cases, countries involve NGOs in the preparation of UPR reports, which contributes to the quality and depth of the reports, and allows the government to present not only its achievements but also a self-critical and balanced report on the human rights situation in the country.

Switzerland: Example of Involving Human rights defenders in the Drafting of Periodic Reports to International Bodies²⁰⁵

The Federal Department of Foreign Affairs consults NGOs about important international and national decisions, and the position of NGOs can be included in messages for bilateral meetings.

²⁰² Poland's response to ODIHR's questionnaire, 2 June 2008.

²⁰³ Information provided by the OSCE Mission to Montenegro, 14 May 2008.

²⁰⁴ Information provided by the OSCE Mission to Serbia, 23 May 2008. Similarly, Azerbaijan's commissioner for human rights organized a roundtable discussion with a government delegation and NGOs in 2007 to discuss the recommendations of the Committee on the Elimination of Discrimination against Women in respect of Azerbaijan. Information provided by Azerbaijan's commissioner for human rights, 9 October 2008.

²⁰⁵ Switzerland's response to ODIHR's questionnaire, 23 May 2008.

Switzerland also held a day of discussions with NGOs before submitting its UPR report to the UN Human Rights Council. This procedure will be repeated before submitting the next report within four years.

Involving human rights defenders in the work of NHRIs and ombudsman institutions

As prescribed by the Principles relating to the Status of National Institutions (or Paris Principles),²⁰⁶ NHRIs should engage a wide variety of individuals in their work.²⁰⁷ This allows the voices of many types of defenders to be heard regularly in a specialized body. A properly independent NHRI, with its expertise and standing, is a very useful consultation mechanism for defenders, as they are able to make joint appeals through a recognized, respected public body. It should be noted that this type of consultation should be performed in addition to, and not as a replacement for, other forms of consultation. An example is the Office of the Ombudsman of the Russian Federation, which has an expert council of defenders who hold regular meetings and discussions.²⁰⁸

Slovenia: Example of Involving Defenders in the Work of NHRIs²⁰⁹

Slovenia's human rights ombudsman started a project in January 2008 based on the Optional Protocol to the UN Convention against Torture, whereby two NGOs were chosen to participate in joint monitoring visits to detention facilities. A joint report is written about each visit, and another joint report will be written about the project as a whole at the end of 2008. This sort of co-operation means a variety of views and experiences are taken into account in monitoring activities.

Involving NHRIs in the legislative process

Another way to ensure that defenders' voices are heard is to codify the right of NHRIs to contribute to the legislative process, in line with the Paris Principles.²¹⁰ NHRIs,

²⁰⁶ "Principles relating to the Status of National Institutions", UN General Assembly, Resolution 48/134, U.N. Doc. A/RES/48/134, 20 December 1993.

²⁰⁷ *Ibid.*, article 1 under 'Composition and guarantees of independence and pluralism': "The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of: (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists; (b) Trends in philosophical or religious thought; (c) Universities and qualified experts; (d) Parliament; (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity)."

²⁰⁸ Russia's response to ODIHR's questionnaire, 9 July 2008.

²⁰⁹ Slovenia's response to ODIHR's questionnaire, 1 July 2008.

²¹⁰ Paris Principles, *op. cit.*, note 206, art. 3 under "Competence and responsibilities": "A national institution shall, *inter alia*, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas: (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems

where properly constituted and gathering a wide variety of voices from the defenders community, can use their expertise and legitimacy to signal when draft legislation may not comply with human rights standards. As the information provided by the OSCE Office in Yerevan points out, Armenia's human rights defender is "authorized to provide advisory clarifications and recommendations to the state and local self-governing bodies and officials". In addition, draft laws related to human rights and fundamental freedoms are given to the human rights defender for his or her opinion before they are submitted to the government.²¹¹ There is a similar process in Slovakia. Before a draft law is deliberated by the government, the bill is discussed with relevant authorities and institutions. The presenter of the bill must ensure that the draft bill is made public on the Internet and that notification of its publication is forwarded to the bodies and institutions concerned with the issue. The draft law may also be forwarded for comments to other public bodies or bodies of self-government, professional organizations, and other institutions. As a result, the public defender of rights and NGOs defending human rights are able to take part in the commenting procedure. The public defender of rights may also use the media to express his concerns with regard to the draft proposal or address the Slovak National Council Committee of Human Rights, Minorities and the Status of Women.²¹²

Joint campaigns with human rights defenders

Governments can also co-operate with defenders on particular human rights issues and start joint campaigns to address them. Such campaigns can use the resources, standing, and influence of the government in combination with the expertise and legitimacy of defenders to ensure that campaigns are well-informed, broadly accepted, and effective.

France's Justice Ministry, the NGO International Observatory of Prisons, and the Office of the Mediator of the French Republic sent a confidential questionnaire to prisoners to gather information about their conditions of imprisonment. The purpose of the questionnaire was to break the silence surrounding prison issues. The information received led to improvements in detention conditions, as well as in co-operation between civil society and the French government.²¹³ Azerbaijan's Interior Ministry has also developed a mechanism for constructive co-operation with civil society, notably with representatives of the NGO Committee Against Torture and the ombudsperson responsible for monitoring detention conditions. This NGO and the Ombudsman are allowed to visit any detention centre without prior notice or permission. Full transparency and close co-operation are also reported by international monitoring organizations, such as the International Committee of the Red Cross and the Committee for the Prevention of Torture (CPT), when monitoring detention facilities.²¹⁴

Representatives of the CPT visited Russia twice during the reporting period. In addition to meetings with government officials, they also met with defenders. Defenders reported that they often participate in penitentiary-related activities

appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures."

²¹¹ Information provided by Armenia's human rights defender, 28 May 2008.

²¹² Information provided by Slovakia's public defender of rights, 21 May 2008.

²¹³ Information provided by the mediator of the French Republic, 18 June 2008.

²¹⁴ Information provided by the OSCE Office in Baku, 14 May 2008.

(monitoring of places of detention, legal aid, support to rehabilitation of prisoners, etc.) and that joint inspections of penitentiaries are being conducted (there were 50,000 such joint visits during the reporting period).²¹⁵

Russian Federation: Example of a Joint Campaign between NGOs and Government²¹⁶

Defenders carry out several activities in the penitentiary system, such as monitoring places of detention, providing legal aid, and supporting the rehabilitation of prisoners. As an example, a project called “A week of visits to pre-trial detention” was carried out in 22 countries in October 2007, including several regions of the Russian Federation, and resulted in assessments of places of detention by joint government-NGO groups. This activity was notably initiated by the human rights commissioner of the Russian Federation. The project assessed, in particular, material conditions of detention and work, as well as the regional law enforcement bodies’ relationships with citizens.

Good practices regarding listening to, and addressing the concerns of, human rights defenders:

- Setting up standing mechanisms for dialogue with defenders;
- Adopting a government strategy for co-operation with defenders;
- Ensuring consultation with NGOs in the legislative process;
- Involving defenders in the drafting of rules affecting them;
- Involving defenders in the drafting of periodic reports to UN treaty-monitoring bodies;
- Involving defenders in the work of NHRIs and ombudsman institutions;
- Involving NHRIs and ombudsman institutions in the legislative process;
- Taking part in joint campaigns with defenders.

²¹⁵ Russia’s response to ODIHR’s questionnaire, 9 July 2008.

²¹⁶ *Ibid.*

Annex I: List of Responses to ODIHR's Questionnaire on Human Rights Defenders in the OSCE Region

OSCE Participating States:

1. Andorra
2. Austria
3. Azerbaijan
4. Belarus
5. Denmark
6. Estonia
7. Finland
8. Germany
9. Holy See
10. Hungary
11. Latvia
12. Malta
13. Poland
14. Portugal
15. Romania
16. Russian Federation
17. Serbia
18. Slovakia
19. Slovenia
20. Sweden
21. Switzerland

EU:

1. EU Slovenian presidency
2. EU French presidency

Input also received from:

National Human Rights Institutions:

1. Austria's ombudsman
2. Armenia's human rights defender
3. Croatia's Office of the Ombudsman
4. The mediator of the French Republic
5. The German Institute for Human Rights
6. The Office of the Public Defender of Georgia
7. The national ombudsman of the Netherlands
8. Lithuania's ombudsman for equal opportunities for women and men
9. Malta's Office of the Ombudsman
10. Norway's parliamentary ombudsman
11. Portugal's public ombudsman
12. Romania's public defender
13. Slovakia's public defender of rights
14. Spain's public defender
15. Sweden's Office of the Ombudsman against Discrimination on Grounds of Sexual Orientation
16. Sweden's ombudsman against ethnic discrimination

OSCE Institutions and Field Presences

1. Office of the High Commissioner on National Minorities
2. OSCE Presence in Albania
3. OSCE Office in Baku
4. OSCE Mission to Montenegro
5. OSCE Spillover Monitor Mission to Skopje
6. OSCE Mission to Moldova
7. OSCE Mission in Kosovo
8. OSCE Mission to Serbia
9. OSCE Mission to Bosnia and Herzegovina

International Organizations

1. Office of the UN High Commissioner for Human Rights

International NGOs

1. Front Line
2. Human Rights Watch
3. International Lesbian and Gay Association

National NGOs

1. Committee for Human Rights (Serbia)
2. Human Rights Agenda Association (Turkey)
3. Norwegian Centre for Human Rights

Annex II: List of Comments on the Draft Report

Participating States:

8 October 2008

The **government of Germany** amended a citation in the report (page 34).

8 October 2008

The **government of Denmark** provided an update of the law (page 34).

10 October 2008

The **government of Estonia** suggested including Estonia in the list of states where no restrictions are placed on foreign funding (see page 40, footnote 179).

13 October 2008

The **Holy See** noted that certain cases were unclear, as they were not adequately described, making it difficult to see who was responsible for attacks, pointed to several cases regarding right-to-life activists in Italy, suggested that cases of defenders of religious liberty be included, pointed out that cases mentioned in the report related to sexual orientation did not enter the area of competence agreed on by OSCE participating States, and suggested inclusion of the duty of defenders to respect the rights of others, and of meeting the just requirements of morality, public order, and general welfare (see page 27, footnote 114).

16 October 2008

The **government of the Russian Federation** provided updates and additional information on a number of individual cases included in the report (see footnotes 35, 36, 40, 43, 47, 70, 76, 81, 91, 94, and 97).

17 October 2008

The **government of Turkey** noted some good practices from Turkey, and made a number of amendments and comments regarding specific aspects of the individual cases mentioned in the report with respect of Turkey (see footnotes 59, 61, 63, and 198).

National Human Rights Institutions:

22 September 2008

The **Office of the Estonian Chancellor of Justice** welcomed the report as “accurate and relevant”.

30 September 2008

The **Office of the Swedish Ombudsman against Discrimination on Grounds of Sexual Orientation** amended the quote referring to harassment of LGBT activists on page 37.

1 October 2008

Norway’s parliamentary ombudsman welcomed the report and noted that he did not have any suggestions.

8 October 2008

Denmark's parliamentary ombudsman called the report a valuable contribution to the charting of obstacles for defenders, and had no further comments.

9 October 2008

Azerbaijan's commissioner for human rights provided a number of materials on her recent work, and suggested inclusion of some of these in the report (see page 45, footnote 204).

9 October 2008

Finland's parliamentary ombudsman noted her own co-operation with Finnish human rights defenders.

10 October 2008

The **Office of the Public Defender of Rights of the Czech Republic** suggested that the report would be useful to defenders.

13 October 2008

The **Office of the Belgian Federal Ombudsman** had no changes to make.

21 October 2008

Ukraine's parliamentary commissioner on human rights described her activities in respect of human rights defenders and noted their importance to democratic states (see page 38, footnote 169).

International Organizations:

15 October 2008

The **Office of the Commissioner for Human Rights of the Council of Europe** made several changes to the section on Council of Europe activities with regard to human rights defenders (see pages 8 and 9).

10 October 2008

The **European Union's Fundamental Rights Agency** noted three points: that it would be engaging in a mapping exercise of both NHRIs and major NGOs within the EU in the near future, its intention to co-operate with NHRIs, and the 7-8 October EU conference on human rights defenders (for more information, see http://ec.europa.eu/external_relations/human_rights/defenders/index_en.htm).

Several **OSCE field operations** (OSCE Mission to Montenegro, OSCE Office in Baku, OSCE Project Co-ordinator in Uzbekistan) and **international NGOs** (Amnesty International, Fédération Internationale pour les Droits de l'Homme, Human Rights Watch) also provided comments to the draft report that were taken into account in several instances.

Annex III: Compilation of Relevant OSCE Commitments

Note: This compilation includes OSCE commitments of relevance to the work of human rights defenders. These include commitments on non-governmental organizations; freedom of expression, free media and information (including the right to act upon one's right); freedom of thought, conscience, religion or belief; workers' rights/conditions of work; national minorities; rule of law; independence of the judiciary; right to a fair trial; right to effective remedies; and respect for private and family life. This list should not be considered exhaustive.

1975 Helsinki Final Act

The participating States will respect (...) the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.

(...)

Within this framework the participating States will recognize and respect the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.

The participating States confirm that religious faiths, institutions and organisations, practicing within the constitutional framework of the participating States, and their representatives can, in the field of their activities, have contacts and meetings among themselves and exchange information.

(...)

The participating States recognize the universal significance of human rights and fundamental

freedoms (...) They confirm the right of the individual to know and act upon his rights and duties in this field.

(...)

They confirm that (...) organizations and persons have a relevant and positive role to play in contributing toward the achievement of these aims of their cooperation.

1983 Madrid Concluding Document

(12) The participating States reaffirm that they will recognize, respect and furthermore agree to take the action necessary to ensure the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.

(14) They will favorably consider applications by religious communities of believers practicing or prepared to practice their faith within the constitutional framework of their States, to be granted the status provided for in their respective countries for religious faiths, institutions and organizations.

(17) The participating States will ensure the right of workers freely to establish and join trade unions, the right of trade unions freely to exercise their activities and other rights as laid down in relevant international instruments. They note that these rights will be exercised in compliance with the law of the State and in conformity with the State's obligations under international law. They will encourage, as appropriate, direct contacts and communication among such trade unions and their representatives.

1989 Vienna Concluding Document

[The participating States will]

(13.1) - develop their laws, regulations and policies in the field of civil, political, economic, social, cultural and other human rights and fundamental freedoms and put them into practice in order to guarantee the effective exercise of these rights and freedoms;

(...)

(13.4) - effectively ensure the right of the individual to know and act upon his rights and duties in this field, and to that end publish and make accessible all laws, regulations and procedures relating to human rights and fundamental freedoms;

(13.5) - respect the right of their citizens to contribute actively, individually or in association with others, to the promotion and protection of human rights and fundamental freedoms;

(13.8) - ensure that no individual exercising, expressing the intention to exercise or seeking to exercise these rights and freedoms or any member of his family, will as a consequence be discriminated against in any manner;

(13.9) - ensure that effective remedies as well as full information about them are available to those who claim that their human rights and fundamental freedoms have been violated; they will, *inter alia*, effectively apply the following remedies:

(...)

- the right to a fair and public hearing within a reasonable time before an independent and impartial tribunal, including the right to present legal arguments and to be represented by legal counsel of one's choice;

(16) In order to ensure the freedom of the individual to profess and practice religion or belief, the participating States will, *inter alia*,

(16.3) - grant upon their request to communities of believers, practicing or prepared to practice their faith within the constitutional framework of their States, recognition of the status provided for them in their respective countries;

(16.4) - respect the right of these religious communities to

- establish and maintain freely accessible places of worship or assembly,

(21) The participating States will ensure that the exercise of the above-mentioned rights will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, and with their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured.

(26) [The participating States] confirm that governments, institutions, organizations and persons have a relevant and positive role to play in contributing to the achievement of the aims of their co-operation and to the full realization of the Final Act. To that end they will respect the right of persons to observe and promote the implementation of CSCE provisions and to associate with others for this purpose.

They will facilitate direct contacts and communication among these persons, organizations and institutions within and between participating States and remove, where they exist, legal and administrative impediments inconsistent with the CSCE provisions.

They will also take effective measures to facilitate access to information on the implementation of CSCE provisions and to facilitate the free expression of views on these matters.

1990 Copenhagen Document

(2) [The participating States] are determined to support and advance those principles of justice which form the basis of the rule of law. They consider that the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression.

(4) They confirm that they will respect each other's right freely to choose and develop, in accordance with international human rights standards, their political, social, economic and cultural systems. In exercising this right, they will ensure that their laws, regulations, practices and policies conform with their obligations under international law and are brought into harmony with the provisions of the Declaration on Principles and other CSCE commitments.

(5.3) - the duty of the government and public authorities to comply with the constitution and to act in a manner consistent with law;

(5.5) - the activity of the government and the administration as well as that of the judiciary will be exercised in accordance with the system established by law. Respect for that system must be ensured;

(5.6) - military forces and the police will be under the control of, and accountable to, the civil authorities;

(5.7) - human rights and fundamental freedoms will be guaranteed by law and in accordance with their obligations under international law;

(5.8) - legislation, adopted at the end of a public procedure, and regulations will be published, that being the condition for their applicability. Those texts will be accessible to everyone;

(5.10) - everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity;

(5.11) - administrative decisions against a person must be fully justifiable and must as a rule indicate the usual remedies available;

(5.12) - the independence of judges and the impartial operation of the public judicial service will be ensured;

(5.16) - in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone will be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law;

(5.20) - considering the important contribution of international instruments in the field of human rights to the rule of law at a national level, the participating States reaffirm that they will consider acceding to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other relevant international instruments, if they have not yet done so. (...)

(5.21) - in order to supplement domestic remedies and better to ensure that the participating States respect the international obligations they have undertaken, the participating States will consider acceding to the international obligations they have undertaken, the participating States will consider acceding to a regional or global international convention concerning the protection of human rights, such as the European Convention on Human Rights or the Optional Protocol to the International Covenant on Civil and Political Rights, which provide for procedures of individual recourse to international bodies.

(7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will

(7.6) - respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities.

[The participating States reaffirm that]:

(9.1) - everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright;

(9.2) - everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards;

(9.3) - the right of association will be guaranteed. The right to form and - subject to the general right of a trade union to determine its own membership - freely to join a trade union will be guaranteed. These rights will exclude any prior control. Freedom of association for workers, including the freedom to strike, will be guaranteed, subject to limitations prescribed by law and consistent with international standards;

(10) In reaffirming their commitment to ensure effectively the rights of the individual to know and act upon human rights and fundamental freedoms, and to contribute actively, individually or in association with others, to their promotion and protection, the participating States express their commitment to

(10.1) - respect the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information;

(10.2) - respect the rights of everyone, individually or in association with others, to study and discuss the observance of human rights and fundamental freedoms and to develop and discuss ideas for improved protection of human rights and better means for ensuring compliance with international human rights standards;

(10.3) - ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms, including trade unions and human rights monitoring groups;

(10.4) - allow members of such groups and organizations to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts and co-operation with such groups and organizations and to solicit, receive and utilize for the purpose of promoting and protecting human rights and fundamental freedoms voluntary financial contributions from national and international sources as provided for by law.

(11) The participating States further affirm that, where violations of human rights and fundamental freedoms are alleged to have occurred, the effective remedies available include (...)

(11.2) - the right of the individual to seek and receive assistance from others in defending human rights and fundamental freedoms, and to assist others in defending human rights and fundamental freedoms;

(11.3) - the right of individuals or groups acting on their behalf to communicate with international bodies with competence to receive and consider information concerning allegations of human rights abuses.

(12) The participating States, wishing to ensure greater transparency in the implementation of the commitments undertaken in the Vienna Concluding Document under the heading of the human dimension of the CSCE, decide to accept as a confidence building measure the presence of observers sent by participating States and representatives of non-governmental organizations and other interested persons at proceedings before courts as provided for in national legislation and international law; it is understood that proceedings may only be held in camera in the circumstances prescribed by law and consistent with obligations under international law and international commitments.

(24) The participating States will ensure that the exercise of all the human rights and fundamental freedoms set out above will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, and with their international commitments, in particular the Universal Declaration of Human Rights. These restrictions have the character of exceptions. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured. Any restriction on rights and freedoms must, in a democratic

society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law.

(26) The participating States recognize that vigorous democracy depends on the existence as an integral part of national life of democratic values and practices as well as an extensive range of democratic institutions. They will therefore encourage, facilitate and, where appropriate, support practical co-operative endeavours and the sharing of information, ideas and expertise among themselves and by direct contacts and co-operation between individuals, groups and organizations in areas including the following:

- developing political parties and their role in pluralistic societies,
- free and independent trade unions,
- developing other forms of free associations and public interest groups,

(30) The participating States recognize that the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law, with a functioning independent judiciary. This framework guarantees full respect for human rights and fundamental freedoms, equal rights and status for all citizens, the free expression of all their legitimate interests and aspirations, political pluralism, social tolerance and the implementation of legal rules that place effective restraints on the abuse of governmental power.

They also recognize the important role of non-governmental organizations, including political parties, trade unions, human rights organizations and religious groups, in the promotion of tolerance, cultural diversity and the resolution of questions relating to national minorities.

(32.2) – [Persons belonging to national minorities have the right] to establish and maintain their own educational, cultural and religious institutions, organizations or associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation;

(32.6) - to establish and maintain organizations or associations within their country and to participate in international non-governmental organizations.

1990 Paris Charter

We recall the major role that non-governmental organizations, religious and other groups and individuals have played in the achievement of the objectives of the CSCE and will further facilitate their activities for the implementation of the CSCE commitments by the participating States. These organizations, groups and individuals must be involved in an appropriate way in the activities and new structures of the CSCE in order to fulfil their important tasks.

We affirm that, without discrimination, every individual has the right to (...) freedom of association and peaceful assembly (...)

1991 Moscow Document

(18.2) Everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity.

(18.3) To the same end, there will be effective means of redress against administrative regulations for individuals affected thereby.

(18.4) The participating States will endeavor to provide for judicial review of such regulations and decisions.

(19.2) The participating States will, in implementing the relevant standards and commitments, ensure that the independence of the judiciary is guaranteed and enshrined in the constitution or the law of the country and is respected in practice, paying particular attention to the Basic Principles on the Independence of the Judiciary, which, inter alia, provide for:

(iii) protecting the judiciary's freedom of expression and association, subject only to such restrictions as are consistent with its functions;

(21) The participating States will:

(21.1) - take all necessary measures to ensure that law enforcement personnel, when enforcing public order, will act in the public interest, respond to a specific need and pursue a legitimate aim, as well as use ways and means commensurate with the circumstances, which will not exceed the needs of enforcement;

(21.2) - ensure that law enforcement acts are subject to judicial control, that law enforcement personnel are held accountable for such acts, and that due compensation may be sought, according to domestic law, by the victims of acts found to be in violation of the above commitments.

(22) The participating States will take appropriate measures to ensure that education and information regarding the prohibition of excess force by law enforcement personnel as well as relevant international and domestic codes of conduct are included in the training of such personnel.

(24) The participating States reconfirm the right to the protection of private and family life, domicile, correspondence and electronic communications. In order to avoid any improper or arbitrary intrusion by the State in the realm of the individual, which would be harmful to any democratic society, the exercise of this right will be subject only to such restrictions as are prescribed by law and are consistent with internationally recognized human rights standards. In particular, the participating States will ensure that searches and seizures of persons and private premises and property will take place only in accordance with standards that are judicially enforceable.

(43) The participating States will recognize as NGOs those which declare themselves as such, according to existing national procedures, and will facilitate the ability of such organizations to conduct their national activities freely on their territories; to that effect they will

(43.1) - endeavor to seek ways of further strengthening modalities for contacts and exchanges of views between NGOs and relevant national authorities and governmental institutions;

(43.2) - endeavor to facilitate visits to their countries by NGOs from within any of the participating States in order to observe human dimension conditions;

(43.3) - welcome NGO activities, including, inter alia, observing compliance with CSCE commitments in the field of the human dimension;

(43.4) - allow NGOs, in view of their important function within the human dimension of the CSCE, to convey their views to their own governments and the governments of all the other participating States during the future work of the CSCE on the human dimension.

(43.5) - during the future work of the CSCE on the human dimension, NGOs will have the opportunity to distribute written contributions on specific issues of the human dimension of the CSCE to all delegations.

(43.6) - the CSCE Secretariat will, within the framework of the resources at its disposal, respond favourably to requests by NGOs for non-restricted documents of the CSCE.

(43.7) - guidelines for the participation of NGOs in the future work of the CSCE on the human dimension might, inter alia, include the following:

- (i) NGOs should be allotted common space at such meeting sites or in their immediate vicinity for their use as well as reasonable access, at their own expense, to technical facilities, including photocopying machines, telephones and fax machines;
- (ii) NGOs should be informed and briefed on openness and access procedures in a timely manner;
- (iii) delegations to CSCE meetings should be further encouraged to include or invite NGO members.

1992 Helsinki Document

IV. Relations with International Organizations, Relations with Non-Participating States, Role of Non-Governmental Organizations (NGOs)

14. The participating States will provide opportunities for the increased involvement of non-governmental organizations in CSCE activities.

15. They will, accordingly:

- apply to all CSCE meetings the guidelines previously agreed for NGO access to certain CSCE meetings;
- make open to NGOs all plenary meetings of review conferences, ODIHR seminars, workshops and meetings, the CSO when meeting as the Economic Forum, and human rights implementation meetings, as well as other expert meetings. In addition each meeting may decide to open some other sessions to attendance by NGOs;
- instruct Directors of CSCE institutions and Executive Secretaries of CSCE meetings to designate an "NGO liaison person" from among their staff;
- designate, as appropriate, one member of their Foreign Ministries and a member of their delegations to CSCE meetings to be responsible for NGO liaison;

- promote contacts and exchanges of views between NGOs and relevant national authorities and governmental institutions between CSCE meetings;
- facilitate during CSCE meetings informal discussion meetings between representatives of participating States and of NGOs;
- encourage written presentations by NGOs to CSCE institutions and meetings, titles of which may be kept and provided to the participating States upon request;
- provide encouragement to NGOs organizing seminars on CSCE-related issues;
- notify NGOs through the CSCE institutions of the dates of future CSCE meetings, together with an indication, when possible, of the subjects to be addressed, as well as, upon request, the activations of CSCE mechanisms which have been made known to all participating States.

16. The above provisions will not be applied to persons or organizations which resort to the use of violence or publicly condone terrorism or the use of violence.

CSCE Human Dimension seminars

18. These seminars will be organized in an open and flexible manner. Relevant international organizations and institutions may be invited to attend and to make contributions. So may NGOs with relevant experience. Independent experts attending the seminar as members of national delegations will also be free to speak in their own capacity.

1994 Budapest Document

14. We confirm the significance of the Human Dimension in all the activities of the CSCE. Respect for human rights and fundamental freedoms, democracy and the rule of law is an essential component of security and co-operation in the CSCE region. It must remain a primary goal of CSCE action. Periodic reviews of implementation of our commitments, fundamental throughout the CSCE, are critical in the Human Dimension. The enhanced capabilities of the Office for Democratic Institutions and Human Rights will continue to assist participating States, in particular those in transition. We underline the importance of human contacts in overcoming the legacy of old divisions.

Chapter VIII. The Human Dimension

2. Human rights and fundamental freedoms, the rule of law and democratic institutions are the foundations of peace and security, representing a crucial contribution to conflict prevention, within a comprehensive concept of security. The protection of human rights, including the rights of persons belonging to national minorities, is an essential foundation of democratic civil society. Neglect of these rights has, in severe cases, contributed to extremism, regional instability and conflict. The participating States confirmed that issues of implementation of CSCE commitments are of legitimate and common concern to all participating States, and that the raising of these problems in the co-operative and result-oriented spirit of the CSCE was therefore a positive exercise. They undertook to encourage implementation

of CSCE commitments through enhanced dialogue, implementation reviews and mechanisms. They will broaden the operational framework of the CSCE, in particular by enhancing the Office for Democratic Institutions and Human Rights (ODIHR), increasing its involvement in the work of the Permanent Council and mission activity, and furthering co-operation with international organizations and institutions active in human dimension areas.

3. The participation of non-governmental organizations (NGOs) was a welcome addition to the implementation review. In their statements, these organizations contributed ideas and raised issues of concern for participating States to take into consideration. They also informed the participating States of their activities, such as in the area of conflict prevention and resolution. The experience of the Budapest Review Conference invites further consideration with regard to promoting within the CSCE the dialogue between governments and NGOs of the participating States, in addition to State-to-State dialogue.

17. The participating States and CSCE institutions will provide opportunities for increased involvement of NGOs in CSCE activities as foreseen in Chapter IV of the Helsinki Document 1992. They will search for ways in which the CSCE can best make use of the work and information provided by NGOs. The Secretary General is requested to make a study on how participation of NGOs can be further enhanced.

Commitments and Co-operation

Rule of law

(...)

18. The participating States (...) also emphasize the need for protection of human rights defenders and look forward to the completion and adoption, in the framework of the United Nations, of the draft declaration on the “Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”.

1999 Istanbul Charter for European Security

27. Non-governmental organizations (NGOs) can perform a vital role in the promotion of human rights, democracy and the rule of law. They are an integral component of a strong civil society. We pledge ourselves to enhance the ability of NGOs to make their full contribution to the further development of civil society and respect for human rights and fundamental freedoms.

2001 Bucharest Decision on Combating Terrorism

10. Institution building, strengthening the rule of law and state authorities:
ODIHR: Will continue and increase efforts to promote and assist in building democratic institutions at the request of States, *inter alia* by helping to strengthen administrative capacity, local and central government and parliamentary structures, the judiciary, ombudsman institutions and civil society. Will facilitate exchanges of best practices and experience between participating States in this regard. Will continue to develop projects to solidify democratic institutions, civil society and good governance.

2002 Porto OSCE Charter on Preventing and Combating Terrorism

7. All measures against terrorism and all counter-terrorism measures and cooperation should be conducted in accordance with the rule of law, the UN Charter and the relevant provisions of international law, international standards of human rights and international humanitarian law;

2004 Sofia OSCE Action Plan for the Promotion of Gender Equality

42. Participating States are therefore recommended to: (...)

Establish or strengthen existing mechanisms for ensuring gender equality, inter alia by making available the services of an impartial and independent person or body, such as an Ombudsman/Human Rights Commissioner, to address gender related discrimination against individual citizens;

44 (g) Building national mechanisms for the advancement of women: The ODIHR will continue to provide know-how and support for the building-up of democratic institutions for advancing gender equality, such as Ombudsman's offices at local and national levels, as appropriate.

Annex IV: ODIHR's Focal Point for Human Rights Defenders and National Human Rights Institutions

Systematic work with civil society is a key element of all programmes conducted by ODIHR. One of ODIHR's core activities involves monitoring the implementation of human dimension commitments, as well as lending assistance to participating States, where needed. This involves monitoring the capacity of human rights defenders and national human rights institutions to operate, especially in challenging circumstances. ODIHR also helps improve the skills of human rights defenders by providing education and training on human rights issues.

Independent national human rights institutions can play a crucial role in advancing and securing human rights. Working with human rights defenders, they foster a national culture of human rights and serve as a respected independent voice. There is a need to promote the establishment of independent national human rights institutions where they do not exist and to support them where they do.

Since its establishment in 2006, ODIHR's focal point for human rights defenders and national human rights institutions (the focal point) has been monitoring the situation of defenders throughout the OSCE region. In its 2007 report, *Human Rights Defenders in the OSCE Region: Our Collective Conscience*, ODIHR identified the situation of human rights defenders as an issue of major concern.²¹⁷ The report focused on patterns of violations affecting human rights defenders, namely continuing physical attacks on defenders, whether actual or threatened; the curtailment of the freedom of association of defenders; the failure to respect and protect human rights defenders' freedom of assembly; and the often severe restrictions placed on the freedom of movement and right to liberty of defenders. The report provided a number of recommendations on how OSCE commitments related to the work of human rights defenders could be implemented more comprehensively.

In designing and implementing its activities, the focal point consults with other international organizations, in particular the Council of Europe and the UN Office of the High Commissioner for Human Rights, as well as the UN secretary-general's special rapporteur on human rights defenders. The focal point is in regular contact with a number of international and national NGOs active in this field.

The focal point promotes the interests of human rights defenders by:

- Assessing the needs of national human rights institutions and human rights defenders and the prevailing circumstances as they affect civil society;
- Supporting OSCE field operations to strengthen their engagement with human rights defenders and national human rights institutions;
- Working closely with other relevant intergovernmental agencies and national and international NGOs involved in supporting the work of human rights defenders and national human rights institutions;
- Giving support to, and strengthening the capacity of, human rights defenders and national human rights institutions;
- Fostering interaction and co-operation between national human rights institutions and human rights defenders; and

²¹⁷ *Human Rights Defenders in the OSCE Region*, ODIHR, *op. cit.*, note 1.

- Assisting participating States to create an environment in which civil society may flourish.

These efforts are inherent in the wider context of ODIHR's activities supporting authorities and civil society to ensure the effective implementation of human dimension commitments.

The focal point's programmatic activities include:

- Capacity-building for NGOs;
- Production of a guidebook on freedom of association; and
- Review of implementation of issues affecting human rights defenders and NHRIs.

Capacity-building for NGOs

Country-based capacity-building projects are delivered to human rights defenders and other members of civil society in order to improve their knowledge of human rights standards and skills in advocacy, monitoring, and strategy formulation and their general capacity to monitor and report on public assemblies. These projects also support the implementation of ODIHR's *Guidelines on Freedom of Peaceful Assembly*.

Production of a guidebook on freedom of association

A guidebook aimed at legislators and policymakers dealing with practical issues concerning freedom of association is being drafted. The guidebook will draw on case studies from various participating States and give guidance on how to deal with issues such as the registration of NGOs, payment of registration fees, the taxation of NGOs, foreign funding of NGOs, and the status of domestic branches of international NGOs.

Review of implementation of issues affecting human rights defenders and NHRIs

Country-based and/or regional roundtables will be organized to review issues affecting the work of human rights defenders and NHRIs, including freedom of assembly and association. These roundtables will gather representatives from relevant governmental structures, NHRIs, and human rights defenders in order to discuss issues of implementation of relevant OSCE commitments and international standards and to develop strategies for addressing implementation challenges. The roundtables will serve as a forum for discussion, dialogue, and networking. Use of the *Guidelines on Freedom of Peaceful Assembly* and the freedom of association guidebook will be promoted during the roundtables.

The focal point will continue to be developed based on an ongoing assessment of the needs of human rights defenders and NHRIs and on consultations with governments, as well as with NGOs and international organizations to achieve a common approach and effective impact.

Annex V: UN Declaration on Human Rights Defenders

**Declaration on the Right and Responsibility of Individuals,
Groups and Organs of Society to Promote and Protect Universally
Recognized Human Rights and Fundamental Freedoms**

General Assembly resolution 53/144

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Taking note of Commission on Human Rights resolution 1998/7 of 3 April 1998, See *Official Records of the Economic and Social Council, 1998, Supplement No. 3 (E/1998/23)*, chap. II, sect. A. in which the Commission approved the text of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms,

Taking note also of Economic and Social Council resolution 1998/33 of 30 July 1998, in which the Council recommended the draft declaration to the General Assembly for adoption,

Conscious of the importance of the adoption of the draft declaration in the context of the fiftieth anniversary of the Universal Declaration of Human Rights, Resolution 217 A (III).

1. *Adopts* the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, annexed to the present resolution;

2. *Invites* Governments, agencies and organizations of the United Nations system and intergovernmental and non-governmental organizations to intensify their efforts to disseminate the Declaration and to promote universal respect and understanding thereof, and requests the Secretary-General to include the text of the Declaration in the next edition of *Human Rights: A Compilation of International Instruments*.

*85th plenary meeting
9 December 1998*

**Declaration on the Right and Responsibility of Individuals, Groups and Organs
of Society to Promote and Protect Universally Recognized Human Rights and
Fundamental Freedoms**

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming also the importance of the Universal Declaration of Human Rights² and the International Covenants on Human Rights Resolution 2200 A (XXI), annex. as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

Stressing that all members of the international community shall fulfill, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international cooperation to fulfill this obligation according to the Charter,

Acknowledging the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

Reiterating that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of those rights and freedoms,

Stressing that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State,

Recognizing the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels,

Declares:

Article 1

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

Article 2

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

Article 3

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

Article 4

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights,² the International Covenants on Human Rights³ and other international instruments and commitments applicable in this field.

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) To meet or assemble peacefully;

(b) To form, join and participate in non-governmental organizations, associations or groups;

(c) To communicate with non-governmental or intergovernmental organizations.

Article 6

Everyone has the right, individually and in association with others:

(a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

(b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;

(c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

2. This includes, *inter alia*, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

Article 9

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

3. To the same end, everyone has the right, individually and in association with others, *inter alia*:

(a) To complain about the policies and actions of individual officials and

governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

(b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;

(c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

Article 10

No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

Article 11

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

Article 12

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of

violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Article 13

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

Article 14

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

2. Such measures shall include, *inter alia*:

(a) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;

(b) Full and equal access to international documents in the field of human rights, including the periodic reports by the State to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.

3. The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.

Article 15

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training program.

Article 16

Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, *inter alia*, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

Article 17

In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to

such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Article 18

1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.

2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.

3. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

Article 19

Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in the present Declaration.

Article 20

Nothing in the present Declaration shall be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the Charter of the United Nations.

Annex VI: Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities²¹⁸

(Adopted by the Committee of Ministers on 6 February 2008 at the 1017th meeting of the Ministers' Deputies)

The Committee of Ministers of the Council of Europe,

Noting the commitment made by Heads of State and Government meeting at their Third Summit in Warsaw 2005 that the Council of Europe “shall – through its various mechanisms and institutions – play a dynamic role in protecting the right of individuals and promoting the invaluable engagement of non-governmental organisations, to actively defend human rights”;

Recalling the United Nations Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognised human rights and fundamental freedoms of 9 December 1998, and reiterating the importance of the declaration for individuals, groups and associations to promote and strive for the protection and realisation of human rights and fundamental freedoms at the national and international level;

Taking account of the European Union Guidelines on Human Rights Defenders of 2004 and the first review of their implementation in 2006, which contain suggestions for practical measures by EU member states and other states willing to implement them, to support and protect human rights defenders;

Deploring that human rights defenders, including journalists, are all too often victims of violations of their rights, threats and attacks, despite efforts at both national and international levels, and considering that human rights defenders merit special attention, as such violations may indicate the general situation of human rights in the state concerned or a deterioration thereof;

Paying tribute to their invaluable contribution in promoting and protecting human rights and fundamental freedoms;

Mindful that restrictions placed on the exercise of the freedom of expression, assembly and association, which affect the work of human rights defenders in Europe, must not extend beyond those authorised by paragraphs 2 of Articles 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention on Human Rights” or “ECHR”);

Taking account of the report of the Steering Committee for Human Rights (CDDH) on Council of Europe action to improve the protection of human rights defenders and promote their activities;¹

Recalling Recommendation [CM/Rec\(2007\)14](#) on the legal status of non-governmental organisations in Europe which stipulates that NGOs should enjoy the right to freedom

²¹⁸ ODIHR notes that, although not all OSCE participating States are members of the Council of Europe, participating States have recognized “the important expertise of the Council of Europe in the field of human rights and fundamental freedoms” and have agreed “to consider further ways and means to enable the Council of Europe to make a contribution to the human dimension of the CSCE”. See Copenhagen 1990, *op. cit.*, note 25, para. 28.

of expression and all other universally and regionally guaranteed rights and freedoms applicable to them;

Acknowledging that whereas the prime responsibility and duty to promote and protect human rights defenders lie with the state, the Council of Europe shall also contribute to creating an enabling environment for human rights defenders and protect them and their work in defending human rights;

Welcoming the activities that the Council of Europe Commissioner for Human Rights has already undertaken in support of human rights defenders, in particular during his country visits, and mindful that protection of human rights defenders as well as the development of an enabling environment for their activities fall within the scope of his mandate, as defined in Committee of Ministers' Resolution (99) 50 of 7 May 1999,

1. Condemns all attacks on and violations of the rights of human rights defenders in Council of Europe member states or elsewhere, whether carried out by state agents or non-state actors;

2. Calls on member states to:

i) create an environment conducive to the work of human rights defenders, enabling individuals, groups and associations to freely carry out activities, on a legal basis, consistent with international standards, to promote and strive for the protection of human rights and fundamental freedoms without any restrictions other than those authorised by the European Convention on Human Rights;

ii) take effective measures to protect, promote and respect human rights defenders and ensure respect for their activities;

iii) strengthen their judicial systems and ensure the existence of effective remedies for those whose rights and freedoms are violated;

iv) take effective measures to prevent attacks on or harassment of human rights defenders, ensure independent and effective investigation of such acts and to hold those responsible accountable through administrative measures and/or criminal proceedings;

v) consider giving or, where appropriate, strengthening competence and capacity to independent commissions, ombudspersons, or national human rights institutions to receive, consider and make recommendations for the resolution of complaints by human rights defenders about violations of their rights;

vi) ensure that their legislation, in particular on freedom of association, peaceful assembly and expression, is in conformity with internationally recognised human rights standards and, where appropriate, seek advice from the Council of Europe in this respect;

vii) ensure the effective access of human rights defenders to the European Court of Human Rights, the European Committee of Social Rights and other human rights protection mechanisms in accordance with applicable procedures;

viii) co-operate with the Council of Europe human rights mechanisms and in particular with the European Court of Human Rights in accordance with the ECHR, as well as with the Commissioner for Human Rights by facilitating his/her visits, providing adequate responses and entering into dialogue with him/her about the situation of human rights defenders when so requested;

ix) consider signing and ratifying the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (ETS No. 124);

x) consider signing and ratifying the 1995 Additional Protocol to the European Social Charter and to consider recognising the right of national NGOs fulfilling the criteria

mentioned therein to lodge collective complaints before the European Committee of Social Rights;

xi) provide measures for swift assistance and protection to human rights defenders in danger in third countries, such as, where appropriate, attendance at and observation of trials and/or, if feasible, the issuing of emergency visas;

3. Calls on all Council of Europe bodies and institutions, to pay special attention to issues concerning human rights defenders in their respective work. This shall include providing information and documentation, including on relevant case law and other European standards, as well as encouraging co-operation and awareness-raising activities with civil society organisations and encouraging human rights defenders' participation in Council of Europe activities;

4. Invites the Commissioner for Human Rights to strengthen the role and capacity of his Office in order to provide strong and effective protection for human rights defenders by:

i) continuing to act upon information received from human rights defenders and other relevant sources, including ombudsmen or national human rights institutions;

ii) continuing to meet with a broad range of defenders during his country visits and to report publicly on the situation of human rights defenders;

iii) intervening, in the manner the Commissioner deems appropriate, with the competent authorities, in order to assist them in looking for solutions, in accordance with their obligations, to the problems which human rights defenders may face, especially in serious situations where there is a need for urgent action;

iv) working in close co-operation with other intergovernmental organisations and institutions, in particular the OSCE/ODIHR focal point for human rights defenders, the European Union, the United Nations Secretary General's Special Representative on Human Rights Defenders and other existing mechanisms;

5. Agrees to keep under review the question of further Council of Europe action in this field.

Annex VII: Principles relating to the Status of National Institutions (Paris Principles) adopted by the UN General Assembly on 20 December 1993, A/RES/48/134

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
 - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
 - (ii) Any situation of violation of human rights which it decides to take up;
 - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
 - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
 - (b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
 - (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
 - (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
 - (e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;
 - (f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
 - (g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

4. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

- (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
- (b) Trends in philosophical or religious thought;
- (c) Universities and qualified experts;
- (d) Parliament;
- (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

5. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding.

The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

6. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional principles concerning the status of commissions with quasi-judicial competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

(a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

(b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

(c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

(d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

Annex VIII: OSCE Parliamentary Assembly Resolution on Strengthening OSCE Engagement with Human Rights Defenders and National Human Rights Institutions, 5-9 July 2007, Kyiv

1. Recalling and reaffirming the important role of civil society and non governmental organizations in our societies as also recognized in the 1975 Helsinki Final Act and expressing genuine appreciation for the contribution of civil society to the promotion and implementation of OSCE principles, standards, commitments and values,
2. Recalling that the commitments undertaken in the field of the human dimension are matters of direct and legitimate concern to all participating States and are not exclusively the internal affairs of the state concerned, as stipulated in the 1991 Moscow Document entered into by all participating States,
3. Reaffirming that the protection and promotion of human rights and fundamental freedoms is one of the basic responsibilities of states, and the recognition of and respect for these rights and freedoms constitutes the foundation of freedom, justice and peace,
4. Recalling that the OSCE participating States committed themselves to respect the right of their citizens to contribute actively, individually or in association with others, to the promotion and protection of human rights and fundamental freedoms and to take necessary action in their respective countries to effectively ensure this right,
5. Recalling and reaffirming the Resolution on Cooperation with Civil Society and Non-Governmental Organizations adopted by the Parliamentary Assembly at the Annual Session in 2006, calling upon the OSCE participating States to seek and implement ways of further promoting exchange of views through an open and constructive dialogue with human rights defenders,
6. Recalling the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders) and the responsibility it places on states to adopt and implement adequate legislation and administrative procedures that would provide for a conducive environment for human rights defenders to promote and strive for the protection and realization of human rights and fundamental freedoms at the national and international levels,
7. Recalling the Principles relating to the Status of National Institutions (The Paris Principles), adopted by the UN General Assembly resolution on 20 December 1993, identifying the crucial role of independent national human rights institutions (NHRIs) in promoting and protecting human rights in a pluralist manner by being co-operative with a range of groups and institutions, including governmental authorities, non-governmental organizations (NGOs), judicial institutions and professional bodies,
8. Recalling the OSCE Supplementary Human Dimension Meeting (SHDM) of 30 and 31 March 2006 entitled “Human Rights Defenders and National Human Rights Institutions: Legislative, State and Non-State Aspects” and the recommendations made thereat including the need for particular attention, support and protection for human rights defenders by the OSCE, its Institutions and field operations, as well as by participating States,

9. Deploring that in a number of OSCE participating States, human rights defenders continuously work under extreme pressure from state authorities and face restrictions, in particular on the exercise of freedom of expression, association and assembly,

10. Expressing concern and disappointment with regard to the introduction of new legislation in a number of participating States that places further restrictions and constraints on the activities of human rights defenders, in particular by making them subject to unnecessary bureaucratic burdens, arbitrary detentions, assaults, ill-treatment, or defamation campaigns,

The OSCE Parliamentary Assembly:

11. Recognizes that domestic law consistent with the Charter of the United Nations and other international obligations of the state in the field of human rights and fundamental freedoms is the legal framework within which human rights and fundamental freedoms should be implemented and enjoyed, and within which all activities for the promotion, protection and effective realization of those rights and freedoms should be conducted;

12. Recognizes that human rights and fundamental freedoms are most likely to be secured when citizens either individually or collectively are able to hold their government to account and notes the particular importance of respect for the freedoms of association and peaceful assembly, as they are intrinsic to the exercise by citizens of their right to express their opinions and to raise publicly issues of concern, and their ability to contribute to their resolution;

13. Recognizes that everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs;

14. Recognizes the crucial role independent national human rights institutions can play in advancing and securing human rights and the need to foster links between these institutions and other groups in civil society;

15. Urges OSCE participating States to establish national human rights institutions in accordance with the Paris Principles, to take the appropriate measures to ensure their independence and all steps necessary to promote their working in partnership with and as advocates for other representatives of civil society;

16. Urges OSCE participating States to reaffirm the important role of human rights defenders and national human rights institutions in protecting and promoting human rights and fundamental freedoms at the 2007 Ministerial Council in Madrid;

17. Urges OSCE participating States to address the remaining challenges, the lack of progress and even set-backs with respect to the implementation of the freedoms of expression, association and assembly, under threat from a range of excessively restrictive laws and policies and that negatively affect the working environment of human rights defenders;

18. Commends the OSCE/ODIHR for its continued assistance to participating States in this respect, particularly by reviewing legislation linked to human rights and fundamental freedoms, as they affect activities of human rights defenders, but also the development and recent publication of Guidelines on Freedom of Peaceful Assembly;

19. Recognizes the role that parliamentarians play in their respective States in this regard and reaffirms the commitment to honour and promote the implementation of existing commitments within their national assemblies;
20. Recommends that the Parliamentary Delegations to the OSCE enhance their engagement with human rights defenders and national human rights institutions in their respective States, thereby making use of the assistance and resources developed by the OSCE/ODIHR;
21. Welcomes the establishment of a Focal Point for Human Rights Defenders and National Human Rights Institutions within the OSCE/ODIHR and its enhanced focus on monitoring the situation of these important actors, following the recommendations made at the 2006 SHDM;
22. Emphasizes the importance of providing adequate funding to the OSCE/ODIHR, in particular its Focal Point for Human Rights Defenders and National Human Rights Institutions, as needed, to support their activities;
23. Underlines the crucial role of the OSCE field operations in assisting human rights defenders and national human rights institutions and encourages the field operations to further undertake projects aimed at capacity building and training for human rights defenders and promoting dialogue among and between human rights defenders, national human rights institutions and governments, in particular in the legislative process;
24. Urges the OSCE participating States to increase participation of human rights defenders and representatives of national human rights institutions in the Organization's institutional structures, including involvement in the activities of the Permanent Council and Ministerial Council.

Annex IX: EU Guidelines on Protecting Human Rights Defenders²¹⁹

I. PURPOSE

1. Support for human rights defenders is already a long established element of the European Union's human rights external relations policy. The purpose of these Guidelines is to provide practical suggestions for enhancing EU action in relation to this issue. The Guidelines can be used in contacts with third countries at all levels as well as in multilateral human rights fora, in order to support and strengthen ongoing efforts by the Union to promote and encourage respect for the right to defend human rights. The Guidelines also provide for interventions by the Union for human rights defenders at risk and suggest practical means to support and assist human rights defenders. An important element of the Guidelines is support for the Special Procedures of the UN Commission on Human Rights, including the UN Special Representative on Human Rights Defenders and appropriate regional mechanisms to protect human rights defenders. The Guidelines will assist EU Missions (Embassies and Consulates of EU Member States and European Commission Delegations) in their approach to human rights defenders. While addressing specific concerns regarding human rights defenders is their primary purpose, the Guidelines also contribute to reinforcing the EU's human rights policy in general.

II. DEFINITION

2. For the purpose of defining human rights defenders for these Guidelines operative paragraph 1 of the "UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms" (see Annexe I), which states that "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels" is drawn upon.

3. Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence.

III. INTRODUCTION

4. The EU supports the principles contained in the Declaration on the Right and responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms. Although the primary responsibility for the promotion and protection of human rights lies with states, the EU recognises that individuals, groups and organs of society all play important parts in furthering the cause of human rights. The activities of human rights defenders include:

- documenting violations;
- seeking remedies for victims of such violations through the provision of legal, psychological, medical or other support; and
- combating cultures of impunity which serve to cloak systematic and repeated breaches of human rights and fundamental freedoms.

5. The work of human rights defenders often involves criticism of government's policies and actions. However, governments should not see this as a negative. The

²¹⁹ "Ensuring Protection – EU Guidelines on Human Rights Defenders", *op. cit.*, note 167.

principle of allowing room for independence of mind and free debate on a government's policies and actions is fundamental, and is a tried and tested way of establishing a better level of protection of human rights. Human rights defenders can assist governments in promoting and protecting human rights. As part of consultation processes they can play a key role in helping to draft appropriate legislation, and in helping to draw up national plans and strategies on human rights. This role too should be recognised and supported.

6. The EU acknowledges that the activities of Human Rights Defenders have over the years become more recognised. They have increasingly come to ensure greater protection for the victims of violations. However, this progress has been achieved at a high price: the defenders themselves have increasingly become targets of attacks and their rights are violated in many countries. The EU believes it is important to ensure the safety and protect the rights of human rights defenders. In this regard it is important to apply a gender perspective when approaching the issue of human rights defenders.

IV. OPERATIONAL GUIDELINES

7. The operational part of the Guideline is meant to identify ways and means to effectively work towards the promotion and protection of human rights defenders in third countries, within the context of the Common Foreign and Security Policy.

Monitoring, reporting and assessment

8. EU Heads of Mission are already requested to provide periodic reports on the human rights situation in their countries of accreditation. The Council Working Party on Human Rights (COHOM) has recently approved the outline of fact sheets to facilitate this task. In line with these fact sheets Missions should address the situation of human rights defenders in their reporting, noting in particular the occurrence of any threats or attacks against human rights defenders. In this contexts HoMs should be aware that the institutional framework can have a major impact on the ability of human rights defenders to undertake their work in safety. Issues such as legislative, judicial, administrative or other appropriate measures, undertaken by States to protect persons against any violence, threats retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of any of the rights referred to the UN Declaration on Human Rights Defenders are all relevant in this regard. Where it is called for, HoMs should make recommendations to COHOM for possible EU actions, including condemnation of threats and attacks against human rights defenders, as well as for demarches and public statements where human rights defenders are at immediate or serious risk. HoMs should also report on the effectiveness of EU actions in their reports.

9. The HoMs reports and other relevant information, such as reports and recommendations from the Special Representative of the Secretary General for Human Rights Defenders, UN Special Rapporteurs and Treaty Bodies as well as non-governmental organisations, will enable COHOM and other relevant working parties, to identify situations where EU actions are called upon and decide actions to be taken or, where appropriate, make recommendations for such action to PSC / Council.

Role of EU Missions in supporting and protecting human rights defenders

10. In many third countries EU Missions (Embassies of EU Member States and European Commission Delegations) are the primary interface between the Union and its Member States and human rights defenders on the ground. They therefore have an important role to play in putting into practice the EU's policy towards human rights defenders. EU Missions should therefore seek to adopt a proactive policy towards human rights defenders. They should at the same time be aware that in certain cases

EU action could lead to threats or attacks against human rights defenders. They should therefore where appropriate consult with human rights defenders in relation to actions which might be contemplated. Measures that EU Missions could take include:

- co-ordinating closely and sharing information on human rights defenders, including those at risk;
- maintaining, suitable contacts with human rights defenders, including by receiving them in Missions and visiting their areas of work, consideration could be given to appointing specific liaison officers, where necessary on a burden sharing basis, for this purpose;
- providing, as and where appropriate, visible recognition to human rights defenders, through the use of appropriate publicity, visits or invitations;
- attending and observing, where appropriate, trials of human rights defenders.

Promotion of respect for human rights defenders in relations with third countries and in multilateral fora

11. The EU's objective is to influence third countries to carry out their obligations to respect the rights of human rights defenders and to protect them from attacks and threats from non-state actors. In its contacts with third countries, the EU will, when deemed necessary, express the need for all countries to adhere to and comply with the relevant international norms and standards, in particular the UN Declaration. The overall objective should be to bring about an environment where human rights defenders can operate freely. The EU will make its objectives known as an integral part of its human rights policy and will stress the importance it attaches to the protection of human rights defenders. Actions in support of these objectives will include:

- where the Presidency, or the High Representative for the CFSP or EU Special Representatives and Envoys, or European Commission are making country visits they will, where appropriate, include meetings with, and raising individual cases of, human rights defenders as an integral and part of their visits to third countries;
- the human rights component of political dialogues between the EU and third countries and regional organisations, will, where relevant, include the situation of human rights defenders. The EU will underline its support for human rights defenders and their work, and raise individual cases of concern whenever necessary;
- working closely with other like minded countries with similar views notably in the UN Commission on Human Rights and the UN General Assembly;
- promoting the strengthening of existing regional mechanisms for the protection of human rights defenders, such as the focal point on human rights defenders of the African Commission on Human and Peoples' Rights and the special Human Rights Defenders Unit within the Inter-American Commission on Human Rights, and the creation of appropriate mechanisms in regions where they do not exist.

Support for Special Procedures of the UN Commission on Human Rights, including the Special Representative on Human Rights Defenders

12. The EU recognises that the Special Procedures of the UN Commission on Human Rights (Special Rapporteurs, Special Representatives, Independent Experts and Working Groups) are vital to international efforts to protect human rights defenders because of their independence and impartiality; their ability to act and speak out on violations against human rights defenders worldwide and undertake country visits. While the Special Representative for Human Rights Defenders has a particular role in this regard the mandates of other Special Procedures are also of relevance to human rights defenders. The EU's actions in support of the Special Procedures will include:

- encouraging states to accept as a matter of principle requests for country visits by UN Special Procedures;

- promoting via EU Missions, the use of UN thematic mechanisms by local human rights communities and human rights defenders including, but not limited to facilitating the establishment of contacts with, and exchange information between, thematic mechanisms and human rights defenders;
- since the Special Procedures are unable to carry out their mandate in the absence of adequate resources, EU Member States will support the allocation of sufficient funds from the general budget to the Office of the High Commissioner for Human Rights

Practical supports for Human Rights Defenders including through Development Policy

13. Programmes of the European Community and Member States aimed at assisting in the development of democratic processes and institutions, and the promotion and protection of human rights in developing countries are among a wide range of practical supports for assisting human rights defenders. These can include but are not necessarily limited to the development co-operation programmes of Member States. Practical supports can include the following:

- bi-lateral human rights and democratisation programmes of the European Community and Member States should take further account of the need to assist the development of democratic processes and institutions, and the promotion and protection of human rights in developing countries by, inter alia, supporting human rights defenders through such activities as capacity building and public awareness campaigns;
- by encouraging and supporting the establishment, and work, of national bodies for the promotion and protection of human rights, established in accordance with the Paris Principles, including, National Human Rights Institutions, Ombudsman's Offices and Human Rights Commissions.
- assisting in the establishment of networks of human rights defenders at an international level, including by facilitating meetings of human rights defenders;
- seeking to ensure that human rights defenders in third countries can access resources, including financial, from abroad;
- by ensuring that human rights education programmes promote, inter alia, the UN Declaration on Human Rights Defenders.

Role of Council Working Parties

14. In accordance with its mandate COHOM will keep under review the implementation and follow-up to the Guidelines on Human Rights Defenders in close co-ordination and co-operation with other relevant Council Working Parties. This will include:

- promoting the integration of the issue of human rights defenders into relevant EU policies and actions;
- undertaking reviews of the implementation of the Guidelines at appropriate intervals;
- continuing to examine, as appropriate, further ways of co-operating with UN and other international and regional mechanisms in support of human rights defenders.
- Reporting to Council, via PSC and COREPER, as appropriate on an annual basis on progress made towards implementing the Guidelines.

Annex X: Indicators identified by the UN Special Representative (now Special Rapporteur) on Human Rights Defenders to assess compliance with the UN Declaration on Human Rights Defenders²²⁰

The Special Representative identifies the following indicators:

Legislation

- Compliance of legislation relevant to the activities of defenders with the Declaration. Several laws can be relevant for the activities of human rights defenders, from laws on NGOs, to those on access to information, freedom of peaceful assembly, witness protection, right to strike, etc.

An enabling environment for human rights defenders

- Enjoyment of rights and freedoms instrumental to the activities of defenders and recognized by the Declaration, e.g. freedom of expression, association, peaceful assembly, access to information, including access to detention places and police stations, access to remedies. Each of these rights has a full set of indicators to measure their level of implementation, which are not developed in this report;
- Existence and effectiveness of independent national human rights institutions;
- Systematic collaboration with public authorities;
- Systematic participation and consultation in decision-making processes, including in law and policymaking;
- Policies on human rights defenders (e.g. strategy on the implementation of the Declaration, national plan on human rights including human rights defenders, policies on the collaboration with civil society);
- Human rights education policies and programmes;
- Open support to defenders from public authorities and the political establishment.

To assess the community of human rights defenders

- Number and types of organisations;
- Type of activities undertaken by defenders:
 - Capacity-building and human rights education;
 - Awareness-raising and outreach;
 - Monitoring and reporting;
 - Legal aid;
 - Research and development of new human rights ideas;
 - Civil, cultural, economic, political and social rights;
- Level of activities and outreach:
 - Grass-root;
 - National;
 - Regional and international;
- Gender:
 - Level of participation, organisation and representation of women defenders;
 - Prominence of women’s rights on the agenda of defenders;
 - Patterns of gender-based human rights violations against defenders;

²²⁰Jilani, *op. cit* note 11, para. 75-78.

- Non-discrimination:
 - Level of participation, organisation and representation of defenders belonging to or working on the rights of groups discriminated against (minorities, LGBT persons, disabled persons, indigenous peoples, migrants, etc.);
 - Prominence of equality on the agenda of defenders;
 - Patterns of human rights violations against defenders belonging to or working on the rights of groups discriminated against;
- Networks and coordination:
 - Level of solidarity and coordination among defenders;
 - Existence and effectiveness of common goals and strategies agreed upon by defenders;
 - Networks on thematic areas, at different levels (grass-root towards international and vice versa), across sectors of civil society (academia, social movements, NGOs, trade unions, bar associations, etc.);
- Capacity to access and use national, regional and international human rights mechanisms;
- Transparency, objectivity and accuracy in the work of human rights defenders;
- Funding:
 - Availability of funding opportunities, within and outside the country;
 - Capacity to obtain funding;
 - Possibility of determining their own priorities versus being donor-driven;
 - Tax exemption for non-profit organisations.

To assess levels of security of defenders

- Number and type of attacks and threats against defenders;
- Availability and effectiveness of protection programmes and measures.

To assess levels of impunity of human rights violations against defenders

- Number and type of human rights violations against defenders;
- Accessibility of remedies available to defenders;
- Number, quality (prompt and impartial) and outcome of investigations and prosecutions sanctioning violations against human rights defenders and providing compensation to victims;
- Existence, accessibility and effectiveness of independent oversight mechanisms for violations committed by public authorities, including the police.

Governments' collaboration with regional and international human rights mechanisms

- Collaboration with the Special Representative:
 - Responsiveness to questionnaires sent by the Special Representative for the preparation of reports;
 - Responsiveness to communications (timelines, comprehensiveness in replying to all the questions, scope of measures taken to address and redress both the individual cases as well as the general situation related to the individual cases);
 - Responding positively to requests of invitations to carry out country visits;
 - Reporting on measures taken to implement recommendations.

Annex XI: ODIHR's Questionnaire on Human Rights Defenders in the OSCE Region

Note

Following its 2007 report *Human Rights Defenders: Our Collective Conscience*, the attached Questionnaire aims at compiling good practices in the area of human rights defence. A compilation of responses to this questionnaire will form part of the OSCE/ODIHR's second Report on human rights defenders ('the Report'). Participating States will receive a copy of a draft version of the Report in advance of the 2008 Human Dimension Implementation Meeting.

The questionnaire sets out four areas in which good practices are sought.

Part I focuses on respect for the rights of defenders and sets out a number of questions concerning the legal space for their work. In order to play their vital role in society, human rights defenders require a sphere as much as possible free from unwarranted and unnecessary government interference. Part I aims at discovering the scope of this 'space for action' for defenders. In assessing progress made by participating States in improving the situation for defenders, the OSCE/ODIHR would also be interested in any areas in which participating States have recently lifted restrictions and limitations on the work of defenders.

Part II of the questionnaire asks about measures taken to protect human rights defenders. As last year's Report has shown, human rights defenders can face physical attacks or are threatened with such attacks. Such attacks, or threats of attacks, may be committed by state organs or government officials themselves, or they may be committed by private actors of various kinds. The OSCE/ODIHR is particularly interested in hearing from participating States about actions they take to prevent attacks against defenders, how they respond to such attacks when they do occur and how they act to provide protection to defenders in third countries, for example by offering them refugee status, or by using diplomatic channels to raise concerns.

Part III of the questionnaire asks about creating an enabling environment for defenders. In this section, participating States can identify what measures they have taken to support and encourage human rights defenders to raise concerns, and to build capacity amongst the domestic defenders community.

Part IV of the questionnaire asks about what governments do with the information, criticism and suggestions received from human rights defenders. As the main duty-bearer for human rights protection, States not only need to enable defenders to do their work, but also to listen to and address their concerns. This requires dialogue and interaction. In this section, the OSCE/ODIHR is interested in finding out from participating States where defenders can turn within the government with their concerns; what State bodies take up their suggestions; and, examples of State bodies positively engaging with human rights defenders, and of taking on board the concerns and suggestions of human rights defenders.

**I. Respecting the rights of defenders:
creating an open space for action**

Question 1: Freedom of association

- 1.1 Are individuals allowed to form and freely join informal groups striving to improve the protection of human rights, or is prior registration required?

- 1.2 If registration is required, please describe the process below, and describe means by which it has been ensured that such restrictions are proportionate to the aim pursued.

- 1.3 Where registration has been refused, are the reasons for such refusal provided in writing? Can the refusal be appealed in court?

- 1.4 Are registered non-governmental organizations required to re-register at certain intervals?

- 1.5 Are non-governmental organizations required to obtain clearance by an authorized state body for events and/or publications raising human rights issues that the non-governmental organization intends to conduct/publish?

Question 2: Freedom of assembly

- 2.1 Is previous authorization required for peaceful assemblies aimed to raise human rights issues, or is notification sufficient?

- 2.2 Are spontaneous assemblies for the same purposes allowed to be organised unhindered as long as they remain peaceful?

Question 3: Freedom of movement

3.1 May defenders travel freely throughout their own country, and may they leave and enter their own country freely?

3.2 Are any measures taken to facilitate the granting of visas to human rights defenders who wish to attend international conferences and events?

3.3 Are emergency visas granted to defenders facing persecution, ill-treatment or imminent danger in their country of origin?

II. Protecting the rights of defenders

Question 4: Preventive measures

4.1 Please describe any measures your government has taken which are aimed at preventing attacks on defenders who may be under threat (such as offering physical/police protection or advice on ensuring their safety).

Question 5: Public statements in support of human rights defenders

5.1 Please give examples of statements made by public officials in support of human rights defenders who have been the victims of physical attacks or who have been threatened with such attacks.

Question 6: Effective investigations of attacks and threats against defenders

- 6.1 Please give examples of cases in which your government has successfully investigated and brought to trial the perpetrators of physical attacks on human rights defenders or those who have threatened such attacks on human rights defenders.

III. Creating an enabling environment for defenders

Question 7: Financial and logistical support, capacity building

- 7.1 Please name ways in which your government supports the domestic human rights community financially and logistically, e.g. through subsidies or training programs provided to defenders in order to build their capacity.

Question 8: Foreign funding

- 8.1 Are NGOs allowed to receive funding from abroad, and if so, under what circumstances?

Question 9: Awareness raising

- 9.1 What campaigns has your government undertaken to raise awareness of the importance of the work of human rights defenders and the important role they play in society?

IV. Listening to and addressing the concerns of defenders

Question 10: Forum for dialogue

- 10.1 Is there a regular formal or informal forum for dialogue between the government (e.g. office of head of state/government, relevant ministries) and human rights defenders where defenders can express their concerns regarding the government's domestic policies and practices on human rights issues? If so, please describe it below.

Question 11: Enabling defenders to comment on legislation or other regulations affecting them

- 11.1 Are human rights defenders allowed to comment on domestic legislation affecting them and/or affecting respect for human rights? If so, please describe this process and give examples of positive experiences in this regard.

Question 12: Cooperation between government bodies and defenders

- 12.1 Please provide examples of the way your government has in the period April 2007 to April 2008 cooperated with human rights defenders e.g. joint campaigns on human rights issues or joint monitoring, such as of places of detention. What were the outcomes of such activities, and what were their effects?