

**INDIVIDUAL HUMAN
RIGHTS COMPLAINTS
A HANDBOOK FOR
OSCE FIELD PERSONNEL**

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FOREWORD

Direct contact with the population is one of the most important aspects of the work of OSCE field missions. Such contact serves to gain a better understanding of the concerns and expectations of the people living in the country where the mission is active.

Often, missions are approached by individuals complaining about alleged human rights violations. How to deal with such complaints is not always clear. It depends not only on the nature of the complaint but also on the mission's mandate, size, and resources. This handbook was developed by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) to provide practical guidelines to field personnel dealing with individual human rights complaints. With the publication of this book, we are pleased to be able to respond to a need frequently expressed by OSCE missions.

The handbook is designed to enable mission personnel to identify the best ways to address individual human rights complaints by giving practical guidance on how to receive, process, and follow up on such complaints. The OSCE, with its comprehensive security concept, places the individual human being at the centre of its security considerations. Protecting human rights and effectively addressing violations constitute crucial elements for promoting human security throughout the OSCE region.

In addition to the need to assist individuals, the overall analysis of individual human rights complaints can help identify weaknesses in national human rights protection systems. By enhancing the capacity of field mission personnel to deal with complaints more systematically through this publication, the ODIHR hopes to contribute to efforts to support governments in developing strong democracies in line with their human dimension commitments.

The ODIHR is grateful to Annette Lyth and Peter Eicher, the authors of this handbook, as well as to the numerous OSCE staff members who responded to the questionnaire that was used to prepare this publication.

Ambassador Christian Strohal
Director of the ODIHR

INTRODUCTION

This handbook is intended to provide basic guidance for dealing with complaints of individual human rights violations received by OSCE missions and other field operations.¹ Because missions receive such a wide variety of complaints, this handbook cannot be exhaustive. Likewise, it is not intended as a substitute for in-depth human rights expertise and training. Instead, its aim is to provide the essential background information needed by field operations faced with individual complaints, together with a basic set of procedures and options for possible action. An effort has been made to indicate where more detailed background information can be found if needed.²

This handbook starts from the premise that human rights are an integral part of the OSCE's comprehensive concept of security. All OSCE participating States have agreed to be bound by a broad set of human rights commitments. All OSCE personnel and all field operations – whatever their specific mandates – are bound by these commitments and have a responsibility to ensure that their activities contribute to the fulfilment of OSCE principles and commitments. This is the broad framework within which OSCE field operations may be faced with individual complaints.

The particular mandate of each field operation, as well as the circumstances in the host country, will define to a considerable extent how it should respond to individual complaints of human rights violations. An OSCE field operation is likely to become involved in individual complaints either because human rights are a specific part of its mandate or because alleged human rights violations are brought to its attention by individuals or others in the course of other activities. Experience suggests that every field mission will, at least from time to time, receive complaints from individuals that their human rights have been violated.

The extent to which field missions can take up such cases depends on a number of factors, including their size and resources. In large missions with an extended network of field offices, it is often possible to monitor general trends, to investigate individual incidents, and to react systematically to allegations. Small field operations will necessarily be more limited in how they can react. Even small operations, however, have a variety of options at their disposal for dealing with individual complaints, and they may request support from other OSCE political bodies or institutions if circumstances merit.

Based on a survey of the smaller OSCE field operations, this guide focuses on the particular types of violations and situations most likely to come to the attention of OSCE field personnel.

¹ For simplicity, the terms “mission” and “field operation” are used interchangeably throughout this handbook to refer to all types of OSCE establishments in the field, including missions, offices, centres, presences, and other such operations.

² For a more detailed manual on human rights monitoring in general, see *Training Manual for Human Rights Monitoring*, Professional Training Series No. 7, UN Office for the High Commissioner for Human Rights.

HOW TO USE THIS HANDBOOK

The chapters that follow are intended to serve as a practical guide for OSCE field operations faced with individual complaints.

PART I outlines the basic context of the work of OSCE field operations on human rights issues. It provides a brief overview of the OSCE's human dimension and the nature of OSCE commitments on human rights. It explains that, since the OSCE sees human rights as a core element of security, all OSCE field personnel should be aware of, and prepared to take appropriate action on, human rights issues. **PART I** also provides an overview of the OSCE political bodies and institutions that deal with human rights issues and some of the precedents for OSCE action in case of human rights violations. Their work is not limited to countries with OSCE field operations. Human rights violations may, and do, occur in all OSCE participating States. This handbook may also be used to guide actions by NGOs, human rights defenders, government officials, and so on.

PART II defines individual complaints of human right violations. It offers guidance on how to prepare a file, interview a complainant, investigate a case, and report on the findings. It also provides an overview of OSCE and other international standards with regard to a number of the types of human rights violations most likely to come to the attention of OSCE field operations through individual complaints.

PART III discusses the various options and approaches available to OSCE field operations if they judge that an individual complaint, or pattern of complaints, merits action by the OSCE. It outlines types of domestic referral mechanisms, actions that can be taken by the mission itself, possible action that can be recommended to other OSCE bodies, and the role of other international organizations in dealing with individual complaints.

It is also recommended that focused training seminars be conducted on a regular basis as a complement to this handbook.

PART I

THE BASIC FRAMEWORK FOR INDIVIDUAL COMPLAINTS

CHAPTER 1

HUMAN RIGHTS AND THE OSCE

The Organization for Security and Co-operation in Europe (OSCE) was the first among international security organizations in recognizing human rights as an integral part of security. When the Helsinki Final Act was adopted in 1975, it marked the first occasion that the “human dimension” of security – in essence, human rights principles – was included as an explicit element of a regional security framework on the same basis as politico-military and economic issues.³ The Helsinki Final Act recognizes human rights as “an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and co-operation” among states. The principles included in the Helsinki Final Act were later expanded and reinforced in numerous follow-up agreements, including OSCE summits and ministerial meetings. The documents issued at these meetings established human rights as a central element of the work of the organization. OSCE commitments are adopted by consensus among all participating States and are politically binding. This means that they are *immediately binding* on *all* OSCE participating States, which is different from the United Nations, for example, where standards must first be signed and ratified before they enter into force.

Thus, the importance of human rights for the OSCE is well established and beyond question. At the most recent OSCE Summit (Istanbul, 1999), for example, the heads of government signed the Charter for European Security, which states: “We reaffirm that respect for human rights and fundamental freedoms, democracy and the rule of law is at the core of the OSCE’s comprehensive concept of security.”⁴

Because the OSCE regards security as a broad concept that includes a politico-military dimension, an economic dimension, and a human dimension, there is no hierarchy among OSCE principles, and no government can claim that it must establish political or economic security before addressing human rights and democracy. Furthermore, all OSCE participating States have accepted that implementation of OSCE human rights commitments is a matter of *direct and legitimate concern* to all participating States and is *not an internal affair*.⁵ At the Istanbul Summit, the heads of government affirmed that: “All OSCE commitments, without exception, apply equally to each participating State.... Participating States are accountable to their citizens and responsible to each other for their implementation of their OSCE commitments. We regard these commitments as our common achievement and therefore consider them to be matters of immediate and legitimate concern to all participating States.”⁶ OSCE participating States are thus not in a position to avoid discussions about human rights problems or to assert that raising human rights concerns constitutes interference in internal affairs.

³ The text of the Helsinki Final Act and other OSCE documents are available in full on the OSCE website at <http://www.osce.org>. Documents containing OSCE human dimension commitments have been compiled both chronologically and thematically in *OSCE Human Dimension Commitments, A Reference Guide* (Warsaw, OSCE/ODIHR, 2001), which is also available electronically on the ODIHR website at <http://www.osce.org/odihr> and is searchable by issue or by document. All OSCE documents and commitments referred to in this guide can be found in these sources.

⁴ Charter for European Security, Paragraph 19.

⁵ This commitment is stated most clearly in the Preamble to the Moscow Document (1993).

⁶ Charter for European Security, Paragraph 7.

The OSCE's comprehensive approach to security and its specific commitments create a context for the work of all OSCE field operations. It is within this context that OSCE field operations carry out their mandates to assist host governments in solving specific problems and in meeting their commitments. Since the human dimension cannot be separated from the other work of the organization, all field operations have a responsibility to ensure that their activities contribute to the fulfilment of OSCE principles and commitments. This is the framework in which OSCE field personnel should understand the human dimension and should be prepared to deal with human dimension issues, including individual complaints of human rights violations, in the course of their work.

1.1 THE HUMAN DIMENSION

The term “human dimension” encompasses human rights and fundamental freedoms, democracy, tolerance, and the rule of law, as well as national minorities, human contacts, and international humanitarian law. OSCE participating States have agreed in their human dimension commitments that pluralistic democracy and the rule of law are prerequisites for peace and security and are essential for ensuring respect for human rights and fundamental freedoms. The OSCE commitments in the field of human rights are broad and detailed. In a number of instances, they go beyond those adopted by the United Nations or other international organizations. An outline of some of the principal issues likely to be faced by field operations is included in the chapters that follow.

The OSCE and its field operations have an important role to play in the area of promoting human dimension commitments, as they can help to point out weaknesses in state structures and practices and can assist in finding solutions. OSCE field operations are often located in states in transition to democracy where, in some cases, the highest authorities want change but others “in the system” may be stuck in their old ways. Resolution of individual complaints can therefore be helpful to the leadership, as the steps taken in individual cases may pave the way for greater changes.

The OSCE is equipped with a variety of mechanisms, structures, and activities aimed at the effective implementation of human dimension commitments. It is involved in following, and intervening in, both individual cases and patterns of alleged human rights violations. Unlike some other human rights treaties, e.g., the European Convention on Human Rights, the OSCE's basic texts have not created a court or other individual petition body to enforce

the implementation of OSCE commitments. This reflects the political character of the OSCE and the intention not to duplicate existing mechanisms. Instead, there are a number of other ways in which individual cases may be dealt with directly or brought to the attention of the institutions or political bodies of the OSCE. These mechanisms are, of course, not limited to usage only by field operations but apply equally to all participating States.

1.2 POLITICAL INSTRUMENTS

The human dimension is fully integrated in the OSCE political consultation process and in the work of the decision-making bodies and the OSCE field missions. Since 1994, representatives of the participating States have conducted a regular dialogue on the human dimension – including cases of non-implementation of human dimension commitments – within the Permanent Council. The OSCE Chairman-in-Office may inform the Permanent Council of cases of alleged non-implementation on the basis of information received by OSCE bodies such as the Office for Democratic Institutions and Human Rights (ODIHR) and the field missions. Any participating State may also raise in the Permanent Council general concerns or specific cases of human rights violations. The heads of OSCE institutions and field operations report regularly to the Permanent Council and often include human rights issues and individual cases in their reports. The annual Human Dimension Implementation Meetings, Supplementary Human Dimension Meetings, and Human Dimension Seminars provide additional venues in which participating States, non-governmental organizations, and OSCE bodies can raise human rights concerns and individual cases in any of the 55 participating States.

Beyond formal meetings, the Chairman-in-Office can, and does, also make direct interventions in individual cases and situations. In some instances, these are private diplomatic appeals to governments, but, in particularly serious instances, they may be public statements. Heads of institutions and field operations also frequently intervene privately or publicly in particular cases. The OSCE has also created a number of special procedures, such as the Moscow Mechanism⁷ and new measures adopted at the Istanbul Summit,⁸ under which participating States can take action in response to serious human rights violations, but these have rarely been put to use. A more detailed description of how various OSCE human rights bodies can assist field operations in following up on individual complaints of human rights violations is included in Part III.

⁷ The Moscow Mechanism, set forth in the Document of the Moscow Meeting of the Conference of the Human Dimension of the CSCE of 4 October 1991, and later streamlined through the Document of the Fourth Meeting of the CSCE Council (Rome) on 1 December 1993, establishes a formal mechanism for sending missions of experts and rapporteurs to participating States in response to human rights violations. For more, see http://www.osce.org/odihr/human_rights/moscow_mechanism/.

⁸ Paragraph 36 of the Charter for European Security adopted in Istanbul in 1999 includes a number of procedures to ensure compliance with commitments, including dispatching delegations to provide advice or representatives for fact-finding missions, or convening reinforced Permanent Council Meetings.

1.3 INSTITUTIONS

The Office for Democratic Institutions and Human Rights (ODIHR) is the main OSCE institution concerned with the human dimension. Its mandate includes assisting the participating States in building democratic institutions and in implementing their human dimension commitments. The ODIHR also provides advice and assistance to the OSCE Chairman-in-Office and the OSCE field operations. It assists the monitoring of implementation by participating States of their human dimension commitments by serving as a venue for bilateral meetings, acting as a clearing house for the exchange of information, and by providing support to field missions. In certain instances, the ODIHR intervenes directly with states on broad human rights issues and on individual cases. The ODIHR may also pursue individual cases in other ways, including in the Permanent Council, in Human Dimension Meetings, and in public statements.⁹

The Representative on Freedom of the Media promotes full compliance with OSCE principles and commitments in respect of freedom of expression and free media. The Representative concentrates on rapid response to serious non-compliance with OSCE commitments and seeks direct contacts with the participating State and other parties involved. As such, the Representative on Freedom of the Media frequently becomes involved in cases of individuals whose rights to freedom of expression may have been violated.

The High Commissioner on National Minorities (HCNM) provides early warning and, as appropriate, early action with regard to tensions involving national minority issues. The High Commissioner's goal is to develop a process to exchange views, co-operate, and take concrete steps to de-escalate tensions and resolve underlying issues. Although the High Commissioner's mandate is almost always relevant to the human dimension work of OSCE field operations, dealing with individual cases is not part of the HCNM's mandate.

⁹ For more on the mandate of the ODIHR, see Helsinki 1992 (Decisions, Chapter VI, Paragraphs 4-6), Rome 1993 (Decisions, Chapter IV, Paragraphs 3-4), Budapest 1994 (Decisions, Chapter VIII, Paragraphs 8-13), and Vienna 2000 (Decision 1, Paragraphs 7 and 13).

1.4 OSCE FIELD OPERATIONS

Wherever there is an OSCE field operation, it should be known to the government and public alike as a body dedicated to fulfilling the organization's policies, goals, and commitments. Thus, every field mission has a responsibility, either explicitly written into its mandate or implicit in its existence as a representative arm of the OSCE, to uphold and promote OSCE principles and commitments. The promotion of human rights and fundamental freedoms, democracy, and the rule of law are essential goals of the OSCE and are therefore relevant activities of all field missions.

CHAPTER 2

OSCE COMMITMENTS AND PRECEDENTS

The OSCE human dimension commitments are politically binding, i.e., they are not treaty obligations. This means that there is no ratification process and that the commitments are immediately binding on all participating States from the moment they are adopted. As they are not legally binding, there is no legal enforcement mechanism such as an international court, but there are instead a number of other options at the OSCE's disposal, which are described later in this handbook.

2.1 OSCE COMMITMENTS AND OTHER HUMAN RIGHTS STANDARDS

The founding document of the OSCE (then the CSCE), the Helsinki Final Act, acknowledges as one of its 10 guiding principles the “respect for human rights and freedoms, including the freedom of thought, conscience, religion or belief”. Since the creation of that document in 1975, a long series of OSCE meetings, documents, and summits has expanded and set out in substantial detail an increasingly broad range of human dimension commitments. These include commitments on civil, political, economic, social, and cultural rights; rule of law; democracy; tolerance and non-discrimination; national minorities and indigenous persons; migration; and international humanitarian law. The number of issues covered by these commitments continues to expand. For example, the Vienna Ministerial Council in 2000 endorsed the OSCE's first extended set of commitments against trafficking in human beings, which, notably, also explicitly recognized the role the OSCE can play in resolving individual cases of human rights violations related to trafficking.¹⁰

In addition, the OSCE has incorporated by reference a number of other human rights standards into its commitments. Various OSCE documents have endorsed or urged the participating States to consider signing and ratifying the following international human rights documents:¹¹

- ▶ The Universal Declaration of Human Rights (UDHR);
- ▶ The International Covenant on Civil and Political Rights (ICCPR);
- ▶ The International Covenant on Economic, Social and Cultural Rights (ICESCR);
- ▶ The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- ▶ The UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- ▶ The Convention on the Rights of the Child (CRC);

¹⁰ Decision 1 of the Vienna 2000 Ministerial Council enhanced the OSCE's efforts to combat trafficking in human beings.

¹¹ The texts of UN documents and treaties relating to human rights are available on the website of the UN High Commissioner for Human Rights at <http://www.unhchr.ch>. The European conventions can be found on the Council of Europe website at <http://www.coe.int>. The Geneva Conventions are on the website of the International Committee of the Red Cross at <http://www.icrc.org>.

- » The Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- » The UN Standard Minimum Rules for the Treatment of Prisoners/UN Code of Conduct for Law Enforcement Officials;
- » The European Convention for the Protection of Human Rights and Fundamental Freedoms;
- » The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- » The Geneva Conventions and their related protocols;
- » The Convention Relating to the Status of Refugees and its 1967 protocol; and
- » The UN Declaration on the Rights and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

It is important for OSCE staff dealing with human dimension issues to be familiar with the contents of the documents listed above and to know which of them their host governments have ratified.¹² Knowing all the relevant standards enables OSCE human dimension officers to choose the most appropriate one to use and refer to in every specific situation. As noted earlier, all participating States are bound by all OSCE commitments, and these commitments may in some instances, by reference, bind the participating States to other international standards and principles enshrined in other international human rights instruments. This is, for example, the case with the United Nations Standard Minimum Rules for the Treatment of Prisoners, as well as the United Nations Code of Conduct for Law Enforcement Officials.¹³

2.2 OSCE PRECEDENTS

The OSCE has developed many precedents for dealing with allegations of human rights violations, including individual cases. Sections 1.2. and 1.3. of this handbook outline some of the actions that OSCE political bodies and institutions have taken in the past in response to allegations of human rights violations. Some OSCE field operations have included large human dimension sections. Actions undertaken in individual cases have included fact-finding, investigations, interventions with governments, appeals for the release of prisoners, trial monitoring, assistance to refugees and displaced persons, mediation, and other steps. In short, field missions have a wide array of possible tools at their disposal for dealing with individual complaints. These are spelled out in more detail in Part III.

¹² For the current status of ratifications of different human right treaties, see the ODIHR website.

¹³ Concluding Document of the Vienna Third Follow-up Meeting, 19 January 1989, Paragraph 23.3.

2.3 OSCE FIELD MISSIONS AND INDIVIDUAL COMPLAINTS OF HUMAN RIGHTS VIOLATIONS

OSCE missions are organized in different ways in different countries. They also vary considerably in size. In some countries, OSCE missions include hundreds of international staff members, a network of field offices, and detailed mandates. In other countries, they include only a very small staff, and their mandates may be set out in more general terms. Almost all field operations have at least one human dimension officer, and all have the human dimension as part of their mandate, explicitly or implicitly.¹⁴

Whatever their size or special mandate, OSCE field operations are likely to be confronted at some stage with individual complaints of human rights violations. It is incumbent on them to respond to such complaints in a serious and professional manner, even if they are not in a position to take up specific cases systematically. The next chapter of this handbook focuses on the types of individual human rights violations that in the past have been most likely to result in individual complaints to OSCE missions.

¹⁴ The mandates of all OSCE field missions are available at http://www.osce.org/field_activities/.

CHAPTER 3

HUMAN RIGHTS VIOLATIONS BY THE STATE AND OTHER ENTITIES

Under international human rights law, the state is responsible for the protection of the human rights of its citizens and others under its jurisdiction. The Charter of Paris called the protection and promotion of human rights “the first responsibility of governments”.¹⁵ State obligations in international human rights law can be divided into three types:

1. **Negative obligations** require that the state and all its organs and agents abstain from taking any action that violates internationally recognized human rights or fundamental freedoms. Examples of violations of human rights by the state might include such acts as:

- ▶▶ Arbitrary arrest or detention;
- ▶▶ Torture;
- ▶▶ Extrajudicial execution.

2. **Positive obligations** require that the state also protect human rights and prevent violations. This kind of obligation requires the state and its agents to take the measures necessary to prevent others from violating the rights of an individual or group. Examples of violations of such obligations include:

- ▶▶ Failure to act when members of a group, such as an ethnic group or private security forces, attack another group or individual;
- ▶▶ Failure to act in cases of violence against women, such as domestic violence and/or rape;
- ▶▶ Failure to prevent discrimination;
- ▶▶ Failure to provide remedies, restitution, and compensation for human rights violations;
- ▶▶ Failure to enforce court decisions that would have provided remedies for human rights violations.

3. The third type of violations are **programmatic** in nature. Programmatic obligations include ensuring the right to:

- ▶▶ Food;
- ▶▶ Housing;
- ▶▶ Work.

Non-governmental entities can also be involved in perpetrating abuses of human rights. Examples of such acts by non-state entities include:

¹⁵ Adopted by the CSCE Summit in Paris, 1990.

- » Violations of individual human rights by separatist entities in *de facto* control of a portion of the territory of a country;
- » Abuses by armed rebel groups or by paramilitary groups, including executions, detention of civilians, or evictions of communities.

In most instances, individual complaints received by OSCE missions allege violation of human rights by the government. In some cases, however, individuals may lodge complaints of violations by non-government actors; these, by their nature, are often harder to pursue effectively.

In order to identify a violation of human dimension commitments, it is necessary to:

- » Identify which commitment is applicable; and
- » Determine whether a violation has taken place.

In times of armed conflicts or public emergency of a serious nature, a state may temporarily restrict the exercise of certain rights but only to the extent that is absolutely necessary under the prevailing circumstances. If a state of public emergency is declared in the OSCE area, the state concerned must immediately inform the ODIHR.¹⁶ It is important to note that some rights are “non-derogable” and cannot be limited under any circumstances, such as torture and ill-treatment, prohibition against slavery, and prohibition of retroactive penal laws.

¹⁶ Moscow 1991, Paragraph 28.10, and Helsinki 1992, Paragraph 5b.

PART II
STANDARDS, INFORMATION
GATHERING, AND REPORTING
ON INDIVIDUAL COMPLAINTS

The presence of an OSCE field operation in a country represents the determination of both the host government and the organization to promote compliance with OSCE commitments and principles. Even when improving human rights is not a specific part of a mission's mandate, experience shows that allegations of human rights violations will at least occasionally be brought to its attention while it is at work in the country. Such allegations may come from private individuals, local human rights groups, or from other sources. Sometimes, allegations come in written form, and, at other times, individuals approach OSCE personnel directly at their offices or elsewhere.

A mission's response to such approaches will depend on many factors, including the nature, credibility, and seriousness of the allegations with which it is presented. Missions' responses will also be guided by their mandates, size, and resources. Missions should also consider the extent to which the host government itself is responding effectively to such allegations and seeking to remedy them. Some missions may be well situated to conduct systematic follow-up activities, including investigations of individual incidents, prison visits, and trial monitoring. Some missions maintain and regularly update a list of cases to raise with the host government. Small missions may not have the means for in-depth responses to individual complaints, particularly if they receive a large number of them. Nonetheless, even the smallest missions can react to serious cases or to patterns of violations and can call on other resources of the OSCE if necessary to deal with a particularly grave situation.

In any event, OSCE field missions approached by individual complainants should respond seriously and professionally. If individuals who approach the mission are not treated in a dignified way, this can undermine the confidence of the local population in the entire mission. The first step is to listen carefully to the information being conveyed and to make a record of the complaint. The next step is to assess whether the allegation may constitute a violation of OSCE human dimension commitments or other international standards binding on the host country. It may be possible to make such an assessment immediately or it may be necessary to conduct further interviews – or even an investigation – to be able to make an accurate assessment of the case. The following chapters provide background and guidance on each of these issues.

CHAPTER 4

WHAT IS AN INDIVIDUAL COMPLAINT?

4.1 THE NATURE OF INDIVIDUAL COMPLAINTS

An individual complaint is an allegation received by a mission of a specific human rights violation against an individual or a group of individuals or of the state's inaction if the alleged violation was committed by non-state actors.

Individual complaints may be raised either by the alleged victim or victims or by other persons or organizations on behalf of the victims. Individual cases of human rights violations may be reported to an OSCE mission by:

- ▶ People who contact the mission on their own initiative, including individuals who wish to testify about alleged treatment to which they have been subjected;
- ▶ Family members of alleged victims;
- ▶ Other individuals with whom the mission may come into contact in the course of its work, such as community leaders, political activists, human rights defenders, defence lawyers, or members of minority or religious groups;
- ▶ Local human rights organizations or other NGOs;
- ▶ Other international organizations and institutions working in the region;
- ▶ The media;
- ▶ Another OSCE body.

If someone besides the alleged victim files an individual complaint, it is important to try to ascertain whether the victim welcomes OSCE involvement in the case. In some instances, an individual may fear further persecution or harassment if his or her case is pursued; OSCE missions should be sensitive to any such concerns. Even in such cases, however, it may be possible to follow up in a more general way, e.g., by approaching the government about a pattern of human rights abuses without mentioning the specific individual in question. In other instances, e.g., if the individual in question has disappeared or is being held incommunicado in detention, it may not be possible to discover his or her wishes. In general, it would be reasonable in such serious cases to respond to concerns raised by family members or others. However, it is of utmost importance that every OSCE staff member always keep in mind the principle of *do no harm*, i.e., even though a positive outcome cannot be ensured, it should be clear that any action taken by the mission will not worsen the situation for the victim.

Whether or not an OSCE field mission is routinely engaged in monitoring, investigating, or reporting allegations of individual violations, it is important to respond to such individuals in a professional manner, to treat the complainant politely and respectfully, and to collect all data in a systematic fashion. Sometimes, it may be necessary for the field mission to take a statement on the spot; at other times, it may be more suitable to decide on a later meeting in a more private setting. (Guidance for conducting interviews is provided in Chapter 6 of this handbook.) An OSCE mission may also learn of an individual violation from other sources, such as a newspaper article or another diplomatic mission, and may choose to look further into the matter.

OSCE staff should be accessible for individuals who wish to bring complaints to their attention. In missions that receive many complaints, it is a good practice to introduce designated office hours during which a competent officer is present and available to receive complaints. Since some complainants may not wish to, or be able to, present themselves at the OSCE office, it is also important that OSCE staff be accessible outside the office. Sometimes, it may be preferable to meet an individual in the office of a local human rights NGO or lawyer or at another venue where a complainant feels comfortable.

Because most field missions have limited resources to follow up on individual cases, it will often be necessary to prioritize which cases to focus on. In general, priority should be accorded to a case if:

- ▶▶ It is particularly urgent, such as when somebody's life or safety is endangered;
- ▶▶ The case is part of a pattern of violations of human rights;
- ▶▶ OSCE involvement seems likely to contribute positively to a satisfactory resolution of the complaint.

4.2 HOW TO DEAL WITH AN INDIVIDUAL COMPLAINT

The manner in which to deal with an individual complaint depends on the nature of the case, its sensitivity, the current political and security situation, and other considerations. In general, however, a mission should consider the following standard steps:

1) First contact

When an individual complaint is made, the first step is to determine whether it is appropriate for the field mission to pursue the case. If an individual presents the complaint in person, the staff member involved should listen carefully and pose preliminary questions to ascertain basic facts and circumstances. It is also possible to ask the complainant to fill in a standardized form (a sample form is included as Annex 3 to this handbook).

If the complaint arrives in written form, the mission should study the information it contains. A response should be provided to the complainant acknowledging receipt of the complaint and, if appropriate, inviting him or her to visit the mission to provide further information.

Whether the complaint is lodged orally or in written form, the mission should make a careful record of the details of the allegations and the contact information of the complainant. This should be placed in an individual file that should be kept in a locked and secure filing cabinet.

2) Preliminary assessment

Based on the information provided, the mission should make a preliminary assessment on whether to pursue the case further. The first point to consider is whether the complaint constitutes a violation of OSCE commitments or other international human rights standards. For example, depending on the specific circumstances, if a complaint relates to an individual's dismissal from a job, eviction from an apartment, or a problem with collecting a pension, this may not qualify as a violation of human rights that could be legitimately pursued by the mission. On the other hand, if one of these circumstances has occurred because of an individual's ethnicity, religion, or political activities, then it might merit follow-up. Chapter 5, on international human rights standards, provides basic guidance on what may be considered a violation of human rights.

In general, individuals alleging human rights violations are expected to seek a remedy through established domestic means before seeking international assistance. Before becoming involved, missions should consider whether complainants have attempted to resolve their problem through national means, such as courts, ombudsman offices, or other avenues. However, if circumstances in the host country are such that effective and timely domestic remedies are either not available or seem unlikely, or if the allegation is sufficiently grave or urgent, missions can become involved even when domestic remedies have not been pursued.

If a complaint clearly has no merit or credibility, or if it may be legitimate but does not involve violations of OSCE commitments or other international human rights standards, then the complainant should be so informed within a reasonable period of time in order not to create a false impression that the mission has agreed to pursue the case. If appropriate, the mission could direct the complainant elsewhere to pursue his or her grievance.

If the complaint has possible merit but the mission makes a preliminary determination that it is not in a position to become involved, the mission should be prepared to offer the complainant some suggestions about how he or she might pursue a remedy. This advice could include referring the complainant to appropriate government offices, courts, or other groups that deal with human rights issues. If there are free or low-cost legal services available in the country, these are also valuable resources. It is a good practice for missions to develop and regularly update a handout on how to pursue domestic remedies and on local resources that might be available to help complainants. Chapters 8 and 11 provide information on national and international referral systems that missions might wish to recommend.

If the mission decides to pursue the case further, it will need to make a judgement as to how to proceed. In some cases, the complaint may be so compelling and urgent that the mission decides to take action immediately on the basis of the information initially provided. This might be the case, for example, if someone's life or safety is apparently in danger, or if a prominent leader is arrested. In many instances, however, the mission may wish to obtain further information before taking action. Such information may be gathered through a more thorough interview with the complainant or by obtaining more information from witnesses and others who may have knowledge of an incident, by checking with independent sources, and through inquiries with the authorities about the incident and their response to it. If the mission decides to make further inquiries or to take other action on the complaint, it should inform the complainant of its intentions. It should also request that

the complainant inform the mission of any new developments, or especially to inform the mission if the case is satisfactorily resolved.

3) Next steps

The following chapters of Part II are designed to assist field operations in following up properly on individual complaints on the basis of the information collected. Chapter 5 provides basic background on OSCE human rights commitments and other international human rights standards intended to help field operations make a sound preliminary assessment as to whether an individual complaint constitutes a human rights violation that could merit further action by the mission. In the event the mission decides to secure further information on a specific individual complaint, Chapter 6 provides guidance on conducting an interview, and Chapter 7 provides guidance on conducting an investigation. The mission may decide at any stage of this process that it has sufficient information to raise a case with government authorities or to take other forms of action. Part III of the handbook discusses various options for action available to OSCE missions.

4) Cases that are not taken up

There may be a number of cases that the missions choose not to take up. The reason for such a decision may be that the case does not involve a human rights violation, that pursuing the complaint is beyond the mandate or resources of the mission, or that there are effective domestic remedies available that have not been pursued. A mission may also judge that a complaint is not sufficiently credible or substantiated, e.g., it is internally inconsistent in significant ways, it contradicts other facts known to the mission, or it appears to be politically motivated. In other instances, a different international organization may be better placed to deal with the complaint. For example, if the complaint concerns treatment of refugees, it is more appropriate to direct it to the local representative of the UN High Commissioner for Refugees, or, if it concerns treatment of a prisoner, the ICRC may better suited to follow up.

CHAPTER 5

INTERNATIONAL HUMAN RIGHTS STANDARDS

OSCE and other human rights standards described in this chapter were selected on the basis of reports from OSCE missions about the types of complaints they receive most frequently. The information given is not exhaustive; rather, its aim is to provide an overview and guidance on where to look if more information is needed. The material is intended to assist field operations in making a sound judgement as to whether an individual complaint reflects a violation of OSCE commitments or other international human rights standards. More detailed information concerning OSCE commitments on these and other human rights issues is available on the ODIHR website.¹⁷ The types of human rights violations described below are also violations of domestic law in most OSCE participating States.

5.1 RIGHT TO LIFE

5.1.1 THE DEATH PENALTY

There is no consensus within the OSCE concerning the abolition of capital punishment, but the large majority of OSCE participating States (43) have fully abolished the death penalty, and only five participating States actively carry out executions. Relevant OSCE documents stipulate that capital punishment may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to international commitments. In addition, participating States are committed to keep the question of abolition of capital punishment under consideration, to co-operate on the subject with relevant organizations, to exchange information regarding the use of the death penalty, and to make available to the public information regarding the use of the death penalty.

In light of the above, a sentence of capital punishment would not in itself constitute a violation of OSCE commitments. However, a death sentence would violate OSCE commitments and be a legitimate subject for an individual complaint if the legal process through which it is imposed does not meet the stringent procedural safeguards and due-process-of-law requirements in OSCE documents (see Section 5.5).

In addition, OSCE commitments incorporate the provisions of the International Covenant on Civil and Political Rights (ICCPR) with regard to the impartial operation of the judiciary, which include the rights to a review by a higher court and the right to seek a pardon or commutation. The ICCPR also includes a prohibition on imposing a death sentence on pregnant women or for crimes committed by persons under 18 years of age.¹⁸

¹⁷ See <http://www.osce.org/odihr>. Click on *OSCE Human Dimension Commitments, A Reference Guide*, which will enable the user to conduct an issue-based search.

¹⁸ ICCPR, Articles 6, 14, and 15.

The UN Safeguards Guaranteeing the Rights of Persons Facing the Death Penalty state that:

- » The death penalty shall only apply to the most serious crimes, i.e., intentional crimes with lethal or other extremely grave consequences;
- » A death sentence shall not be carried out on new mothers or on persons who are mentally incapacitated;
- » The death penalty may only be imposed when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of facts.

The Second Optional Protocol to the ICCPR abolishes the death penalty, as does Protocol No. 6 to the ECHR, which all Council of Europe members must ratify.

Individual complaints regarding capital punishment would be appropriate matters for follow-up by OSCE field operations if any of the standards or safeguards listed above have been violated.

For more detailed information on the death penalty in the OSCE context, see *The Death Penalty in the OSCE Area: Background Paper 2003/1*.¹⁹

5.1.2 EXTRAJUDICIAL, SUMMARY, OR ARBITRARY EXECUTIONS

An arbitrary execution is the killing of a person by an agent of the state or any other person acting under government authority or with its complicity, tolerance, or acquiescence, but without due judicial process.

Extrajudicial, summary, or arbitrary executions take place outside the judicial process and are illegal under national and international law. Examples of such executions include:

- » Killings carried out by order of a government or with its consent, e.g., by “hit squads”, paramilitary groups, or secret police;
- » Killings of civilians by members of the armed forces in violation of the laws of war;
- » The death of an individual while in the custody of law enforcement officials or other official capacity if the death is not followed by an official inquiry;
- » Death resulting from abuse or excessive use of force by law enforcement officials;
- » An execution in which the due process of law, in particular the minimum guarantees as set out in Articles 6, 14, and 15 of the ICCPR, has not been respected.

¹⁹ OSCE/ODIHR Background Paper for the Human Dimension Implementation Meeting, October 2003, available from the ODIHR in book form or on the ODIHR website at <http://www.osce.org/odihr>.

The UN General Assembly's Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary, and Summary Executions (1989) set out the actions every government should take to prevent, investigate, and punish any extrajudicial executions. These include:

- » Guaranteeing protection to individuals or groups threatened with death;
- » Ensuring that detainees are held in recognized places of detention and that accurate information is available to their relatives, lawyers, and other persons;
- » Granting independent inspectors unlimited access to all places of detention at any time;
- » Co-operating with international investigations;
- » Conducting thorough, prompt, and impartial investigations in all suspected cases;
- » Ensuring that a thorough autopsy is carried out to establish – at the least – the identity of the deceased and the cause and the manner of death;
- » Protecting all those involved in the investigations from intimidation and suspending from office those implicated;
- » Keeping families and legal representatives of the deceased informed at all stages of the investigation, notifying them of any hearings, and ensuring the return of the deceased's body on completion of the investigation;
- » Ensuring that those identified by the investigations as participants in such an act are brought to justice and that:
 - » The justification by a person that he or she was “ordered” to commit the execution is no defence;
 - » Superior officers/officials are responsible for the acts of those under them if they had a reasonable opportunity to prevent the acts;
 - » No blanket immunity from prosecution is granted to those involved;
- » Providing fair and adequate compensation to the families and dependents of the deceased within a reasonable period of time.

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide the following principles:

- » Non-violent means are to be attempted first;
- » Warning must be given;
- » Force is to be used only when strictly necessary;
- » Force is to be used only for law enforcement purposes in self-defence or in defence of others;

- » No exceptions or excuses shall be allowed for unlawful use of force;
- » Use of force is always to be proportional to lawful objectives;
- » Restraint is to be exercised in the use of force;
- » Damage and injury are to be minimized.

For more information on limits on the use of force by law enforcement officials, consult the UN Code of Conduct for Law Enforcement Officials, which the OSCE participating States have committed themselves to observe.²⁰ Extrajudicial, summary, or arbitrary executions are grave violations of human rights. Individual complaints of such violations are extremely serious matters and would be appropriate issues for follow-up by OSCE field operations.

5.1.3 ENFORCED DISAPPEARANCES

The UN Declaration on the Protection of All Persons from Enforced Disappearance (1992) defines victims of enforced disappearances as people:

- » Who have been taken into custody by state agents;
- » Yet whose whereabouts and fate are concealed and whose custody is denied.

An enforced disappearance is most likely to occur when:

- » Individuals are arrested, detained, or abducted against their will or otherwise deprived of their liberty by officials of different branches and levels of the government or by organized groups or private individuals acting on behalf of, or with the direct or indirect support, consent, or acquiescence of, the government; and
- » This is followed by the government's refusal to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of their liberty.

There have been numerous reports of disappearances in the OSCE area in recent years. In conflict or post-conflict situations in particular, countries may be faced with a sizeable number of disappearances. In some instances, the fate of missing individuals becomes a highly charged political issue that can complicate conflict resolution or reconciliation. The issue of disappearances has also been taken up at OSCE Human Dimension Meetings, including by spouses of missing persons who have attended and spoken.

²⁰ Concluding Document of the Vienna Third Follow-up Meeting, 19 January 1989, Paragraph 23.3.

Enforced disappearances are grave violations of human rights and constitute an appropriate issue for OSCE involvement. If OSCE field operations receive an individual complaint of a disappearance, they should first consider whether it might best be handled by existing mechanisms, if there are any. In some post-conflict countries, there are commissions on missing persons mandated to resolve specific cases. The International Committee of the Red Cross (ICRC) may also be involved in seeking to resolve cases of missing persons; OSCE field missions should be in touch with the ICRC to ascertain whether it is already taking action.

In the event that a mission receives a credible complaint of an enforced disappearance in a non-conflict situation, a first appropriate step would be to request that the government conduct a search for the missing person in official or unofficial detention centres. If a disappearance has occurred and a government denies having been involved, the government can be asked to conduct a thorough and convincing investigation into the disappearance and to release the findings publicly. Other possible steps are set out in Part III.

5.2 TORTURE

The prohibition against torture is found in all major international and regional human rights treaties. The OSCE has repeatedly committed itself to the abolition of torture. The Charter of Paris for a New Europe (1990), for example, states that “no one will be ... subject to torture or other cruel, inhuman or degrading treatment or punishment”, echoing virtually identical language in the Universal Declaration of Human Rights, the ICCPR, and the European Convention on Human Rights. The Concluding Document of the Vienna Third Follow-up Meeting (1989) commits OSCE participating States not only to prohibit torture or other cruel, inhuman, or degrading treatment or punishment but to take effective legislative, administrative, judicial, and other measures to prevent and punish such practices.

Freedom from torture is a non-derogable right, meaning it cannot be suspended under any circumstances. The OSCE Copenhagen Document specifies that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture”.²¹

Other key international standards against torture include the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),

²¹ Copenhagen Document, Paragraph 16.3.

plus the Optional Protocol to the Convention,²² and the Geneva Conventions. Most OSCE participating States have ratified one or more of these treaties. Also of importance is the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment under which the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is mandated to conduct prison visits in the Contracting States. Through its Protocol No. 1, it is also possible for non-members of the Council of Europe to accede to the Convention after an invitation by the Committee of Ministers.

Torture is defined in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment²³ as any act:

- » That is *intentionally* inflicted;
- » By, or on the orders of, or with the agreement of a *public official*, or person acting in an official capacity;
- » Causing severe pain or *suffering*, physical or mental, on a person, in order to:
 - » Obtain information or a confession;
 - » Punish;
 - » Intimidate or coerce;
 - » Or for any other reason based on discrimination.

Acts of sexual violence committed by state agents, including rape, sexual slavery, and sexual mutilation, amount to torture and are thus prohibited under both international human rights law and humanitarian law. Individual complaints of sexual violence by state agents such as the acts listed above would represent a legitimate case for follow-up by an OSCE field operation. When sexual violence does not involve agents of the state but is rather an individual criminal act, the state nevertheless has the responsibility to protect victims and punish perpetrators. If a state fails to take such action – and particularly if a pattern of state inaction in such cases is apparent – this would also constitute a reason for an OSCE mission to pursue a case.

²² The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment creates a mechanism for international and national monitoring of places of detention. It was opened for signature on 18 December 2002 and has not yet come into force. The full text of the Convention and Optional Protocol is available at <http://www.unhchr.ch>.

²³ Article 1.

5.2.1. CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT

International conventions do not define cruel, inhuman, or degrading treatment or punishment in such specific terms as torture. The CAT describes inhuman or degrading treatment or punishment as acts that do not amount to torture. This may be because the acts do not involve severe pain or suffering or because they are not inflicted for one of the enumerated purposes. This could, for example, include unnecessary use of force against prisoners, unacceptable prison conditions, or prolonged solitary confinement. Degrading treatment could include any treatment that grossly humiliates an individual; it would not be necessary for such acts to involve physical mistreatment or pain.

In essence, torture, cruel treatment, inhuman treatment, and degrading treatment are seen as a progression, with torture being the most severe and degrading treatment being at the lower end of the scale. The key point, however, is that all treatment falling into any of these categories is strictly and unequivocally prohibited by OSCE commitments and by international law. As such, any individual complaint alleging torture or cruel, inhuman, or degrading treatment or punishment would be an extremely grave matter and would constitute a valid basis for an OSCE field operation to take action on an individual complaint.

For more detailed guidelines on actions that OSCE field operations can take to combat torture, see *Preventing Torture: A Handbook for OSCE Field Staff*.²⁴

5.3 VIOLENCE AGAINST WOMEN

Violence against women is often committed by relatives, such as husbands or fathers, rather than state actors and would thus fall outside the scope of torture and cruel, inhuman, or degrading treatment or punishment as defined above. Since the 1980s, however, international standards, including OSCE commitments, have emerged that are very clear on the matter of domestic violence and the duties of states to eradicate violence in the family.²⁵ The OSCE Moscow Document states clearly that participating States should “seek to eliminate all forms of violence against women ... by ensuring adequate legal prohibitions against such acts and other appropriate measures”.²⁶ In cases of domestic violence, the UN Committee on the Elimination of Discrimination against Women has recommended that legislation:

²⁴ Published by the ODIHR in 1999, hardcopies are available from the ODIHR, or it can be found on the ODIHR website at <http://www.osce.org/odihr>.

²⁵ Moscow Document, Paragraph 40.7; Charter for European Security, Paragraph 24.

²⁶ Paragraph 40.7.

- » Impose criminal penalties where necessary;
- » Prohibit any defence of “honour” in regard to the assault or killing of a female family member;
- » Provide provision of safe refuge for victims of family violence and support services.

Cultural relativism is often used as an excuse to permit inhumane and discriminatory practices against women in the community, despite clear provisions against such practices in many human rights instruments. The OSCE commitments are firm in their dedication to equal opportunities for women and men. To realize this equality, violence against women must be eradicated; cultural peculiarities cannot be used to excuse violence. For example, the Moscow Document states that full and true equality is a fundamental aspect of a just and democratic society based on the rule of law. This is a firm commitment that every citizen should have the same protection by the judicial system, which goes beyond mere legislation.

Other appropriate measures also include, *inter alia*, provision of social services for women victims of violence and ensuring that public officials entrusted with implementing the laws have adequate training to sensitize them to the needs of women.

If a case involving violence against women is brought to the attention of the mission and the complaint is based on a criminal act in which the state was not involved, the state still has a responsibility to protect the victim and to prosecute the perpetrator. If the state is not fulfilling these responsibilities in an individual case, or especially if there is a clear pattern of state failure to meet its responsibilities in such cases, the complaint might also be cause for follow-up by a field mission.

5.4 DETENTION

5.4.1 ARBITRARY ARREST AND PRE-TRIAL DETENTION

In all OSCE participating States, people can be arrested and detained on the suspicion that they have committed a criminal offence. Whatever the reason for pre-trial detention, and whatever term may be used for it, e.g., “administrative detention”, “preventive detention”, “arrest”, etc., persons detained by the authorities for any reason are entitled to a number of rights and protections. OSCE commitments and other international standards spell out that no one will be subject to arbitrary arrest or detention.

A deprivation of liberty qualifies as *arbitrary detention* when it is carried out by law enforcement officials (or other agents of the state) by methods that are not established by law. Detentions may also be termed arbitrary if the law itself is arbitrary or if the law is enforced in an arbitrary manner, as well as when someone is imprisoned following an unfair trial.

Under OSCE commitments, persons who are detained or arrested have, *inter alia*, the following rights:²⁷

- ▶ To be treated with humanity and with respect for the inherent dignity of a human being;
- ▶ To be informed promptly in a language he or she understands of the reason for the arrest and the charges;
- ▶ To be informed of his or her rights under domestic law;
- ▶ To be brought promptly before a judge;
- ▶ To have legal assistance of his or her own choosing, or to be given free legal assistance;
- ▶ To notify others of his or her detention or arrest and whereabouts;
- ▶ Not to be compelled to confess or incriminate himself or herself or to be forced to testify against others;
- ▶ To have a legally enforceable right to seek compensation for unlawful arrest or detention.

Similar, and in some cases more stringent, standards exist in other international instruments such as the ICCPR and the ECHR, which are legally binding on those states that have ratified them. There are additional standards of treatment applicable to women and juveniles. If any of the rights listed above has been violated, it would provide a legitimate basis for an individual complaint.

For more detailed information on detention, see *Pre-trial Detention in the OSCE Area*.²⁸

5.4.2 IMPRISONMENT

Prisoners, i.e., those convicted of a crime and serving a sentence, should be able to expect a humane and decent prison regime, including at least a minimum level of hygiene, food, clothing, bedding, exercise, and other adequate physical conditions. Prisoners also have certain rights under OSCE and other international standards, including:

²⁷ See the OSCE Vienna Document (1989), the Copenhagen Document (1990), and the Moscow Document (1991).

²⁸ OSCE/ODIHR Background Paper 1999/2, September 1999, prepared for the OSCE Review Conference, available from ODIHR in book form or on the ODIHR website at <http://www.osce.org/odihr>.

- » To be treated with humanity and with respect for the inherent dignity of the human person;
- » Not to be subjected to torture and cruel, inhuman, or degrading treatment or punishment;
- » Not to be discriminated against.

Violations of these rights and conditions could be a cause for a legitimate individual complaint by, or on behalf of, a prisoner or a group of prisoners. OSCE field operations should, however, be aware of other international organizations that may be involved in issues surrounding prison conditions, in particular the International Committee of the Red Cross (ICRC). As a rule, OSCE field personnel should be in touch with the ICRC before undertaking action on behalf of individual prisoners.

More detailed international standards on the conditions of imprisonment can be found in the UN Minimum Standards for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The ODIHR publication *Preventing Torture: A Handbook for OSCE Field Staff* also includes a substantial amount of detailed information on appropriate prison standards.

5.5 FAIR TRIALS

Under OSCE commitments, everyone is entitled to a fair trial. The commitments include a number of specific provisions on fair trials, some of which have already been listed in this chapter (see Section 5.4.1 on arbitrary arrest and pre-trial detention). In addition to these, other OSCE commitments on fair trials require that:²⁹

- » All people are equal before the law and are entitled without any discrimination to equal protection of the law;
- » The independence of judges and the impartial operation of the public judicial service must be ensured;
- » The rules relating to criminal procedure should contain a clear definition of powers in relation to prosecution and the measures preceding and accompanying prosecution;
- » The trial should be held in public;
- » The accused has the right to defend himself or herself in person or through legal assistance of his or her own choosing;

²⁹ See the Copenhagen Document (1990) and the Moscow Document (1991).

- ▶ No one will be tried for any criminal offence unless the offence is provided for by a law that defines the elements of the offence with clarity and precision;
- ▶ Everyone will be presumed innocent until proven guilty.

There are extensive other standards for fair trials in other international instruments, including in the ICCPR and the ECHR.

The principle of a public hearing gives a general right for trial monitors to attend the proceedings. In addition to this general principle, OSCE participating States have explicitly committed themselves to accept the presence of observers at proceedings before courts, specifically including observers sent from other participating States, representatives of non-governmental organizations, and other interested persons.³⁰ The existence of this open invitation as part of the body of OSCE commitments provides a legitimate basis for OSCE field operations to attend trials in individual cases, including if they have received an individual complaint that a person's right to a fair trial is being violated.

However, it is permissible under international instruments to exclude the public from all or part of a trial for reasons of morals, public order, national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.³¹

5.6 TOLERANCE AND NON-DISCRIMINATION

OSCE commitments on non-discrimination are very comprehensive. The first such commitments were included in the Helsinki Final Act, but they were subsequently expanded and have been repeatedly reaffirmed. In the Concluding Document of the Vienna Third Follow-up Meeting, for example, the participating States pledged to “ensure human rights and fundamental freedoms to everyone within their territory and subject to their jurisdiction, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status”.³² More recently, the Istanbul Summit Declaration of 1999 committed participating States “to abstain from any form of discrimination”.³³ The Istanbul reference proscribing discrimination on “any” basis may be regarded as going a step beyond previous formulations, which included lists, since the lists were sometimes interpreted as limited. The Istanbul formula prohibits, for example, discrimination on the basis of sexual orientation.

³⁰ Copenhagen Document (1990), Paragraph 12.

³¹ Copenhagen Document (1990), Paragraph 12

³² Paragraph 13.7. This is also the exact formulation found in Article 2 of the UDHR and Article 2 of the ICCPR.

³³ Paragraph 2.

The OSCE has adopted many commitments affirming that persons belonging to minorities must be able to exercise their human rights without any discrimination.³⁴ Additional commitments relate specifically to non-discrimination against Roma and Sinti.³⁵ Further standards on non-discrimination on ethnic grounds can be found in the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD).

The OSCE participating States have also condemned discrimination against migrant workers.³⁶ As early as in the Helsinki Final Act, they adopted certain non-discrimination commitments on behalf of migrant workers, e.g., migrant workers and host-country nationals should have equal rights with regard to conditions of employment and to social security, and the children of migrant workers should have access to education under the same conditions as the children of host-country nationals.³⁷

Although discrimination against women is included in the general non-discrimination commitments of the OSCE, the organization has adopted a number of additional commitments that specifically target non-discrimination against women and the equality of women and men. They are spelled out in most detail in the Document of the Moscow Meeting of the Conference on the Human Dimension (1991).³⁸ In this document, the participating States have committed themselves to create not only *de jure* equality of opportunity between men and women but *de facto* equality. This means that, in order for a participating State to be seen as complying with this commitment, it is not enough that women and men have equal opportunities in theory, but they must also have such opportunities in reality. The Moscow Document also enumerates a number of measures that participating States should undertake in order to ensure equal opportunities for men and women.

In the Charter for European Security (1999), the participating States committed themselves “to making equality between men and women an integral part of our policies” and “to take measures to eliminate all forms of discrimination against women”.³⁹

³⁴ See, for example, the Copenhagen Document, Paragraphs 30-40.

³⁵ Charter for European Security, Paragraph 20, as well as earlier documents.

³⁶ See, for example, the Concluding Document of Budapest - Towards a Genuine Partnership in a New Europe (1994), Paragraph 30.

³⁷ Helsinki Final Act, Section 6, “Economic and Social Aspects of Migrant Labour”.

³⁸ Paragraphs 40-40.13.

³⁹ Paragraph 24.

OSCE field operations have often been faced with individual complaints of discrimination. To establish that a case of discrimination may have taken place, it is necessary to conduct a comparative test:

- ▶ Is any distinction between similarly situated individuals justified by reasonable and objective criteria?
- ▶ Is the distinction objectively or reasonably related to the aim of the law and practice, and is that aim itself consistent with recognized principles of human rights?
- ▶ Does a law or practice have a discriminatory impact, i.e., “hidden” discrimination that routinely affects a certain group in the society?

Under international human rights instruments, so-called affirmative action, which is undertaken in order to diminish or eliminate conditions that cause or help to perpetuate discrimination, constitutes legitimate differentiation. Moreover, discrimination is not restricted to action by, or on behalf of, governments. States have an obligation to take measures to eliminate discrimination in the private sector.

Because the issue of discrimination is so broad and may manifest itself in so many different ways, OSCE field operations will need to consider carefully their ability to pursue various types of individual complaints of human rights violations in this field. It is likely well beyond the means of even the largest OSCE missions to deal with certain legitimate complaints, e.g., involving the employment conditions of an individual at a private enterprise. Such cases might be better referred to appropriate national authorities for redress. On the other hand, even the smallest missions should consider following up on certain individual complaints of discrimination, e.g., if a candidate for election is arbitrarily refused registration because he or she does not speak the national language. Missions should also be alert to individual complaints that may reflect a pattern of discrimination, such as unequal opportunities for persons belonging to minorities.

5.7 FREEDOM OF THOUGHT, CONSCIENCE, RELIGION, OR BELIEF

OSCE commitments on freedom of thought, conscience, religion, or belief were first enshrined in the Helsinki Final Act (1975), making them among the longest-standing OSCE

human dimension commitments. In Helsinki, the participating States agreed to “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”. This wording closely parallels the language of the UDHR and the ICCPR.

The Helsinki commitments have been repeatedly reaffirmed and expanded substantially in subsequent OSCE documents, notably the Concluding Document of the Vienna Third Follow-up Meeting (1989).⁴⁰ The commitments include freedom to choose and practice a religion or belief and to change one’s current religion or belief for another. The formulation “religion or belief” makes clear an individual’s right to subscribe to, and profess, his or her beliefs even if these may not be officially recognized by a government as a “religion”. It also means that an individual can freely choose to have no religion.

Under OSCE commitments, governments are required to:

- ▶▶ Foster a climate of tolerance;
- ▶▶ Grant recognition upon request to communities of believers;
- ▶▶ Respect the right of religious communities to establish places of worship, organize themselves according to their own structures, select and appoint their personnel, and receive voluntary financial and other contributions;
- ▶▶ Engage in consultations with religious faiths;
- ▶▶ Respect the right of individuals to give and receive religious education, as well as the right of parents to ensure religious education for their children;
- ▶▶ Allow the training of religious personnel in appropriate institutions;
- ▶▶ Allow religious groups to acquire, possess, produce, and disseminate publications.

The United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief sets out further standards on religious freedom.

OSCE commitments also deal with conscientious objection to military service, an issue often related to freedom of conscience, religion, or belief. The Copenhagen Document (1990) commits participating States to consider introducing non-punitive forms of alternative service of a non-combat or civilian nature and to make information available to the public on this issue.⁴¹

⁴⁰ Paragraphs 16-17.

⁴¹ Paragraph 18.4-18.5.

The OSCE participating States have made clear that their increased efforts to combat terrorism will not affect their commitments on religious freedom. The Bucharest Ministerial Declaration (2001), for example, stated that “the struggle against terrorism is not a war against religions”, while the Bucharest Ministerial Decision on Combating Terrorism reiterated that efforts to combat terrorism must fully respect human rights. The participating States firmly rejected “identification of terrorism with any nationality or religion”.⁴²

Alleged violations of freedom of religion or belief are frequently raised at OSCE Human Dimension Meetings. Individual complaints of violations of the right to freedom of conscience, religion, or belief are a legitimate issue to be followed up by OSCE field missions. In addition to the measures set out in Part III, OSCE field operations receiving complaints of religious-freedom violations can consider requesting that the ODIHR provide assistance through its Advisory Panel of Experts on Freedom of Religion or Belief. Such assistance could include advice, provision of an expert to discuss religious-freedom issues with the host government, or the development of projects to improve respect for religious freedom.⁴³

5.8 FREEDOM OF EXPRESSION, MEDIA, AND INFORMATION

OSCE participating States have adopted the commitment that “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”.⁴⁴ In this field, OSCE participating States have also committed themselves:

- ▶ To respect freedom of the press and media, including the right of the media to collect, report, and disseminate information, news, and opinions;
- ▶ Not to discriminate against independent media with respect to access to information, material, and facilities;
- ▶ To take no measures aimed at barring journalists from the legitimate exercise of their profession;
- ▶ Not to impose limitations on access to, and use of, means of reproducing documents of any kind.

⁴² For more on OSCE commitments in connection with terrorism, see Porto Ministerial 2002, Decision No. 1, Implementing the OSCE Commitments and Activities on Combating Terrorism and the OSCE Charter on Preventing and Combating Terrorism, both available on the OSCE website at <http://www.osce.org>.

⁴³ More information can be found on the ODIHR website at <http://www.osce.org/odihr>.

⁴⁴ Copenhagen Document, Paragraph 9.1.

Additional provisions on freedom of expression are set forth in Article 19 of the ICCPR. Under OSCE commitments, any restrictions on freedom of expression must be prescribed by law and be in accordance with international standards. The ICCPR states that any such restrictions may only be imposed if they are necessary to ensure respect for the rights and reputation of others or to protect national security, public order, public health, or morals. Individual complaints of violations of the right to freedom of expression are a legitimate issue for follow-up by OSCE field operations. Field operations should inform the OSCE Representative on Freedom of the Media of such violations and should consult with that institution about possible follow-up steps.

5.9 FREEDOM OF MOVEMENT

OSCE commitments and other international standards provide that any person who is lawfully located within a country shall have freedom of movement and that those entitled to permanent residence shall have freedom of choice of residence within that country. In addition, everyone has the right to leave any country, including his or her own country, and the right to return to his or her own country. Refugees who wish to return in safety to their homes are entitled to do so.

Any restrictions on these rights must be stipulated by law and be necessary to protect national security, public order, public health, morals, or the rights and freedoms of others.

Restrictions on freedom of movement in the OSCE area in recent years have often involved the inability of individuals to move freely in conflict or post-conflict situations. In a number of cases, refugees or internally displaced persons have been unable to return to their homes. The existence of separatist entities in the OSCE region has also negatively affected the rights of individuals to freedom of movement. In some countries, one-time legal restrictions on freedom of internal movement have been removed, but administrative practices may continue to limit individuals' right to freedom of movement or choice of place of residence. The requirement for exit visas in some countries also usually constitutes a violation of OSCE commitments on the right to freedom of movement.

Various OSCE field operations have been involved in trying to resolve all of these types of restrictions on freedom of movement. An individual complaint on any of the types of issues described above could be a valid basis for follow-up by an OSCE field mission. If the

complaint relates to a refugee, the mission should co-ordinate any possible follow-up action with the office of the UN High Commissioner for Refugees.

5.10 TRAFFICKING IN HUMAN BEINGS

The United Nations has defined trafficking as:⁴⁵

“(a) Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

“(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.

“(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this Article.

“(d) Child means any person under the age of eighteen years of age.”

In the OSCE area, the most visible form of trafficking in human beings is trafficking in women for the purpose of sexual exploitation, i.e., forced prostitution. Part of the reason behind this phenomenon can be found in the effects of the conflict, post-conflict, and political and economic transition that has characterized Central and Eastern Europe over the past decade. In a majority of these countries, women have had to bear the biggest burden of the economic transition. Discrimination against women and the fact that women and children are more dependent on welfare services such as health care and childcare have exacerbated their situation. As a result, many, especially young, women try to find a better life outside of their home countries, which makes them a vulnerable group for exploitation by traffickers.

⁴⁵ Article 3, United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, December 2000 (The Palermo Protocol).

The OSCE has recognized trafficking in human beings as an “abhorrent human rights abuse and a serious crime”,⁴⁶ and it is by no means limited to only those countries in which the OSCE has field missions. OSCE participating States are committed to ending all forms of trafficking in human beings and have committed themselves to a human rights-based approach to combating trafficking. In particular, they have pledged to take measures, including by adopting legislation, to protect the human rights of victims and to ensure that victims of trafficking do not face prosecution solely because they have been trafficked.

The OSCE Ministerial Council in Vienna (2000) specifically authorized and encouraged OSCE field operations to become involved in individual cases of trafficking in human beings.⁴⁷ It recognized “that OSCE field operations, within the legal framework of the host countries, can have a valuable role to play in the fight against trafficking, including by regular monitoring and reporting and assisting State authorities through, *inter alia*, promoting dialogue and acting as a bridge between governments and non-governmental organizations and institutions, in resolving individual trafficking cases”.⁴⁸

⁴⁶ Vienna Ministerial Council (2000), Decision 1, Paragraph 1.

⁴⁷ Decision No. 1.

⁴⁸ Paragraph 12. The decision also sets out a number of other commitments and activities with regard to combating trafficking.

The OSCE has established anti-trafficking guidelines for all OSCE personnel and field operations that are to be implemented in a manner appropriate to their mandates and resources.⁴⁹ These provide basic information on how field operations may respond to individual cases of trafficking. The guidelines stipulate that:

- ▶▶ Field operations should consider trafficking issues as an appropriate subject for inclusion in their regular reporting. Field operations should establish procedures with the national governments of their host countries through which to report specific instances or suspicions of trafficking to local law enforcement authorities;
- ▶▶ Field offices could also be involved in co-ordinating appropriate, timely response mechanisms to urgent trafficking cases in close co-operation with the government and other international organizations and NGOs;
- ▶▶ If field operations are confronted with a likely case of trafficking, such a response, where appropriate, could include:
 - ▶▶ Verifying the circumstances and allegations, with due regard to the alleged victim's safety;
 - ▶▶ Facilitating shelter and services to the victims;
 - ▶▶ Facilitating legal assistance to the victims, including special protection due to their status as witnesses of a crime;
 - ▶▶ Liaising with consular and border authorities in order to obtain travel and identification documents and to allow a safe and voluntary return of the victim;
 - ▶▶ Monitoring and reporting follow-up to individual cases, with the victim's consent, in order to avoid revictimization and to contribute to the effective prosecution of perpetrators, as well as to the reintegration of trafficking victims into society.

⁴⁹ The OSCE anti-trafficking guidelines were issued jointly by the Secretary General and the Director of the ODIHR to all OSCE field operations on 18 June 2001. The full text of the guidelines is available on the ODIHR website at http://www.osce.org/odihr/documents/guidelines/at_guidelines.pdf.

CHAPTER 6

HOW TO CONDUCT AN INTERVIEW

If a field operation judges that an individual complaint of a human rights violation is appropriate for follow-up, there are a variety of options for action that it may take. Some of these steps were noted earlier in this handbook with regard to various types of human rights violations, and a more complete outline of possible actions is provided in Part III. In some instances, the initial individual complaint – whether received in writing or in person – may be sufficiently urgent, compelling, and credible that the mission will decide to take action immediately, without gathering further information. This could be the case if, for example, a person's life or security appears to be in danger, or if the mission already has independent information of the incident in question from the media or other sources, or if the original individual complaint comes from a source that enjoys the mission's full trust and confidence.

In most circumstances, however, the mission may feel it is necessary or desirable to seek further information on an individual complaint that it has received. This may be because the initial information was insufficiently clear, complete, or precise or because the source is unknown to the mission or its credibility is in question. In such instances, the mission may wish to seek an interview with the complainant. In other cases, the mission may be approached directly by a person wishing to make an individual complaint. In any of these circumstances, an OSCE staff member will become involved in conducting an interview.

6.1 POINTS TO KEEP IN MIND THROUGHOUT THE INTERVIEW

There are some points that the interviewer should keep in mind during the entire interview. In some cases, interviewees may appear unreliable, as they may withhold information related to the violation in order to avoid painful memories, embarrassment, or shame. They may also experience extraordinary difficulties in recalling elements of their experiences and confuse the location or timing of various events. Details may be added as they come to mind as the interviewee feels more trust towards the interviewer.

It can happen that interviewees may exaggerate because they feel that they must go to extreme lengths to ensure that their story makes an impression and is believed. In other cases, an interviewee may lie or deliberately mislead. If it is suspected that this is the case, rephrase the question and politely point out inconsistencies, but do not badger the complainant or become confrontational. A confrontational or provocative interviewing style should be avoided at all stages.

Be aware of the interviewee's political position or any other kind of bias that may influence his or her statement. This may influence what is said and what is not said. For instance, an interviewee may not be willing to volunteer information on violations committed by the community or political parties to which he or she is affiliated.

6.2 BEGINNING THE INTERVIEW

The beginning of the interview is the most critical point where an atmosphere of trust and confidence must be established between the interviewer and the interviewee in order to ensure effective communication during the interview.

Interviews should be conducted in as private and confidential a setting as possible, e.g., in a separate room or a location away from other people. It is preferable that interviews be conducted on a one-to-one basis unless the interviewee requests the presence of another person. If an interpreter is needed during the interview, you should look directly at the interviewee when asking questions and listening to the answers, so that the presence of the interpreter has as little impact as possible.

Open the interview in a respectful manner, using some phrases in the local language if possible and using customary greetings that exist in that particular area. Identify yourself and describe what you do in the mission. Explain the mandate of the OSCE and its role in the country, what it can do, and what its limitations are. It is particularly important to avoid raising exaggerated expectations. Do not give victims or witnesses false or misleading assurances. Do not pledge any action by the mission or by the OSCE unless you are certain that action will be taken. Explain clearly the purpose of the interview and inform the interviewee how the information will be used. In most cases, the priority for the interviewee/complainant will be to resolve his or her problem as soon as possible. However, it may also happen that a person wishes to leave a statement in full anonymity and wants no action to be taken with the information. It may still be useful to take a statement, as this information, when combined with other information, will give a clearer picture of the situation in the country.

It is important in a human rights interview that the person interviewed is given as much control as possible. The interviewee will decide independently how much information he or she wants to share and in what way. There is no need to put pressure on the interviewee

in order to obtain more information, but, if needed, it may be useful to explain that the more information that is given, the better the chance that the OSCE will be able to intervene.

If the interviewee is the victim of sexual violence or trafficking, or is suspected to be, the OSCE staff member conducting the interview should always be asked if the interviewee would prefer an interviewer and interpreter of the same sex.

6.3 CONDUCTING THE INTERVIEW

Begin by asking open-ended questions, such as “What happened?”, “How did it start?”, “What happened next?”, etc. The interviewee should be allowed to tell the story in his or her own words with as few interruptions as possible. Even if certain points appear unclear or irrelevant, you should not interrupt straightaway, but allow for sequences of events to be told as the interviewee understands them to have occurred.

If clarifications are needed, review the interviewee's account, asking questions requiring shorter answers and clarification of details. If an individual's story appears unclear, contradictory, or inconsistent with what is already known, do not express disbelief about the person's claims but try to find out why this is so. This should be done in a spirit of elucidation rather than scepticism in order to consolidate the relationship between the interviewer and the interviewee. Ask about unclear points in different ways, and, at different points in the interview, try to establish a clear chronology of the events using reference points. You may find it useful to use maps or to let the interviewee draw sketches of locations, uniforms, etc. It is also important to clarify which elements of the reported information the interviewee experienced or witnessed himself or herself, as well as how he or she found out any other information.

Stay calm, and communicate calmness to the interviewee. Listen with an open mind, empathy, and without judgement or preconceived assumptions. Try to maintain eye contact with the interviewee throughout the interview and nod your head while listening. If an interviewee is very upset, he or she may speak almost non-stop for quite a long time. Try not to interrupt too soon. Emotional breakdowns should be anticipated and handled in a gentle manner. It may sometimes be necessary to take a break, offer something to drink, and talk about unrelated issues until the interviewee has regained his or her composure. It may also be necessary to interrupt the interview and continue on a later occasion, but, in this

situation, it is important that the interviewee be given time to calm down before the interview is broken off completely.

Instruct your interpreter to adopt the same attitude and behaviour as you. This may require some preparation and training. For more on how to work with an interpreter, see *Working with or as an interpreter: OSCE handbooks for field work*.⁵⁰

6.4 CONCLUDING THE INTERVIEW

When the interviewee has finished telling his or her story, ask whether he or she would like to add anything. In some cases, it may be necessary to meet with the interviewee on several occasions in order to get a full picture of what happened or in order to let the interviewee calm down or get more information. If this is the case, another meeting should be agreed upon before ending the interview.

Inform the interviewee about what you intend to do next with regard to the complaint, e.g., report the information to your supervisor/Head of Mission, the OSCE headquarters, or the ODIHR; seek further information from other sources; approach host government officials; etc.

If it is clear that the mission will take no further action on the complaint, it is important that the complainant be informed promptly. This should include a polite explanation as to why the OSCE is not in a position to take further action on the case. If possible, the complainant should be offered advice on where or how he or she might pursue the case elsewhere. This might include a referral to appropriate domestic authorities or to local legal- or social-services offices. (Chapter 8 describes a number of referral possibilities.)

Whether or not further action is contemplated, after an interview is completed, the interviewer should immediately prepare a complete report on the interview based on the notes taken during the interview. The information should provide the details necessary to explain what happened, when it happened, where it happened, who was involved, how it happened, and why it happened (see Section 8.1).

⁵⁰ Available from the OSCE in book form.

6.5 PARTICULARLY VULNERABLE GROUPS

Some individuals or groups of individuals may be especially sensitive; the interviewer should keep this in mind in order not to retraumatize or cause harm to the person interviewed:

- ▶ **Torture victims** may express strong emotions during an interview. If the interviewee becomes overwhelmed with emotion, it may be appropriate to take a break from the interview. As the interview begins again, it may be suitable to bring the interview back to less upsetting topics;
- ▶ **Victims of sexual violence** may be particularly reluctant or unable to talk about their experience because of the social stigma attached to it. The victim should be offered an interviewer and interpreter of the same sex. Experience shows that the most important element of a successful interview is to establish an atmosphere of trust and respect between the interviewer and the victim;
- ▶ When interviewing **children**, it is necessary to adapt the procedure to the age, maturity, and understanding of the child. It may be necessary to adopt simpler language and to spend more time developing a rapport with a child who is to be interviewed. If a parent is available, parental permission should be obtained before interviewing a child, and, preferably, parents or legal guardians should be present during the interview.

CHAPTER 7

INVESTIGATION

The normal human rights and monitoring functions of OSCE field operations include such activities as making inquiries with government officials, collecting publicly available information, receiving testimonies from individuals, and making contact with other organizations. The distinction between such normal monitoring activities and an investigation are not always easy to define. In general, investigations involve a broader and more proactive effort to obtain information about a specific human rights violation than would a monitoring function. An investigation is intended to assess the validity of claims and to determine, if possible, what steps can be taken to address the problem. The aim is to establish the facts of exactly what happened or is happening, to prepare a report that contains a conclusion and, where appropriate, recommendations for action by the OSCE and/or by the host government.

Thorough investigations can require a good deal of time, effort, and human resources. They can be politically sensitive and occasionally may be dangerous. These factors should be carefully considered before beginning an investigation. In general, only large OSCE field operations will be equipped to carry out investigations. However, even small missions may initiate limited investigations or inquiries if they are presented with extremely serious individual complaints. Examples of such issues might include enforced disappearances, mistreatment of prisoners, or unfair trials.

A first step before beginning an investigation is for the field mission to assess whether the specific investigation contemplated is within its mandate. The mission's mandate does not have to specify that it can carry out investigations, but the complaint to be investigated should fall clearly within the mission's general human rights mandate. If the mission determines that an investigation is merited, the next step should be to pursue an inquiry to collect evidence and verify information concerning the alleged violation, as well as the response of the authorities, including the military, police, and the judicial system, where relevant. Evidence could include statements by victims, witnesses, and others who may be connected to the case, e.g., a doctor who examined the victim, legal experts, or law enforcement personnel. Evidence may also include physical items, such as photographs, videotapes, or weapons.

Missions should always keep in mind that any investigation or inquiry they undertake is in the nature of fact-finding, not judicial or prosecutorial. Except in rare instances, missions do not attempt to gather evidence for criminal prosecution. They should be careful not to interfere with any official inquiry that may be under way or take any steps that could com-

promise evidence. Investigations should be carried out in a way that is fair and even-handed; all evidence should be equally considered, whether it supports or contradicts the initial allegation under investigation.

If an investigation establishes that no human rights violation has occurred, the case can be closed, meaning that the mission will not continue to work on the case. If the investigations or inquiries establish the likelihood that there has been a human rights violation, the mission should report its conclusions (see Chapter 8) and make recommendations for further action, in line with Part III. In either instance, depending on the particularities of the case, it must be determined how pieces of evidence, confidential documents, etc. collected during the investigation should be treated.

7.1 CORROBORATION

An investigation seeks to verify, or corroborate, whether a complaint of an alleged human rights violation is valid. For new information to be corroborating, it should be collected from independent sources and fit into the context emerging from other materials that have been amassed.

- ▶▶ It may be possible to corroborate the information received by speaking to the family, friends, and neighbours of the apparent victim. It is important that witnesses are interviewed separately;
- ▶▶ It may also be possible to take note of physical or psychological symptoms that are observed during the interview;
- ▶▶ If the victim has a defence lawyer, this can usually be an important source of information.

Corroborating some types of allegations requires particular expertise that may or may not be available to an OSCE mission. An obvious example would be a report of the existence of a mass grave. Allegations of this type have faced OSCE field operations in the past and are sufficiently serious that they should not be ignored even by the smallest missions. However, while it may be possible for an OSCE staff member to visit a site (see Section 7.2) of an alleged mass grave, it would require a forensic expert to excavate and interpret the evidence. Any such effort would also require the co-operation of the host government. Serious investigations or other types of issues may also require expertise that is not available at

the mission, e.g., verifying allegations of torture may require medical expertise. For serious cases in which the mission does not have adequate expertise on its staff, it should inform the OSCE Secretariat and/or an OSCE institution to ascertain if they would be in a position to provide assistance.

Except in rare instances, it is customary and necessary to approach the authorities to inquire whether they can provide clarification or corroboration with regard to the allegation. An exception might be if making such an inquiry would further endanger a victim or community.

7.2 AT THE SCENE

If it is considered necessary to go to the scene of an alleged human rights violation, the OSCE staff member should exercise caution and discretion. If the event has just occurred, make sure that any injured or traumatized victim is seen promptly, if possible, by a medical professional. Obtain the co-ordinates of the medical professional and, later, a copy of the medical report, if possible. Note any obvious injuries or signs of torture.

Identify any victims and witnesses and establish whether they are willing to talk or make a statement either at that time or later. Make a note of their names and addresses or where they can be located. Depending on the nature of the alleged violation, it could be useful to take photographs of the scene.

It is of utmost importance that the OSCE staff member leave scenes untouched and not attempt to be a substitute for the police or other investigative authorities. Remember that the purpose of every OSCE mission is to reinforce state responsibility, not to replace it.

7.3 IN DETENTION CENTRES

Sometimes, pursuing individual complaints may require visiting places of detention to find out about cases of arbitrary detention, ill-treatment, or discrimination against detainees or to seek information about a missing person. Visits to places of detention require the permission and co-operation of the authorities. In addition, the mission should consult with the local delegate of the International Committee of the Red Cross, if any exists, before deciding whether to undertake visits to places of detention.

OSCE staff should always keep in mind that persons in detention are in an extremely vulnerable situation and should do nothing that could unwittingly endanger detainees.

The visit should start with a visit to the director of the detention centre. It is important to work in the spirit of good faith and collaboration instead of confrontation. It is good to become familiar with, and to take along a copy of, the UN Standard Minimum Rules on the Treatment of Prisoners.

If possible, the OSCE staff member should talk to several detainees during the same visit in order to avoid drawing attention to one particular detainee, who could be at risk of negative consequences after the visit. One option is to determine which cell block the desired individual is in and then ask to interview several detainees from that cell block. The OSCE staff member can then talk to several of the residents of that block, apparently chosen at random, but including the individual of concern. If interviewing an individual detainee, this should take place without witnesses. Even in private, however, detained persons may not be willing to talk freely.

The purpose of the visit is not related to the guilt or innocence of the prisoner but to:

- »» The lawfulness of the person's detention;
- »» Has he or she been detained arbitrarily or for administrative reasons, i.e., detained without judicial authority?

- »» The conditions of detention;
 - »» Is there adequate food, water, health care?
 - »» Do conditions comply with the UN Standard Minimum Rules?
 - »» Is there adequate access to a legal representative and/or family members?
 - »» Are there any signs of ill-treatment?

- »» The length of pre-trial detention;
 - »» How long has the person been in detention?
 - »» What are the stated charges?
 - »» When can a trial be expected?

In general, the ICRC should retain the lead in visits to prisoners and detainees, and OSCE missions should be careful not to interfere with its work. The European Committee for the Prevention of Torture (CPT) also has considerable expertise in the field of prison visits and can be consulted for information on its activities. Both the ICRC and the CPT operate on the basis of confidentiality, but they can provide general advice and guidance to the mission. If the ICRC and/or CPT are already involved in prison visits and giving recommendations to a government, the OSCE field mission should be careful to co-ordinate with them and not provide advice to the host government that conflicts with what is being provided by these organizations.

Although a visit to a place of detention may be intended to gather information on a single detainee, the OSCE staff member should be alert to any broader conditions or circumstances that could suggest the existence of ill-treatment, inhuman or degrading treatment, or other human rights violations. In many countries, prison systems are woefully underfunded. This may result in inadequate training for prison officials and other conditions that do not comply with international standards. If such conditions are found to exist, it may be possible for the OSCE to assist the government, for example, through the development of an ODIHR programme on prison reform.

For more detailed guidelines on visits to detention centres, see *Monitoring Places of Detention: A Practical Guide for NGOs*.⁵¹

7.4 TRIAL MONITORING

The purpose of trial monitoring is to assess the fairness of the proceedings and whether they comply with OSCE commitments and other international obligations of the host country (see Section 3.4 for a list of the principal commitments and obligations). Trial monitors should be careful not to interfere in court proceedings. Since court cases are often lengthy, sometimes with proceedings extending over many weeks or months and through several levels of appeals, very few OSCE field operations would have the resources needed to attend all sessions or phases of a trial. It is therefore usually necessary to select certain key or representative sessions to monitor. In some cases, OSCE field missions have engaged local NGOs with special expertise to monitor court proceedings on the mission's behalf and to report their conclusions to the mission.

⁵¹ Association for the Prevention of Torture/ODIHR publication, 2002, available from the ODIHR in book form or on the ODIHR website at <http://www.osce.org/odihr>.

Trial monitoring also has political implications, since attending a trial demonstrates OSCE interest in, and concern about, an individual case. As such, beyond the value of monitoring to ascertain the fairness of the proceedings, the act of trial monitoring itself is one small, practical step an OSCE mission can take to demonstrate its concern about an individual case. Trial monitoring may also be useful or necessary if the complaint alleges a human rights violation such as an arbitrary arrest or ill-treatment by police. Trial monitoring can also be part of long-term monitoring of one individual who has had his or her rights violated through a chain of events.

7.4.1 BEFORE THE TRIAL

It is a courtesy that the OSCE staff member introduce himself or herself to the president of the court and/or the presiding judge and explain that he or she plans to attend the trial, although there is no requirement to do this. If meeting with the presiding judge is difficult or otherwise inadvisable, the OSCE staff member may consider notifying the judge or other court officials in advance that he or she will be attending. In some cases, it may be necessary to fill in a form to announce that the OSCE staff member will attend the trial or to gain access to the courtroom.

If possible, speak to both the prosecutor and defence lawyers to get a better perspective of both sides of the case and for clarifications of any legal points or other information that may be necessary.

7.4.2 AT COURT

The observer should be dressed in proper business attire and sit where she or he can see and hear clearly, if possible. If an interpreter is needed, the observer should sit so that interpretation can be made during the trial without disturbing the proceedings.

Detailed notes should be taken, particularly on the nature of the proceedings. **Remember that the role of a trial monitor is to assess the fairness of the trial, not the guilt or innocence of the accused.** Note the presence and behaviour of security officers and the treatment of the accused during the trial.

Do not interrupt the procedure or intervene or talk to court officials, the accused, witnesses, or the defence lawyer during the trial. It may be possible, however, to use breaks to make contacts and arrange later meetings. The observer should be careful not to be identified with either the defence or the prosecution.

7.4.3 AFTER THE TRIAL

A report should be written that focuses in particular on whether the court proceedings appeared to comply with OSCE and other fair-trial commitments. It should make clear any issues of concern in this regard. The report should take into account that a trial is part of a judicial process, not a single event, and should therefore be written to include the broader legal context and circumstances. For example, if the court proceedings appear technically correct but the defendant was forced to confess while in detention, this would still be a violation of the defendant's right to a fair trial. Or, a trial may be fair, but it may conclude that a person has been the victim of human rights violations. Any such circumstances should be noted.

The report should include official court references (case numbers, charges, names of witnesses, etc.). This can be especially important if further follow-up is contemplated. It should be made clear how much of the trial the monitor has actually attended. It may not be possible to draw fair conclusions about a trial if the monitor has only attended one session. On the other hand, in some instances, one session may be sufficient for it to be clear that there are valid concerns about the fairness of a trial.

If possible, visit the president of the court or the judge again and inform him or her of the observations made.

CHAPTER 8

REPORTING

Reporting is one of the standard functions of OSCE field operations. The Secretariat has issued general guidance on reporting, which is available to all OSCE field personnel and should be followed. Field operations report to the OSCE Chairman-in-Office and the Secretariat. The extent to which reports deal with human rights issues depends on the mission's mandate and staffing pattern, as well as the circumstances in the country. When reports include human rights information, including on individual complaints, they should be copied to the ODIHR and, as appropriate, to the High Commissioner on National Minorities and the Representative on Freedom of the Media. The Head of Mission normally clears all such reports

Field operations have a number of options for reporting, including their regular periodic reports, spot reports, confidential reports, and appearances by the Head of Mission before the Permanent Council. Large missions will also have an internal reporting system, with field offices reporting to the mission's headquarters. OSCE staff members drafting reports should be aware of who will be reading the report and whom it is intended to inform; this will influence the amount of detail and the level of confidentiality of the report.

OSCE bureaucratic structures are not designed to absorb large amounts of detailed reporting. In general, reports to headquarters and institutions should be as brief and concise as possible. They should highlight the key issues and developments, put them into context, and offer any assessment or recommendation by the mission. If a particular issue or individual complaint is especially grave or significant, it may merit a more detailed report. Alternately, the Chairman-in-Office, the Secretariat, or an institution may request that the mission provide more information on a case, either immediately or later, for example, in the context of an upcoming visit to the country by a senior OSCE official. For this reason, it is important for field operations to develop a good reporting and record-keeping system on complaints of human rights violations, even if not all the information is reported to OSCE headquarters.

Ultimately, a sound report is what provides the basis for any follow-up action by the OSCE on human rights violations.

8.1 REPORTS OF INTERVIEWS WITH INDIVIDUALS

In general, reports of interviews with individuals will not be forwarded to the OSCE headquarters. However, references to individual cases, perhaps including a summary of the information in an interview report, might be appropriate in a report to OSCE headquarters. Many field operations already include such information routinely in their regular reporting. Moreover, if the alleged violation in an individual case were part of a pattern of alleged violations of the same type, this would provide a strong basis for including the issue in a report to OSCE headquarters. In some cases, the mission may judge that it should not report the information to OSCE headquarters, for example, because it is not sufficiently substantiated or because it does not constitute a human rights violation.

In any of these situations, it is important for the mission to prepare and keep a good record of each interview. There are many reasons for this. An interview might later turn out to be the first report of a human rights situation that is more serious than had previously seemed. Information received later may substantiate an allegation that did not seem credible when the interview took place. An interviewee may later be the victim of further violations. Or, an interviewee may be providing the first report to the mission of what may later emerge as a pattern of human rights violations. The high turnover of international personnel in OSCE field operations makes it particularly important that reporting of individual cases be accurate, sufficiently detailed, and easily retrievable.

A report of an interview with an individual must therefore contain as accurate an account of facts as possible. The more serious the allegation, the greater the need for detail and accuracy in describing it. The interviewer needs to identify in the report what information is based on the personal experiences of the interviewee and what is based on hearsay. The facts should speak for themselves without comment. It is also important for an impartial account to use language that is as objective as possible.

To avoid possible confusion later, it is useful to record place names, names of people, and other such details in the language the interviewee used, as well as in English. If an interpreter is used, it may be appropriate to have the interpreter read the report of an interview, since he or she may have been the only one who directly communicated with the person interviewed. Misunderstandings can be minimized this way. Any written accounts by the interviewee, sketches, etc. should be attached to the report.

Any comments by the interviewer should be separated from the narrative. These might include his or her personal impression of the interviewee, an assessment of the credibility of the information provided, and the reasons for possible doubts, or additional relevant information the interviewer may have acquired from other sources.

8.2 RECORDS

It is important to keep a systematic record of complaints of individual cases involving allegations of human rights violations. Documents such as victim or witness testimonies and incident reports are essential in human rights work; thus, it is important that they be stored properly in a secure place. Press clippings and other forms of documentation related to an individual complaint should be preserved and routinely filed.

A file of an individual complaint could include the following:

- ▶▶ The mission's report of its interview with the complainant and copies of any other reports prepared by the mission relating to the case, especially including any reporting forwarded to OSCE headquarters;
- ▶▶ Narratives with the facts presented in a chronological manner;
- ▶▶ Copies of evidential documents such as written statements provided by victims or witnesses themselves, photographs, medical certificates, or autopsy results;
- ▶▶ Copies of court records;
- ▶▶ Copies of relevant legislation or decrees related to the case, or references of where to find them;
- ▶▶ Press reports about events or persons involved;
- ▶▶ A record of any action the mission has taken on the case;
- ▶▶ A record of any statements on the case made at the OSCE Permanent Council or made publicly by the Head of Mission or other senior OSCE officials such as the Chairman-in-Office or the head of an institution;
- ▶▶ Information on any action or statements by government authorities regarding the case.

Reports of individual complaints should be filed first of all under the name of the complainant for easy retrieval and to ensure that no documents related to a particular case are inadvertently overlooked when dealing with the case.

It may also be useful to store material according to its thematic subject matter, such as the type of human rights violation alleged. If such a system is used, however, it is important either to keep multiple copies of documents, so one is also included in each relevant individual file, or to develop a good system of cross-referencing, so that important documents of a general nature are not overlooked when perusing a file of an individual case. Filing by subject matter has the following advantages:

- ▶▶ All major documents on a particular subject are easily retrieved at once in the same location in the collection; this can simplify reporting or work on a particular issue;
- ▶▶ Keeping documents on the same subject together also helps the mission discern any emerging patterns with regard to a particular type of human rights issue;
- ▶▶ Some documents will be relevant to a number of individual cases, so it can be more convenient to include a cross reference in each individual file to a central file, rather than keeping copies in each individual file;
- ▶▶ Keeping thematic files can help eliminate an intermediary process of searching for documents in a catalogue or a database of individual cases.

If filing by subject matter, it is necessary to use standardized terminology, i.e., a limited set of terms to define an event or the contents of a document. To illustrate, the terms “capital punishment” and “death penalty” mean the same thing, so it is useful to use only one of them as a term for filing purposes. Otherwise, there could be problems not only in document retrieval but also in the generation of statistics.

8.3 SECURITY

Reports and files of individual complaints must be stored in a safe and secure manner. This is important for protecting not only the files but also the safety and privacy of victims and witnesses. Files should therefore be kept in locked premises and locked filing cabinets. Computer files should always require passwords to enter. It is also recommended that computerized files be systematically copied and stored in an even more secure location, such as a fireproof vault.

It should be ensured that visitors who come to an OSCE office to report human rights violations are not registered by anyone but the relevant OSCE staff member. This may at times be difficult. The visitors may well be more aware of security risks than international OSCE staff.

In general, while collecting information and reporting on alleged human rights violations, OSCE staff must do their utmost not to put anyone involved in danger, including victims, witnesses, other mission staff (including, most importantly, the local staff), or themselves. Human rights work can be dangerous. OSCE staff, and in particular those handling human rights complaints, should therefore always be discreet and cautious and always keep the principle of “do no harm” in mind.

PART III
**OPTIONS FOR FOLLOW-UP TO
INDIVIDUAL COMPLAINTS**

OSCE field operations have many options for reacting to, and following up, individual complaints of human rights violations. These range from referring the complainant to domestic government or other offices or NGOs that might help resolve the complaint to pursuing the complaint through a variety of OSCE diplomatic or other channels. In some instances, it might be appropriate for the OSCE to refer a complaint to another international organization or at least to ensure that the individual lodging the complaint is aware of the appeals options available through other international organizations. The chapters in this section describe the range of options available.

Following up on individual complaints is often politically sensitive. In general, the Head of Mission or another senior mission official should be consulted about what follow-up steps, if any, to take. If a mission plans to approach the host government about an individual complaint, a decision will also need to be taken on the type of intervention to be made and the level at which it will be made. Missions should also consider how other international organizations may be responding to the case. Depending on the circumstances, the involvement of another organization may be a reason for the OSCE not to become involved, or it may reinforce the importance of the OSCE's involvement. For example, if the individual complaint is a refugee issue that is being handled adequately by the UN High Commissioner for Refugees, there would probably be no reason for mission involvement. On the other hand, if another international organization had called for the release of a political prisoner, it might be helpful for the OSCE to reinforce the call.

Missions should carefully consider all their options before deciding what follow-up action to take. The type of action selected should be proportionate to the circumstances of the individual complaint. Usually, except in grave and urgent circumstances, any intervention with authorities should be at a level that would allow for later follow-up at a higher level. Action by missions should be designed and carried out in a way that tries to elicit a positive and co-operative response from the authorities. The mission's purpose in pursuing an individual complaint is not to criticize the authorities, although this may be a step taken in some circumstances, but to resolve the issue and to correct behaviour inconsistent with OSCE commitments. The ODIHR is willing to assist the field presences in any questions they have regarding a particular complaint. The nature of this assistance will vary according to the particular complaint. For example, it could include advice on the relevant OSCE commitments and provisions of international human rights law or, alternatively, advice on which regional or international human rights mechanism to contact.⁵²

⁵² The ODIHR Human Rights Section serves as a focal point for contacts.

CHAPTER 9

DOMESTIC REFERRALS

9.1 DOMESTIC INSTITUTIONS AND GROUPS

One of the first issues for a mission to consider when it receives an individual complaint is the extent to which effective domestic remedies and solutions may be available. As a general principle, victims of human rights violations are expected to exhaust domestic legal remedies before seeking international remedies for their complaints. There are exceptions to this principle, e.g., where domestic remedies are unavailable, generally ineffective, or take an unreasonably long time, or in circumstances where the complainant has a legitimate fear for his or her safety from an appeal to local authorities. Moreover, since the OSCE human rights commitments are political rather than legal, there is no strict requirement that domestic options be pursued before the OSCE can become involved. It is therefore common for OSCE field operations to become involved in seeking solutions to human rights cases even when the domestic appeals processes have not been completed.

Still, for most individual complaints, the first option an OSCE field operation should consider is a referral to appropriate domestic means and remedies. To make referrals effective, the mission must be well informed on the various options available locally. In general, these will include some or all of the following:

- ▶▶ *Government offices:* The first logical step by someone alleging an individual violation of human rights should be an appeal to the relevant government institution or agency to take action to redress the violation. This could be a ministry such as the Ministry of Housing, Social Affairs, or Justice, or it might be another institution, such as the police or the central election commission. OSCE missions receiving individual complaints should always ascertain if an appeal to a government office has been lodged and, if so, with which office and with what result. If not, the mission should assess whether recommending such a step to the complainant would be useful in light of the nature of the violation and local circumstances;
- ▶▶ *National human rights institutions:* Many countries have national human rights commissions and/or ombudsman institutions that handle individual complaints of human rights violations. Some also have special offices to assist persons belonging to minorities or other groups. If such institutions exist in a host country, they can often be a valuable way for an individual to pursue a complaint. OSCE missions should become familiar with any such offices in the country and their functions in order to better assess whether they would be useful points of referral in different kinds of cases;

» *The judicial system:* Most human rights violations entail violations of domestic law, as well as international standards. In such cases, it can be logical for complainants to take their cases to court. Missions receiving individual complaints should consider whether the legal system in the country provides a reasonable channel to provide redress for a specific kind of human rights violation. If so, it can be appropriate to refer the individual complainant to the courts and to provide basic information such as how to initiate the legal process. Some countries have public-defenders offices that assist individuals with human rights complaints; in such instances, these may be appropriate points for referral. If free or low-cost legal services are available in the country, the mission could refer the complainant to these for assistance. In some countries, “legal clinics” exist – in some cases established with OSCE/ODIHR assistance – that are designed to provide free legal advice for people who cannot afford to hire lawyers;

» *Non-governmental organizations:* Many countries have an effective network of NGOs that can provide assistance to victims of human rights violations. In some cases, these include human rights NGOs, which can give helpful advice on how to proceed with an individual complaint at the national level. They may also include NGOs that specialize in specific aspects of human rights, e.g., the human rights of women, and so are in a position to offer more specialized advice and assistance. Some NGOs provide social services relevant to victims of human rights violations, e.g., shelters for victims of domestic violence or centres for the treatment of victims of torture. All of these can be valuable resources for victims and can provide services in fields that are usually beyond the means even of large missions;

» *Other international organizations:* Although not strictly speaking a “domestic” remedy, a number of international organizations other than the OSCE may be based in a country and may help provide solutions or services for victims of human rights violations. Some of these have been mentioned previously. For example, the UN High Commissioner for Refugees may be able to provide assistance to refugees. The International Organization for Migration and the United Nations Children’s Fund sometimes have programmes to assist victims of trafficking. The International Committee of the Red Cross can often assist prisoners, can sometimes help trace disappearances, and frequently has programmes to assist refugees and internally displaced persons in conflict situations. OSCE missions should become familiar with the other international organizations working in their host country and the extent to which the local offices of these organizations might be in a position to assist individual victims of human rights violations. While it often may be useful to refer a victim to another international organization if that organization is in a position to

be helpful, it can be frustrating both for the victim and the organization for the OSCE to make inappropriate referrals.

9.2 GOOD PRACTICES ON DOMESTIC REFERRALS

In order to be in the best possible position to provide useful referral information to individuals alleging violations of their human rights, it is a good practice for OSCE field missions to prepare a number of written handouts, in local languages, providing guidance on where and how to pursue domestic complaints and on local organizations that may be able to provide further information or assistance. Such handouts could include specific details on the types of organizations and processes set out in the various paragraphs of Section 9.1. To develop these handouts, missions should cultivate contacts with domestic officials, NGOs, and other relevant organizations in order to obtain a sound understanding of the role of each office and the type of assistance it might be able to offer to someone claiming that his or her human rights have been violated. This familiarity will help avoid referring people to an office that is not in a position to be of assistance. Having such handouts available would also simplify responding to written complaints received by the mission.

Such handouts could include the following information:

- ▶ A general list of the offices and contact details for the government and other offices most likely to be tasked with handling individual complaints of the kinds most frequently received by the mission. This could include some or all of the types of offices mentioned in Section 9.1, such as relevant ministries, human rights commissions, ombudsman institutions, charitable groups, providers of social services, NGOs, and other resources;
- ▶ A list of lawyers and legal services for people who wish to pursue their complaints through the judicial system. In general, missions should only recommend lawyers that are known to them to be reputable and capable and only after they have checked with the lawyer to ensure that he or she does not object to having his or her name on such a list. In any event, if a mission prepares such a list, it should be clearly stated that the list is provided for informational purposes only and that the OSCE cannot be held responsible in any way for the quality of the advice or representation provided by any legal practitioner. In countries where a bar association or defence-lawyers association exists, their list might be a substitute for creating a new list;

►► The mission could develop, with the assistance of local lawyers or legal experts, a basic, country-specific document explaining how to pursue an individual complaint through various domestic means, including both government offices and the judicial system. If the mission receives many complaints on a single type of issue, e.g., housing rights or minority rights, it might consider producing a specialized handout on how to pursue domestically that kind of human rights violation.

Developing these kinds of handouts might be undertaken as a small-scale project, perhaps with the assistance of the ODIHR.

Another good practice used by some missions for handling individual complaints is to hire a local lawyer on either a full-time or part-time basis to provide basic legal advice to people who approach the mission for assistance. The purpose is not to take up legal cases officially or to represent any individual in court – this would be beyond the scope of virtually all mission mandates – but to have sufficient in-house expertise to make an initial judgement on the legal aspects of a complaint and to provide some initial, useful, legal guidance to the complainant. The lawyer could alert the mission to any serious human rights allegations that come to his or her attention and that might merit further follow-up by the mission. The lawyer could either operate out of the mission or could set aside a certain number of hours each day to deal with referrals from the mission. The mission might also come to a similar agreement with a local legal-aid society.

CHAPTER 10

OSCE INTERVENTIONS

If an OSCE field operation decides to follow up an individual complaint in ways beyond providing general advice or referrals to the complainant, it still has a number of options for action from which to choose. This chapter sets out a number of these, beginning with the lowest level of OSCE intervention and moving progressively through more serious forms of diplomatic intervention. Missions may wish to follow this list as a progression in an individual case, moving from step to step until the problem is resolved or stopping at any stage if it is not appropriate to move to the next step. Or, depending on the particular case, missions may choose a single step or any combination of steps from the list. In extremely serious or urgent cases, a mission might choose to skip the initial steps and move directly to high-level, political intervention.

10.1 APPROACHING THE HOST GOVERNMENT

As a general rule, the first stage in following up an individual complaint will be to make inquiries with the relevant government authorities about the case. It is important to select the right authorities to meet. It is also important to choose which information to give to the authorities, remembering in particular the risk of causing real harm. The Head of Mission or other relevant mission officer will determine which authorities to contact, at what level, and in what form. In many instances, it may be an OSCE staff member other than the one who took the complaint who contacts the authorities.

10

10.1.1 WHOM TO CONTACT

A field operation should be sufficiently familiar with its host government to have a good idea which offices are responsible for dealing with human rights violations and which ones are most likely to be responsive to an OSCE inquiry. Ideally, the mission would make contact at the appropriate level of the ministry under whose jurisdiction the alleged human rights violation falls. In some countries, however, the mission may be required to deal with the Ministry of Foreign Affairs or may judge that it would be more effective to deal with a human rights office or a regulatory body that deals with the type of complaint in question, such as an election commission or a minorities office. If the mission chooses to raise a case with more than one government office, it is a courtesy to inform each office that other offices have also been notified of the mission's concerns.

The level at which to approach the government depends on the seriousness and urgency of the individual complaint. In some instances, a junior-level mission officer may address a counterpart at an equivalent level in a ministry. In more serious cases, more-senior mission officers should be involved and should make the approach at a more-senior level. Contacts at the most-senior levels of government should be reserved for the Head of Mission. Depending on the circumstances of the complaint, the mission may wish to begin at a low level and move the complaint to progressively higher levels until it is resolved, or it may wish to jump to a higher level immediately. It is also possible to follow up with a different office if a complaint is not resolved by the responsible ministry, for example, by raising the complaint with an official in the president's office.

State officials are more likely to be responsive to OSCE officials with whom they already have good relations. It is important, therefore, to prepare for possible interventions by developing contacts with key officials of the civil administration, military, police, prosecutor's office, and other offices to which the mission may wish to appeal for assistance on an individual case. It should be part of the routine work of field missions to discuss implementation of the OSCE human dimension commitments with relevant government officials. It is important to establish a friendly and co-operative atmosphere that will facilitate the taking up of individual cases of particular concern. If good relations are established with the most relevant officials, it is much easier to address problems when they do arise.

10.1.2 HOW TO MAKE THE INTERVENTION

Interventions with government officials can be made either in written form or directly in person. If a written communication is selected, the text should be addressed to an official at an appropriate level. The letter should be approved and signed by the Head of Mission or other authorized officer in the mission. It should be as brief and precise as possible. It should note that the inquiry is either in accordance with the mission's mandate or that it relates to the government's compliance with its OSCE commitments. The communication should set out the facts of the case as the mission understands them and indicate exactly what the mission requests the government to do, e.g., review an individual case, investigate an incident, release a prisoner, allow a religious group or an NGO to function, etc. It should also refer to the OSCE commitment involved. It should be extremely accurate and use polite terminology. If the letter is in English, it is helpful to provide a copy in the local language.

Written communications have the advantage of leaving a clear record of the mission's intervention and helping to avoid misunderstandings. The text and the tone can be carefully crafted and approved in advance. On the other hand, written communications are very formal approaches. They do not lend themselves to a give-and-take exchange and may not encourage creative solutions. In some cases, a written communication may prompt a formalistic response that can lock a government into a negative position on an issue. These advantages and disadvantages should be carefully considered before making an intervention.

Direct interventions in person provide greater flexibility than written communications. For example, they allow OSCE staff to test the atmosphere before entering into the subject of a potentially sensitive human rights complaint. The complaint may be the sole issue of a conversation, or it may be raised at any point in a discussion that covers several issues. The setting for an oral *démarche* may also be selected: While it would usually be made in the context of a formal office call, it is not unusual for OSCE officials to raise individual cases with especially close or trusted contacts in a less formal setting, such as over a lunch or even in a telephone call.

When making a personal intervention, the OSCE staff member should briefly explain how the individual case fits into the mandate of the mission or relates to the country's OSCE commitments. If the *démarche* relates to a specific agreement with, or undertaking of, the national authorities, the OSCE staff member should be prepared to present a copy of the document in question. The OSCE staff member should start from the presumption that the government is committed to fulfilling its OSCE commitments and will be willing to remedy any violation of human rights that may have occurred.

It is important to observe customary rules of courtesy, to dress in proper business attire, and to use the correct name and title of the official. The OSCE staff member should be firm and polite and should avoid being arrogant or provocative. Remember that the *démarche* is intended to elicit a positive result; a confrontational approach is unlikely to be productive in this regard. As with a written communication, an oral presentation should be as brief and precise as possible. It should set out the facts of the case as the mission understands them and indicate exactly what the mission requests the government to do. The OSCE staff member should listen carefully to the response and then take the opportunity to clarify any misunderstanding or ask again if any initial questions remain unanswered. At the end of the meeting, the mission officer should state his or her understanding of the result of the meeting and the next steps to be taken.

A meeting with government officials can be more effective if it is well planned in advance. Before meeting with the authorities, the mission should decide precisely what information should be given to the authorities in raising a case. For example, has the complainant or witness given permission to use his or her name or even to raise the matter at all? Are there any facts or evidence that should not be provided to a particular government official because, for example, they might endanger others? Who else should be present? Exactly which issues should be raised? What reactions, objections, and questions are expected? How should the OSCE staff member overcome those objections? The mission should also decide whether notes will be taken and, if so, by whom. While it is normal practice to take notes at a diplomatic meeting, the presence of a note-taker can result in a more formalistic response from government officials or even in reluctance to discuss the issue at all.

The art of intervening with government officials in the most effective and appropriate manner cannot be summed up in a few paragraphs or taught in template format. Conduct and outcomes may depend on interpersonal dynamics, intercultural and even linguistic factors and cannot always be predicted. Judgements on how to proceed need to be made on a case-by-case basis and according to the situation.

It is possible for the OSCE staff member to leave an *aide memoire* with officials at the end of a meeting. This is a document summarizing the key points and facts raised by the mission during the meeting. Leaving such a document helps ensure that the official will not misunderstand or misinterpret the points raised.

It is extremely important to prepare detailed reports and keep records of interventions with government institutions, including names and ranks of the officials contacted, the date of the meeting, the information conveyed and received, and the follow-up promised. Such information should be included in the file of the complaint. These records will be crucial if the mission later decides to intervene at a higher level, or if it decides to follow up in other ways.

It is a good practice to designate a case officer within the mission to be responsible for keeping track of the development of an individual case, even if he or she might not be the only person responsible for receiving information or liaising with the authorities. It is also useful to stay up to date on any efforts that have been made by other international organizations.

If, after the first intervention, the government provides information that satisfies the mission that no human rights violation has occurred, or if the case is resolved by the govern-

ment, then the mission may close its file on the individual complaint. Likewise, if it is clear that the government is taking appropriate action to redress a violation and to bring the perpetrator to justice, there should be no need for further mission involvement. On the other hand, if no information is provided or no action taken, the mission will need to decide what further steps to take, if any. This decision involves political judgements on whether further intervention is merited by the seriousness of the case and whether further mission involvement is likely to bring any positive result.

If a mission decides to proceed, one obvious option is to raise the case again with government officials at a higher level. As the level of concern and the level of the government officials approached rises, it becomes necessary to involve staff of the mission with corresponding levels of responsibility, up to, in some cases, the Head of Mission. The intervention of the Head of Mission may be required when the human rights violations are particularly serious and/or when the violations may have been committed or sanctioned by a high-level government official. If a case remains unresolved after a mission has raised it at as high a level as it can – usually ministerial level or above – the mission still has other options available to it for showing concern. These are described below.

10.2 OTHER WAYS TO EXPRESS INTEREST AND CONCERN

The types of written and oral démarches described in the previous section are, in general, confidential diplomatic contacts. Because they are carried out in private, they avoid public embarrassment or criticism and give the government an opportunity to right a wrong without appearing to do so under international pressure.

There are other measured ways in which OSCE field operations can also express interest in, and concern about, individual cases of human rights violations. These approaches are more public than diplomatic, but they stop short of outright public criticism. There are many ways of showing support for individual victims or groups of victims or for people or groups suffering harassment or otherwise in danger of becoming victims. Such steps can be carried out without fanfare as part of the normal human dimension work of a field operation. It is likely, however, that the government will notice the mission's actions, which may thus provide a measure of protection to the individuals concerned. As such, the measures may be preventive and may encourage remedial action by the government.

The bullets below set out some of the options available:

- » Monitoring trials;
- » Visiting prisons or individuals in detention;
- » Visiting refugee camps or camps for internally displaced persons;
- » Visiting shelters for victims of domestic violence or victims of trafficking;
- » Visiting treatment centres for victims of torture;
- » Visiting offices of media outlets, political parties, religious groups, NGOs, or others that may be suffering harassment or human rights violations;
- » Meeting with individual members of such groups and/or including such persons on guest lists for mission functions;
- » Facilitating the attendance of such persons at OSCE Human Dimension Meetings in Warsaw or Vienna;
- » Monitoring rallies of political parties or candidates who are suffering persecution or discrimination;
- » Developing small-scale assistance projects to benefit specific NGOs, minority groups, or others that may be suffering discrimination or other violations.

This list is not exhaustive. Local circumstances and the nature of an individual complaint may dictate the extent to which any particular step is likely to be helpful in a specific case.

10.3 INVOLVEMENT OF OTHER OSCE BODIES

Another option field operations may consider for following up on individual complaints of human rights violations is to raise the issue with other OSCE bodies. These bodies may be able to take further action, or, in some instances, just raising the issue may be sufficient to draw the government's attention to an issue and prompt a response. The principal OSCE bodies concerned with human rights in the participating States include:

The Permanent Council (PC), composed of representatives of all participating States, is the regular body for political consideration and decision-making on all issues pertinent to the OSCE. The PC routinely discusses human rights issues, including individual cases, as part of its political dialogue. Heads of all OSCE field operations address the PC regularly on developments in their mission area or country, including human rights developments. These regular reports provide an opportunity for Heads of Mission to raise directly with the par-

ticipating States any particularly serious individual cases of violations of human rights. The participating States have various options for action in response to a violation, e.g., sending a fact-finding mission or reinforcing an existing field operation, but they usually limit themselves to exerting political pressure.

Human Dimension Meetings, including the annual Human Dimension Implementation Meeting in Warsaw, Supplementary Human Dimension Meetings held three times a year in Vienna, and Human Dimension Seminars, are designed to promote discussion of human dimension issues and concerns in all of the OSCE participating States. The Implementation Meeting in particular is intended to provide a forum for detailed review of how the participating States are implementing their human rights commitments. Individual cases are frequently raised and discussed at Human Dimension Meetings. Unlike the PC, Human Dimension Meetings are open to the press and to NGOs. Heads of field operations and other OSCE staff regularly attend Human Dimension Meetings and may, as they deem appropriate, raise individual cases.

The Chairman-in-Office (CiO) is vested with overall responsibility for executive action by the OSCE and for representing the organization. CiOs have frequently raised human rights issues with participating States, including individual cases. Often, such interventions are made during visits to countries, but they may also be made from afar. Because the CiO is the most senior political figure in the OSCE, his or her interventions are normally at a very high level, often directly with the president of a country, and are taken very seriously. In a number of instances, interventions by a CiO have resulted in the release of political prisoners or other positive human rights steps. The CiO may raise a case with a government publicly or privately and may do so either because of his or her own concerns or at the recommendation of a field operation or an OSCE institution.

Personal or Special Representatives of the Chairman-in-Office may be appointed by the CiO to deal with certain events, conflicts, crises, or regions. These individuals, depending on the mandate and instructions given to them by the CiO, may also be in a position to raise individual cases of human rights violations, and they frequently do so. For example, special representatives appointed to lead short-term election observation missions often comment on non-compliance by governments with their OSCE commitments on democratic elections, including in relation to individual cases. Special representatives dealing with conflict situations may raise conflict-related human rights violations. OSCE field operations should ensure that any personal or special representatives of the CiO dealing with

their country are made aware of serious human rights cases or issues and are given the opportunity to consider raising these with the host government.

OSCE institutions concerned with human dimension issues include the Office for Democratic Institutions and Human Rights (ODIHR), the Representative on Freedom of the Media, and the High Commissioner on National Minorities (HCNM). The HCNM mandate precludes dealing with individual cases, but the ODIHR and the Representative on Freedom of the Media have frequently taken up cases of individual violations of human rights. Both these institutions welcome input from field operations. They may be willing to support mission efforts to resolve individual cases, or they may be ready to intervene directly, within their own mandates, on individual cases. The ODIHR and the Representative on Freedom of the Media can raise cases privately or publicly and may do so at very high levels, including with presidents. They are specifically authorized to raise cases with the Permanent Council.⁵³ They may also be willing to visit countries specifically to follow up on human rights issues or cases.

10.4 PUBLIC STATEMENTS

Public statements of concern or criticism are often the strongest step available to follow up, and seek government action on, individual cases of human rights violations. Public statements or press releases should be limited to the most serious or urgent cases of human rights violations. In general, field operations should seek action through private diplomatic channels before considering any public statement. However, in extremely urgent or flagrant cases, a mission may see a need to go public before it has exhausted other types of diplomatic action. The head of a field operation may choose to issue a public statement himself or herself or may recommend that the Chairman-in-Office or the head of an institution issue a public statement on a case.

⁵³ Charter for European Security (Istanbul, 1999), Paragraph 36.

CHAPTER 11

TECHNICAL ASSISTANCE

The purpose of OSCE actions on individual complaints of human rights violations is to assist governments to meet their human dimension commitments. OSCE action, even if critical of a government, is not intended to be punitive but to provide assistance. In some instances, governments in transition to democracy have long and difficult legacies of human rights violations to overcome. They may be working to end violations but may lack the legal infrastructure, resources, or trained personnel to do so effectively. In such circumstances, another option available to the OSCE is to design specific programmes to assist the government to overcome conditions that may be at the root of many individual complaints.

The OSCE and its institutions have developed increasing expertise in implementing specific types of technical-assistance projects to assist ending human rights violations. The ODIHR in particular has developed a wide range of projects. If a field operation has received a number of individual complaints of the same type of human rights violation, it may be an indication of structural or training problems that could be remedied through technical assistance. In such cases, the mission could seek to design a project to assist in improving the deficiency identified. The ODIHR or another institution may be able to help in designing, implementing, and seeking funding for such projects.

As examples, ODIHR projects have included providing assistance in the following areas:

- ▶▶ Assessing the situation;
- ▶▶ Revising national legislation to conform with international human rights standards;
- ▶▶ Improving election systems;
- ▶▶ Advancing equality of women and men;
- ▶▶ Protecting the human rights of victims of trafficking;
- ▶▶ Promoting religious freedom;
- ▶▶ Training and capacity-building for NGOs involved in monitoring and redressing human rights violations;
- ▶▶ Providing human rights training for police, border guards, prosecutors, and judges;
- ▶▶ Promoting reform of prisons and other places of detention;
- ▶▶ Developing better practices for ensuring the rights of internally displaced persons;
- ▶▶ Establishing legal clinics;
- ▶▶ Developing ombudsman institutions.

Projects of this nature almost always require voluntary financial contributions from governments for implementation. In the past, however, OSCE participating States have been

generous in providing funding for well-conceived and targeted projects. Projects can often be developed and implemented jointly by the ODIHR and field operations. Small-scale projects implemented by field operations with local partners may qualify for support and funding as part of the ODIHR's Grassroots Democracy Projects.⁵⁴

While technical-assistance projects are unlikely to provide a remedy for specific individual complaints, they can be extremely valuable in helping to establish conditions for ending or reducing the prevalence of a particular category of individual complaints. For such projects to be successful, however, the government must be committed to change and must be prepared to co-operate with implementation.

⁵⁴ Information on the ODIHR Grassroots Democracy Projects programme, including on how to apply for funding and assistance for specific projects, is available on the ODIHR website at <http://www.osce.org/odihr>.

CHAPTER 12

INTERNATIONAL REFERRALS

There are a number of international organizations and mechanisms outside the OSCE that are also involved in trying to resolve individual complaints of human rights violations. Some of these have been created by international human rights treaties that establish binding legal obligations on the part of host governments. Some of these treaties are incorporated by reference in OSCE human dimension commitments. Other mechanisms may be less formal and may not be legally binding.

In general, when an OSCE field operation receives an individual complaint, it should first consider what OSCE mechanisms or actions, if any, might be appropriate to deal with the complaint, rather than referring it immediately to another international organization. However, field operations should be reasonably knowledgeable about other mechanisms and organizations, as, in some cases, they will be better positioned to deal with certain types of individual complaints. Other organizations may also provide people with legal remedies that go well beyond the OSCE's political commitments or may provide alternatives for individuals who are not satisfied with the OSCE's reaction in a given case.

12.1 UNITED NATIONS MECHANISMS⁵⁵

12.1.1 TREATY BODIES

Several United Nations human rights instruments establish mechanisms for considering individual cases of human rights violations. If a country has subscribed to the individual-complaints clause of, or optional protocol to, such treaties, individuals in the country may petition the relevant “treaty bodies”, i.e., committees of experts, to consider their case. It is usually a requirement that the complainant will have exhausted all available domestic remedies before invoking these international legal procedures. In some cases, however, this may not be required, e.g., if local remedies are not available, are unreasonably prolonged, or are unlikely to bring effective relief to the victim. The UN treaty bodies authorized to deal with individual complaints are:

The UN Human Rights Committee

The Human Rights Committee was established by the ICCPR. If a country has ratified the first Optional Protocol to the ICCPR, individuals in that country may petition the Human Rights Committee if they believe their rights under the ICCPR have been violated, provided that:

- ▶▶ All available domestic remedies have been exhausted;
- ▶▶ The communication is not anonymous;
- ▶▶ The complaint is not the subject of another procedure of international investigation or settlement.

⁵⁵ For further details on the human rights bodies and mechanisms described, see the website of the UN High Commissioner for Human Rights at <http://www.unhcr.ch>. Each of the UN's specialized agencies has its own website.

When it receives an admissible complaint, the Human Rights Committee forwards the information in the complaint to the government in question, which has six months to provide the Committee with written explanations clarifying the matter and the remedy that has been taken, if any. The Committee will then hold a closed meeting to consider the complaint and the response and forward its views to the state and the individual concerned, as well as publicize them. In the event that it considers that a human rights violation has occurred, the Committee requires the government concerned to report back within 90 days about what action has been taken to remedy the violation. There is no further enforcement power.

The UN Committee against Torture

The Committee against Torture can consider a “communication” from an individual in a state that has ratified the Convention against Torture and made the declaration under Article 22 recognizing the Committee’s jurisdiction to hear communications from, or on behalf of, individuals. The prerequisites for use of this procedure and the working methods of the Committee parallel those of the Human Rights Committee.

The UN Committee on the Elimination of Racial Discrimination

Under the terms of the Convention on the Elimination of All Forms of Racial Discrimination, the Committee can receive and consider complaints from individuals or groups of individuals against any State Party that has made the declaration under Article 14, recognizing the Committee’s jurisdiction to hear individual complaints. Any state accepting the procedure under Article 14 should establish or designate a domestic body to consider individual complaints. If this body does not provide a satisfactory remedy within six months, then the Committee may consider the complaint. In such cases, the Committee will forward the information to the State Party without revealing the names of individuals without their consent, and the state must reply within three months. The Committee then provides its recommendation to the state and to the complainant. The prerequisites for filing a communication with the Committee are similar to those for the other UN Committees.

Although the human rights obligations in each of the three treaties are legally binding on States Parties, the committee mechanisms function in a manner that is unlikely to bring short-term relief to individual complainants.

12.1.2 THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS

The UN High Commissioner for Human Rights (UNHCHR) has a general mandate to promote and protect all human rights. The UNHCHR may intervene with governments from time to time with regard to individual complaints of human rights violations. In general, however, individual complaints of human rights violations directed to the UNHCHR, or to the United Nations in general, will be funnelled to the Working Group on Communications of the UN Sub-Commission on Human Rights, under a confidential procedure created by Resolution 1503 of the UN's Economic and Social Council. The Sub-Commission does not treat individual complaints individually, but if it considers that the individual complaints constitute a consistent pattern of gross and massive violations of human rights, it may recommend action by the UN Commission on Human Rights.

12.1.3 UN SPECIAL PROCEDURES

The UN Commission on Human Rights has established a number of special procedures to encourage implementation of various human rights. The procedures include special rapporteurs or special representatives of the UN Secretary-General, and working groups. Each special procedure centres on a specific right or set of rights or on a specific country. Special rapporteurs have been appointed for some OSCE countries. Many of the special procedures accept and follow up with governments on individual complaints. Some make “urgent appeals” to governments, for example, if an arbitrary execution may be imminent. The special procedures, however, do not have any enforcement powers.

Some of the current thematic special procedures⁵⁶ that may consider raising individual complaints include:

- ▶▶ The Special Rapporteur on Summary, Arbitrary, or Extrajudicial Executions;
- ▶▶ The Special Rapporteur on Torture;
- ▶▶ The Special Rapporteur on Religious Freedom;
- ▶▶ The Special Rapporteur on Racism;
- ▶▶ The Special Rapporteur on Violence against Women;
- ▶▶ The Working Group on Arbitrary Detention;
- ▶▶ The Special Representative on Human Rights Defenders.

⁵⁶ Further information about these procedures is available on the UNHCHR website at <http://www.unhchr.ch>.

12.1.4 UN SPECIALIZED AGENCIES AND OTHER UN BODIES

A number of specialized UN agencies are concerned with various aspects of human rights, and some of them may deal with cases of individuals in certain circumstances. A few have already been referred to in earlier chapters, for example:

- ▶▶ The UN High Commissioner for Refugees (UNHCR) is the world's leading agency on refugee issues. The UNHCR is heavily involved in protecting and assisting refugees in many OSCE countries;
- ▶▶ The United Nations Children's Fund (UNICEF) is dedicated to protecting the human rights of children and has programmes in several OSCE countries to this end;
- ▶▶ The International Labour Organization has adopted a large number of conventions on human rights issues such as slavery, freedom of association, forced labour, child labour, and workers' rights;
- ▶▶ UN field offices with special mandates operate in many countries, including in the OSCE area. Many of these are involved in various forms of human rights work, including supervising and training police forces, combating trafficking in human beings, or developing human rights institutions. Some of these missions may take up individual cases of human rights violations.

12.2 EUROPEAN MECHANISMS AND INSTITUTIONS

The Council of Europe has adopted a broad range of important human rights standards that are legally binding on states that have ratified them. From the perspective of individual complaints of human rights violations, by far the most significant is the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which contains a procedure for individual petition. The Convention created the European Court of Human Rights to hear cases and pass binding judgements relating to the implementation of the rights and freedoms included in the Convention, which parallel those in the Universal Declaration of Human Rights. The Court was restructured in the 1990s with the adoption and entry into force of Protocol No. 11; the new Court began operating under revised procedures in 1998. Most OSCE participating States have ratified the Convention and are subject to the jurisdiction of the Court.

Under current procedures, individuals, groups of individuals, or NGOs may lodge an application directly with the European Court of Human Rights in Strasbourg if they believe

any of their rights under the Convention have been violated and if they have exhausted domestic remedies. Procedures before the Court are adversarial and public except in exceptional circumstances. Each application is assigned to a chamber of the Court, which determines admissibility and rules on the merits. The first stage of the procedure is usually written, although there may be a public hearing. Some cases may be referred to a grand chamber if they raise serious questions of interpretation of the Convention.

Individuals may submit applications to the Court themselves, but legal representation is recommended and even required for hearings or after a decision declaring an application admissible. The Council of Europe has a legal-aid scheme for applicants who do not have sufficient means.

Final judgements of the Court are binding on the respondent state. The Council of Europe's Committee of Ministers supervises the execution of judgements and verifies whether a state has taken sufficient remedial measures to comply.⁵⁷

In addition to the European Convention, the Council of Europe has adopted instruments on social rights, prevention of torture, protection of national minorities, prevention of racism, and other human rights issues. These instruments do not include provisions for dealing with individual complaints. However, a protocol to the European Social Charter created a mechanism for collective complaints, including by national NGOs. The European Commission against Racism may also be seized by non-governmental organizations on any question covered by its term of references.⁵⁸

The Council of Europe Commissioner for Human Rights does not take up individual complaints. The Commissioner can, however, draw conclusions and take initiatives of a general nature that are based on individual complaints.⁵⁹

The Council of Europe also sometimes takes up individual complaints through its political mechanisms. For example, the release of particular political prisoners may be a prerequisite for membership in the Council.

⁵⁷ Details on the European Court are available on its website at <http://www.echr.coe.int>. An application form for forwarding cases to the Court is also included on the website.

⁵⁸ Details on all Council of Europe standards, instruments, and procedures are available on its website at <http://www.coe.int>.

⁵⁹ See <http://www.commissioner.coe.int>.

12.3 OTHER ORGANIZATIONS DEALING WITH HUMAN RIGHTS

Among international organizations dealing with individual human rights cases outside the UN and European systems, the most notable are the following:

The International Committee of the Red Cross (ICRC) is involved with international humanitarian law, conflict situations, missing persons, prisoners of war, conditions of detention, emergency relief for refugees and internally displaced persons, and other human rights-related issues. As discussed elsewhere in this handbook, the ICRC may become involved in various ways in individual human rights cases. The ICRC conducts its dealings with governments on a confidential basis.

The International Organization for Migration is frequently involved in providing assistance to individuals whose rights may have been violated, including displaced persons, refugees, and victims of trafficking in human beings.

A number of international NGOs specialize in human rights and frequently raise individual cases with governments. Among the best known and most widely active in the OSCE area are the International Helsinki Federation, Amnesty International, and Human Rights Watch. OSCE participating States are committed to recognizing NGOs, to facilitating their activities, to welcoming NGO observation of their compliance with human dimension commitments, and to allowing NGOs to convey their views to any participating State.⁶⁰ Through these and other commitments, the OSCE has acknowledged the important role of NGOs in promoting and protecting human rights. NGOs have no specific powers over governments; their strength lies in their ability to generate public pressure and to react very quickly and in flexible ways to allegations of individual rights violations. International NGOs can be valuable partners for OSCE field operations in dealing with individual cases, both in gathering information and in encouraging positive action.

⁶⁰ Moscow Document, Paragraph 43-43.4.

CHAPTER 13

THE ODIHR'S ROLE IN INDIVIDUAL COMPLAINTS

As the OSCE institution with the most comprehensive human dimension mandate, the ODIHR is particularly well positioned to provide guidance to all OSCE field operations on how to deal with individual complaints, to provide training and expertise on specific issues, and to help ensure consistency in OSCE actions with regard to individual complaints.

In addition, the ODIHR, like OSCE field operations, from time to time receives individual complaints of human rights violations. It may receive such complaints either by mail or e-mail, in person at Human Dimension Meetings, or directly to ODIHR personnel working or travelling in the field, including members of election observation missions. The ODIHR's options for dealing with such individual complaints are similar to the options available to missions described in Chapters 9 to 11.

There are, however, significant differences as well, primarily that the ODIHR, unlike the field operations, usually does not have a presence in a country. As a result, the ODIHR must consult closely with the relevant field operation or other actors on the ground when deciding whether to take action. This is important in order to ensure that the ODIHR has all the information available to the mission, to avoid possible duplication, and, most importantly, to avoid the possibility that different branches of the OSCE will take conflicting positions on the same issue.

For these reasons, the ODIHR does not usually deal with individual complaints. In some instances, however, the ODIHR may decide to take action on an individual case entirely independently of a mission. Such circumstances are not common. They might include instances in which a mission does not consider that it has a human rights mandate that includes certain issues but where the issue does fall within the ODIHR mandate. It might also include election-related issues that are at the core of the ODIHR mandate, particularly when an election observation mission is in the field. Other such circumstance might be follow-up to cases in which the ODIHR has intervened in the past or where consistency requires that the ODIHR deal in the same manner with similar cases in more than one country. In any such cases, however, the ODIHR should keep the relevant missions informed of its activities and the reasons for its decisions.

As a rule, the impact of OSCE interventions on any individual case is enhanced if domestic authorities see that the OSCE is speaking with one voice. With this as the guiding principle, there are a variety of ways in which the ODIHR and field operations can interact effectively on individual cases, using the various options in Chapters 9 to 11. Field

operations will usually be in a much better position than the ODIHR to gather information on individual cases and to follow up on a regular basis with officials at various levels. Because the ODIHR covers developments in all OSCE participating States and is usually geographically removed from the scene of alleged human rights violations, the ODIHR will normally be able to intervene only in a limited number of especially significant or serious cases.

There may be circumstances, however, where the ODIHR and/or a mission judge that an intervention by the ODIHR might be more effective than one by the mission. This may be the case where ODIHR action would reinforce earlier action by the mission or take it to a higher level or where the ODIHR can draw upon its special expertise in making the intervention. The ODIHR may also have easier and more frequent access to the Permanent Council, the Chairman-in-Office, or other OSCE bodies than the mission would. One way of demonstrating that the mission and the ODIHR stand together on an individual case is for the Head of Mission to deliver a letter from the Director of the ODIHR to a senior government official and to personally reinforce the points in the letter.

The ODIHR may also be in a position to take up individual cases as part of its normal work, for example, during visits to a country by the ODIHR Director, in briefing papers and recommendations for action by the Chairman-in-Office, and in statements to Human Dimension Meetings and to the Permanent Council. The ODIHR can also design technical-assistance projects aimed at alleviating certain types of human rights violations, as described in Chapter 11. It can propose that Supplementary Human Dimension Meetings be convened on issues that are a source of individual complaints in several OSCE countries. In responding to individual complaints received by mail, the ODIHR might also make use of any written handouts developed by field operations, as described in Chapter 9.

ANNEX 1

BASIC PRINCIPLES OF MONITORING

- 1. DO NO HARM**
- 2. KNOW THE STANDARDS**
- 3. RESPECT THE MANDATE**
- 4. RESPECT THE AUTHORITIES**
- 5. CONFIDENTIALITY**
- 6. SECURITY**
- 7. IMPARTIALITY**
- 8. OBJECTIVITY**
- 9. SENSITIVITY**
- 10. ACCESSIBILITY**

ANNEX 2

CHECKLIST OF INFORMATION MISSIONS SHOULD OBTAIN ON AN INDIVIDUAL COMPLAINT

BASIC INFORMATION

- ✓ Date of interview/testimony;
- ✓ Place and circumstances of the interview/testimony;
- ✓ Names of those present, including the interpreter;
- ✓ Personal details of the individual: name, age, sex, family, education, occupation, political or other relevant activity or background, address, and telephone numbers;
- ✓ Names, addresses, and telephone numbers of contact persons, if different from the victim.

CASE-SPECIFIC INFORMATION ABOUT THE INCIDENT

- ✓ The date of the incident or violation;
- ✓ The place of the incident or violation;
- ✓ The human right alleged to have been violated;
- ✓ The nature of the incident or violation;
- ✓ The identity of the victim(s);
- ✓ The identity of the alleged perpetrator(s);
- ✓ The official status of the alleged perpetrator(s), or other official connection;
- ✓ Witnesses, including their names, positions, addresses/contact numbers;
- ✓ All other relevant factual details, including full details and chronological narration of the case;
- ✓ Information on which authorities, if any, have been notified of the violation, what their reaction has been, and what steps they have taken;
- ✓ Information on whether the complaint or appeal has also been lodged with a court or other international or domestic organizations, and what the reaction has been;
- ✓ Copies of relevant documents or evidence should be attached.

ANNEX 3

SAMPLE INDIVIDUAL COMPLAINT FORM

FOR OSCE CENTRE USE ONLY

Registration number

Received on (dd/mm/yy)

Please carefully read the attached description of the mandate of the OSCE Centre in Cornucopia. If you wish to lodge a complaint about a human rights violation with the OSCE Centre, please fill in this form. Please attach copies of relevant documents, such as court decisions, results of medical examinations, etc. Information provided by you will be treated as confidential.

After your complaint has been considered, an OSCE staff member will contact you.

1.

First name: _____

Last name: _____

Citizenship (citizen of Cornucopia, refugee, stateless person, other – please indicate): _____

Date of birth: _____ Sex: M ☐ F ☐

Contact address: _____

Phone/fax/e-mail: _____

Alternate contact information: _____

If you are NOT the victim of the alleged human rights violation, please also fill in the following:

2.

Victim's first name: _____

Victim's last name: _____

Victim's citizenship (citizen of Cornucopia, refugee, stateless person, other – please indicate): _____

Date of birth: _____ Sex: M ☐ F ☐

Contact address: _____

Phone/fax/e-mail: _____

Alternate contact information: _____

Your relationship to the victim: _____

3. Which state structure/institution is the perpetrator of the violation?

4. What kind of violation took place?

5. When did the violation take place?

6. Has the victim applied to a court? If yes, which court? At what stage are the court proceedings?
(Please attach copies of court decisions, if any exist.)

7. Does the victim have a lawyer? If yes, please give his/her contact information
(phone/address/fax/e-mail):

8. Did the victim apply to any other governmental/non-governmental/international organization/institution prior to lodging a complaint with the OSCE Centre in Cornucopia? If yes, please list them. What were their responses (*please attach if available*)?

9. Why are you applying to the OSCE Centre in Cornucopia? What kind of assistance do you expect to receive?

Date_____ Signature_____

This form should be made available in a language(s) spoken in the mission's area of responsibility.

It is also useful to have a one-page description of the mission's mandate to offer to complainants along with the form. This description could contain information about the types of violations the mission does not deal with (due to its mandate, size, priorities, etc.).

ANNEX 4

DRAFT LETTERS OF RESPONSE TO A COMPLAINT

A 4.1 SAMPLE LETTERS STATING THAT THE MISSION WILL NOT TAKE ACTION ON A CASE

EXAMPLE 1:

The individual complaint does not constitute a human rights violation:

Dear,

Thank you for your letter of 11 January 2003 concerning dismissal from your job due to the closing of the steel works at Romberlpar.

The Mission is acutely aware that the recent the economic downturn, together with newly implemented privatization policies, has led to economic hardships for a number of citizens of the Italgerfran Republic. We regularly discuss economic policy issues with the government and have urged that social safety nets be put in place to protect the welfare of the citizens.

We regret, however, that the Mission is not in a position to assist with your complaint, since our mandate does not extend to issues of unemployment, nor does the type of economic dislocation you are facing constitute a violation of OSCE commitments or other internationally recognized human rights standards.

We understand the Ministry of Social Welfare and the Ministry of Labour have programmes to assist citizens dislocated by the recent factory closings. We recommend that you contact those offices for assistance. A list of offices that may be of assistance is attached.

Sincerely,

Jane Smithova
Human Dimension Officer

A4

EXAMPLE 2:

Reasonable domestic means exist for remedying the complaint, but no effort has been made to use these means:

Dear ,

Thank you for your letter of 11 January 2003 informing us that, due to your inability to pay your rent, you are threatened with eviction from your apartment.

It appears from your letter that you have not yet attempted to resolve the matter through domestic channels. We have therefore attached a list of government offices that may be helpful in resolving your complaint, including the Ministry of Housing, the Ministry of Social Welfare, and the Human Rights Commission.

While we sympathize with your circumstances, we regret that the Mission is not in a position to consider assisting with individual complaints unless it is clear that they constitute a human rights violation and unless reasonable efforts have been made to resolve the problem through available domestic channels.

Sincerely,

Jane Smithova
Human Dimension Officer

EXAMPLE 3:

The OSCE is not the appropriate organization to deal with the complaint:

Dear ,

Thank you for your letter of 11 January 2003 requesting refugee protection.

Refugee status is not granted by the OSCE but by the government of the country where you are located. You should therefore apply to the Ministry of Immigration and Refugees for official status as a refugee, which may entitle you to a number of benefits, possibly including financial support.

The principal international organization responsible for refugee issues is the United Nations High Commissioner for Refugees, which has an office here in Ankamoscruss; the office may also be in a position to offer you guidance or assistance in seeking refugee status or resettlement.

Attached is a reference sheet including the names and contact numbers of appropriate offices.

Sincerely,

Jane Smithova
Human Dimension Officer

A4

EXAMPLE 4:

The complaint may be a human rights violation, but the Mission lacks the mandate or resources to take action:

Dear ,

Thank you for your letter of 11 January 2003 concerning the difficulties you are having in collecting the government pension checks that are due to you. The Mission is aware that erratic payment of pensions by the government is causing substantial hardships for many citizens of Swebulg.

We regret, however, that the Mission is not in a position to assist in resolving pension problems because of our small size and limited resources and because our mandate does not extend to pension issues. In addition, there are no specific OSCE human rights commitments relating to this issue.

Nevertheless, your case, as you have described it, does seem to merit action by the government, especially since Swebulg has ratified the International Covenant on Economic, Social and Cultural Rights, through which it undertook to implement the right to social security. If you have not already contacted the Ministry of Pensions, we recommend that you do so. Another option would be to contact the Office of the Ombudsman, which has been helpful in such cases in the past. A third alternative would be to address the courts; one of the local legal-aid societies may be able to assist you with the necessary paperwork. A list of offices and organizations that may be able to assist you is attached.

Sincerely,

Jane Smithova
Human Dimension Officer

4.2 SAMPLE LETTERS REQUESTING MORE INFORMATION IN ORDER TO DECIDE WHETHER TO TAKE ACTION ON A CASE

EXAMPLE 1:

Request for more information on a serious incident:

Dear,

Thank you for your letter of 11 January 2003 concerning the skinhead attacks earlier that day on members of the Temple of God in Lisviensaw.

Unprovoked attacks on innocent worshippers is an issue of deep concern. Such incidents violate basic OSCE values of tolerance, non-discrimination, rule of law, and freedom of religion or belief. The Mission has spoken out against such attacks in the past.

Judging from the information you provided, the government was not involved in, or responsible for, this attack. Nevertheless, OSCE participating States are committed under the Copenhagen Document (1990) and other agreements to “take effective measures ... to provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred.” We hope, therefore, that you have raised your complaint directly with the police and other government authorities.

Given the apparent seriousness of this incident, we are considering raising the matter in an upcoming meeting with senior government authorities. Before doing so, however, it would be helpful to have additional details of what exactly occurred on 11 January and what the government response to the incident has been. To this end, I will be visiting Lisviensaw on Wednesday, 29 January, and would like to meet with you and other members of the congregation at that time to discuss the incident. Please let me know if a meeting on that date would be possible.

Sincerely,

Jane Smithova
Human Dimension Officer

A4

EXAMPLE 2:

Request for more information
when the circumstances are
less urgent or are not clear:

Dear ,

Thank you for your letter of 11 January 2003 concerning discrimination against members of the Nethspangyz minority in Dubtibetta.

Judging from the information you provided, the discrimination relates primarily to employment practices of private companies; it is not clear from your letter whether local government officials are also involved in discriminatory practices. In any event, the government is bound by OSCE commitments to prevent all forms of discrimination. We hope, therefore, that you have raised your complaint directly with government authorities.

Before the Mission can consider taking any action on this complaint, we would need additional details to substantiate the allegations of discrimination you raised, as well as information on whether the government has been approached to remedy the problem and what its response has been. I would therefore appreciate receiving any further information you might be able to send me. Alternatively, I invite you to come to the Mission at your convenience to discuss the problem. Please contact me by telephone (55 5 555 555) for an appointment.

Thank you for bringing this problem to our attention.

Sincerely,

Jane Smithova
Human Dimension Officer

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Document).

The ODIHR, based in Warsaw, Poland, was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 100 staff.

The ODIHR is the lead agency in Europe in the field of election observation. It co-ordinates and organizes the deployment of several observation missions with thousands of observers every year to assess whether elections in the OSCE area are in line with national legislation and international standards. Its unique methodology provides an in-depth insight into all elements of an electoral process. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's democratization activities include the following thematic areas: rule of law, civil society, freedom of movement, gender equality, and trafficking in human beings. The ODIHR implements more than 100 targeted assistance programmes every year, seeking both to facilitate and enhance state compliance with OSCE commitments and to develop democratic structures.

The ODIHR promotes the protection of human rights through technical-assistance projects and training on human dimension issues. It conducts research and prepares reports on different human rights topics. In addition, the Office organizes several meetings every year to review the implementation of OSCE human dimension commitments by participating States. In its anti-terrorism activities, the ODIHR works to build awareness of human dimension issues and carries out projects that fundamentally address factors engendering terrorism.

The ODIHR provides advice to participating States on their policies on Roma and Sinti. It promotes capacity-building and networking among Roma and Sinti communities and encourages the participation of Roma and Sinti representatives in policy-making bodies. The Office also acts as a clearing house for the exchange of information on Roma and Sinti issues among national and international actors.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (<http://www.osce.org/odihhr>).

