

SUPPLEMENTARY HUMAN DIMENSION MEETING

**PROTECTION AND PROMOTION OF HUMAN RIGHTS:
RESPONSIBILITIES AND EFFECTIVE REMEDIES**

**12-13 July 2007
HOFBURG, VIENNA**

ANNOTATED AGENDA

Under OSCE commitments as well as international human rights law, States are required to provide effective remedies to those who claim that their human rights and fundamental freedoms have been violated.¹ Participating States have recognized that it is the primary responsibility of the state to promote and protect human rights and fundamental freedoms.² OSCE commitments provide that international remedies are supplementary, recognizing that effective remedies should be provided primarily at the national level.³ This requirement has a number of different aspects, including ensuring a legal framework in line with international commitments, effective implementation of remedies, an independent judiciary and other institutions, as well as a strong civil society. This SHDM will examine how participating States are dealing with violations of human rights and fundamental freedoms that occur within their jurisdiction. It will do so by considering specifically the role played by three vital actors in this regard: national courts, human rights defenders and independent national human rights institutions.

As far as *national courts* are concerned, participating States have recognized that the right to a fair and public hearing within a reasonable time before an independent and impartial tribunal forms an integral part of their obligation to provide effective remedies.⁴ Either because of a lack of independence or a lack of powers under national law, national court systems are not always in a position to exercise their function as an effective remedy. The issue of their independence has been a regular topic at the annual

¹ Vienna 1989, para. 13.9; International Covenant on Civil and Political Rights article 2 (3) (a), European Convention on Human Rights, article 13, American Convention on Human Rights, article 25.

² See e.g. Madrid 1983, (Principles), Copenhagen 1990, para. 1, Paris 1990 ('Human Rights, Democracy, and Rule of Law').

³ Copenhagen 1990, para. 5.21: in order to supplement domestic remedies and to better ensure that the participating States respect the international obligations they have undertaken, the participating States will consider acceding to a regional or global international convention concerning the protection of human rights, such as the European Convention on Human Rights or the Optional Protocol to the International Covenant on Civil and Political Rights, which provide for procedures of individual recourse to international bodies.

⁴ Vienna 1989, para. 13.9.

Human Dimension Implementation Meeting, where participants have in recent years expressed concern about pressure on judges, breaches of transparency, obstacles to accessing justice, corruption, the lack of adequate funding of courts, and limitations on access to legal services.⁵ The OSCE/ODIHR has also noted that the right to an effective remedy has been undermined by the discourse and practices around the international fight against terrorism.⁶

An important role in assisting victims of human rights violations is also played by *human rights defenders*, who serve as a crucial link between victims and the State. OSCE commitments state that non-governmental organizations (NGOs) can perform a vital role in the promotion of human rights, democracy and the rule of law as an integral component of a strong civil society.⁷ NGOs can publicize cases where no effective remedy exists, advocate adequate and effective solutions, point victims to existing remedies, and assist them in finding their way through the national legal system. They can also assist victims in the redress of violations, through counselling, rehabilitation and reintegration schemes, and providing psychosocial, medical, socio-economic and other assistance. Their advocacy role on behalf of victims also contributes to the prevention of human rights violations.

Finally, an important role in identifying areas where there are no effective remedies for human rights violations lies with independent *national human rights institutions (NHRIs)*. With their overview of the national situation, expertise and independence, such bodies can identify gaps in protection and propose solutions. The need to prevent national human rights institutions from becoming a facade to hide state violations of human rights and fundamental freedoms was noted at the 2006 SHDM on Human Rights Defenders and National Human Rights Institutions.⁸ Much work remains to be done in achieving full NHRI compliance with the Paris Principles.⁹

This SHDM will provide an opportunity to identify gaps in national systems for protecting human rights, and to examine what role these three different actors can play in identifying and addressing such gaps effectively. It will address ways in which their independence and capacity can be strengthened and enhanced.

Session I: the role of national courts in promoting and protecting human rights

Courts are the primary bodies to which victims of human rights violations look to obtain formal redress. OSCE commitments specify that independent judicial systems play a key role in providing remedies for human rights violations, and they have

⁵ Consolidated Summary, HDIM 2006, pp. 20-22, HDIM 2005, pp. 14-18. The issue of access to legal services, including defence counsel, was extensively discussed at the 2005 SHDM on the Role of Defence Lawyers in Guaranteeing a Fair Trial (Tbilisi, 3-4 November 2005).

⁶ OSCE/ODIHR, *Common Responsibility. Commitments and Implementation*, Report submitted to the OSCE Ministerial Council in response to MC Decision No. 17/05, on Strengthening the Effectiveness of the OSCE (2006), at p. 19 (cited as '*Common Responsibility*', available at www.osce.org/item/22321.html).

⁷ Istanbul 1999, para. 27.

⁸ Final Report of the 2006 SHDM on Human Rights Defenders and National Human Rights Institutions: legislative, State, and non-State aspects (Vienna, 30-31 March 2006), p. 13.

⁹ *Common Responsibility*, pp. 19-20: "Such bodies do not yet exist in a number of participating States, or, where they do, they often lack the requisite level of autonomy and independence to be effective."

undertaken to promote the development of these systems.¹⁰ An important aspect of the judiciary's role as an effective remedy lies in its independence, which has been recognized on repeated occasions by OSCE participating States.¹¹

In this respect, OSCE Commitments recognize the importance of: prohibiting the improper influencing of judges; protecting the judiciary's freedom of expression and association; guaranteeing the proper qualification, training and selection of judges; providing judges with security of tenure and appropriate conditions of service; respecting conditions of immunity; and ensuring that the disciplining, suspension and removal of judges is determined according to law.¹² This session will therefore deal with the role and importance of judicial independence in providing a truly effective remedy to victims of human rights violations, and examine how judicial independence can be strengthened.

Another important aspect in providing effective remedies through national courts lies in the judiciary's professionalism and technical capacity to recognize and deal with violations of human rights and fundamental freedoms. This involves developing human rights jurisprudence, publicizing judgments, reaching out to citizens, facilitating the initiation of court proceedings, training staff in international standards and in recognizing human rights violations during court sessions. Another way of improving the functioning of the judiciary as an effective remedy is to allow impartial national and international trial monitors to observe court proceedings and for the judiciary to implement fully any resulting recommendations.

This session will also explore how judges can better deal with allegations of violations of human rights by examining how their standards of professionalism and knowledge of human rights can be improved, how they can best keep abreast of developments in international human rights jurisprudence, and how best practices on this issue can be shared within the national judiciary. The session will further examine how co-operation with courts in other participating States can be strengthened. Finally, the session will look at what courts can do to ensure the proper enforcement of remedies that are provided to victims: how can the full compliance of all relevant parties best be achieved?

Issues that could be discussed:

1. What best practices have supreme and constitutional courts developed to ensure lower courts are aware of and apply international standards?
2. How can courts best publicize their judgements and reach out to citizens?
3. How can the courts ensure remedies are enforced most effectively?
4. How can national courts be strengthened, both in terms of capacity and in terms of impartiality and independence, to uphold international human rights standards?

¹⁰ Istanbul 1999, para. 45.

¹¹ Vienna 1989, para. 13.9; Copenhagen 1990, para. 5.12; Moscow 1991, paras. 19-20.4; Istanbul 1999, para. 45.

¹² Moscow 1991, paras. 19- 19.2.

Session II: the role of human rights defenders in addressing human rights violations

OSCE commitments provide that where violations of human rights and fundamental freedoms are alleged to have occurred, the effective remedies available include the right of individuals to seek and receive assistance from others in defending their human rights and fundamental freedoms.¹³ As participating States have recognized, NGOs play a vital role in the promotion and protection of human rights.¹⁴ The importance of full information about effective remedies being given to individuals has also been recognized.¹⁵ Human rights defenders can play an important role in assisting victims, informing them of their rights and advocating on their behalf. Though the primary responsibility for offering redress for violations lies with the State, individuals and NGOs can also offer victims assistance in making their rights a reality, and running programmes for their rehabilitation (e.g. for torture victims).

Human rights defenders can identify areas where remedies do not exist and advocate legislative changes to promote and protect human rights and to provide effective remedies. The effectiveness of NGOs in fulfilling this role is, *inter alia*, contingent upon their financial and technical capacity. They need to develop effective strategies and techniques for dealing with state structures in order to advance human rights and strengthen the national system for protecting human rights.

This session will therefore discuss how civil society actors can best undertake their monitoring and advocacy work to ensure that citizens have access to remedies, and to develop strategies to address human rights violations for which no effective remedies may exist, either in law or in practice. It will also focus on the role of the government in providing for independent civil society actors and establishing partnerships with NGOs, free of intimidation and harassment. The session will allow NGOs to share examples both of good practice and of challenges in these areas.

Issues that could be discussed:

1. What is the role of human rights defenders in promoting effective prevention of and redress for human rights violations?
2. What best practices have human rights NGOs developed to identify protection gaps?
3. How can civil society at large play a role in the promotion of a human rights culture and the provision of remedies for human right violations?
4. How can human rights NGOs maximize the effectiveness of their advocacy and monitoring work, and what is the role of co-operation, including international co-operation, with other NGOs and international organizations in this regard?

¹³ Copenhagen 1990, paras. 11, 11.2.

¹⁴ Copenhagen 1990, paras. 10-10.4.

¹⁵ Vienna 1989, para. 13.9.

Session III: the role of independent national human rights institutions in promoting and protecting human rights

Independent NHRIs play a vital role in identifying protection gaps in national human rights systems. The importance of participating States establishing independent institutions has been recognized in OSCE commitments.¹⁶ As part of their role in receiving, investigating and seeking to resolve complaints of human rights violations, NHRIs can form partnerships with NGOs and assist in establishing links between NGOs and state institutions while maintaining their own independence. As noted at the 2006 SHDM on Human Rights Defenders and National Human Rights Institutions, NHRIs play an important role in the creation of networks between NGOs.¹⁷ NHRIs have an advocacy role in promoting and protecting human rights through seeking to resolve violations. Their involvement in human rights issues may take many forms, e.g. monitoring places of detention, monitoring trials, and working to prevent torture and providing assistance to complainants. In some countries, NHRIs have the right to bring or assist in the determination of cases of constitutional importance before the courts.

Only truly independent NHRIs will be able to identify areas where national human rights systems provide ineffective protection. As noted at the 2006 SHDM on Human Rights Defenders and National Human Rights Institutions, the United Nations Paris Principles serve as an important reference tool in this regard.¹⁸ This session will examine the ability of NHRIs, both in law and in practice, to advocate effectively for changes and improvements in national human rights systems.

This session will also focus on how to enhance the role of independent NHRIs in the receipt, investigation and resolution of human rights violations, and in fostering partnerships between human rights defenders, and between human rights defenders and government, and generally their role in creating a more effective national framework for the protection and promotion of human rights. It will examine the importance of improving standards of professionalism, sharing experiences with other NHRIs, and how NHRIs can fulfil their function as a vital link between NGOs and the government.

Issues that could be discussed:

1. How can independent NHRIs assist state and civil society actors to cooperate in the promotion and protection of human rights?
2. How can the independence of NHRIs be strengthened?
3. How can independent NHRIs best establish partnerships with and between human rights defenders at the national level?
4. How can NHRIs share best practices on creating networks with one another, and what is the role of international organizations in this regard?

Of particular importance and interest in the discussion will be the interaction between the court system, independent NHRIs and human rights defenders. Participants are

¹⁶ Copenhagen 1990, para. 27.

¹⁷ Final Report of the 2006 SHDM on Human Rights Defenders and National Human Rights Institutions, pp. 14, 19, 22.

¹⁸ Final Report of the 2006 SHDM on Human Rights Defenders and National Human Rights Institutions, pp. 20-25.

encouraged to consider how these entities can best complement each other in a manner that ensures the greatest possible synergy and contributes to creating a truly effective system for dealing with human rights violations.