

SUPPLEMENTARY HUMAN DIMENSION MEETING

**HUMAN RIGHTS DEFENDERS
AND NATIONAL HUMAN RIGHTS INSTITUTIONS:
LEGISLATIVE, STATE AND NON-STATE ASPECTS**

**30 – 31 March 2006
HOFBURG, VIENNA**

ANNOTATED AGENDA

The role of human rights defenders and national human rights institutions in promotion and protection of human rights has been recognized worldwide. The UN Declaration on human rights defenders¹ confirms the right of everyone, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels. The Declaration stresses the responsibility of each State to protect, promote and implement all human rights and fundamental freedoms and commits the States to adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the Declaration are effectively guaranteed.

National human rights institutions (NHRIs), as defined in the so-called Paris Principles², are vested with competence to promote and protect human rights and are increasingly seen by all stakeholders as key actors in this sphere. Independence from the executive power is the attribute that most clearly underpins the legitimacy, credibility and effectiveness of NHRIs. NHRIs take many forms in terms of their mandate, composition and the political and legal traditions within which they operate. The Paris Principles identify the role of NHRIs as pluralist and co-operative with a range of groups and institutions, including governmental authorities, non-governmental organizations (NGOs), judicial institutions and professional bodies. NHRIs should make recommendations and proposals to governments on various matters relating to human rights, including the human rights related legal framework and practice, pointing out to concrete violations.

For women human rights defenders, promoting and protecting women's rights in particular can be an additional risk factor, as the assertion of some such rights can be perceived as a threat to,

¹ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the General Assembly on 8 March 1999. The severity and scale of reprisals committed against defenders were one of the primary motivations behind the adoption of the Declaration and the establishment of the mandate of the Special Representative of the Secretary-General on human rights defenders.

² Principles relating to the Status of National Institutions (The Paris Principles), adopted by the General Assembly resolution on 20 December 1993.

and disruptive of, cultural, religious and societal norms. They may face rights abuses not only as human rights defenders, but also because of the gender based expectations about their position in society as women and the fact that their work may be viewed as countering society's notions about the status of women. Awareness and knowledge of gender implications in this regard are relevant in order to ensure development and maintaining of effective, appropriate and accessible protection of women human rights defenders.

The OSCE has a long standing relationship with human rights defenders and NHRIs, based on commitments reflected in various OSCE documents, including 1990 Copenhagen Document and 1991 Moscow Document. Annual Human Dimension Implementation Meetings (HDIMs) provide an opportunity for peer review of implementation of the OSCE human dimension commitments, including those relevant for human rights defenders and NHRIs, such as freedom of expression, movement, assembly and association, etc. Problems facing human rights defenders were also discussed at the Supplementary Human Dimension Meeting (SHDM) in 2001.

The OSCE participating States recognized that the promotion of human rights through education and training is vital for the strengthening of respect for human rights and fundamental freedoms³. It can be achieved through formal or informal human rights education and awareness raising efforts undertaken by state bodies, NHRIs and human rights defenders, with every actor having its important and particular role to play in this process.

Working Session 1

Human rights defenders in the OSCE region: challenges, obstacles and opportunities

“Human rights defender” is a term used to describe people who, individually or with others, act to promote or protect human rights. The Special Representative of the Secretary-General on human rights defenders has expressed concern for the situation of human rights defenders in all countries, including both emerging democracies and countries with long-established democratic institutions, practices and traditions. Human rights defenders, in every region of the world, have been subject to violations of their human rights. Women human rights defenders are facing specific violations because of their gender and/or because of the gender specific nature of the issues they advocate for.

The importance of adequate legislation has been underlined in the UN Declaration on human rights defenders which states that each country's domestic legislation should provide a conducive environment for human rights defenders.⁴ At the same time, it places on States the responsibility of adopting and implementing relevant legislation and administrative procedures that would allow human rights defenders to be seen and heard.⁵ Likewise, the OSCE

³ Ministerial Council Decision no. 11/05 “Promotion of human rights education and training in the OSCE area”, Ljubljana, 6 December 2005.

⁴ “Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.” (Declaration on human rights defenders, Art. 3)

⁵ “1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons

commitments stressed that the OSCE participating States “will respect the right of their citizens to contribute actively, individually or in association with others, to the promotion and protection of human rights and fundamental freedoms⁶” and “will take necessary action in their respective countries to effectively ensure this right”.⁷

The participating States recognized that co-operation among themselves, as well as the active involvement of persons, groups, organizations and institutions, will be essential to ensure continuing progress towards their shared objectives.⁸ The OSCE participating States offer various opportunities for human rights defenders and civil society to get involved in promotion and protection of human rights and fundamental freedoms. These different experiences developed within the OSCE region could be discussed in view of identifying the best practices.

Issues that can be discussed in connection with this topic are:

- What challenges do human rights defenders face in the OSCE region, including specific gender based difficulties faced by women human rights defenders? How can these challenges be overcome?
- What opportunities do OSCE participating States create to facilitate the work of human rights defenders? How can these opportunities be further reinforced?
- What are the registration and other bureaucratic demands faced by NGOs and how do they impact on their work?
- What are the main legal obstacles limiting the activities of human rights defenders and NGOs?
- What happens to human rights defenders when NGOs are closed down?
- How to promote the important work of human rights defenders and to strengthen their image vis-à-vis States and non-state institutions?

Working Session 2

Synergies and co-operation between State organs, national human rights institutions and human rights defenders

The OSCE commitments confirm that the protection and promotion of human rights and fundamental freedoms is one of the basic purposes of government, and the recognition of these rights and freedoms constitutes the foundation of freedom, justice and peace.⁹

under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.”

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

⁶ Concluding Document of the Vienna Meeting 1989, “Questions relating to Security in Europe: Principles”, paragraph 13.5.

⁷ Concluding Document of the Madrid Meeting 1983, “Questions relating to Security in Europe: Principles.”

⁸ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990.

⁹ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990, paragraph

As the State is the most significant and by far the most important protector of human rights on the national level, there is a need for a continuous interaction between the State organs and civil society. This may be done in several different ways: by respecting the freedoms of its citizens to exercise their civil and political rights; by consulting with civil society on important policy decisions which may influence the human rights situation; or by providing protection to human rights defenders.

NHRIs, including Ombudsman institutions, play a special role in this context. NHRIs offer people, including human rights defenders, an opportunity to have their complaints heard, evaluated and investigated by independent bodies. While these institutions are not directly involved in the outcome of judicial processes, they can comment on complaints and offer recommendations, aiming to remedy the situation and prevent it from happening again. They should also have a right to consistently monitor the extent to which relevant authorities follow their advice and recommendations.

Relationships with civil society can help NHRIs to protect their independence and pluralism. This can also enhance their effectiveness by deepening their public legitimacy, ensuring they reflect public concerns and priorities, and giving them access to expertise and valuable social networks, including to individuals or groups who are politically, socially, economically or culturally marginalized.

In order to ensure effective human rights protection by State organs and NHRIs, training for staff members of these bodies is required to equip them with necessary professional skills, including expertise in human rights.

Issues that can be discussed in connection with this topic are:

- What mechanisms already exist in the OSCE participating States to protect the rights of human rights defenders, including the rights of women human rights defenders? What else can be done by States to reinforce the protection of human rights defenders?
- How can State organs, NHRIs and human rights defenders support each other in enhancing the promotion and protection of human rights?
- What best practices the participating States can offer that encourage and facilitate the dialogue between State organs, NHRIs and human rights defenders?

Working session 3

Human rights defenders: pertinent legislation and implementation of OSCE commitments

Human rights defenders carry out their activities within national legal frameworks, which, as prescribed by the UN Declaration on human rights defenders¹⁰, should be consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms.

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¹⁰ UN Declaration on human rights defenders, Art. 3

The Declaration stipulates that in order to promote and protect human rights and fundamental freedoms, human rights defenders should have a right to meet or assemble peacefully; and to form, join and participate in NGOs, associations or groups¹¹. It is widely acknowledged that protection of opinions and the freedom to express them is one of the objectives of the freedom of assembly and association. Moreover, genuine and effective freedom of assembly and association cannot be reduced to a mere duty on the part of the State not to interfere and requires States to take positive measures to guarantee these freedoms.

OSCE Commitments¹² echo international standards contained in the United Nations documents and demonstrate the participating State's commitment to develop relevant laws pertinent to freedom of assembly and association and put them into practice. OSCE Commitments also recognize that civil society should be consulted during the drafting of primary and secondary legislation which affects their status and operation¹³.

Freedom of assembly and freedom of association are of importance for all members of any democratic and pluralistic society, but NGOs and human rights defenders are often the first ones to be affected in case of limitations placed on these freedoms.

National law enforcement plays an important role in protection and enforcement of the rights of human rights defenders and NGOs and should act "in the public interest, respond to a specific need and pursue a legitimate aim". The participating States should ensure that "law enforcement acts are subject to judicial control and the law enforcement personnel are held accountable for such acts"¹⁴ and human rights defenders and NGOs "enjoy recourse to effective remedies, national or international, against any violation of their rights"¹⁵.

Issues that can be discussed in connection with this topic are:

- Does existing national legislation in OSCE participating States provide adequate guarantees for freedom of association and assembly? How is it enforced in practice?
- Do law enforcement bodies fulfil their duties with regard to ensuring and facilitating the free exercise of freedom of assembly and association?

¹¹ UN Declaration on human rights defenders, Art. 5

¹² In 1990 Copenhagen Document in Paragraph 10.3 the participating States committed themselves to "ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms, including human rights monitoring groups. In Paragraph 9.2 the participating States declared that "everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards"

¹³ 1990 Copenhagen Document, Paragraph 5.8 foresees the participating State's commitment to have "legislation, adopted at the end of a public procedure, and regulations published, that being the condition for their applicability " and Principle 78 of the Council of Europe Fundamental Principles on the Status of Non-governmental Organisations in Europe, adopted on 13 November 2002.

¹⁴ Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE 1991, paragraph 21.1 and 21.2.

¹⁵ Charter of Paris for a New Europe, 1990.

- Do participating States effectively prosecute members of the law enforcement in cases when human rights violations are committed by them, for example, in instances of the excessive use of force?
- What reforms are needed to ensure that law enforcement agencies better contribute to the protection of human rights defenders according to their needs, including gender based needs?
- How do participating States raise awareness of the law enforcement personnel about human rights standards? Can the OSCE assist in this process?