



Combating Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: The Role of the OSCE

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This report is one of a series of papers prepared under the auspices of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe for the benefit of participants at the 1998 Implementation Meeting on Human Dimension Issues. Every effort has been taken to ensure that the information contained in this report is accurate and impartial. We are grateful to a number of experts for their valuable contributions to this series.

These papers are intended to highlight key issues and to promote constructive discussion; the opinions and information they contain do not necessarily reflect the policy and position of the Office for Democratic Institutions and Human Rights or of the Organization for Security and Co-operation in Europe. Any comments or suggestions should be addressed to the ODIHR.

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EXECUTIVE SUMMARY

Credible reports show that torture and ill treatment are still widespread in a number of countries in the OSCE region. At the 1997 Human Dimension Implementation Review Meeting (hereafter 'Implementation Meeting'), torture was identified by both State delegations and non-governmental organizations as an area in which participating States could work harder to fulfil their OSCE commitments.

The prohibition of torture was affirmed within the OSCE in the 1989 Third Follow up Meeting in Vienna and was restated in the unfolding of the Helsinki process. The OSCE participating States committed themselves to prohibit torture and to prevent, inquire, prosecute and punish the practice of torture and ill treatment. They stressed that the prohibition of torture is absolute. They did not provide for compensation - including the means for rehabilitation - for victims of torture, which is a gap in comparison to a key treaty in the field. Regarding the implementation of those commitments, the OSCE participating States referred to the "*agreed measures and procedures*" of the OSCE human dimension and provided guidance for their use in the field of torture prevention.

The OSCE is involved in following and intervening on individual cases of alleged torture and ill treatment. But, generally, the OSCE's actions typically aim at assisting the State concerned to address gaps in the rule of law, the lack of democracy and fundamental freedoms and the insecurity that give rise to practices of torture and ill treatment. The Advisory Panel for the Prevention of Torture, established in 1998, provides guidance to the ODIHR in developing new projects involving legislative reform, training, and supporting the work of NGOs and on ways to integrate anti-torture activities into existing projects without duplicating ongoing efforts by other organizations.

Numerous other standards and mechanisms to combat torture and ill treatment relevant for the OSCE region exist at national and international level. Despite this fact, obstacles remain to the full implementation of the prohibition of torture. To focus the discussions, the report outlines some advances and main areas of concern in the OSCE region including: the status of ratification of international instruments; the co-operation existing with some international bodies; the setting of domestic legal safeguards; the conditions of detention; the behaviour of the security forces and the fight against impunity; widespread torture and ill treatment committed during situations of tension and conflict; the groups particularly at risk; and the question of compensation and rehabilitation

Finally, the report indicates a number of areas and directions where States and the OSCE may pursue concrete actions. These include, for the participating States, the taking of all measures, legislative, administrative, judicial or other to prevent torture and ill treatment; the strengthening of international obligations; co-operation with international bodies and NGOs; and providing the victims with redress, including rehabilitation. Informal recommendations for the OSCE include that it should integrate the prevention of torture fully into its activities, including by providing special training to OSCE field mission members and by taking a more proactive role in raising specific cases of concern with the governments of participating States.

1. INTRODUCTION

Credible reports show that torture and ill treatment are still widespread in a number of countries in the OSCE region. At the 1997 Human Dimension Implementation Review Meeting (hereafter 'Implementation Meeting'), torture was identified by both State delegations and non-governmental organizations as an area in which participating States could work harder to fulfil their OSCE commitments.

This report is a response to that recommendation. The report analyses the commitments undertaken by OSCE participating States, describes the current role and activities of the OSCE regarding torture, and compares them with other key international standards and mechanisms aiming at the prevention of torture. It also highlights the main obstacles to the prevention of torture in the region. Finally, it indicates a number of areas and directions where States and the OSCE may pursue concrete actions.

The report is based on material from various sources collected by the ODIHR during the year and takes into account the extensive work done in the field by the Council of Europe and the United Nations. Material was provided by Bulgaria, the Slovak Republic and Switzerland, the OSCE Missions and the following international non-governmental organizations: International Helsinki Federation (IHF); Human Rights Watch; Amnesty International London; Amnesty International, Polish Section; Association for the Prevention of Torture (APT); International Prison Watch (OIP); World Organization against Torture (OMCT/WOAT); and the International Rehabilitation Council for Torture Victims (IRCT).

2. OSCE COMMITMENTS AND IMPLEMENTATION MECHANISMS

2.1. OSCE commitments: content and gap

2.1.1 To prohibit, prevent, inquire, prosecute and punish

It was only in the 1989 Third Follow up Meeting in Vienna that the prohibition of torture was affirmed within the OSCE. The prohibition was restated at the Paris Summit (1990) and reaffirmed and refined at the Copenhagen Meeting (1990), the Moscow Meeting (1991) and the Budapest Summit (1994) (see commitments in annex 1). No commitments in the field of the human dimension were adopted at the last OSCE Summit held in Lisbon in 1996, as the OSCE's focus has shifted from standard setting to implementation.

Although in the Implementation Meeting's agenda, the topic is tackled under the heading "Prevention of Torture", the OSCE participating States committed themselves, in those various documents, to prohibit torture and to prevent, inquire, prosecute and punish the practice of torture, other cruel, inhuman or degrading treatment or punishment (hereafter ill treatment) and psychiatric or other medical practices that violate human rights and fundamental freedoms.

They also stressed that the prohibition of torture is absolute: *"no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or another public emergency, may be invoked as a justification of torture"* (Copenhagen, 16.3).

Since the Copenhagen Meeting, the participating States have specified the measures to be undertaken to ensure effective implementation of their commitments.

They committed themselves to take effective legislative, administrative, judicial and other measures to prevent and punish torture and ill treatment and to consider acceding ("*as a matter of urgency*"),

Copenhagen) to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, as well as to recognize the competence of its monitoring Committee to receive individual and state communications and to proceed to a confidential inquiry into allegations of the systematic practice of torture.

Participating States also committed themselves to ensure that education and information are included in the training of law enforcement personnel and any other persons who may be involved in the custody, interrogation or treatment of persons deprived of their liberty and to keep under systematic review rules, instructions, methods and practices as well as arrangements for the custody and treatment of those persons. In Moscow, particular attention was paid to the rights of persons deprived of their liberty, including the right of a detainee or his counsel to make a request or complaint regarding his treatment, and the guarantee that no complainant will suffer prejudice for making such a request.¹

The prohibition of torture and ill treatment is supplemented, for persons deprived of their liberty, by two positive commitments: they shall be treated with humanity and with respect for the inherent dignity of the human person and participating States will endeavour to take measures, as necessary, to improve the conditions of individuals in detention or imprisonment.

2.1.2. The gap: the right to compensation

The OSCE commitments in great part restate international human rights treaties² and UN non legally binding rules concerning the treatment of detainees and the behaviour of law enforcement officials³. They also contain explicit and implied references to key international human rights instruments and supervisory mechanisms in the field of combating torture.

They contain, though, a major gap in comparison to those instruments: they do not provide for compensation - including the means for rehabilitation - for victims of torture⁴. Another gap is the lack of recognition of the right not to be expelled, returned or extradited to another State where there are substantial grounds for believing that there is a danger of being subjected to torture (the principle of 'non refoulement').

2.1.3. No definition

The OSCE commitments are practical tools. Torture and ill treatment have not been defined in the framework of OSCE. In everyday usage torture and ill treatment are sometimes used as synonyms and can refer to mere criminal acts non-imputable to the State. In international law, those words have specific meaning, which defines the scope of the State's responsibility. The key document on this matter is the UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment (CAT), which defines torture in its article 1⁵ and deals with other cruel, inhuman or degrading treatment or punishment in its article 16 paragraph 1.

¹ In some Moscow commitments, the words detainees, deprivation of liberty and imprisonment are used as synonyms and in a way inconsistent with the wordings of the similar provisions contained in the 1988 UN Body of Principles for the protection of All Persons Under Any Form of Detention or Imprisonment.

² The 1984 UN Convention Against Torture; the 1966 International Covenant on Civil and Political Rights (articles 7 and 10).

³ The 1977 United Nations Standard Minimum Rules for the Treatment of Prisoners; the 1979 United Nations Code of Conduct for Law Enforcement Officials.

⁴ Such a right to compensation is only provided for "the victim of an unlawful arrest or detention" (Moscow 23.1.xi).

⁵ Art. 1 "Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him for an act he or a third person has committed or is

Several international bodies such as the UN Human Rights Committee, the European Commission and Court on Human Rights and the UN Special Rapporteur on torture have further defined those words or specified the (broad) range of protected persons (persons imprisoned, pupils, patients in educational and medical institutions) for the purposes of their respective mandates.

2.2. Implementation mechanisms

Implementation of human rights first takes place at national level. Concerning the topic tackled in this report, the OSCE participating States have recognized the importance of national legislation (Budapest, 20) and enumerated measures to be taken at national level to prevent, prosecute and punish torture and ill treatment.

Mechanisms established at international level have the role of promoting, encouraging and measuring compliance with internationally recognized human rights standards. Since 1989, the OSCE has been equipped with mechanisms, activities and structures aimed at the effective implementation of human dimension commitments. In the Copenhagen and Budapest commitments regarding torture, participating States referred to those "*agreed measures and procedures*" (Copenhagen 16.6 and 16.7, Moscow 20) and provided guidance for their use in the field of torture prevention.

2.2.1. OSCE human dimension measures and procedures

a) The 1989 "Vienna mechanism" allows any participating State to ask another participating State to provide, within 10 days, written information on situations or individual cases relating to the human dimension of the OSCE and, possibly, to request the holding of bilateral meetings to find a solution. Then, it allows for situations and cases to be brought to the attention of other participating States⁶. Since 1991, the "Moscow Mechanism" has supplemented the Vienna Mechanism⁷. It establishes a system of a mission of independent experts or rapporteurs with fact-finding, advisory or even mediation powers to facilitate the resolution of a particular problem relating to the Human Dimension of the OSCE.

Since the collapse of communism in Eastern Europe, the Vienna mechanism has been resorted to less and less frequently⁸. The Moscow Mechanism has been activated a few times, twice in relation with situation of serious violation of Human Dimension commitments that included torture and ill treatment⁹. These procedures have almost never been invoked between the Council of Europe's member States.

suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or any other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

⁶ See Vienna Concluding Document (1989), chapter on the Human Dimension.

⁷ See Moscow Document (1991), paragraph 2.

⁸ The Vienna Mechanism was applied on a great number of occasions during the first years of its existence, notably in favour of political detainees. See Victor Ghebali, *L'OSCE and l'Europe post-communiste 1990-1996*, Bruylant, Bruxelles, 1996 and Arie Bloed "Monitoring the CSCE Human Dimension: in Search of its Effectiveness" in *Monitoring Human Rights in Europe*, Nijhoff, Dordrecht..., 1993.

⁹ Rapporteur mission to Bosnia and Herzegovina and Croatia in 1992 (CSCE communication 342, 3 November 1992); Establishment of Rapporteur mission to enquire human rights violations in Serbia/Montenegro (CSO/Journal 3, 30 June - 1 July 1993).

b) In parallel to the decline of the Vienna and Moscow mechanisms, the human dimension has been increasingly integrated in the OSCE political consultation process, the work of the decision-making bodies and the OSCE missions (see below 1.2.3.).

Thus, *ad hoc* Expert and Rapporteur Missions with torture prevention tasks can also be - and have been - set up outside the Moscow mechanism. For instance, the so-called Thomson mission to Yugoslavia, established by the Council of Senior Officials (now Senior Council) in 1992, was charged with the "primary task, in close co-ordination with the International Committee of the Red Cross and United Nations Commission on Human Rights, to ensure that all alleged places of detention are inspected within the shortest possible time"¹⁰.

Since 1994¹¹ representatives of participating States have conducted a regular dialogue on the human dimension, including cases of non-implementation of human dimension commitments, within the Permanent Council (PC)¹². The Chairman-in-Office informs the PC of serious cases of alleged non-implementation on the basis of information received by OSCE executive bodies (the ODIHR, the Missions) or participating States. The Presidency (the Chairman-in-Office and the Troika) can also make discrete interventions on individual verified cases and situations during their bilateral meetings with officials from OSCE participating States.

c) The Implementation Meeting and human dimension seminars

During meetings set up since 1993 to address the implementation of the OSCE human dimension, problems in the implementation of commitments in the field of torture are regularly raised by governmental delegations as well as by NGOs under the heading "Prevention of Torture". In the official consolidated summary, discussions are then summed up without reference to specific cases or situations.

Human dimension seminars have been set up since 1992 to address specific questions of particular relevance to the Human Dimension and of current political concern. The question of prevention of torture and ill treatment has never been the subject of a seminar.

d) The Office for Democratic Institution and Human Rights (ODIHR)

The ODIHR's mandate includes assisting the participating States to build democratic institutions and implement their human dimension commitments, which include the prevention of torture. In the context of its responsibility to monitor the implementation of OSCE Human Dimension commitments, the ODIHR provides advice and assistance to the OSCE Chairman-in-Office, as well as to the participating States. It has the task of managing the Vienna and Moscow mechanisms and of organising the Implementation Meetings and human dimension seminars mentioned above (for practical activities, see below, 3).

2.2.2 Guidance: criteria for action, information and role of NGOs

In Copenhagen and Budapest, participating States committed themselves to take up as a matter of priority for consideration and for action any cases of torture and ill treatment (Copenhagen, 16.6). They also committed themselves to act upon the understanding that preserving and guaranteeing the life and security of possible victims would be the sole criterion in determining the urgencies and priorities to be accorded in taking appropriate remedial action. Thus, the fact that an individual case is already

¹⁰ CSO/Journal No. 2, Annex 1, 14 August 1992.

¹¹ See Budapest document, VIII, 5 and 6.

¹² See agenda of the Permanent Council on OSCE website (www://osceprag.cz).

considered by an other international body may not be invoked as a reason for not considering it within the OSCE (Copenhagen 16.7).¹³

In Budapest, the importance of exchange of and access to information were underlined and, for the first time, the role of NGOs as a relevant source of information for the OSCE was recognized. The OSCE was also encouraged to draw on the experience of the Special Rapporteur on Torture and other Cruel Inhuman and Degrading Treatment or Punishment established by the Commission on Human Rights of the United Nations (see below, 3.2.3.), and to make use of the information received from NGOs.

3. OSCE CURRENT PRACTICAL ACTIVITIES AGAINST TORTURE AND ILL TREATMENT

In reality, the OSCE is in principle less involved in following and intervening in individual cases of alleged torture and ill treatment, than in considering situations in which individual cases can be a part of a general pattern of non-compliance with OSCE commitments. The OSCE's actions typically aim at assisting the State concerned to address gaps in the rule of law, the lack of democracy and fundamental freedoms and the insecurity that give rise to practices of torture and ill treatment.

3.1. The Office for Democratic Institutions and Human Rights (ODIHR)

3.1.1. Advisory Panel

Following up on proposals made at the 1997 Implementation Review Meeting, the ODIHR established an Advisory Panel for the Prevention of Torture and received a voluntary contribution from the United Kingdom for anti-torture activities. The task of the Panel is to provide advice on how the ODIHR can best develop programmes and activities to combat torture in OSCE participating States, without duplicating ongoing efforts by other organizations.

The first meeting of the Panel was held in Warsaw on June 11-12. The Advisory Panel provided guidance to the ODIHR in developing new projects involving legislative reform, training, and supporting the work of NGOs. The Advisory Panel provides continuing advice to the ODIHR on ways to integrate anti-torture activities into existing projects and in the development of a strategic plan to combat torture. Additional recommendations from the Panel are incorporated in the recommendations at the end of this report. The ODIHR has already begun implementing some of the panel's recommendations by incorporating torture concerns into ongoing and planned projects in the OSCE area.

3.1.2. Implementing the Advisory Panel's Recommendations

The Advisory Panel recommended that the ODIHR provide specialized training to OSCE mission personnel in torture prevention and awareness. Such training will enhance the OSCE's capacity to assist participating States in combating torture. In response to this recommendation, the ODIHR is working with European experts to develop a field handbook for mission members that will include information about the practice of torture and ill treatment, existing international and national actions to combat torture including the role and methods used by NGOs; techniques for monitoring, investigating and reporting ill treatment; assistance for victims and issues relating to public awareness and anti-torture campaigns. Completion and dissemination of the field handbooks is scheduled for early spring 1999. The ODIHR will also develop other ways in which it can work more closely with field personnel to develop anti-torture assistance projects and raise public awareness of international campaigns to combat

¹³ One year later though, the Moscow document stated that "in considering whether to invoke the procedures (of the Moscow mechanism) regarding the case of an individual, participating States should pay due regard to whether that individual's case is already subjudice in an international judicial procedure" (Moscow, 16).

torture and ill treatment. By strengthening the literacy of OSCE personnel in torture related issues, the ODIHR will be better able to utilise the information provided and will be able to respond more quickly to the issues as they arise.

In addition, the ODIHR is incorporating anti-torture concerns into existing projects. For example, the ODIHR, together with an expert from the United Kingdom's Prison Service, has been working with the prison administration in several participating States to strengthen the operational procedures of the prison systems and to enhance the training given to penal staff with regard to international standards. Future implementation phases of these projects will include more specific practices and standards utilised by other participating States to eliminate the opportunities for torture and ill treatment.

3.1.3. Monitoring

The ODIHR gathers information on implementation by participating States of their human dimension commitments - including in the field of torture prevention - to enable its Director to advise the Chairman-in-Office and other OSCE institutions, and to provide a framework for decision-making on ODIHR policies and projects.

3.2. OSCE field missions

The promotion of human rights and fundamental freedoms, democracy and the rule of law are essential elements of the tasks of the field missions. Thus, potentially, they all have a role to play in combating torture and ill treatment.

The role they effectively play in this field varies greatly depending on the specific situation in the region where they are deployed and thus, the mandate and the composition of the mission - in number and expertise - and the priorities set. It goes from no role to on-going active involvement in the prevention of torture and ill-treatment. For instance, the mission to Tajikistan has become particularly involved with the question of the treatment of prisoners and army draftees.

Missions which are involved in the prevention of torture and ill-treatment implement activities such as:

- monitoring and reporting on the situation. In missions with a very extended network of field offices – such as Croatia - it is possible to monitor in permanence general trends as well as to investigate possible individual incidents. Other missions have a more reactive role. To monitor includes to carry out occasional visits to particular detainees (Croatia) or regular visits to detention facilities (Georgia) and to monitor trials;
- organizing training activities; for example, the September 1997 Seminar on the Code of Conduct in Ukraine co-ordinated by the Conflict Prevention Centre (CPC, see below, 2.2.3.);
- offering advice to change or to implement existing legislation, in particular, the Penal Code and the Penal Code Procedure (Belarus, Croatia);
- maintaining a regularly updated list of cases of alleged violations and raising those cases during discussions with representatives of the Government;
- presence at fora where the topic is officially discussed to convey OSCE's serious attention to the issue. For instance, last June, the Advisory and Monitoring Group in Belarus attended the Minsk City Council's one-day hearing on police brutality which occurred in connection with demonstrations in Minsk.

3.3. The Conflict Prevention Centre (CPC)

The CPC supports the work of all OSCE field missions. In addition, upon request of participating States, the CPC provides support for the implementation of the 1994 Code of Conduct¹⁴. In 1997, the

¹⁴ See document of the Budapest Summit, Chapter IV.

CPC played an organising role to provide expertise, notably on humanitarian law, to Ukraine and Moldova upon their request.

4. OTHER MAIN INTERNATIONAL STANDARDS, MECHANISMS AND PROGRAMMES TO COMBAT TORTURE

As noted above, OSCE commitments contain explicit and implied references to key international human rights instruments and supervisory mechanisms of relevance for the OSCE region¹⁵. A brief presentation of the main standards will identify areas where the OSCE has a specific role to play in combating torture in co-operation with other organizations.

4.1. Main international standards

From the 1948 Universal Declaration of Human Rights stating the prohibition of torture and ill-treatment to the 1998 Rome Statute of the International Criminal Court which declares torture committed as part of a widespread or systematic attack against civilians a crime against humanity, a large panoply of norms has been adopted to combat the scourge of torture (see annex 2 for a list).

4.1.1. The key document in this field is the 1984 UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) which sets out a definition of torture and its absolute prohibition and states that an order from a superior cannot serve as a justification. States party have the obligation not to expel or return persons to a country where they are in danger of being tortured. They have to prosecute or extradite perpetrators, to keep the rules and methods of interrogation under systematic review, to set in motion impartial investigations of alleged acts of torture and not to admit statements obtained under torture as evidence, and to provide fair and adequate compensation, including the means for as full a rehabilitation as possible.

4.2.2. At regional level, article 3 of the European Convention on the Protection of Human Rights and Fundamental Freedoms has given rise to an important case law of the European Commission and Court of Human Rights, and the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, adopted in 1987, set up a non-judicial preventive mechanism based on visits (without previous invitation of the State concerned) which has no precedent at intergovernmental level (see below, 3.2.2).

4.2.2. Torture is also prohibited by the four Geneva Conventions of 1949 and their two Additional Protocols of 1977, which apply in cases of international armed conflict, in particular articles 50/I, 51/II, 130/III, 147/IV, as well as article 75 of Additional Protocol I. Common article 3 of the four Geneva Conventions of 1949 applies to non-international armed conflicts, and prohibits "at any time and in any place whatsoever violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture".

4.2. Main international implementation mechanisms and assistance programmes

4.2.1. The UN Committee Against Torture, composed of independent experts, monitors States' compliance with the obligations set out in the CAT through periodic examination of States' reports. It examines individual (article 22) or States (article 21) communications (complaints) and proceeds to a confidential inquiry into allegations of the systematic practice of torture in States party (article 20) if the States recognize the Committee as competent in those respects.

4.2.2. The European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) set up by the Convention mentioned above is composed of as many independent

¹⁵ For more details, see Didier Rouget, *The Prevention of Torture in Europe, International, European and National Mechanisms to Combat Torture*, Association for the Prevention of Torture, Brochure no 2, Geneva, June 1998.

and impartial experts as there are States party, drawn from various professions. The Committee conducts periodic and *ad hoc* visits in any places under the jurisdiction of a contracting State where persons are deprived of their liberty by a public authority (police and gendarmerie stations, public or private hospitals admitting interned patients, administrative detention centres for foreigners and disciplinary premises in military enclosures). In such places, the experts communicate freely and without witness with persons deprived of their liberty on the model of visits conducted by the International Committee for the Red Cross (ICRC). The essential feature of the Convention is the principle of co-operation between the CPT and the States party. The corollary of the obligation of the State to co-operate is the confidentiality of the entire procedure. The report on the visit and detailed recommendations sent to the Government are confidential as long as the Government does not decide to publish them. The first amending protocol to the Convention - which has not yet entered into force - opens the convention to States non members of the Council of Europe which the Committee of Ministers invite to accede to it. A protocol to the CAT currently being drafted within the UN Commission on Human Rights intends to create a similar system of visits at universal level.

4.2.3. Since 1985, the UN Special Rapporteur on Torture and other Cruel Inhuman and Degrading Treatment or Punishment has examined questions relevant to torture, reported on its frequency and extent all over the world and made recommendations to the UN Commission on Human Rights. The Special Rapporteur receives a great deal of information about individual cases of torture. Whenever allegations are sufficiently detailed and not obviously groundless, he forwards them to the government concerned with a request for its observations. In some cases he adopts the urgent action procedure whereby he intervenes immediately with the government "for purely humanitarian reasons, in order to ensure protection of individuals' physical and mental integrity and that the treatment to which they were subjected during their detention was humane". Lastly, he conducts consultative visits, with the agreement of the government, to gather first-hand information on cases and situations and make tailored recommendations to improve the situation. The Special Rapporteur reports regularly and publicly to the Commission on Human Rights and to the UN General Assembly.

4.2.4. The International Committee of the Red Cross (ICRC), which was founded in 1863 in Geneva as an impartial private humanitarian body, is active in many forms of protection and assistance to victims of armed conflict, as well as situations of internal strife and tensions. In particular, its delegates visit detainees with the aim of assessing and, if necessary, improving the material and psychological conditions of detention and to do everything possible to prevent torture and ill treatment. In cases of international armed conflict between States party to the Geneva Conventions, the ICRC is authorized by those Conventions to visit all sites (places of internment, imprisonment and labour) where protected persons (prisoners of war or civilian internees) are held. In cases of non-international armed conflicts, the ICRC offers its services to the conflicting parties and, with their consent, has access to places of detention. In situations other than armed conflicts (internal strife and tensions) the ICRC takes humanitarian initiatives in also offering its services to the State concerned. For instance, it organizes visits to security detainees by concluding special agreements with the State. Co-operation and trust between the ICRC and State authorities are essential. Visits and the reports made on them are confidential. ICRC procedures require that it have access to all places of detention, that no limit be placed on the duration and frequency of visits, and that ICRC representatives be able to talk freely and without witness to any detainee.

4.2.5. The UN Voluntary Fund for Victims of Torture, in operation since 1983, is funded by voluntary contributions from governments, private organizations, institutions and individuals in order to give humanitarian, legal and financial aid to victims of torture, promote their rehabilitation and train specialists in their treatment. In 1997, subsidies of nearly US\$3 million were distributed to 104 projects involving 94 organizations in 56 countries.

3.2.6. Many other international bodies assist States to prevent torture by implementing numerous programmes of technical assistance such as training for law enforcement officials and magistrates, drafting legislation, and strengthening the rule of law. The Council of Europe's programme "Police and Human Rights 1997-2000" is an example of such work. Its aim is to enable police officers in the member States of the Council to acquire appropriate knowledge about human rights standards and to develop the skills that will enable them to apply these in their daily working practice.

5. THE CURRENT SITUATION IN THE OSCE REGION

As the recommendations of the CAT, the CPT and the report of the UN Special Rapporteur and reliable NGOs show, no State is entirely free from torture or ill-treatment. It is not the purpose of this report to present an exhaustive picture of current good practices and drawbacks in the OSCE region in this regard. The aim of this chapter is to outline the main advances and areas of concern in the OSCE region so as to help participants at the Implementation Meeting to focus discussions and to draw conclusions on how the OSCE could assist participating States to better implement their commitments.

5.1. Status of international instruments

5.1.1. According to official UN documents¹⁶, Andorra and Turkmenistan are not parties to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The following States which are parties to the CAT have not accepted the individual complaints mechanism under article 22: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Estonia, Georgia, Germany, Kyrgyzstan, Latvia, Lithuania, Moldova, Romania, San Marino, The Former Yugoslav Republic of Macedonia, Tajikistan, Ukraine, United Kingdom, United States of America and Uzbekistan. Belarus, Bulgaria and Ukraine have made reservations to article 20 CAT regarding the competence of the Committee to proceed to a confidential inquiry into allegations of the systematic practice of torture in States party.

5.1.2. Lithuania has not yet ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT). Andorra, Croatia, Italy, Lithuania and Ukraine have not ratified Protocol I ECPT and Andorra, Croatia, Italy, Lithuania, Portugal and Ukraine have not ratified Protocol II ECPT. OSCE participating States not members of the Council of Europe cannot yet accede to the ECPT because Protocol I has not entered into force.

5.2. Co-operation with international bodies

With regard to co-operation with the UN Special Rapporteur¹⁷, Turkey, as the Russian Federation did in 1994, extended an invitation to make a visit to its territory at the end of this year. In his last report presented to the UN Human Rights Commission last spring, the Special Rapporteur mentioned that not all OSCE participating States had answered the letters and the urgent appeals sent during 1997.

In its 1998 report to Council of Europe's Council of Ministers¹⁸, the CPT stated that, with rare exceptions, the degree of cooperation displayed towards CPT delegations was satisfactory, at both national and local level, even if on occasion the CPT was not supplied in good time with complete lists of places of detention. This was particularly the case as regards police establishments. One sign of transparency is that 49 of the 70 visit reports so far drawn up by the CPT have been published. Many of the remaining twenty-one visit reports have only recently been forwarded to Governments and the

¹⁶ See website <http://www.un.org/Depts/Treaty>.

¹⁷ UN document E/CN.4/1998/38.

¹⁸ CPT/Inf (98) 12 [EN], 31 August 1998, 8th General Report on the CPT's activities covering the period 1 January to 31 December 1997.

CPT expects that they will be published in due course. Access to detention facilities for the International Committee of the Red Cross has not been allowed in a certain number of countries.

5.3. Implementation of international standards: selected questions

5.3.1. Domestic legal safeguards:

Most OSCE participating States have included the prohibition of torture in their constitutions. Observers note that considerable efforts have also been accomplished regarding the inclusion of this prohibition into domestic legislation. Deficiencies, though, are still to be found at the level of the rule of law safeguards.

5.3.2. Conditions of detention

Conditions of detention are still a matter of concern in many OSCE Participating States. The CPT, in each of its visits, has made recommendations on ways to improve safeguards (legal or practical). Ill treatment can be inflicted on particular individuals deprived of their liberty. It can also be part of a general pattern in which conditions of detention themselves are gravely damaging to the mental and physical health of detainees and can amount to ill treatment or even torture. In several countries, prison conditions, especially in some pre-trial detention centres, are recognized by the Government to be harsh. Altogether, in newly established or restored democracies, tens of thousands of detainees, according to informal figures, are dying each year in detention because of lack of hygiene, food and medical care. A particularly acute problem is widespread infectious disease like tuberculosis and AIDS.

Several countries in recent years have announced and implemented amnesties to try to tackle the issue of overcrowding. The problem of overcrowding, leading to appalling conditions of detention, stems partly from laws and practices allowing for long pre-trial detention not justified by particular danger of flight or risk of collusion of the suspect. Such laws and practices still exist in several former communist countries. A particular concern in this respect is the situation of children in pre-trial detention, as children are more vulnerable to ill treatment.

The CPT also noted in its last report that the prevailing economic circumstances in at least some States visited render it difficult to meet all of the Committee's requirements, notwithstanding the goodwill of the authorities concerned. So it has begun to reflect on whether a more proactive approach might be adopted as regards the implementation of its recommendations and to suggest that, in appropriate cases, positive measures intended to assist States to implement the Committee's recommendations could contribute to solving this problem. The Open Society Institute is providing help in this respect in some countries.

5.3.3. Behaviour of the security forces

Each year in several OSCE countries, police brutality - mostly beating - lead to death. In fact, most cases of ill treatment happen during detention in police facilities, in the first hours of arrest, when no access to a lawyer or a doctor and no contact with the family are allowed. The aim is generally to extract a confession. In 1998, brutality has also been used by security forces in connection with demonstrations.

A major concern is impunity, although the situation is said to have improved in some countries in 1998. The ODIHR has received information that allegations of torture in some countries have regularly not been properly investigated, if at all, and that confessions apparently obtained under duress have been taken into account in penal procedures without enquiry. Cases of intimidation and ill treatment of complainants were also reported, as well as inadequate punishment for offenders.

5.3.4. Situations of tension and conflict

All governments recognize that the prohibition of torture is absolute. Nevertheless, some governments still evoke security concerns to justify the worst practices of widespread ill treatment, although externally, those practices or impunity for the perpetrators are generally denied even when they are obvious. In the OSCE region, widespread torture still occurs in the context of current conflicts. Another concern is impunity for violations that happened in the context of past conflicts.

5.3.5. Groups at risk

From reports of international bodies as well as other reliable sources, one can draw the conclusion that certain groups are particularly at risk of being tortured or ill treated in the OSCE region. This is the case for members of minorities - in particular Roma in Eastern and Central Europe and members of racial minorities, as well as refugees and other foreigners in Western countries. A second group at risk is composed of persons making use of their freedom of expression, association and assembly (political opponents, journalists, human rights defenders) as well lawyers complaining about the treatment inflicted on their clients. However, while members of this last group can sometimes bring their cases to international attention, the ordinary victims of, for instance, beating - which is said to be widely practised - often do not even dare to complain. Another group at risk in several newly established or restored democracies is new conscripts because of the practice of severe hazing in the army.

5.3.6. Compensation and rehabilitation

One NGO said in the last Implementation Meeting that the prevalence of torture survivors in need of professional assistance has not yet been determined in a number of OSCE countries. The needs, though, are suspected to be great (former political detainees, victims of torture in the context of conflicts, refugees). Many OSCE countries have given effect to their international (CAT) obligations to provide for compensation and rehabilitation of survivors, in particular by establishing or supporting rehabilitation centres. Twenty OSCE countries, though, do not have rehabilitation centres and, in other countries, centres had to close down this year because of various forms of governmental interference.

INFORMAL RECOMMENDATIONS

OSCE participating States

1. Are encouraged to manifest their commitment to prevent torture and ill-treatment by strengthening their international obligations in this field and by increasing transparency in order to identify and address main obstacles to the eradication of those practises and to promote accountability in a spirit of international co-operation and solidarity. Concretely, they are encouraged:
 - 1.1. For all OSCE participating States, to make use of the OSCE mechanisms, in particular, exchange of information and possible requests to the CPC to provide support for the implementation of the Code of Conduct;
 - 1.2. For all OSCE participating States, to draw upon the experience and expertise of existing international governmental bodies active in the field, to co-operate with them and make the best advantage of technical assistance offered;
 - 1.3. For all OSCE participating States, to draw upon the experience and expertise of existing NGOs active in the field and to conduct an open dialogue with them with the aim of combating torture and ill-treatment;
 - 1.4. For all OSCE participating States, to co-operate closely with the International Committee of the Red Cross (ICRC) and for States so requested by the ICRC to open their places of detention to its inspection;
 - 1.5. For all OSCE participating States, to take as guidelines for the treatment of detainees the UN and Council of Europe non-binding rules and principles;
 - 1.6. For all OSCE participating States, to consider making additional financial contributions to the UN Voluntary Fund for the victims of torture;
 - 1.7. For all OSCE participating States, to encourage the establishment and functioning of centres for the rehabilitation of victims of torture, especially in countries where such centres do not already exist and to consider strengthening their commitments with regard to redressing torture;
 - 1.8. For all OSCE participating States, to give their full support to the Draft Optional Protocol to the CAT by making positive contributions towards building an effective and universal system for the prevention of torture and ill-treatment;
 - 1.9. For all OSCE participating States, to consider withdrawing all reservations to the CAT;
 - 1.10. For Andorra, Belgium, Holy See, Ireland, Kazakstan, San Marino and Turkmenistan, to consider signing and ratifying or acceding to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
 - 1.11. For Albania, Andorra, Armenia, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Estonia, Georgia, Germany, Holy See, Ireland, Kazakstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Romania, San Marino, The Former Yugoslav Republic of Macedonia, Tajikistan, Turkmenistan, Ukraine, United Kingdom, United States of America and Uzbekistan to consider accepting the individual complaints mechanism under article 22 CAT;
 - 1.12. For Belarus, Bulgaria and Ukraine to withdraw their reservations to article 20 CAT;
 - 1.13. For Lithuania to ratify the European Convention for the Prevention of Torture and Inhuman of Degrading Treatment of Punishment (ECPT);
 - 1.14. For Andorra, Croatia, Italy, Lithuania and Ukraine to consider ratifying Protocol I ECPT and for OSCE participating States non members of the Council of Europe, to seek an invitation by the Committee of Ministers of that organization to accede to the ECPT once Protocol I has entered into force;
 - 1.15. For Andorra, Croatia, Italy, Lithuania, Portugal and Ukraine to consider ratifying Protocol II ECPT;

2. To implement, at national level, the commitments taken within the framework of OSCE, giving them full effect by:
 - 2.1. Integrating the absolute and non-derogable prohibition of torture as defined in international law into domestic legislation, at constitutional as well as at lower level;
 - 2.2. Taking all measures, legislative, administrative, judicial or other, to prevent torture and ill treatment. Those measures include respect for the right to liberty and security and the right to a fair trial, review of interrogation rules, legislation that evidence obtained through the use of torture, including confessions, is excluded from judicial proceedings, regular independent inspections of all places of detention, respect for the principle of *non-refoulement*, organization of information on preventing torture as well as training, especially for prosecutors and judges, law enforcement, police and military forces and health personnel;
 - 2.3. Stop impunity. This means engaging in prompt and impartial investigation, wherever there are reasonable grounds to believe that an act of torture has been committed, prosecuting the perpetrator and, if found guilty, imposing adequate punishment. Immediate and full compliance must also be given by the participating States to the International Criminal Tribunal for the Former Yugoslavia in the Hague;
 - 2.4. Providing the victim of an act of torture with prompt redress, including rehabilitation.
 - 2.5. In the fight against torture and ill-treatment, paying particular attention to people belonging to groups at risk (people belonging to minorities, migrants, human rights defenders), and particularly vulnerable groups such as children.

To the OSCE

1. The OSCE should fully integrate the prevention of torture into its activities:
 - 1.1. Current activities to prevent torture should be pursued and expanded;
 - 1.2. Combating torture and ill-treatment should be more integrated into existing projects and activities:
 - special training should be provided to OSCE field mission members, to enable them, within the mandate of the missions, to detect and/or report cases of torture and ill-treatment as defined in international law, to understand better how to interact with victims and, possibly, to give advice on means of redress. This project is underway;
 - trials, especially in sensitive cases, should be monitored by trained trial lawyers. If necessary, assistance from specialized NGOs should be sought;
 - Anti-torture elements should be included in projects focusing on such areas as Human Rights education, Migration, Police and correctional officer training.
 - 1.3. New ODIHR projects could be developed such as:
 - Assistance to Ombudsmen and Human Rights Protection Institutions, for instance in providing training in appropriate ways to deal with allegations of torture;
 - Help in legislative reforms, in countries not members of the Council of Europe where laws do not yet incorporate international standards;
 - Develop training for prosecutors and judges;
 - Promote monitoring by supporting domestic NGOs and human rights defenders;
 - Gender projects relating to torture and ill treatment.
2. In addition, the OSCE might adopt some more political approaches to combating torture such as:

- 2.1. The Chairman-in Office could establish a short term post (e.g. special representative) to pursue ratification of international instruments relating to torture and ill-treatment, and removal of reservations.
 - 2.2. OSCE field missions and senior officials could take a more proactive role in raising specific cases of concern with the Governments or participating States;
 - 2.3. The OSCE should propose or join in activities proposed for the UN International Day Against Torture (25 June).
3. To avoid unnecessary overlapping, the OSCE should continue to take into due account the work of existing international mechanisms dealing with the question of torture, in particular the European Committee for the Prevention of Torture (CPT), the UN Special Rapporteur on Torture and the UN Committee against Torture (CAT), as well as the technical assistance already provided in the field;

ANNEX 1

The OSCE commitments regarding the prohibition of torture and other cruel, inhuman or degrading treatment or punishment and the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person.

1. Concluding Document of Vienna, The Third Follow-Up Meeting, 1989

(23) The participating States will

(23.2) - ensure that all individuals in detention or incarceration will be treated with humanity and with respect for the inherent dignity of the human person;

(23.3) - observe the United Nations Standard Minimum Rules for the Treatment of Prisoners as well as the United Nations Code of Conduct for Law Enforcement Officials;

(23.4) - prohibit torture and other cruel, inhuman or degrading treatment or punishment and take effective legislative, administrative, judicial and other measures to prevent and punish such practices;

(23.5) - consider acceding to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, if they have not yet done so.

(23.6) - protect individuals from any psychiatric or other medical practices that violate human rights and fundamental freedoms and take effective measures to prevent and punish such practices

2. Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990

16. The participating States

16.1 - reaffirm their commitment to prohibit torture and other cruel, inhuman or degrading treatment or punishment and take effective legislative, administrative, judicial and other measures to prevent and punish such practices; to protect individuals from any psychiatric or other medical practices that violate human rights and fundamental freedoms and take effective measures to prevent and punish such practices;

16.2 - intend, as a matter of urgency, to consider acceding to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, if they have not yet done so, and recognizing the competence of the Committee against Torture under articles 21 and 22 of the Convention and withdrawing reservations regarding the competence of the Committee under article 20;

16.3 - stress 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;

16.4 - will ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment;

16.5 - will keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under their jurisdiction, with a view to preventing any cases of torture;

16.6 - will take up with priority for consideration and for appropriate action, in accordance with the agreed measures and procedures for the effective implementation of the commitments of the CSCE, any cases of

torture and other inhuman and degrading treatment or punishment made known through the official channels or coming from any other reliable source of information;

16.7 - will act upon the understanding that preserving and guaranteeing the life and security of any individual subjected to any form of torture and other inhuman and degrading treatment or punishment will be the sole criterion in determining the urgencies and priorities to be accorded in taking appropriate remedial action; and, therefore, the consideration of any cases of torture and other inhuman and degrading treatment or punishment within the framework of any other international body or mechanism may not be invoked as a reason for refraining from consideration and appropriate action in accordance with the agreed measures and procedures for the effective implementation of the commitments relating to the human dimension of the CSCE.

3. Charter of Paris for a New Europe, CSCE Summit, Paris 1990

no one will be:

subject to torture or other cruel, inhuman or degrading treatment or punishment

4. Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow 1991

(23) The participating States will treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person and will respect the internationally recognized standard that relate to the administration of justice and the human rights of detainees.

23.1 The participating States will ensure that

(ix) a detained person or his counsel will have the right to make a request or complaint regarding his treatment, in particular, when torture or other cruel, inhuman or degrading treatment has been applied, to the authorities responsible for the administration of the place of detention and to higher authorities, and when necessary, to appropriate authorities vested with reviewing or remedial power

(x) such request or complaint will be promptly dealt with and replied to without undue delay; if the request is rejected or in case of inordinate delay, the complainant will be entitled to bring it before a judicial or other authority; neither the detained or imprisoned person nor any complainant will suffer prejudice for making a request or complaint.

(xi) anyone who has been the victim of an unlawful arrest or detention will have a legally enforceable right to seek compensation.

(23.2) The participating States will

(i) endeavour to take measures, as necessary, to improve the conditions of individuals in detention or imprisonment;

(ii) pay particular attention to the question of alternatives to imprisonment.

5. CSCE Summit, Towards A Genuine Partnership In A New Era, Budapest 1994

Prevention of Torture

20. The participating States strongly condemn all forms of torture as one of the most flagrant violations of human rights and human dignity. They commit themselves to strive for its elimination. They recognize the importance in this respect of international norms as laid down in international treaties on human rights, in particular the United Nations Convention against Torture and other Inhuman and Degrading Treatment or Punishment and the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment.

They also recognize the importance of national legislation aimed at eradicating torture. They commit themselves to inquire into all alleged cases of torture and to prosecute offenders. They also commit themselves to include in their educational and training programmes for law enforcement and police forces specific

provisions with a view to eradicating torture. They consider that the exchange of information on this problem is an essential prerequisite. The participating States should have the possibility to obtain such information. The CSCE should in this context also draw on the experience of the Special Rapporteur on Torture and other Cruel Inhuman and Degrading Treatment or Punishment established by the Commission on Human Rights of the United Nations and make use of the information provided by NGOs.

ANNEX 2

Main international standards for the prevention of torture and ill treatment

Main legally binding norms and treaties:

- the 1966 International Covenant on Civil and Political Rights (articles 7 and 10);
- the 1984 UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (article 1 and 2);
- the 1965 International Convention on the Elimination of all Forms of Racial Discrimination (article 50);
- the 1989 Convention on the Rights of the Child (article 37);
- The four 1949 Geneva Conventions and their 1977 Additional Protocol;
- The 1949 European Convention on the Protection of Human Rights and Fundamental Freedoms (article 3);
- The 1987 European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment

Main principles and rules:

- the 1957 and 1977 UN Standards Minimum Rules for the Treatment of Prisoners;
- the 1979 UN Code of Conduct for Law Enforcement officials;
- the 1982 Principle of Medical Ethics Relevant to the Role of Health Personnel (...);
- the UN 1988 Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment
- the UN 1990 Rules for the Protection of Juveniles Deprived of their Liberty;
- the 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")
- European Prison Rules, Recommendation No R (87) 3 of the Committee of Ministers of the Council of Europe
- Standard Minimum Rules for the Treatment of Prisoners of the Council of Europe, Recommendation No R (73) 5 of the Committee of Ministers of the Council of Europe