The Fight against Torture

The OSCE Experience

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Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR)
Al. Ujazdowskie 19
00-557 Warsaw
Poland
www.osce.org/odihr

ISBN 978-92-9234-763-5

Cover designed by Nona Reuter

Table of Contents

Foreword

Torture is, unfortunately, a phenomenon that continues to exist and requires further attention in the OSCE area. All OSCE field operations are involved in torture-prevention activities of some kind. Through their work in this area, these operations have gained substantial experience in how best to tackle torture and other forms of inhumane and degrading treatment. In accordance with its mandate, ODIHR has assembled all of this experience to make it available to a wide audience, including torture-prevention practitioners, those working within the OSCE, and relevant policy makers in the 56 OSCE participating States.

This manual is the second ODIHR publication in the arena of torture prevention. While *Preventing Torture: A Handbook for OSCE Field Staff*, published in 1999, explained the Organization's role in torture prevention and offered advice to OSCE field operations on how to effectively engage in torture prevention activities, *The Fight Against Torture* analyzes OSCE experience and, based on this experience, proposes strategies for future work in this area. It also takes into consideration new developments in the international regulatory framework addressing the issue of torture and other forms of ill-treatment, notably the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). This instrument is of crucial importance, and the OSCE remains ready to assist participating States in its implementation. This publication contains a number of examples of effective approaches to implementation and best practices regarding the establishment of so-called National Preventive Mechanisms, as required by OPCAT.

I warmly thank all OSCE personnel who provided us with the benefit of their experience in this area and made this publication possible. I hope that it will further strengthen our efforts and impact in preventing torture across the entire OSCE area.

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

Summary

The aim of this study is to review the work of the Organization for Security and Co-operation in Europe (OSCE) in the area of torture prevention, with a particular focus on concrete achievements in countries where the OSCE maintains field operations. Based on this experience, the study identifies lessons learned and best practices developed in order to maximize the impact of current and future OSCE activities in this field. This publication also seeks to inform OSCE personnel and others working in the area of torture prevention about applicable standards and the latest developments in this field, with particular regard to the implementation of the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Finally, the study considers what can be done to increase the impact of torture-prevention strategies in particular contexts.

The findings of this study are fundamentally important and underline the need for progress across the board in democratization as a prerequisite to a sustainable and effective anti-torture strategy. However, even in well-developed democracies, the temptation to weaken protection against torture has been shown to be strong where there are threats to national security.

One of the most significant results of the survey was that most OSCE field operations continue to be extensively engaged in torture-prevention activities. Interestingly, an overview of other OSCE reports, such as annual reports, did not initially reveal this level of engagement.

The analysis of the experience of OSCE field operations in combating torture demonstrated that certain strategies tended to be more successful. In general, a comprehensive approach to torture-prevention work was shown to be the most effective. Such an approach incorporates the implementation of international instruments at the national level, the training of various law enforcement and other relevant actors, the direct monitoring of all places of deprivation of liberty, lobbying for ratification of instruments and assisting in legislative reform.

On the other hand, in countries with governments that are not prepared even to acknowledge the existence of the phenomenon of torture, such an approach would be unrealistic and unlikely to achieve much progress. In such circumstances, there is often also a paucity of effective NGOs with appropriate expertise or international organizations present on the ground. This is also frequently accompanied by the lack of a strong legal framework, both at the national and international level, and a lack of democratic legal institutions with a human rights-based approach to law enforcement. In the face of such obstacles, a different strategy is clearly necessary and well worth the effort. It is often true that such countries are among those with more acute problems regarding torture, and are thus deserving of more, rather than less, attention despite the inherent difficulties.

OPCAT is coming into its own as an innovative tool for torture prevention. The early ratification by all OSCE countries of this instrument will send a strong message in

terms of the priority given to torture prevention in the region. OSCE experience to date reflects the view that the creation of effective national detention-monitoring bodies will proceed at different speeds, depending on previous experience in detention monitoring and the stage of democratic development in individual countries. This is unlikely to be a template for the manner of creation, form or operation of these national bodies. They can be crafted to fit individual contexts, as long as they embody or aspire to embody the essential qualities of independence and objectivity and have sufficient resources, expertise and access.

It is essential for the OSCE region that high standards are maintained by all participating States with regard to respect for the absolute prohibition against torture and other cruel, inhuman or degrading treatment or punishment. The OSCE, through its presence on the ground – and with the support of the Office for Democratic Institutions and Human Rights (ODIHR) – can make a valuable contribution to this process by continuing to adopt a flexible and determined approach to combating torture and its underlying structural basis.

1. Introduction

Torture is today prohibited under international law and the domestic laws of most states. The war crimes and crimes against humanity committed during World War II led to a sweeping international rejection of most, if not all, aspects of torture, and a number of international treaties have since been adopted to prevent its use. The development of domestic and international jurisprudence over the same period has also resulted in the strengthening of protection against torture. The monitoring by a number of international bodies of conditions of detention and the ability to take individual complaints to relevant international committees help provide this protection. There is also detailed ongoing scrutiny of national practices via reporting, recommendations and follow-up action as required under various international treaties. Finally, factors in the field of domestic protections, awareness raising, political demarches and training have been identified that should help to reduce the practice of torture.

Nevertheless, torture continues to be a persistent practice worldwide.

ODIHR hosts the anti-torture focal point of the OSCE. In its capacity as the Organization's oversight body for monitoring the implementation of OSCE commitments in the human dimension, ODIHR follows developments in the arena of torture prevention across all OSCE participating States and assists OSCE field operations in carrying out their activities related to torture prevention. Since the beginning of 2008, ODIHR has focused its work on the implementation of OPCAT. This publication relates to all of these ODIHR tasks.

1.1 Methodology

A questionnaire (see Annex I) was sent to all field operations in October 2007[1] to collect OSCE institutional experience on activities to combat torture and ill-treatment. The questionnaire focused on four issues:

- existing OSCE field activities aimed at combating torture;
- systemic obstacles to the prevention of torture in the criminal justice system and elsewhere;
- implementation of international standards at the national level; and
- co-ordination and co-operation among organizations, governments and other bodies working on torture prevention.

The questionnaire sought input from the field as to how torture and ill-treatment could most effectively be tackled at the grass roots level and, in particular, what difficulties have been encountered in the course of their activities and how these might be resolved.

[1] This publication considers the anti-torture work of the OSCE field operations from the time of their establishment through May 2009.

The OSCE has field operations in only a limited number of countries and regions within the OSCE area (see box below), thus limiting the scope of the study. This also meant that the focus was on torture prevention in countries at various stages of post-communist and/or post-conflict transition. Since information was collected from OSCE field operations in order to analyse OSCE experience, some of responses received were inevitably anecdotal and the views expressed cannot be taken to reflect those of the organization. However, some trends emerged from the responses that provide a sufficient basis for preliminary conclusions to be drawn.

Although an OSCE-wide survey is beyond the scope of this report, two sections have been included that cover developments in the wider OSCE area, dealing with counter-terrorism strategies and torture, and the implementation of OPCAT in the OSCE area, respectively.

1.2 Terminology

The terms "torture" or "torture and ill-treatment" as used in this report can be taken to include torture and other cruel, inhuman or degrading treatment or punishment as defined by the relevant international instruments and jurisprudence. For ease of reference and to avoid discrepancies in translation, offices that are effectively carrying out the role of Ombudsman institutions will be referred to as "Ombudsman offices" throughout.

1.3 Summary of the existing framework for protection against torture

It should be emphasized that OSCE commitments are unequivocal with regard to the prohibition against torture and are applicable to all OSCE participating States, regardless of whether they are parties to the relevant legally binding international instruments mentioned below. Relevant OSCE commitments include the Vienna Document of 1989,[2] in which participating States undertook to prohibit and take effective measures to prevent and punish torture.

The absolute nature of the prohibition against torture is reflected in the Copenhagen Document of 1990,[3] where it is stated that: "... no exceptional circumstances whatsoever, whether a state of war or threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture …" In the Istanbul Charter of 1999,[4] participating States further committed themselves to the eradication of torture and other cruel, inhuman or degrading treatment or punishment.

The above-mentioned commitments reflect international human rights law, and provisions relating to the prohibition against torture and related issues appear in several international instruments. The most notable of these are the UN Convention

[2] "Vienna Document 1999 of the Negotiations on Confidence- and Security-Building Measures", OSCE website, < http://www.osce.org/documents/fsc/1999/11/4265_en.pdf>.
[3] "Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE", OSCE website, < http://www.osce.org/documents/odihr/1990/06/13992_en.pdf>.
[4] "Istanbul Document 1999", OSCE website, <www.osce.org/documents/mcs/1999/11/4050_en.pdf>.

against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and OPCAT, Article 7 of the International Covenant on Civil and Political Rights (ICCPR), and Article 3 of the European Convention on Human Rights (ECHR). Member States of the Council of Europe are also bound by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT). A further mechanism is the office of the UN Special Rapporteur on Torture, which was created by the UN Commission on Human Rights in 1985. The Special Rapporteur carries out fact-finding missions to countries, submits annual reports on activities, and can make urgent appeals to states on individual cases.

The Geneva Conventions also contain certain provisions prohibiting torture and cruel treatment (common Article 3). Additionally, the Rome Statute of the International Criminal Court specifies that torture can constitute an international crime against humanity when certain conditions are met.

An additional "catch-all" protection is derived from the fact that the prohibition against torture is a peremptory norm of customary international law – a fundamental principle of international law considered to be accepted by the international community of states. Consequently, the prohibition against torture is binding for all states, regardless of whether they have signed or ratified any of the relevant international human rights treaties containing protection and torture-prevention mechanisms mentioned above.

Finally, there are a number of legally non-binding UN guidelines, recommendations and codes of conduct that contain relevant provisions and are applicable to particular groups, such as law enforcement officials, or particular situations, such as places of deprivation of liberty. These include the UN Code of Conduct for Law Enforcement Officials (1979),[5] the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990),[6] and the UN Standard Minimum Rules for the Treatment of Prisoners (1957).[7]

1.4 Existing compilations of torture-prevention principles

Numerous studies have been made that enumerate approaches to assisting in the prevention of torture. The Association for the Prevention of Torture has produced several publications on this issue, including those focusing on the effective monitoring of places of deprivation of liberty and the implementation of relevant provisions of international law.[8] The Human Rights Centre, at the University of Essex, has produced manuals for judges and prosecutors on reporting and combating

[5] "UN Code of Conduct for Law Enforcement Officials", UNHCHR website, <http://www.unhchr.ch/html/menu3/b/h_comp42.htm>.
[6] "UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials", UNHCHR website, <http://www.unhchr.ch/html/menu3/b/h_comp43.htm>.
[7] "UN Standard Minimum Rules for the Treatment of Prisoners", UNHCHR website, <http://www.unhchr.ch/html/menu3/b/h_comp34.htm>.
[8] Available on the Association for the Prevention of Torture website, <www.apt.ch/component/option,com_docman/Itemid,59/lang,en/>/

instances of torture,[9] and the International Committee of the Red Cross (ICRC) has produced a guide for police conduct and behaviour.[10]

There also exist a number of practical codes and guidelines on this subject, including the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa **(**the Robben Island Guidelines);[11] the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol);[12] and the Guidelines to EU policy towards third countries on torture and cruel inhuman or degrading treatment or punishment.[13] Also worth mentioning in this context is the OSCE Handbook on Preventing Torture (1999), which was the Organization's first attempt to distil lessons learned up to that point for the benefit of all OSCE field operations. Finally, there have been numerous recommendations made by international anti-torture and human rights bodies. This publication aims not to duplicate such efforts or reiterate principles already enumerated but, rather, to collect the OSCE's unique experience since 1999 and highlight practical issues arising in relation to field operations activity in preventing torture.

The common perception of a torturer is someone who is inhuman, mentally sick; only "bad" people commit torture. Academic studies have shown that in the right circumstances, for example when individuals feel threatened, under stress and subject to peer pressure (such as during a war), they may behave in a way they would normally consider unacceptable.

"Certainly, acts of torture can be committed by almost anyone – not just psychopaths," says Ian Robbins, a clinical psychologist who has treated victims of torture and torturers themselves at the traumatic stress service in St George's Hospital, London. Over 25,000 psychological studies involving eight million participants support this finding.[14].

[9] Foley, Conor. *Combating Torture: A Manual for Judges and Prosecutors* (Essex: Human Rights Centre University of Essex, 2003), <http://www.essex.ac.uk/combatingtorturehandbook/>

[10] *To serve and protect: guide for police conduct and behaviour* (Geneva: International Committee of the Red Cross, 2002), <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/p0845>.

[11] "Guidelines and Measures for the Prohibition and Prevention of Torture, Inhuman or Degrading Treatment or Punishment", African Commission on Human and Peoples' Rights, <http://www1.umn.edu/humanrts/achpr/tortguidelines.html>.

[12] "Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol)", UNHCHR website, <http://www.unhchr.ch/pdf/8istprot.pdf>.

[13] "Guidelines to EU policy towards third countries on torture and cruel inhuman or degrading treatment or punishment", UNHCHR website, <http://www.unhcr.org/refworld/category,LEGAL,,THEMGUIDE,,3e2fac757,0.html>.

[14] Vince, Gaia. "Everyone Is a Potential Torturer", New Scientist, 25 November 2004. <http://www.newscientist.com/article/dn6727-everyone-is-a-potential-torturer.html>.

When encouraged by figures of authority and seeking peer acceptance, individuals may cross the line, starting with reluctant or peripheral participation in ill-treatment such as minor acts of abuse, slaps, later progressing to levels of extreme torture.

Research also shows that perceiving particular victims, or groups of victims, as subhuman or contemptible helps individuals to justify and accept the use of torture. Situational pressures can also cause torturers to loose moral inhibitions. Finally, torture can become institutionalised.

There are, of course, always those individuals who dissent and alert authorities to abuse.

2. OSCE field operation activity: combating and preventing torture and ill-treatment

2.1 Overview of OSCE field operations

The OSCE has 18 field operations spread throughout South-Eastern and Eastern Europe, the South Caucasus and Central Asia, the majority of which were established during the 1990s. The sizes of the field operations differ substantially, ranging from 13 staff (five international and eight national) at the OSCE Office in Minsk, to 926 staff (262 international and 664 national) at the OSCE Mission in Kosovo.[15]

Likewise, the mandates of the field operations vary, although most incorporate monitoring or assisting with the implementation of OSCE commitments. In some cases (in Serbia and Albania, for example) there is a more specific mandate to assist in areas directly related to the prevention of torture, such as in rebuilding the legal system, developing and training of the judiciary and/or police forces, or developing Ombudsman offices. The mandates of other field operations may put more emphasis on other issues, such as, for example, conflict resolution or border monitoring.

Therefore, the resources and focus of field operations – in addition to such country-specific factors as the stage of democratic development, the political climate and whether relevant international instruments have been ratified – will affect the level of engagement of OSCE field operations with the respective governments. This bears directly on the potential effectiveness of any anti-torture activities.

2.2 OSCE field operations and international commitments

With regard to the international legal instruments focusing specifically on torture, all of the host countries for OSCE field operations are States Parties to the UNCAT, and the majority to the ECPT as well (with the exception of those that are not members of the Council of Europe). A full table of signature and ratification of the UNCAT and OPCAT can be found in Annex II.

The Council of Europe's influence in the largest part of the region covered in this publication and the monitoring regime of the ECPT have undoubtedly added momentum to torture-prevention work. Most OSCE field operations have been contacted regularly by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment – often in connection with visits over a period of several years – and have provided oral and sometimes written information, in addition to assisting in the implementation of the Committee's recommendations. Ongoing reforms might also be linked to consideration for eventual EU membership, with several countries in the region at different stages in this process.

[15] "Survey of OSCE Field Operations", OSCE Conflict Prevention Centre, 2008, OSCE website, <http://www.osce.org/documents/cpc/2008/10/3242_en.pdf>.

It is not surprising, therefore, that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was reported as the primary interlocutor by field operations in South-Eastern and Eastern Europe and the South Caucasus. Field operations in South-Eastern Europe could not recall being visited by or having contact with the UN Committee against Torture or the UN Special Rapporteur on Torture in recent years.

In the South Caucasus, only one field operation, in Georgia, reported having had contact with the UN Special Rapporteur, as a result of a visit the operation facilitated to a conflict zone and briefings it provided. Other field operations in the region reported having provided verbal comments to the European Committee in connection with visits to the respective countries.

In Eastern Europe, two countries that host OSCE field operations, Moldova and Ukraine, are members of the Council of Europe, and are thus in contact with the European Committee. The third, Belarus, is not a member of the Council of Europe and, therefore, is not party to the European Convention or subject to visits by the European Committee.

2.3 Summary of field operation activities in torture prevention

One of the aims of the questionnaire sent to OSCE field operations was to consider existing activities and the most effective role for the OSCE in torture prevention. This section will provide an overview of the types of activities, followed by a more detailed analysis organized by region for ease of comparison.

The questionnaire sought to establish how field operations staff saw their role in torture prevention in various contexts and, in particular, what added value the OSCE could provide. Training was clearly regarded as a priority by many field operations, with the target groups being the judiciary, prosecutors, defence lawyers, police, prison staff, doctors and health care workers.

Training sometimes focused specifically on the application of international law at the national level, such as the need for judges to be informed about relevant jurisprudence under the ECHR. Defence lawyers were also seen as useful – though sometimes overlooked – targets for training, particularly in view of their potential access to persons at early stages of their arrest, when ill-treatment and torture are often observed as prevalent. Respondents suggested that this training could also incorporate the provision of information on how to submit individual complaints to quasi-legal bodies, such as the UN Committee against Torture, where applicable.

Another focus of OSCE activity is the promotion of, or direct involvement in, the monitoring of detention centres and support for bodies at the national level that have this role, such as national human rights institutions. This often involves the facilitation of this work by NGOs rather than direct activities by the field operations. In this context, monitoring and promoting ratification and implementation of OPCAT has been a focus of OSCE attention in all mission areas.

Among the 18 countries hosting field operations surveyed, 12 are parties to OPCAT and one other, the former Yugoslav Republic of Macedonia, has signed the Protocol.

In some cases, particularly in South-Eastern Europe where staff levels are much higher, field operations are involved in monitoring and reporting on the existence of torture and ill-treatment at a countrywide level to identify trends and systemic problems. Individual complaints of torture or cruel, inhumane and degrading treatment or punishment are also dealt with directly by field operations in some countries, either by raising them with the authorities or directing individuals to the relevant NGOs. Where possible, OSCE field operations take advantage of their position as part of an international organization with a political mandate to maintain a dialogue with the government. This dialogue may include the provision of technical advice, the encouragement of signing and ratifying relevant international instruments, or the facilitation of dialogue between the government and NGOs or Ombudsman offices.

2.4 The field operations

2.4.1 Central Asia

OSCE field operations in Central Asia are relatively small, and usually only one international and one or two national staff will focus on torture prevention. The OSCE is sometimes the only international organization with a long-term "in country" presence, and field offices here report that they are seen as an important partner in this activity.

The level of engagement in this region appears to be related closely to governmental attitudes, especially vis-à-vis the question of whether torture exists in a country or not. If the existence of torture is questioned by the government it is difficult for a field operation to implement activities to directly combat these phenomena.

Even in comparatively difficult contexts, however, it may be possible to identify measures that can indirectly assist in combating torture. One example is a field operation that has been advocating for legislation relating to a new Ombudsman institution to include visiting prisons as part of its mandate. Additionally, some field operations in Central Asia have directed their efforts towards other activities considered viable. Examples include providing financial support for or organizing public meetings to discuss torture and ill-treatment within the context of detention monitoring and criminal justice reform in general, providing information to international treaty monitoring bodies, and training and supporting other organizations politically.

In one country, Turkmenistan, the field operation has taken an active role in implementing short training sessions for judges and prosecutors, focusing on human rights standards in relation to arrest and detention. In general, Central Asian field operations said that integrating anti-torture activities into criminal justice reform activities or other projects, such as those dealing with psychiatric or social welfare custody issues, was more palatable to the authorities and the most effective approach. Individual countries may provide particular opportunities for such a course. For

example, it was noted that the transfer of power to authorize arrest from the prosecutor's office to judges in Kazakhstan was given a high priority by the government. Relevant amendments to the Constitution of Kazakhstan and to specific legislation were adopted in 2007 and 2008, respectively. The subsequent impact on torture prevention of these changes, with regard to the handling of allegations of torture and ill-treatment, is an issue for future monitoring by the field operation there.

Activities related to preventing torture and ill-treatment by field operations were more developed in some of the Central Asian countries mentioned above than others. These included training on anti-torture issues in relation to implementation of the ICCPR and activities in co-operation with local and international NGOs on such issues as health in prisons, and reform of legislation relating to and public monitoring of detention facilities. In Kazakhstan, a number of meetings were held with the government and civil society organizations in 2007 and 2008 addressing many aspects of criminal justice reform, including the transfer of power of arrest from prosecutors to judges. In addition, anti-torture elements were incorporated in training for trial monitors under an ODIHR Trial Monitoring Project implemented in Kazakhstan and Kyrgyzstan.

Following the ratification of OPCAT by Kazakhstan, debate between the authorities and civil society on a possible National Preventive Mechanism (NPM) model has continued. The OSCE field operation supported a six-month project whereby independent NGO monitors paid 60 unannounced visits to police-station cells and pre-trial detention centres in Almaty. The monitoring project, which was fully supported by the Ministry of the Interior, resulted in disciplinary measures against officials in some instances. The project also incorporated a training component for police officers and monitors.

A number of respondents saw the use of the OSCE's political offices vis-à-vis the government in question as an important part of the Organization's role in promoting anti-torture measures. This political role has also often been used to support and assist international and national organizations working on the prevention of torture. In some countries, for example, the OSCE has participated in various working groups for reform. Support and the provision of experts for the training of judges, prosecutors, police, prison staff and lawyers was named in several responses as another key area of engagement for the OSCE. Finally, co-ordination with international bodies such as the UN Committee against Torture was reported to be a regular feature of OSCE activity, and included the provision of information on torture and ill-treatment.

For some field operations, like that in Tajikistan, the issue of combating torture has provided an opportunity to build a network among government, civil society and international organizations like Freedom House and the Association for the Prevention of Torture. In 2008, field operations co-sponsored a roundtable on implementation of the UNCAT, at which experts underlined the importance of the UN Committee against Torture's recommendations and the benefits of ratifying OPCAT and concluding an agreement allowing the ICRC unconditional access to places of deprivation of liberty.

2.4.2 Eastern Europe

The existence of full and sustained engagement by both the government and NGOs was noted by field operations as a key factor leading to anti-torture work being given a relatively high priority in one country in the region, Moldova. Where relatively conducive conditions exist on the ground, there is clearly a greater potential for OSCE field operations to be actively involved in anti-torture efforts. Instrumental to this active involvement was the acknowledgement by the authorities of the existence of torture and ill-treatment and a degree of political will to tackle the problem. This political will is often manifested in ratification of OPCAT and subsequent steps by governments towards implementation, including, in particular, work done in consultation with international experts and NGOs on draft legislation to establish an NPM.

As in Central Asia, OSCE offices in Eastern Europe sometimes represent the only long-term international "in-country" presence and report that they are seen as important partners in torture-prevention activity. This fact is attested to by other international organizations. Notably, several countries in the region have received regular visits from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, something that has undoubtedly also contributed to the momentum for reform. Finally, the presence of a number of local NGOs focusing on anti-torture issues, dealing with such matters as individual complaints, detention centre monitoring and training, was identified as an important factor.

One field operation, in Moldova, identified the taking of a comprehensive approach as a major factor in their role in anti-torture work. Activities assisted with or implemented by the field operation cover a wide area, including the facilitation of conferences and meetings; visiting detention centres (both by the field operations directly and in support of other bodies); dealing with individual complaints; training; providing expert comment on relevant legislation (in the context of OPCAT implementation in particular); and dialogue with national authorities, including intervention at the political level, if required. The effectiveness of detention centre monitoring, in particular, was underlined as a key element in positively influencing the authorities to investigate and punish torture and ill-treatment.

All field operations said that they viewed a long-term approach to activities as an essential component of an effective strategy. Seminars and meetings on preventing torture have not, for example, been ad hoc events but, instead, linked to further steps such as meetings, proposals for legislative reform and lobbying for new legislation to achieve conformity with international standards. Activities have also been carried out in co-operation and co-ordination with relevant international and national NGOs and governmental bodies.

In one country in the region, Ukraine, the field operation has focused on support for national monitoring of places of detention by police and has implemented a project in co-operation with the Interior Ministry. Mobile groups to monitor police and pre-trial detention facilities were established across the country and training on visiting practices and reporting forms were standardized to ensure a coherent approach. A website for the groups was also created with the support of the OSCE field operation

and legislation was adopted to provide a legal framework for their activities. According to the field operation, the success of this early phase of the project generated interest from another government department, which wants to extend the monitoring process to the penitentiary system. Over the course of 2008, the ground was prepared for the extension of monitoring to the penal system and other specialized places of deprivation of liberty within the framework of the adoption of a national policy to prevent torture, as well as for the development of an NPM.

The project helped create an impetus for changes to the existing legislative framework for monitoring groups, the development of legislation to establish an NPM under OPCAT, and amendments to legislation regulating the rights of minors in relation to law enforcement bodies.

The field operation in another country in the region reported a marked lack of anti-torture activity and its perception that, despite documentation by credible international human rights organizations indicating the contrary, the authorities do not acknowledge the existence of torture in the country. This, coupled with the political climate, is a major obstacle to any possible project activity. The field operation reported that it carried out some ad hoc monitoring of pre-trial detention centres and prisons, although this did not form part of a systematic or long-term detention-monitoring programme. Public commissions created by the government make pre-arranged visits to prisons, and the field operation suggested that their role and mandate could be expanded to carry out systematic monitoring.

2.4.3 South Caucasus

In general, OSCE activities in the region provide a good example of ODIHR's complementary role, as the OSCE's oversight body for monitoring the implementation of OSCE commitments in the human dimension, and the contribution by OSCE field operations in the implementation of torture-prevention activities. The degree of political will shown by the government, as well as a comprehensive approach to prevention, also appears to be relevant factors for effective work against the use of torture.

There are some common factors regarding the three countries that make up the South Caucasus region.[16] All three are members of the Council of Europe and, therefore, are subject to oversight by the European Court of Human Rights and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. All three OSCE field operations here, as seen in other regions, provide grass roots information to the European Committee in order to assist with its country visits. The field operations have also facilitated visits to disputed areas by the Committee and other international mechanisms, such as the UN Special Rapporteur. Another common factor is that all three countries are involved in disputes over breakaway territories.

[16] The Mission to Georgia's mandate expired as of 31 December 2008 after the OSCE Permanent Council failed to reach consensus on its renewal in the wake of the conflict of August 2008. Twenty unarmed military monitoring officers, who were deployed to the Mission to Georgia by Permanent Council decision on 19 August 2008, continued to operate under a mandate that, barring consensus on its renewal, was scheduled to expire on 30 June 2009.

All three countries have also ratified OPCAT and are at various stages in the process of designating or creating NPMs. The OSCE has been involved in these developments to a varying degree in each of these countries.

In Armenia and Georgia, both ODIHR and the OSCE field operations have for a number of years been assisting in the creation and development of independent public-controlled monitoring bodies for places of deprivation of liberty. Subsequent activities connected to the implementation of OPCAT and the NPMs are thus a natural continuation of this earlier work.

In one country, Armenia, the OSCE field operation has assisted in establishing public boards for police and prison monitoring and organized training on human rights standards and report writing for board members, police and penitentiary staff. The field operation has sought to promote the use of these boards' capacity, in addition to the Office of the Ombudsman and civil society, in any NPM. In 2008, amendments to the country's law related to the office of Ombudsman were adopted and the Office was designated as the NPM. Discussions on the mode of operation of the NPM, involving non-government, state and international actors, are ongoing. The OSCE field operation also supported the holding of conferences and meetings to provide expert advice on best practices for the implementation of OPCAT and the functioning of the NPM. In Georgia, an inter-agency council was created by the President and tasked with identifying a draft model NPM. The OSCE mission was represented on the council, along with other international organizations and NGOs.

Different strategies in torture prevention included the creation in Georgia of a governmental National Action Plan against Torture, the elaboration and implementation of which the field office there supported. This was described by the operation as a good catalyst for the ratification of OPCAT. In the view of the field operation, support for anti-torture activities carried out within the framework of this plan has helped generate progress in combating torture at police stations and improving conditions of detention in police cells. In another country, Armenia, hotlines were created for the public to seek advice in pursuing claims of torture.

Azerbaijan, meanwhile, ratified OPCAT in January 2009 and designated its Commissioner for Human Rights, an Ombudsman institution, as the NPM. The field office reported that some detention monitoring is already being carried out at the national level, although it is neither comprehensive nor adequately funded. A public committee exists, encompassing NGOs that have a mandate to visit any penitentiary institution under the jurisdiction of the Ministry of Justice, including remand facilities. As this body was created under the Ministry of Justice, its remit does not include other places of deprivation of liberty, such as those under the Interior Ministry or others. Over the past three years, however, a number of national NGOs managed to visit places of deprivation of liberty under the jurisdiction of the Interior Ministry and the Ministry of National Security.

In the context of advising the Government on the implementation of OPCAT and the creation of an NPM, and its legislative basis in particular, the field operation outlined the need for a monitoring body with a mandate to visit all places of deprivation of liberty, incorporating civil society expertise and fulfilling other OPCAT criteria. The

field operation also advises on the content of draft laws that have anti-torture aspects, such as a law on the rights and freedoms of suspects and accused currently pending adoption by the Parliament.

2.4.4 South-Eastern Europe

OSCE field operations in South-Eastern Europe are generally much larger than those in the regions described above. The area hosts the three largest missions – in Kosovo, Bosnia-Herzegovina and the former Yugoslav Republic of Macedonia. The area also hosts more field operations – seven – than any other. In general the field operations have substantial Rule of Law and/or Human Rights departments and staff deployed throughout the respective areas of operation. They thus have greater resources for tackling anti-torture issues and are generally involved in a number of diverse activities in this field, often within the framework of ongoing criminal justice reform.

Several of the field operations in the area are involved in monitoring places of deprivation of liberty, either directly or by providing support and assistance in building capacity for NGOs working in this field. In general, the larger resources and greater development of NGOs has led to more specialized detention monitoring. In Albania, for example, the institutions monitored have included psychiatric hospitals and juvenile detention centres, while in Bosnia and Herzegovina they have included social care institutes for juveniles and persons with mental and physical disabilities, as well as psychiatric institutions. This is probably also the result of greater activity in the region by other international organizations, including the ICRC, the Council of Europe, UN agencies and major international NGOs, such as Amnesty International. These provide greater coverage and expertise, creating more opportunities for diversification and specialization in activities.

It also appears that a larger number of national organizations specializing in anti-torture work here than in other regions. This may partly reflect the legacy of the conflicts in the region, where cases of rape and torture and ill-treatment in mass detention camps were widespread. One of the field operations in the area, in Bosnia and Herzegovina, reported that the multiplicity of local actors had brought negative consequence, as rivalries between NGOs in the context of discussions on the creation of a network to establish a public monitoring mechanism led to the process being stalled.

At another field operation, in Kosovo, the focus of anti-torture activities has been on the police, in terms of training, legislative assistance and detention monitoring. The field operation has also supported national NGOs by providing training on detention monitoring. Monitoring activity has led to an initiative supported by the OSCE and other international organizations to build and refurbish holding cells used by the police.

3. OSCE: obstacles and lessons learned

Police, ill-treatment and confessions

The Council of Europe Commissioner for Human Rights, Thomas Hammarberg, highlighted in December 2007[17] the prevalence of police brutality and ill-treatment during interrogation, both during and after arrest. He noted that he had frequently been told by victims that they did not file complaints for fear of being beaten up again.

"... acts of police brutality are often not isolated incidents but products of a mentality. In several transition countries there is a remaining sense that a good police is one who can 'solve the case' by producing a confession. At the same time, courts have relied excessively on such signed statements instead of requesting other types of evidence," Hammarberg wrote.

The importance of effective investigation into such allegations was also emphasised and, in particular, the need for independent enquiries to be made. The CPT has issued policy guidelines for such investigations.[18]

Suggested models to increase the impartiality of the investigation include the prosecutor together with a specialized team conducting enquiries where allegations concern the police, the use of a general or special police ombudsman, or a police complaints commission incorporating members of civil society.

3.1 Obstacles identified by OSCE field operations

Field operations were asked in the questionnaire to give their views on systemic obstacles to the prevention of torture. The aim was to use their experience to identify areas where reforms that may not explicitly focus on torture could have an impact on torture prevention, as well as to show that the failure to address these entrenched issues may render ineffective other strategies, including training and legislative reform.

Among the obstacles mentioned were the following: a lack of recognition that torture exists; a lack of regular visits to places of deprivation of liberty; the elevated position of prosecutors vis-à-vis judges and/or defence lawyers; the routine use of maximum detention periods for arrested persons in contravention of international standards; a presumption of guilt with regard to accused persons; a lack of internal control and complaints mechanisms within police forces; a lack of resources for police investigations into allegations of torture; very high criminal conviction rates, combined with a low rate of acceptance of allegations that confessions were obtained

[17] Hammarberg, Thomas. "There must be no impunity for police violence", Council of Europe website, <http://www.coe.int/t/commissioner/Viewpoints/071203_en.asp>.
[18] "The CPT Standards – 'Substantive' Sections of the CPT's General Reports", European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, October 2006, <http://www.cpt.coe.int/en/docsstandards.htm>.

via torture; and inadequate maximum penalties for the use of torture and/or a tendency on the part of judges to hand down sentences at the lighter end of the scale.

Specific questions focused on the issue of confessions as the main or sole pieces of evidence for criminal convictions and the link between this and the way pressure on police, prosecutors and judges to obtain convictions or "solve" cases provides a motivation for the use of torture to dispose of cases by way of confessions. This was identified as a problem in a number of the countries hosting field operations, spanning across all of the regions under consideration.

One question posed was as to whether conviction rates or the percentage of cases solved were factors considered in determining promotions or evaluating the performance of police officers, prosecutors or judges. Field operations in five countries, the majority of which were in the Central Asia region, answered that this was the case for all three groups. In another six countries, spread across the three regions other than Central Asia, the answer was in the negative. Respondents in the remaining countries responded that they did not know whether these factors played a role in promotions or evaluations.

Another problem raised by bodies responsible for monitoring the implementation of international conventions on torture, as well as by relevant judicial bodies, is that countries that do include torture as an offence under their national law, as required by the UNCAT, define it in a manner more restrictive than is the case in international law. This is the case in many OSCE participating States – not just those where OSCE field operations are based – and is frequently referred to in UNCAT reports.

One restriction in the definition of torture involves limiting the category of persons who can be accused of the offence to law enforcement officials, thus excluding indirect sanctioning. Conversely, in some countries there are heavier penalties when the offence is committed by a law enforcement officer or public official, for instance.

In some countries, the OSCE staff on the ground said that the existence of torture per se is not generally acknowledged by the authorities. In this context, field operations found that implementation of activities to directly combat these phenomena is difficult, and sometimes impossible. The response from the field operation in one country noted that the government is generally hostile to the concept of detention centre visits by any outside bodies and has rejected possible visits by an international organization.

The field operations surveyed were also asked to identify difficulties they faced in implementing activities clearly and specifically targeting torture and ill-treatment. The question was only relevant in cases where it was possible to implement targeted activities of this type. A number of respondents, working in countries where the existence of torture is not even acknowledged by the authorities, therefore marked this question "not applicable". One field operation said that talk of prison access and visits to detainees "frightens" the authorities.

This issue has gained further focus in countries that are trying to establish an NPM mechanism under OPCAT. A lack of clarity as to how to advance this process was found to be a problem in many of the countries where field operations have been

established. This manifested itself in many forms, from disagreement between NGOs, the government and national human rights institutions as to which bodies should constitute the NPM, to lack of financial support and expertise (See Section Four "The OSCE and implementation of the Optional Protocol to the UN Convention against Torture").

One field operation answered that a problem was that anti-torture activities were not a priority for national or international actors working on justice-sector reform. Another difficulty reported was that of co-ordinating and involving all relevant actors such as law enforcement officials, medical staff, prison officials, and civil society and international organizations. Finally, there were a number of references to public perceptions of arrested persons as "criminals", thus providing a perceived justification for the use of torture.

Field operations based in countries with ongoing territorial disputes noted that access to information in conflict areas is often limited. As a result, assessments of the extent of torture and ill-treatment are often difficult, as is the implementation of activities. Information is frequently anecdotal and originates from broad-based human rights reporting by NGOs. In addition to their own activities, field operations also assisted the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in facilitating access to disputed areas.

Following is an overview of obstacles mentioned:

Systemic, conceptual and resource problems:

- The absence of a democratic system of government
- A lack of political will on the part of governments and a low priority for human rights issues in general
- Corruption in various sectors of the legal system
- A weak or non-existent NGO community, or one in which none of the actors focuses on torture issues
- A low regard or lack of regard for international opinion and/or the near absence of international organizations
- A lack of financial resources for the legal system
- Overcrowding in prisons and a lack of financial resources, leading to poor conditions for those in detention
- A lack of public awareness of persons' rights in relation to torture
- The absence of official awareness of national and/or international legal protections relating to torture
- Fear and/or mistrust of the justice system by victims of torture, resulting in a reluctance to make formal allegations
- The presumption of guilt by public and justice officials with regard to arrested persons, leading to a tolerance of torture
- A lack of independent national bodies to provide systematic monitoring of places of deprivation of liberty and the absence of international monitoring
- An absence of expertise for monitoring specialized places of deprivation of liberty, such as psychiatric hospitals, children's care facilities or centres for those seeking asylum

- The lack of awareness of the need for special measures to protect vulnerable groups, such as women, children, migrants and minorities

Problems relating to legislation and the functioning of the legal system

- The non-existence of, or failure to implement, legislative fair-trial safeguards, such as access to lawyers and doctors, limits on pre-trial detention periods and related guarantees
- The absence of torture as an offence in national criminal legislation or its inclusion under a definition not in conformity with international law and/or subject to inadequate penalties
- Pressure to resolve criminal cases and the basing of promotions and/or performance evaluations for prosecutors and police officers on conviction rates and/or percentage of cases solved
- A lack of training and/or access to evidence-collection techniques, resulting in an excessive reliance on confessions as the main source of evidence
- The absence of interrogation procedures that tend to safeguard against torture
- The absence of accessible and independent internal mechanisms for investigating allegations of torture
- The failure to investigate allegations of torture promptly and impartially
- The failure to punish adequately – or at all – those guilty of the criminal offence of torture
- Immunity for certain officials from prosecution for torture
- A lack of alternative sentencing possibilities

3.2 Lessons learned: OSCE experience

Among the positive factors identified by field operations in preventing torture were the following: the creation of NPMs with the power to make regular visits to places of deprivation of liberty and to make recommendations to the authorities; a reduction of overcrowding at places of deprivation of liberty; effective training for justice branch employees; improving access to independent and well-trained defence lawyers at an early stage of the proceedings; and the use of a telephone hotline advice network for reporting allegations of torture.

Detention monitoring was widely reported to be a key way to encourage authorities to acknowledge the existence and extent of torture and encourage governments to work with civil society. Once monitoring is accepted in principle, more concrete evidence of any existing torture and ill-treatment can be obtained. It also seems that publicizing evidence of these practices can have an effect on behaviour. The field operation in Albania, for example, mentioned that the practice of ill-treatment or beating people in public by police seems to have decreased. Although this may only be a first step, it highlights the importance of exposing torture and ill-treatment to public view and ensuring it is not allowed to thrive un-scrutinized in places of deprivation of liberty.

Where states have denied the existence of such practices, OSCE field operations have looked for alternative methods of verifying the presence and extent of these

phenomena. For example, in the absence of access to places of deprivation of liberty, one field operation surveyed ex-prisoners to establish how they had been treated during their detention. OSCE field operations are also approached by individuals alleging torture or ill-treatment and are able to draw some conclusions based on the credibility, consistency and frequency of such cases.

Building strong partnerships with the relevant authorities was also identified as being a key part of a torture-prevention strategy. Official bodies mentioned by field operations as involved in various ways in the issue of torture prevention included Justice and Interior ministries (sometimes through committees with specific responsibility for issues such as human rights, law enforcement or the implementation of relevant international conventions); various police inspection/investigation mechanisms; and the office of the prosecutor and national human rights institutions, particularly Ombudsman offices.

The presence of both international and national organizations was also judged to be a factor in strengthening torture prevention. Field operations in a small number of countries reported that there were no national organizations focusing on the issue of torture and ill-treatment, and that this was sometimes matched by a lack of activity by international organizations. Regional patterns can be observed with regard to the involvement of both national and international organizations, with Freedom House and Penal Reform International reported to be significant actors in Central Asia. Other international organizations mentioned regularly as working on torture prevention in the regions under consideration were the ICRC, the International Organization for Migration, the Office of the UN High Commissioner for Human Rights and Amnesty International.

National Helsinki Committees were reported to be present in all of the regions under consideration. Some Central Asian countries have a number of other national organizations involved in anti-torture activity. National bodies often specialized in particular aspects of torture prevention, including assisting in individual cases of torture allegations, sometimes through the use of the individual complaint mechanisms of international bodies, lobbying for the ratification of international instruments, legislative review, monitoring of detention centres, and the rehabilitation of torture victims.

The field operations were also asked whether it was more effective to integrate activities to prevent torture and cruel, inhumane or degrading treatment or punishment into criminal justice reform activities. The response from seven field operations was that this was “always” the best approach, while six said that this was the case “sometimes”. The remainder did not reply, possibly because they were not involved in projects of this type. None of the field operations answered “never”. In those cases where the answer strongly favoured this kind of integration, the reasons given tended to be more general than specific, with the suggestion that such an approach had the advantage of not stigmatizing states as one example.

Some field operations identified specific factors for consideration when choosing an approach to implementing anti-torture activities. It was noted, for example, that some instances of torture occur in places where persons are deprived of their liberty but are not part of the criminal justice system, such as psychiatric institutions, military

facilities and social care homes. Exclusively targeting groups or activities within the criminal justice system may, therefore, lead to the neglect of other priority areas. Another observation was that, as the OSCE is frequently already engaged in activities on criminal justice reform, there is a natural complementarity in integrating anti-torture aspects.

One of the reasons an integrated approach has been advocated by ODIHR as more effective is that, as mentioned above, it might decrease the stigma a country may attach to the acknowledgement of the existence of torture. Thus, the debate can be steered away from a potentially confrontational discussion in which a state might react by defending or denying bad practices, to focus instead on more practical changes to the system that should have the "side effect" of decreasing torture or ill-treatment.

Discussion can also be couched in terms to which legal professionals, who are frequently the target group, can relate. For example, judges and prosecutors can be trained in the importance of evaluating the probative value of the available evidence in its entirety, while stressing the risks of relying on confessions alone. Likewise, if confessions are not to be the main or sole form of evidence, police, prosecutors and judges need to be trained in and given the resources for effective investigation techniques – the use of forensic science in particular.

However, some respondents noted that the integration of anti-torture aspects into criminal justice reform activities, while appropriate for some projects and some activity areas, might not always be the best approach. It was, however, stressed by respondents that any work on penal reform should include an anti-torture component. An evaluation of the type of project, its target group and relations with relevant national partners were highlighted as matters that need to be considered when deciding if it is appropriate to include anti-torture elements in a particular activity.

Overall, activities were noticeably limited in countries where the government would not acknowledge the existence of torture, and there also seemed to be a limited presence or involvement on the part national or international organizations. It is worth considering what further strategies can be used in such countries to encourage the authorities to address this problem.

Perhaps not surprisingly, it seems that in countries where anti-torture work is perceived as difficult, resources are often directed to activities where the most progress is thought to be achievable. Many of the countries that are more difficult to work in are also those with worse records of human rights abuses in general, and torture in particular (as documented by international human rights organizations, reports by treaty monitoring bodies, etc.). Therefore, it could be argued that they are also deserving of greater attention.

In conclusion, it can be noted that while mainstreaming or integrating torture prevention may often be effective for the reasons mentioned above, this approach should not be taken as strict dogma. A tailored approach dealing with specific "in-country" issues is likely to be the most effective.

The following is a non-exhaustive list of measures to assist in the prevention of torture. These are derived both from OSCE experience and principles established by NGOs, international bodies and experts in the field.

Torture Prevention – A checklist

- States should sign, ratify, accede to and effectively implement the main international instruments (e.g. ICCPR, UNCAT, ECPT, OPCAT, the Geneva Conventions and the Rome Statute)
- States should implement the recommendations of relevant regional and international bodies, such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the UN's Committee against Torture, Subcommittee for the Prevention of Torture and Special Rapporteur on Torture
- States should accept the right to make individual and inter-state complaints regarding torture under relevant international instruments
- Detainees should be given prompt access to counsel of their choice (not later than 48 hours from the moment of detention – UN Basic Principles on the Role of Lawyers)
- A relative of the detainee or third party should be promptly informed of the person's arrest and place of detention
- The detainee should be informed promptly of the reason for the arrest and any charges
- Records are to be kept of the time and place of arrest, identification of arresting persons and state of health of the detainee
- Video/audio records are to be kept of interrogations, including who was present, length of questioning, etc.
- Detainees should have the right to be brought before a judge within 48 hours and challenge their detention (*habeas corpus*)
- Accessible, speedy and independent mechanisms – both external and internal – for the investigation of complaints of torture should be put in place
- Independent investigations should take place into all deaths occurring in custody
- The offence of torture should be criminalized in national law and defined in conformity with the definition in international law
- Adequate penalties should be established and imposed for those found guilty of torture
- Amnesty laws should not apply to offences of torture
- The use of evidence obtained via torture should be prohibited
- An NPM should be created in accordance with the OPCAT criteria. Where OPCAT has not been ratified, other independent national bodies for monitoring places of deprivation of liberty should be created and supported
- Sufficient financing should be provided to allow for humane conditions of detention, in particular to minimize overcrowding of places of deprivation of liberty
- The UN Standard Minimum Rules for the Treatment of Prisoners should be referred to as guidelines with regard to ensuring humane conditions of detention

- The use of alternative sentencing should be considered where appropriate to reduce the prison population
- Regular visits to all places of deprivation of liberty by NGOs should be facilitated, together with ongoing visits by international treaty bodies as appropriate
- The use of unauthorized places of deprivation of liberty and incommunicado detention should be prohibited
- Regular and practically oriented training on torture prevention should be provided for judges, lawyers, prosecutors, law enforcement personnel, prison staff, medical personnel, NGOs and the media
- Codes of conduct for law enforcement personnel should be established
- Governments should make public statements condemning instances of torture where appropriate
- Awareness-raising campaigns on torture and its prevention should be instituted
- Mechanisms should be established for providing reparation and rehabilitation for victims of torture and protection for witnesses, investigators and family from reprisals
- Medical personnel should be appropriately trained to recognize and deal with torture victims
- Governments should support the creation and strengthening of independent and National Human Rights Institutions with the necessary resources
- Vulnerable groups (such as women, refugees, migrants and minorities) should be afforded special protection commensurate with their needs

3.3 OSCE experience: planning and implementing a torture-prevention strategy

Following is a suggested approach derived from OSCE experience to planning and implementing anti-torture activity.

It is important initially to identify other actors working in the field – international and national organizations in general and, in particular, those focusing specifically on anti-torture issues. At the same time, information needs to be collected on the type of anti-torture activities being implemented, to assess where activities might be implemented jointly, to avoid overlap, and to determine what gaps exist.

Another useful initial step is the collection of country-specific data, such as the location of places of pre- and post-trial detention and the number of detainees, and the existence of specialized detention facilities, including psychiatric institutions, detention centres for asylum seekers and juvenile facilities. Likewise, it is important to identify the types of training facilities that already exist for judges, prison staff, police and medical staff, and whether the current curricula incorporate general human rights and specific anti-torture elements.

A key aspect to determining what support a country needs in implementing anti-torture activities is familiarity with the national and international legal framework. Thus, it should be determined what international legal instruments have been signed

or ratified in the torture-prevention sphere or are under consideration for ratification, whether they have been effectively implemented at the national level, the situation regarding state reporting under such treaties or conventions, and the existence of alternative NGO reports. Relevant national legislation and guidelines for police and prosecutors, in addition to any national plans of action on torture prevention, should be collected.

With regard to governmental/official structures, it is important to assess political will at different levels and identify individuals and/or structures with which effective partnerships can be built. In countries where there is resistance from the authorities to torture-prevention activities, often based on the assertion that the problem does not exist at all, a less direct approach will be required. In this case, field operations noted it was generally more effective to integrate anti-torture elements into broader project activities that are not a direct threat to the power structures of the state and may initially be easier to implement. If successful, they may also provide a platform for the development of further activities.

Examples of activities of this type given were: integrating anti-torture elements into more general human rights based training for law enforcement officials; focusing on the reform of prison management or administration, using such instruments as the United Nations Standard Minimum Rules for the Treatment of Prisoners as a basis, and thus improving prison conditions and reducing the risk of ill-treatment; promoting the use of alternative sanctions to imprisonment, thus reducing the prison population; and legislative review and reform programmes that incorporate changes such as transferring the power to review arrest and detention from prosecutors to the judiciary.

In light of the information gathered, the most appropriate role for an organization can then be identified, taking into account its mandate and resources. Other issues to consider include the chances of success of the proposed activity when balanced against resources that will need to be expended, the potential for positive effects in terms of building relationships with other actors, and the long-term sustainability of the proposed activities.

As a general rule, OSCE field experience suggests that a field-based torture-prevention strategy should tackle the issue from multiple angles and aim at an integrated approach, incorporating activities in the areas listed below. Specific factors such as funding, staffing, the role of other organizations and the political, economic and security environment will obviously dictate the emphasis placed on different possible activities.

3.4 Counter-terrorism strategies in the OSCE area and torture: upholding OSCE principles

A detailed discussion of certain practices that have been used or sanctioned in the context of counter-terrorism strategies, and which have been found to be in contravention of international human rights law, is beyond the scope of this paper. A full exposition of these issues can be found in the ODIHR manual *Countering*

Terrorism, Protecting Human Rights.[19] However, in the context of considering the effectiveness of torture-prevention strategies in the OSCE area certain significant developments are mentioned below.

In the wake of a number of terrorist attacks in recent years, some counter-terrorism measures have been embraced that have not been in compliance with international human rights or refugee and humanitarian law. A number of these have, directly or indirectly, challenged the absolute prohibition in international law against torture and ill-treatment. The following practices have been reported in the media and shown to be conducive to the use of torture and ill-treatment in the context of counter-terrorism measures:

- The use of secret or incommunicado detention, which can facilitate the use of torture, including the indefinite detention of terrorist suspects in several OSCE participating States and deprivation of their rights to due process and an effective remedy
- The transportation of terrorism suspects to countries that practice torture – sometimes transiting OSCE participating States – in violation of the principle of *non-refoulement*
- The official sanctioning of interrogation techniques or treatment amounting to torture or cruel, inhuman or degrading treatment or punishment
- The deportation or extradition of terrorist suspects to countries known to practice torture in conjunction with "diplomatic assurances" from the receiving government that the person will not be tortured or ill-treated on return
- The existence of special security forces operating outside of the normal legal framework
- The use of national security as a consideration to justify secrecy regarding exceptional measures taken with respect to detention, extraordinary rendition and harsh interrogation techniques
- The official position that the effective protection of the public from terrorism necessitates a dilution of international human rights law and domestic protections regarding torture
- The acceptance of the above-mentioned rationale by the general public, often on the basis of fear, leading to support for use of torture[20]

The incorporation of such methods, which breach international human rights law, in counter-terrorism strategies not only risks diminishing the credibility of the international legal framework but can also exacerbate the problem. Any attempted

[19] *Countering Terrorism, Protecting Human Rights: A Manual* (Warsaw: Office for Democratic Institutions and Human Rights, 2007), OSCE website, <http://www.osce.org/odihr/item_11_28294.html>.

[20] In a poll of 27,000 people in 25 countries conducted for the BBC in 2006, nearly a third of those questioned thought the use of torture was acceptable under certain circumstances. Although a clear majority of respondents worldwide was found to be against the use of torture in all cases, the BBC report analysing the results concluded that "… countries that face political violence are more likely to accept the ideas that some degree of torture is permissible because of the extreme threat posed by terrorists." "One-third support 'some torture'", BBC News Website, 19 October 2006, <http://news.bbc.co.uk/2/hi/in_depth/6063386.stm#table>.

dilution of human rights protections has the potential to encourage other states – from newly established or fragile democracies, where the OSCE is frequently assisting democratic development, to autocratic regimes – in justifying the use of torture on the basis, for example, of security concerns or terrorist threats, whether real or artificially created, as well as providing a rallying call for recruitment to terrorism.

It is recognized that states have a duty to protect their citizens through the investigation, prosecution and punishment of those who commit acts of terrorism, and to prevent terrorism by taking appropriate measures. This duty must, however, be carried out within the framework of international human rights law in order to be effective. It is thus a key aspect for torture prevention within the OSCE area that both political and international legal commitments relating to torture continue to be given the highest respect and to be implemented fully in all OSCE participating States, including in the context of counter-terrorism initiatives. This will ultimately strengthen and support the work carried out by OSCE field operations as described in this paper.

Saadi v Italy[21]

In 2008 the European Court of Human Rights reaffirmed the absolute and unconditional nature of the long standing principle against deporting people to countries where there is a "real risk" they will be subject to torture or treatment. The Court stated that no circumstances, including national security concerns and terrorist threats would justify such action.

This case concerned a Tunisian citizen resident in Italy whom the Italian government wanted to deport to Tunisia on the basis that he was a terrorist threat. He had been convicted in Tunisia of terrorism-related offences and claimed he would be at risk of torture and ill-treatment if deported there.

It had been argued that in the case of terrorist suspects, their right to be protected from torture or ill-treatment in a country should be balanced against the risk to national security that they pose in the country which wants to deport them. This argument was rejected unequivocally by the Court, which recognized that:

"States face immense difficulties in modern times in protecting their communities from terrorist violence. The Court cannot therefore underestimate the scale of the danger of terrorism today and the threat it presents to the community. That must not, however, call into question the absolute nature of Article 3 [of the European Convention, which prohibits torture and other ill-treatment]."

[21] Saadi v Italy (App no 37201/06), Judgement of 28 February 2008, <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=829510&portal=hbkm&source=externalbydocnumber&table= >

4. The OSCE and implementation of the Optional Protocol to the UN Convention against Torture

4.1 Overview of the Protocol: National Preventive Mechanisms and the UN Subcommittee for the Prevention of Torture

OPCAT came into force in June 2006 and is the newest torture-prevention tool in international law.

A major feature of the Protocol is the requirement to create or designate a detention-monitoring body at the national level, known as an NPM. This should be created (or designated) one year after the Protocol's entry into force or its ratification. The word "preventive" highlights a distinctive feature of this body or collection of bodies. It should visit places of deprivation of liberty systematically, rather than in response to specific individual or group allegations of torture and ill-treatment, in order to have a preventive effect on these phenomena. While monitoring places of deprivation of liberty is a major focus of the work of the NPMs, their mandate goes wider, encompassing the right to submit proposals or comment on relevant draft legislation. The Protocol also mentions that relevant authorities should publish and disseminate the annual report of the NPMs and engage in dialogue with regard to their recommendations

Among other things, states must guarantee this body the necessary financial resources, expertise and unfettered access to all places of deprivation of liberty. Its independence must also be ensured and parties to the Protocol must publish and distribute its annual reports. More specific issues with regard to the development of NPMs will be examined below, in Section 4.2.

The Protocol also established the UN Subcommittee for the Prevention of Torture. This body is currently composed of ten members and is mandated with visiting places of deprivation of liberty under the jurisdiction of States Parties, in addition to supporting the establishment and capacity building of NPMs under the Protocol. The Subcommittee may also make confidential recommendations to States Parties and NPMs and issues reports that may be made public if a state so requests.

In view of the current (and potential) number of parties to the Protocol, it is clear that the Subcommittee will have a limited capacity to conduct regular visits to all eligible countries. With its current strength of ten members, and with 43 countries to potentially visit at the time of writing, the Subcommittee estimates it will only be able to visit each country on an average of once every nine years.[22] Thus, the NPMs

[22] "First Annual Report of the UN Subcommittee for the Prevention of Torture, February 2007 to March 2008", Official Documents System of the United Nations website, http://daccessdds.un.org/doc/UNDOC/GEN/G08/418/28/PDF/G0841828.pdf?OpenElement

clearly have a key role to play in providing the type of systematic monitoring envisaged under the Protocol.

The Subcommittee has carried out several country visits to date. According to the Protocol, the selection of the first group of countries was to be performed by lottery, and the Maldives, Mauritius and Sweden were visited in 2007 and early 2008. Countries selected by the Subcommittee for visits in 2008 included Benin, Mexico and Paraguay. The Subcommittee reported[23] that it could not carry out more visits due to lack of capacity and, in particular, lack of support from the Secretariat, which had also delayed the preparation of visit reports.

The Subcommittee has said the criteria it will use for future selections include urgent issues reported, size and complexity of the state, regional preventive monitoring and date of ratification/development of an NPM.

The UN Subcommittee on the Prevention of Torture released its first annual report in May 2008. The report identified a lack of financial and human resources as a serious obstacle to effective activity and, in particular, to the work expected to be carried out under the Protocol with NPMs.

"... the Subcommittee considers that the current budget does not adequately cover the expenditure necessary for it to implement fully the Optional Protocol, and that it has not been provided with the staff, facilities and other resources necessary for the effective performance of its functions, as defined by the Optional Protocol. The Subcommittee consequently considers that it is not yet in a position to fulfil its mandate."[24]

The Subcommittee is currently making use of its visits to develop contact with NPMs, but does not have a budget to support NPMs as mandated under the Protocol.

4.2 OPCAT in the OSCE area

OPCAT has been the focus of much activity in OSCE participating States in all of the regions under consideration. It is notable that OSCE participating States were urged to give early consideration to signing and ratifying the Protocol in a Ministerial Council Decision.[25] The current status of signature and ratification of OPCAT by OSCE participating States is provided below.

[23] *Ibid.*
[24] *Ibid.*
[25] MC.DEC/12/05 of 6 December 2005

OPCAT ratifications and signatories in OSCE States:

- **23 OSCE participating States are States Parties to the OPCAT**
- **16 OSCE participating States have signed but not ratified the OPCAT (several signed in the period from 2003-2005 but have yet to progress to ratification)**
- **17 OSCE participating States are neither States Parties nor signatories to the OPCAT**

An overview of the implementation of the Protocol in OSCE countries reveals a mixed picture. It should be noted that implementation has been relatively slow in all OSCE participating States concerned, with the deadline set in the Protocol for the creation or designation of NPMs having been missed almost universally.[26] It may be that this deadline was overly optimistic. It may not have taken sufficient account of the time needed for public debate to create new mechanisms or of legislative and other changes needed to existing bodies in order for them to fulfil the Protocol criteria.

However, in many OSCE countries this process is ongoing. In many cases there has already been some indication as to which bodies may eventually be designated, even if no final decision has been reached. For example, existing Ombudsman institutions seem to have been a popular choice as possible NPMs, and many already have a mandate to visit places of deprivation of liberty. Some might, however, need increased or revised powers to be OPCAT compliant, such as the right to visit all places of deprivation of liberty or to submit proposals on draft legislation.

Challenges that have arisen in the selection of Ombudsman institutions as the sole NPM include the fact that these institutions may not have sufficient resources or expertise to carry out the regular visits to many different types of detention facilities envisaged by the Protocol. Additionally, they often have a mandate to take up individual cases of alleged torture or ill-treatment, which could conflict with the co-operative and consultative role envisaged between the NPM and the authorities under OPCAT. These institutions might also be accustomed to operating only within a national, rather than an international legal framework, and would thus need additional training to be effective NPMs. These issues have been examined in depth in a publication from the Association for the Prevention of Torture.[27]

In certain countries, existing Ombudsman offices have been criticized for being too closely linked to the President or current government, and thus lacking the independence required of an NPM. Finally, it has been argued that the designation of a new body rather than an existing one sends a signal to the public that torture

[26] Article 24 of the OPCAT allows States Parties to postpone their obligation to create an NPM for a period of three years from the date of their ratification, and a further two years under certain conditions, but this provision has not as yet been used.

[27] "National Human Rights Commissions and Ombudspersons' Offices/ Ombudsmen as National Preventive Mechanisms under the Optional Protocol to the Convention against Torture", January 2008, available on the Association for the Prevention of Torture website <http://www.apt.ch/component/option,com_docman/task,cat_view/gid,51/Itemid,59/lang,en/>.

prevention is of particular significance and should be given a clearly identifiable profile, rather than being devolved to an organization or organizations that may have a number of other roles, or whose mandate and structure does not currently fit the requirements for an NPM under the Protocol.

It is also notable that in some OSCE participating States that had signed, but not yet ratified the Protocol when the field operations submitted the questionnaires, discussions of the creation of an NPM were going ahead in any event – often in anticipation of this happening. In Montenegro, for example, a working group was established to consider the possible structure of a future NPM, and was being assisted by expert and logistical support provided by the OSCE field operation. In November 2008, the working group proposed that the required legislative amendments be made to the Ombudsman institution with the purpose of designating it as the NPM. Montenegro ratified the OPCAT on 6 March 2009. In another case, concrete discussions regarding an NPM were underway in Kazakhstan even before the signature and ratification of the Optional Protocol, and continue to date.

Where field operations have in the past been engaged in the promotion of independent national detention-monitoring mechanisms, it is a natural progression for them to continue such activity in relation to the creation of an OPCAT-compliant monitoring body. This is particularly the case where a country is considering signing or ratifying. In the former Yugoslav Republic of Macedonia, for example, the field operation has been engaged for some time in supporting the Office of the Ombudsman, which has a mandate to visit places of deprivation of liberty. Having identified shortcomings in the effective investigation of allegations of police abuse in detention, the field operation took a leading role in the creation of an external oversight mechanism for this purpose. In several countries, the Heads of Missions of OSCE field operations have publicly emphasized the importance of signature/ratification of the Protocol or raised the issue with the country's Ministry of Justice.

4.3 ODIHR: Supporting the implementation of OPCAT

As mentioned above, ODIHR has developed a strong focus on supporting the implementation of OPCAT. The Office sees this instrument as vital in the area of criminal justice reform, and it is a key element in its present and future torture-prevention efforts.

ODIHR, in conjunction with the OPCAT Project of the Bristol University School of Law, organized a conference in Prague in November 2008 to bring together representatives from government and civil society, national human rights institutions, OSCE field operations and experts from several countries to share their experience on the implementation of OPCAT in the OSCE region. Participants were invited from countries hosting OSCE field operations that have ratified OPCAT, in addition to a number of other OSCE participating States that are party to the Protocol. The meeting focused on the Eastern European, Central Asian and South Caucasus regions.

The conference also provided an opportunity for liaison between representatives of several international organizations working in the field of torture prevention, including the UN Subcommittee for the Prevention of Torture, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,

ICRC, the Association for the Prevention of Torture, Penal Reform International, Amnesty International, the Mental Disability Advocacy Centre and the Office of the UN High Commissioner for Human Rights.

In May 2009, the OSCE Mission to Montenegro, along with ODIHR and national institutions, organized a regional conference on OPCAT implementation in South-Eastern Europe. This conference complemented the Prague event. The conference provided a useful platform for communication, as many practitioners who work on similar topics in their home countries met for the first time. The Ombudsman Office in Montenegro declared its intention to take up the recommendations generated at the gathering, especially vis-à-vis the required independence of the NPM and the obligation to visit all places of detention regardless of which ministry exercises supervision.

Both meetings focused on the process in several countries of establishing NPMs, the effectiveness and appropriateness of the bodies chosen, and the implementation of the mandate to prevent torture under the Protocol. The meetings aimed to provoke open discussion of the Protocol as an effective tool for torture prevention by considering the practical issues regarding implementation and, in particular, those surrounding the creation or designation of NPMs. The Optional Protocol is being implemented simultaneously in different political contexts, and this event provided a unique opportunity for comparison and the sharing of experience between different countries in the OSCE region.

4.4 Implementation of OPCAT in the OSCE area: national perspectives

This section will outline the main themes that emerged from the meetings mentioned above and provide some examples from individual countries.[28] Comments have not been attributed to any specific individuals unless their prior consent has been obtained.[29]

4.4.1 Ombudsman offices and NGOs as NPMs

A majority of the countries participating in the meetings had designated Ombudsman offices as part of the NPM. In some countries this selection was made with the initial involvement of NGOs, whereas in others the selection was made by the Parliament or Government without such consultation. In the latter cases NGOs had not generally been included in the NPM.

It appears, however, that sustained lobbying by civil society led many countries to move towards the inclusion of NGOs either in the process of selecting an NPM or in the NPM itself. In a number of cases Ombudsman institutions themselves had initiated the contact with and involvement of NGOs in the NPM, even where

[28] A comprehensive report of the meeting, "OPACT in the OSCE region: What it means and how to make it work", is available on the University of Bristol website at <http://www.bris.ac.uk/law/research/centres-themes/opcat/opcatdocs/prague2008/proceedingspraguenovember2008.pdf>/

[29] The meeting was held under the Chatham House Rule.

legislation had established the Ombudsman solely as the NPM. Countries where the Ombudsman was involved in the inclusion of NGOs in the process of the creation or designation of an NPM included Moldova, Slovenia and Denmark. The conference in Montenegro also discussed the danger of the exclusion of qualified NGOs that were viewed unfavourably by the government, and proposed that a selection procedure be put in place that avoided arbitrary selection or undue exclusion.

With regard to the appropriateness of Ombudsman offices as NPMs, concerns were raised as to how to reconcile the preventive role envisaged for an NPM under the Protocol with the Ombudsman office's responsibilities for making recommendations and operating in a co-operative and often confidential manner with the authorities. Existing quasi-legal aspects of Ombudsman's mandates, including the power to initiate criminal proceedings (Czech Republic) or issue reprimands (Finland), could prove an obstacle to a preventive approach. These issues have not been resolved, and how they will be is only likely to become clearer as more NPMs become operational. One point raised was that, in many cases, existing legislation covering Ombudsman offices would need to be amended in order for the Ombudsman to be able to fulfil tasks stipulated by OPCAT.

Some broader issues also arose with regard to the mandate of NPMs. One suggestion was that monitoring the effectiveness of any investigations by the authorities should also be one of the NPM's roles. At the very least, it was concluded, this needs to be carried out in a complementary manner in the context of NPM activity. The Czech Ombudsman had confronted the issue of how its mandate could be implemented in relation to privately owned and managed institutions, such as residential care facilities.

A key issue for most Ombudsman offices was funding. In most cases, the expectation was that an increase in financial resources would be necessary for existing Ombudsman offices to take on monitoring places of deprivation of liberty and the follow-up activities required by the Protocol. Although it was also noted that one reason Ombudsman offices were popular choices as NPMs was that this avoided the expense of setting up new institutions. Ombudsman offices were also a natural choice in that, in most cases, they already had a mandate to deal with complaints from detainees and/or to visit places of deprivation of liberty.

Part of the discussion focused on the reference made in Article 18 (4) of the Protocol to the Paris Principles[30] and National Human Rights Institutions (NHRIs):

"When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights."

In particular, there was the question of what would happen if an NHRI had been refused accreditation by the International Co-ordinating Committee of NHRIs for not being sufficiently independent or failing to fulfil other requirements under the Paris

[30] "Annex to Fact Sheet No. 19, National Institutions for the Promotion and Protection of Human Rights," UNHCHR website, <http://www.unhchr.ch/html/menu6/2/fs19.htm#annex>.

Principles, but was designated as an NPM under the Protocol.[31] One point made was that Paris Principles criteria were not a perfect match for those of OPCAT, as the former are broader in scope and designed for a less specialized purpose, so this was not necessarily an issue in evaluating an NPM. More generally, the point was also made that the process of the creation and ongoing operation of an NPM should be seen as an evolving one.

A recurring theme at the meeting was that the NPM is an evolving institution and it was obvious that certain approaches were already being adjusted. The recognition of the need to include NGOs in the NPM process was one example. It was also acknowledged that a period during which NPMs will gain the necessary experience should be expected on their way to becoming effective visiting bodies.

It was generally recognized that the existence of a long-term field presence by international organizations, such as the ICRC or OSCE, was an important factor with regard to support for the establishment and effective ongoing operation of NPMs. Representatives from a number of countries, including Armenia, Moldova, Ukraine and Azerbaijan, emphasized the value of support from OSCE field operations in this regard.

4.4.2 The Estonian NPM Experience

A comprehensive and practical overview of the work of a newly designated NPM was provided by a representative of the office of the Estonian Chancellor of Justice in the context of a discussion of how NPMs can carry out the preventive aspect of their mandate. As the institution designated under the Protocol, the office of Chancellor of Justice has had a mandate to inspect places of deprivation of liberty in Estonia for several years, although it only began visiting as an NPM in 2008. The representative of the Chancellor's office stressed that carrying out visits, per se, will not ensure the effective prevention of torture. Prevention should also address possible future breaches, thereby minimizing the risk that shortcomings in the system will lead to torture or ill-treatment. The Chancellor's office enumerated a number of factors assisting in prevention, including transparency of visits, raising public awareness, publishing reports, the follow up of recommendations, and identifying gaps in law and practice and introducing changes to legislation.

The representative from the office of the Estonian Chancellor of Justice attempted to define the concept of an effective visit, stressing that preparatory work, such as identifying questions to be asked and having knowledge of the institution, was essential. It was important to visit both individuals who had specifically requested an interview and those who had not. Discussions with lower level officials were as important as meetings with detention centre managers, and should be carried out with the managers not present, preferably in an informal setting. The representative noted that obtaining information in military detention centres could be particularly challenging. The Chancellor's office sought further input from the UN Subcommittee for the Prevention of Torture regarding NPM activity and visits – particularly what is

[31] A report on this issue by the OPCAT Project at Bristol University can be found on the University of Bristol website, <http://bristol.ac.uk/law/research/centres-themes/opcat/>.

meant by a "preventive visit" – and suggested that specific guidelines and standards be issued.

A particularly important factor stressed by the representative of the Chancellor's office was the need for widespread dissemination of information regarding the Protocol, the protection it offers, and the role of NPMs and the UN Subcommittee. This aspect is not specifically included as a key task of the NPMs under the Protocol, which only requires that NPM reports should be made publicly available by States Parties. After a visit, the Chancellor's office issues a public report, which is posted on its website, and sends a follow-up letter, booklets with information on its mandate, and texts of the UNCAT, OPCAT and other international agreements to the place of detention. It was also pointed out that the NPMs were well placed to help in preparing the ground for a Subcommittee visit by disseminating information about it on the ground.

The Estonian Chancellor of Justice's office has the right to attend and speak at parliamentary sessions, and is thus able to comment directly on legislation relating to OPCAT issues. It can also provide its interpretation of a law to the Ministry of Justice.

4.4.3 Detention monitoring: some country experiences

It was reported with regard to Ukraine that the establishment of the office of Ombudsman and independent surveys conducted by civil society were key factors in the recognition and public perception of torture as a problem that exists in the country. In particular, the office of Ombudsman and human rights protection groups received large numbers of complaints of torture and ill-treatment, including those concerning conditions of detention. This led to a particular focus on the issue by the Interior Ministry. The first attempt to introduce civic monitoring was associated with the adoption of the Interior Ministry Ordinance,[32] which provided a provisional legal framework for a pilot scheme of preventive monitoring in three regions in Ukraine. Mobile Monitoring Groups were established under the Interior Ministry specifically to monitor places of police detention. The scope of the work by the Monitoring Groups was subsequently expanded to incorporate monitoring on a nationwide basis.[33]

This direct link to the Interior Ministry was deemed useful in that it facilitated the translation of NPM recommendations into binding commitments. With regard to the independence of the Mobile Monitoring Groups, it was stated that two-thirds of a Group's membership should be drawn from civil society, with other representatives being full-time Interior Ministry representatives. Notwithstanding Interior Ministry support for the Monitoring Group system, some outstanding issues need to be resolved to ensure it functions effectively. Issues that need to be addressed include insufficient funding in many regions in Ukraine for monitoring activities and regular visits (such funding is provided by the OSCE field operations and NGOs), a limited

[32] Ukrainian Interior Ministry Ordinance No. 286 of 17 March 2004 "On Approving the Provisional Regulation on Mobile Groups for Monitoring Observance of the Constitutional Rights and Freedoms of Citizens in the Activities of the Ministry of the Interior."
[33] Ukrainian Interior Ministry Ordinance No. 536 of 8 July 2005 "On the Establishment of Regular Mobile Groups for Monitoring the Observance of the Constitutional Rights and Freedoms of Citizens in the Activities of the Ministry of the Interior."

understanding of the Mobile Monitoring Groups' role by local NGOs, limited co-operation between local Interior Ministry structures and civil society, and diverse views on the functioning of the Groups in different regions.

The establishment of the Mobile Monitoring Group system was carried out in a comprehensive manner, including the provision of training and a code of conduct for independent visitors, reform of the legal framework for the activities of the Groups, and standardized reporting. This system provides a good example of integrated action between civil society and the Interior Ministry. Notably, the system is focused on detention facilities operated by the police, a notoriously difficult area to tackle and one where torture is often prevalent. Part of the inspiration for the Monitoring Group system in Ukraine came from practice in the United Kingdom, following a study visit there by Ukrainian officials and Group members. This example demonstrates the value of sharing experience between OSCE participating States.

The development of the Mobile Monitoring Groups in Ukraine has been an evolving process, with several amendments made to the legal framework as their work developed and a national policy to combat torture having been elucidated.[34] The mandate of the Monitoring Groups is continually expanding, and they were recently granted the right to visit detention facilities at night and conduct confidential interviews with detainees. At the time of writing, a comprehensive NPM with a mandate to visit all places of deprivation of liberty was not yet in existence. However, discussions on the development of an NPM and expanding monitoring to include prisons and specialized medical and asylum facilities for refugees and those seeking asylum are ongoing.

In the Czech Republic, the existing Ombudsman institution – the Office of the Public Defender of Rights – was designated as the NPM because of its institutional and financial independence, previous experience in detention monitoring and the authority it enjoys. Legislative changes introduced in 2006 made the Public Defender's Office eligible for this task. A special department within Office was established, composed of 12 lawyers and several independent experts, including doctors, nurses, psychologists and psychiatrists. Visits to *de jure* facilities, such as prisons and holding cells, and to *de facto* facilities are made systematically according to a half-yearly plan.

Moldova provides an example of an NPM that unites the forces of the Ombudsman and civil society. Initially, the Ombudsman office was selected as the sole body responsible for NPM functions under OPCAT. After lobbying from civil society, the government introduced a law specifying that the Ombudsman office should carry out its mandate in co-operation with civil society. It also took the initiative of creating an 11 person Consultative Council, comprising ten NGO representatives and the Ombudsman as chair.

The Moldovan model is an example of the pooling of the expertise and resources of NGOs and the Ombudsman office. As part of an ongoing process, however, a number of additional measures were mentioned as necessary to guarantee the full independence and effectiveness of the body. Particular stress was placed on the

[34] "Concept of the State Policy on Preventing Torture and Inhuman or Degrading Treatment or Punishment", as developed by the Ukrainian Presidential National Commission for Strengthening Democracy and the Rule of Law. The related Presidential Decree had yet to be signed as of June 2009.

importance of finding the right balance in the NPM, both in the legislative framework and in practice, between NGOs and the Ombudsman. This was a recurring theme throughout the discussions. Another issue raised was the absence of functional immunity for NGO members of the Consultative Council. The guarantee of such immunity is required under OPCAT for members of the NPM.

The civil society component of the Moldovan NPM has encountered practical problems due to the fact that NGO members are not paid and expenses incurred in carrying out visits are not covered. The funding issue is thought to have contributed to the resignation of several members of the Consultative Council. The opinion was that there are likely to be ongoing problems for the participation of NGOs in the work of the NPM unless this situation changes. Issues were also raised regarding the threats to the security of members of the civil society component of the Moldovan NPM that could arise as a result of exercising their official functions.[35]

One institution examined in the United Kingdom was the Independent Custody Visiting Association, which was formed in the late 1980s following the introduction of legislation obliging local police authorities to establish independent visiting of places of police detention. The Association's unique feature is that all visitors are volunteer members of the public who receive special training in order to carry out their role. Volunteers have to agree to make a minimum number of visits per year.

Another interesting model from the United Kingdom relates to the visiting of military establishments. This is regulated internally by the British Army, although there is also some external monitoring.[36] The Army inspects its facilities in operational areas that hold local nationals, currently Iraq and Afghanistan, every six months. The Provost Marshal (Army) is the competent Army authority on operational detention and normally attends each inspection. The inspection report is not in the public domain. Unit Guardrooms, which hold United Kingdom service personnel, are licensed every two years. The Provost Marshal (Army) checks the infrastructure and regime according to inspection criteria and issues operating licenses. These facilities also exist overseas. It was pointed out that the UK-based army detention facility had been visited for monitoring purposes by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 2002.

One point raised during the meeting was that very few bodies in CIS countries focus on the monitoring of military detention facilities and, in general, there appears to be more limited expertise and coverage in this area than in that of detention monitoring of prison or police facilities.

[35] Article 35, OPCAT, which states that: 'Members of the … national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions...'

[36] Her Majesty's Inspectorate of Prisons has been invited to regularly inspect the UK's Military Corrective Centre in Colchester.

4.5 The UN Subcommittee for the Prevention of Torture's relationship with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and NPMs

The complex relationship between the UN Subcommittee for the Prevention of Torture and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and between both international anti-torture bodies and NPMs, was examined in depth during the meeting in Prague. It was noted that of the 23 OPCAT members from the OSCE region, 20 are also covered by the European monitoring regime. A forum is likely to be held later in 2009 to discuss how the two bodies, along with other international organizations, will co-ordinate their activities.

The European Committee has over 20 years of experience in visiting places of detention and torture prevention, having carried out 256 visits and published 206 reports as of November 2008, and it was pointed out at the meeting that the UN Subcommittee could benefit from this. It is likely that formal modalities for co-operation will be established in the future. One concern is that visits to the same country by the UN Subcommittee and the European Committee or other international bodies might occur within a relatively short space of time. Denmark questioned the real value added of being a party to OPCAT when its detention centres were already being monitored by the European Committee, although it acknowledged the value of setting an example for other countries that had a greater need to establish NPMs to strengthen their national monitoring activities. Also, the European Committee is scheduled to visit Sweden in 2009, despite the fact that a visit by the UN Subcommittee was carried out in 2008. It was pointed out, however, that the Committee had not visited Sweden for some time and also that the close timing of the visits by the two bodies could provide an opportunity to examine how co-operation would function in such circumstances.

A key issue considered that affects the relationship of the UN Subcommittee and the European Committee with the NPMs was the sharing of information ostensibly not made public by the Subcommittee at this stage, and of visit reports in particular. Sweden, as one of the first states to be visited by the Subcommittee, is also the first country to have agreed to the visit report being made public. As all states, with the exception of the Russian Federation, have now agreed to the publication of the European Committee's reports, it is anticipated that this may also increasingly be the case with UN Subcommittee reports for Council of Europe members who are party to OPCAT. The issues of publicity and transparency need to be balanced against confidentiality and, while it was agreed that publicity is an important aspect of prevention, it was also pointed out that governments may be more willing in some cases to change their policies in response to quiet persuasion than public condemnation.

Annex I

Torture and Cruel, Inhuman or Degrading Treatment or Punishment: Causes and Prevention (A Questionnaire for OSCE Field Operations)

Despite the existence of a body of international law designed to combat torture, it remains a persistent practice in many countries. The OSCE, due to its long-term presence on the ground, is in a unique position to support and advocate for adherence to international legal standards in this field. This exercise aims to collect and document existing OSCE field experience in combating torture and ill-treatment.

The detailed aims of this questionnaire are as follows:

- To obtain information about existing OSCE field activities aimed at combating torture and cruel, inhuman or degrading treatment or punishment (hereafter CIDT)
- To identify systemic obstacles to the prevention of torture in the criminal justice system
- To identify areas where the ODIHR could support OSCE FOs and assist in the coordination of OSCE anti-torture activities
- To identify other organisations or institutions working in this area and their activities

We appreciate that the level of general legal expertise and specific knowledge of this area varies widely among OSCE Field Operations and thus ask you to provide as much information as is possible, and mark sections N/A (not applicable) as required. We have also prepared a short information sheet 'Basic Facts about Torture' (attached) to assist you in completing the questionnaire.

Your assistance in completing this questionnaire is important and is much appreciated.

PART 1 OSCE Field Operation (FO) Activities

Does your FO implement, assist or fund any projects to combat torture or cruel inhuman or degrading treatment or punishment, hereafter 'CIDT', (whether specifically identified as such, or having elements which may serve to reduce torture or CIDT, such as training of the judiciary or police), in any of the following areas:

1. Visiting places of detention?

☐ Yes ☐ No

If YES, please indicate type and continue to a) and b):

☐ Police Station ☐ Pre-trial detention ☐ Prison

☐ Juvenile detention centre ☐ Asylum seeker detention centre

☐ Other (please specify)

a) Are the visits part of a long term, systematic monitoring programme with regular reports?

☐ Yes ☐ No

g this monitoring has been/will be conducted and give details of programme:

b) Do you use implementing partners, such as NGOs, for this monitoring?

☐ Yes ☐ No

2. Training?

☐ Yes ☐ No

If YES, please indicate sector:

☐ Police ☐ Prosecutors ☐ Detention Centre Staff

☐ Judiciary ☐ Defence Lawyers ☐ Medical Personnel ☐ Other

Please give details, particularly whether specific anti-torture/CIDT components are included:

3. Legislative reform?

☐ Yes ☐ No

Please give details:

4. NGO capacity building?

☐ Yes ☐ No

Please give details:

Please also feel free to attach project descriptions or reports (if not a project which is implemented in co-operation with ODIHR)

PART II International Commitments

(Please see attached list of signatures and ratifications for the United Nations Convention against Torture (UNCAT), its Optional Protocol (OPCAT) and the European Convention for the Prevention of Torture (ECPT), relating to participating States where OSCE FOs are located)

1. Does the FO implement, assist or fund projects related to the implementation of any international Conventions of the Council of Europe or UN relating to torture/CIDT?

☐ Yes ☐ No

If YES, please give brief project details or attach a project description and indicate role of FO

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2. Has the European Committee for the Prevention of Torture (CPT) ever contacted you in connection with a visit to the FO country?

☐ Yes ☐ No

If YES, how often?

(Please provide details including date(s) and attach any written comments provided to the CPT by the FO)

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3. Has the UN Committee against Torture (CAT) ever contacted you in connection with a visit to the FO country?

☐ Yes ☐ No

If YES, how often?

(Please provide details including date(s) and attach any written comments provided by the FO)

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4. Has the UN Special Rapporteur on Torture ever contacted you in connection with a visit to the FO country?

☐ Yes ☐ No

If YES, how often?

(Please provide details including date(s) and attach any written comments provided by the FO)

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5. If the FO country has ratified OPCAT, have the government or NGOs taken any steps towards establishing or designating a National Preventive Mechanism (NPM) to visit places of detention?

☐ Yes ☐ No

(Please provide any available details of the forms of NPMs under consideration, such as the Ombudsman, National Human Rights Institution etc. and stage of discussions):

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6. Have the government, or NGOs, produced any draft implementing legislation?

☐ Yes ☐ No ☐ Not applicable

(Please attach if available)

7. If the FO country has not signed or ratified OPCAT, is there a likelihood of this in future?

☐ Yes ☐ No ☐ Not known

(Please give further details, such as time frame, if known)

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8. Has the FO been involved in any advocacy for the ratification of OPCAT? (e.g. via public statements, roundtables or the distribution of publications)

☐ Yes ☐ No ☐ Not applicable

Please give brief details

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9. If the FO country has not accepted the application of Article 22 of the UNCAT (allowing the right to make an individual complaint), is there a likelihood of this in future?

☐ Yes ☐ No ☐ Not known

PART III Systemic Obstacles to Torture Prevention

Please indicate by checking the box whether any of the following systemic obstacles to combating torture exist in the FO area:

1. Authority over the penitentiary system in the FO country rests with the Ministry of Justice?

☐ Yes ☐ No ☐ Not known

If NO, please specify which body has this role

2. Authority over police custody cells in the FO country rests with the Ministry of Justice?

☐ Yes ☐ No ☐ Not known

If NO, please specify which body has this role

3. The Prosecutor, rather than the judiciary, authorises and sanctions arrest and detention in the FO country at the pre-trial stage?

☐ Yes ☐ No ☐ Not known

Additional comments:

4. The judiciary has no mandate to intervene in allegations of torture or ill-treatment in detention (for example this power may rest with the Prosecutor)?

☐ Yes ☐ No ☐ Not known

Additional comments (if YES, please specify whether the judiciary exercises its mandate to intervene in practice)

5. Confessions are often the sole, or main, evidence used to obtain criminal convictions?

☐ Yes ☐ No ☐ Not known

Additional comments:

6. One, or all, of the following groups have their performance evaluated, or are promoted, based on conviction rates?

a) Police ☐ Yes ☐ No ☐ Not known

b) Prosecutors ☐ Yes ☐ No ☐ Not known

c) Judiciary ☐ Yes ☐ No ☐ Not known

Additional comments:

7. The offence of torture is included in the national criminal law of the FO country?

☐ Yes ☐ No ☐ Not known

Additional comments:

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8. If included in national criminal law, the offence is defined more narrowly than in international law (such as in the UN Convention against Torture)?

☐ Yes ☐ No ☐ Not known

Additional comments:

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9. A Statute of Limitations is applied to offences of torture?

☐ Yes ☐ No ☐ Not known

Additional comments:

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10. There is a prohibition on prosecuting a member of the armed forces, law enforcement personnel, or a civil servant for offences of torture?

☐ Yes ☐ No ☐ Not known

Additional comments:

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11. Please describe any other systemic factors in the criminal justice system which may have an impact on the prevention of torture and/or CIDT:

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12. Does the Government of the FO country use any technical means such as audio/videotaping of interrogations to combat torture/CIDT?

☐ Yes ☐ No ☐ Not known

PART IV Other Actors

(Where there are large numbers of organisations involved in anti-torture work, please give details of the most active and/or those focusing primarily on this area)

1. Are there any local organisations working on anti-torture or CIDT issues in the FO area?

☐ Yes ☐ No

If YES, please give name(s) and focus *(e.g. monitoring places of detention, intervening in individual cases of torture allegations, lobbying for ratification/implementation of international conventions)*

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2. Are there any international organisations working on anti-torture or CIDT issues in the FO area?

☐ Yes ☐ No

If YES, please give name (s) and focus

3. **Are there any Governmental or quasi-governmental bodies focusing on anti-torture or CIDT issues in the FO area?**

☐ Yes ☐ No

If YES, please give name(s) and mandate

PART V Governmental Attitudes and FO Anti-Torture Strategies

1. **If the existence of torture or CIDT is well-documented in the FO area, do the authorities acknowledge this fact?**

☐ Yes ☐ No ☐ Sometimes

2. **Do you think that anti-torture/CIDT work has changed the attitude of the authorities in your host country towards these practices in recent years?**

☐ Yes ☐ No

Please give details:

3. **Have you encountered particular difficulties in implementing specific anti-torture/CIDT activities?**

☐ Yes ☐ No ☐ Not applicable

If YES, please describe:

4. **Is torture and/or ill treatment a worse problem in areas of the FO country affected by conflict or ongoing disputes?**

☐ Yes ☐ No ☐ Not known ☐ Not applicable

Please give details:

5. **Is it possible for the FO to work to combat torture and/or ill-treatment in areas affected by conflict or ongoing disputes?**

☐ Yes ☐ No ☐ Sometimes ☐ Not applicable

Please describe problems faced and whether/how these might be overcome

6. **Do you think it is more effective to integrate anti-torture/CIDT activities into other criminal justice system reform projects?**

☐ Always ☐ Never ☐ Sometimes

(Please give reasons for your answer)

7. Are there any projects supported or implemented by the FO into which components to prevent torture/CIDT could be incorporated where they are currently lacking?

☐ Yes ☐ No

If YES, please specify the project(s) and give brief details:

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8. Does the FO possess sufficient expertise and/or capacity to work on anti-torture/CIDT issues?

☐ Yes ☐ No

If NO, how could the FO capacity be strengthened?

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9. What do you think should be the main role of OSCE in the prevention of torture or CIDT in your FO area, considering the need to avoid duplication and make the most effective use of its structure and mandate?

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10. Is there a staff member in the FO currently responsible for anti-torture/CIDT issues?

☐ Yes ☐ No

If YES, please provide name and contact details

If NO, please provide a contact point where feasible (taking into account individual mission staffing levels and mandates)

Annex II

OSCE participating States - UNCAT and OPCAT status as of March 2009

(s = signing date, r = ratification date, a = accession date and d = succession date)

Location of OSCE Field Operations:

1. Central Asia

Kazakhstan	UNCAT – 26/8/98 (a) OPCAT – 25/09/07 (s) 22/10/08 (r)
Kyrgyzstan	UNCAT – 5/9/97 (a) OPCAT – 29/12/08 (a)
Tajikistan	UNCAT – 11/01/95 (a)
Turkmenistan	UNCAT – 25/06/99 (a)
Uzbekistan	UNCAT – 28/9/95 (a)

2. Eastern Europe

Belarus	UNCAT – 19/12/85 (s) 13/-3/87 (r)
Moldova	OPCAT - 16/09/05 (s) 24/07/06 (r)
Ukraine	UNCAT – 27/02/86 (s) 24/02/87 (r), Article 22 OPCAT - 23/09/05 (s) 19/09/06 (r)

3. South Caucasus

Armenia	UNCAT – 13/09/93 (a) OPCAT – 14/09/06 (a)
Azerbaijan	UNCAT – 16/08/96 (a), Article 22 OPCAT – 15/09/05 (s) 28/01/09 (r)
Georgia	UNCAT – 26/10/94 (a), Article 22 OPCAT – 9/08/05 (a)

4. South-eastern Europe

Albania	UNCAT – 11/05/94 (a) OPCAT – 1/10/03 (a)
Bosnia and Herzegovina	UNCAT – 1/09/93 (d), Article 22 OPCAT – 7/12/07 (s) 24/10/08 (r)
Croatia	UNCAT – 12/11/92 (d), Article 22 OPCAT – 23/09/03 (s) 25/04/05 (r)
Former Yugoslav Republic of Macedonia	OPCAT – 1/09/06 (s) 13/02/09 (r)
Montenegro	UNCAT: 23/10/06 (d), Article 22

	OPCAT - 23/10/06 (d) 06/03/09 (r)
Serbia	UNCAT – 12/03/01 (d), Article 22 OPCAT - 25/09/03 (s) 26/09/06 (r)

Other OSCE Participating States

Austria	UNCAT – 14/03/85 (s) 29/07/87 (r), Article 22 OPCAT - 25/09/03 (s)
Andorra	UNCAT – 05/08/02 (s) 22/09/06 (r), Article 22
Belgium	UNCAT – 4/02/85 (s) 25/06/99 (r), Article 22 OPCAT - 24/10/05 (s)
Bulgaria	UNCAT – 10/06/86 (s) 16/12/86 (r), Article 22
Canada	UNCAT – 23/08/85 (s) 24/06/87 (r), Article 22
Cyprus	UNCAT – 9/10/85 (s) 18/07/91 (r) OPCAT – 26/07/04 (s)
Czech Republic	UNCAT – 22/02/93 (d), Article 22 OPCAT – 13/09/04 (s) 10/07/06 (r)
Denmark	UNCAT – 4/02/85 (s) 27/05/87 (r), Article 22 OPCAT – 26/06/03 (s) 25/06/04 (r)
Estonia	UNCAT – 21/10/91 (a) OPCAT – 21/09/04 (s) 18/12/06 (r)
Finland	UNCAT – 4/02/85 (s) 30/08/89 (r), Article 22 OPCAT – 23/09/03 (s)
France	UNCAT – 4/02/85 (s) 18/02/86 (r), Article 22 OPCAT – 16/09/05 (s) 11/11/08 (r)
Germany	UNCAT – 13/10/86 (s) 1/10/90 (r), Article 22 OPCAT – 20/09/06 (s) 4/12/08 (r)
Greece	UNCAT – 4/02/85 (s) 6/10/88 (r), Article 22
Holy See	UNCAT - 26/06/02 (a)
Hungary	UNCAT – 28/11/86 (s) 15/04/87 (r), Article 22
Iceland	UNCAT – 4/02/85 (s) 23/10/96 (r), Article 22 OPCAT – 24/09/03 (s)
Italy	UNCAT – 4/02/85 (s) 12/01/89 (r), Article 22 OPCAT – 20/08/03 (s)
Ireland	UNCAT – 28/09/92 (s) 11/04/02 (r), Article 22 OPCAT – 2/10/07 (s)
Latvia	UNCAT – 14/04/92 (a)
Lichtenstein	UNCAT – 27/06/85 (s) 2/11/90 (r), Article 22 OPCAT – 24/06/05 (s) 3/11/06 (r)
Lithuania	UNCAT – 1/02/96 (a)
Luxembourg	UNCAT – 22/02/85 (s) 29/09/87 (r). Article 22 OPCAT – 13/01/05 (s)

Malta	UNCAT – 13/09/90 (a), Article 22 OPCAT – 24/09/03 (s) 24/09/03 (r)
Monaco	UNCAT – 6/12/91 (a), Article 22
Netherlands	UNCAT – 4/02/85 (s) 21/12/88 (r), Article 22 OPCAT – 03/06/05 (s)
Norway	UNCAT – 4/02/85 (s) 9/07/86 (r), Article 22 OPCAT – 24/09/03 (s)
Poland	UNCAT – 13/01/86 (s) 26/07/89 (r), Article 22 OPCAT – 05/04/04 (s) 14//09/05 (r)
Portugal	UNCAT – 4/02/85 (s) 9/02/89 (r), Article 22 OPCAT – 15/02/06 (s)
Romania	UNCAT – 18/12/90 (a) OPCAT – 24/09/03 (s)
Russian Federation	UNCAT – 10/12/85 (s) 3/03/87 (r), Article 22
San Marino	UNCAT – 2002 (s) 27/11/06 (r)
Spain	UNCAT – 04/02/85 (s) 21/10/87 (r), Article 22 OPCAT – 13/04/05 (s) 04/04/06 (r)
Slovakia	UNCAT – 28/05/93 (d), Article 22
Slovenia	UNCAT – 16/07/93 (a), Article 22 OPCAT – 23/01/07 (a)
Sweden	UNCAT – 4/02/85 (s) 8/01/86 (r), Article 22 OPCAT – 26/06/03 (s) 14/09/05 (r)
Switzerland	UNCAT – 4/02/85 (s) 2/10/86 (r), Article 22 OPCAT – 25/06/04 (s)
Turkey	UNCAT – 25/01/88 (s) 2/08/88 (r), Article 22 OPCAT – 14/09/05 (s)
United Kingdom	UNCAT – 15/03/85 (s) 8/12/88 (r) OPCAT– 26/06/03 (s) 10/12/03 (r)
United States	UNCAT – 18/04/88 (s) 21/10/94 (r)

Annex III

OSCE Commitments on the Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Vienna 1989 (Questions Relating to Security in Europe: Principles)

(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.

Copenhagen 1990

(16) The participating States

(…)

(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 competences 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 sub-

jected 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 relating to the human dimension of the CSCE, any cases of torture and other inhuman or degrading treatment or punishment made known to them through 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 or degrading treatment or punishment will be the sole criterion in determining the urgency and priorities to be accorded in taking appropriate remedial action; and, therefore, the consideration of any cases of torture and other inhuman or 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.

Paris 1990 (A New Era of Democracy, Peace and Unity)

We affirm that, without discrimination (…) no one will be:

(…)

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

(…)

Moscow 1991

(23.1) The participating States will ensure that

(…)

(vii) effective measures will be adopted, if this has not already been done, to provide that law enforcement bodies do not take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, or otherwise to incriminate himself, or to force him to testify against any other person;

(viii) the duration of any interrogation and the intervals between them will be recorded and certified, consistent with domestic law;

(ix) a detailed 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 or complaint 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;

Budapest 1994 (Decisions: VIII. The Human Dimension)

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 Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention for the Prevention of Torture and Inhuman or 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 an 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 Cruelly Inhuman or Degrading Treatment or Punishment established by the Commission on Human Rights of the United Nations and make use of information provided by NGOs.

Istanbul 1999 (Charter for European Security: III. Our Common Response)

21. We are committed to eradicating torture and cruel, inhumane or degrading treatment or punishment throughout the OSCE area. To this end, we will promote legislation to provide procedural and substantive safeguards and remedies to combat these practices. We will assist victims and co-operate with relevant international organizations and non-governmental organizations, as appropriate.

Ljubljana 2005 (Decisions: Decision No. 12/05 Upholding Human Rights and the Rule of Law in Criminal Justice Systems)

The Ministerial Council

(…)

Reaffirming the rule of law commitments contained in the 1975 Helsinki Final Act, the 1989 Concluding Document of Vienna, the 1990 Copenhagen Document, and the 1991 Moscow Document, those undertaken at the 1994 OSCE Summit in Budapest, and other relevant OSCE commitments and recalling relevant international obligations, including the International Covenant on Civil and Political Rights and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

(…)

Underlining the need to speak out publicly against torture, and recalling that all forms of torture and other cruel, inhuman or degrading treatment or punishment are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and stressing the need to strengthen procedural safeguards to prevent torture as well as to prosecute its perpetrators, thereby preventing impunity for acts of torture, and calling upon participating States to give early consideration to signing and ratifying the Optional Protocol to the Convention against Torture,

Decides to:

- Increase attention to and follow up on the issues of the rule of law and due process in criminal justice systems in 2006, *inter alia,* by encouraging participating States to improve the implementation of existing commitments, also drawing on the expertise of the ODIHR, and in close co-operation with other relevant international organizations in order to avoid unnecessary duplication;

Tasks the ODIHR and other relevant OSCE structures to:

- Assist the participating States to share with one another successful examples, expertise and good practices to improve criminal justice systems;

- Assist the participating States upon their request to strengthen the institutional capacity of defence lawyers to protect and defend the rights of their clients.

Brussels 2006 (Brussels Declaration on Criminal Justice Systems)

[Members of the Ministerial Council] also recall relevant UN instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(…)

We consider that:

(…)

- In the performance of their duty, law enforcement officials should respect and protect human dignity and maintain and uphold the human rights of all persons;

- Law enforcement officials should use force only to the extent necessary and appropriate to accomplish their mission and to ensure the safety of the public;

- Law enforcement officials, as members of the broader group of public officials or other persons acting in an official capacity, should not inflict, instigate, encourage or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment;

- No law enforcement official should be punished for not obeying orders to commit or conceal acts amounting to torture or other cruel, inhuman or degrading treatment or punishment;

Helsinki 2008 (Decisions: Decision No. 7/08. Further Strengthening the Rule of Law in the OSCE area)

The Ministerial Council

(…)

4. Encourages participating States, with the assistance, where appropriate, of relevant OSCE executive structures in accordance with their mandates and within existing resources, to continue and to enhance their efforts to share information and best practices and to strengthen the rule of law, *inter alia* in the following areas:

(…)

- Prevention of torture and other cruel, inhuman or degrading treatment or punishment, including through co-operation with the applicable intergovernmental bodies;