



**CIVIL SOCIETY RECOMMENDATIONS
TO THE PARTICIPANTS OF THE OSCE MINISTERIAL COUNCIL
MEETING IN BASEL, 4-5 DECEMBER 2014**



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The Civic Solidarity Platform, a network of more than 60 human rights NGOs from throughout the OSCE region,¹ convened the 2014 OSCE Parallel Civil Society Conference in Basel on 2-3 December, building upon the tradition of OSCE parallel civil society conferences in Astana in 2010, Vilnius in 2011, Dublin in 2012, and Kiev in 2013. At the conference, activists from Albania, Armenia, Azerbaijan, Belarus, Belgium, France, Finland, Georgia, Italy, Kazakhstan, Kyrgyzstan, Lithuania, Moldova, the Netherlands, Norway, Russia, Serbia, Switzerland, Tajikistan, Turkmenistan, Ukraine, the United Kingdom, and the USA discussed and adopted the attached policy document, developed by the Civic Solidarity Platform and containing civil society analysis and recommendations on alarming human dimension issues across the OSCE region, on human dimensions issues in Switzerland, in light of the country's OSCE Chairmanship, and human dimensions issues in Serbia, in light of the country's incoming OSCE Chairmanship. It also includes reflections on the impact of the crisis in Ukraine on comprehensive security in Europe as well as recommendations for enhanced engagement of civil society in the OSCE work. Many of the recommendations are based on results of the work of regional OSCE civil society workshop, held throughout 2014 in Belgrade, Vienna, Dushanbe, and Tbilisi. They were organized jointly by the Civic Solidarity Platform and local civil society organisations with support from the Swiss OSCE Chairmanship and brought together more than 150 representatives of civil society organisations from across the OSCE region as well as experts from international NGOs and OSCE institutions.

The outcome document is addressed to governments of the OSCE participating States that will be gathering in Basel for this year's meeting of the Ministerial Council, as well as all the OSCE political bodies and institutions, including the current and the incoming Chairmanships, the Permanent Council, the Human Dimension Committee, ODIHR, the OSCE Parliamentary Assembly, the OSCE High Commissioner on National Minorities, the OSCE Representative on Freedom of the Media, and the OSCE field missions.

We hope that this analysis and the recommendations that flow from it will be studied carefully at the Ministerial Council meeting and in the work of OSCE. We look forward to reaction from all interested stakeholders. While some of our recommendations may be implemented immediately, others relate to systemic problems and will require consistent effort over a longer period of time. We express our commitment as civil society actors to continue to actively engage in the work of OSCE in the spirit of the Helsinki Principles and our determination to contribute to the full realization of respect for human rights and fundamental freedoms, democracy and the rule of law throughout the OSCE region.

¹ The Civic Solidarity Platform was established in December 2011 in Vilnius on the eve of the OSCE Parallel Civil Society Conference. Since then it has grown to more than 60 member organisations from across the OSCE region. For more information about the Civic Solidarity Platform please visit the Platform's web site civicsolidarity.org. The core group of the founders of the Platform had organized earlier the OSCE Parallel Civil Society Conference in Astana on the eve of the OSCE Summit in December 2010 and has been organising OSCE Parallel Civil Society Conferences since then. For outcome documents of the OSCE Parallel Conferences in Astana, Vilnius, Dublin and Kiev visit <http://civicsolidarity.org/page/osce-parallel-civil-society-conferences-outcome-documents>.

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Comprehensive Security in the OSCE Region: The Effects of the 2014 Events

It is four years now since the heads of state and government of the OSCE participating States solemnly recommitted themselves “to the vision of a free, democratic, common and indivisible Euro-Atlantic and Eurasian security community stretching from Vancouver to Vladivostok, rooted in agreed principles, shared commitments and common goals” (Astana Commemorative Declaration, 3 December 2010).

They said that “each participating State has an equal right to security. We reaffirm the inherent right of each and every participating State to be free to choose or change its security arrangements, including treaties of alliance, as they evolve.”

Today the vision expressed in the Helsinki Final Act of 1975 is more imperiled than ever. One of the most powerful states in the OSCE, the Russian Federation, is increasingly operating in a manner at odds with the principles confirmed time and again since 1975. The year 2014 witnessed gross violations of the positions reconfirmed explicitly as recently as in 2010. While the 2010 statement said that no state, group of states or organization “can consider any part of the OSCE area as its sphere of influence”, precisely the “need” for such a sphere of influence is used as an argument for armed interference, invasion, occupation and annexation, accompanied by gross violations of human rights and international humanitarian law. As the conflict in Ukraine has developed, such violations have, unfortunately, been committed by all parties, in the process alienating many of the people they pretend to protect and increasing polarization and hatred. There also seems a real danger of other, “frozen” conflicts heating up in the wake of the conflict in Ukraine.

Millions of citizens have been subjected to lawlessness and to serious danger of humanitarian disaster. The primary goal of each and every party and person in the conflict should be to reverse this situation. Ukraine should recognize the jurisdiction of the International Criminal Court, creating a safety net with respect to prosecution and punishment of gross human rights abuses and war crimes. Civil society activists working peacefully and unarmed to assist civilians and document the human rights situation should not be harmed or hindered by the parties, neither should journalists be murdered or held captive.

It is high time for a return to respect for the basic principle of the OSCE: peaceful rather than violent resolution of conflicts. The capacity of the OSCE as a unique forum “for promoting open dialogue, preventing and settling conflicts, building mutual understanding and fostering co-operation” (once again a quote from the Astana Declaration) should be exploited to the full. Mutual understanding in the Helsinki spirit applies not just to state leaders and officials but to all citizens. In the current crisis a first step towards mutual understanding is the provision of impartial, non-propagandistic information. The OSCE, with its Special Monitoring Mission, is in a unique position to contribute such information, and ways should be sought to expand this capacity, including through direct broadcasting to the region. The OSCE mission’s size, composition and equipment should be adapted to make this possible.

Citizens working in the conflict zone to assist victims of violence, monitor human rights and raise abuses with the parties to the conflict merit special attention from the OSCE mission; they are in a vulnerable position and yet their work is of great importance, including their ability to provide valuable information about the situation of civilians to the OSCE mission.

Concerns about the situation of minorities in other states are not illegitimate. As with all OSCE principles and commitments, the rights of minorities are one of the “matters of immediate and legitimate concern”, as noted in the Astana Declaration. To deal with problems in this area, however, the services of the High Commissioner on National Minorities should be called on rather than force or the threat of force. The HCNM’s Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations should guide the behavior of the Russian Federation in the conflict with Ukraine and in its concerns about minorities in other neighbouring countries. A series of other HCNM Recommendations provides guidance to states on their policies towards minorities on their own territories, and are relevant to both states involved in the current conflict.

This conflict once again demonstrates how disrespect for OSCE commitments in inter-state relations is accompanied by, indeed made possible by, internal disrespect for human dimension commitments. The OSCE’s central concept of comprehensive, co-operative, equal and indivisible security is at stake, which as the Astana Declaration says “relates the maintenance of peace to the respect for human rights and fundamental freedoms, and links economic and environmental co-operation with peaceful inter-State relations.”

While improvements, often substantial ones, are needed in all OSCE participating States with respect to the human dimension, a number of states on the territory of the former Soviet Union are increasingly curbing freedom of expression, association and assembly. Probably the most amazing steps in this direction were taken this year by Azerbaijan, with a large number of civil society organizations being paralyzed, a series of prominent civil society representatives imprisoned, and dozens of others compelled to flee the country.

This development has led to fears that a divide similar to the one that scarred Europe between 1945 and 1989 could once again be established. Countries to the east of this divide would be dominated by repressive political elites largely living off the proceeds of their countries’ key economic sectors, in many cases the extraction of fossil fuels. The transition from a Soviet mentality (citizen subordination to the state and its officials) to the view that the state is the servant of the citizen has been incomplete in these countries. This Soviet-style mentality implies the subjection of large majorities to arbitrary governance, corruption and limitation of the rule of law. Freedom- and justice-loving citizens continue the struggle for full de-Sovietization. Ukraine has been moving in this direction, but there is still a long way to go. International support of this development, in particular of the building of rule of law and democratic institutions in the countries in transition after the Communist rule which has been prominent in international cooperation since the end of the Cold War and in the work of OSCE institutions and missions, requires strong and continued support and cooperation with civil society.

Paternalistic and authoritarian thinking in society and corresponding styles of government are not limited to the former-Soviet space. In a number of countries they continue to pose serious threats to the freedom of civil society, media and political opponents. Minorities suffer from these positions. Their struggle for emancipation must be taken serious. With respect to ethnic minorities, the body of HCNM Recommendations referred to earlier, should play a central role in policy development and implementation.

Prevailing economic policies all too often fail to involve all citizens in deploying their capacities to sustain themselves and contribute to sustainable development. Development of an inclusive, people- rather than money-centered economy is key to fulfilling human rights. Abuse of power for financial gain, tax evasion and money laundering inhibit this development and undermine the belief of citizens in democracy. These

root causes of instability should be given priority attention under the OSCE's second dimension, in cooperation with civil society groups working on these matters.

Rather than dividing the OSCE region again into "spheres of influence", the well-being of citizens requires a return to the principles of the Helsinki process, to which all participating states recommitted themselves only four years ago in Astana.

Civic Solidarity Platform's Human Dimension Priorities for 2015

THEMATIC PRIORITIES

I. Putting newly adopted Guidelines to work at the OSCE and national levels

- Security of Human Rights Defenders
- Freedom of Association

II. Upgrading existing Guidelines and increasing the efficiency of their implementation

- Freedom of Peaceful Assembly

III. Bringing existing OSCE work to a new level

- Prevention of torture and enforced disappearance
- Combating discrimination, hate crime and hate speech

IV. Addressing new human dimension problems

- Protection of privacy and personal data

V. Providing support and solidarity to human rights defenders at risk

INSTITUTIONAL PRIORITIES

VI. Strengthening human dimension mechanisms

1. Strengthening the role of the OSCE Chairmanship

- take the lead in initiating action-oriented discussions of reports in the human dimension and developing concrete follow-up action plans
- conduct of a self-assessment: lead by example

2. Strengthening the role of the Human Dimension Committee

- serve as a forum where follow-up steps to human dimension reports are discussed, developed, and agreed upon
- serve as a forum for discussion of possible joint actions in emergency situations in the human dimension
- develop a regular and systematic voluntary reporting and peer review process and elaborate guidelines for voluntary reporting

3. Strengthening the monitoring role of ODIHR, RFoM and HCNM

- add new areas of monitoring such as places of detention and closed institutions (prevention of torture), hate crime and hate speech
- Participating States should issue standing invitations to OSCE institutions' monitoring missions
- Participating States should provide extra-budgetary and seconded personnel support

4. Enhancing the role of civil society in human dimension work

- CSO input should be requested at the preparatory stage of meetings and in drafting documents, consultations should be held at all stages of work

- incoming Chairmanships should begin consultations with CSOs on its thematic priorities early on and appoint an NGO liaison person within its Task Force
- CSOs should be invited to present civil society recommendations at a plenary session of the Ministerial Council meeting
- institutions should consult with CSOs prior to developing their programmatic priorities and project activities and involve CSO experts in the implementation of their programmatic activities
- the OSCE Secretariat should establish an NGO focal point and systematically interact with CSOs and seek their input, especially regarding monitoring the human dimension and security situation in conflict zones and early warning signs of conflict escalation
- OSCE monitoring missions should establish an NGO contact person and maintain permanent contact with local and international civil society

5. Strengthening the role of participating States

- shift focus from criticising other States or defending one's own State to voluntary reporting, taking up voluntary pledges, adopting follow-up action plans, closely cooperating with and providing support to ODIHR, RFoM and HCNM
- issue standing invitations to observation missions of ODIHR, RFoM and HCNM
- more actively and effectively use non-consensual mechanisms to react to human dimension emergencies and protracted and gross violations

6. Reform of human dimension events

- change calendar to allow more time for follow up work between HDIM and the MCM
- change meeting modalities to focus on discussing solutions to problems
- adopt a standing HDIM agenda and expand time dedicated to fundamental freedoms

REGIONAL PRIORITIES

VII. Supporting the Serbian NGO Coalition and civil society in the Western Balkans

- institutional support
- assistance in addressing local NGOs' thematic priorities

VIII. Supporting Ukrainian civil society

- observation missions
- dissemination of information
- expert assistance in reforms

IX. Supporting Azerbaijani civil society

- solidarity actions with imprisoned and persecuted activists
- assistance to activists and lawyers working on behalf of imprisoned activists
- observation missions
- advocacy at the international level

CRISIS RESPONSE

X. Learning lessons from the crisis in Ukraine

- reform OSCE mechanisms for reacting to security crises
- discuss relations between states and ethnic minorities in other states (the subject of the Bolzano Guidelines)

- address the manipulation of media freedom during conflicts for propaganda, spreading enemy images, hate speech, nationalism and militarism
- include in the OSCE work the theme of “dealing with the past”, including issues of different interpretations of history, accountability for past crimes, including war crimes, and recent experiences of ethnic conflicts.
- improve coordination and cooperation with other international mechanisms.
- ensure regular information exchange between monitoring missions and CSOs.

Alarming Trends in Observation of Fundamental Human Rights in the OSCE Region

Freedom of expression

In 2014 participating States continued to fall short in implementing the OSCE's human dimension commitments on the right to freedom of expression and information. Serious violations related to the armed conflict in Ukraine are a source of particular concern. The rights to freedom of expression and access to information, which are incorporated in these commitments, continue to be undermined through physical attacks on and intimidation of journalists and activists, and impunity for such attacks, politically motivated arrests, the lack of free and independent media, restrictions on internet freedom, and other forms of governments' interference with the right, such as mass surveillance.

Physical safety and impunity for attacks against journalists and human rights activists

Safety of journalists and activists is a matter of serious concern in Ukraine, especially in eastern parts of the country where an armed conflict is taking place, and in Crimea. According to the Institute of Mass Information, seven journalists were killed in Ukraine in 2014, 270 facts of physical attacks against reporters were reported. In the zone of armed conflict in eastern Ukraine reporters face torture and other forms of ill-treatment as well as illegal detentions.

In Russia, perpetrators of crimes against journalists enjoyed a high level of impunity, for crimes that range from threats and attacks to murder. The creation of a climate of fear, the widespread practice of self-censorship and restrictions on the flow of information together stunt the development of an informed and engaged public that is able to exercise their rights and participate actively in the establishment of a genuine democratic governance.²

As in previous years, in 2014 investigations into attacks, killings and harassment of journalists and human rights defenders were marred with delays, obstruction and lack of political will to investigate potential links between these crimes and the victims' professional activities. In Russia murders of journalist, such as Akhmednabi Akhmednabiyev in July 2013 and Timur Kuashev in August 2014, are coupled with a complete failure to investigate such attacks, resulting in total impunity for its perpetrators, as investigations either do not take place, or are not speedy not effective. This can be shown in the lack of results, as for example, the masterminds behind the 2006 murder of Anna Politkovskaya remain at large, while there has been little or no progress into the killings of Natalia Estemirova (in 2009) and Khadijmurad Kamalov (in 2011).³

In Azerbaijan, the journalist Ilgar Nasibov was brutally attacked in August 2014.

Politically motivated arrests of journalists and civil society activists

In several OSCE countries, critical journalists and outspoken free speech activists have faced trumped up charges ranging from tax evasion to hooliganism. In such instances, the lack of judicial independence is a

² [http://www.article19.org/data/files/medialibrary/37399/Russia-Report-EN-\(web\).pdf](http://www.article19.org/data/files/medialibrary/37399/Russia-Report-EN-(web).pdf)

³ <http://www.article19.org/resources.php/resource/37695/en/unhrc:-oral-statement-on-impunity-for-attacks-against-journalists-in-russia#sthash.uQkU05cT.dpuf>

serious concern, as an independent judiciary is an essential safeguard against arbitrary detention and arrest.⁴

In Azerbaijan, Rasul Jafarov, an activist who became known for his campaigns in support of artistic freedom of expression and political prisoners, has been charged with tax evasion, illegal entrepreneurship and power abuse. He is being held in pre-trial detention although there is no legal reason for this. Reporters Seymur Hezi and Khalid Garayev also faced detentions on trumped-up charges of hooliganism.

In Belarus, only between January and July 2014, 22 cases of detentions or police interrogations of journalists were reported as the authorities of different levels continue to intervene with legitimate journalistic activity and prevent media workers from reporting.⁵

In Uzbekistan the journalist Sid Yanishev was subject to prosecution and fines in July 2014.

Environmental activists and journalists across Europe and Central Asia face severe challenges in their efforts to promote both the access and dissemination of environmental information and public discussion of environmental issues. Even in long-standing democracies, including the United Kingdom and the Netherlands, unlawful techniques are used against those who speak out about environmental hazards.⁶

Lack of media freedom

Media freedom has been restricted throughout the OSCE region through repressive legislation and various types of economic pressure, non-transparent media ownership and economic discrimination against media outlets, critical of the authorities. For instance, Azadliq, an international award-winning newspaper from Azerbaijan, was forced into cancelling its print run because of severe economic pressure in July 2014.⁷

In Kazakhstan, in February 2014 authorities shut down the Pravdivaya Gazeta for insignificant infringements (like misinformation about the paper's circulation), followed by a similar court order to ban the Assandi Times in April 2014. In September 2014, authorities also closed access to web-based Ferghana News Agency, seemingly due to an article describing ethnic tensions following a street fight in the south of the country.

The region's two most repressive states, Uzbekistan and Turkmenistan, continued to hold all media outlets under the strictest government control. While no independent media currently exists in Uzbekistan, some members of the country's marginalized journalistic community do publish articles with foreign news agencies, often under pseudonyms. In Turkmenistan all media remained loyal to government policy, focusing mainly on continuing to build up the personality cult surrounding president Berdymukhamedov.

In Tajikistan "slander cases" continued to be used to legally harass independent media outlets. In February 2014, the country's leading independent news agency Asia Plus was fined about 4,500 Euros for allegedly having "offended the country's intellectuals".

⁴ The 1989 Vienna Document, 23.1; the 1991 Moscow Document 23.1.

⁵ Belarusian Association of Journalists – Attacks against journalists and media staff (January – June 2014), http://baj.by/sites/default/files/monitoring_pdf/attacks_against_journalists_and_media_staff_january_-_june_2014.pdf

⁶ A Dangerous Shade of Green: Threats to Environmental Human Rights Defenders and Journalists in Europe - <http://www.article19.org/resources.php/resource/37608/en/a-dangerous-shade-of-green:-threats-to-environmental-human-rights-defenders-and-journalists-in-europe#sthash.CB0H23qH.dpuf>

⁷ Azadliq editor not hopeful for future of Azerbaijan's last independent daily, <http://www.indexoncensorship.org/2014/08/azerbaijan-last-independent-daily-stops-printing/>

Defamation continues to be a criminal offense in many countries of the OSCE region, which also has a chilling effect on freedom of expression.

In Azerbaijan, Khadija Ismayilova, an investigative journalist, is still subjected to a campaign of defamation, included blackmail, criminal investigations, and a ban on travel abroad, all aimed at silencing her.⁸ Another reporter, Arzu Geybullayeva, has been subject to ongoing intimidation campaign on social media because of her work at Istanbul-based Armenian paper, Agos.⁹

Restrictions on free speech online

As the internet becomes an increasingly important domain for free speech, governments in the OSCE region are increasingly adopting restrictive legislation and practices aimed at curtailing freedom of expression online and those that openly dissent against the authorities. Black lists of websites deemed by the authorities to contain “harmful content” are still reported to exist in various countries, including **Russia** and **Belarus**.

In the **United Kingdom**, a number of individuals have been convicted and imprisoned for sending ‘grossly offensive’ messages on Twitter and Facebook. The government is also encouraging internet service providers to install filters by default on the Internet connection they provide to UK residents. Whilst users may opt-out, it is unclear what categories of harmful content are filtered and there is no system in place to challenge wrongful site blocking.

In **Tajikistan**, authorities blocked the social network Facebook on numerous occasions throughout 2013 and 2014, citing negative information about the country being posted by users of the site. Restrictive Internet laws introduced in **Turkey** have led to an increase in the adoption of broad measures to censor online content. Thousands of news sites and social media platforms, such as YouTube and Twitter have been blocked in Turkey in recent years.

Mass surveillance and other types of interference, incompatible with democratic society

The right to freedom of expression is being threatened by excessive and non-transparent actions under the pretext of protecting national security. Whistle-blowers and investigative journalists are often targeted by governments. In response to Edward Snowden’s revelations, the government of the United Kingdom put pressure on the Guardian newspaper, as well as detaining under national security legislation David Miranda, the partner of Guardian journalist Glen Greenwald. It has also been revealed that the intelligence agencies of the **United Kingdom** were routinely intercepting legally privileged communications in sensitive security cases. Meanwhile, law enforcement agencies have been using the broad surveillance powers under UK legislation to collect the private communications of journalists, putting the anonymity of their sources at risk. More generally, there is increasing evidence that the mass surveillance activities carried out by the Five Eyes Alliance, including the **United Kingdom** and the **United States**, have a chilling effect on the ability of lawyers, writers, journalists and ordinary user to express themselves freely. In the **United States**, foreigners whose communications have been intercepted under mass surveillance programmes are denied an effective remedy to challenge the lawfulness of these measures in the US courts.

⁸ Azerbaijan: Stop harassment and legal action against leading investigative journalist - <http://www.article19.org/resources.php/resource/37735/en/azerbaijan:-stop-harassment-and-legal-action-against-leading-investigative-journalist#sthash.gRP8iehu.dpuf>

⁹ Azerbaijan: Journalist Arzu Geybullayeva threatened, <http://www.indexoncensorship.org/2014/10/azerbaijan-journalist-arzu-geybullayeva-threatened/>

Recommendations

To OSCE participating States:

1. Prevent attacks, killings and harassment of journalists, media workers, and other civil society and human rights activists. When such attacks do take place, ensure that independent, speedy and effective investigations are carried out and swiftly bring the perpetrators and instigators to justice.¹⁰
2. Remove other obstacles for exercising the right to freedom of expression effective measures to enable and protect those exercising their right to freedom of expression, including journalists, other media actors and civic activists.
3. Promote the development of a pluralistic media environment
4. Ensure that the right to freedom of opinion and expression applies to both online and offline.
5. Review surveillance legislation, policies and practices, in accordance with international human rights standards, considering its impact on the right of privacy.
6. Introduce effective measures to protect the right of access to information, and refrain from punishing whistle-blowers for disseminating information in the public interest on-line and off-line. Whistle-blowers who reveal serious wrongdoings in the public interest should benefit from full legal protection, as long as they have acted in good faith and with the reasonable belief that the information they have disclosed is substantially true and is evidence of wrongdoing. This protection should be granted even when the disclosure might be in breach of the law or a condition of employment.

To the OSCE as a whole:

Implement and follow-up on recommendations by the OSCE Representative on Freedom of the Media, and in particular enable the implementation of the [2012 Joint Declaration on Crimes against Freedom of Expression](#). The OSCE Chairmanship, the Permanent Council, the Human Dimension Committee, ODIHR, and the OSCE Parliamentary Assembly should ensure a coherent, integrated and coordinated approach to both examining freedom of expression throughout the OSCE region and assisting participating States in implementing the Joint Declaration. New legislation and amendments to existing legislation should be made compatible with OSCE commitments and international standards. Participating States should be held accountable for violations of the right to freedom of expression.

¹⁰ A specific opportunity for participating States to improve their record would be to implement the [2012 Joint Declaration on Crimes against Freedom of Expression](#) (adopted by the four special mandates on freedom of expression, including the OSCE Representative on Freedom of the Media on 25 June 2012).

Freedom of Assembly

In the past year, the situation with respect to freedom of assembly has continued to deteriorate in parts of the OSCE region. Developments in Ukraine have reinforced the fears of authoritarian leaders that mass protests may pose a threat to their grip on power, prompting new, repressive measures to stifle freedom of assembly. For example, in Russia, legislation on assemblies was further tightened and participants in the so-called Bolotnaya protest in Moscow in May 2012 were convicted and imprisoned on disproportionate “mass riot” charges, which set a chilling precedent.¹¹ A full, thorough and impartial investigation into the use of unlawful and excessive force against participants in the Maidan protests in Ukraine, which resulted in the killing of civilians, has yet to be conducted nor have those responsible been brought to justice.

Overall we are seriously concerned that existing legislation and judicial practice in many OSCE participating States do not accord with the OSCE/ODIHR and Venice Commission Guidelines on Freedom of Peaceful Assembly.

The following issues are of particular concern:

- The adoption and enforcement of legislation on peaceful assembly that baselessly limits the realization of this right and provides for disproportionately harsh sanctions for the organizers and participants in peaceful assemblies that violate such rules;
- The continued implementation of procedures that de jure or de facto require government approval of the organization and conduct of peaceful assemblies, rather than just notification;
- Demonstrations, marches and pickets only being allowed in particular places or along particular routes designated by the authorities;
- The blurring of the definition of peaceful assembly when any protest action (including flash mobs, the collective submission of petitions, group demands to meet government officials, the gathering of citizens near their houses etc.) is considered an unlawful assembly if there is no prior permission from the authorities to hold it;
- Dispersal of unsanctioned but peaceful demonstrations; disproportionate use of force by law enforcement authorities and a growing number of cases of police brutality against participants in assemblies; and mass detentions of participants;
- More frequent use of “kettling” tactics to cordon off protesters and limit their freedom of movement;
- Criminal prosecution of the organizers and participants in peaceful protests for minor violations; a growing number of cases where organizers and participants in assemblies are indicted and convicted on disproportionate charges of organizing “mass riots” or similar; and frequent violations of fair trial standards in these cases;
- Failure by the judiciary in many OSCE participating States to protect the right to freedom of assembly; and
- Limitations on the right to peaceful assembly of particular groups and minorities, including LGBT groups.

¹¹ See also the report by an independent international expert commission, available at http://6maycommission.org/sites/default/files/iec_report_eng.pdf

Recommendations

To OSCE participating States:

OSCE participating States should adopt new and improve existing legislation on peaceful assemblies and reform their practices in order to guarantee the right to freedom of assembly in accordance with the OSCE/ODIHR and the Venice Commission Guidelines on Freedom of Peaceful Assemblies, the recommendations of the SHDIM of November 2012 and the Civil Society Forum of November 2012, as well as with existing best practices. Legislation and practice should:

1. Guarantee the presumption in favor of the freedom to organize and conduct peaceful assemblies, as well as the obligation of the authorities to support citizens in exercising their right to freedom of peaceful assembly should be set forth clearly and unambiguously.
2. Strengthen guarantees of non-discrimination in relation to the exercise of the right to freedom of peaceful assembly. All citizens and civic organizations, including minority groups (among them LGBT groups) should be able to exercise their right to free assembly without hindrance or discrimination.
3. Contain a clear conceptual framework setting forth the forms of peaceful assembly that may be regulated.
4. Implement Notification-based procedures for organizing peaceful assemblies.
5. Set forth the types of peaceful assemblies not requiring notification, with clear provisions regarding the number of participants and type of actions.
6. Place no limits on peaceful assemblies or other civic actions, such as flash mobs, the laying of flowers at monuments, the collective submission of petitions etc.
7. Include provisions for the conduct of spontaneous assemblies. The authorities should seek to support the conduct of such events when prior notification is not possible because of the extraordinary character of events that generate such a public response.
8. Set out an exhaustive list of places where it is forbidden to hold peaceful assemblies, or in which their conduct is limited. The authorities should be guided by the principle of "sight and sound," in accordance with which civic actions designed to convey a message to a particular target audience should take place within sight and hearing of that audience.
9. Clearly defined procedures for organizers of assemblies and relevant authorities to agree on the place, time and order in which peaceful assemblies are to be carried out.
10. Forbid the improper use of "kettling," or otherwise limiting the right to freedom of movement of participants in peaceful assemblies.
11. Establish procedures for the rapid and effective review of complaints related to refusals to sanction peaceful assemblies, including through the judicial system.
12. Ensure the use of adequate means to guarantee order during assemblies, including standards of training for law enforcement personnel on alternatives to the use of force -- including the peaceful resolution of conflicts, crowd psychology, methods of persuasion, negotiations, mediation and the use of technical means to limit the need to employ firearms.
13. Follow the principle that "human rights are part of public order." In this regard, the authorities, including those assigned to ensure public order during assemblies, should be required to act in the first instance with a view to protecting public interests and the right to freedom of peaceful assembly and, in cases in which conflict does take place, to use force only to the extent called for by the situation and in all cases to use the minimum force necessary.

In addition, the participating States should:

14. Ensure that no one is punished for the peaceful exercise of freedom of assembly and that any sanctions for violations of reasonable rules guiding the conduct of assemblies (which correspond to international standards) are strictly proportional to the seriousness of the offense. Decisions to impose sanctions should be subject to judicial review in full accordance with fair trial principles.
15. Carry out prompt, thorough and impartial investigations into all allegations of excessive use of force by law enforcement authorities against participants in assemblies; bring those responsible to justice; and provide adequate reparations to the victims.

To ODIHR:

ODIHR should:

1. Actively promote its Guidelines on Freedom of Peaceful Assembly and work towards their integration into national legislation and practice in participating States, including through a network of NGO partners;
2. Expand the activities of the OSCE/ODIHR expert panel on freedom of assembly and involve civil society groups from the OSCE region in the monitoring and promotion of the Guidelines;
3. Engage in regular cooperation with the UN Special Rapporteur on Freedom of Assembly and Association, including through the establishment of a joint working group on freedom of assembly standards; and
4. Look into possibilities to review not only participating States' legislative acts but also their implementing practices, in particular with respect to high-profile, mass protests.

Freedom of Association

2014 has been a particularly grim year for freedom of association globally, and many OSCE countries have served as laboratories for the development and implementation of repressive practices that have now outgrown the region and become part of a global pushback against independent civil society. Limits on freedom of association in the OSCE area have expanded to include not just democracy and human rights organizations, but humanitarian and other development NGOs as well. The pushback is taking place not only in highly authoritarian countries such as Turkmenistan and Uzbekistan, but also in democracies such as Hungary, the UK, where the so-called Lobbying Act was passed on 30 January 2014 after significant controversy over its provisions and the process of lawmaking.

Each government has its own reasons for restricting civil society, but there are common threads. In countries like Russia and Azerbaijan, governments increasingly fear their own largely disenfranchised publics in the wake of the Arab Spring and the Euro Maidan protests. In countries as disparate as Hungary and Russia, suspicion of foreign governments has clearly been a driving force. Finally, governments in the OSCE region are cracking down on civil society as they see other governments doing so successfully, copying laws and practices they see being implemented elsewhere (including in the western democracies as part of the so-called War on Terror), encouraged in many cases by the lack of domestic or international pushback these repressive measures have occasioned.

In 2014, we have witnessed increasing legal restrictions and growing repression throughout the entire cycle of exercising the right of freedom of association – from the establishment of an association to its ability to operate, raise funds, advocate for its cause, reach out to the public, engage with the authorities, promote policy and legislative recommendations, and, finally, to its dissolution. Particularly worrying and widespread trends include legislative and practical restrictions on access to foreign funding and branding NGOs that receive such funding as “foreign agents,” as well as governments-led smear campaigns and crackdowns on civil society, political opposition, and media ahead of elections.

In many states, NGOs supported by international donors were increasingly branded as puppets in the hands of hostile foreign governments and traitors and subjected to smear campaigns in government-controlled media. This practice was particularly widespread in Russia, Azerbaijan, Belarus, Hungary, Kyrgyzstan and Kazakhstan. The previous government of Ukraine was on the verge of following the same course until the Euromaidan protests and the change of government prevented this from happening.

In September, a dozen police officers raided the offices of two nongovernmental organizations in Budapest. The two groups, Ökotárs and Demnet, are part of a four NGO-consortium that administers foreign donor money for civil society organizations in Hungary. This continued an attack that began earlier this year when Hungarian authorities ordered the Government Control Office (KEHI) to audit 58 NGOs, all of which had received Norwegian support under a 20-year-old deal to strengthen civil society in poorer parts of Europe.

In the United Kingdom, a country widely seen as having progressive and enabling laws guaranteeing the independence of civil society, the Lobbying Act now regulates advocacy activities throughout the electoral cycle. Although the legislation was reputedly intended to level the electoral playing field, the UN Special Rapporteur on Freedom of Assembly and Association, Maina Kiai, argues that it actually does little more than shrink the space for citizens – particularly those engaged in civil society groups – to express their collective will. Meanwhile, restrictions on in-house corporate lobbyists remain weak, leaving civil society groups to bear the brunt of the law’s impact.

Azerbaijan's government has unleashed unprecedented harassment of independent NGOs, which peaked during its May-November 2014 Chairmanship of the Committee of Ministers of the Council of Europe, a body founded on human rights principles. New legislation has created additional obstacles for registered NGOs to operate and obtain funding and seriously worsened the situation of unregistered NGOs, a category that includes well-known human rights and pro-democracy groups that have failed to obtain registration despite repeated attempts. A package of legislation signed into law this spring provided for harsh sanctions for undertaking banking and other operations in relation to NGO grants that had not been registered with the government. These rules made it impossible for unregistered NGOs to access funding in the form of sub-grants by registered organizations. Finally, in October Azerbaijan's Parliament adopted new changes to the law on grants. These changes require that donors register and obtain a license, provide detailed justifications of their grants and have their projects reviewed and approved by relevant Azerbaijani state agencies. In May, the Grave Crimes Investigation Department of the Prosecutor General's Office launched an apparently politically motivated, high-profile investigation against some 20 human rights NGOs and think tanks, including both national NGOs and branches of foreign organizations. NGO offices were raided, their equipment and documents confiscated, their bank accounts of those of their leaders arbitrarily blocked or frozen, and their representatives summoned for interrogation, subjected to travel bans and in some cases detained.

In Russia, at least six NGOs have already been forced to close down to avoid harsh penalties for refusing to adopt the stigmatizing "foreign agent" label, and several more are contemplating self-liquidation. This number is expected to grow now that the "Foreign Agents" law has been further toughened in June to allow the Ministry of Justice to add NGOs to the register of "foreign agents" at its own initiative. The new provisions were immediately put into force and, as of this writing a total of 17 NGOs have been listed as "foreign agents," including prominent human rights organizations such as the Public Verdict Foundation, the Memorial Human Rights Centre, Agora, Jurix, Golos, the Union of the Women of the Don and the Soldiers Mothers' Committee of St. Petersburg. The Ministry has added some groups to the list with reference to court decisions, while others have been listed even though they are still appealing their cases in the courts. Earlier this year, the grounds for unscheduled inspections of NGOs were broadened, and a new campaign of inspections has reportedly begun.

In Kyrgyzstan, parliament is currently debating a draft law that could undermine an NGO sector that, uniquely in Central Asia, has thrived since independence in 1991. The draft law is inspired by and almost verbatim reproduced the Russian law. The Kyrgyz law would force civil society groups to register as "foreign agents" and comply with stringent reporting and audit requirements.

In Tajikistan, the government is currently considering draft legislation that would require NGOs to register all grants and donations received from international and foreign sources with the government before they can make use of them. There are fears that this would amount to a system of pre-authorization for the use of funds that would involve direct government interference in the activities of NGOs and could result in arbitrary delays and denials to register grants.

Limitations on access to funding and severe restrictions on civil society operations continue to be major issues in Belarus, Uzbekistan and Turkmenistan. We are also concerned about reported discussions on the need to tighten NGOs legislation in Armenia, and Kazakhstan.

Bans on the activity of unregistered or informal associations, which exists in a number of OSCE participating States, contradict international standards on freedom of association and essentially outlaw the activities of initiative and volunteer groups or organisations that have lost their registration as a result of decisions by

the authorities. Criminal liability for activities on behalf of unregistered associations, such as those in place in Belarus and Uzbekistan, creates a high risk of prosecution for civic activists.

Recommendations

To OSCE institutions and participating States:

1. The incoming OSCE Chairmanship and OSCE participating States should support ODIHR's initiative to produce, in cooperation with the Venice Commission, Guidelines on freedom of association. This support should include explicit political endorsement of this initiative and statements indicating commitment to cooperate with ODIHR in implementing standards and recommendations contained in the Guidelines once they are issued.
2. ODIHR should ensure that these Guidelines include a list of international standards on freedom of association and the functioning of civil society institutions, not only a compilation of best practices.
3. Based on the experience of drafting the Guidelines, ODIHR should establish a permanent group of experts on freedom of association, similar to the existing panel of experts on freedom of assembly.
4. The OSCE institutional framework in this field should be strengthened by establishing a mandate for a Representative on Freedom of Association or a Representative on the Freedoms of Association and Assembly. In anticipation of a consensus-based decision of OSCE participating States, the OSCE Chairmanship should appoint such a representative on a temporary basis.

Security of Human Rights Defenders

Despite two notable positive developments, the adoption of OSCE Guidelines on Security of Human Rights Defenders and the release of renowned defender Ales Belyatski from **Belarus**, both long advocated for by civil society, over the course of the past year the ability of human rights defenders to carry out their work in the OSCE region has deteriorated. The security of human rights defenders remains an issue of serious concern.

Leading human rights activists remain under pressure. Azimzhan Askarov (**Kyrgyzstan**) remains in prison on trumped up charges since 15 June, 2010 despite evidence of torture and an unfair and politically motivated trial, as his health rapidly deteriorates.

New information is continually coming to light about the imprisonment of human rights defenders and cruel and inhuman treatment they suffer while in prison. After **Azerbaijan** assumed the Chairmanship of the Council of Europe this year, several human rights defenders were arrested on false charges, including tax evasion. These include Leyla Yunus, director of the Institute of Peace and Democracy, and her husband Arif Yunus; Rasul Jafarov, one of the founders of the Human Rights Club, which has had to de-facto stop its activities this year because of pressure against unregistered groups; and Intigam Aliyev, chair of the Legal Education Society. These defenders have been at the forefront of promoting human rights in Azerbaijan, including at the international level and their arrests have been widely condemned as retaliation for their human rights activities. Among the human rights defenders who are currently serving prison sentences in Azerbaijan are Anar Mammadli and Bashir Sulemainly, who were sentenced to 5.5. and 3.5 years in prison, respectively, in May of this year on charges similar to those brought against the recently arrested defenders. Moreover, there are imminent fears that additional human rights activists may be arrested. In particular, there are such concerns with regard to IRFS Chairman and prominent human rights defender and media freedom advocate Emin Huseynov.

In **Ukraine**, in particular in the territories controlled by Russian Federation and pro-Russian illegal military units, human rights defenders and activists are subjected to intimidation, enforced disappearances, torture and arbitrary preventive detentions. In Crimea human rights defenders face restrictions on leaving and entering territory of the peninsula.

In **Russia**, human rights defenders who document and publicise information about casualties among Russian soldiers in the East of Ukraine and about human rights violations in Crimea are particularly targeted. Office of Soldiers Mothers of Saint Petersburg, apartments and cars of their members were intruded into and physically attacked in the beginning of September after the organisation released information about possibly high number of casualties among Russian soldiers in the east of Ukraine. Another attack occurred on 1 July 2014 in Voronezh, in which a prominent human rights defender and a member of the Presidential Council on Human Rights, Mr. Andrei Yurov, suffered first-degree chemical burns. This happened after he made public statements on human rights violations in Crimea and on the conflict in the east of Ukraine. On 17 October 2014, 73-year-old human rights defender Ms. Ludmila Bogatenkova, the head of the Soldiers Mothers' Committee in the city of Budennovsk in the Stavropol region of Russia, was charged with fraud and put in pre-trial detention. She spent two days in detention before being released after a rapid deterioration in her state of health. Ludmila Bogatenkova has recently investigated the deaths of Russian soldiers who were, according to various reports, illegally sent to Ukraine.

Another notable trend was the increasing use in many countries of legislation to curb the activities of human rights defenders. This is particularly evident in **Russia, Azerbaijan, Belarus** and the countries of **Central Asia**. Governments' efforts to marginalize the human rights movement, most notably in **Russia, Belarus and Azerbaijan**, have had a serious impact on activists' legitimate work. In many countries state-controlled media have been used to portray human rights groups as traitors. Another new and negative trend is the growing attack on the very concept of human rights. State representatives up to the very highest levels have begun to speak of different concepts of human rights and of the need to protect so-called "traditional values," which could undermine the existing international system of universal human rights and lead to legislative action designed to limit coordination with international organizations, discrimination on the grounds of sexual orientation, limitations on freedom of speech and arbitrarily limits on other freedoms. Human rights activity is being equated with political activity and on that basis various steps are being taken to limit or even ban it, while human rights defenders are being portrayed as "agents of the West" working against national interests. In **Kyrgyzstan**, a bill similar to Russia's law on "foreign agents" was again initiated as an attempt to curb civil society's efforts.

2014 also saw an increase in cases of harassment and obstacles put in the way of activists promoting and defending LGBTI rights in **Russia, Belarus, Armenia and Kyrgyzstan**. In just the last few months Kyrgyzstan's Parliament gave preliminary approval to a bill, similar to one already passed in Russia that would criminalize any actions promoting "positive attitudes toward non-traditional forms of sexual relations" and impose up to a year of imprisonment. Russia's anti-gay "propaganda" law has served as a tool for anti-gay discrimination in the year since it entered into force; activists report routine disruptions of public events in support of LGBT rights during the past year.

Governments continued the practice of limiting the activities of and pressuring and arresting human rights activists for their legitimate work around elections. On 13 September 2014, unknown assailants attacked the flat of human rights defender Ms. Natalia Zviagina in the city of Voronezh, **Russia** on the eve of the Voronezh regional governor elections. Natalia Zviagina had worked as a regional coordinator of the leading Russian election watchdog, "GOLOS."

Central Asian and **Kyrgyz** human rights defender are also under increasing pressure, facing targeted threats to their families by state security services and radical groups. A national smear campaign was launched in local language media against NGOs in Kyrgyzstan in another attempt to undermine their work. In December 2013, the home of human rights defender Tolekan Ismailova was attacked, and her organization's office was robbed twice. Prominent human right defender Ilya Lukash fled the country in March after a group of radical extremists burned his portrait in front of the U.S. Embassy due to his vocal opposition to Kyrgyzstan joining the Customs Union.

In **Serbia** governmental officials rarely condemn or publicly react to threats, physical assaults and cases of incitement to violence and hate speech from extremist groups against NGOs and human rights defenders. Extremist right-wing organizations are targeting organizations and activists focusing on dealing with the past and warning about Serbian nationalism. The "Naši" movement spread the list of "30 biggest Serb-haters and traitors among public figures" via social networks, containing the names of many human rights defenders. For months a campaign was being waged accompanied by death threats against the Chairwoman of the Helsinki Committee for Human Rights in Serbia Sonja Biserko, following the leaking of information that she had agreed to appear as a witness in Croatia's case against Serbia for genocide before the International Court of Justice. The NGO "Women in Black" have been physically assaulted on several occasions. Three years ago their premises in downtown Belgrade were demolished and the police had never identified perpetrators. "Women in Black" was anew threatened with death in Facebook in March 2014 once Radomir Počuča, the spokesman for the Anti-terrorist Unit, had called hooligans to lynch activists of "Women in

Black” after their memorial to mark the 15th anniversary of ethnic cleansing of Albanian civilians in Kosovo. In the editorial of *Vecernje Novosti*, penned by the daily’s editor-in-chief Ratko Dmitrović, a ban on public appearance of Jelena Milić’s (director of the Center for Euro-Atlantic Studies) and Sonja Biserko’s (chairwoman of the Helsinki Committee) was advocated, calling them notorious “anti-Serbs” and “traitors”.

Similar attacks on human rights defenders in the media and by public officials have been taking place this year in **Hungary** and **Bulgaria**, when human rights defenders were accused in being “marionettes in the hands of foreign governments” and “traitors” on the ground of their organisations receiving funding from foreign sources.

Recommendations

To OSCE Participating States

1. Commit to implement the newly adopted ODIHR Guidelines on Security of Human Rights Defenders and take steps to domesticate international norms on protection of human rights defenders, including their access to funding resources.
2. Request OSIHR and the Venice commission to assess existing legislation affecting the work of human rights defenders and repeal restrictive or excessively regulating laws.
3. Publicly recognize the important role of human rights defenders and communicate publicly and in a timely manner in cases when human rights defenders are at risk.
4. Facilitate free movement of human rights defenders throughout the OSCE region based on OSCE commitments to facilitate observation of human dimension conditions in participating States.
5. Instruct diplomatic missions to visit imprisoned human rights defenders and attend their trials.
6. Ensure that diplomatic missions and government officials visiting from capitals are aware of and follow ODIHR Guidelines on Security of Human Rights Defenders, similar EU Guidelines, recently adopted Swiss Guidelines, and other similar documents aimed at ensuring security of human rights defenders.
7. Ensure enhanced protection of human rights defenders in zones of military conflict.
8. Ensure access by human rights defenders to resources from abroad and to international human rights education programs.
9. Ensure facilitation of issuance of visas to human rights defenders, giving preference to long-term multiple-entry visas.

To OSCE political bodies and institutions

1. The incoming OSCE Chairmanship and OSCE participating States should support the newly adopted Guidelines on Security of Human Rights Defenders. This support should include explicit political endorsement of the Guidelines and statements indicating commitment to cooperate with ODIHR in implementing standards and recommendations contained in the Guidelines.
2. OSCE Chairmanship and ODIHR should react to severe cases of attacks on human rights defenders, such as arbitrary detention, arrest, and conviction, and take appropriate steps to resolve the situation.
3. ODIHR should take active follow-up steps to promote the newly adopted Guidelines on Security of Human Rights Defenders and assist participating States in their implementation.
4. ODIHR should cooperate with the UN Special Rapporteur on the Situation of Human Rights Defenders, the Commissioner on Human Rights of the Council of Europe, the PACE Rapporteur on the situation of

human rights defenders and other relevant international organizations and mechanisms to establish a mechanism for joint interventions and adoption of joint documents.

5. ODIHR, jointly with the Representative on Freedom of the Media, should develop educational courses for journalists on reporting on the work of human rights defenders.
6. Representative on Freedom of the Media should react to smear campaigns against human rights defenders in the media of OSCE participating states.

To the OSCE Parliamentary Assembly

Establish a mandate for a Special Rapporteur on the Situation of Human Rights Defenders in the OSCE space and create an expert group to assist in promoting policy proposals on the topic.

To OSCE institutions and Participating States

1. Create a Special Representative on Protection of Human Rights Defenders with a mandate similar to that of the Representative on the Freedom of the Media. This mechanism should complement and bolster the work of the UN Special Rapporteur on Human Rights Defenders and bring the OSCE into step with African and Inter-American regional bodies that have already created such mechanisms.
2. Work towards adopting a new explicit OSCE commitment on protection of human rights defenders.
3. Include in the standard agenda of the Human Dimension Implementation Meeting a session on the situation of human rights defenders.
4. Devote a Supplementary Human Dimension Meeting to this subject as soon as possible.
5. Strengthen the OSCE's rapid response capacity in cases where human rights defenders are in danger or urgently need assistance and their situation needs to be raised at the highest levels of government.

Combating and preventing discrimination, intolerance, hate crime and hate speech¹²

In recent years we have witnessed a new rise of discrimination, racism and xenophobia across the OSCE region, which is manifested through an increase in hate-motivated violence, hate speech, and other acts of intolerance targeting ethnic and religious minorities, migrants, LGBT, Roma and Sinti and other vulnerable groups.

Some participating States have recently adopted new discriminatory laws and engage in discriminatory practices against these groups, in particular LGBT and migrants, violating the fundamental principle of non-discrimination enshrined in international human rights treaties and spelled out in OSCE commitments. By doing so they de-facto encourage intolerance and hatred towards minorities. The problem is further exacerbated by a lack of adequate investigation of such crimes and failure to bring perpetrators to justice, which creates an atmosphere of impunity and permissiveness.

Among the most worrying trends of recent years is the rise of organized discrimination, racism, xenophobia and intolerance in the form of racist and extreme right political movements and parties across the OSCE region, as demonstrated yet again during the European Parliament elections in May 2014. Such developments are often linked with extreme forms of nationalism or ideologies similar to Nazism and fascism. They create a rising risk to the security of our societies by deepening gaps between different groups of society and giving rise to further conflict and extremism.

A particular concern are recent changes in public attitudes towards the rise of racism is manifested in a growing acceptance of organized forms of discrimination, racism, xenophobia and intolerance and ideologies similar to Nazism and fascism and the lack of a proper response by key institutions. This change is one of the most serious problems in many OSCE participating States. In a number of participating States racist and xenophobic parties, including those represented in national parliaments, systematically use hate speech that generates a broad public response, adding to existing tensions.

While a broad consensus has existed in our societies since World War II about the unacceptability of antisemitism or racism, other kinds of phobias are now more easily exploited by right-wing movements and populist politicians such as intolerance towards LGBT or migrants, as these phobias are still not conventionally unacceptable in many OSCE participating States. As they are easier and safer targets, LGBT and migrants have become the “new scapegoats.” It is crucially important to remember that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law” and ensure that discrimination on all and any grounds is made unacceptable in our societies, be it racism, anti-Semitism, Islamophobia, hatred towards migrants, or homophobia.

The OSCE needs to create a more comprehensive and consolidated programmatic and institutional framework to effectively confront discrimination, hate crime, racism, xenophobia and other forms of intolerance. This should go beyond focusing on specific manifestations of hatred or addressing discrimination against selected minorities and instead address the common roots of these problems and embrace all vulnerable groups. In this regard the vast experience accumulated over the years by the OSCE

¹² Recommendations in this chapter are based on the results of the work of OSCE civil society workshop, held throughout 2014 in Belgrade, Vienna, Dushanbe, and Tbilisi. They were organized jointly by the Civic Solidarity Platform and local civil society organisations with support from the 2014 Swiss OSCE Chairmanship and brought together more than 150 representatives of civil society organisations from across the OSCE region as well as experts from international NGOs and OSCE institutions.

bodies and institutions in the field of fighting specific forms of discrimination and intolerance, such as anti-Semitism, Islamophobia and discrimination against Roma and Sinti, should be reflected upon and adapted to confront all existing forms of discrimination and intolerance.

Recommendations

COMBATING INTOLERANCE AND DISCRIMINATION

To OSCE participating States:

1. Those participating States that have not ratified relevant international treaties (the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child and its optional protocol, the Convention on the Rights of Persons with Disabilities and its Optional Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Their Families, as well as Protocol 12 to the European Convention on Human Rights and Fundamental Freedoms) should ratify them without delay.
2. Adopt comprehensive anti-discrimination/equal rights legislation, based on relevant international legal instruments prohibiting discrimination and international best practice, covering different manifestations of direct and indirect discrimination and including as exhaustive a list as possible of the grounds on which discrimination is prohibited, while also holding open the option for courts to add other grounds. In this process use the most advanced best practices in national legislation of other participating States.
3. Amend criminal, labour and administrative procedure codes and other laws in order to effectively protect persons from discrimination by shifting the burden of proof from the alleged victim to the alleged perpetrator.
4. Request international legal expertise by ODIHR and the Venice Commission whenever new laws in the field of combatting discrimination and hate crimes are drafted or existing laws amended.
5. Fully implement decisions and recommendations on combating discrimination and hate crimes adopted by international human rights bodies, including judicial, quasi-judicial, monitoring and treaty bodies as well as special procedures, in both individual cases and in the adoption of general measures in legislation, policies and institutions.
6. Develop effective anti-discrimination strategies and action plans and put them in place in order to ensure effective implementation of laws and the effective functioning of relevant institutions.
7. Create national specialized institutions, responsible for combating and preventing racism, xenophobia and other forms of intolerance and discrimination. Meanwhile, ensure in law and practice that national human rights institutions are mandated to review complaints related to discrimination.
8. Establish in the law enforcement system a hotline for complaints of hate crimes and discrimination by representatives of minorities and other vulnerable groups, victims and witnesses of hate crimes.
9. Ensure prompt, impartial and effective investigation of all cases of discrimination and hate crimes and speak out against such incidents. Ensure via legislation and practice effective investigation of all bias whenever reported by victims.
10. Train police officers, prosecutors, judges and public servants to investigate, combat and prevent discrimination, intolerance and hate crimes, and invite ODIHR to assist in the conduct of such trainings.
11. Provide training for housing, education, employment and healthcare providers to identify discriminatory practices and introduce anti-discrimination measures.

12. Introduce tolerance education in schools. Curricula should be developed and adopted in consultation with relevant CSOs and minority groups.
13. Mandate educational authorities to review curricula of religious studies in schools to ensure equal approach to all confessions as well as non-religious beliefs.
14. Develop educational policies aimed at promoting the values and importance of tolerance, reconciliation, cultural diversity, inclusion and non-discrimination among the general public and in educational institutions, especially given the history of conflicts in the OSCE region and the importance of addressing war-time injustice.
15. Stop the practice of harassing and stigmatizing NGOs, human rights defenders and anti-discrimination activists working to combat discrimination and hate crimes and ensure their protection from threats and attacks by non-state actors.
16. Provide more support for civil society groups and activists working on the issues of discrimination, intolerance, and hate crimes by allocating resources and creating opportunities to share expertise.
17. Facilitate cooperation between NGOs, community groups, law enforcement bodies and policy-makers in the field of combating and preventing discrimination, intolerance and hate crime.
18. Ensure in law and practice the involvement of national and ethnic minorities in local and national decision making processes concerning relevant legislation and policies.
19. Ensure in law and practice unhindered development of the culture and language of ethnic, religious and cultural minorities and ensure in law and practice that national and local TV and radio channels allocate time for programs in minority languages.
20. Increase focus on disability rights, including disenfranchisement of those with mental disabilities. The OSCE and participating States should strengthen their stance on legal capacity, including the link to the right to vote. Guarantee legal capacity, abolish systems of guardianship and substitute decision-making.
21. Publicly condemn and take legal action against political parties and movements inciting discrimination, hate and violence.
22. Develop and implement effective inclusion and integration programmes for migrants and minority groups.
23. Bring National Action Plans on Roma and Sinti into line with the OSCE Maastricht Action Plan of 2003 and best practices in its implementation, ensure sufficient funding for implementation of National Action Plans on Roma and Sinti, and adopt evaluation mechanisms for assessing the effectiveness of National Plans on Roma and Sinti.
24. Abolish criminal liability for consensual homosexual relations where it still exists. Participating States should adopt measures for the effective and timely investigation of hate crimes against LGBT individuals and examine motives of transphobia and homophobia in such crimes.
25. Refrain from adopting laws banning the so-called "propaganda of homosexuality" and repeal them if already adopted.
26. Pay greater attention to discrimination against children. To the extent possible, children should not be separated from their parents during detention. Teachers should receive training on non-discrimination.
27. Ensure access to justice for all residents regardless of their immigration status and guarantee the right to inclusive education.
28. Use mechanisms set up to monitor freedom of assembly to monitor discriminatory acts before, during or after public assemblies.

To OSCE political bodies and institutions, including field operations:

29. In the face of new conditions, draft renewed, consolidated and deepened commitments on non-discrimination to include different manifestations of direct and indirect discrimination against protected groups, based on best practices and decisions of international human rights bodies, including the UN Human Rights Committee and ECHR jurisprudence over the last decade.
30. Develop a comprehensive OSCE action plan to combat racism, xenophobia, discrimination, hate crimes and other forms of intolerance in order to pool resources and enhance cooperation between various stakeholders within the OSCE framework, as well as to improve cooperation with other relevant international institutions.
31. ODIHR should develop comprehensive guidelines for participating States on addressing racism, xenophobia, discrimination, hate crimes and other forms of intolerance through education and youth policy, including specific methods of anti-racism education, building on its experience developing educational materials in the field of Holocaust education, education against Islamophobia and human rights education for various social and professional groups.
32. ODIHR should develop recommendations on the review of the school curricula with the goals of removing elements that may promote negative stereotypes, incite hatred and intolerance, and combatting bullying.
33. OSCE terminology used in the field of combating discrimination and hate crimes should be updated and refined to bring it in line with the most progressive approaches.
34. ODIHR, jointly with the Venice Commission, should examine the legislation of participating States for discriminatory provisions targeting migrants, LGBT, Roma and Sinti, religious minorities, and other groups, and issue recommendations; participating States should request such examinations and follow their recommendations.
35. ODIHR should organize expert consultations on ways of addressing violations of fundamental rights, including incitement to hatred, in the context of elections in participating States, by using, inter alia, existing tools such as ODIHR election observation missions and the Panel of experts on political party regulation.
36. The OSCE should increase coordination and cooperation among ODIHR, the Representative on Freedom of the Media, the High Commissioner on National Minorities and Personal Representatives of the CiO on Tolerance and Non-Discrimination.
37. Personal Representatives of the Chairman-in-Office on Tolerance and Non-Discrimination should increase the visibility of their work and enhance their cooperation with civil society (including seeking increased media coverage of their country visits, wider dissemination of their reports and more active participation in international and national events on topics relevant to their mandates, including those organized by CSOs).
38. The OSCE Contact Point for Roma and Sinti should be strengthened. Its model should be replicated to create similar structures for other minorities / vulnerable groups.
39. OSCE political bodies and institutions should strengthen cooperation with other relevant intergovernmental bodies addressing the issues of racism and xenophobia (EU Fundamental Rights Agency, European Commission against Racism and Intolerance, UN Special Rapporteur on racism, etc.).
40. ODIHR should help participating States develop statistics on discrimination and hate crimes that will be easily comparable from state to state.

41. ODIHR and field operations should assist participating States in education of judges, police officers and other public officials about ethnic, religious, and sexual diversity, the rights of members of minority groups and about effective protection of members of minority groups in situations of particular vulnerability, notably whilst in detention.
42. The ODIHR Tolerance and Non-Discrimination Department (TNDD), HCNM and the Personal Representatives of the OSCE Chairmanship on Tolerance and Non-Discrimination (PRTND) should organize discussions with participating States on the development of action plans to combat discrimination and promote tolerance. Should such action plans be adopted, TNDD should assist participating States in their implementation and monitor implementation.
43. The OSCE Chairmanship should publicly and consistently uphold the position that religious belief or traditional values cannot serve as justification for discrimination and hate crimes.

COMBATING HATE CRIME

To OSCE participating States:

1. Pass legislation criminalizing violent hate incidents and avoid passing discriminatory laws or laws that increase the prospects for hate crimes.
2. Amend legislation and practice on combating and preventing hate crimes, including the definition of the concept of hate crime and protected characteristics based on all groups at risk, systems of registration and collection of statistics on hate crimes, assistance to victims, etc. This work should be based on best practices and decisions of international bodies, including the EU Directive, ODIHR's Practical Guide on Hate Crime Laws, opinions of the UN Human Rights Committee, and jurisprudence of the ECHR over the last decade. The list of protected characteristics should be based on these decisions and include, among others, sexual orientation, gender identity, and physical and mental disability.
3. Explicitly define in national legislation bias motivation of discrimination and hate-motivated crimes on grounds of sexual orientation and gender identity and develop mechanisms for effective implementation of these laws using the expertise of civil society organizations and best practices of other participating States.
4. Ensure that victims of hate crimes are treated in a respectful manner and provide training to all officials who come into contact with them to ensure they treat them in such a manner. Provide training on hate crimes and victims' rights to government officials likely to deal with victims of hate crimes. Establish a system to provide support to victims of hate crimes.
5. Implement programs to build affected communities' and groups' trust in the law enforcement system. In particular, provide support and assistance to victims and witnesses and ensure that they do not experience fear of reprisal when they complain about incidents of hate crime and discrimination.
6. Identify a government agency which will collect and maintain statistical data on hate crimes and incidents, at all stages, starting from the moment a crime is reported up to the final court sentence, with a breakdown of sources of information, target groups, bias motivation, types of crimes, perpetrators, sentences, etc. Such agencies should also serve as contact point for ODIHR. Focus additional attention on cases where hate crimes are based on more than one bias (e.g. race + sexual orientation; age + disability). Such statistics should be made open to the public and serve as a basis for developing effective prevention policies.

7. Systematically monitor and publish reports on hate crimes, covering all protected characteristics and using the ODIHR data collection guide, and annually submit the statistical data to the OSCE hate crime reporting website.
8. Promptly and effectively investigate and prosecute allegations of hate crimes. Bias motives should be taken into consideration throughout the criminal proceedings.
9. Run public awareness campaigns on hate crime issues in cooperation with all stakeholders, including civil society and representatives of vulnerable groups.
10. Ensure inclusive engagement with civil society organizations and human rights defenders in addressing hate crimes, including their participation in public awareness raising programmes, mandatory trainings for officials of the criminal justice system and in the assessment of monitoring and reporting of hate crimes by participating States.

To OSCE political bodies and institutions:

11. ODIHR should develop and promote new guidelines on combating and preventing hate crimes, including legislation, systems of registration and collection of statistical data on hate crimes, assistance to victims, etc., based on best practices and decisions of international human rights bodies, including decisions of the UN Human Rights Committee and jurisprudence of the ECHR over the last decade. The list of protected characteristics should be based on these decisions and include sexual orientation, gender identity, physical and mental disability.
12. ODIHR should monitor implementation of OSCE commitments on combating hate crimes by participating States, publish reports on the results of this monitoring and organize discussions on implementation of OSCE commitments on hate crimes with participating States. Such discussions could be held at PC meetings, HDC meetings, SHDMs, or other human dimension events.
13. ODIHR should conduct an assessment of changes in the field of combating hate crime across the OSCE region since the adoption of the OSCE commitments on hate crime in 2009 and organize, with support from the OSCE Chairmanship, a discussion on the necessity of amending existing OSCE commitments. Such a discussion could be held at a meeting of the PC or the HDC, at SHDMs or other human dimension events.
14. Presentation of ODIHR's annual hate crimes report and its discussion by participating States should be included in the agendas of the Permanent Council and the Human Dimension Committee.
15. The OSCE Chairmanship, in cooperation with OSCE institutions, should consider holding a SHDM on the subject of hate crime and hate speech in the nearest future.

COMBATING HATE SPEECH WHILE PROTECTING FREEDOM OF EXPRESSION

To OSCE Participating States:

1. Adopt anti-discrimination legislation that would include a definition of hate speech. Amend criminal laws to clearly and narrowly define prohibited hate speech (direct incitement to violence, discrimination and hostility towards minorities and vulnerable groups) and establish accountability for such language.
2. Government officials should avoid demonizing groups and peoples in public remarks.

3. Participating States should, with assistance from RFOM and ODIHR, hold discussions on balancing national legislation regarding combating hate speech and ensuring freedom of expression, develop relevant draft legislation and ask for assistance from ODIHR and the Venice Commission.

To OSCE political bodies and institutions:

4. The Representative on Freedom of the Media should develop and promote guidelines for participating States on combating hate speech in the media and the Internet as well as in comments by public officials and politicians while also upholding freedom of expression.
5. The Representative on Freedom of the Media, in collaboration with journalism schools and CSOs of participating States, should hold trainings for the media on what the hate speech is, what kind of negative impact it may have on the society and how to cover “sensitive” news and life in a multi-cultural society based on best practices and best ethical standards of professional journalism.
6. The Representative on Freedom of the Media, in collaboration with journalism schools and CSOs of participating States, should develop educational materials for awareness campaigns for the general public on hate speech and destructive consequences of its use on the society.

Combating torture¹³

Bearing in mind that civil society has been paying much attention to the problem of torture and ill-treatment in the OSCE region which was manifested, in particular, by the adoption of the “Kiev Declaration: OSCE Should Make Combating Torture a Priority”¹⁴ by the participants of the 2013 OSCE Parallel Civil Society Conference in Kiev, and that torture prevention is one of the thematic priorities of both Swiss and Serbian OSCE Chairmanships, combating torture has been addressed at all regional OSCE civil society workshops, held throughout 2014 in Belgrade, Vienna, Dushanbe, and Tbilisi. Civil society actors believe it is very important to continue focusing on the issue of combating torture and ensure effective and coordinate actions by all OSCE actors to address this major problem.

During the last year torture, cruel, inhuman and degrading treatment and punishment continue to be among the most serious problems in many OSCE participating states. In some countries and regions torture is widespread and systematic and is practiced with impunity. Prosecution rates against perpetrators are shamefully low compared to its incidence. Even where there are bona fide attempts at prosecution, these are often undermined by the lack of adequate safeguards and by corrupt, obstructive and non-transparent investigation mechanisms. The tendency of the last years is that torture has become a particular problem in the context of fighting terrorism as torture of terrorism suspects has become widespread.

In the recent months, there is an alarming new trend of widespread use of torture and enforced disappearances during the annexation of Crimea and in the course of the armed conflict in the East of Ukraine. International human rights NGOs documented a number of such cases.

Lack of effective investigation in torture and ill treatment cases remains a serious problem in many OSCE participating States and usually is a result of problems with the organisation of the work of investigative bodies, namely lack of institutional and personal independence of the investigators, existing professional evaluation system pushing investigators to secure higher quantitative indices at the expense of the quality of investigation, lack of resources needed for investigations, and inefficiency of control over the investigation.

Successful investigation of torture complaints depends to a large extent on the medical evidence. However, there are significant obstacles in many participating states, such as lack of forensic experts, lack of due experience and qualification among both forensic experts and investigators, and poor financing. Provisions of Istanbul protocol are not sufficiently spread and used in the OSCE Participating states.

Over the past decade the European Court of Human Rights (ECtHR) has issued hundreds of judgments regarding the prohibition of torture, inhuman or degrading treatment against many Council of Europe member states. The ECtHR judgments specifically establishing torture have grown exponentially. These findings were often combined with other gross human rights violations, including killings and enforced disappearances in the hands of law enforcement officials. Several UN treaty bodies have also found violations of the prohibition of torture and other ill-treatment in a number of participating States. Each one of these judgments and decisions requires a reopening of the criminal investigations against perpetrators at

¹³ Recommendations in this chapter are based on the results of the work of OSCE civil society workshop, held throughout 2014 in Belgrade, Vienna, Dushanbe, and Tbilisi. They were organized jointly by the Civic Solidarity Platform and local civil society organisations with support from the 2014 Swiss OSCE Chairmanship and brought together more than 150 representatives of civil society organisations from across the OSCE region as well as experts from international NGOs and OSCE institutions.

¹⁴ Kiev Declaration: OSCE Should Make Combating Torture a Priority. December 2013. civicsolidarity.org/article/857/kiev-declaration-osce-should-make-combating-torture-priority

the national level, who are often well-known, as a condition for adequate execution of the judgments. This however does not happen. Many participating States, as well as international organisations, are faced with the growing problem of non-execution of international judgments and decisions. This is particularly the case with those related to torture.

In many participating states conditions of detention are continuing to remain inhuman and degrading. This is the case not only with prisons and pre-trial jails, but also with other types of detention facilities, including mental health institutions, detention centres for migrants and children's institutions.

Rehabilitation of victims of torture continues to be another serious problem in many OSCE participating states, particularly in those that carry a totalitarian legacy. Despite widespread atrocities in the past, holistic rehabilitation of former and current torture victims has been a foreign concept in these countries with no meaningful efforts at holistic rehabilitation existing at the governmental level. Important initiatives by non-governmental organisations to develop rehabilitation work in some of these countries such as Georgia, Moldova, Russia and Kyrgyzstan have so far been an exception rather than a rule. They should be supported at the official level and their experience should be replicated by other NGOs and governments.

In addition to responding effectively to torture and ill-treatment cases, participating States should also address their root-causes, and effectively implement measures aimed at preventing torture and ill-treatment from occurring in the first place. This preventive approach should be holistic and respond to the need for an effective legal framework, the need for its implementation in practice - notably through training and development of procedural safeguards and sanctions - and the need for effective control mechanisms, including preventive monitoring bodies.

Despite certain measures undertaken in some participating States during the last years, disregard to main procedural safeguards protecting detainees from torture continues to be a crucial problem across the OSCE region. This increases risks of use of illegal violence by the police and other law enforcement officers. Although pre-trial detention is to be considered as a means of last resort according to international standards, many participating States keep on using pre-trial detention without sufficient justification and do not pay attention to the practice of alternative measure developing in other States. As a result pre-trial jails continue to be overcrowded.

Since 2002 many OSCE member states have ratified the Optional Protocol to the Convention against Torture (OPCAT) and established National Preventive Mechanisms (NPM). While this is a positive development in itself, which has brought a degree of transparency to the detention systems throughout the region, many NPMs are not independent, lack capacity or resources (including financial ones) for serious monitoring, and cannot make their voices heard by the governments despite the dialogue requirement established under OPCAT. OPCAT's effective implementation, which is necessary for an effective prevention of torture, therefore still leaves much to be desired. At the same time there still a number of participating States which have not ratified OPCAT and have not established NPMs.

Practical experience demonstrates that the opening of places of detention for civil society scrutiny through enabling independent human rights NGOs to monitor the conditions of detention and treatment of detainees, as well as to offer legal assistance and rehabilitation to victims, has proved to be one of the major factors in reducing the incidence of torture and other ill-treatment. Yet many governments in the region still resist allowing human rights NGOs to freely access detention facilities. No binding standards exist and very few good practices can be shown in that regard in either the East or the West. On the contrary, in some countries the establishment of NPMs has resulted in the further denial of civil society access to places

of detention through the creation of official avenues of monitoring, which have proved nowhere near as effective in reducing the incidence of torture and ill-treatment.

Recommendations

To OSCE participating States:

On legislation

1. Amend, whenever needed, the definition of torture and ill-treatment in the national legislation to bring it in conformity with international norms enshrined in the UNCAT and other relevant international instruments.
2. Make a declaration, whenever needed, under Article 22 of the UNCAT in order to recognize the competence of the UN Committee to receive individual communications.
3. Those participating States that have not yet ratified the Optional Protocol to the Convention against Torture (OPCAT) should do so without further delay.
4. Develop effective mechanisms for implementing decisions of UN treaty bodies on individual communications as well as ECHR judgments by improving legislation and taking other relevant measures. Take into consideration the best practices of other countries when developing such mechanisms.
5. Ensure that prompt and impartial investigation of allegations of torture and ill-treatment are guaranteed by law.
6. Enact legislation to effectively incorporate their obligations under relevant ratified international treaties and effectively prevent torture and ill-treatment in national law, including by:
 - a) making torture and ill-treatment punishable as an offense under criminal law, by appropriate penalties which take into account their grave nature;
 - b) providing essential safeguards against torture to detainees, including custody records, information on their rights, access to a lawyer and to independent medical expertise from the moment of detention, notification of a third party and right to complain,
 - c) extending protection from torture and ill-treatment to persons from the moment of their apprehension by State actors or non-State actors acting on behalf of the State,
 - d) ensuring that every individual alleging that he or she has been subjected to torture or ill-treatment has the right to complain to competent authorities without any impediment and providing effective protection to alleged victims of torture and ill-treatment and witnesses in cases of torture and ill-treatment.
7. Refrain from violating the rights of, ensure protection and safety of, and protect from reprisals any persons and organisations which provide information on torture and ill-treatment to NPMs and other preventive monitoring bodies, in particular during a monitoring visit, as well as to law enforcement bodies, when applicable, and OSCE bodies and institutions and other international organizations. These persons and organisations should not be accused of false allegations, and the confidentiality of the information they shared should be protected.
8. Ensure in law and in practice that victims of torture and ill-treatment obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible, including access to free legal, medical and psychological assistance.

9. Elaborate and introduce in the legislation the institution of independent forensic medical examinations and increase the number of qualified medical personnel in police detention and pre-trial facilities.
10. Establish in law the maximum length of pre-trial detention, if not already stipulated.
11. Adopt legislation on prevention of torture and ill-treatment in the healthcare system, based on international norms and best practices, including, inter alia, on forced psychiatric treatment and forced treatment for transgender persons.
12. Make classified laws or bylaws that are of public importance available for public examination both at the stage of development and implementation, in accordance with international legal standards on access to information.
13. Actively involve civil society in the drafting of legislation related to preventing and combating torture and ill-treatment.
14. Ensure effective democratic oversight of intelligence operations. Stop invoking the state secrets privilege and the importance of the fight against terrorism to shield themselves from accountability for torture and ill-treatment, both in legislation and practice.
15. Ensure that the domestic legal framework provides an effective right to rehabilitation,
16. Prohibit the use of confession-based evidence and convictions.

On implementation

a. Effective preventive monitoring bodies

17. Those participating States that have not yet established National Preventive Mechanisms (NPMs) under OPCAT should do so without further delay.
18. Guarantee and ensure full and effective functional, institutional, personal and financial independence of NPMs in law and practice.
19. Ensure effective functioning of National Preventive Mechanisms and strengthen them, including by providing NPMs with adequate financial resources and by providing appropriate training of its staff and experts.
20. Ensure the effective functioning of other forms of monitoring of all places of detention and closed institutions (including psychiatric and social care institutions), including by civil society organizations, under a firm legal basis.
21. Ensure, in law and practice, unimpeded access of NPMs and any other preventive monitoring bodies to all places of deprivation of liberty and any other closed institutions, where torture or ill-treatment may take place, including psychiatric and social care institutions and military facilities.

b. Effective legal safeguards

22. Ensure that allegations of torture and ill-treatment are promptly and impartially investigated, through an effective and independent mechanism which addresses the issue of impunity.
23. Ensure that the work of doctors and other medical personnel in detention facilities is truly independent, participating States should not subordinate medical services in detention facilities to the Ministry of the Interior or the administrations of the penitentiary system. Participating States should ensure that adequate medical services are available to all the detainees at all times and medical personnel working inside detention facilities are trained on the provisions of the Istanbul Protocol.

24. Take steps to ensure appropriate recording of events in places where torture and ill-treatment are most prevalent (for example, audio and video monitoring of police stations).
25. Increase citizens' awareness of their rights and existing legal and procedural safeguards in police detention.
26. Ensure that no person is expelled, returned or extradited to countries he or she is at risk of being subjected to torture or ill-treatment, and create effective domestic mechanisms, including judicial review, to prevent the transfer of people to such countries.

c. Policing and torture prevention

27. Take legislative and practical steps to ensure the prevention of torture and ill-treatment during the policing of demonstrations, including introduction of a requirement that officers policing demonstrations wear name tags and mandatory human rights education and training programmes for police and personnel working in places of detention.
28. Ensure that use of force by law enforcement officials and detaining authorities is regulated in accordance with law, respecting the principle of proportionality and necessity.
29. Always check the stockpiles of the police special means/weapons, including gas canisters and other chemicals based equipment that have expiry date and can become more dangerous or lethal after that period.

d. Training of law enforcement personnel and other relevant professionals

30. Conduct effective training programmes for all personnel working in places of detention and closed institutions, including psychiatric and social care institutions.

e. Protection from reprisals

31. Refrain from persecuting, harassing, stigmatizing, or putting pressure on non-governmental organisations, human rights defenders and anti-discrimination activists working in the field of prevention and investigation of torture. Instead, they should cooperate, provide support, create favourable conditions for their work, and in general, act in accordance with the OSCE Guidelines on Human Rights Defenders and any other relevant international instruments.

f. Effective reporting mechanisms on torture and ill-treatment

32. Regularly provide statistical data, disaggregated by crime, ethnicity, age and sex relevant to complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and prison personnel as well as on means of redress, including compensation and rehabilitation provided to victim and consult with ODIHR on the methodology used.
33. OSCE participating States should comply with the 2012 Monaco OSCE Parliamentary Assembly resolution, and all implicated States should effectively investigate their roles in the CIA rendition and secret detention programmes. ODIHR and other OSCE institutions should assist participating States in doing this.
34. Voluntary reports by participating States on torture prevention during meetings of the Human Dimension Committee would be most welcome. Such sessions of the HDC should be open to specialised NGO representatives from these states that should be able to make their own contribution to the discussion.

g. Effective cooperation with other stakeholders

35. Implement effective export control mechanisms for goods that can be used for the purposes of torture.
36. Support the role of the media in creating a culture of absolute non-acceptance of torture. States can be assisted in this task by the OSCE Representative on Freedom of the Media. This should include applying highest ethical standards of journalism and avoidance of bias and racial and religious stereotypes in the coverage of cases of terrorism suspects.
37. Increase their cooperation with ODIHR and provide it with political, financial and personnel support for effective implementation of its existing and new programmes in the prevention of torture.

h. Conditions of detention

38. Bring conditions of detention in line with regional and international standards and take steps to reduce prison overcrowding.

i. Remedies and rehabilitation

39. Develop and implement a strategy and action plan for the effective rehabilitation of victims of torture, including:
 - a) legal remedies (Participating States should establish and ensure in practice effective mechanisms to investigate allegations of torture and ill-treatment in accordance with international standards of effective investigation and address the problem of impunity for the use of torture, including by cooperating with other States in the investigation and persecution of person, suspected of authorizing, participating, committing, or attempting to commit torture and ill-treatment. In connection with prima facie cases of torture and ill-treatment, the alleged suspect should be subject to suspension or reassignment during investigation, especially if there is a risk that person might influence the investigation);
 - b) psycho-social rehabilitation (for this purposes adequate funding should be allocated, and outsourcing used, including to CSOs);
 - c) financial compensation (by allocating finances to offer sustainable compensation to victims – eg. monthly compensation).
40. Provide for medical rehabilitation of torture victims in cooperation with CSOs and medical centres. This should include the full medical examination and effective treatment of torture victims.
41. Ensure that state policies and budgets enable availability and accessibility of appropriate holistic rehabilitation services to all victims of torture and ill-treatment within their jurisdiction.
42. Ensure that all victims of torture and ill-treatment have a genuine free choice between state or non-state services, that all costs associated with the services are covered by the state, and that the validity of non-state services are fully recognised.
43. Ensure that victims of torture and ill-treatment have access to rehabilitation services at the earliest point in time, including by giving access based on a mental and physical health evaluation rather than on the pursuit of remedies.
44. Ensure that victims pursuing remedies are afforded victims' status and psychological support at the earliest possible point in time.
45. Create a safe, trusting and enabling environment for accessing and providing rehabilitation services. Facilitate the continued capacity development of practitioners to adequately cover the demand for rehabilitation within their jurisdiction.

46. Ensure transparency through regular reporting, including disaggregated data, on measures taken to implement the right to rehabilitation with full respect for victims' right to confidentiality.

j. Human rights protection in territories which are not under effective control of de jure authorities

47. Participating States that exercise de-facto control over territories that are de-jure recognized by the international community as part of the territory of another state, should accept full responsibility and be held accountable for ensuring the implementation on these territories of all OSCE human dimension commitments, including on prohibition of torture and enforced disappearances, and in doing so should fully cooperate with OSCE institutions, other inter-governmental human rights bodies, and local and international civil society organisations. This should include providing unimpeded access to representatives of international monitoring missions of the OSCE and other international bodies to these territories. This in no way should be interpreted as legal recognition of annexation or changes of borders.

48. Equally importantly, participating States that exercise de-facto control over territories that are de-jure recognized by the international community as part of the territory of another state, should effectively implement decisions of international judicial and other bodies concerning human rights cases and situations on these territories, including decisions related to cases of torture and enforced disappearances.

To OSCE political bodies and institutions:

1. OSCE political bodies and institutions and participating States should comprehensively review, consolidate and update existing commitments related to torture, and in the process recognize enforced disappearance as a crime and a form of torture. These revised commitments should include a particular focus on the prevention of torture in the context of the fight against terrorism.
2. All OSCE institutions working on issues relating to torture should coordinate their efforts in an effective manner as well as include prevention of torture as one of the core component of their agendas.
3. OSCE should exercise care in the appointment of heads of OSCE field missions to ensure that these are fully committed to supporting and promoting basic principles in the area of the OSCE's human dimension.
4. OSCE should consider establishing a dedicated position on the prevention of torture, including NPM support and coordination, as a focal point within ODIHR Human Rights department, or as a Personal Representative of the OSCE Chairperson-in-Office on the Prevention of Torture, or as an OSCE Representative on the Prevention of Torture.
5. OSCE should create an Expert Panel on Torture Prevention under the ODIHR Human Rights department, similar to the existing ones on Freedom of Association and Assembly, Freedom of Religion or Belief, to review the relevant legislation and practices of the participating States, and provide adequate resources for this Panel.
6. OSCE should draft and adopt an Action Plan on torture prevention and any other relevant strategic documents enhancing the torture prevention focus of the OSCE.
7. OSCE should ensure implementation of the OSCE Code of Conduct on Politico-military Aspects of Security, as well as the OSCE Handbook on the Rights of Armed Forces Personnel at the local level.
8. ODIHR should develop Guidelines on prevention of torture and ill-treatment, including such issues as the functioning of National Preventive Mechanisms, participation of NGOs in monitoring of places of

detention and closed institutions and instruments for evaluating the prevalence of torture and ill-treatment in participating States. ODIHR should establish a permanent expert panel to develop and promote these Guidelines.

9. In their torture prevention work, ODIHR and other OSCE institutions and structures, including field operations, should use and follow up on reports and recommendations of international and national torture prevention bodies such as the SPT, the CPT and NPMs, and other relevant international stakeholders, including the UN Human Rights Council, the UN Committee against Torture, and the UN Special Rapporteur on Torture.
10. ODIHR should monitor, research, and report annually on the situation of torture prevention and related issues in OSCE participating States. Research should address the particular needs, risks and vulnerabilities of specific persons and groups when deprived of their liberty, including women, LGBTI individuals, members of religious minorities, asylum seekers and migrants, persons with physical and mental disabilities, HIV positive individuals, drug users undergoing substitution therapy, etc. ODIHR should develop recommendations to participating States, based on results of the study.
11. With support from the Chairmanship and the participating States, ODIHR should develop and begin to implement a programme for monitoring detention facilities and closed institutions, including psychiatric hospitals, temporary accommodation centres for children, temporary allocation centres for migrants, and military units as part of its work to monitor implementation of the OSCE's human dimension commitments. OSCE Secretariat and ODIHR should negotiate with governments hosting OSCE field operations to include in the latter's mandates monitoring visits to places of deprivation of liberty, including in conflict zones where POWs and civilians are detained.
12. OSCE should create a network of participating States' National Preventive Mechanisms and civil society organizations involved in monitoring places of detention and closed institutions to conduct and/or facilitate the monitoring and evaluation of NPMs in OSCE participating States, and share best practices. ODIHR should build the capacity of NPMs from OSCE participating States by providing them with trainings and supporting NPM training initiatives by civil society.
13. ODIHR should conduct a comparative study of national systems for assessing the effectiveness of the work of the police and develop recommendations to participating States on this subject based on best practices.
14. ODIHR should conduct a comparative study of participating States' domestic legislation with the goal of identifying provisions creating risks of the use of torture and ill-treatment.
15. As part of its monitoring of implementation of human dimension commitments, ODIHR should systematically conduct human rights assessments and monitoring missions on territories of participating States which are de-facto controlled by other States and include prevention of torture and ill-treatment as well as forced disappeared as a key component of such monitoring.
16. OSCE counter-terrorism and police training programme should be reviewed and reformed to ensure that human rights promotion and protection, including against torture and ill-treatment, are at the core of police training efforts. In particular, torture prevention should become a component of annual OSCE Police Meetings.
17. OSCE should provide full support to civil society organizations and promote, as a matter of priority, efforts to create an enabling environment for human rights defenders in the OSCE participating states, with a view to ensuring that defenders can freely carry out their work on torture prevention and other human rights issues.
18. OSCE Human Dimension Committee should hold a special session on torture prevention, discussing the outcomes of the SHDM on torture prevention and inviting the UN Special Rapporteur on Torture and

representatives of other international bodies to discuss possible OSCE interaction with them.

To the OSCE Chairmanship-in-Office:

19. The OSCE Chairmanship should aim to develop an OSCE action plan to combat torture which in particular would include measures on prevention, but also prosecution, and comprehensive rehabilitation. A perception paper on torture prevention, produced by the OSCE Chairmanship with input from civil society, could be a first step in this direction.
20. The OSCE Chairmanship should encourage participating States to develop realistic national action plans for the prevention of torture, including strict deadlines and measurable criteria of progress.
21. The OSCE Chairmanship should organise a process of preparing updated OSCE commitments on prohibition of torture that would include enforced disappearance as a form of torture¹⁵. This issue should be included in the agenda of OSCE meetings addressing the problem of torture.
22. The incoming Chairmanships-in-office should ensure that fight against torture is on the high political agenda of the organisation during the coming years.

¹⁵ See also a chapter on enforced disappearances in this document.

Enforced Disappearances

An alarming trend of spreading of the crime of enforced disappearances in a number of OSCE participating States requires particular vigilance and immediate actions by OSCE. In particular, lack of a specific OSCE commitment to prevent and combat the crime of enforced disappearances and absence of this important subject on the agenda of OSCE human dimension activities is deeply disturbing and must be addressed without delay.

However, even in the absence of an explicit OSCE commitment on this subject, it is obvious that the practice of enforced disappearance contradicts existing OSCE commitments and international human rights law more generally, including provisions enshrined in the International Covenant on Civil and Political Rights and the Convention against Torture. These include great threats to the right to life, the right to freedom from torture or cruel, inhuman, or degrading treatment, the right to liberty and security, the right to recognition as a person before the law, and the right of all detained people to be treated with humanity. At the very least, it is an ultimate negation of proper procedures of arrest and fair trial. OSCE documents enshrine these same rights and freedoms, to which participating OSCE States have made a commitment to respect.

Moreover, enforced disappearances are prohibited under international law as a grave crime subject to universal jurisdiction for the purposes of prosecuting those responsible. A number of OSCE participating States have become parties to a recently adopted Convention for the Protection of All Persons from Enforced Disappearance; some of them have recognised the competence of the UN Committee on Enforced Disappearances.

As OSCE and other inter-governmental organisations have failed to address numerous past cases of enforced disappearances in a number of countries of the region, an atmosphere of impunity prevails there and a breeding ground for commission of new crimes is established. This not only denies justice and effective remedy to victims and their families but often leads to other grave human rights crimes such as short-term abductions, torture and murder. Enforced disappearances often target political opponents, civic activists and journalists; they are committed during counter-terrorism operations against terrorism suspects, and take place with alarming occurrence against civilians in the course of armed internal and international conflicts. Both agents of the state and private actors commit this crime.

A few examples of enforced disappearances stand out in the OSCE region. Among them we recall numerous cases of this crime in **Chechnya** and other regions in the **North Caucasus** which are not just a matter of the past but continue unabated today. Equally importantly, lack of effective investigation of massive enforced disappearances in almost all **countries of the former Yugoslavia** during the wars in the 1990s not only denied justice and effective remedy to victims and their families but also led to commission of this crime during the war in **Kosovo** in the 2000s. Alarming reports about enforced disappearances have been also coming from **Turkey**. Most recently, numerous disturbing reports of abductions and enforced disappearances have been coming from **Ukraine**, where they have been committed against protesters during the Maidan events, in **Crimea** annexed by Russia, and lately by separatist forces in the East of the country against journalists, civic activists and even members of the OSCE monitoring missions.

Two participating States that have been a subject to the OSCE Moscow Mechanism, **Turkmenistan** and **Belarus**, stand out as having the biggest problems with enforced disappearances in the entire OSCE region.

According to information from reliable sources and reports of witnesses, from the first years of Alexander Lukashenka's ruling in mid-1990s, political leadership of **Belarus** started to create a secret group for assassination of dangerous criminals and political opponents of the regime with total annihilation of their bodies or hiding them without a trace. This group included former and acting officers of special services and was often referred to as a "death squad". Reportedly, about 30 persons were abducted and murdered by this group. Its victims included several leading political opponents of the regime and a leading journalist who disappeared and were apparently murdered in 1999-2000. None of these crimes have been effectively investigated despite of international and domestic outcry. More recently, in 2008-2014 the practice of abductions has been widely spread: a number of civic and political activists were abducted, taken outside of the city, intimidated, and in some cases tortured and threatened with murder, allegedly by law enforcement officers.

More than 10 years ago several "resonant" trials took place in **Turkmenistan**. A large number of persons, including acting or former high-ranking officials, were sentenced to life or long-term imprisonment. Information on the most prominent cases can be found in the 2003 report of the OSCE Moscow Mechanism Rapporteur. The report unveiled numerous due process violations, brought up evidence of torture of persons under investigation, and repression against relatives and friends of the accused. These people faced evictions, deprivation of rights, and denial of any information about their dear ones ever since. All cases have led to the emergence of a large category of persons sentenced to life or long-term imprisonment, approximately 100 people in total. Almost all of these people have been held incommunicado since the time of their detention more than 11 years ago. For all this time, neither relatives nor the public have received any official information about the fact of whether these people are still alive or dead, where they are, and what their health condition is. These people have in fact forcefully disappeared in the Turkmenistan prison system.

Recommendations

To OSCE participating States:

1. All OSCE participating States should ratify the International Convention for the Protection of All Persons from Enforced Disappearance and recognise the competence of the UN Committee on Enforced Disappearances;
2. Enact domestic legislation criminalising enforced disappearances based on the provisions of the International Convention for the Protection of All Persons from Enforced Disappearance;
3. Take all necessary practical steps to combat enforced disappearances, effectively investigate allegations of enforced disappearance, bring perpetrators to justice and provide proper compensation to the victims and their families;
4. Fully implement relevant judgments of the European Court of Human Rights as concerns both individual cases and general measures;
5. Assist other participating States in combating the crime of enforced disappearances by applying the mechanism of universal jurisdiction to apprehend individuals from other countries suspected in or responsible for committing the crime of enforced disappearance, effectively investigate allegations brought against them, and bring perpetrators to justice.

To OSCE political bodies and institutions:

1. OSCE political bodies, institutions and participating States should start working without delay on

drafting an explicit OSCE commitment on enforced disappearances with the aim of adopting such a commitment in the nearest future. The OSCE Chairmanship should take a lead in this process;

2. Meanwhile, OSCE political bodies, institutions and participating States should immediately review and update existing OSCE commitments related to torture, and in the process recognize enforced disappearance as a crime and a form of torture. The OSCE Chairmanship should organise the process of preparing updated OSCE commitments on torture that would include enforced disappearance as a form of torture.
3. Continued application of the OSCE Moscow Mechanism regarding a human dimension situation in a participating State (or a similar Human Dimension Mechanism, should it be established) should not be considered finished until substantial progress in the implementation of recommendations contained in the Moscow Mechanism report has happened. An absolute minimum requirement for continued application of the Mechanism should be the continuation of such gross violations of human dimension commitments as continued abductions and enforced disappearances, lack of effective investigation of the past cases of abductions and enforced disappearances, continued incarceration of political prisoners, repeated and widespread use of force against participants of peaceful assemblies, and systematic use of torture against political prisoners, victims of abductions and participants of peaceful assemblies. Each incoming OSCE Chairmanship should look into such “open Moscow Mechanism cases”, examine the current situation in a country and organise a follow-up process if needed. Progress in implementing recommendations in the previous report(s) should be documented in subsequent reports by a working group or a rapporteur established by the OSCE Chairmanship or the HDC Chair or a group of concerned participating States (with a more informal status).

Independence of the judiciary, right to fair trial, and the problem of politically motivated persecution

Selective justice and politically-motivated persecution of civic and political activists, opposition politicians and journalists is a persistent problem throughout the OSCE region. In many cases, international and national human rights organizations have categorized detainees in such situations as political prisoners. The number of such prisoners in the OSCE region is growing.

Civic and political activists often find themselves detained or facing other punishment as part of fabricated criminal or administrative cases. A weak judiciary that is open to pressure from the executive branch is unable to protect the rights of these defendants, let alone ensure that government critics are treated fairly. Politically-motivated trials are characterized by court decisions based solely on political orders from the executive branch and not on the provisions of national legislation. Defendants' rights to a fair trial and the presumption of innocence are violated: charges are often based on police testimony, while defense witnesses are not allowed to testify; defendants are often subjected to torture and ill-treatment; evidence is routinely fabricated; and the final sentence is out of all proportion to the crime allegedly committed. Another characteristic feature of politically-motivated trials is the government's desire to restrict public oversight by using small hearing rooms, banning photo or video recording or employing a strictly formal excuse to close the trial to the public.

In many OSCE participating States, judicial systems have not been reformed or reforms have been only superficial. This preserves the judiciary's dependence on the executive authorities and creates conditions for the use of the courts as an instrument of selective justice and politically-motivated persecution.

In 2014, a number of OSCE participating States continued to apply selective justice in politically motivated cases against civic and political activists, opposition politicians and journalists.

In **Armenia** several government critics were imprisoned following trials that were not conducted in line with international fair trial standards. The human rights group Helsinki Citizens' Assembly – Vanadzor reports¹⁶ that there are 16 political prisoners in Armenia, including defendants currently being tried in cases with political overtones. One of them is Shant Harutyunyan, a political opposition leader. Starting on 31 October 2013, he and other Karabakh War veterans protested on Freedom Square in Yerevan for several days calling for a "revolution." The authorities claimed that the group was planning to occupy the building of the Presidential Administration by force. The protestors clashed with riot police on 5 November and Shant Harutyunyan was apprehended along with 37 other protestors. Although Shant Harutyunyan was reportedly beaten in custody by senior police officials, no investigation was opened into these allegations. He and 13 others, including his underage son, were charged with "hooliganism." On 21 November, a court ordered that Shant Harutyunyan be transferred to the Nurabashen psychiatric clinic to conduct a forced psychiatric examination. There were allegations that his 24-day-long stay at the Psychiatric Clinic was a punitive measure and an attempt to revive the use of psychiatry for silencing dissent. On October 17, 2014, Shant Harutyunyan and his co-defendants were sentenced to up to 7 years imprisonment.

In **Azerbaijan**, those voicing criticism of the authorities or engaging in political opposition activities are at risk of harassment, arbitrary detention and imprisonment. It has become increasingly dangerous for civil

¹⁶ List of 17 political prisoners in Armenia handed over to the Council of Europe Commissioner on Human Rights. Armenia News, 06.10.2014, <http://news.am/eng/news/232649.html>. Note: The list of political prisoners in the referenced article includes Hayk Kyureghyan who disrupted the first hearing of Shant Harutyunyan's case by firing with an air pistol.

society groups to operate freely. Different Azerbaijani NGOs have counted between 30 and 170 political prisoners. Since the beginning of 2014, at least 15 leaders of non-governmental organizations, independent journalists and opposition bloggers have been accused on the basis of fabricated evidence and bogus charges of illegal entrepreneurship, espionage, or possession of drugs.¹⁷ Some of them have already been sentenced to several years in prison such as Anar Mammadli (Election Monitoring and Democracy Studies Centre). In August 2014, well-known human rights defenders Intigam Aliyev (Legal Education Society), Leyla Yunus and Arif Yunus (Peace and Democracy Institute) and Rasul Jafarov (Human Rights Club) were taken into custody. Detention was chosen as a measure of restraint against these human rights defenders despite their poor health and the fact that they did not pose a danger to the public or a flight risk. A number of other prominent human rights defenders had to go into hiding or flee the country to avoid arrest and criminal prosecution.

The human rights organization Viasna in **Belarus** has reported¹⁸ that there are currently seven political prisoners in the country. There are allegations that they have had limited access to lawyers and have been subjected to arbitrary administrative punishment and ill-treatment. Two of them, Mykalai Statkevich (an opposition candidate in the 2010 presidential elections) and Eduard Lobau (of the opposition youth organization Young Front), have been in detention since 2010. In the April 2014 Report of the UN Special Rapporteur on the situation of human rights in Belarus, the Special Rapporteur called upon “the authorities to release immediately and unconditionally all those imprisoned for their exercise of their political and other rights” and urged “the authorities to ensure that the rights of those political prisoners who have been released are immediately and fully rehabilitated.”¹⁹

In **Kazakhstan**, lawyer Zinaida Mukhortova, who raised the issue of corruption among government officials at the regional level, was again placed in a psychiatric hospital. She was accused of avoiding receiving outpatient treatment and medication and was subjected to compulsory treatment for 6 months. Lawyer Evgeniy Tankov, who was accused of assaulting a judge, has been sentenced to 3 years in prison. Opposition leader Vladimir Kozlov, convicted to 7.5 years in prison for allegedly inciting social discord and organizing mass riots after police shooting during the protest of oil workers in the small town of Zhanaozen in the west of the country, and human rights activist Vadim Kuramshin, sentenced to 12 years in prison on bogus charges of extorting money from a prosecutor, poet and social activist Aron Atabek, sentenced to 18 years on charges of organizing mass disorder in which a police officer was killed, are all still in prison. All of these were clearly cases of politically-motivated prosecution, with charges that were either based on dubious evidence or not proved and were held in a manner that violated international standards for independent and fair trials.²⁰

In **Kyrgyzstan**, the politically motivated conviction of Azimzhan Askarov is a clear example of violations of the provisions of the ICCPR by the Kyrgyz authorities, including article 7 (prohibition of torture and other ill-treatment), Article 9 (Prohibition of arbitrary detention), Article 10 (right to humane treatment of detainees), article 14 (right to fair trial) and Article 19 (freedom of speech). A human rights activist and independent journalist, Askarov was arrested on June 15, 2010, during the conflict between ethnic Kyrgyz and Uzbeks in southern Kyrgyzstan. Three months later, the court sentenced him to life imprisonment on charges of public calls for extremism, incitement of public hostage-taking, as well as involvement in the

¹⁷ There are many reports about politically motivated persecution in Azerbaijan in 2014. See, for example, Azerbaijan: When the truth becomes a lie. 2014. A report by Article 19. http://civicsolidarity.org/sites/default/files/azerbaijan_report.pdf, and When and What for Azerbaijani Activists Were Arrested, BBC, 15.09.2014, http://www.bbc.co.uk/russian/international/2014/09/140912_azerbaijan_arrests_timeline.shtml

¹⁸ List of political prisoners in Belarus. Human Rights Centre “Viasna”. <http://spring96.org/en/news/49539>. Accessed on 20.11.2014.

¹⁹ UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in Belarus*, 22 April 2014, A/HRC/26/44, available at: <http://www.refworld.org/docid/53a026d74.html>. Accessed on 21 November 2014.

²⁰ Information of the Kazakhstani Bureau for Human Rights and Rule of Law, November 2014.

murder of a police officer. Askarov's appeal was rejected by the Supreme Court of Kyrgyzstan. Askarov is currently contesting the verdict in the UN Committee on Human Rights. There were dozens of cases of assault and battery against lawyers, human rights activists and their relatives in 2014 and the perpetrators remain unpunished. Litigation on politically-motivated charges is held in an atmosphere of intimidation and harassment; access to a fair trial has become a predicament for ordinary Kyrgyz citizens.²¹

In **Russia**, the authorities continue to clamp down on civil society and government critics. 31 people who participated in a large anti-government demonstration on Bolotnaya Square in Moscow on 6 May, 2012 were prosecuted in 2013-2014. Prison terms were handed down on disproportionate "mass riot" charges and charges of "violence against police officers", although most of the defendants were believed to have protested peacefully. In October, Human Rights Centre "Memorial" issued a list of 46 people the organization identifies as political prisoners in Russia.²² The list includes, among others, environmental activist Evgeny Vitishko, Ruslan Kutaev, an opposition political activist from Chechnya, opposition politician Alexey Navalny and a number of the "prisoners of Bolotnaya square". During the last few months in the context of the Russia-Ukrainian conflict, a number of Ukrainian citizens have been arrested and are being tried on the territory of the Russian Federation. Ukrainian military pilot Nadezhda Savchenko is charged with assisting in the murder of Russian journalists. Crimean activists Oleg Sentsov, Aleksandr Kolchenko, Aleksey Cherniy, and Gennadiy Afanasev are charged with terrorism. Ukrainian diplomats have only restricted access to these detainees; their access to defense attorneys is obstructed and some hearings have been closed to the public. There are concerns about punitive psychiatry being used against Nadezhda Savchenko and Aleksey Cherniy.

Turkmenistan is one of the most repressive countries in the world, where virtually no open dissent and political competition are permitted. According to the Prove They Are Alive! campaign, there are over a hundred politically-motivated cases of enforced disappearances in Turkmenistan prison system, of which the campaign has documented 67 cases²³. Relatives, international organizations, and society at large have not been able to obtain any information about these individuals for over a decade. To this day, the government of Turkmenistan refuses to disclose any information about these people's fates.

In **Ukraine**, politically motivated trials at the end of 2013 and beginning of 2014 were held in connection with the Euromaidan events. Approximately 400 people were arrested from December 2013 to February 2014. According to the Public Monitoring Group "Ozone", just in Kiev and Cherkas there were correspondingly 275 and 139 trial hearings. During these criminal proceedings, judges massively chose detention as a preventive measure despite the frequent threats to the health of the defendants due to injuries received during arrest. Currently, there is a tendency to avoid proper investigation of the gravest crimes committed by the authorities during Euromaidan, which can be attributed to a desire to conceal the participation of high-ranking officials currently in power in murders and other grave crimes. For instance, Dmitri Sadovnik, a Major in the disbanded "Berkut" anti-riot police unit who was charged with the murder of 39 people on February 20, 2014, was placed under house arrest by the Pecherski Court on September 19, 2014, which allowed him to run away and escape justice.²⁴

In **Uzbekistan** the space for freedom of expression and association is extremely limited. Scores of people have been sentenced to long terms of imprisonment on politically-motivated charges in unfair trials. One

²¹ Information of Human Rights Movement "Bir Duino-Kyrgyzstan", November 2014.

²² List of Persons Recognised as Political Prisoners by Human Rights Centre "Memorial". 30 October 2014. <http://memo.ru/d/214537.html>. Accessed on 10 November, 2014.

²³ The Disappeared in Turkmenistan. Report of the Prove They Are Alive! campaign. September 2014. <http://provetheyarealive.org/wp-content/uploads/2014/09/FINAL-Disappeared-Report-September-2014-Compressed.pdf>.

²⁴ Information of the "Public Alternative" Foundation, November 2014.

such case is that of Salidzhon Abdurakhmanov, a human rights defender and independent journalist, who was sentenced to 10 years' imprisonment on trumped-up drug charges in 2008 to punish him for peacefully exercising his right to freedom of expression. Blood tests ordered by the police showed no traces of drugs in his body. His lawyer's petition to conduct a forensic examination in order to identify any fingerprints on the bag containing the drugs was refused.

Recommendations

We call on all OSCE participating States that have imprisoned human rights defenders, opposition politicians, other government critics, independent journalists, bloggers, lawyers and religious activists to:

1. Take all appropriate measures to ensure that all provisions of the ICCPR relating to fair trials are fully respected and that the judiciary is able to function without undue influence by the executive or legislative branches of power;
2. Ensure that all those who have been imprisoned solely to punish them for peacefully exercising their rights to freedom of expression, association, assembly, religion or belief are released immediately and unconditionally;
3. Ensure that all other political prisoners are retried in proceedings which meet international standards on fairness;
4. Ensure that all reports of intimidation, harassment, arbitrary detention, torture or other ill-treatment, and fabrication of charges against human rights defenders and other civil society activists, dissidents and opposition politicians, lawyers, journalists and bloggers are investigated promptly, impartially and thoroughly and that the perpetrators are brought to justice;
5. Ensure that human rights defenders, other civil society actors, dissidents, opposition politicians, lawyers, journalists and bloggers, and religious activists are able to carry out their peaceful legitimate activities without fear or threat of reprisal, unlawful restrictions and arbitrary prosecutions;
6. Ensure genuine independence of the judiciary from the executive branch through judicial reforms based on expert conclusions of the Venice Commission and ODIHR.²⁵

To OSCE participating States:

7. Reject the practice of selective and politically motivated justice.
8. Admit the existence of political prisoners based on criteria prepared by the region's human rights organizations as well as the criteria of the Council of Europe.
9. Allow access by independent observers to penitentiary institutions, including representatives of ODIHR, OSCE field missions, other international organizations and civil society.
10. Demand that other participating States where there are political prisoners, provide reports on their fate, the conditions of their incarceration and progress towards restoring their human rights and rehabilitating them through legal proceedings.
11. Positively respond to requests from ODIHR to monitor peaceful assemblies and court trials.

²⁵ For more recommendation on legislative and policy measures on independence of the judiciary, see Recommendations on Ensuring Independence of the Judiciary, elaborated by the participants of the OSCE civil society workshop in Tbilisi on 2-3 September, 2014.

12. Create an institution for independent, international psychiatric evaluations to bring international experts into cases where there is reason to believe that orders for forcible psychiatric treatment have been made without proper basis.
13. Create legislative bases to involve independent psychiatric experts in court cases as an important guarantee of the right to a fair trial.

To OSCE Chairmanship:

14. Pay particular attention to reports on politically-motivated persecution in participating States.
15. Support ODIHR's mandate to observe trials and peaceful demonstrations, including by encouraging participating States to issue standing invitations to ODIHR to observe them.

To ODIHR:

16. Promote the Kyiv Recommendations on Judicial Independence in Eastern Europe, the South Caucasus and Central Asia and assist OSCE participating States in implementing them.
17. Establish a permanent Working Group including experts and members of civil society to monitor implementation of the Kyiv Recommendations.
18. Strengthen cooperation with NGOs engaged in independent monitoring of peaceful assemblies in OSCE participating States and strengthen the methodological basis for such observation missions through regular exchanges of experience.
19. Expand the circle of experts able to evaluate the character of mass protest actions from the point of view of standards of freedom of assembly, the adequacy of police reaction to unauthorized peaceful assemblies, apparent violations, and alleged provocations.
20. Support cooperation among civil society monitoring groups in monitoring peaceful assemblies in their home countries and the work of the ODIHR panel of experts on peaceful assembly.
21. Support the development of systems of civic oversight of courts by training interested activists on ODIHR's methodology for trial observation.
22. Work together with human rights groups from the region to expand the methodological basis for civic monitoring of courts and their practices.
23. Pay particular attention to the preparation of judges and lawyers able to defend representatives of civil society, non-governmental organizations and human rights defenders in court in cases in which they face unjustified or fabricated accusations.

To the OSCE Parliamentary Assembly:

Create a position of Special Rapporteur on Political Prisoners or a thematic working group on the subject.

The right to privacy and protection of personal data²⁶

We are seriously concerned about the growing problem of intrusion into privacy and lack of protection of personal data across the OSCE region, East and West. Governments of many OSCE participating States violate the right to privacy through legislation and practice. Private actors also increasingly violate this right with impunity. Infringement of the right to privacy often leads to violation of other fundamental rights and freedoms, including freedom of expression offline and online, freedom of association, freedom of movement and security of human rights defenders. It also undermines the ability of civic activists, journalists, bloggers and others to exercise their rights and engage in legitimate activities without fear of reprisal. We believe that the OSCE should pay immediate attention to this relatively new human dimension problem and take appropriate measures to address it.

The following issues are of particular concern:

- Many states have adopted legislation that allows the mass collection of personal data on all citizens or large groups of citizens by secret services and other government and private institutions without a court order, irrespective of any criminal or other official investigation, and with no information made available to the public about these activities.
- The right to freedom of expression is threatened by excessive and non-transparent actions by governments under the pretext of protecting national security. Whistle-blowers and investigative journalists are often targeted by governments.
- Many states have adopted legislation that forces journalists and other professionals to reveal private information, especially in the context of counter-terrorism and counter-extremism measures.
- Surveillance equipment and technologies are increasingly produced in countries with repressive regimes or produced in other countries and sold to repressive regimes without effective controls or safeguards.
- States increasingly share personal data with other states' secret services.
- Governments conduct "preventive" operations with increasing frequency, targeting members of various minorities (LGBTI, Roma, religious groups, etc.) and collect their personal data.
- States are increasingly using mass monitoring of mosques and other places where communities meet, especially in the context of counter-terrorism and counter-extremism activities.
- Governments increasingly discriminate against migrant workers and their families, including children, by introducing obligatory fingerprinting when they pass the state border.
- States increasingly outsource service delivery functions that involve personal data collection (visa issuance, etc.) without ensuring an adequate level of data protection.

²⁶ Recommendations in this chapter are based on the results of the work of OSCE civil society workshop, held throughout 2014 in Belgrade, Vienna, Dushanbe, and Tbilisi. They were organized jointly by the Civic Solidarity Platform and local civil society organisations with support from the 2014 Swiss OSCE Chairmanship and brought together more than 150 representatives of civil society organisations from across the OSCE region as well as experts from international NGOs and OSCE institutions.

- States do not take adequate measures to prevent illegal sale of databases with personal data by government agencies and private companies and do not bring perpetrators to justice.
- Governments increasingly use the pretext of protecting privacy and personal data to prevent civil society monitoring of the functioning of state agencies and private institutions, especially in the law enforcement and healthcare fields.
- E-governance without effective safeguards may negatively affect the right to privacy.

Recommendations

To OSCE participating States:

1. Domestic legal frameworks for the protection of privacy and personal data should strictly comply with participating States' international human rights obligations, including the proper application of proportionality and necessity tests;
2. Guarantee in law and practice effective protection of privacy and personal data in respect to secret services' surveillance activities, including by adopting precise and comprehensive laws and regulations regarding the types of information gathered, the equipment used, the types of criminal offences investigated by means of surveillance, etc.;
3. Guarantee in law and practice the application of the principle of mandatory court orders for access to and collection of personal data;
4. Access to personal data by secret services, police and judicial authorities should be based on explicit and clear criteria written into law and only on an individual, not a mass basis. The rights of individuals to be informed should be protected by law and in practice when the authorities handle or access their data;
5. Amend legislation and practice on surveillance, communications interception and the handling of personal data to comply with the most progressive approaches and best practices in this field such as the rulings of the European Court of Justice and the standards of the European Telecommunications Standards Institute. In particular, relevant laws and practices should ensure that the law enforcement agencies and secret services are obliged not only to obtain a court order but also to present it to an Internet Service Provider or a telecom operator;
6. Establish or strengthen independent data protection authorities;
7. Enhance administrative and judicial remedies through national data protection authorities when privacy and data protection rights are violated;
8. Control over exports of technology that may be used for surveillance should be applied in a way similar to arms exports. Special attention should be paid to requests for exports of technology and training from repressive governments;
9. Treat with particular scrutiny requests from other States in the framework of intergovernmental cooperation to share personal data of human rights defenders and civil society activists, paying due attention to possible political motives and persecution of such individuals;
10. Guarantee effective protection of vulnerable minorities' data, including pre-transition data of transgender people (birth certificates, passports, drivers' licenses, etc.);
11. Adopt laws and policies ensuring effective protection for whistle-blowers exposing violations of the right to protection of privacy and personal data;

12. Ensure lawful regulation of activities of large organizations and private companies with particularly large databases regarding their collecting and handling of personal data.

To OSCE Political Bodies and Institutions

1. Expand OSCE commitments from 1991 on privacy protection to address contemporary challenges in this field, in particular the use of modern technology, lack of accountability, effective safeguards and the judicial oversight of secret services' activities, violations in the course of counter-terrorism and counter-extremism measures, targeting of minorities, cooperation of states and private actors across borders, etc. Civil society representatives should be included in the process of drafting these updated commitments;
2. ODIHR should organize monitoring of participating States' activities in the field of surveillance and communications interception;
3. A special expert meeting on the protection of privacy and personal data should be held without delay in the framework of the OSCE's human dimension activities in order to contribute to the drafting of updated OSCE commitments in this field.

The right to free and fair elections

In 2014, a number parliamentary and presidential elections and referenda were held in OSCE participating States. Presidential elections were held in Slovakia, Malta, the Former Yugoslav Republic of Macedonia, Latvia, Ukraine; Turkey; Romania. Parliamentary elections were held in Hungary, Belgium, Slovenia, Sweden, Latvia, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, and Moldova. Early parliamentary elections were held in Ukraine, Serbia, and Bulgaria. Local elections also took place in a number of OSCE participating States. In a majority of these elections principles stipulated in the OSCE and the Venice Commission guidelines and other relevant documents were observed.²⁷

2014 was arguably a year of separatist movements in the OSCE region. In a number of instances separatists used referenda as an instrument to mobilize public support for the idea of independence and as a tool to justify the actions of their political leaders. However, the degree of freedom and fairness and the extent to which international standards for democratic elections were observed varied strikingly from case to case. The referendum held in Scotland on 18 September showed that self-determination can be expressed peacefully, within the principles of democracy and in observance of national legislation and international standards. It was recognised as legal, free and fair and held in accordance with democratic standards by many governments and the European Commission.

On the other hand, the Crimean “referendum” on 16 March, which took place amidst an ongoing military occupation of this region of Ukraine by Russian military forces, and the subsequent decision by the Russian government to annex Crimea to Russia demonstrated that infringement on the territorial integrity of another state and the forceful annexation of another state’s territory can still take place under the pretext of the principle of self-determination, similar to historical precedents that took place prior to the adoption of the Helsinki Final Act. Importantly, Russia justified annexation as a response to the local population’s desire for secession and transfer of the region to Russian jurisdiction as allegedly manifested through a process presented as a “referendum.” This so-called referendum was held in violation of the Constitution of Ukraine and under Russian occupation; it did not correspond to international norms. This chain of events also demonstrated a dangerous dimension of the use of aggression toward a state under the pretext of humanitarian intervention or responsibility to protect, justified by the Russian government as a necessary step to ensure the security of the local population and guarantee safe conditions for voting in the “referendum.” The largest Ukrainian election observation organizations did not observe or recognize the legitimacy of the referendum. Only an assorted group of politicians from several European countries, mostly representing extreme right- or left-wing parties and movements, Russian officials and a few Russian NGOs with close ties to their government observed the “referendum” at the invitation of the self-proclaimed “government” of Crimea. Not surprisingly, the OSCE Chair-in-Office called the “referendum” illegal, and the UN General Assembly adopted a resolution with the same conclusion. Similar problems concern “elections” held on 2 November on the territories of the self-proclaimed “Donetsk Popular Republic” and “Luhansk Popular Republic” in the east of Ukraine, controlled by the armed separatist forces.

Likewise, a “referendum” on 2 February in Gagauzia, an autonomous territorial unit of Moldova, was held in direct violation of the Constitution of Moldova and a decision of its Constitutional Court. The “referendum,” in which an overwhelming majority voted for “external self-determination” and joining the Customs Union with Russia, Belarus, and Kazakhstan, was not recognised by any government or international organisation.

²⁷ See, in particular, Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report by the Venice Commission, <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282002%29023-e>, and Guidelines on Political Party Regulation by ODIHR and the Venice Commission, <http://www.osce.org/odihr/77812>.

Low turn-out in a number of countries in the OSCE region spoke of voter fatigue and distrust toward electoral systems triggered by vote-buying, control and intimidation of specific groups of voters, as well as violations of campaign norms and regulations. In Russia, for example, the Golos Association for the Rights of Voters observed that the authorities' main tactic in local elections was to restrict and obstruct the registration of candidates who could potentially challenge the ruling "United Russia" party's candidates.

In a number of countries, observers recorded problems with the use of the media by incumbents and pressure by political parties or public individuals on media companies and journalists.

Party financing and transparency remain the largest problem in a number of countries where the campaign finance regulatory system is not adequate to ensure transparency, integrity and accountability of the process, and a majority of previous OSCE/ODIHR and the Council of Europe's Group of States against Corruption (GRECO) recommendations remain unaddressed. Observers reported abuse of administrative resources in many cases, both to ensure voter turnout and to restrict voters' free will. Reported violations were not investigated by law enforcement officials, who served as guarantors of the authorities' status rather than of the law.

Independent civic observers who reported electoral violations in OSCE participating States were often intimidated, blackmailed and harassed by the authorities. Civic control over elections remained subject to formal restrictions and unlawful intimidation. Anar Mammadli, chairman of Azerbaijani NGO Election Monitoring and Democracy Studies Centre (EMDS) and board member of the European Platform for Democratic Elections, was sentenced to 5.5 years of imprisonment on fabricated charges in May 2014. Mammadli was arrested in late 2013 after EMDS' critical assessment of the October presidential elections. The European Platform for Democratic Elections assessed his arrest an attempt to destroy independent and critical citizens' election observation in Azerbaijan and proof of the political discrimination that dominates the country's judicial system.

In 2013, the Ministry of Justice suspended the activity of Golos, the largest observer organization in Russia, after Golos was found "guilty" of failing to register as a "foreign agent" following the requirements of the infamous law adopted by the Russian government. In September 2014, after lengthy trials, Golos was able to overturn the court decision imposing administrative charges against the Association and its former executive director, Lilia Shibanova. However, despite the court decision the organization remains on the list of "foreign agents" and the persecution of Golos and other civil society and human rights organizations in Russia continues. On the eve of local elections in September the press-service of the Central Electoral Commission issued a release addressed to all local electoral commissions across the country, demanding that observers from Golos not be allowed to observe the voting because "foreign agents" might undermine their democratic character. As a result, many local commissions did not permit observers from Golos to observe the voting.

In Ukraine, the parliamentary elections in October took place in an increasingly challenging political and security environment, notwithstanding the September 2014 Minsk cease-fire agreements. Electoral authorities made resolute efforts to organize elections throughout the country, but they could not be held in parts of the Donetsk and Luhansk regions and in the Crimean peninsula. Minorities' participation in these elections was affected by the crisis in the east of Ukraine and the annexation of Crimea, which made it difficult to organize elections in those parts of the country where nearly half of the 14 million citizens identify themselves as either native Russian speakers or Crimean Tatars.

In a number of other OSCE participating States the electoral legal framework is not conducive to national-minority representation.

One positive development was the increased capacity to use electronic voting technologies in a number of countries in transition, particularly, electronic databases and voting machines. In a number of countries, observers noted improvement in the work of Central Electoral Commissions.

Recommendations

To OSCE participating States:

1. Amend electoral legislation and practices in accordance with recommendations issued by OSCE/ODIHR.
2. Ensure that electoral commissions at all levels are genuinely independent and unbiased and all allegations of violations are investigated promptly, thoroughly and objectively.
3. Develop and implement safeguards to ensure a clear separation between the government and the ruling party, so as to prevent candidates from unduly using the advantage of their office for electoral purposes.
4. Eliminate the use of “administrative resources,” including campaigning in state budget-funded institutions or with the assistance of employees of such institutions as well as applying pressure on employees of such institutions to vote for a particular candidate.
5. Strengthen provisions regulating campaign financing to enhance the transparency of campaign funds. Funding and expenditure records should be made public and subject to independent oversight and monitoring.
6. Ensure that all candidates have equal access to the media, including state-controlled media, in order to maintain contact with constituents. The provision for “balanced coverage” should be overseen by a genuinely independent implementing body that should act on complaints and monitored violations in a timely manner. Remedies imposed by the body should not prevent the media from carrying out their activities or encourage self-censorship among journalists.
7. Make efforts to promote participation in elections by national minorities and women as well as participation by candidates from national minorities.
8. Safeguard possibilities for independent citizens’ election observation. Full access of independent civic observers to monitor voting and vote counting should be guaranteed by electoral authorities. All incidents in which independent civic observers are prevented from monitoring elections or are the victims of intimidation should be promptly and thoroughly investigated, and the perpetrators brought to justice. OSCE participating States should ensure the safety and security of civil society representatives, opposition members and journalists critical of the administration of elections and refrain from reprisals. Imprisoned election observers, including Anar Mammadli and Bashir Suleimanli, should be immediately released. Harassment of election observation NGOs, including Golos, should be immediately stopped.
9. Fully cooperate with OSCE observation missions and other international missions, invite them for both long- and short-term observation and refrain from creating obstacles to their work. Refrain from publicly criticising conclusions issued by international observation missions.
10. OSCE participating States should provide extra-budgetary funding to ODIHR for expansion of its election monitoring activities.

To ODIHR:

1. Expand election monitoring to a maximum number of elections in OSCE participating States.

2. Encourage and support independent citizens' election observation in the OSCE region as an important additional information resource on the conduct and quality of elections.
3. Track and publicly criticize unqualified and politically motivated "fake-observation" of elections in the OSCE regions conducted by unauthorized politicians or unqualified election observation groups.

Human Dimension Issues in Switzerland: The Self-Evaluation

The Civic Solidarity Platform believes that it is incumbent on the state performing the role of OSCE Chairman to set the standard for the other participating States, lead by example, and actively use the Chairmanship to improve the human rights situation and solve existing problems in the human dimension both in the OSCE space as a whole and within the country itself.

The Swiss NGO Working Group was created to accompany the Swiss OSCE Chairmanship in regards to human dimension issues. The Working Group is an informal network of human rights NGOs²⁸, coordinated by humanrights.ch. On the one hand, the Working Group is active on the international level of the OSCE, in coordination with Civic Solidarity Platform. On the other hand, the Working Group coordinates a critical domestic dialogue on the implementation of OSCE human dimension commitments in Switzerland, especially those brought up in the 2014 self-evaluation.

A new format: The self-evaluation²⁹

To improve implementation of OSCE human dimension commitments and ensure better follow-up on related findings and recommendations by OSCE structures, Switzerland decided to present a self-evaluation/self-assessment to the OSCE. The idea originated with the Civic Solidarity Platform and the Swiss Chairmanship mandated the Swiss Center of Expertise in Human Rights (SCHR) to develop a self-evaluation concept and carry out the evaluation. The objective was to assess the extent to which Switzerland, as the OSCE Chairmanship State, implemented relevant OSCE Human Dimension Commitments.

The self-evaluation is limited to issues addressed in recent OSCE monitoring reports covering Switzerland (exclusively or together with other OSCE participating States). NGOs considered this limitation to be partly accidental, arbitrary and too restrictive; in their view OSCE basic documents, decisions and general recommendations should have been taken into consideration as well. The methodology of the self-evaluation was designed in such a way as to become a regular and standard tool that future Chairmanships will be able to use.

Following this model, any future self-evaluation should be conducted by an independent institution and not by the government. Ideally the self-evaluation – together with feedback from NGOs and the government – should be ready at the very beginning of the year of the Chairmanship. This was unfortunately not the case with Switzerland, which was pioneering the process. Swiss NGOs appreciate the Swiss government undertaking this self-evaluation, although the role of the NGOs in the different phases of the process was not always transparent and the government has not committed itself to a dialogue with civil society and/or to the publication of a report listing improvements undertaken in response to the recommendations of the self-evaluation by a specific date.

²⁸ Current members are: Alliance Sud, Amnesty International (Swiss Section), Association for the prevention of torture (apt), Caritas, Christian Peace Service (cfd), Egalité Handicap, FIZ Advocacy and Support for Migrant Women and Victims of Trafficking, foraus, Society for Threatened Peoples (GfbV), Helvetas, Human Rights House Network (HRHN), Human Rights Watch, Swiss Interchurch Aid (HEKS), humanrights.ch/MERS, Peace Boat, Peace Women Across the Globe, Swiss Refugee Council (SFH-OSAR), swisspeace, Swiss Peace Council (SFR), Swiss Helsinki Committee (SHV), Unisourds.

²⁹ Documents: www.eda.admin.ch/eda/en/home/aktuell/dossiers/osze-vorsitz-2014/news.html/eda/en/meta/news2/osze/implementing-osce-commitments-in-the-human-dimension--switzerlan

Recommendation to future OSCE Chairmanships: The self-evaluation should become a regular and standard tool of any future Chairmanship State. The State should entrust a professional independent body to conduct the self-evaluation. The findings, prepared in close cooperation with human rights NGOs, should be published before the start of or at the very beginning of the Chairmanship year.

Key human rights area in Switzerland: The most significant fact that arose from the self-evaluation of Switzerland is that (non-) discrimination of foreign nationals/ rights of migrants and refugees/ xenophobia is the area in which the country has experienced grave shortcomings in implementing OSCE recommendations. This conclusion is supported by the sub-study on election monitoring, which indicated a widespread exclusion from the right to vote of foreign nationals, leading to a situation in which nearly a quarter of the population is excluded from democratic decision processes. The study also points out the high hurdles that complicate the naturalization process, as well as deficiencies in protecting people's rights in the field of aliens' and asylum law. The conclusion is also supported by the sub-study on intolerance and racism, which noted problems in the practice of granting asylum to homosexuals, the social exclusion of asylum seekers, the lack of integration of Yeniche, Roma and Sinti, xenophobic discourse and anti-Gypsyism.

1. Election Observation

a) Excerpts from the self-evaluation (Swiss Center of Expertise in Human Rights):

Various OSCE standards as well as universal and regional human rights instruments and electoral good practice require Switzerland to regulate party and campaign financing. (...) The OSCE/ODIHR Election Assessment Mission Report 2007 notes that "there are no legal provisions on party and campaign financing at the federal level", and therefore "parties can receive unlimited funds from any source without any requirement of disclosure". With reference to Switzerland's commitments in this field, the Report recommended that the Swiss authorities consider introducing a disclosure obligation covering parties' and political associations' final income, sources and expenditures. (...) While different parliamentary interventions tried to push the issue, the Swiss government has not undertaken any steps to improve the current situation to date.

We recommend that the Swiss government take concrete steps to adopt and implement the measures recommended by the OSCE/ODIHR EAM Reports in order to fully comply with international good practice in the field of party and campaign financing. The low level of transparency regarding the influence of interest groups in the political process risks undermining the proper functioning of Swiss democracy and carries a significant potential for corruption.

b) Excerpts from the NGO Feedback:

In general, voting successes of small and poor parties and failures of expensive voting campaigns remain the exception proving the rule that the financial resources available to parties and voting committees have a great impact on the outcome of votes and elections. The best example of this is the rise of the Swiss People's Party (SPP), which since the early 1990s has risen to become the party with the biggest share of the vote after the multimillionaire Blocher and some other very wealthy people bought the party and in effect privatized it.

We recommend the adoption of transparency regulations and regulations concerning donations to parties and election committees as well as for limitations on vote and election budgets. (...)

With very few exceptions **the Swiss right to elect and vote is contingent on Swiss citizenship**. This limitation is based on the principle of 'ius sanguinis'. Combined with an extremely restrictive or even prohibitive naturalisation policy, the result is that today almost a quarter of the Swiss population is excluded

from the political process. This situation is difficult to reconcile with the democratic ideal that people affected by decisions of the community should be able to participate in their making. (...) A comparison of the development of the right to vote for Swiss expatriates and the continuing exclusion of 2nd, 3rd or further generations of foreigners must lead to the conclusion that we are today dealing with an ethnicisation of the right of vote in Switzerland. Many persons whose families have been resident in Switzerland for generations are prevented from exercising political rights, while the participation of persons living anywhere in the world, perhaps having even been born and grown up there without any connection to Switzerland, is supported by all means. (...)

We recommend that foreign citizens living in Switzerland be granted the right to elect and vote.

2. Intolerance

a) Excerpts from the Self-evaluation (Swiss Center of Expertise in Human Rights):

(...) For example, Switzerland nominated the Federal Department of Foreign Affairs as the national point of contact on hate crimes to periodically report to ODIHR reliable information and statistics on hate crimes (...). The Federal Commission against Racism (FCR) compiles and provides the relevant data.

A large gap (...) relates to **combating and monitoring hate crimes** (...), part of the legal basis for complete implementation is missing. Although Switzerland generally refers to article 261bis of the Swiss Criminal Code in this context, it has to be stressed that this legal provision does not fulfil all of OSCE's requirements. For example, Art. 261bis Swiss Criminal Code protects only a very restricted category of people, whereas ODIHR's definition of hate crime includes a much wider range of protected characteristics such as language and sexual orientation.

We recommend that the Swiss authorities adopt appropriate and more effective legislation.

The OSCE Personal Representative, on the occasion of his country visits, criticized the increasingly **intolerant and discriminatory climate regarding Muslims and other minorities** in Switzerland. The anti-minaret initiative, which had been perceived as discriminatory against Muslims internationally, was mentioned in particular. On a positive note, as a consequence of the anti-minaret initiative, the federal government has sought to increase dialogue with the Muslim population. (...) It is important that the federal and cantonal authorities continue their efforts and are not trying to shirk their responsibilities by pointing to the distribution of powers and duties in the federal state. The OSCE is fundamentally concerned about the nature of political discourse in Switzerland. Particularly during campaigns around federal popular votes, referenda or elections the discourse risks turning discriminatory. Swiss Courts tend to classify the protection of freedom of expression as more important than the protection against discrimination during political discourse. While robust political discourse must be allowed, discrimination and defamation in electoral campaigns must be effectively combatted, as required in OSCE commitments.

We recommend that the precise limits of freedom of expression be further defined and, if necessary, that tools be developed that include positive measures such as sensitization campaigns or codes of conduct by political parties, as well as prohibitions and sanctions where necessary.

b) Excerpts from the NGO Feedback:

From (an NGO) perspective, Swiss authorities frequently discriminate against **homosexual asylum seekers** in the asylum procedures. The authorities in principle recognize that persons who are persecuted in their home country due to their homosexuality belong to a particular social group and that persecution for

homosexuality can be grounds for asylum. In practice, however, there is little chance of receiving asylum on these grounds.

NGOs have followed with apprehension recent developments that have resulted in the **social exclusion of asylum seekers**. Swiss asylum authorities frequently resort to using old and very remote military accommodations as centres for asylum seekers where they have no contact with the Swiss population. From an impartial perspective, such barriers to integration are to be avoided, as are strategies of separating asylum seekers from the rest of the population. (...) The general exclusion of persons from a certain area or a ban on entering certain areas without prior reproachable behaviour lacks any legal basis, is not proportional and discriminates.

For years now, the issue of asylum and migration has been on the public agenda, and the **discussion** has been distinctly **xenophobic**. This is the case even though asylum seekers make up but two percent of the foreign population. Public perception does not correspond to this reality at all. (...) This distorted perception is mainly due to the media coverage as well as to the rhetoric of right-wing parties such the Swiss People's Party (SPP). (...) Reports in the media frequently are not objective and differentiated enough. By constantly emphasizing the "asylum problem", the impression is created in a wide readership that a huge wave of refugees is overwhelming Switzerland. (...) In such a climate, the willingness to restrict fundamental rights improperly, such as in violation of the principle of family unity or even the principle of non-refoulement, emerges readily. Swiss Federal authorities should make a greater effort to explain to the Swiss population that more than 60 per cent of asylum seekers for whose claim Switzerland is substantively responsible receive a protective status in Switzerland (asylum/provisional admittance). This stands in contrast to the perception of various actors that a majority of asylum seekers in Switzerland make a claim for protection unjustly. Cheap propaganda-making against foreigners was particularly apparent during federal popular initiatives with a xenophobic undertone ("Against the Construction of Minarets", "Expulsion Initiative" and "Against Mass Immigration"). The right-wing SPP thereby exploits diffuse fears in the population and uses them as campaign tools. The increasing number of xenophobic and defamatory readers' commentaries in online media regarding articles about the asylum system or migrants is not to be underestimated either.

In the chapter of the self-evaluation on hate crimes, racism and intolerance, the **discrimination of Yeniche, Sinti and Roma** in Switzerland was ignored despite numerous related OSCE commitments. (...) The group "Travellers" has been officially accepted as a national minority as of 1998. This designation does not, however, do justice to the reality of the minorities concerned since it confuses lifestyle and ethnicity, suppresses their own designations and plays the particular interests of various minorities against each other.

We recommend that solutions to the problem of camping places, passageways and transit sites be quickly found and that the phenomena of intolerance and hostility be decisively countered.

We recommend further endeavours to promote the culture and identity of Yeniche, Sinti and Roma.

We recommend that the government take decisive action against anti-Gipsyism especially in the media and in the administration and arrange for prevention and awareness-raising campaigns.

3. Freedoms of Expression and Assembly

a) Excerpts from the Self-evaluation (Swiss Center of Expertise in Human Rights):

Authorization and notification of demonstrations: A review by the OSCE of pertinent cantonal and municipal legislation in the cities of Geneva and Bern and the town of Davos, concludes that while the legal requirements and restrictions for peaceful assemblies differ in content, they all have in common that a prior authorization is needed for holding non-spontaneous assemblies. According to the OSCE, while a

notification system is preferable, there is no evidence of overly restrictive authorization practices in the three municipalities. (...)

We recommend the authorities consider the introduction of a notification system at least for some types of demonstrations beyond spontaneous assemblies, and if prior authorization is required, legislation should contain “a legal presumption that the authorization will be issued and that any refusal of authorization will be based on clearly defined criteria”.

Unauthorized demonstrations: Law and practice concerning unauthorized demonstrations appear mostly to reflect the principle that just because an assembly has not been authorized or is otherwise not meeting all legal requirements, the demonstration cannot automatically be prevented or dispersed. However, the OSCE monitors also noted that some legislation and practice concerning unauthorized demonstrations are problematic in light of OSCE commitments and human rights standards on freedoms of assembly and expression.

We recommend making the principle of allowing peaceful but unauthorized demonstrations, not punishing participants in such demonstrations and dealing with potentially or actually violent protesters individually (including through arrest, prosecution and punishment be made the standard rule of police engagement, if this has not already been done.

Demonstrations in relation to high-level events: Davos, as the host town of the annual summit of the World Economic Forum (WEF), Geneva, as the home of the UN Office in Geneva, several UN agencies, the World Trade Organization and numerous permanent representations, and Bern, as the capital city and seat of the federal government, all have seen their fair share of high-level events. In general, the authorities have been willing to accommodate related protests. At times, restrictions concerning the location of protests have been unsatisfactory in light of the sight-and-sound principle: protests should be allowed to take place within sight and hearing of the event or the people at whom the protests are aimed.

b) Excerpts from the NGO Feedback:

Contrary to OSCE recommendations, in Swiss cities a system of permits is not only the rule, but over the past years, there has been **a trend to increasingly limit the freedom of assembly** through legislation (e.g. Canton of Geneva) or to be increasingly restrictive in granting permits for demonstrations (e.g. city of Berne).

We recommend that the role of the Confederation in implementing OSCE recommendations be clarified. Its institutions are entrusted with the task of actively communicating the OSCE recommendation to cantons and municipalities. In doing so, the Confederation should refer to good practices from other OSCE states.

4. Trafficking in Human Beings

a) Excerpts from the Self-evaluation (Swiss Center of Expertise in Human Rights):

Coordination and monitoring: Various authorities and other actors with very different roles and at times conflicting priorities have to work together to combat trafficking. Switzerland’s federal structure makes coordination and cooperation even more complex. Overall, Switzerland has come a long way in implementing OSCE commitments concerning coordination and cooperation of anti-trafficking efforts. (...)The creation of a National Coordination Mechanism (NCM) has been instrumental.

We recommend having cantonal child protection and labour inspection authorities represented in the NCM, establishing coordination mechanisms in cantons that still lack such a forum and strengthening the NCM's role in monitoring anti-trafficking efforts.

Identification of trafficking victims: While officers and staff from several authorities are among the most likely persons to encounter trafficking victims, they may not always realize this. Also, trafficking victims can be reluctant to contact authorities because of their irregular status or because they have been traumatized.

We recommend making human trafficking part of the basic training of all relevant actors (...), namely the police, prosecution officials, migration authorities, labour inspectors and staff working at victim protection centers. (...)

Labour exploitation: The involvement of labour inspection authorities in anti-trafficking efforts has been very limited (...). Domestic workers employed by diplomats and irregular migrants are particularly at risk of labour exploitation. Moreover, this type of human trafficking appears to be often overlooked, and its real scope is unknown.

We recommend stepping up involvement of and training efforts for labour inspection authorities, the swift adoption and dissemination of the NCM's draft guidelines on labour exploitation, and the strengthening of research on labour exploitation.

5. Gender

a) Excerpts from the Self-evaluation (Swiss Center of Expertise in Human Rights):

Women's economic empowerment: Switzerland has strong international and national obligations to guarantee gender equality. (...) Despite these norms, considerable inequalities between women and men persist in reality. These inequalities in particular concern the following areas: the participation in paid work (women's employment rate is still lower than men's, although it has increased during the last decades); the professional status of women is – despite equal education – lower than men's; representation in leadership positions, where women are underrepresented in management positions; the labour market being characterized by a pronounced sex segregation; equal pay for women and men, which is still not a reality as women's average income is lower than men's (23.6% in the private and 14.7% in the public sector); unpaid care work (women carry out 64% of the unpaid work), negative financial incentives (both tax systems and social security schemes discourage women's participation in the paid labour market); and sexual harassment (both women and men are confronted with sexual harassment in the work place).

(...) Achievements can be noticed regarding legal procedures based on the Gender Equality Act (different legal institutions on different levels regularly deal with cases of gender based discrimination), counseling services addressing different issues linked to gender equality in the work place, gender equality in the public administration (for instance targets for the percentage of women in leading positions), actions to achieve equal pay (for instance monitoring instruments and dialogues with companies), the strengthening of the low income sector by the commitment of the Federal Council to ratify ILO convention No. 189 concerning decent work for domestic workers, measures to improve the integration of female migrants into the labour market and the enhancement of the compatibility between family life and gainful employment (for instance by encouraging the creation of child care facilities by federal, cantonal and communal administrations).

We recommend improving access to justice in cases of gender based discrimination, enhancing the private sector's commitment regarding equal pay and increasing the number of women in leadership positions (underpinned by more binding obligations for businesses), increasing efforts to overcome gender

segregation in the labour market by addressing stereotypes on all levels and further enhancing the compatibility between family and working life by increasing the quality and affordability of child care facilities as a precondition for women's full participation in paid employment.

Implementation of UN Security Council Resolution 1325: For many years, Switzerland has considered the protection of civilians a major priority in its foreign policy and has confirmed its commitment through the adoption of a National Action Plan (NAP) for the implementation of UNSC Resolution 1325. (...) There has been considerable progress in realizing the targets fixed. For instance, the number of women participating in peacebuilding activities has increased in recent years. (...) At the same time, there is a certain gap between Switzerland's commitment to women, peace and security in foreign policy documents at the international level on the one hand and measures taken domestically on the other hand. (...)

We recommend further monitoring of the implementation of the National Action Plan. Moreover, the gender balance in peace missions and other relevant bodies as well in domestic security and police services should be improved further, while engagement for the protection of women and girls in conflict situations, the integration of women in peace building processes and combatting impunity for sexual violence should be pursued both on a bilateral and on a multilateral level. Finally, an increase in financial resources – for instance through gender sensitive budgeting – would give all these strategic commitments further credibility.

Domestic violence: We broadly agree with the analysis and the conclusion made by the Report of the OSCE gender equality delegation. The high rate of women killed as a result of domestic violence is alarming and apparently a specific Swiss phenomenon that should be further analysed. (...)

We recommend that the Swiss authorities adopt comprehensive domestic violence legislation focused on preventing and combating violence against women, including through criminal investigation, prosecution and adequate punishment of those found guilty, and provide social services to victims and their families. Furthermore, the number of shelters for women should be increased, and the financing of existing institutions be secured. (...)

b) Excerpts from the NGO Feedback:

As in other European countries, in Switzerland **the goal of gaining equal rights for all genders** is still far off. Even if we see slight progress in some areas, we see a backlash in others. This derives mainly from the revival of conservative values. The backlash is manifest, for example, in the federal initiatives concerning the family or abortion coming from conservative political parties. Although some of these conservative initiatives were not accepted by the people, they show that women's human rights, sexual and reproductive health and rights are under pressure. Nor are women making relevant progress on structural levels. For example, the salary discrepancy is still close to 19%. When it comes to the Federal Department of Foreign Affairs, civil society is particularly involved in negotiating and developing positions on women's human rights. Unfortunately, the same cannot be said in regard to departments responsible for domestic policy. (...)

Promotion of women's participation in political and public life: (...) Women are under-represented in elected office, both in municipalities and cantons. This has been documented in several studies. The Federal Statistical Office (FSO) provides the figures, even disaggregated by political parties. The gap is almost the same at every level, be it in the executive or legislative bodies. The percentage of women in the most recently elected legislative bodies on a cantonal level ranges from 11.7 to 35.6. The two national chambers have the following percentages: 19.6% in the States' Council and 29.0% in the National Council. (...) The percentage of women in the federal administration is around 40%, but their representation is very limited in top positions (15.6 % according to the FSO). (...) Civil society welcomes the introduction of quotas for

companies close to the Confederation and the cantons. However, these measures should be extended to all companies listed on the Swiss stock exchange.

Creating national mechanisms for the advancement of women: We recommend that in the Federal administration, a clear process is established to coordinate the implementation of international norms and women's human rights; the Federal Gender Equality Office should be given greater legal means to pursue further concerns; legislation should be supplemented in order to allow greater support for civil society and women's organisations; a real mainstreaming and the nomination of gender advisors in the different federal departments and on the cantonal or inter-cantonal levels should be effected.

Human Dimension Issues in Serbia, Requiring Special Attention

In June 2014 a 10-member Coalition of Non-Governmental Organizations on Serbia's OSCE Chairmanship in 2015 was created to work with the Serbian Chairmanship and OSCE institutions to address OSCE-wide human dimension issues identified as priorities by the incoming Serbian Chairmanship and to use the occasion of the Serbian Chairmanship to improve the implementation of human dimension commitments in Serbia. The Coalition identified a number of issues that cause significant concern and require considerable progress in the presiding country which should lead other participating States by example. Some of these issues clearly fall within the scope of existing OSCE human dimension commitments while others do not but nevertheless require serious attention.

The Coalition hopes that Serbian NGOs will be allowed to contribute to the important process of self-assessment of Serbia's implementation of its OSCE human dimension commitments which is currently being prepared by the incoming Serbian Chairmanship. We hope that the information and recommendations below will be useful in conducting the self-assessment.

In general, Serbia has established a legal framework for protecting human rights. Implementation, however, is lacking in many areas. We therefore see the Serbian OSCE Chairmanship as a valuable tool for advancing human rights in the country. Legal reforms are underway, although judicial protection, one of the prerequisites for effective protection of human rights, is currently paralyzed by the strike of attorneys at law. EU aspirations of Serbia are fully in line with the goal of advancing human rights but progress should be visible on the ground. Independent institutions in Serbia that have emerged in the last decade, from the Ombudsman to the Commissioner for Equality, the Commissioner for Free Access to Information and Data Protection, the Agency against Corruption and others are gaining strength and their activities are well respected in the society. These institutions provide a good balance to a weak separation of powers and institution building that is still at an early point.

Discrimination

Protection against discrimination in the Republic of Serbia was established in 2009 and has since been upgraded by adopting appropriate legislation and the establishment of independent institutions for the protection of citizens' rights.

However, improvement of institutional arrangements does not necessarily lead to integration of anti-discrimination policies and norms in political and social life. The lack of consistent implementation of adopted "European laws" is a chronic problem. Fundamental human rights are still violated, especially when it comes to Roma and minority communities and other vulnerable groups (women, LGBT, persons with mental disabilities, elderly, children, etc.). Discriminatory statements, intimidation and violence still occur without political reaction or appropriate follow-up by authorities.

The Prosecution of War Crimes and the Rights of the Victims of War Crimes in Serbia

According to the Annual Report on War Crimes by the Humanitarian Law Center³⁰ and its Analysis of the Prosecution of War Crimes in Serbia in 2004-2013³¹, the characteristics of the prosecution of war crimes in Serbia include:

³⁰ Humanitarian Law Center, "Report on War Crimes Trials", July 2014, <http://www.hlc-rdc.org/wp-content/uploads/2014/07/Report-on-war-crimes-trials-in-Serbia-in-2013-ff.pdf>

³¹ Humanitarian Law Center, "Analysis of the Prosecution of War Crimes in Serbia 2004-2013", September 2014, <http://www.hlc-rdc.org/?p=27457&lang=de>

- A small number of indictments: The number of prosecutions brought by the Office of the War Crimes Prosecutor (OWCP) remains extremely low in relation to the number, scale and intensity of the crimes under international law which were committed by Serbian forces during the armed conflicts of the 1990s.
- Avoidance of politically sensitive cases: Several cases regarding war crimes committed by Serbian forces have been in the pre-trial phase for more than 10 years, including the case of the mass grave in Batajnica.
- Avoiding prosecution of officers and generals: the OWCP has so far prosecuted only low profile perpetrators, while the responsibility of mid- and high- ranking police and army officials is ignored. Individuals responsible under the doctrine of the command responsibility and for crimes against humanity have not yet been brought to justice.
- Mild sentencing policy: In a significant number of cases, the war crimes departments have rendered sentences around, on the border, or even below the statutory minimum. This lenient practice is often the result of the court considering mitigating circumstances relating to the character of the defendant or other issues that, due to the severity of the crime, should not be given much significance (e.g. passage of time after the commission of the crime, being a family person, etc.).
- Protection of victims and witnesses: Institutions involved in war crimes prosecution in Serbia do not seem to sufficiently understand the delicate position of victims and witnesses of war crimes and their importance in the court proceedings. Existing mechanisms for the protection of victims and witnesses from intimidation and assaults on their integrity, along with the support system for victims and witnesses, only partially fulfill this function. The most serious deficiencies have been recorded in the program designed to provide protection to former members of the military and police, as well as the psychological support for victims. The allegations of illegal and unprofessional conduct of the Ministry of the Interior Protection Unit members point to serious problems in the implementation of protection programs.
- Regional Cooperation in the realm of war crimes prosecution amounts to the transfer of cases and exchange of evidence. As of now the OWCP established cooperation with counterparts in Croatia, Montenegro and Bosnia and Herzegovina, as well as with the EULEX in Kosovo. Even though regional cooperation has been on the rise in recent years, problems have emerged in those cases in which the OWCP named citizens of Bosnia and Herzegovina and Croatia who had held important political, military and police functions, as suspects.
- In 2012 and 2013 the Higher Court Department delivered anonymizing rulings in war crimes cases, denying victims and society the right to learn the facts about the war crimes committed.
- Institutional Reform: There are no criteria and conditions which will prevent the employment by the specialized institutions for the prosecution of war crimes of persons who participated in armed conflicts the 1990s.

Victims' Rights

According to the HLCs analysis "Administrative reparations in Serbia - an existing legal framework"³² as well as the findings of the Council of Europe (Point 2.b) and the UN Committee Against Torture (Point 18), Serbia violates victims' rights to compensation and other types of reparation. The existing legal framework is very discriminative, since it doesn't recognize the right to administrative reparations for all victims of war crimes. Only around 10% of victims of war crimes can fulfill their right to reparations according to this law. Among

³² Humanitarian Law Center, "Administrative reparations in Serbia - an existing legal framework", June 2013, http://www.hlc-rdc.org/wp-content/uploads/2014/03/Administrative_reparations_in_Serbia_an_analysis_of_the_existing_legal_framework.pdf

the categories excluded are victims of sexual violence, missing persons, family members, victims of Serbian forces, etc.

Attacks on Human Rights Defenders

Governmental officials rarely condemn or publicly react to threats, physical assaults and cases of incitement to violence and hate speech from extremist groups against non-governmental organizations, human rights defenders, journalists, bloggers or individual citizens. Extremist right-wing organizations are targeting members of minority groups (national, sexual and political minority groups) as well as organizations and individuals dealing with the past and warning about Serbian nationalism. The "Naši" movement spread the list of "30 biggest Serb-haters and traitors among public figures" via social networks, containing the names of many human rights defenders. For months a campaign was waged accompanied by death threats against the Chairwoman of the Helsinki Committee for Human Rights in Serbia Sonja Biserko, following the leaking of information that she had agreed to appear as a witness in Croatia's case against Serbia for genocide before the International Court of Justice.

Members of the non-governmental organization "Women in Black" have been physically assaulted on several occasions. Three years ago their premises in downtown Belgrade were demolished and the police had never identified perpetrators. "Women in Black" activists were again threatened with death in Facebook in March 2014 after Radomir Počuča, the spokesman for the Anti-terrorist Unit, called for hooligans to lynch them after their memorial to mark the 15th anniversary of ethnic cleansing of Albanian civilians in Kosovo. Radomir Počuča and Ivan Ivanović of the "Naši" organization were detained as suspects of the crimes against law and order and racial and other discrimination committed via the Internet. Despite being on trial, Počuča went to fight alongside pro-Russian forces in Ukraine as the judges didn't take his passport.

An editorial of *Vecernje Novosti*, penned by the daily's editor-in-chief Ratko Dmitrović, advocated for a ban on public appearance of Jelena Milić's (director of the Center for Euro-Atlantic Studies) and Sonja Biserko's (chairwoman of the Helsinki Committee), calling them notorious "anti-Serbs" and "traitors" and comparing them with a convicted criminal and drug dealer Kristijan Golubović.

The number of complaints to the Press Council on breaches of the Code of Journalists is rising. One of the most dramatic examples is the campaign against actor Goran Jevtic, who had the main role in a theatre play perceived as sending a message of harsh criticism of the government. Although journalists are obliged to respect the presumption of innocence, the daily *Blic* published an article entitled "Actor Goran Jevtic ravished my son" and continued with accusations the next day breaking the Code of Journalists of Serbia by publishing a news item based on a criminal charge and not on a conviction.

Perpetrators of hate crimes are often not arrested and trials last for a very long time, eventually ending in very mild court sentences. For example, Mladen Obradovic, leader of extremist right-wing organization "Srbski obraz", was sentenced to 12 months of prison in 2012 for inciting hatred before the announced Pride Parade in 2009, but after several appeals and re-trials in 2014 his sentence was reduced to 4 months of house arrest.

National minorities

When it comes to the concept of guaranteed individual and collective rights, and in particular the right to self-governance and the possibility of electing national councils, Serbia is among the top countries in Europe when it comes to the status of national minorities. However, it does not reflect a thoughtful strategy for

improving the status of minorities, but rather ad hoc responses to pressure from the international community.

Discrepancies between the minority policy and practice are manifested in procedural non-compliance, unclear division of responsibilities between institutions, strong tendencies towards ghettoization of national minority communities, and growing internal conflicts. Minorities seek for solutions on the basis of external arbitration, which sometimes comes from central authorities and very often from outside the country, either from so-called kin states or international organizations.

The constant politicization of the society, including national minorities, shows up in over-representation of minority political parties in national councils and the adoption of provisions turning them into the para-state bodies. This leads to a weakening of ties inside communities, including communication and cooperation between various national minorities.

During recent ethnically motivated attacks in Vojvodina (October 2014) after a football match between Albania and Serbia, two Albanian and Gorani-owned shops in the towns of Stara Pazova and Sombor were set on fire while another in Novi Sad was stoned. A bakery in Novi Sad was burned and five more shops in Novi Sad and Vrsac were damaged. The owner of the Novi Sad bakery that was torched said that the police turned down his request for protection, which he had made after the attacks started a day earlier. The police responded that they did not have enough patrol vehicles or the capacity to respond to his request. The police questioned 62 persons and 11 were detained.

Since December 2013, eleven children died in fires in Roma settlements. The poor living conditions of the Roma, most of whom live in wooden shacks throughout Serbia, caused these tragedies, which are also the responsibility of the Serbian state, which treats Roma as second-class citizens, marginalized and separated from other social groups.

Media freedoms / Freedom of expression

The legal framework related to media ownership and transparency has been improved, with the most recent changes in 2014. Nevertheless, it is not implemented consistently: media privatization has been postponed for years; data on media owners and sources of money invested in the media through commercials and other means are not publicly available. State ownership of the media is the most blatant mechanism of the government influence especially when it comes to financing and personnel policy. Media owned by municipalities serve as advertising service for local governments. The Government of the Republic of Serbia has shares in the two most important daily newspapers – Politika (50 percent) and Vecernje Novosti (one third), and decides on the appointments of their editors in chief. An outstanding war propagandist of the 90s, Ratko Dmitrovic was appointed editor in chief of Vecernje Novosti. Several texts in this media outlet in 2013 and 2014 could be characterized as hate speech against human rights defenders.

Even though censorship is illegal in Serbia, different mechanisms allow for “soft censorship” and self-censorship. This is primarily done through advertising agencies whose owners are close associates of the ruling party. These agencies are intermediaries between large advertisers and the media, giving them a strong potential to bring pressure to bear.

Critical opinions about the government are almost completely repressed in the media. The most powerful party in the government criticized the public broadcasting service several times, including severe accusations for waging a dirty campaign against the Prime Minister Aleksandar Vucic immediately after the formation of the current cabinet. One of the most popular political talk shows in the past 20 years, “Utisak

nedelje,” was removed from the program of national TV broadcaster B92. The author of the TV show, Olja Beckovic, claims that she received several phone calls from representatives of the government, including the Prime Minister Vucic, who criticized her work.

During the election campaign in January-March 2014 both print and electronic media favored the ruling Serbian Progressive Party not only through their reporting, but also by attacking its political opponents.

Freedom of expression on the internet was breached numerous times over the past two years. Several websites were hacked after having criticized the government. Web portal Pescanik (Hourglass) was hacked after having published a text questioning the diploma of the Minister of Interior Nebojsa Stefanovic and providing the evidence that it was plagiarized. Office for the fight against high-tech crime never publishes the results of investigation of persons responsible for hacking this web portal.

The Commissioner for Information of Public Importance and Personal Data Protection stated several times that state authorities are denying journalists the right to information of public importance.

Politicians influence the media through fabrications, “exclusive information” and campaigns against their opponents. Independent media associations repeatedly pointed to the fact that information is being leaked by power centers not to inform the citizens but to serve their own purpose in political clashes. The media announce police investigations and accusing individuals while citing the information from investigations and presenting them as proven facts, a practice which was noted by the Ombudsman and the Commissioner for Information of Public Importance and Personal Data Protection.

The murders of journalists Milan Pantic in 2001 and Dada Vujasinovic in 1994 have still not been solved. Investigation into the 1999 murder of journalist Slavko Curuvija and the related trial are full of controversies. The intensity of physical and verbal attacks on journalists has increased. The editor of a private news agency Fonet, Davor Pasalic, was brutally beaten in July 2014, and police has still failed to identify the culprits. Four journalists are under constant police protection, including Brankica Stankovic, journalist and editor of the investigative TV show “Insider”, who has had police protection for five years.

Attacks against LGBT activists

LGBT activists continue to be subject to threats and hate speech. The main trends are impunity and inefficiency of the judiciary in cases of violence, both contributing to the deepening of prejudice and the rise of violence directed at the LGBT community. Even though the Pride Parade was organized in Serbia in 2014, it had previously been banned each year since 2010, a systemic breach of the LGBT community’s human rights. The Pride Week was organized from 22–28 September 2014, but it was not clear until the very last moment whether the authorities would allow the Pride Parade. Several hundred participants, including public officials, human rights defenders, representatives of the international community and LGBT activists from across the region took part in the Parade, while thousands of police officers, special forces and armored vehicles secured the venue, vastly outnumbering the marchers.

It is clear that political will is crucial in providing the security and respect for LGBT rights. A “family walk” organized by the Serbian extreme right-wing group Dveri took place in Belgrade only hours after the Pride Parade, whereby anti-gay groups led a counter-march meant to “cleanse” the city of the LGBT event.

A German LGBT activist was attacked at the main bus terminal; he suffered serious injuries to his head and body. Three suspects were arrested but there is still no information about progress in the prosecution of the

attackers. An additional problem is the lack of official state statistics about cases of violence based on sexual orientation and gender identity.

LGBT persons faced a dangerous level of homophobia and discrimination in the education system due to discrimination and intolerance in textbooks and inadequate knowledge by professors of issues regarding gender identity and sexual orientation. 80 percent of high school students support discrimination against LGBT persons, while 38 percent of young men aged 14 to 19 believe violence against LGBT persons is justified and only 16 percent think that LGBT persons should have the same rights as everyone else.

Inhuman Conditions in Closed Institutions

Inhuman conditions do not refer only to the living conditions (quality of accommodation, rooms, beds, facilities, food, bathrooms), but also to healthcare, mechanisms for filing complaints and providing assistance to detained persons, including the process of re-socialization and rehabilitation. The number of detained persons in Serbia exceeds the capacity of prisons by 20%. Most complaints refer to healthcare provision (over 50%), and more than 50% of total number of detained persons are recidivists; only a small number of prisoners is engaged in prison work (10-20%) or provided with occupational therapy.

Individual cases of inhuman treatment, punishment and torture are most frequent in the facilities closed to independent monitoring by civil society organizations. It is only possible to enter these facilities in Serbia through the National Preventive Mechanism (NPM).

Prisoners awaiting or standing trial are kept in detention for several years on average without adequate treatment programs since the law differentiates them from prisoners under sentence.

Cases of excessive use of force against prisoners and use of instruments of restraint by institutional personnel have also been observed. In some prison institutions, high-security measures are being implemented for a long time (up to several years), while in others the very number of disciplinary measures taken against inmates testify of unjust punishments even for minor offenses.

Recommendations:

1. On prosecution of war crimes:

- Provide continuous political and public support for the comprehensive prosecution of war crimes in Serbia;
- Adopt a strategy for the period 2015-2025 for the prosecution of war crimes with clear objectives, directions, necessary resources and an action plan for implementation of the strategy;
- Apply the principles of command responsibility and crimes against humanity when indicting persons for crimes committed in the 1990s;
- Improve the system of support and protection of victims and witnesses, including engagement of psychologists to help and support witnesses and affected individuals;
- When deciding on sentences and the application of mitigating and aggravating circumstances, give greater attention to the specific nature and severity of war crimes;
- Strengthen regional cooperation of war crimes prosecutors (transfer proceedings against foreign nationals to their countries, inform prosecutors in the region of the cases that involve

citizens of other countries, transfer evidence on those cases; initiate the signing of a formal agreement between the OWCP and the Kosovo Public Prosecutor's Office);

- Improve the existing legal framework for the protection of civilian victims of war in Serbia by taking into consideration international standards in this field as well as the observations and recommendations of international bodies that monitor the implementation of international conventions for the protection of human rights;
 - Introduce specific criteria for employment in specialized institutions for the prosecution of war crimes that ensure that these institutions do not employ persons who participated in armed conflicts in any capacity.
2. Improve existing minority policy by adopt new instruments for promoting diversity, non-discrimination, acceptance of differences and multilingualism. Place greater focus on values, procedures and institutions for integration. Actively cooperate with OSCE High Commissioner on National Minorities.
 3. Effectively investigate allegations of hate crimes and prosecute hate crimes. Bias motives should be taken into consideration throughout criminal proceedings; educational campaigns about discrimination, hate crime and hate speech should be carried by special agencies. The government should develop educational policies aimed at promoting the values of tolerance, reconciliation, cultural diversity, inclusion and non-discrimination through educational institutions and media. Special focus should be placed on recent conflicts in the region and the importance of accountability. Actively cooperate with ODIHR Tolerance and Non-Discrimination Unit in addressing the problem of hate crimes.
 4. Adequately react to all types of incidents by extreme right wing groups and publicly denounce their activities. The government should make an effort to create a social atmosphere for the inclusion of all minorities (ethnic, religious, sexual etc.)
 5. Harmonize the practice of the Constitutional Court with the practice of European Court for Human Rights regarding violations of the rights of LGBT persons; recognize same-sex couples in order to enable them to enjoy basic rights stemming from a long life together.
 6. Speed up the reform of closed institutions (prisons, psychiatric institutions). Decrease the number of detained persons through the promotion and encouragement of alternative sanctions. Improve healthcare through more conscientious and comprehensive programs, including preventive medicine. Improve the treatment of prisoners under sentence primarily through educational and occupational training programs; place a special focus on social rehabilitation and pre-release programs to prepare inmates for better integration into outside community upon release.
 7. Speed up media privatization and strengthen the mechanism guaranteeing the independence of public broadcasting services. The police and the judiciary must promptly react to all assaults at journalists. Actively cooperate with OSCE Representative on Freedom of the Media in the issues of freedom of expression, including security of journalists.
 8. The authorities should focus on the security of human rights defenders, with all elements provided by the well-developed legal framework put to use. Pending court cases that are moving towards the statute of limitation should be sped up and concrete results should be visible. Public officials should strongly condemn incidents against human rights defenders, as well campaigns in media against human rights defenders. Special attention should be paid to campaigns in the state owned/controlled media against human rights defenders. Implementation of the recently adopted ODIHR Guidelines on Security of Human Rights Defenders should also be a focus of the incoming OSCE Chairmanship and the government of Serbia.

Enhancing Civil Society Input in OSCE Activities

1. General approaches

- 1) OSCE documents refer to civil society groups as important actors in the implementation of OSCE commitments and call on OSCE institutions and participating States to cooperate with NGOs. Nevertheless, we believe that civil society's potential remains largely untapped by the OSCE, since many NGOs at the local, national, and international levels have increased their expertise over the last decade. This is particularly important in light of the uneven record of implementation of human dimension commitments across the OSCE region and the emergence of new human dimension challenges. It is important for the OSCE to include NGOs as full-fledged partners for dialogue, especially in cases of anti-democratic backsliding and human rights crises.
- 2) At the same time we see alarming initiatives coming from some OSCE participating States aimed at limiting civil society's role in OSCE activities and even instances of reprisals against NGOs for their engagement with the OSCE and other international bodies. We consider it of paramount importance for the OSCE to firmly adhere to the principle of inclusive NGO participation spelled out in OSCE documents, in particular, the Helsinki Document of 1992 and the Budapest Document of 1994, and ensure the safety of those NGOs and activists that experience pressure for their engagement with the OSCE.
- 3) NGOs' detailed and often unique knowledge of human dimension issues is based on their work on the ground and, in particular, with victims of human rights violations. NGOs are able to provide valuable input at different stages: from monitoring implementation of OSCE commitments to problem identification, goal setting, suggesting new mechanisms and procedures, developing policy advice, drafting documents, elaborating new normative approaches, participating in the implementation of OSCE programs and activities and assessing their efficiency and building capacity and doing trainings to raise awareness of OSCE principles and activities. Therefore, NGOs should be involved in all stages of OSCE's human dimension activities and not be limited to certain events such as HDIMs. This type of narrowing of the scope of NGO engagement would not be based on existing OSCE commitments and rules of procedures. Instead, OSCE political and decision-making bodies and autonomous institutions should seek and utilize civil society contributions in their various activities and in different settings.
- 4) We regret that the draft declaration on civil society introduced by the Swiss Chairmanship for adoption at the Ministerial Council meeting in Basel could not find consensus among participating States and encourage participating States to agree to a significant and meaningful declaration civil society at the ministerial level in the nearest future.
- 5) We suggest the following general principles for civil society involvement in the work of OSCE:
 - involvement of NGOs in all stages of human dimension activities and with all OSCE institutions;
 - inclusiveness and non-discrimination (excluding only those who support violence and terrorism);
 - security for NGOs and activists engaged with the OSCE;
 - recognition of the pluralistic and non-hierarchical nature of civil society;
 - equality of NGO and non-NGO experts; and
 - openness and responsiveness by OSCE institutions to civil society's proposals.

In the view of the Helsinki +40 process, civil society participation in discussions of OSCE reforms, including human dimension reviews, should be ensured.

2. Civil society in crisis resolution and dealing with emergencies

Civil society has shown its ability to act during the various types of crises that have occurred in the OSCE region, such as the clashes in Osh, Kyrgyzstan and the crackdown in Belarus, while the crisis that has unfolded in and around Ukraine has once again shown the capacity that civil society has to offer the OSCE in terms of observation, early warning, evidence gathering and conflict resolution. Unfortunately, Ukraine also demonstrates the lack of mechanisms in OSCE to accommodate what civil society has to offer. While the CiO is working to coordinate efforts by independent institutions, participating States, the CPC and observation missions, civil society has only the CiO and some other occasional entry points to whom they can submit their information and proposals.

The necessity to coordinate efforts of OSCE bodies, institutions and civil society in cases of serious crises calls for establishing a new cross-dimensional mechanism that would allow coordination across dimensions.

In the case of serious crises, we propose the establishment of a contact group as a part of such a cross-dimensional mechanism to serve as a platform for dialogue. Such contact groups would be comprised of all actors involved in crisis resolution – the CiO, participating States, independent institutions, the CPC, observation missions, local civil society and international civil society organisations.

The mandate of such a platform could be:

- monitoring human dimension conditions in the context of crises, conducting an impartial assessment of the situation and regularly providing recommendations for the relevant bodies of the OSCE, as well as the participating States;
- reviewing and proposing actions on reported cases of violations of the OSCE Security Code, including reports from CSOs;
- reporting and proposing actions based on early warning observations, including observations by CSOs;
- engaging civil society groups from target countries and international civil society networks in selecting members for Special Monitoring Missions (SMM) deployed to those countries, as well as revising and tightening the criteria for this selection;
- coordination of actions by different OSCE institutions among themselves and with civil society groups;
- addressing humanitarian issues, such as prisoners of war, non-combatant prisoners, repatriation of bodies, internally displaced persons and refugees. That could be done through various means, including negotiations with different sides, legal aid, trial observations, prison visits and aid on legislation reforms;
- mandating joint observation, investigation and mediation missions;
- receiving evidence for possible international legal action; and
- advising media on unbiased reporting, as well as taking action on outstanding cases of propaganda and hate incitement.

The exact mandate and working procedures of such a platform should be discussed with civil society.

As a part of greater civil society involvement in conflict prevention and resolution, as well as in other emergency situations, the following steps should be taken:

- The OSCE Secretariat and the CPC should develop their own mechanism for interaction with civil society. This could include, in particular, an NGO contact point for human dimension emergencies and crisis situations. This is especially important for countries where there is no OSCE office, mission or center. Such an NGO contact point could be based in the Secretariat's crisis unit.
- An emergency contact point should be established within the Chairmanship for those types of emergency for which there is no special OSCE representative or specialized institution, including instances of mass violence against participants in demonstrations and the persecution of activists.
- The Conflict Prevention Centre at the Secretariat should engage civil society in increasing civilian observation capacity in response to early warning signs.
- Monitoring missions that are deployed in crisis situations should have a mechanism for permanent contact with civil society.
- Civil society representatives should be able to participate (possibly as independent observers) in investigations and fact-finding missions in emergency and crisis situations and contribute to and comment on these missions' reports.
- In case participating States do not consent to host an official observation mission, the OSCE could more actively use NGO observation reports. Particular attention should be paid to those types of emergencies and crises for which there is no special OSCE representative or specialised institution, including instances of mass violence against participants in demonstrations and the persecution of activists. NGOs could conduct observation and monitoring missions according to OSCE institution methodology and then request that their materials and conclusions be included in reports to the Chairmanship and the Human Dimension Committee. Results of election observations, trials and peaceful assemblies by NGOs should receive proper consideration and follow-up, especially when ODIHR or other OSCE institutions' observation missions are not allowed into the country.

3. Civil society participation in the annual cycle of human dimension and OSCE events

1) *General approach to all human dimension events*

- The OSCE should ensure robust civil society participation in the whole cycle of human dimension activities throughout the year, beginning with preparations for the HDIM (or SHDMs, whichever comes first) and ending with the meeting of the Ministerial Council (which is not formally part of the human dimension cycle but addresses human dimension, along with other dimensions).
- The OSCE should increase the role of independent experts, including NGO representatives, in preparing, holding them, reporting and developing follow-up actions from human dimension events.

2) *HDIMs and SHDMs*

1. CSO experts should be involved in preparing the agenda of HDIM and SHDMs. In preparation for HDIM, the OSCE Chairmanship should set up an informal panel of experts, including NGO representatives, to examine information and conclusions discussed at the previous HDIM and SHDMs and prepare recommendations on OSCE actions to be discussed at the upcoming HDIM. This would ensure continuity of work in the human dimension and an action-oriented and forward-looking approach.
2. Experts from civil society should be more systematically invited to serve as introductory speakers, moderators and panelists at HDIM and SHDM plenary sessions.

3. Experts from civil society should be engaged by the Chairmanship in preparing Chairmanship “perceptions papers” on the results of HDIM that would be used in discussions at a reinforced Permanent Council meeting, should such a reinforced PC meeting be introduced.
4. It is important to ensure that a Reinforced Permanent Council meeting be open to civil society representatives as a matter of standard procedure rather than on an ad hoc basis by invitation of the Chairmanship-in-Office.

3) *Permanent Council and Human Dimension Committee meetings*

1. It is important to increase the openness of the Permanent Council (PC) and the Human Dimension Committee (HDC) to civil society, for example, by introducing the practice of regularly inviting civil society experts to address these meetings and propose recommendations in the human dimension to participating States and OSCE institutions.
2. At least certain parts of Permanent Council meetings – certainly those related to the human dimension – should be open for observation, perhaps through Internet streaming and close-circuit TV, with a view to moving in the future to opening most or all PC meetings for direct observation by civil society representatives present in the meeting room.
3. Should the practice of holding a Reinforced Permanent Council meeting as part of the follow-up process to HDIM be adopted, these sessions should be treated as a special case and always include participation of civil society to discuss the outcomes of HDIM and recommendations for further OSCE action.
4. All meetings of the Human Dimension Committee should be open for observation by civil society. Ideally, tentative agendas and work plans for the HDC for the upcoming year should be set as a follow up to HDIM in consultation with civil society, through a special meeting including the HDC Chair, interested State delegations and civil society representatives.
5. The commendable practice of participating States’ voluntarily reporting at HDC meetings on implementation of human dimension commitments should continue and be reinforced and expanded. This practice is of crucial importance for developing stronger emphasis in OSCE on implementation and follow up to recommendations. Therefore, voluntary reports by participating States should be the norm, not an exception. It is important that the HDC and ODIHR jointly and in consultation with civil society elaborate guidelines for such voluntary reporting by State delegations. The HDC Chair and reporting States should invite NGOs working in related geographic and thematic areas to these meetings and take their recommendations into account. Country reports and a summary of discussion of these reports at HDC meetings should be made public. NGOs should be provided with an opportunity to comment on these reports.
6. The HDC has already started inviting NGO representatives to its meetings to present civil society recommendations on particular human dimension commitments, on the reform of human dimension mechanisms and for discussions with participating States. This commendable practice should develop into a tradition and lead to the regular presence of NGO representatives at discussions at the HDC.

4) *Ministerial Council meetings*

1. Annual Parallel Civil Society Conferences where recommendations to participants of the Ministerial Council Meetings are elaborated must be recognized as a regular element of the cycle of human dimension activities. Support from the Chairmanship and OSCE institutions for the Parallel Conference would be welcome.
2. The tradition of holding a public event at which the outcome documents of the Civil Society Parallel

Conference are handed over to the current and the incoming OSCE Chairs-in-Office should be established as a standard procedure.

3. An NGO representative should be invited to present civil society recommendations at a plenary session of the Ministerial Council meeting. Copies of civil society recommendations should be distributed among all State delegations participating in MCMs. This is standard practice in international organizations including the Community of Democracies and the EBRD. After the presentation of civil society recommendations, the Chairmanship and participants in the Ministerial Council meeting should be allowed time to comment on them.
4. A meeting of NGO representatives with the Troika should always be held during Ministerial Council meetings or Summits to discuss in greater detail recommendations of the Parallel Conference, the results of human dimension activities during the year and prospects for the coming year.
5. Civil society should be consulted in the process of drafting and discussing decisions of the Ministerial Council related to the human dimension. This could be done by the Chairmanship and interested delegations, informally or through a more formalized procedure.
6. The practice begun by the Swiss Chairmanship and implemented by the Chairmanship and civil society of holding regional civil society seminars throughout the year on human dimension issues to feed into the annual Civil Society recommendations has been successful. This process should be continued and replicated by incoming Chairmanships and OSCE institutions.

4. Civil society interaction with OSCE institutions

General proposals for all institutions

- 1) Consult with civil society prior to developing programmatic priorities and project activities.
- 2) Involve civil society in the implementation of programmatic activities to the maximum extent possible.
- 3) Build into programs regular impact evaluations with substantive input from civil society.
- 4) Establish a process of annual assessments of activities with substantive input and recommendations from civil society.
- 5) Create an NGO focal point or name an NGO liaison person.
- 6) Consult with civil society in the process of planning and preparing the agenda of events.
- 7) Institutions such as ODIHR and RFoM should co-organize events with civil society using the model introduced during the Swiss Chairmanship.

ODIHR

ODIHR has always played a fundamental role in the human dimension, and does a significant part of its work in conjunction with civil society. Still, ODIHR's work could benefit from broadening some of these interactions.

Civil society representatives should play an important role if new expert groups on fundamental human rights modeled after the ODIHR Panel of Experts on Freedom of Assembly are established at ODIHR or other OSCE institutions.

Civil society should be able to contribute, if ODIHR develops mechanisms for regular monitoring of the implementation of human dimension commitments, including by elaborating recommendations for improving implementation of commitments.

ODIHR should consider the possibility of including civil society representatives in missions observing elections, trials and peaceful assemblies (possibly as independent observers). In addition, civil society organisations' ability to conduct their own independent observation of elections, trials and peaceful assemblies and to make assessment of ODIHR observation reports should be recognized as an important contribution to the implementation of OSCE commitments. ODIHR should pay special attention to the protection and safety of NGOs and activists that face retaliation for their engagement in observing elections, trials and peaceful assemblies.

One way to overcome the problem of lack of consent of participating States to host an ODIHR observation mission could be a more active use by ODIHR of NGO observation reports. Particular attention should be paid to those types of emergencies and crises for which there is no special OSCE representative or specialised institution, including instances of mass violence against participants in demonstrations and the persecution of human rights defenders. NGOs could conduct observation and monitoring according to ODIHR methodology and then request ODIHR consider these materials and include their data and conclusions in reports to the Chairmanship and the Human Dimension Committee. Results of NGO monitoring of elections, trials and peaceful assemblies should receive proper consideration and follow-up, especially when ODIHR or other OSCE institutions' observation missions are not allowed into the country.

To ensure greater consistency, quality and impartiality of NGO reports and to make them fit into the system, OSCE/ODIHR should develop monitoring and reporting guidelines for NGOs. More active use of NGO reports could be tested in the observation of peaceful assemblies in countries that have not allowed in ODIHR observation missions.

Should ODIHR strengthen existing and develop new mechanisms for on-site observation (for example, monitoring of places of detention), systematic monitoring of the implementation of commitments and rapid response, civil society should be able to contribute to this process. In particular, groups comprised of experts from academia and civil society, modelled after the ODIHR panel of experts on freedom of assembly, could be established at ODIHR. These expert groups could elaborate human dimension guidelines and recommendations on the implementation of existing human dimension commitments.



BASEL DECLARATION

RISING INTOLERANCE, DISCRIMINATION, AND HATE CRIMES POSE A MAJOR RISK FOR SECURITY AND REQUIRE A COORDINATED RESPONSE FROM THE OSCE

*Adopted by the participants of the OSCE Parallel Civil Society Conference
Basel, 2-3 December 2014*

The OSCE Parallel Civil Society Conference-2014,

CONSIDERING that equality and protection against discrimination, racism and other forms of xenophobia and intolerance is a key OSCE value, as stated in the Charter of Paris for a New Europe (1990): “We express our determination to combat all forms of racial and ethnic hatred, anti-Semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds,” and in the key anti-discrimination commitments in the 1990 Copenhagen Document: “...all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground.” Also considering that this determination has been reaffirmed on numerous occasions since then, such as at Ministerial Council meetings in Porto in 2002, Maastricht in 2003, Sofia in 2004, Ljubljana in 2005, Brussels in 2006, Madrid in 2007, Athens in 2009 and at High Level conferences in Bucharest in 2007, Astana in 2010, Tirana in 2013, and, most recently, at the High-Level Commemorative Event in Berlin in November 2014 on the occasion of the 10th Anniversary of the OSCE Berlin Conference on Anti-Semitism;

UNDERLINING that this key value is an essential element of the human dimension, which is in turn an essential component of the comprehensive security concept underlying the Helsinki process and the OSCE;

CONSIDERING that in recent years we have witnessed a new rise of racism, xenophobia, discrimination, and intolerance across the OSCE region, which is manifested through an increase in hate-motivated violence, hate speech, and other acts of intolerance targeting ethnic and religious minorities, Roma and Sinti, migrants, LGBT, and other vulnerable groups. Some participating States have recently adopted new discriminatory laws and engaged in discriminatory practices against these groups, in particular migrants and LGBT, violating the fundamental principle of non-discrimination enshrined in international human rights treaties and spelled out in OSCE commitments. By doing so, they are de-facto encouraging intolerance and hatred towards minorities. The problem is further exacerbated by a lack of adequate investigation of such crimes and a failure to bring perpetrators to justice, which creates an atmosphere of impunity and permissiveness;

EXPRESSING concern that among the most worrying trends in recent years has been the rise of organized discrimination, racism, xenophobia and intolerance in the form of racist and extreme-right political movements and parties across the OSCE region, both in the East and the West. It was demonstrated yet again during the European Parliament elections in May 2014. Such developments are often linked with extreme forms of nationalism or ideologies like Nazism and fascism, and create a growing risk to the

security of our societies by deepening the gaps between different groups of society and giving rise to further conflicts and extremism;

EXPRESSING grave concern about a change in public attitudes towards the rise of racism, a growing acceptance of organized manifestations of racism, xenophobia, discrimination, and intolerance, and ideologies similar to Nazism and fascism and the lack of proper response by key institutions in societies, which make this one of the most serious problems in many OSCE participating States. In a number of participating States racist and xenophobic parties, some represented in national parliaments, systematically use hate speech and generate broad public response to such statements, adding to existing tensions;

RECOGNISING that while a broad consensus has existed in our societies since World War II that anti-Semitism or racism are unacceptable, other kinds of phobias are now more easily exploited by the right-wing movements and populist politicians such as intolerance towards migrants and LGBT, as these phobias are still not conventionally unacceptable in many OSCE participating States. Since they are easier and safer targets, migrants and LGBT have become the "new scapegoats." It is crucially important to remember that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law", as stated in the 1990 Copenhagen Document, and ensure that discrimination on any and all grounds is made unacceptable in our societies, be it racism, xenophobia, anti-Semitism, intolerance and discrimination against Muslims, Christians and members of other religions, Roma and Sinti, migrants or LGBT.

UNDERLINING that the roots of these developments are found in the fundamentals of society itself and should be challenged not only by effective legislation, consistent policy and sound law enforcement measures but, equally importantly, by education that discusses the value of diversity and respect for everyone's human rights, as well as the key role of society in responding to the new challenges of growing intolerance. Some OSCE participating States have developed good practices to promote diversity and combat racism and intolerance through both formal and non-formal education, which may be adapted and disseminated across the region;

RECALLING that more effective implementation of existing OSCE human dimension commitments, including those in the field of protection of rights of all persons belonging to minorities and on tolerance and non-discrimination, is one of the priorities of the Joint Work Plan adopted by Switzerland and Serbia for their OSCE Chairmanships in 2014 and 2015;

RECOGNISING efforts already taken in this respect by the OSCE ODIHR Tolerance and Non-Discrimination Programme, the Personal Representatives of the Chairman-in-Office on Tolerance and Non-Discrimination, as well as by the High Commissioner on National Minorities and other OSCE bodies and institutions;

* * *

CONSIDERS that the OSCE needs to create a more comprehensive and consolidated programmatic and institutional framework to effectively confront discrimination, hate crime, racism, xenophobia and other forms of intolerance, which should go beyond focusing on specific manifestations of hatred or addressing discrimination against selected minorities and instead address the common roots of these problems, combat discrimination on any and all grounds, and embrace all vulnerable groups. In this regard the vast experience accumulated over the years by OSCE bodies and institutions in the field of fighting specific forms of discrimination and intolerance, such as anti-Semitism, Islamophobia and discrimination against Roma and Sinti, should be reflected upon and adapted to confront all forms of discrimination and intolerance.

NOTES that ODIHR has well-developed observation mechanisms in place to ensure implementation of commitments on fair and democratic elections. Notes that these mechanisms could be strengthened by including in their scope monitoring of the observance of fundamental rights, including the rights of minorities and vulnerable groups in the context of elections.

NOTES that civil society organisations across the OSCE have a strong knowledge and experience in combatting racism, xenophobia and intolerance and have developed and effectively implemented unique methodologies in this area. Their experience should be put to use by the OSCE and its participating States.

URGES the OSCE Ministerial Council to explicitly re-affirm existing OSCE commitments to combat all forms of discrimination, racism, xenophobia, intolerance, and hate crimes, and to review these commitments in order to address new forms and manifestations of these phenomena so as to protect all minorities from discrimination on any and all grounds without exception. The OSCE Ministerial Council and other OSCE bodies and institutions should also initiate measures to evaluate the implementation and effectiveness of existing OSCE programmes in this field.

CALLS ON the participating States to intensify their efforts to implement OSCE commitments in the field of confronting racism, xenophobia, anti-Semitism, intolerance, and discrimination against Muslims, Christians and members of other religions, Roma and Sinti, migrants or LGBT, including by fully cooperating with relevant OSCE bodies and institutions to review existing domestic legislation and policies, repeal discriminatory laws, develop new policies to effectively address contemporary challenges.

ENCOURAGES the OSCE bodies and institutions to take concrete steps without delay to develop appropriate and effective mechanisms and tools for combatting and preventing, intolerance and discrimination against Muslims, Christians and members of other religions, racism, xenophobia, anti-Semitism Roma and Sinti, migrants and LGBT and in doing so take into account the following recommendations that emerged from civil society workshops held across the OSCE region in 2014:

- OSCE political bodies should develop a comprehensive OSCE action plan to combat racism, xenophobia, discrimination on all grounds, hate crimes and other forms of intolerance, in order to pool resources and enhance cooperation between various stakeholders within the OSCE framework, as well as to improve cooperation with other relevant international institutions;
- Personal Representatives of the Chairman-in-Office on Tolerance and Non-Discrimination should increase the visibility of their work and enhance their cooperation with civil society (including seeking increased media coverage of their country visits, wider dissemination of their reports and more active participation in international and national events on topics relevant to their mandates, including those organized by NGOs);
- ODIHR should develop comprehensive guidelines for the participating States on addressing racism, xenophobia, discrimination on all grounds, hate crimes and other forms of intolerance through education and youth policy, including specific methods for anti-racism education, building on its experience of developing educational materials in the field of the teaching of anti-Semitism , Holocaust education, education against Islamophobia and human rights education for various social and professional groups;
- ODIHR should develop recommendations on the review of school curricula with the goal of removing elements that may promote negative stereotypes, incite hatred and intolerance, and strengthening measures to combat bullying;
- ODIHR, together with the Venice Commission, should examine the legislation of participating States for discriminatory provisions targeting religious and ethnic minorities, Roma and Sinti, migrants, LGBT, and other groups, and issue recommendations upon results of this examination; participating States should request such examinations and follow their recommendations;
- ODIHR should organize expert consultations on ways to address violations of fundamental rights, including incitement to hatred, in the context of elections in participating States, by using, inter alia, existing tools such as ODIHR election observation missions and the Panel of experts on political party regulation;

- The Representative on Freedom of the Media should develop and promote guidelines for participating States on combatting hate speech in the media and the Internet as well as by public officials and politicians, while also upholding freedom of expression.

In our times, we witness the ideology of racism and intolerance being incorporated into political movements and parties and discrimination increasingly practiced by governments. In the past this has led to the gravest and darkest pages of human history. It has long been a priority of many organisations and societies to prevent this from happening again. Now these old risks are emerging in a new form, as societies are rapidly changing. This forces us once again to make combatting discrimination, racism, xenophobia and intolerance a priority.

