



CIVIL SOCIETY RECOMMENDATIONS TO THE PARTICIPANTS OF THE OSCE MINISTERIAL COUNCIL MEETING IN KIEV, 5-6 DECEMBER 2013

The Civic Solidarity Platform, a network of more than 50 human rights NGOs from throughout the OSCE region,¹ convened the 2013 OSCE Parallel Civil Society Conference in Kiev on 2-4 December, building upon the tradition of OSCE parallel civil society conferences in Astana in 2010, Vilnius in 2011, and Dublin in 2012. Civic Solidarity developed the attached policy document containing civil society analysis and recommendations on alarming human dimension issues across the OSCE region and on human dimensions issues in Ukraine, in light of the country's OSCE Chairmanship. It also includes recommendations for increasing the efficiency of the OSCE human dimension process. Activists from Azerbaijan, Armenia, Belarus, Belgium, Georgia, Kazakhstan, Moldova, the Netherlands, Norway, Russia, Serbia, Sweden, Switzerland, Tajikistan, Ukraine, the United Kingdom, the USA and other countries discussed the document and formally adopted it at the Parallel Civil Society Conference.

The outcome document is addressed to governments of the OSCE participating States who will be participating in the upcoming Kiev meeting of the Ministerial Council, as well as all OSCE institutions working in the human dimension, including the current and the incoming Chairmanships, the Permanent Council, the Human Dimension Committee, ODIHR, the OSCE Secretariat, the OSCE Parliamentary Assembly, the OSCE High Commissioner on National Minorities, the OSCE Representative on Freedom of the Media, and the OSCE field missions, offices and centres.

We hope this analysis and the recommendations that flow from it will be studied carefully at the Ministerial Council meeting and in the work of OSCE thereafter. 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 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 54 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 and Dublin please visit <http://civicsolidarity.org/page/osce-parallel-civil-society-conferences-outcome-documents>.

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On the Application of the Principles of International Law in the Field of Human Rights in the OSCE Participating States

In many OSCE participating States that have ratified international human rights treaties (covenants, conferences, etc.) and incorporated them into national legislation, their provisions are generally not implemented by law enforcement or even judicial bodies.

The concept of human rights concerns the relationship of the individual and the state (the authorities), not the relationship between two individuals or between an individual and an organization. It is based on the recognition of human dignity as the foundation for relations between the individual and the state and acceptance of the fact that human rights are granted to the individual at birth and are therefore universal, indivisible, and inalienable.

The concept of human rights is based on three fundamental principles: **(1) all state authorities should have limited powers and must act in strict accordance with restrictive frameworks established by law; (2) all individuals have their own autonomous sphere in which no one, including the state, has the right to interfere; (3) all individuals have the right to make a complaint to the state and demand that his/her rights and freedoms be protected.** The task of the state is to promote, maintain, and protect each individual's rights and freedoms and to pursue the restoration and compensation of these rights and freedoms if they have been violated.

In this we find the basic conceptual problem of legislation and law enforcement practice in a number of OSCE member states, where state policy is based on the concept of legal regulation of human rights and freedoms, the priority of state interests and a subjective interpretation of collective interests. Instead, state institutions should all serve the goal of promoting, protecting and defending human rights and freedoms. While restrictions on human rights are possible, they should serve goals set forth in law, be necessary in the conditions of a democratic society and proportionate to any threat to national security, public health and morals or the rights and freedoms of others. They should be based on the following fundamental principles:

1. The principle that the citizen is permitted everything that is not prohibited by law while the authorities are forbidden everything that is not expressly permitted by law:

Citizens do not need to prove to representatives of the state that their actions are permitted by law. It is representatives of the state who are required to prove to the citizen by citing specific provisions of the law that particular actions or behavior are prohibited. Legislation should clearly define procedures governing the conduct of state authorities and preventing them from arbitrarily interpreting provisions of the law.

2. The principle of the presumption in favor of protecting and implementing rights and freedoms:

The decisions and actions of competent government bodies should be aimed primarily at promoting the implementation of constitutional rights and freedoms. They should only impose legal restrictions when there are sufficient grounds to do so. The burden of proof regarding the presence of sufficient grounds for the imposition of such restrictions should lie with the body authorized to impose such restrictions.

3. The principle of legal certainty and predictability:

Any restrictions on rights or freedoms should be based on clear criteria that allow any person with certainty to distinguish lawful from unlawful conduct and to foresee the legal consequences of his/her behavior. There should be no possibility of arbitrary interpretation of the law by either representatives of the state or by citizens.

4. The principle of proportionality:

Any restriction on the implementation of a right or freedom must be proportionate to the aim of the legislation. Methods for achieving such aims that minimize restrictions should always be favored.

5. The principle of non-discrimination:

The principle that human rights and freedoms must be secured without discrimination lies at the heart of international standards. Article 2 of the ICCPR requires each state to take measures to ensure the realization of human rights for all individuals within their territory and subject to their jurisdiction without discrimination of any kind.

6. The principle of transparent decision-making:

Citizens should have unimpeded access to information about the motives behind a decision to limit a right or freedom. The transparency of the decision-making process is a guarantee that rights and freedoms will not be restricted on the basis of an imaginary threat and that in the case of real-life problems they will be resolved in good time.

7. The principle of rapid and timely administrative or judicial review of appeals against court rulings:

Citizens' seeking to challenge the limits of a right or freedom through the courts should be guaranteed a rapid hearing. It is important to bear in mind, however, that the opportunity to challenge decisions in court does not replace effective administrative procedures for reviewing decisions.

8. The principle of following eligibility criteria for restrictions on rights and freedoms:

The principle that the only permissible restrictions of an individual's rights and freedoms are those that are established by law; answer a pressing public or social need; and pursue a legally valid purpose in a democratic society, such as safeguarding the interests of national security or public safety, preventing disorder or crime, or protecting public health and morals or the rights and freedoms of others should be enshrined in law and implemented in practice.

Disavowal of or noncompliance with these principles renders any discussion on how to follow international human rights standards meaningless and compromises the implementation of international human rights obligations by the OSCE participating States.

Alarming Trends with Fundamental Human Rights in the OSCE Region

Democratic Development

Democratic development is threatened when citizens' right to participate in political activities is not respected, when elections are not free and fair, when the principle of separation of powers is violated, when barriers are created to the operation of civil society organizations, when free media is destroyed and when citizens' ability to participate in governing their countries is limited.

We have witnessed with great concern the following worrisome tendencies in democratic development in a number of OSCE participating States:

- continued pressure on the political opposition, including by making procedural requirements for registering a political party more complicated, lack of access by political opposition groups to national mass media, steps by the authorities to limit the activities of opposition groups in the provinces and rural areas, and politically motivated criminal prosecutions of opposition politicians and participants in opposition groups;
- the absence of free and fair elections, steps designed to ensure that power remains in the hands of ruling groups, including refusal to allow independent opposition candidates to participate in elections, unequal access by candidates to the media, the widespread use of administrative resources to support those in power, massive falsification of election results, a failure to hold those responsible for these acts accountable and a lack of independent judicial review of election violations and pressure on independent observers;
- violations of the principle of separation of powers and of checks and balances by de facto subordination of parliaments and judicial authorities to the executive branch;
- limitations on independent media and journalists, including by making procedures for registering media companies more complicated, the liquidation of independent media through charges of a political nature or for strictly formal violations of law, the use of civil suits for defense of a person's honor or character and criminal prosecutions of independent media and journalists on charges of libel that lead to huge fines and the closing of newspapers and magazines;
- growing pressure on civil society organizations, most particularly those engaged in defending human rights, through efforts to limit their financing (via the so-called "foreign agents" law), through the use of law enforcement agencies, prosecutors' offices and judicial organs to persecute independent NGOs on clearly political grounds, through the tapping of telephone conversations, the interception of activists' Internet correspondence and by declaring human rights activity "interference in the internal affairs of the state"; as well as
- strict limitations on or the complete nullification of citizens' ability to participate in resolving social problems on national, regional and municipal levels.

Recommendations for OSCE participating States:

1. Guarantee the political opposition the rights to carry out its activities freely, to freely access the mass media and make their political views known, including through public discussions of political issues.

2. Guarantee that electoral systems and procedures will ensure the expression of citizens' will without interference by the authorities and in accordance with the OSCE's Copenhagen Document.
3. Guarantee that the principle of separation of powers and systems of checks and balances will not be violated; guarantee that parliaments and judiciaries will be independent of presidential and executive authority.
4. Guarantee freedom of speech, the right to receive and distribute information and the right to free and independent activity on the part of the media in accordance with states' international obligations.
5. Guarantee the free development of civil society and the unrestricted functioning of non-governmental organizations without interference from state organizations or officials, without name-calling or political, informational or other pressure on civic activists, human rights defenders or journalists. In accordance with the OSCE's Moscow Document, states should recognize and guarantee the extra-territorial nature of human rights.
6. Broaden and honor various forms of citizen participation in the resolution of social problems on the national, regional and municipal levels.

Freedom of Assembly

We are concerned that in many OSCE participating States existing legislation and judicial practice fail to accord with the guiding principles of the OSCE and the Venice Commission. We note the following particular problems:

- amendments to laws on peaceful assembly that baselessly limit the realization of this right and introduce disproportionately harsh punishments on organizers and participants;
- the continued functioning, in places de jure and in others de facto, of systems requiring government approval, rather than just notification, of the organization and conduct of peaceful assemblies;
- demonstrations, marches and pickets only being allowed in special places or routes designated by the authorities;
- efforts by the authorities to break up unsanctioned but peaceful demonstrations, the disproportionate use of force by law enforcement agencies and mass detention of participants in the process;
- criminal prosecutions of organizers and participants in peaceful protests for minor violations; a growing number of cases of indictments and convictions for organizing “mass riots” and “resisting arrest” and frequent violation in these cases of fair trial standards; and
- the limitation of particular groups’ and minorities’ right to freedom of peaceful assembly, including those of LGBT groups.

Recommendations

To OSCE participating States:

We recommend that the OSCE participating States 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. These changes should be designed to guarantee the following principles:

1. The presumption in favor of the freedom to organize and conduct peaceful assemblies should be set forth clearly and unambiguously. The authorities should be obliged to support citizens in exercising their right to freedom of peaceful assembly.
2. The principle of non-discrimination in relation to the exercise of the right to peaceful assembly should be strengthened. All citizens and civic organizations, including minority groups (among them LGBT groups) should be able to exercise their right to free assembly without any barriers or discrimination.
3. Legislation should contain a clear conceptual framework setting forth the forms of peaceful assembly that may be regulated.
4. Notification-based systems for organizing peaceful assemblies should be implemented and guaranteed.
5. The types of peaceful assemblies not requiring notification should be set forth, based on the number of participants.
6. There should be no limits on peaceful assemblies or other civic actions that are not subject to legal regulation, for example, flash mobs, the laying of flowers at monuments, the collective presentation of petitions, and so on.

7. Provisions should be made 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 the events that generate a public response.
8. There should be an inclusive 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 target audience should take place within sight and hearing of that audience.
9. Clearly defined procedures should be set forth for negotiations between organizers and competent government authorities to agree on the place, time and order in which peaceful assemblies are to be carried out.
10. Procedures should be set forth allowing for the rapid and effective review of complaints related to refusals to sanction peaceful assemblies, including through the judicial system.
11. Principles should be set forth for the relevant authorities to ensure order, 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.
12. The principle that “human rights are a part of public order” should be followed. In this regard, the authorities, including those assigned to ensure public order, 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.

To ODIHR:

1. To actively promote its Guidelines on Freedom of Peaceful Assemblies and work towards their integration into national legislation and practice, including through a network of NGO partners;
2. To expand activities of the OSCE ODIHR expert panel on freedom of assembly and involve civil society groups from the OSCE space in the monitoring and promotion of Guidelines;
3. To establish regular cooperation with the UN Special rapporteur on freedom of assembly and association, including through establishment of a joint working group on freedom of assembly standards;
4. To look into possibilities to review not only legislative acts of participating States but also their implementation practices, first of all during resonant and mass assemblies.

Freedom of Association

2013 has been a particularly grim year for freedom of association “East of Vienna.” We have witnessed increasing legal restriction and growing repression throughout the entire cycle of exercising freedom of association – from establishment of an association to its ability to operate, raise funds, advocate for its cause, reach out to the public, engage with the public authorities, promote policy and legislative recommendations, and, finally, to its dissolution. Particularly worrying and widespread trends include legislative limitations on 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.

Other significant problems included:

- the imposition of legal penalties for participation in the activities of unregistered associations, either criminal (as in Belarus) or administrative (as in Kazakhstan and Uzbekistan);
- repression for participation in the activities of legal groups, including for trade union activity;
- unwarranted and selective use of legislation regarding the fight against terrorism and “extremism”;
- repeated refusals to register organizations perceived by the authorities as too critical or pursuing goals not approved by the government (as in Belarus, Russia); and
- dissolution of NGOs by public authorities for minor procedural violations (as in Tajikistan).

In many states, NGOs supported by international donors were increasingly branded as puppets in the hands of hostile foreign governments and traitors and were the subjects of smear campaigns in government-controlled media. This practice was particularly widespread in Russia, Azerbaijan, Belarus, Kyrgyzstan and Kazakhstan.

In the spring of 2013, Russian authorities launched an unprecedented series of inspections of more than 1000 NGOs to monitor their compliance with the notorious law on “foreign agents,” which was adopted in July 2012 and required NGOs that received foreign funding and engaged in undefined “political activities” to register as “foreign agents.” As a result of these inspections, almost 100 NGOs received warnings or orders from prosecutors’ offices to register as foreign agents due to their work on issues such as the transparency of elections, fighting torture, protecting the environment, monitoring human rights violations and discrimination against lesbians, gays or ethnic minorities or sending communications to UN bodies. At least 20 NGOs have been taken to court by the Russian authorities for refusing to register as foreign agents, a term that in Russia is equivalent to spy. Most of these cases are still in process, but three NGOs have been found guilty for failing to register, two of which – the Golos Association for Electoral Rights and the Kostroma Centre for Support of Public Initiatives -- were forced to close after the courts levied huge fines on them and to avoid potential criminal prosecution of their leaders, which could have led to up to two years of imprisonment.

In another worrying development, in September 2013 members of Kyrgyzstan's Parliament submitted for public discussion a draft law on “*non-commercial organisations fulfilling the role of foreign agents.*” The draft law, which was later withdrawn, was inspired by and almost verbatim reproduced the Russian law. The authors of the Kyrgyz bill intend to submit it to the Parliament again soon. Nor is this the first legislative initiative in Kyrgyzstan this year that has sought to curb the activities of nongovernmental groups. In January, a draft law on money laundering was introduced by the State Financial Intelligence Unit under the prime minister’s office that would have placed undue financial controls on nongovernmental organizations. In this case NGOs successfully intervened and managed to defend their right to free association.

Access to funding is a major issue in Belarus, where since the end of 2011 violation of regulations on the use of foreign donations has been criminalized. The laws prohibit the use of foreign funds for “mass work with the public,” including holding seminars. It is also a criminal offense to act in the name of an unregistered

organization. Human rights groups which were unlawfully shut down by the authorities in the past as well as new groups seen by the authorities as overly critical have repeatedly been denied registration.

Countries continued the practice of curtailing free association and assembly around elections. In Azerbaijan amendments to the NGO law adopted in February 2013 and the law on grants limit the ability of NGOs to accept donations, restrict their operations, and make it easy for the authorities to shut down undesirable groups. Registration of NGOs remains politicized, with democracy and human rights NGOs disproportionately facing difficulties in registering. An estimated 1,000 NGOs remain unregistered in Azerbaijan, including the Human Rights Club, which has been refused registration three times. Ahead and in the aftermath of recent presidential elections, government raids led to closure of the Free Thought University and blocked the activities of a number of independent NGOs and media, including the Election Monitoring and Democracy Studies Center, the newspaper Azadliq, and the Ganun publishing house.

Around the presidential elections in Tajikistan, the government intensified its policy of suppressing the opposition, media and NGOs. In 2013 alone many opposition leaders were detained, imprisoned and intimidated including Zaid Saidov from New Tajikistan Party and the deputy leader of Tajikistan's Islamic Renaissance Party. The association of young lawyers "Amparo", which had been very active in investigating cases of torture and ill-treatment as well as in monitoring and advocating for the rights of vulnerable groups in Tajikistan, remains closed since the end of 2012 when it was dissolved by the authorities for minor procedural violations.

There have been a number of cases of discrimination against associations advocating for minority rights, especially of LGBT communities. For many years these groups have faced difficulty in registering in a number of countries on the grounds that they threatened public morals, but it was the recent adoption of infamous laws banning the so-called "propaganda of homosexuality" in Russia that associations representing LGBT communities have started to face more systematic impediments to their ability to operate without fear of reprisals. In Britain, the Human Dignity Trust, which supports gay and lesbian individuals in countries where homosexuality is outlawed, was denied charitable status on the grounds that it was not sufficiently of "public benefit."

In a number of countries, including the Central Asian states and Russia, so called anti-extremism legislation was increasingly used to curb freedom of association through the issuance of warnings to organizations, penalizing them for incitement to social hatred (in the form of public criticism of the authorities) and closing them down. The definition of extremism in these laws is vague and unclear, which allows for selective and politically motivated persecution.

Recommendations to OSCE institutions and participating States:²

1. Incoming OSCE Chairmanships and participating States should support ODIHR's new initiative to produce, in cooperation with the Venice Commission, guidelines on freedom of association. This support should include explicit political endorsement of this initiative, extra-budgetary financial contributions, and statements indicating willingness 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 set of common standards on freedom of association and the functioning of civil society institutions, not only a compilation of best practices.
3. 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 of a

² For further recommendations see the report of the SHDIM on freedom of assembly and association that took place in Vienna on 8-9 November, 2012, and the recommendations of the Civil Society Forum that preceded it.

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 Chairmanship should have consider appointing such a representative on a temporary basis.

Security of Human Rights Defenders

Over the course of the year the situation regarding the freedom of human rights defenders to carry out their work in the OSCE region has not improved. The security of human rights defenders remains an issue of serious concern.

Individual leaders of the human rights movement continue to come under pressure. World-renowned human rights defenders, including Ales Belyatski (Belarus) and Azimzhan Askarov (Kyrgyzstan), remain in prison on trumped up charges after politically motivated and unfair trials. New information is continually coming to light about unbroken pressure on and cruel and inhuman treatment of imprisoned human rights defenders. This year, Mikhail Savva (Russia), a PhD in political science, and ecologist, and human rights defender and the director of the grant program of the Southern Resource Center in Krasnodar joined their number.³ Savva was detained on April 15, 2013 and since that time has been incarcerated in a facility operated by the FSB. His trial began on November 5.

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 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, discriminate on the grounds of sexual orientation, limit freedom of speech and arbitrarily limit 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.

2013 also saw an increase in cases of harassment and obstacles put in the way of activists promoting and defending LGBTI rights in Russia, Belarus, Kyrgyzstan, Armenia and Ukraine.⁴ In just the last few months the Russian Federation adopted a federal ban on the propaganda of "non-traditional" sexual relations. A similar law was adopted in Moldova and one is being considered in Ukraine.

Governments continued the practice of limiting the activities, pressuring and arresting human rights activists for their legitimate work around elections. According to the Institute for Reporters' Freedom and Safety, in Azerbaijan alone in September 2013 there were nine journalists in detention or prison on politically motivated charges in retaliation for their critical coverage of government policies. In addition, two bloggers are behind bars who are believed to have been targeted for expressing views critical of the authorities while two human rights defenders are in prison on politically motivated charges in connection with the exercise of their freedom of expression rights.

Human rights defenders have been arrested and fined for exercising their right to free assembly, particularly in Azerbaijan, Russia and Belarus. Most recently, on September 14, 2013 in Belarus, 18 persons, including Andrei Bondarenko, director of the human rights organisation Platforma, which monitors conditions of detention, were detained while holding a peaceful demonstration in front of a pre-trial detention facility. Later he was arrested for five days for alleged violation of peaceful assembly regulations. Uladzimir Labkovich and Tatsiana Reviaka, members of the Human Rights Centre Viasna were fined after they took

³ <http://www.hr-nis.org/node/737>

⁴ Study by the Observatory for the Protection of Human Rights Defenders (<http://www.fidh.org/en/eastern-europe-central-asia/eastern-europe-and-central-asia-the-defence-of-lgbti-rights-in>).

part in a solidarity action in Minsk on August 5 marking the second anniversary of the arrest of Ales Bialiatski, Viasna's president.

Recommendations

To the OSCE Participating States

1. States should 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.
2. They should facilitate free movement of human rights defenders throughout the OSCE space based on OSCE commitments to facilitate observation of human dimension conditions.
3. Diplomatic missions as well as representatives of the OSCE institutions should visit imprisoned human rights defenders and attend their trials.
4. Ensure that diplomatic missions and government officials visiting from capitals are aware of and follow any existing guidelines for dealing with human rights defenders.
5. States should ensure access by human rights defenders to resources from abroad and to human rights education programs.

To ODIHR

1. 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 international organisations and mechanisms.
2. In addition to ongoing work on the subject, ODIHR should establish a group of experts to develop and promote guidelines on commitments with regard to the protection of human rights defenders..

To the OSCE Parliamentary Assembly

1. The PA should 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 the OSCE institutions and Participating States

1. Create an instrument on protection of human defenders within the OSCE institutions — a Special Representative 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 region 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.

5. Strengthen the OSCE's rapid response capacity in cases when human rights defenders are in danger or urgently need assistance and in cases where their situation needs to be raised at the highest levels of governmental.

Politically Motivated Persecution of Civic and Political Activists, Journalists and Opposition Politicians and Violations of the Right to a Fair Trial

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 such detainees 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 punishments as part of fabricated criminal or administrative cases. According to criteria for determining who is a political prisoner prepared by a group of human rights defenders from Azerbaijan, Armenia, Belarus, Georgia, Poland, Russia and Ukraine⁵, at the moment there are 70 political prisoners in Russia, 11 in Belarus and an as yet undetermined number in the other countries.

In recent years we have witnessed a growing tendency to persecute civic and political activists and journalists in connection with efforts to exercise their right to freedom of assembly. Civic activists have been persecuted in a number of countries in connection with major political gatherings.⁶ Authorities throughout the region have employed preventive detention of organizers and detention of organizers and participants during and after events, including mass and arbitrary detention. Human rights defenders have frequently identified such cases in Ukraine, Belarus, Azerbaijan, Armenia, Russia and other countries of the post-Soviet space.

The so-called Bolotnaya Case is a clear example of politically-motivated persecution of participants in and organizers of a demonstration that took place on Bolotnaya Square in Moscow on May 6, 2012. The Russian Ombudsman for Human Rights, international specialists and Russian experts have carried out independent investigations of these events and come to the unanimous conclusion that there were no signs of mass disturbances. Nevertheless, a number of activists have been convicted of participating in mass disturbances, 12 people are currently being tried on such charges and more than 30 others are still being investigated.⁷ Some suspects were persecuted to the point that they were forced to leave the country. The trial is proceeding with numerous procedural violations and in an obviously non-objective manner. It is clearly designed to scare off potential participants in protest actions.

Recently the number of political prisoners in Russia was swollen by the detention of Greenpeace activists and the crew of the icebreaker Arctic Sunrise, who on September 18 tried to carry out a peaceful protest on a Russian oil platform. Their illegal detention, including two months under difficult conditions in an investigative prison, and the clearly disproportionate charges against them are being used to scare off civic activists.

Among political prisoners in OSCE States are Yulia Timoshenko (Ukraine), Vladimir Kozlov (Kazakhstan), Mikhail Khodorkovsky, Platon Lebedev, Aleksei Pichugin, Maria Alyokhina and Nadezhda Tolokonnikova (Russia). Alyokhina and Tolokonnikova, members of the band Pussy Riot, have been subjected to continuous pressure and cruel treatment bordering on torture. The editor of the Azerbaijani newspaper "Tolyshi Sado," Gilal Mamedov, can also be considered a political prisoner. On September 27 a court found him guilty of treason, inciting ethnic hatred and possession of narcotics and sentence him to five years imprisonment in a strict regime prison.

⁵ Manual on the definition of the notion of "political prisoner". Coalition for the Defense of Fundamental Freedoms in Eurasia, <http://www.hr-nis.org/node/939> (in Russian).

⁶ Information about a joint statement of the UN experts on the situation with civil society in Azerbaijan on the eve of presidential elections, <http://hr-nis.org/node/879>

⁷ Information about the suspects in the Bolotnaya square case, <http://rosuznik.org/arrests> (in Russian).

Ahead of presidential elections this year, the governments of Azerbaijan and Tajikistan engaged in politically motivated persecution of the opposition. Tofiq Yagublu, deputy head of Azerbaijan's Musavat Party, members of the youth NGO NIDA and presidential candidate Ilgar Mammadov were all victims of the crackdown ahead of elections in Azerbaijan. In Tajikistan, opposition party leaders faced intimidation and imprisonment and the government stepped up efforts to extradite political opponents from abroad.

There is no information in the public domain on the fate of political prisoners in Turkmenistan. There have also been large scale persecutions of activists on charges of religious extremism and terrorism in countries such as Uzbekistan. Once again we are beginning to see evidence of the use of forcible psychiatric treatment of civic activists in post-Soviet countries. In just the last few months of 2013 we have seen four major cases of the political abuse of psychiatry in Ukraine, Kazakhstan, Belarus and Russia:

- Raisa Radchenko, a civic activist from Ukraine, was remanded for forced psychiatric treatment in revenge for her social activities;
- Kazakhstani lawyer Zinaida Mukhortova, who was engaged in human rights and anti-corruption work, was sent to a psychiatric clinic;
- Belarusian psychiatrist Igor Postnov was subjected to forced psychiatric treatment at the same clinic where he worked as a result of his public criticism of the government and the local health care system; and
- Mikhail Kosenko, a participant in the May 6, 2012 demonstration on Bolotnaya Square in Moscow, was ordered by a court on October 8 to undergo forced psychiatric treatment.⁸

Recommendations

To OSCE Participating States:

1. Reject the practice of selective and politically motivated justice.
2. Admit the existence of political prisoners in countries of the region based on criteria prepared by the region's human rights organizations.
3. Allow access by independent observers to penitentiary systems, including representatives of ODIHR, OSCE Missions, other international organizations and civil society.
4. Demand that 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.
5. Positively respond to requests from ODIHR to monitor peaceful assemblies and court trials.
6. 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.
7. Create legislative bases to involve independent psychiatric experts in court cases as an important guarantee of the right to a fair trial.

To the Chairmanship-in Office:

1. Pay particular attention to reports of politically-motivated persecution in participating States.

⁸ The text of the statement by Civic Solidarity on these cases may be found at <http://www.civicsolidarity.org/article/815/use-psychiatry-political-aims-unacceptable>.

2. Support ODIHR's mandate to observe trials and peaceful demonstrations, including by encouraging participating States to issue standing invitations to ODIHR to observe on trials and peaceful assemblies.

To ODIHR

1. Strengthen cooperation with NGOs engaged in independent social monitoring of peaceful assemblies in countries of the OSCE region and strengthen the methodological basis for such observation missions through regular exchanges of experience.
2. Expand the circle of experts able to evaluate the character of mass actions from the point of view of standards of freedom of assembly, the adequacy of police reaction to unsanctioned peaceful assemblies, apparent violations, and possible provocations.
3. Support cooperation among civil society monitoring groups in monitoring following the course of peaceful assemblies in their home countries and the work of the ODIHR panel of experts on peaceful assembly.
4. Support the development of systems of civic oversight of courts by training interested activists on ODIHR's methodology for trial observation.
5. Work together with human rights groups from the region to expand the methodological basis for civic monitoring of courts and their practices.
6. 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 face unjustified or fabricated accusations.

To the OSCE Parliamentary Assembly:

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

Freedom of Expression

Participating States continue to fall short in implementing the OSCE's human dimension commitments on free expression, despite constant appeals from civil society.⁹ The right to freedom of expression and the right to information, which are incorporated in these commitments, continue to be undermined through physical attacks and intimidation of journalists and activists, politically motivated arrests, the lack of free and independent media, restrictions on internet freedom, government interference incompatible with a democratic society, including mass surveillance, and impunity.

Physical safety and impunity

Sadly, in 2013 investigations into attacks, killings and harassment of journalists and human rights defenders continued to be marred by delays, obstruction and lack of political will to investigate potential links between these crimes and the victims' professional activities. Examples include the murder of Akhmednabi Akhmednabiyev in **Russia**¹⁰ and the outcome of the trial against the perpetrators of the violent attack of Lukpan Akhmedyarov in 2012 in Kazakhstan.¹¹ Despite a conviction in January 2013 of one of organisers of the murder of the investigative journalists Georgiy Gongadze in **Ukraine**, the mastermind(s) of his killing remain free.¹²

In some instances attacks on journalists were perpetrated by the authorities whose duty it was to protect the victims.¹³ At least 45 instances of journalists' detentions have been noted in 2013 in **Belarus**, mostly while they were covering street actions. About 40 reporters were detained, many of them violently, on 6 May 2012 in **Russia** during and after the March of Millions in Moscow.¹⁴ Khadija Ismayilova, an investigative journalist from Azerbaijan, continued to be subjected to a defamatory campaign, included blackmailing, aimed at silencing her.¹⁵

Politically motivated arrests of journalists and civil society activists

This year critical journalists and outspoken activists have faced trumped up charges ranging from terrorism to hooliganism to possession of narcotics and drugs. In such instances the independence of the judiciary is of utmost concern, as this should form part of the safeguards against arbitrary detention and arrest.¹⁶ Such arrests can lead other journalists to stop their activities or self-censor, as well as limit the amount of information available to journalists on sensitive issues and the range of alternative opinions available to the public.

Examples in 2013 include the case of Azerbaijani journalist Avaz Zeynalli, sentenced to nine years imprisonment on charges of extortion, tax evasion and failure to implement a court decision¹⁷; a 10-month

⁹ Civil Society Recommendations to the Participants of the OSCE Ministerial Council Meeting in Dublin, 6-7 December 2012, <http://www.civicsolidarity.org/article/598/civil-society-issues-recommendations-osce-ministerial-council-meeting>

¹⁰ <http://www.article19.org/resources.php/resource/37151/en/russia:-journalist-akhmednabiyev-killed-after-authorities-fail-to-protect>

¹¹ <http://www.article19.org/resources.php/resource/37155/en/kazakhstan:-sentences-for-four-attackers-on-journalist-lukpan-akhmediyarov-welcome,-but-mastermind-remains-at-large>

¹² <http://www.article19.org/resources.php/resource/3597/en/ukraine:-conviction-over-murder-of-journalist-a-victory-but-not-the-end-of-the-fight-for-justice>

¹³ A number of OSCE documents explicitly refer to this commitment, including the 1994 Budapest document, VIII, 37, and the 1991 Moscow Document, 34.

¹⁴ Civil and Political Rights. Materials of Russian NGOs for the Universal Periodic Review of the Russian Federation in the United Nations Human Rights Council in 2013. Center for the Development of Democracy and Human Rights, 8 October 2012.

¹⁵ Azerbaijan: In Solidarity with Khadija Ismayilova, ARTICLE 19 Press Release, 15 March 2012,

<http://www.article19.org/resources.php/resource/2994/en/azerbaijan:-in-solidarity-with-khadija-ismayilova>

¹⁶ The 1989 Vienna Document, 23.1; the 1991 Moscow Document 23.1.

¹⁷ <http://www.article19.org/resources.php/resource/3656/en/azerbaijan:-journalist-jailed-to-silence-criticism>

suspended jail sentence given to the pianist Fazil Say in **Turkey** for comments he posted on Twitter¹⁸; and the trial of **Greek** investigative journalist [Kostas Vaxevanis](#) for publishing a leaked list of Greeks with bank accounts in Switzerland.¹⁹

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 independent newspaper from **Azerbaijan**, came under severe economic pressure as the result of defamation suits that resulted in £52,000 in fines.²⁰ In Belarus, at least 11 independent newspapers face restrictions on access to the state-run press distribution systems.²¹

Anti-extremism laws are being widely used to curtail free speech. In **Kazakhstan**, the TV channel K+, newspapers Vzglad and Respublika, and more than 20 supposedly related websites lost their appeals against their closure for publishing “extremist” material. In **Belarus**, a Belarus Press Photo album was deemed “extremist material” and ordered destroyed by a court; the independent publisher Lohvinau, which had printed the album, was stripped of its publishing license. Defamation is still a criminal offense in many countries of the OSCE region, which also has a chilling effect on freedom of expression.

Restrictions on free speech online

As the internet has become an increasingly important domain for free speech, governments of many countries have introduced restrictive laws and practices aimed at curtailing freedom of expression online. Black lists of websites with “harmful content” are being introduced, for instance in **Russia** and **Belarus**.²² On 10 October the European Court of Human Rights dealt a severe blow to internet freedom by confirming a 2006 decision of the **Estonian** courts, which found that the Delfi AS news portal should have prevented clearly unlawful comments from being published in the portal’s comments section, even though Delfi had taken down the offensive comments as soon as it was notified of them.

Mass surveillance and other types of unnecessary 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. Edward Snowden’s revelations show that the U.S. and some European governments indiscriminately monitor citizens’ electronic communications. Such mass surveillance violates the rights to privacy and freedom of expression, chill free speech, and is a threat to democracy and the rule of law.

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 and on David Miranda, the partner of Guardian journalist Glen Greenwald, using national security legislation.²³ In the **United States** whistle-blower Bradley Manning was sentenced to 35 years in prison for

¹⁸ <http://www.article19.org/resources.php/resource/3699/en/turkey:-quash-twitter-pianist-sentence-in-honour-of-free-speech>

¹⁹ Greece: Free speech faces abyss, Index on Censorship, 31 October 2012, <http://www.indexoncensorship.org/2012/10/censorship-greece-press-freedom/>

²⁰ <http://www.indexoncensorship.org/2013/11/azerbajjans-leading-independent-newspaper-needs-your-help/>

²¹ *Distributing Non-State Press in 2013*, BAI <http://bai.by/en/node/22883>

²² <http://www.indexoncensorship.org/2013/11/russia-censored-autumn-2013/>

²³ <http://www.article19.org/resources.php/resource/37333/en/joint-letter:-open-letter-to-david-cameron-on-surveillance>

disclosing classified material to WikiLeaks. Whistleblowing is a crucial aspect of the right to freedom of expression and information.²⁴

Recommendations

To OSCE participating States:

1. Prevent attacks, killings and harassment of journalists, media workers, and other civil society activists. When such attacks do take place, ensure effective investigations and swiftly bring the perpetrators to justice.²⁵
2. Take 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 and ensure that the right to freedom of opinion and expression applies as much online as off.
4. Consider the serious implications of communications surveillance for freedom expression and privacy and revise surveillance laws in line with human rights standards.
5. Introduce effective measures to protect the right to access 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 of 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 examine freedom of expression throughout the OSCE region and assist 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.

²⁴ <http://www.article19.org/resources.php/resource/37214/en/presidential-pardon-needed-for-whistleblower-bradley-manning>

²⁵ 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 Movement

The promotion of human contacts between citizens of participating States was dealt with in some detail in the 1975 Helsinki Final Act. While in some areas of the OSCE regions visa-free zones have been established, visa barriers continue to exist between many participating States.

States continue to deny entry to members of civil society human rights organizations who want to engage in observing human rights compliance or in training or otherwise assisting civil society human rights activity.

A number of participating States restrict citizens in leaving the country, sometimes for politically motivated reasons. Freedom of movement inside countries continues to be limited by some States, in particular when it relates to residence rights in certain cities or areas.

Recommendations to OSCE participating States

1. In line with the spirit and commitments of the 1975 Helsinki accords, participating States should ensure a progressive liberalization of visa regulations of OSCE participating States, in particular so as to enable active involvement of persons, groups, organizations and institutions from across the OSCE states in fulfilling the human dimension commitments and in furthering conflict resolution.

2. Along with visa liberalization, other administrative barriers restricting the freedom of movement across borders or putting obstacles to it (such as ban lists of foreign nationals or denial of issuing foreign travel passport and exit visas to own citizens) should also be either minimized or totally removed by participating States.

3. Any restrictive measures related to individual freedom of movement (including bans on entry) may be imposed by participating States only according to a procedure which is clearly defined, transparent and based on the law; all the individuals concerned should be provided by an explanation of the reasons of imposing such measures and an opportunity to appeal against them.

4. OSCE participating states should not prevent human rights defenders from conducting fact-finding missions, attending meetings and engaging in other activities relevant to their work in other OSCE participating States.

5. As long as full visa liberalization has not been achieved, States should facilitate the visa process by easing the issuance of multi-entry visas with long-term validity, by limiting the number of documents required and the amount of money required.

6. The OSCE and OSCE participating States should analyze how other international and regional agreements, such as the Schengen regulations and the Minsk Convention (1993), affect the OSCE commitments on freedom of movement, and revise them if they contradict or come into conflict with the OSCE commitments.

7. We call upon participating States to start the process of drafting Guidelines on freedom of movement giving interpretation of the already existent OSCE commitments in this field and compiling relevant best

practices, as well as to consider the adoption of new commitments setting wider standards in relation to freedom of movement across the borders, taking into account the Recommendations of the April 2013 Supplementary Human Dimension Meeting on Freedom of Movement and Human Contacts.

The Right to Free and Fair Elections

Armenia, Azerbaijan, Georgia, and Tajikistan all held presidential elections in 2013. According to local and international human rights organizations, all except those in Georgia were marred by serious violations that jeopardized the results and undermined the elections' legitimacy.

There was no equal opportunity for all candidates in Armenia, Azerbaijan or Tajikistan. In these countries, a number of candidates were not allowed to register due to unduly strict requirements, including unreasonably large deposit requirements and numbers of signatures needed to register, while opposition candidates who did register did not have equal opportunities to conduct their campaigns.

Observers reported abuse of administrative resources in all 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. Those who reported violations were often intimidated and even blackmailed by the authorities.

Prior to Election Day, many believed the presidential elections in the Republic of Armenia would not be competitive; This turned out not be the case, and many observers concluded that on election day the results of the election were fabricated with reported cases of ballot box stuffing and ballot spoiling. Both in Azerbaijan and in Tajikistan the elections followed predefined scenarios without any real chance for the incumbent's challengers.

Although during the campaign period Armenian media provided more or less balanced coverage of the candidates, biased coverage resumed during post-election protests, which were accompanied by the police intimidation and violence. Before and after the election in Azerbaijan, a number of journalists and civil society activists were persecuted and arrested. The leading local election monitor, the Azerbaijani Election Monitoring and Democracy Studies Centre, was prosecuted in the aftermath of the election for alleged financial abuses, though it was clear that the authorities were trying to silence a critic of the elections and their administration.

International election monitoring was not always effective. Armenian civic activists disrupted a press conference by OSCE/ODIHR observers to read out their alternative statement on the elections, presenting numerous violations reported by local observers. European inter-governmental observers gave varying and in cases very controversial assessments of the presidential election in Azerbaijan. The OSCE observation mission considered that "the 9 October election was undermined by limitations on the freedoms of expression, assembly, and association that did not guarantee a level playing field for candidates... Significant problems were observed throughout all stages of Election Day processes and underscored the serious nature of the shortcomings that need to be addressed in order for Azerbaijan to fully meet its OSCE commitments for genuine and democratic elections." Simultaneously, election observers from PACE and the European Parliament issued a joint statement saying that the "electoral procedures on the eve and on election day have been carried out in a professional and peaceful way... On election day we did not witness any evidence of intimidation against voters, in or close to polling stations." The OSCE observers' critical report provoked a hostile reaction from the Azerbaijani government, which challenged the OSCE's professionalism, while the Central Election Commission proposed ending cooperation with ODIHR. Prior to the election, the government of Azerbaijan had already downgraded the OSCE Office in Baku to Project Coordinator status, thereby reducing its mandate to monitor and report on commitments in the human dimension.

Recommendations

1. Amendments should be made to any OSCE participating States' legislation that levy excessive requirements for candidate registration.

2. Any use of administrative resources should be eliminated including campaigning in state budget institutions or with the assistance of state budget employees.
3. Electoral commissions at all levels should be genuinely independent and unbiased and all allegations of violations should be investigated promptly, thoroughly and objectively.
4. Electoral processes and systems should ensure genuine opportunities for pluralism so that elected bodies can be representative of their constituency.
5. All candidates should have equal access to the media, including state-controlled media, in order to ensure their contact with constituents.
6. OSCE participating States should fully cooperate with ODIHR and OSCE Parliamentary Assembly election observation missions and refrain from accusing them of bias or double standards.
7. International observation missions should be more objective in their assessment and more assertive in presenting them. They should also follow up on the implementation of their recommendations by initiating dialogues with corresponding agencies and demanding regular reports. All stakeholders, including local observers, should be involved in these dialogues.
8. International observation missions should closely follow investigations of election law violations and reports of crimes registered during election periods. International observation missions should promote specific legislative amendments recommended by local observation missions and representatives of civil society, ensuring that violations they report are addressed by the authorities.
9. OSCE participating States should ensure the safety and security of civil society representatives and opposition members critical of the administration of elections.

Freedom from Torture

Torture, cruel, inhuman and degrading treatment and punishment continue to be among the most serious problems in many OSCE participating States. In some participating States 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. Over the last decade torture in the context of the war on terror has become a particular problem, as torture of terrorism suspects has become widespread, including at the U.S. detention facility at Guantanamo Bay and in Russia's North Caucasus where police officials use torture to force confessions or simply to assert their power; investigators typically do not open investigations into allegations of torture.

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 number of such judgments has grown exponentially over time. These cases often involved other gross human rights violations, including killings and enforced disappearances at 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 OSCE participating States. Each one of these judgments and decisions requires a reopening of national criminal investigations against the perpetrators, but this rarely happens.

In many OSCE participating States, conditions of detention are inhumane and degrading. This includes not only prisons and jails, but also mental health institutions, detention centres for migrants and children's institutions. The recent global economic crisis, combined with a lack of transparency and frequently a lack of concern among politicians about the conditions in these institutions, has brought about a deterioration of conditions throughout the region.

Rehabilitation of victims of torture is another serious problem in many OSCE participating States, particularly those that bear a totalitarian legacy. There have been on efforts at holistic rehabilitation of former and current torture victims, which is often seen in these countries as a foreign concept. Existing projects and approaches only scratch the surface of the problem.

Since 2002, many OSCE participating 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 and has brought a degree of transparency to detention systems throughout the region, many NPMs are not independent, lack capacity for serious monitoring, cannot make their voices heard by the governments and are not well funded. Many OSCE participating States have still not ratified OPCAT or established NPMs.

One major factor in reducing the incidence of torture and other forms of ill-treatment in some countries has been the opening of places of detention to scrutiny by civil society organizations. This has enabled independent human rights NGOs to monitor the conditions of detention and treatment of detainees as well as offer legal assistance and rehabilitation to victims. Yet many governments in the region still resist allowing human rights NGOs to freely access detention facilities. In some countries the establishment of NPMs has even resulted in further denial of civil society access to places of detention in favour of NPMs that have proven not to be nearly as effective in reducing the incidence of torture and ill-treatment.

Recommendations

To the OSCE Participating States

1. OSCE participating States should establish effective mechanisms to investigate allegations of torture and other ill-treatment by law enforcement officials. These should include the establishment of complaints boards staffed by lay persons and possessing effective powers to participate in investigations in accordance with international standards for effective investigation.
2. OSCE participating States must ensure that the work of doctors in detention facilities is truly independent. Medical services in detention facilities should not be subordinated to Ministries of the Interior.
3. Those OSCE participating States that have not yet ratified OPCAT and have not established National Preventive Mechanism should do so as soon as possible.
4. OSCE participating States should strengthen their National Preventive Mechanisms by providing a firm legal basis guaranteeing their independence and their engagement in effective monitoring.
5. OSCE participating States should provide a firm legal basis for NGO monitoring of places of custody, including pre-trial and police detention facilities, as well as for NGOs to be able to engage in legal assistance and rehabilitation of victims of torture and other ill-treatment in places of detention.
6. OSCE participating States must ensure that no one is expelled or extradited to countries where torture is an endemic problem.
7. OSCE participating States should bolster and reinforce the role of the media as a tool 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.
8. OSCE participating States should ensure they abide by international human rights obligations while countering terrorism.

To the OSCE Institutions:

1. ODIHR should elaborate guidelines on the prevention of torture and ill-treatment in OSCE participating States. The guidelines should build on existing OSCE commitments, define concrete steps for states to take in order to prevent and effectively investigate torture, and summarise best practices in the field.
2. OSCE institutions should consider organising an SHDM on the prevention of torture and monitoring of detention facilities, with a special emphasis on the role of NGOs in the process.
3. OSCE institutions should consider measures to improve conditions of detention in all types of detention facilities, including ODIHR monitoring of places of detention as part of its mandate to monitor implementation of human dimension commitments.
4. The Human Dimension Committee should hold a special session on torture prevention, discussing the outcomes of the SHDM, should it be held, and inviting the UN Special Rapporteur on Torture and representatives of other international bodies to discuss possible interaction and enhancement of their work. Voluntary reports during such an HDC meeting by participating States on torture prevention would be welcome. This session should be open to NGO representatives who should be able to make their own contribution to the discussion.
5. OSCE institutions should consider engaging in the execution of judgments and decisions of international

bodies against participating States in cases involving torture and other ill-treatment by law enforcement officials.

To the OSCE Chairmanship-in-Office:

1. The Chairmanship-in-Office should aim to develop an OSCE action plan to combat torture. A perception paper on torture prevention, produced together with civil society, could be a first step.
2. The Chairmanship-in-Office should encourage participating States to develop realistic national action plans on the prevention of torture, including strict deadlines and measurable criteria of progress.

Human rights in conflict and post-conflict situations and territories

According to statements by the OSCE Chairmanship, a top priority in 2013 was protecting human rights and fundamental freedoms in conflict and post-conflict zones and making progress in resolving protracted conflicts. Because the human dimension is an essential part of the OSCE concept of comprehensive security, making progress on human rights in protracted conflicts is crucial for the region's security.

In 2013 a significant dialogue took place on resolving the Transnistrian conflict. Thanks to the involvement of the OSCE, the parties to the conflict continued to discuss a number of common issues, particularly socio-economic problems.

On the other hand, this has been a year of stagnation in the processes related to other regions of frozen conflict, such as Nagorno-Karabakh, South Ossetia and Abkhazia. During 2013 OSCE efforts have not produced expected positive results. The situation is also uncertain in other post-conflict regions in OSCE participating States such as Kyrgyzstan and Tajikistan.

New challenges have emerged in the conflict regions of Georgia. In South Ossetia, mass violations of the right to freedom of movement, the right to property and other rights of Georgian residents have taken place as a result of the continued erection of new barbed wire fences by Russian and Ossetian border guards, onto and beyond 15 Georgian villages adjacent to the administrative boundary line of the unrecognized regime of South Ossetia. This process of constructing barbed wire fences into the "buffer zone" of the Georgian territory started in April-May 2011 and has intensified since February of 2013. As a result of this, the villagers have lost access to their arable land plots, which provided for their subsistence. Access by Georgian residents to irrigation and drinking water reservoirs is being limited, as well as opportunities to visit graveyards. Some of the villagers were forced to leave their homes which are located beyond the fences within the Ossetian controlled territories. In the district of Akhagori under South Ossetian control a process of expulsion of Georgian residents from their houses has been recorded. In this case a violation of the right to a fair trial and the right to effective remedy took place in addition to violation of property rights. The conflict situation around the unrecognized regime of Abkhazia has been frozen with no progress in the protection of rights of the local residents and the IDPs.

The processes occurring in the conflict regions that clearly lead to violations of the local populations' rights and freedoms cannot be treated as "political issues." The authorities involved in negotiations on the resolution of conflicts should not forget that human rights are non-negotiable and that all parties are responsible for observing human rights, including unrecognized regimes.

The use of torture and ill-treatment and the violation of liberty and security of person are the most severe human rights problems in these regions. These problems result from the fact that there are no effective remedies to contest the actions of the unrecognized administrations ruling these regions.

Lack of official investigation of allegations of human rights violations, inefficient prosecution and bringing perpetrators to justice as well as systematic violation of the right to a fair trial of the victims of human rights abuse are of particular concern in the conflict regions because access to justice plays a decisive role in the conflict situations. Inability of the authorities to establish facts and reasons for human rights violations and ensure justice leads to the preservation of the situation when the causes of conflicts continue to exist and may lead to new instances of violence and clashes.

In those OSCE participating States that are also members of the Council of Europe, the European Court of Human Rights is essentially the only institution that can establish the facts of human rights violations and provide some remedies. For example, in 2013 the Court continued to communicate to the Moldovan and

Russian governments cases from Transnistria where the applicants complained about the use of torture and the lack of an effective remedy.

International obligations assumed in the framework of regional human rights institutions are binding on the signatory states. Failure to execute decisions of the European Court not only contravenes these obligations but also creates a state of impunity and leads to continuous human rights violations. Lack of execution by the Russian Federation of the decision in the case of *Catan and others vs. Moldova and Russia*, in which the Court established violations of the right to education in the Transnistrian region illustrates this problem.

Experts' visits to the regions of conflict in 2012 and 2013 and reports they issued demonstrate the importance of civil society reports on human rights practices in these areas. At the same time human rights defenders continue to face prosecution and harassment in conflict regions as retaliation for their human rights work.

The process of consolidation of new states in the Western Balkans is still unfinished. Macedonia, Kosovo, Bosnia and Serbia are still turbulent and post-conflict divided societies, and therefore the role of OSCE in post-conflict consolidation in this region continues to be very important. Contribution of civil society groups in the promotion of effective implementation of the human dimension commitments is of particular importance there.

Recommendations

In the light of the existence of similar problems in conflict regions, yet different real opportunities to address them, we recommend the parties involved in the conflicts and the OSCE bodies and institutions undertake the following actions:

1. International human rights obligations and commitments should be respected by the de-facto administrations of the conflict territories and the third parties in the conflict regions on the basis of both the European Court judgments and OSCE recommendations.
2. The OSCE participating States in the conflict and post-conflict regions should accelerate their efforts in investigating allegations of violations of human rights of the local residents while ensuring adherence to international standards of investigation. In this regard, the participating States should establish accountability for perpetrators, guarantee the right to a fair trial of the victims of human rights abuses and ensure adequate remedies and compensations to victims and their families.
3. The OSCE participating States should take measures aimed at addressing the root problems of the conflicts to prevent such developments in the future.
4. Persecution and harassment of civil society activists in conflict and post-conflict regions should be stopped, and the development of strong and independent civil society there should be supported by OSCE participating States and institutions.
5. Exchanges between human rights activists in different conflict and post-conflict regions should be facilitated.
6. Unconditional access for international human rights experts to conflict and post-conflict regions should be allowed, in particular to places of detention which are not under the control of the constitutional authorities.
7. Continuous monitoring in all areas of human rights in conflict and post-conflict regions and the production of monitoring reports that should be discussed at OSCE meetings and supported.

Racism, Intolerance, Hate Crimes and other Forms of Xenophobia

The fight against discrimination, racism and other forms of xenophobia and for the promotion of tolerance and diversity was enshrined as a key OSCE value in the Charter of Paris for a new Europe (1990), in which the heads of States/Governments pledged: *“We express our determination to combat all forms of racial and ethnic hatred, antisemitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds.”* This determination has been reaffirmed at numerous occasions since.

In its 2012 annual report on Hate Crimes in the OSCE region, ODIHR made a strong statement of the risks of hate crimes: *“The information collected by ODIHR makes clear that hate crimes remained a serious and wide-ranging problem in 2012. There is a pressing need for more effective responses, recognizing that such crimes violate the security and dignity of individuals, endanger entire communities, undermine public confidence in governmental authorities and can escalate into serious threats to national and international security.”*

Civil society expressed its strong concern about growing xenophobia and hate crimes in the Outcome Document of the OSCE Parallel Conference in 2012, which contained recommendations to the Ministerial Council meeting in Dublin: *“While the OSCE as an organization can make important contributions to the fight against hate crimes, the primary burden rests with governments, which are ultimately responsible for meeting their commitments in this field... Participating States have acknowledged hate crimes do not happen in a vacuum and ‘can be fuelled by racist, xenophobic and anti-Semitic propaganda,’ and have repeatedly expressed their concern regarding ‘racist, xenophobic and discriminatory public discourse.’ Intolerant speech can lend a sense of social acceptance to potential perpetrators of violence. Even where intolerant speech or hate speech does not result in hate crimes, it can inflame social tensions and induce fear among targeted groups.”*

In the past year we have witnessed further tensions across the OSCE region: more use of hate speech, more blaming of minority groups by populist parties, not only on grounds of ethnicity, race or religion but also on the ground of sexual orientation and gender identity. In May 2014, the EU will hold elections to the European Parliament. Populist parties that were not willing to cooperate with each other in the past are now forming coalitions across the EU with the goal of winning more influence in the European Parliament and setting a populist, often racist agenda.

This phenomenon is not limited to the EU. It can be witnessed across the OSCE region. In many OSCE participating States populist, far-right parties and movements use the same poisoned rhetoric against minorities, migrants, refugees, LGBTI community, often mixed with extreme nationalism. They are successful in winning seats in parliaments and spreading more hate speech. Basic, fundamental rights and values in society seem to be forgotten when it comes to these themes. Much is done to combat this worrying trend in the OSCE region but much more needs to be done: more anti-discrimination and human rights education in schools, more prosecution of hate crimes, more knowledge in law enforcement agencies of how to tackle discrimination.

The missing link is public debate in OSCE participating States about these developments and the voices of public leaders, both from political parties and institutions. It is up to public figures to take responsibility, up to leaders in society to speak up against this spiral of hate and fear, to break it, not to stir it or to use it.

Recommendations to the OSCE participating States:

1. Publicly condemn and take action against political parties and movements inciting discrimination, hate and violence.

2. Initiate and organise public debates throughout the OSCE region.
3. Provide NGOs with resources to develop public awareness campaigns against racism, migrantophobia, homophobia and other forms of xenophobia.
4. Train police and public bodies to investigate hate crimes and intervene to mitigate their destructive effects on victim groups and the wider society, including by creating dedicated teams to work in this field.
5. Train police and public authorities to deal respectfully with victims and build positive trusting relationships by providing counselling and support.
6. Establish platforms and mechanisms for cooperation between intergovernmental, state and civil society organizations.
7. Open up and democratise agenda-setting within intergovernmental bodies dealing with xenophobia to allow NGOs more influence.
8. Provide more support for NGOs working on xenophobia by allocating resources and creating opportunities to share expertise.
9. Facilitate cooperation between NGOs, community groups, legal bodies, police and policy-makers.
10. Strengthen cooperation between relevant intergovernmental bodies (FRA, ECRI, OSCE).
11. Provide support, capacity building and leadership training for victim groups.
12. Develop inclusion and integration programmes for migrant and minority groups, prioritising their participation in such programmes.
13. Mainstream prevention of racism, migrantophobia, homophobia and other forms of xenophobia into youth work and youth policy.
14. Reposition antidiscrimination education within a human rights framework, addressing the root causes of different forms of xenophobia.
15. Generate research and develop a body of good practice for innovative informal education against different forms of xenophobia, with a cross-disciplinary approach.

The Rights and Freedoms of Soldiers

The armed forces are essential institutions of any democratic state and society, and through their functions in the fields of defense, national security and peacekeeping play a key role in ensuring conditions that allow people to take advantage of all of their inalienable rights and freedoms. At the same time, servicemen and women, be they professionals or draftees, are citizens in uniform and should have the same basic rights and freedoms as other citizens, excepting those limitations and responsibilities entailed by their military service as enshrined in national law.

However, in a number of OSCE participating States that maintain a military draft, the situation with servicemen's rights remains problematic. This is particularly true in states located in the former-Soviet space, in which servicemen's rights such as the right to life and health are systematically violated. Frequently, servicemen suffer torture and other cruel and inhuman treatment and procedures for the draft are massively violated. The full integration of the armed forces into the structures of democratic society will only be possible if servicemen and women are able to work in conditions where their rights are protected.

Recommendations

To the OSCE participating States:

1. All servicemen should have the right to inform of violations of the law or crimes in military units. Their information should not be ignored; investigations of all allegations should be carried out by organizations that are independent of the involved military commands.
2. Special circumstance (including guarantees of anonymity and access to channels of communication) should be created for information from servicemen about violations that threaten their life or health or involve torture or other cruel and inhuman treatment.
3. Measures should be put in place to protect servicemen and women who provide information about violations from revenge.
4. Servicemen should not be used to carry out tasks unrelated to their role in providing national defense except in emergency situations and in providing assistance to the civilian population in accordance with local laws.
5. Every state has the right to organize its own system of military discipline. However, only behavior that presents a threat to military discipline, order, safety or security can be considered as a disciplinary offense. The severity of any punishment should be in line with the severity of the offense. The type and duration of punishments foreseen for disciplinary offenses, the organizations empowered to impose such punishments, and the procedures for appeals should be set out in legislation. Collective punishments should be forbidden.
6. No serviceman should be deprived of liberty except in circumstances and in accordance with procedures laid out in national law. Soldiers who are deprived of liberty should have the right to a hearing before competent, independent and objective authorities.
7. Soldiers' rights to private and family lives, their residences and correspondence should be respected. Any limitations of these rights should only be allowed in case of real threats to national security.
8. To the maximum extent possible, draftees should carry out their service near their homes and families.

9. Servicemen and women should have the right to freedom of thought, conscience and religion, including the right to change their religion or beliefs at any time. There should be no discrimination among servicemen on the grounds of their religion or beliefs.
10. In countries that maintain a draft, every draftee should have the right to decline military service in accordance with his beliefs and to undertake alternative service of a civilian character. Professional soldiers should have the right to leave the armed forces in accordance with their conscience.
11. Servicemen should be guaranteed full and detailed information about all aspects of the military draft or the contract system and their obligations regarding military service.
12. Current and former servicemen, including draftees, should have full access to their personal information, including medical information.
13. Servicemen should have the right to join independent organizations that protect their rights, and should have the right to organize and carry out collective bargaining. Unjustified and disproportionate limitations on their freedom of assembly and association should be revoked.
14. Servicemen should have the right to receive medical treatment.
15. Housing for servicemen, including barracks, should meet standards required to protect their health.
16. Professional soldiers should receive pay sufficient to guarantee them an adequate standard of living.
17. Servicemen should have the right to periods of rest. To the extent possible, these should be included in periods of basic training. Professional soldiers should receive paid leave.
18. Professional soldiers retiring from service should be guaranteed a package of benefits and programs to assist their re-adaptation into civilian life.
19. Servicemen and women should receive human rights training, including on their own rights.
20. In order to ensure civilian oversight and respect for the principles of leadership in the military sector, every country should create an independent organ (ombudsman) on servicemen's rights.
21. All servicemen should be informed that they are not required to carry out illegal orders that could lead to genocide, war crimes, crimes against humanity or torture.

To OSCE institutions and participating States:

1. Organize consultations on a more robust and efficient form of review of implementation of human dimension commitments related to the armed forces contained in the Code of Conduct on Politico-Military Matters of 1994, going beyond the system in which participating States submit answers to questionnaire

Human Dimension Issues in Ukraine, Requiring Special Attention

Civic Solidarity believes that it is incumbent on the state performing the role of OSCE Chairman to set the standard for the other participating States and actively use its 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.

On September 27, 2012, the Coalition of Non-Governmental Organizations on Ukraine's Chairmanship of the OSCE in 2013 was created. The Coalition noted a number of human dimension issues in Ukraine that caused significant concern for civil society and required considerable progress from the presiding country. The position of the Coalition was supported by the Civic Solidarity Platform and reflected in the Civil Society Recommendations to the Participants of the OSCE Ministerial Council meeting in Dublin.²⁶

We must state with regret that, at year-end, Ukraine has demonstrated only very limited progress in the conduct of democratic reforms, respect for human rights and the rule of law. The process of European integration and related pressure from the international community revealed that the state is ready to perform only those international obligations that do not threaten the current power arrangements. Thus, the human dimension issues we raised a year ago remain as relevant as ever and the trend line over the course of the year has, if anything, been negative.

Freedom of expression/mass media

In 2013, the number of violations of journalists' rights increased considerably. During the first half of the year there were almost three times as many offences registered as in the first half of 2012. During the first eight months of this year there were at least 54 cases of threats and attacks against journalists and 89 cases of seeking to impede journalists carrying out legal professional activities. The main culprits were individuals (22 cases, total for all of 2012 - 23), security, defense and law enforcement agencies (15 cases, total for 2012 - 8) and private security personnel and young men of athletic appearance (12 cases, total for 2012 - 18).

This alarming tendency is the result of the impunity enjoyed by both governmental and private structures. The court decision punishing those found guilty of battering the journalists Olga Snitzachuk and Vlad Sodel was a rare exception and only came about because of mass protest. Otherwise, during the first half of 2013, 117 criminal cases were brought for seeking to impede the resistance to journalists' legal professional activities but only five of them – one in twenty – came to court. More than two thirds of the cases were closed for lack of evidence.

Both legal and physical means were employed to pressure journalists. For example, the authorities automatically recognized the new owner of the opposition television channel TVi in April, in spite of the fact that they were engaged in a dispute with the previous owners. Approximately 30 of the station's journalists resigned because under the new ownership they felt they could not "guarantee the provision of objective and unbiased information to our viewers."

The process of concentrating media assets in the hands of structures affiliated with the authorities is ongoing. In June, for example, the VETEK group of companies belonging to businessman Sergii Kurchenko, acquired UMH GROUP media holding, including Forbes Ukraine. After the purchase the chief editor of Forbes resigned, saying that the new owner's objective was to "shut the journalists' mouths before the presidential elections." In November, 14 journalists from Forbes Ukraine resigned due to "attempts to change the editorial policy."

²⁶ Human Dimension Issues in Ukraine Requiring Special Attention, in *Civil Society Recommendations to the Participants of the OSCE Ministerial Council meeting in Dublin, 6-7 December 2012*, p. 28, http://civicsolidarity.org/sites/default/files/civil_society_recommendations_for_mcm_in_dublin_final.pdf

Freedom of peaceful assembly

In spite of constitutional guarantees, freedom of peaceful assembly in Ukraine is limited by administrative procedures in 17.4 % of cities and towns of Ukraine. In one third of cities and towns of Ukraine freedom of peaceful assembly is limited by the Order of Presidium of Supreme Council of the USSR No. 9306 - XI from July 28, 1988, "On the order of organization and conduct of meetings, marches and demonstrations in the USSR," the provisions of which directly violate the Constitution of Ukraine.

The number of court orders forbidding the conduct of peaceful assemblies during a particular period of time in a designated place has increased. For example, the Administrative Court of Kyiv banned the conduct of peaceful assemblies in the "Presidential district" from June 14 to December 31, 2013. Earlier, on March 17, 2013 a demonstration against the fabricated criminal case against the now-deceased human rights defender Dmitrii Groisman resulted in the arrest of four activists for violating a two-month ban on peaceful assembly in front of the public prosecutor's office.

There have been cases of arrests by plain clothed police officers, efforts to prevent participation in peaceful assemblies, bias towards one party over another during the conduct of demonstrations, failure to act when conflicts have arisen during assemblies, the unjustified termination of peaceful assemblies and the detention of their participants, excessive use of force and special means and the prosecution of participants in peaceful assemblies after though the events were registered. For example, a court sentenced Valilii Lubarets to administrative arrest violating the procedures for peaceful assembly for organizing the Vladievka demonstration, which started after the rape of a 29-year-old woman by police officers. Earlier, on July 18, 2013, a demonstration on Independence Square was unlawfully dispersed by law enforcement agencies.

In its April 11 decision in the case of Verentsov against Ukraine, the European Court of Human Rights found that, although the Constitution of Ukraine provides some general rules regarding possible restrictions on the freedom of peaceful assembly these rules require further development in legislation. Moreover, the court stated it could not accept as justified a delay of more than twenty years in creating an independent legislative framework.

The unlawful use of internal troops to limit freedom of peaceful assembly, which is a direct violation of the Constitution of Ukraine, continues. Despite the abolition of the military draft, there is still a draft for service in the internal troops.

Right to a fair trial

In 2013, the negative consequences of the judicial reform of 2010, including elimination judges' independence and increased political influence on the judicial branch, continued to increase. According to sociological polling data, 46% respondents do not trust the courts.

The authorities continue to employ a mechanism to ensure the selection of loyal judges. Judges are transferred without competition and selection results are ignored. Judges' promotion to positions on higher-level courts and the appointment of court presidents and their deputies takes place behind closed doors. The transfer of judges from Eastern regions to courts in the capital is now a regular occurrence.

Disciplinary proceedings are being used with increasing frequency, particularly by the prosecutor's office, to pressure judges. This practice is one of the reasons for the very small number of acquittals (just 2% in the first half of 2013). Judges' self-government bodies are controlled and unable to protect judges' independence. This fact that bodies responsible for disciplining judges (the High Justice Council and the Higher Qualification Commission of Judges) are controlled by the authorities along with the existence of grounds for disciplining judges such as breach of time limits for considering cases when all judges face excessive workloads make them fully dependent.

The loyalty of the Constitutional Court of Ukraine, which makes decisions in favor of the authorities' position, often notwithstanding its own previous decisions, is a particular threat. On July 18, the ex-Chairman of the Yenakievo City Court was elected President of the Court, although he is linked to the disappearance of materials in a criminal case against President Viktor Yanukovich.

The prosecution of independent lawyers is another disturbing tendency. In July 2013, cases against approximately 15 lawyers were being heard in qualification and disciplinary committees, while judgments were delivered against approximately 20 lawyers. On April 17, the Bar Association's Qualifications and Disciplinary Committee found against the lawyer Mykola Siryi on the basis of his analysis of the new Criminal Procedural Code of Ukraine.

Freedom from torture, inhuman and degrading treatment

A topical issue in 2013 was the unlawful use of force by staff of internal affairs agencies without the presence of witnesses or a video record. During the first nine months of the year 333 complaints were lodged against brutal treatment by law-enforcement personnel, 12% of all protests filed during this period.

The introduction of the new Criminal Procedural Code of Ukraine led to a decrease in the number of cases of physical violence by police officers in comparison with previous years. Mass media reported only about 68 cases of violence by staff of the internal affairs agencies in 2013 and eight deaths of citizens in law enforcement offices or while dealing with police officers. Despite this, police violence remains a threat for most citizens.

On the night of June 26-June 27, police officers in Vradiyevka village dragged a 29-year-old woman into a taxi, then raped and violently battered her. After the victim filed a complaint, the deputy head of the district police division forced the taxi driver to provide false evidence and concealed the police officers' participation in the commission of a crime. Public prosecutor's office intervened in this case only after mass demonstrations in Vradiyevka and coverage of the incident on the national level.

A new order of the Ministry of Interior regarding procedures for the conduct of internal investigations adopted in March 2013 has no provision for the participation of a complainant who suffered from unlawful actions by a police officer in the investigation process. In May 2013, by the order of Ministry, mobile groups, the only form of social control over institutions of confinement in the police system, which had operated since 2006, were abolished. Despite the positive results of the work of the national preventive mechanism, it is not capable of filling this gap because it is not oriented at investigating individual violations. Partly due to this departmental policy, police officers continued to use violence to extract confessions.

During just the first half of 2013, 1923 criminal proceedings related to tortures and brutal treatment, were initiated. At the same time, prosecutors qualified the majority of such actions as abuse of authority or official position or transgression of authority and not as torture.

Politically motivated persecution of civil society actors

During 2013, there were numerous cases of politically motivated persecution of civil society actors, including human rights defenders, journalists, lawyers, social activists and politicians. Both legal procedures (including the initiation of criminal and administrative cases based on false evidence or in the absence of a corpus delicti, or the commission of the offense the other person), and persecution based on extralegal procedure – assault, threats and even murder – were used.

Consideration of a case involving Iurii Kosarev, a member of the Lugansk human rights team who was beaten in the yard of his house in May 2011 continued in 2013 while at the same time a criminal case was initiated against Kosarev and one of his friends for resisting a police officer. So far, Kosarev has been in prison for more than two years.

There has been no progress in the investigation of the murder of the famous ecologist Vladimir Goncharenko, who was beaten to death after participating in a press conference on the storage of chemically polluted scrap metal in his native city more than a year ago.

More and more illegal acts by police officers are coming to light, including cases involving damage of equipment belonging to the journalist Nataliia Barbarosh, the conduct of a search in the flat of the journalist Anatoliy Lazarenko, the assault of Femen female movement activists and the journalist Dmitriy Kostiukov and the blocking of screenings of the documentary movie "Open Access" in regions.

The inertness of law-enforcement agencies in the face of such offenses and in the course of their investigation is a particular concern. For example, Oleh Bohdanov, an activist of "Road Control" was assaulted on July 21 in Donetsk at the entrance to his house. A half year earlier, unknown individuals burned his car, a crime that has yet to be solved. He also received numerous threatening SMS messages on his mobile phone.

In 2013 a new form of persecution was registered – compulsory medical treatment in an insane asylum. The female activist Raiisa Radchenko, who had protested against unlawful building in Zaporizhzhya city was sentenced to such treatment as the result of a complaint by yard cleaners and restaurant personnel with complaints against her inadequate behavior. In their diagnosis, psychiatrists referred to her alleged medical history, which was not submitted to the court. Moreover, the court refused to allow an independent evaluation. Radchenko spent more than two weeks in a mental hospital and was released only after active social protests and the ombudsman's intervention.

Other disturbing trends in 2013

Attacks on and threats against LGBT activists to stir up discriminatory attitudes in society was another disturbing trend in 2013. New legislative initiatives were introduced to amend the laws on the defense of children's right to a safe information space establishing restrictions on "homosexuality propaganda" and criminal responsibility for this "offense."

Violations of the right to privacy were another major issue of concern. Law enforcement agencies illegally collected information about political and civil society activists and their relatives in various regions. It is now common practice to automatically copy information from communication channels without a court order. The Ministry of Internal Affairs is actively lobbying for introduction of a legal requirement for Internet service providers to install technical means necessary for the authorities to carry out operational searches on their telecommunications networks at the providers' own expense.

Against this background, the government's decision to assign approximately 300 million UAH to create a single state demographic registry is a particular threat. This registry would contain an unreasonably wide range of personal data (including digital face images and fingerprints) and summary data from all existing governmental databases, which would take the country in the direction of full government monitoring of each person's private life.

Recommendations to the government of Ukraine:

1. Amend the relevant legislation to make it possible to identify the real owner of media companies, especially television and radio stations, as well as cross-ownership of print, electronic and other media in order to ensure transparency surrounding the concentration of media in the hands of a single owner or family and to ensure antitrust restrictions on the media market.
2. Provide the same legal protection to bloggers, freelancers, Internet publication journalists etc. as are already provided to traditional journalists.

3. Ensure rapid and transparent investigations into all allegations of violence against and deaths of journalists, as well as cases of interference in journalism.
4. Develop, with input from human rights groups, and promulgate a special law on freedom of peaceful assembly that will be in complete accordance with the norms of international law and Ukraine's OSCE commitments, paying particular attention to the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly.
5. Bring the content of Ukraine's legislation into accordance with international standards (including by removing Art. 185-1 of the Criminal and Administrative Code), and by revoking unconstitutional ordinances adopted by local authorities limiting the right to freedom of peaceful assembly.
6. Systematically and regularly train law enforcement officials and judges on international norms with respect to freedom of peaceful assembly with the participation of experts from international human rights organizations.
7. Amend the Law "On Military Duty and Military Service" to abolish compulsory conscription.
8. Immediately change the method of forming the Higher Council of Justice, perhaps through its formation by a congress of judges, or liquidate it and transfer its functions to other bodies that meet the criteria for the independent formation of judicial organs while increasing the responsibilities of the Supreme Court of Ukraine.
9. Improve the procedures for reviewing cases of administrative violations, creating a guarantee of a fair trial as foreseen in Article 14 of the International Covenant on Civil and Political Rights and Article 6 of the European Convention on Human Rights.
10. Prepare legislative norms that guarantee cases are heard within a reasonable period of time and review the possibilities for compensating persons for violations of their right to have their cases heard within a reasonable period of time.
11. Create an independent body within the law enforcement system to effectively conduct criminal investigations of claims of torture and ill-treatment by law enforcement officials.
12. Introduce amendments to Article 127 of the Criminal Code to bring it into conformity with the demands of the UN Convention against Torture.
13. Adopt a law which shall require law enforcement officers to provide proper identification while performing his duties in uniform.
14. Stop the practice of politically motivated judicial and extra-judicial persecution and harassment of civic activists, journalists, lawyers and politicians and immediately review all allegations of politically motivated convictions, ensuring impartial and fair trials.
15. Form a civil society monitoring group on political persecution under the aegis of the Parliament or the Ombudsman's Office in order to explore cases where a political motive is alleged and invite monitoring missions from ODIHR and the OSCE PA to explore the current situation.
16. Improve the Law "On Protection of Personal Data" to bring it into line with the Law "On access to public information" and abolish the Unified State Demographic Register.
17. Stop the practices of terminating the use of internet resources and maintaining global internal-control and automatic data collection of electronic communication and their misuse without proper

authorization by the courts.

18. Abolish the practice of developing discriminatory law drafts such as 0945 and other of the kind and make sure that human rights standards are not narrowed or offset by new legal developments.
19. Request that OSCE/ODIHR conduct a wide-ranging evaluation of Ukrainian legislation and the legislative process with the goal of increasing its quality and compliance with OSCE commitments.

Meeting Helsinki +40 Challenge: Strengthening Human Dimension Implementation through Systematic Monitoring, Voluntary Reporting and Follow-up Action

General approaches:

OSCE obligations in the human dimension were voluntarily adopted by the participating States, and they are obliged to implement them in good faith. Even though many participating States have adopted similar obligations as members of other international organizations and treaties, for the citizens of a number of countries these OSCE obligations remain the only international guarantees that their rights and freedoms will be respected. The OSCE is also the only community that views respect for democratic principles and human rights as a guarantee of overall security, both for individuals and for the community of nations.

Unfortunately, in recent years the OSCE's ability to act to ensure the participating States fulfil their human dimension obligations in practice has remained low, and in many cases even declined. This is particularly concerning when seen against the systematic worsening of the human rights situation in many participating States and the challenges to OSCE human dimension principles that the governments of some states are openly posing, even though they themselves adopted these principles 15-25 years ago. Many observers believe that the OSCE is increasingly turning into a talk fest and is not capable of taking real actions to solve the problems that are brought to light in meeting after meeting. Not infrequently, all that gets done is defining the problem; there is no or too little discussion or adoption of actions necessary to improve the situation. In the critics' view, on the verge of its 40th anniversary, the OSCE is losing its effectiveness and relevance.

With this in mind, energetic measures necessary to improve the effectiveness of the implementation of human rights commitments should be a key priority for the entire organization. These should include not only measures to improve the effectiveness of existing instruments and programmes (such as identification of problems, elaboration of guidelines and recommendations on legislation, capacity building, observation of certain important events, including elections, trials, and assemblies) but in many cases the introduction of new approaches, such as the systematic monitoring of implementation of commitments, objective assessment of the extent to which they are fulfilled in the participating States, the adoption of concrete follow-up action plans by various actors in the OSCE framework and adoption of voluntary obligations by participating States including measurable benchmarks of progress and follow-up reporting.

Development of mechanisms for regular monitoring of the implementation of human dimension commitments is a key means for increasing the OSCE's efficiency in the human dimension. It may take several years to adopt decisions and develop specific mechanisms but discussions and practical steps should start right away. Monitoring could focus on implementation of a particular human dimension commitment across the OSCE region or on implementation of one or several commitments in a particular country.

A variety of actors within the organization should play a role in implementing these kinds of changes, which will increase the ability of the organization to improve the actual situation in the human dimension across the region. These include the Chairmanship, the Ministerial Council and the Permanent Council, subsidiary bodies (in particular, HDC), autonomous institutions (first of all ODIHR), field missions, civil society organizations and, not least, the participating States themselves.

From our point of view, the implementation of a system of monitoring and assessment of the implementation of human dimension commitments and the adoption of action plans can be achieved through the OSCE's existing system and institutions; in some cases this will not even require a consensus of the participating States. Bearing in mind the current complex situation within the OSCE where the taking of consensus decisions is complicated by principled differences among the participating States, the main

actions towards accomplishing this should consist of the strengthening of autonomous institutions and their mandates and providing them with the necessary funding, states leading by example through the introduction of a system of voluntary self-assessment and making it a tradition, creating good and comprehensive practices, more active use by the participating States of non-consensual mechanisms, and increased participation by civil society organisations.

In addition, events in the cycle of human dimension meetings should be transformed to become more focused on presenting the results of systematic monitoring, adoption of recommendations and concrete plans of action aimed at changing the situation with implementation of commitments. The connection between analysis and conclusions coming out of human dimension meetings and discussions in the OSCE's decision-making bodies and their subsidiary bodies should be increased.

Civil society has its own role in increasing the effectiveness of the implementation of the OSCE's human dimension commitments. 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. 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 identifying problems, setting goals, suggesting new mechanisms and procedures, developing policy advice, drafting documents, elaborating new normative approaches, participating in the implementation of programmes and activities, assessing their efficiency, building capacity and conducting trainings to raise awareness of OSCE principles and activities.

The entire system of monitoring, assessment and adopting plans of actions to improve the implementation of human dimension commitments should be based on the following components:

1. a more logical cycle of human dimension events, more focused on the assessment of the implementation of commitments, the adoption of recommendations for follow up action plans and their transmission for discussion and decisions in meetings of the Human Dimension Committee, the Permanent Council and the Ministerial Council;
2. OSCE institutions, and in particular ODIHR, with politically strengthened and financially supported mandates to monitor the implementation of commitments with more systematic input from civil society;
3. the Permanent Council and the Human Dimension Committee paying particular attention to materials and recommendations presented by ODIHR and prepared during human dimension meetings and strengthening the system of voluntary reporting and peer-review by the participating States;
4. voluntary self- assessment by participating States leading by example, and their providing standing invitations to ODIHR and field operations' observations missions;
5. a more active role for the Chairmanship in supporting the OSCE's autonomous institutions; appointing temporary representatives of the Chairmanship for specific human dimension problems and the introduction of self- assessment by the Chairmanship, including voluntary pledges;
6. increasing the effectiveness and the active use of the OSCE's non-consensual mechanisms; and
7. a more active role for civil society at all of these stages.

All of these changes should be accompanied by a political strengthening of the role of the human dimension within the OSCE. All OSCE actors should reaffirm the fundamental principle of comprehensive security encompassing all three dimensions to prevent the compartmentalisation of the three OSCE dimensions and the pushing aside of the human dimension that is being promoted by some countries. Participating States

and Chairmanship must accept that cooperation in the first two dimensions depends on successful implementation of commitments in the third dimension. Violators of human dimension commitments cannot be trusted partners for cooperation in the military security, energy, economic or environmental areas.

Changes in the human dimension events cycle:

A more logical regular annual cycle of human dimension events should be established, starting early in the year with the HDIM and continuing with strong follow-up activities throughout the year, including SHDMs, Chairmanship events, HDC meetings, PC meetings, and the Ministerial Council meeting.

The aim of the entire human dimension cycle should move from raising concerns and identifying problems to a more systemic assessment of implementation of human dimension commitments by participating States, elaboration of practical, forward-looking recommendations and decisions, followed by adoption of action plans aimed at addressing the identified problems and improving the participating States' implementation of commitments and on assessing implementation of decisions adopted by OSCE bodies in the past.

HDIM should be moved from autumn to spring, preferably as early as March. This would provide sufficient time for work to be taken forward on the recommendations emerging from HDIM, particularly those that might be a subject of the Ministerial decisions at the Ministerial Council. Currently the time between the end of HDIM and the MCM is less than two months which prevents any meaningful follow-up to HDIM at MCM. This would also allow all three Supplementary HDMs to be held after the HDIM and their themes to be chosen on the basis of discussions at HDIM.

This change of timing and sequence would help to establish a logical year-long cycle of review and follow-up action on human dimension commitments. It would also enable more systematic engagement by a new Chairmanship from the very start of the year and give it sufficient time to develop follow-up plans for the rest of the year.

A special assessment report at the end of each Chairmanship should be produced by ODIHR and Chairmanship to assess progress made during the year in addressing the implementation problems identified at HDIM and other human dimension events throughout the year. This report should be presented at the Ministerial Council meeting.

Changes in the HDIM proceedings:

The focus of the HDIM should be less on presenting information and recommendations in prepared statements and more on discussing these recommendations and how to remove obstacles to their implementation. We suggest that NGOs and governments be asked to submit their information and recommendations as much as four weeks in advance of HDIM to allow for a shift of the event's focus.

Discussions at HDIM could be prepared by independent experts who would make presentations on key issues and recommendations raised in participating States' and NGOs' preliminary submissions, and ensure that discussions are focused on recommendations and follow-up actions.

The final session of HDIM should be focused on a discussion of lessons learned, ideas for follow-up discussions and actions; it should include an announcement of voluntary pledges by participating States leading others by example.

A report on the HDIM proceedings should be focused on specific recommendations regarding problems discussed at the event and concrete follow-up actions. ODIHR should more actively assist States in developing more consistent plans to follow up on human dimension meetings, in particular with regard to the recommendations made.

The special role of the various OSCE institutions should be used effectively wherever possible. The Chairmanship-in-Office should recommend ODIHR take action to follow-up to specific findings at HDIM. This would allow for more tangible follow-up to HDIM and support ODIHR's mandate to monitor implementation of human dimension commitments.

In preparation for the HDIM, the Chairmanship-in-Office should consider setting up a panel of experts, including CSO representatives, to examine information and conclusions discussed at the previous HDIM and prepare recommendations on further OSCE action on them.

Strengthening the role of ODIHR:

ODIHR must be a leading institution in efforts to strengthen the OSCE's capacity to monitor implementation of human dimension commitments. ODIHR's breadth of mandate provides ample scope for addressing almost all human dimension issues that are not specifically entrusted to other institutions (such as the Representative on Freedom of the Media or the High Commissioner on National Minorities). Stronger and clearer language in ODIHR's mandate would help make its mandate to monitor the implementation of human dimension commitments more explicit. Likewise, the Chairmanship-in-office should regularly express its political support for ODIHR's monitoring mandate.

In practical terms, the monitoring of the human dimension situation in OSCE participating States and the implementation of their commitments should be made more systematic and continuous and progressively cover an expanding scope of commitments. Currently the range of ODIHR's monitoring tools is limited and includes deployment of missions for on-site observation of elections, trials and peaceful assemblies as well as reports by the director at the Permanent Council three times a year. There is a strong need to develop new tools and instruments for systematic and continuous monitoring of the implementation of commitments that will produce reports and recommendations to participating States and OSCE institutions for follow-up action. ODIHR should present its reports with results of its monitorings to the Chairmanship and the HDC on a more frequent basis. In its turn, the Chairmanship should take more actions in response to ODIHR reports. ODIHR's expanded monitoring work should be properly staffed and funded.

On-site observation of important human dimension events and situations is one of the key tools in ODIHR's monitoring of human dimension commitments. Direct ODIHR observation should be progressively broadened. This could start with the observation of pre-trial detention conditions in the framework of combating torture, a priority of the incoming Chairmanship.

ODIHR's ability and expertise to respond rapidly to human dimension problem cases is currently constrained and underused. ODIHR offers assistance which may or may not be accepted by participating States (observation, training, capacity building, and advisory services). In cases where the host country is willing to accept assistance from ODIHR, teams can be deployed rapidly to observe and provide other kinds of engagement. But in reality there have been few cases of rapid response by ODIHR in recent years and there are many barriers including from within the OSCE where some states and others actors view only the Chairmanship and the Secretariat as the lead on all "crisis" interventions even when the root problem falls within ODIHR's mandate. This approach needs revision.

Currently there is no mechanism whereby participating States may offer a standing invitation to ODIHR observation missions, unlike in the UN system where a growing number of states issue standing invitations to the special mechanisms of the UN Human Rights Council. In the OSCE it takes time for States to respond to ODIHR's requests for deployment of monitors, and a number of participating States have refused such requests. Participating States should lead by example by issuing standing invitations to ODIHR observation missions, making it a tradition.

The OSCE should ensure the active participation of civil society representatives in missions observing elections, trials and peaceful assemblies. In addition, civil society organisations' ability to conduct their own

independent observation of elections, trials and peaceful assemblies and to assess ODIHR observation reports should be recognized as an important contribution to the implementation of OSCE commitments. Special attention should be paid 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 could be the more active use by ODIHR of observation reports by CSO organisations. Particular attention should be paid to those types of emergency and crisis 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. CSOs could conduct observation and monitoring according to the ODIHR methodology and then request ODIHR consider these materials and include their data and conclusions in ODIHR 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.

To ensure greater consistency, quality and impartiality of CSO reports and to make them fit into the system, OSCE/ODIHR should develop monitoring and reporting guidelines for CSOs. More active use of CSO reports could be tested in the observation of peaceful assemblies in countries that have not allowed in ODIHR observation missions. Similarly, this approach could be started as a pilot project in the incoming Chairmanship's priority areas, for example, torture and the security of human rights defenders.

Should OSCE strengthen existing and develop new mechanisms for on-site observation, systematic monitoring of implementation of commitments and a quick 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.

There is no system of documenting or a procedure for reviewing individual complaints in the OSCE, and a quick response to emerging individual cases mostly takes place in an ad hoc fashion through statements of concern by participating States in the Permanent Council. Individual cases should be brought more systematically to the attention of the OSCE's political bodies. In fact, the ODIHR has a specific duty to bring concrete circumstances, including individual cases, to the attention of the Permanent Council and the OSCE's Chairman-in-Office. This should be done more systematically because the overall picture of implementation of commitments in a particular country to a large extent consists of individual cases. It is important that ODIHR document developments in such individual cases and make conclusions and recommendations because many cases require urgent response and cannot wait for the annual HDIM. ODIHR should establish a rapid response program, possibly through a decision by the Chairmanship, funded with extra-budgetary contributions by interested States, and fully staffed. In addition, the Chairmanship could appoint a representative to review of individual complaints in crisis situations.

The role of the OSCE's decision-making bodies:

The Permanent Council

The Permanent Council (PC) bears responsibility for ensuring that the OSCE focuses on human dimension issues throughout the year, and that urgent human dimension issues receive proper attention and are put before all participating States. This constant focus is crucial for ensuring that monitoring results receive proper attention and for providing more incentive for participating States to implement their commitments.

The PC is also the place where participating States at a political level reconfirm what has been achieved by the Human Dimension Committee (HDC). Discussions at PC meetings should be held in a results-oriented manner, and it is the place for countries, willing to lead by example, between the HDIM and MC, to make

pledges in the human dimension either in answer to monitoring findings or as a result of discussions and a willingness to use new approaches.

While the main human dimension work should be done at the HDC, it is the PC that gives political weight to its achievements, which is why HDC reporting to the PC should be systematic and receive proper consideration. The PC should carefully consider findings of the HDIM, as it is the main human dimension forum in the OSCE, bringing together all actors and providing the broadest representation of human dimension developments in the OSCE area.

A regular review of shortcomings in the implementation of human dimension commitments is an indispensable part of the process of stimulating compliance with human dimension commitments. HDIM outcomes must lead to tangible follow-up by participating States, OSCE institutions, the Human Dimension Committee, the Permanent Council and the Ministerial Council. A reinforced Permanent Council meeting in Vienna should be held a few weeks after HDIM and be specifically devoted to the implementation of human dimension commitments, with the participation of Human Rights Directors and relevant senior officials and heads of OSCE institutions. They should present their priorities for the future as well as their assessment of recommendations made during the HDIM.

In order to prepare for the discussion at the Reinforced Permanent Council meeting, in addition to the official summary of HDIM proceedings traditionally prepared every year by ODIHR, the Chairmanship should prepare a perception paper that would be circulated in advance of the Reinforced PC meeting. The perception paper would summarize the main findings and recommendations made at HDIM, identify key issues and topics requiring follow-up action by participating States and OSCE institutions, including the Permanent Council and the Ministerial Council, and propose concrete follow-up actions. The Chairmanship should involve independent experts and civil society representatives in preparing this follow-up perception paper.

The Reinforced PC meeting should be devoted to a forward-looking discussion with a view to fostering implementation of human dimension commitments as well as elaborating recommendations necessary to meet new risks and challenges. The PC should discuss proposals made in the Chairmanship's perception paper and provide direction on follow-up actions and recommendations with regard to preparations for the OSCE Ministerial Council Meeting at the end of the year.

Overall, however, there remains a need to ensure more systematic follow-up to all decisions made at the annual Ministerial Council meetings, particularly in the framework of the PC. This cannot be achieved only through structural adjustments of the intergovernmental machinery but rather by developing and maintaining the necessary political will. It is in this regard that the role of the Chairmanship is crucial.

Action plans adopted as a follow-up to HDIM should be less vague and more specific, identifying countries concerned and encouraging them to voluntarily report on improvements and problems in implementation of commitments at subsequent HDIMs, PC meetings, HDC meetings, or other possible multilateral meetings such as special events convened by the Chairmanship or autonomous OSCE institutions.

The Human Dimension Committee

Follow up to reports on the ODIHR observations and the human dimension meetings is largely left to individual governments and sometimes to the OSCE's autonomous institutions, particularly ODIHR. However, there should be an inter-state forum where systematic follow-up should be developed; the Human Dimension Committee should play this role.

Being a subsidiary body of the PC, the Human Dimension Committee has strong potential for going beyond the ritualised plenary sessions of the PC and engaging in real and substantively detailed exchanges not only

of criticisms, but also of concrete experiences and possible solutions. It should be a place for in-depth dialogue about concrete plans of actions and follow-up to discussions at human dimension events.

While the HDC has been leading the way in the OSCE in introducing peer review by States, more work needs to be done to develop a regular and systematic peer review process. Intensified use of peer review of implementation of human dimension commitments should also make full use of the expertise and assistance of all OSCE institutions and bodies.

The commendable practice of participating States' voluntarily reporting at HDC meetings on implementation of selected human dimension commitments should continue and be expanded. Voluntary reports should be made a rule rather than a rare exception. The HDC Chair and reporting state delegations should invite to these meetings NGOs working in related geographic and thematic areas and take their recommendations into account. It is important that the HDC and ODIHR jointly and in consultation with civil society elaborate guidelines for such reporting by State delegations. Country reports and a summary of discussion of these reports at HDC meetings should be made public.

Participating States should be encouraged to voluntarily present at HDC meetings their plans to address shortcomings in human dimension implementation identified during discussions at HDIMs and other human dimension events. On the basis of lessons learned from voluntary country reporting at the HDC we propose to move in the future towards mandatory reporting by participating States.

In addition to voluntary reporting by States about the implementation of their human dimension commitments, the process should include regular special meetings of the Permanent Council and/or the Human Dimension Committee focusing on specific human dimension issues across the OSCE region. Reports from HDIM and SHDMs should be used to prepare such discussions. These meetings should be open to civil society representatives and the media, beyond what is foreseen by the current Rules of Procedure.

More systematic and regular reviews will strengthen the effectiveness of action plans discussed at HDC, which could eventually lead to the introduction of the practice of preparation of an annual review for presentation and discussion at the Ministerial Council meeting. Preparation of an annual implementation report to the Ministerial Council should be a joint exercise by the HDC, ODIHR and civil society.

The HDC has already started inviting NGO representatives to its meetings to present civil society recommendations on particular human dimension commitments and 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 HDC.

The Ministerial Council:

The failure of Ministerial Council meetings to adopt any decisions and resolutions in the human dimension in the last two years illustrates the growing differences among OSCE participating States. However, Ministerial meeting should be a logical end of the human dimension yearly cycle, drawing conclusions and looking forward to the upcoming year. Currently preparations to the Ministerial meetings, including discussions of the draft resolutions, are too detached from the results of HDIM and other events of the human dimension annual cycle.

In order to foster human dimension discussions, an annual implementation report to the Ministerial Council should be introduced. It should lay the basis for high-level discussions aimed at adopting specific action plans.

States that are willing to lead by example should announce their main voluntary pledges for the upcoming year at the Ministerial Council meeting.

Participants in the MCM should review and comment on the annual concluding document of the Civil Society Parallel Conference preceding the Ministerial Council meeting. A representative of civil society should be invited to the Ministerial Council meeting to present the document.

CSOs should have input into the Ministerial Council's annual implementation report should one be instituted.

The Chairmanship-in-Office:

The role of the Chairmanship in providing leadership in implementing human dimension commitments and initiating follow-up to reports on situations in the human dimension cannot be overestimated.

Chairmanships should take the lead in initiating forward-looking and action-oriented discussions among participating States and OSCE institutions of the results of HDIM. We suggest that each Chairmanship should produce its own perception paper reflecting on the HDIM report produced by ODIHR and suggesting follow-up actions. The Chair should present its paper at meetings of the HDC and PC.

Visible support by the Chair for the ongoing work of OSCE institutions and field missions in addressing concrete human rights deficits is crucial and needs to be maintained, particularly in crisis situations. In particular, Chairmanships should systematically express vocal political support for ODIHR's mandate to monitor the implementation of human dimension commitments and deploy observations missions.

The Chairmanship should work closely with ODIHR on outstanding individual cases of violations of human dimension commitments and pay close attention to gross and systemic violations.

A country that holds the Chairmanship of the OSCE should expect closer scrutiny of the way it fulfils its OSCE commitments and should provide a good example to other participating States with regard to respect for these commitments. Therefore, an official review mechanism should be introduced in the OSCE to assess participating States for a potential Chairmanship role, including evaluation of the candidate country's implementation of its human dimension commitments. This review should be carried out before any decision on the matter of future Chairmanships is made.

Initially this assessment could be done on a voluntary basis in the form of a self-assessment by the Chairmanship, in order to strengthen the international standing of the Chairmanship and lead others by example. If a country that has already been appointed to hold the Chairmanship accepts the idea of a voluntary self-assessment of its performance in implementation its commitments, it should consult NGOs and invite them to make recommendations.

Each Chairmanship could choose one, two, or three commitments from among the most alarming trends across the OSCE region raised during discussions at HDIM before the beginning of its Chairmanship term, or one commitment from each of the three "pillars" of the human dimension – human rights, democracy, and rule of law. Likewise, each Chairmanship could do a self-assessment of its implementation of commitments in the areas of thematic priorities it had identified for its Chairmanship year. Alternatively, Chairmanships could pick one Human Dimension commitment causing concern and one other, more positive area where it could share best practices with other participating States. Each Chairmanship should also study HDIM reports prepared by ODIHR and other relevant materials, including reports by the UN human rights bodies, with a view to selecting commitments for assessment.

Assessments could result in the adoption of three documents (at different stages of the process):

- an assessment report as such, identifying achievements and gaps in implementation of selected commitments (which could include legislation, institutions, and practices), presented at HDIM before the beginning of the Chairmanship term;

- “pledges” or action plans aimed at achieving progress in implementing selected commitments during the Chairmanship term, ideally including specific measurable benchmarks (adopted in consultation with relevant ministries and approved by the government of the Chairmanship country), presented at the Ministerial Council meeting before the beginning of the Chairmanship term; and
- a report on progress in implementing this action plan, presented at the Ministerial Council meeting at the end of the Chairmanship term (and/or at the last HDC meeting in the year). The report could also identify further steps in improving implementation of selected commitment(s) after the Chairmanship term is over and make recommendations to all participating States. Lessons learned from the process should be analysed and transferred to the next Chairmanship.

This self-assessment process should take place on the basis of the most recent reports by UN human rights bodies, international and national NGOs, national human rights institutions, etc.

Each Chairmanship should avail itself of the assistance of and regularly consult with ODIHR, other OSCE institutions and NGOs at all stages of its self-assessment. Civil society should be able to contribute at various stages, including making recommendations on the selection of commitments for assessment, providing materials to the assessment process, giving feedback to the assessment report, commenting on the draft action plan, commenting on the action plan, and commenting on the final report on the implementation of the action plan. Civil society representatives should be represented at official meetings when these reports are presented and discussed.

Increasing the efficiency of field operations:

OSCE field missions are important tools for both monitoring the implementation of commitments and providing assistance to States in their implementation. Their strength is their presence on the ground and, in an ideal world, in permanent contacts with both government and civil society. However, there are also inherent weaknesses: OSCE missions are not present in all participating States; in a number of cases host governments have sought to limit the scope of their mandates and narrow them down to project offices. In these circumstances, the staff of some missions may find a way to continue their work in the human dimension while in others the situation is more precarious.

In order to make field missions more capable of carrying out human dimension activities, at least the following should be done:

- on the political level, the Chairmanship should reconfirm that every OSCE mission has a built-in human dimension monitoring mandate, that their flexibility should not come at the expense of human dimension commitments, and that human dimension implementation is an essential part of comprehensive security;
- the Chairmanship should encourage participating States to provide enabling environment for the effective functioning of OSCE field missions;
- the Chairmanship should encourage participating States to make use of the field missions’ human dimension mandates for their own benefit, resulting in higher security within the country and enhanced international cooperation and positively influencing other aspects of the country’s international relations (for example, “hard security” cooperation and economic cooperation);
- human dimension monitoring by field missions should be based on a unified system and ODIHR-developed methodology and should feed into a unified OSCE human dimension monitoring system, preferably based in ODIHR;
- field missions should not shy away from bringing to Chairmanship’s and ODIHR’s attention urgent cases of violations of human dimension commitments as well as human dimension problems of a systemic nature;
- field missions should work inclusively with civil society representatives, avoiding selectivity imposed by the host government; and
- performance evaluation of field missions’ work should be based, among other tools, on feedback from civil society.

A more active role for participating States:

OSCE participating States can do much more than they do at present to strengthen implementation of human dimension commitments through monitoring, observation and follow-up actions. The focus should be shifted from mostly criticising others or defending one's own country to voluntary self-assessments and reporting, taking up voluntary pledges, more closely cooperating with and providing support to ODIHR and other OSCE institutions and field missions.

In particular, the States can lead by example and regularly conduct self-assessment with voluntary presentation of reports at the meetings of the Human Dimension Committee and adopt voluntary pledges in implementation of particular human dimension commitments based on issues raised and lessons learned at HDIM and SHDMs.

States should play an active role in organising and participating in forward-looking and action-oriented discussions of follow-up actions based on the results of human dimension events.

States should take a much more active role in providing increased and flexible extra-budgetary support to ODIHR's activities and projects.

States should issue standing invitations to ODIHR observation missions, currently observing elections, trials, and peaceful assemblies, following the model used at the UN Human Rights Council.

States should more actively engage with civil society representatives, regularly consult with them, take on board their recommendations, invite them to speak at OSCE meetings, attend their events, provide political support when they face harassment and persecution, and provide resources for their work.

States should more actively and effectively use non-consensual mechanisms in reaction to emergency human dimension situations or those of protracted and gross human rights violations and initiate informal working groups as part of the follow up to reports in the framework of these mechanisms.

Enhancing the efficiency of non-consensual mechanisms:

The OSCE should ensure that investigations and decisions for swift OSCE actions in response to human rights emergencies and situations of persistent, large-scale human rights abuses or imminent threat of such violations cannot be held up by a veto by any one participating State. Participating States should re-examine the idea of using flexible, temporary, and focused mechanisms to examine human rights emergencies and protracted and large-scale abuses. All existing OSCE mechanisms for dealing with emergency situations should be more regularly and efficiently applied in cases of clear and gross violations of OSCE human dimension commitments, including the Berlin Mechanism, the Vienna Mechanism, the Prague "consensus minus one" procedure, and the Moscow Mechanism.

One of the major problems with application of the Moscow Mechanism is that the existing OSCE documents do not envision any specific follow-up steps after the release of reports produced by rapporteur(s) in the framework of the Mechanism and its presentation at a meeting of the Permanent Council. We believe that such specific instruments for follow-up steps should be developed and tested, taking into consideration, inter alia, lessons learned from past applications of the Moscow Mechanism. Scepticism about the Moscow Mechanism is often caused by frustration about the lack of impact it has on the situation on the ground if the country in question is not willing to cooperate. Development of a mechanism of follow-up steps should help addressing this problem.

Strong analysis and recommendations contained in the Moscow Mechanism reports remain unutilized while the situation on the ground may remain very problematic or even deteriorate. Therefore, we believe that follow-up instruments need to be developed and tested which would provide for continued OSCE attention

to the situation, monitoring of new developments and consistent efforts to negotiate implementation of recommendations contained in the Moscow Mechanism report with the authorities of the participating State concerned.

The OSCE Rules of Procedures of 2006 give OSCE decision-making bodies, their chairpersons and the chairpersons of informal subsidiary bodies (particularly the HDC) the authority to set up or dissolve ad hoc/thematic open-ended informal working groups, open to participating States.²⁷ This means that delegations of participating States, the OSCE Chairmanship, and the Chair of the Human Dimension Committee can all play a role in establishing and applying follow-up instruments following the release of Moscow Mechanism reports. In particular, the OSCE Chairmanship may, upon the request of a number of concerned States, establish a working group to follow up on a Moscow Mechanism report. Similarly, the Chair of the Human Dimension Committee may take such a decision. The mandate of such a working group could include monitoring, assessment of the situation, presentation of regular reports to the Permanent Council, elaboration of recommendations, and interaction with other relevant international organisations dealing with the human dimension situation in the country concerned such as bodies of the UN, the Council of Europe and the Inter-American Commission on Human Rights.

When a decision by the OSCE Chairmanship or the Chair of the Human Dimension Committee is not possible, the States concerned about an emergency situation or a case of continued systemic and gross human rights violations in a participating State previously assessed in a Moscow Mechanism report, should react beyond issuing statements at meetings of the Permanent Council or HDIM, currently the only action regularly undertaken by concerned State delegations. We believe that the countries that initiated the Moscow Mechanism bear particular responsibility for follow-up actions. They may establish their own informal working group on the human dimension situation addressed in the Moscow Mechanism report and/or appoint their own informal Special Rapporteur. Other concerned States could join them.

Increasing the impact of OSCE cooperation programmes:

OSCE cooperation programmes are important tools for implementing human dimension commitments and allow participating States to benefit from international aid and expertise. However, the existence of these programmes themselves and the participation of States in them do not guarantee the desired results.

Quite often such cooperation is selective, and commitments are chosen because they are less politically sensitive. Likewise, activities within the programmes are often superficial, with no real impact on the ground. In a number of cases programmes are conducted by OSCE field missions or offices that experience pressure from host countries.

In order to ensure the efficiency of cooperation programmes, we recommend that:

- each Chairmanship should focus on the most complicated programmes, encouraging host countries to provide truly enabling environment;
- civil society should be consulted at all stages, from program conception to monitoring and evaluation, including those issues not related directly to the human dimension;
- all human dimension programmes should ensure the inclusion of civil society groups, even when the host country is not comfortable with this;
- cooperation in the first two dimensions should not be undertaken at the expense of the human dimension; on the contrary, a country interested in cooperation in the first two dimensions should be urged to take up cooperation in human dimension as well;
- a clearer set of benchmarks and impact assessment tools for the OSCE cooperation programmes should

²⁷ OSCE Rules of Procedures (2006): "II (A) 8. The decision-making bodies, the Chairpersons of decision-making bodies, and the Chairpersons of ISBs in close consultation with their superior decision-making body, may set up or dissolve ad hoc/thematic open-ended informal working bodies, hereinafter referred to as informal working groups (IWGs), which shall not have a decision-making capacity as specified in paragraph II(A)1 and which shall be open to all the participating States."

be developed in order to strengthen the link between these programmes and the implementation of OSCE commitments; and

- cooperation programmes should be the subject of regular discussions in the framework of the HDC and the PC, especially regarding their impact and results.