



**OUTCOME DOCUMENTS of the  
OSCE PARALLEL CIVIL SOCIETY CONFERENCE**

**HAMBURG, 6-7 DECEMBER 2016**

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## HAMBURG DECLARATION

### ON PROTECTING AND EXPANDING CIVIL SOCIETY SPACE

*Adopted by the participants of the OSCE Parallel Civil Society Conference  
Hamburg, 6-7 December 2016*

The OSCE Parallel Civil Society Conference – 2016,

CONSIDERING that civil society has been a strong driving force across the OSCE region and has played a vital role in collecting and disseminating information from the ground; ensuring accountability and advocating for greater efforts by participating States to implement their OSCE commitments and initiate reform across all three dimensions of security of the OSCE, as well as in early warning, crisis prevention and conflict transformation,

RECALLING that the Helsinki Final Act confirms that organisations and persons have a relevant and positive role to play in contributing to the achievement of the aims of their co-operation and the right of the individual to know and act upon his rights and duties. The Charter of Paris for a New Europe recognised the major role that non-governmental organisations, religious and other groups and individuals have played in the achievement of the objectives of the OSCE,

NOTING that the backlash against civil society has accelerated lately in many OSCE participating States. Increasing restrictions on freedoms of association, peaceful assembly and expression, as well as growing threats to the security of civil society activists, their freedom of movement and the right to fair trial, have a hugely negative impact on the ability of civil society to operate freely and without the fear of reprisals,

UNDERLINING that some participating States attempt to justify restrictions on the ability of civil society to operate freely by the false pretexts of protecting state sovereignty and preventing “foreign interference in domestic affairs”, fight against terrorism and extremism and protection of “traditional values”,

EXPRESSING concern about attempts made over the past years in several OSCE participating States to further toughen legislation regarding NGOs and intensify repressive practices, first and foremost in the context of the “foreign agents” and similar laws. Civil society groups and their leaders are increasingly singled out for negative and discrediting statements by government officials and public media who accuse them of promoting “foreign” interests and values and of undermining national security and stability. Politically-motivated lawsuits are being used in many States against activists critical of the

authorities and often involve trumped-up charges, harsh sentences and the impossibility of a meaningful legal defence or a fair trial,

RECOGNISING that if before the main area of concern were a substantial number of countries of the former Soviet region, now increasingly Turkey, the western Balkans, and Central Europe have seen the growth of “illiberal democracies” in which critical civil society organisations are being put under pressure. In addition, in the framework of fighting terrorism and transnational threats, many democracies in the West restrict civil society activities, put limitations on funding for civil society organisations and violate the privacy of activists,

EXPRESSING concern also about growing abuse by repressive governments of international agreements on cooperation in criminal matters and relevant intergovernmental organisations (such as Interpol) to prosecute human rights defenders and civil society activists, as well as of international agreements and cooperation aimed at countering tax evasion (such as the Berlin Convention on Mutual Administrative Assistance in Tax Matters), money laundering and financing of terrorism (such as the Financial Action Task Force / FATF) to put pressure on or fully disable civil society activities,

RECOGNISING that autocratic governments have moved from attacking individual human rights defenders to attacking the mechanisms of protection of human rights defenders and even to undermining the international system of human rights protection as such,

RECOGNISING the focus on space for civil society and the security of human rights defenders made by the Swiss OSCE Chairmanship in 2014 as well as consistent efforts made by several successive OSCE Chairmanships and OSCE institutions in recent years to expand space for civil society participation in the OSCE work and events and to increase cooperation with civil society both in the OSCE headquarters and in the field,

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CONSIDERS that the problem of shrinking space for civil society has numerous negative implications for realisation of the OSCE comprehensive security concept. The inability of civil society to operate effectively will not only undermine democratic public participation, but the very ability of the OSCE to work effectively, since a lot of vital information from the ground and pioneering ideas on how to address gaps in implementation of OSCE commitments come from civil society.

ALSO CONSIDERS that these negative developments stand in sharp contrast to the adoption in 2014-2015 of the OSCE ODIHR Guidelines on the protection of human rights defenders and on freedom of association.

NOTES that civil society organisations and activists documenting human rights violations in conflict zones, involved in conflict prevention and peace-building, as well as those working to combat xenophobia and hate crime, advocating for equality and promoting the rights of discriminated groups (women, LGBTIQ, national minorities and migrants) are especially targeted and disproportionately affected.

CALLS ON the authorities of OSCE participating States to reverse the backlash against civil society at the national level, inter alia, to:

- stop referring to civil society groups critical of government policies as political tools of foreign interference in domestic affairs,
- refrain from describing civil society groups critical of government policies as a threat to “traditional values” and stability,
- stop engaging in smear campaigns and making discrediting statements against civil society groups and activists;
- repeal “foreign agents” laws” and lift restrictions on international funding of civil society activities;
- promptly and effectively investigate all attacks against civil society activists and bring their perpetrators and masterminds to justice,
- stop conflating civic activism and extremism and imposing excessive and disproportionate restrictions of freedoms of association, assembly, and expression in the name of security, including countering terrorism,
- stop criminalising non-violent expression to suppress critical voices and prevent accountability of governments,
- recognise and support the role civil society plays in combating radicalisation and violent extremism by reaching out to include citizens and residents from minority groups,
- stop using the judicial system as a means of repression and pressure on civil society, including through unfair trials, politically motivated convictions, approval of surveillance and travel bans (denial of exit from the country),
- stop using economic mechanisms, including tax, financial, anti-money-laundering, and other regulations, to restrict civil society activities,
- stop using “collective punishment” to intimidate and repress civil society activists by targeting their relatives,
- consistently raise the issue of shrinking civil society space at various OSCE fora as well as in bilateral meetings with representatives of the States concerned, and consider adopting joint statements or declarations on this issue at the level of the Ministerial Council or the Permanent Council, or at the HDIM,
- establish a list of human rights defenders at risk and issue express long-term visas to them and their family members upon request, make recommendations to relevant government bodies on granting political asylum to persecuted activists, when necessary, and support shelter programmes for civic activists at risk,
- review their implementation of international agreements on cooperation in criminal matters and their participation in relevant inter-governmental organisations such as Interpol to ensure that they do not contribute to abuse of such agreements and organisations for prosecuting human rights defenders and civic activists,
- review their implementation of international agreements on countering tax evasion, money laundering and terrorism financing to prevent that these agreements are used to restrict civil society activities and provide safeguards for activists from countries with repressive governments.

ENCOURAGES the OSCE bodies and institutions to take concrete steps without delay to develop appropriate and effective mechanisms and tools for protecting and expanding civil society space and in doing so take into account the following recommendations that have been developed by civil society representatives from across the OSCE region:

- OSCE Chairmanships should consider appointing a Special Representative on Civil Society,
- OSCE Chairmanships should consistently and publicly express support for the protection of civil society space across the OSCE region and in the OSCE's work and events,
- future OSCE Chairmanships should include in their priorities a focus on the protection of space for civil society and the security of human rights defenders, similar to 2014 Swiss Chairmanship,
- OSCE political bodies and institutions should mainstream protection of space for civil society in all OSCE activities and recognise the role of civil society in their programs,
- OSCE political bodies and institutions, including OSCE Chairmanships and ODIHR, should develop a system of prompt and effective reaction to cases of persecution of NGOs and civil society activists and violence against them, in particular, to each and every case of reprisals against NGOs and civil society activists for their participation in OSCE activities and events,
- ODIHR should set up an expert panel on freedom of association, similar to the existing expert panel on freedom of peaceful assembly,
- ODIHR should restore its focal point for human rights defenders and establish an expert (consultative) panel on the protection of human rights defenders,
- ODIHR should study how the Guidelines on the protection of human rights defenders are implemented by participating States, using reports and information from civil society organisations and going beyond the current system of collecting responses to questionnaires, and publish reports on this issue,
- All OSCE institutions, structures, units, and field presences, not only those in the field of human dimension, should designate liaison officers / focal points for civil society. These should not only disseminate information about their work to civil society, but also collect information, network and consult with civil society in a regular and consistent manner,
- Efforts by several successive OSCE Chairmanships and OSCE institutions to expand space for civil society participation in the OSCE work and events and to increase their cooperation with civil society should be continued and expanded,
- Attempts by some OSCE participating States to restrict participation of civil society organisations in the OSCE work and events and their efforts to substitute the existing commitment of unrestricted participation of civil society organisations (except those who engage in or support violence) by a principle of approval by governments, should be clearly and strongly resisted,
- OSCE field operations should more actively cooperate with and support civil society in their countries of presence, by maintaining regular contacts with civil society organisations and activists, accepting and using their information and recommendations, and reacting to instances of restrictive legislation and policies, persecution of and attacks against civil society groups and individual activists,
- The practice of including civil society representatives in ODIHR's expert panels / rosters of experts on specific topics (through open public calls) should be used more widely, and the fact of such involvement should be made public (lists of experts published online, etc.),
- The Chairperson-in Office and Special Representatives of the Chairperson should publicly meet civil society representatives while on official country visits to participating States,
- On the eve of human dimension events, OSCE field presences should organise preparatory meetings in the countries where they operate, bringing together the authorities and civil society representatives,

- ODIHR and other OSCE actors should more systematically work with other inter-governmental organisations on the protection of civil society space and the security of human rights defenders,
- OSCE cooperation programmes should feature human rights conditionality. The benchmarks used should include implementation of UN Human Rights Committee views and European Court of Human Rights judgments issued in cases of persecution of civil society activists and human rights defenders,
- The protection of civil society space should be treated as a matter of conflict prevention. OSCE actors should consider repressive legislative and policy changes regarding civil society space early warning signs of a human dimension crisis,
- OSCE actors should ensure that civil society continues playing an active role in early warning, crisis prevention and conflict transformation; regularly involve local civil society actors, human rights experts in joint analyses and the development of policies and country strategies; develop early warning and human dimension crisis prevention indicators and actions jointly with civil society,
- OSCE actors should enhance their support of civil society groups, representatives of minorities and women activists in their conflict transformation and peacebuilding efforts,
- OSCE actors, other international actors and donors involved in conflict management in conflict regions and separatist-controlled territories should recognise the key role of civil society in monitoring the situation, collecting and analysing information and providing assistance to victims. They should provide support to civil society groups, regardless of their national origin.



# CIVIL SOCIETY RECOMMENDATIONS TO THE PARTICIPANTS OF THE OSCE MINISTERIAL COUNCIL MEETING IN HAMBURG

*Adopted by the participants of the OSCE Parallel Civil Society Conference  
Hamburg, 6-7 December 2016*

## INTRODUCTION

The Civic Solidarity Platform, a network of more than 80 human rights NGOs from throughout the OSCE region,<sup>1</sup> convened the 2016 OSCE Parallel Civil Society Conference in Hamburg on 6-7 December, building upon the tradition of OSCE parallel civil society conferences in Astana in 2010, Vilnius in 2011, Dublin in 2012, Kiev in 2013, Basel in 2014, and Belgrade in 2015. At the conference, activists from Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Croatia, Georgia, Germany, Hungary, Italy, Kazakhstan, Kosovo, Kyrgyzstan, Lithuania, Macedonia, Moldova, the Netherlands, Norway, Poland, Russia, Serbia, Switzerland, Tajikistan, Turkey, Turkmenistan, Ukraine, and the United Kingdom discussed and adopted the Outcome Documents of the conference, developed by the Civic Solidarity Platform. The Outcome Documents include the Hamburg Declaration on the Protection of Civil Society Space, Civil Society Recommendations to Participants of the Ministerial Council Meeting in Hamburg, and a statement entitled “Cessation of the Armed Conflict in Eastern Ukraine and the Effective Overcoming of its Legacies”.

The Recommendations include chapters on alarming trends in the human dimension across the OSCE region, the human rights situation in Ukraine, including Crimea and Donbas, key human dimensions issues in Austria in the light of the country’s upcoming OSCE Chairmanship, as well as on migration, freedom of expression, torture and enforced disappearances, human rights in the context of conflicts, and anti-democratic constitutional changes. Some of the chapters are based on the results of OSCE civil society expert workshops, held throughout 2016 in Berlin (migration), Tbilisi (shrinking space for civil society), Vienna (conflicts and human rights as a cross-dimensional issue) and Almaty (freedom of expression). These were organised by the Civic Solidarity Platform with the support of the German OSCE Chairmanship and brought together representatives of civil society organisations from across the OSCE region and representatives of OSCE political bodies and institutions. Annexes to the Outcome Documents include a list of outstanding cases of persecution of human rights defenders in 2016 and a collection of links to publications, reports, and statements by the Civic Solidarity Platform and its members.

The Outcome Documents are addressed to the governments of the OSCE participating States that will be gathering in Hamburg for this year’s meeting of the Ministerial Council, as well as all the OSCE political bodies and institutions, including the current and the incoming Chairmanships, the Permanent Council, the Human Dimension Committee, ODIHR, the OSCE High Commissioner on National

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<sup>1</sup> The Civic Solidarity Platform was established in December 2011 in Vilnius on the eve of the OSCE Parallel Civil Society Conference. Since then it has grown to more than 80 member organisations from across the OSCE region. For more information about the Civic Solidarity Platform, please visit the Platform’s web site [civicsolidarity.org](http://civicsolidarity.org). The core group of the Platform founders had organised earlier the OSCE Parallel Civil Society Conference in Astana on the eve of the OSCE Summit in December 2010 and has been organising OSCE Parallel Civil Society Conferences since then. For outcome documents of the OSCE Parallel Conferences in Astana, Vilnius, Dublin, Kiev, Basel, and Belgrade please visit <http://civicsolidarity.org/page/osce-parallel-civil-society-conferences-outcome-documents>.

Minorities, the OSCE Representative on Freedom of the Media, the OSCE Parliamentary Assembly, the OSCE Secretariat and its various units and bodies, and the OSCE field missions.

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

## ALARMING TRENDS IN THE HUMAN DIMENSION ACROSS THE OSCE REGION IN 2016

The year 2016 represented a sad deterioration of the existing restrictive trends in government approaches to civil society and human rights. It represents one of **the worst worldwide situations for the human dimension in the OSCE in recent memory**. While a significant majority of the OSCE participating States have a history of strong civil societies and constitutional protections for many civil and political rights, the past year has seen some traditionally good examples of human rights protection regress and some bad examples recede even further.

The continued security and human rights crisis in the context of the **war in eastern Ukraine and the occupation of Crimea** has remained a priority concern. This worst breach of the Helsinki Final Act principles in the history of the OSCE has not been stopped or reversed in 2016 and continues to undermine international security and cooperation, the three dimensions of the OSCE and the very ability of the organisation to function.

The year witnessed the sharp rise of nationalist far-right movements in Europe and the United States and a surge in authoritarianism across Central Asia; a still-unresolved and ever-worsening “refugee crisis” fostering an increase in xenophobia, antisemitism, islamophobia, and discrimination; and several anti-democratic constitutional revisions, resulting in widespread threats to democratic and pluralistic values, civil rights and fundamental freedoms. Many newly adopted laws violate internationally recognised human rights standards; and often the people least able to defend their rights are those most likely to suffer abuses. In the face of the threat of shredding the OSCE human dimension favour what some refer to as “*hard security*”, it seems essential, now more than ever, to work on the basis of what German Chancellor Merkel has called “shared values of democracy, freedom and respect for the law and the dignity of man, independent of origin, skin colour, religion, gender, sexual orientation or political views”.

The **space in which civil society** can act has significantly shrunk across the OSCE region, and threats to the security of human rights defenders have increased substantially. Russia’s “foreign agent” law inspired countries across Central Asia and Eastern Europe to envisage similar legislation, targeting the activity of NGOs critical of government policies and international civil society cooperation, for example in Hungary and Poland. NGOs and activists in Azerbaijan and Central Asia continue to face increased pressure from law enforcement officials, with reports of threats and violence against NGO members. Forced disappearances or imprisonment of political opponents and activists remain widespread in Central Asia. Opposition figures and anti-corruption activists continue to face threats of arrest across the region. Attacks against civil society activists are often not investigated properly and the perpetrators are not brought to justice. This creates an atmosphere of impunity and permissiveness for violence against civil society representatives. In many countries, NGOs and activists who work for the protection of minority rights and migrants are targeted the most by both governments and non-state actors. There is a clear connection between the growing threat of terrorism and radicalisation, on the one hand, and restrictions placed on civil society in the framework of the fight against terrorism and extremism, on the other hand. Governments, both in the east and the west, mistakenly or purposely use the fight against extremism to suppress criticism by civil society and refuse to recognise and support civil society’s role in combating radicalisation and violent extremism by reaching out to citizens and residents from minority groups. Meanwhile in Europe, the **state of emergency** declared in Turkey

has seen a serious crackdown against journalists, activists and teachers alike – and to this day it remains difficult to assess precisely how many of them are currently in jail. These negative developments across the OSCE region stand in sharp contrast to the adoption in 2014-2015 of the OSCE ODIHR Guidelines on the protection of human rights defenders and on freedom of association. Clearly, new ways of addressing the problem of shrinking space for civil society need to be found within the OSCE.

**Freedom of expression** has further regressed in many OSCE participating States, both east and west of Vienna. Journalists and other communicators are faced with numerous threats including killings, death threats, arbitrary arrest and imprisonment, torture, physical abuse, legal and financial harassment, legal, administrative and financial harassment, smear campaigns and intimidation. These measures do not only endanger the lives and violate the fundamental rights of journalists and other communicators, but also aim to suspend freedom of expression and suppress dialogue in the wider society. Particularly worrisome is the trend of mass repression of journalists and communicators during periods of emergency and the ever-growing dangers for journalists in conflict zones. States are not taking adequate steps to prevent, investigate, prosecute or punish the threats and abuses, and in too many cases are themselves complicit in the violence, censorship and persecution perpetrated against those who exercise their right to freedom of expression.

**Disinformation** has also increased as a worrisome phenomenon and major abuse of freedom of expression as Russia has wielded power in Europe using media outlets to spread false stories, especially about minority communities (migrants, refugees, LGBT persons). This has been done in order to sow dissent in Europe and lead individuals to question facts and the policies of their governments, particularly where those policies are harmful to Russia. Increased threats against minority communities in Europe have been the by-products of this disinformation. In Central Asia, the repressive policies of the ruling regimes and the influence of Russian media have led to disinformation campaigns targeting human rights defenders, women activists and LGBT persons, tapping into Central Asian nationalist movements that advocate a return to what are termed traditional values, which include anti-foreigner sentiment, anti-LGBT policies, and restrictions of women's rights, exacerbated by the rejection of the primacy of international law. The dilemma of how to effectively combat **propaganda and hate speech** while protecting freedom of expression and access to information has emerged as one of the most challenging tasks facing the OSCE and the international community today.

The year 2016 has seen an unprecedented series of **constitutional changes** across the OSCE region, undermining democratic institutions, eroding the rule of law, and weakening constitutional safeguards for fundamental rights. A number of countries in the OSCE region are facing threats to their constitutional makeup, some of which were achieved through popular vote. Several constitutional referendums have resulted in a worrying increase in executive power, weakened checks and balances, and threats to essential rights and freedoms. Governments of several other OSCE participating States are discussing plans to amend the constitutions of their countries in the near future. In Azerbaijan, the September referendum approved the extension of the presidential term from five to seven years, and further consolidation of power in the hands of the president – while the electoral process was largely deficient, with no access to the media for opponents, reported ballot stuffing and detention of protesters. Amendments to constitutions adopted this year in Tajikistan and Turkmenistan have strengthened the autocratic nature of the political system and failed to provide guarantees to several fundamental rights and freedoms, in striking contradiction to OSCE commitments and these countries' UN obligations. Similarly, Kyrgyzstan is to hold a referendum in early December – the proposed changes would significantly alter the balance of powers in favour of the executive branch and threaten the

independence of the judiciary – with the government hoping it will allow it to bypass the UN Human Rights Committee’s demand that jailed activist Azimjon Askarov be freed. In Hungary, the government seeks to amend the Fundamental Law to include a mention of “constitutional identity” in the hope that these magic words will isolate national policies from review by European courts. After the recent attempt to pass constitutional amendments banning resettlement of refugees failed in Hungary, the policy idea of denying rights to refugees has been picked up by several other states in the region. Poland is still in the midst of legal turmoil and confusion after the government attempted to completely restructure the framework of the Constitutional Tribunal to allow the government to pass laws without independent review. These constitutional crises reflect threats to rule of law, fundamental rights, and constitutionalism itself.

This year has seen a **surge of the far right and populist parties** and movements gaining political power across the OSCE region – in places where it could to some extent have been expected, such as Central Europe, and in others in the West where it came as an unpleasant surprise to many, such as the Brexit vote which was largely supported by far-right party UKIP in the United Kingdom, and the victory of a populist president in the United States whose campaign encouraged and capitalised on xenophobia and racism. The far right do not uphold a single, unified political vision – not to mention policy programme – across these countries. Nevertheless, the main figures do present some common features, such as praise of national sovereignty, security and traditional values over individual rights; resorting to populist and simplistic rhetoric in defence against perceived “outsiders” such as refugees fleeing violence; blatantly discriminatory and xenophobic policies; and a general contempt for certain civil liberties and fundamental rights – especially those of minorities. The influence gained by leaders and parties – such as the Front National in France, whose candidate is likely to reach the second round of next year’s presidential election in France, or the AfD in Germany – illustrates that countries where the democratic tradition is deeply rooted and civil society is an essential part of political life are not immune to drastic upheavals similar to those recently experienced elsewhere in Western Europe and the United States.

The clear increase in nationalism and xenophobia is closely linked to and fostered by a **strong anti-refugee sentiment** fed by recent influx of individuals from Syria and Iraq to Europe, and from Central America to the United States. This year was further marked by the failure of participating States to find an effective and human rights-compliant solution to the “migration crises”, while the inflow of migrants and asylum seekers shows no sign of abatement. The rights of migrants remain a major concern, in view of the appalling reports of their treatment at border crossing points and in detention facilities throughout Europe. This is further exacerbated by the widespread conflation of migrants and refugees – rhetoric which far-right leaders shamelessly use and encourage. In the United States, the anti-refugee rhetoric that fuelled the Republican party’s presidential campaign was reinforced by conspicuous Islamophobia – and although it may be too soon to assess what the real policies of the incoming administration will be, the weeks following the U.S. elections have been marked by an increase in reported racist and xenophobic attacks that were encouraged by this rhetoric. The OSCE has yet to find its particular role in addressing problems associated with the drastic increase in migration and refugee flows. For civil society, the importance of upholding the OSCE human dimension commitments in the receiving, accommodating and integration of migrants remains the top priority.

Furthermore, the prevalence of international terrorism in the past year, with attacks in France, Germany, and the U.S., as well as in Turkey and Central Asia, led several governments to adopt **tougher counterterrorism legislation** marking a shift towards a harder security line, at the expense of individual

freedoms. These counter-terror laws too often define terrorism offenses, actions, and responses in overly broad terms, leaving the door open to misinterpretation and misuse for the targeting of minorities and civil society. Some recent laws include serious restrictions on the rights to freedom of expression and peaceful assembly, which could lead to disproportionate or discretionary enforcement, and laws which threaten the human rights of the most vulnerable. This legislation more often than not violates international human rights law such as the International Covenant on Civil and Political Rights or the European Convention on Human Rights. Other legislation violates the privacy and security of individuals by expanding state surveillance powers, often by forcing private technology companies to become agents of the state, as has increasingly been the case in Russia, the U.S., and elsewhere. The declaration – and repeated prolongation – of states of emergency in France and Turkey in the wake of terrorist attacks and a failed coup d'état attempt, respectively, illustrate this shift towards securitarianism in democratic countries. In both cases, as with legislation in many states, minorities are the most exposed to misuse of these laws – be it Muslims in France or opposition figures and Kurds in Turkey. Crucially, exceptional powers and temporary measures adopted in the wake of national tragedies risk becoming the new normal, with long-lasting impacts on human rights and civil liberties – while it becomes more difficult for institutions to reprimand states when standard-bearers like France now behave in the same way. The OSCE participating States should be vigilant in observing this approach to the new normal, and should consider offering a framework for states of emergency that balances the first and third dimension concerns involved. This might be accomplished by encouraging more interaction between the two dimensions, such as by inviting civil society representatives to observe and participate in more first dimension discussions.

The increase in the use or promotion of **torture** in OSCE countries is alarming. A recent letter from a prisoner in Russia exposed current and ongoing use of torture in its prisons. In Turkey, there have been numerous reports of cruel and inhuman treatment of detained individuals during the state of emergency; and there have also been several reports of ill-treatment of migrants in detention facilities across Europe. Reports of torture throughout Central Asia also continue. This is a worrying trend at a time the U.S. President-elect has spoken out in favour of reinstating practices such as waterboarding – which was banned and considered torture under the previous administration – and against the closure of the Guantanamo Bay detention camp, foreboding a disturbing backward step for human rights in the years to come, unless countries and civil societies across the OSCE work together to uphold and defend the values of democracy, freedom and the rule of law. Notwithstanding certain recent positive steps by the OSCE to focus its efforts on addressing the prevalence of torture across the whole region, much more needs to be done to eradicate this shameful crime.

## THE HUMAN RIGHTS SITUATION IN UKRAINE, INCLUDING CRIMEA AND DONBAS

Despite the democratic reform process ongoing in Ukraine since the Euromaidan events in 2013-2014, many challenges and alarming trends in the human rights situation remain. The most worrying among them include the situation on the territories not controlled by the Ukrainian government (the Crimean Autonomous Republic illegally annexed by the Russian Federation, and certain areas of Donetsk and Luhansk regions controlled by Russia-backed separatists); problems with the reform of the justice system, as well as persistent intolerance and discrimination.

**Crimea** is de-facto under the control of the Russian Federation - in violation of Ukraine's sovereignty and territorial integrity and in violation of the Helsinki Final Act principles. Monitoring of the human rights situation in the peninsula by Crimean activists<sup>2</sup> as well as human rights defenders from Russia and mainland Ukraine<sup>3</sup> shows that the situation in Crimea has deteriorated further in 2016 compared to the previous year and that numerous gross violations of human rights have become more intense and include cases of illegal detention, torture, abductions, enforced disappearances, murder, the forceful relocation of detained and convicted persons to Russia, the persecution of persons who refuse to accept Russian citizenship, as well as violations of freedoms of peaceful assembly, expression, and association.

According to human rights defenders, Russia has not implemented a single recommendation from the July 2015 report of the OSCE Human Rights Assessment Mission on Crimea by the OSCE ODIHR and the OSCE High Commissioner on National Minorities.<sup>4</sup> The decision of the Russian Federation to ban the Mejlis - the elected body of the Crimean Tatar people - from Russia and Russian-occupied Crimea by declaring it an extremist organisation, is a clear example of systemic pressure on Crimean Tatars. Violations of freedom of expression include the shutting down of the Crimean Tatar TV channel ATR, the criminal persecution of journalist Mykola Semena for alleged extremist statements and of the Deputy Chair of the Mejlis Ilmi Umerov for "calls and actions aimed at changing territorial integrity of Russia". Of particular concern were the arrests in Crimea of several dozen of pro-Ukrainian activists, including Oleg Sentsov and Olexander Kolchenko, their subsequent criminal prosecution in Russia and sentencing to long prison terms after being found guilty of the charges of plotting terrorist acts in trials which were widely deemed unfair and politically motivated.<sup>5</sup>

A recent report by members of the Civil Solidarity Platform, "International Crimes in Crimea: An Assessment of Two and a Half Years of Russian Occupation" provides evidence of international crimes, including war crimes and crimes against humanity that were committed on Crimean peninsula since it was illegally annexed by Russia in March 2014.<sup>6</sup> The report is based on evidence demonstrating that

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<sup>2</sup> See monthly reviews by the Crimean Human Rights Group, <http://crimeahrg.org/en/category/monitor-2/>.

<sup>3</sup> "Almost 1000 Days out of Life of the Occupied Crimea", Center for Civil Liberties and Euromaidan-SOS, 01.10.2016, <http://ccl.org.ua/en/reports/almost-1000-days-out-of-life-of-occupied-crimea/>.

<sup>4</sup> "Russia totally ignores OSCE recommendations on human rights in Crimea", in Russian, Crimean Human Rights Group, 09.11.2016.

<http://crimeahrg.org/rossiya-polnostyu-ignoriruet-rekomendatsii-obse-po-soblyudeniyu-prav-cheloveka-v-kryimu/>

<sup>5</sup> "28 Hostages of the Kremlin", report in the framework of the "LetMyPeopleGo" campaign by Euromaidan-SOS, Center for Civil Liberties and Open Dialogue Foundation, 2016, <http://en.odfoundation.eu/i/fmfiles/pdf/28hostages-eng-ccl-mf-web-final.pdf>

<sup>6</sup> "International Crimes in Crimea: An Assessment of Two and a Half Years of Russian Occupation", report by IPHR, Crimea-SOS and Truth Hounds, September 2016, <http://iphronline.org/wp-content/uploads/2016/09/Crimea-report-Sept-2016.pdf>

the persecution of Crimean Tatars, including human rights defender Emir-Huseyn Kuku and individuals who held pro-Ukrainian **views**, amounted to crimes against humanity as defined by international law. The permanent presence of full-fledged international monitoring mission that could help prevent gross human rights violations in the peninsula needs to be established as a priority.

The situation in **Donbas region** poses real challenges. Civilians living close to the “contact line” continue to suffer from military violence and daily shelling in breach of core provisions of the Minsk Agreements. Monitoring by local and international NGOs shows that all sides of the conflict are engaged in arbitrary detentions, incommunicado and secret detention of civilians, torture of prisoners, enforced disappearances, extrajudicial executions, intentional attacks against civilians and civilian objects, deliberate killing of civilians and non-active combatants, denial of fair trial rights etc.<sup>7</sup> It is imperative to conduct full and thorough investigations into all allegations of war crimes and crimes against humanity perpetrated in eastern Ukraine and to bring those responsible to justice before an independent and impartial tribunal.

The human rights situation in the rest of **Ukraine** is also poor with extremely slow and contradictory justice system reform<sup>8</sup>, growing levels of intolerance and the absence of effective strategies for combating this. Since 2015 many high profile trials (e.g. investigations into the shooting of participants in the Euromaidan protests in 2014) have again raised questions about the impartiality and independence of Ukrainian judges and the effectiveness of the Ukrainian legal system in general.

Intolerance in Ukrainian society is high, with national minorities, LGBT people, IDPs and refugees being the most vulnerable groups. Despite recently adopted changes to the anti-discrimination law and the Labour Code, there are no effective legal mechanisms of redress. This reinforces impunity in such cases as the violence against Roma people in Loschynovka, Odessa region, or the violence against LGBTI activists during Equality Week in cities across Ukraine.<sup>9</sup>

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<sup>7</sup> See, for example, Monitoring on territories outside of control of authorities of Ukraine, in Russian, report by Human Rights Centre “Memorial”, 04.10.2016, <http://khp.org/index.php?id=1475592296>; Situation of civilian population in Donetsk and Luhansk regions on the territory controlled by Ukrainian government, in Russian, report by Kharkiv Human Rights Protection Group, 05.10.2016, <http://khp.org/index.php?id=1475581147>; “You Don’t Exist”. Arbitrary Detentions, Enforced Disappearances, and Torture in Eastern Ukraine. Joint report by Amnesty International and Human Rights Watch. 21 July 2016. <https://www.hrw.org/report/2016/07/21/you-dont-exist/arbitrary-detentions-enforced-disappearances-and-torture-eastern>

<sup>8</sup> See, for example, Statement of the Human Rights Agenda platform regarding amendments to the constitutional justice fundamentals adopted on the 2 of June 2016, 9 June 2016, <http://ccl.org.ua/en/statements/statement-of-human-rights-agenda-platform-regarding-amendments-to-the-constitutional-justice-fundamentals-adopted-on-the-2-of-june-2016/>

<sup>9</sup> “Ukraine: Investigate Violence against LGBT Activists”, Human Rights Watch, 30 May 2016, [www.hrw.org/news/2013/05/30/ukraine-investigate-violence-against-lgbt-activists](http://www.hrw.org/news/2013/05/30/ukraine-investigate-violence-against-lgbt-activists)

# KEY HUMAN DIMENSION ISSUES IN AUSTRIA

## Introduction

In June 2016 a small group of non-governmental-organizations (NGOs) accepted the invitation of the Civic Solidarity Platform (CSP) to learn about the platform, its international structure, goals and work programme as well as about its planned activities with regards to the upcoming Austrian OSCE chairmanship in 2017. Although to date only Zivilcourage and ZARA-Anti-Rassismus-Arbeit (ZARA) became members of the platform, others such as the Boltzmann Institute for Human Rights (BIM) and the Austrian Helsinki Association for Human Rights (AHA) were involved in the preparatory tasks around the chairmanship and may expand their roles in the future. As a result, ZARA drafted this first brief overview of the situation in Austria covering the most significant and pressing human dimension issues in Austria but with a strong focus on its area of expertise - namely racism. Thankfully, AHA and BIM together with ZARA's partner organizations such as Klagsverband and Reporter ohne Grenzen agreed to contribute input and expertise at very short notice.

The group of NGO collaborators very much hopes that the Austrian government will follow the example of preceding states and make it possible for Austrian NGOs to contribute to the self-assessment of Austria's implementation of its OSCE human dimension commitments by an independent human rights institution. We hope that the information and recommendations below will be useful for the self-assessment.

Overall it should be stressed that the somewhat hesitant commitment by Austrian NGOs to participate in this activity stems from previous experiences where an already strained civil society discovered that "NGO involvement" did not always mean that its input, expertise and recommendations were seriously considered by governmental decision makers. In addition, general budget cuts, a shift of governmental focus, and ever more demanding requirements for obtaining public funds have already caused some organizations to cease certain activities or closedown altogether.

## Key issues of concern and recommendations

### 1. Racism / Intolerance / integration of migrants

Combating racism and intolerance has been hampered in Austria by insufficient and over-complicated legislation, discriminatory acts, and government reluctance to collect and harmonize data on racism, as well as unwillingness to assess police misconduct and the spread of racism and discrimination by the mainstream media.<sup>10</sup> As a consequence of official unwillingness to tackle racism, the few civil society organizations, human rights institutes and research facilities working on this topic suffer from a constant lack of public support and funding which renders them fragile and vulnerable.

#### a) Legal situation

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<sup>10</sup> ZARA, UPR Shadow Report Austria, Oct 2010, pg. 1

## *Constitution*

The constitution (Art 7 para. 1) and the jurisdiction of the Constitutional Court protect nationals and aliens from unequal treatment. However, in 1995, the Constitutional Court established that the Constitution only guarantees equality before the law to nationals and not to aliens. This provision made it possible to exclude third-country nationals from receiving social, housing and family benefits. The EU Directive in relation to third-country nationals who are long-term residents and persons who have been granted asylum (2003/109/EC), limited the effects of this for some people, but recently- arrived immigrants continue to be excluded.<sup>11</sup>

### **Recommendation:**

- We urge the government to amend the constitution and guarantee equality before the law for all people residing in Austria regardless of their national origin.

## *Human Rights Infrastructure*

There are approximately 60 antidiscrimination laws at the federal and provincial levels. This has resulted in a plethora of uncertainties and legal gaps, where the legal competence of bodies overseeing equality is restricted to the respective act alone. When the State and federal equality bodies hold differing opinions over the applicability of the law, clients are told to seek information from NGOs such as ZARA. As a result, public knowledge of anti-discrimination laws is poor, and this applies especially to minority groups.<sup>12</sup> A survey among members of ethnic minorities conducted by the EU Fundamental Rights Agency showed that 70% of the interviewees in Austria had not heard of a law against discrimination (the EU average was 57%). Only about 15% knew about the Ombudsman for Equal Treatment (OET) (the EU average was 37%).<sup>13</sup>

### **Recommendations**

- Despite recent amendments, the Equal Treatment Law currently in force does not offer adequate and effective protection against racial discrimination. To date effective legal options to combat discrimination are still missing in many cases. Furthermore, the options available to sanction offenders are insufficient. Therefore, a comprehensive legal anti-discrimination package developed in consultation with NGOs should be a priority.
- Furthermore, the human rights infrastructure needs to be supported by organizing awareness-raising campaigns and training; establishing regional bodies of the OET; providing contact points for victims and witnesses of discrimination; supplying competent NGOs with adequate resources and actively monitoring the implementation of anti-discrimination policies.<sup>14</sup>

## *Islam Act 2015*

As the 2015 ECRI report on Austria states: “The regulatory framework for the exercise of religion also raises important integration issues. Until now, Muslims could set up associations, religious communities and religious societies, which are composed of one or more communities of worship.

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<sup>11</sup> ZARA, UPR Shadow Report Austria, Oct 2010, pg. 2

<sup>12</sup> Klagsverband, Anti-Discrimination Law in Austria, Dez 2014, pg. 1

<sup>13</sup> ZARA, UPR Shadow Report Austria, Oct 2010, pg. 3

<sup>14</sup> ZARA, UPR Shadow Report Austria, Oct 2010, pg. 3

(OSZE/ODIHR 2014: 3 et seq.<sup>15</sup>) The 2015 Islam Act brings considerable improvement such as state protection for Islamic holidays, the right of religious societies to provide Islamic spiritual care in public hospitals and other institutions and regular university studies in Islamic theology. Concerns have been raised about several other provisions which, for example, ban ongoing foreign funding of Islamic religious societies and provide for the dissolution of a considerable number of associations whose purpose is to spread the doctrine of a religious society already acknowledged under the Islam Act (Articles 6.2 and 31.3).<sup>16</sup>

#### **Recommendations:**

- Muslim communities need to be granted the right to freedom of religion and should not be discriminated for practicing their religion.

#### **Recommendations on the Draft of Islam Act 2015:**

- Take into account OSCE recommendations on the draft of the Islam Act 2015 which indicated that the draft could give greater autonomy to religious societies that the ban on foreign funding would need to be carefully worded in order to prevent religious societies from being exploited for political reasons.
- Take into account OSCE recommendations to remove provisions on the freedom of peaceful assembly and address such issues under existing legislation where applicable.
- Heed OSCE recommendations that religious organizations should only be closed down as a final course of action if previous penalties and sanctions do not have the desired effect<sup>17</sup>
- Take into account findings of the Venice Commission that the “blanket prohibition on all foreign funding (...) is arguably unreasonable, and not necessary in a democratic society.”<sup>18</sup>
- Implement in legislation and practice the findings of the European Court of Human Rights which concluded that a state may place restrictions on religion in order to protect a democratic society but such restrictions must “correspond to a pressing social need and must be proportionate to the legitimate aim pursued.”<sup>19</sup>

#### *Emergency decree on Asylum*

Austria has drafted an emergency decree to prevent asylum seekers entering Austria once the annual cap of 37,500 persons has been reached. The governing coalition claims the decree is necessary because asylum seekers were “endangering Austria’s security”. This is not the first time that the so-called “migration crisis” has been used by a European country to warrant extraordinary or unconstitutional measures. However, the situation is not so much a state security issue as a political, social and economic one. Therefore, it should not be used to justify extraordinary measures. Furthermore, the emergency decree contravenes Austrian commitments under the Geneva Refugee Convention and the European Declaration of Human Rights which are integrated into its Constitution. Austria is obliged to fulfill these commitments and neither legal basis includes any limit for the number of refugees.

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<sup>15</sup> Site: <http://www.osce.org/odihr/126575>

<sup>16</sup> ECRI Report Austria, 2015, pg. 28.

<sup>17</sup> OSCE/ODIHR, “Opinion on the Draft Federal Law of Austria Amending the Law on the Recognition of Adherents to Islam as a Religious Society”, Site: <http://www.osce.org/odihr/126575>

<sup>18</sup> Venice Commission, 2003, p. 47. Site: [http://www.venice.coe.int/webforms/documents/?pdf=CDL\(2013\)042-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL(2013)042-e)

<sup>19</sup> European Court of Human Rights on Sect/Cult issues, §56, pg 11. Site: <http://www.hrwf.net/images/reports/2013/2013jurisprudence.pdf>

**Recommendation:**

- Austria should reject the emergency decree that runs counter to Austria's Constitution. Furthermore, Austria should refrain from referring to the migration crisis as a threat to national security and instead should address the political, social and economic issues in the public sphere.

b) Police

For the last 17 years ZARA's counseling unit for victims and witnesses of racism has documented improper behavior by law enforcement officials, including threats, disrespect or ethnic/racist profiling. The reported cases clearly show that the discriminatory behavior of police officials has reduced trust in the police service whose main purpose should be to protect and ensure security for everyone. When the competent police departments assess allegations of racist violence by the police, the respective police officers are often absolved of any criminal offences before the case has even been investigated. There are currently no legal provisions which guarantee the independence of these investigations and assessments.<sup>20</sup>

**Recommendation:**

- Establish an independent mechanism investigating police violence against ethnic minorities as well as allegations of ethnic profiling.

c) Politics and the media

The Freedom Party of Austria is the most dominant player in the right wing movement and has spent years bringing racist ideologies back onto the political spectrum. As a result, anti-Muslim racism, ethno pluralism and xeno-racism have increasingly found their way into the discourse of other parties and groups, as well as the mainstream media.<sup>21</sup> Anti-Muslim racism and ethno pluralism have become particularly popular as they label certain sections of the population as "others" and present them as a threat to local values and culture. The antagonism between "us" and "them" is a powerful discursive tool that dehumanizes the "other". As racism in politics has become more virulent some mainstream media outlets have capitalized on this fear by sowing division, inciting hatred, promoting prejudice and spreading false information. The media potentially has the opportunity to fulfil its democratic responsibilities and use corrective measures, but unfortunately media content is often one-sided and insufficiently researched leading to discriminatory prejudices being promoted and encouraged.

**Recommendation:**

- In order to tackle one-sided newspapers that are detrimental to a functioning democracy, media subsidies should be used as an instrument to promote and foster qualitative journalism. Granting of subsidies should be bound to compliance with ethical codes and standards such as the ones formulated by the Austrian Press Council (Österreichischer Presserat).

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<sup>20</sup> ZARA, UPR Shadow Report Austria, Oct 2010, pg. 3

<sup>21</sup> Edma Ajanovic & Stefanie Mayer, "Racism in political discourse" in ZARA, Racism report 2015, p. 76

#### d) Social media and cyber hate

After paying little attention to the rise of hateful, harmful and discriminatory content on social network sites (SNS) despite early warnings<sup>22</sup>, members of the government have finally started to react to the worrisome developments. The reasons for this perhaps include the fact that some high ranking officials were insulted and threatened on their own Facebook pages. By then, the viral battle for likes, fans and shares has already been won by the right-wing, anti-democratic and radical online community that was formed years ago to spread hate, fear, deliberate lies and (racist) attacks on their self-constructed enemies. Since summer 2015 comments and harmful statements about refugees have substantially risen in number.<sup>23</sup> ZARA received significantly more reports about hate content on the internet in 2015 than in previous years and the upward trend continues.<sup>24</sup> Since then, the majority of reports received concern hate speech against refugees and Muslims who are increasingly becoming the targets of hostility and discrimination. Often refugees and Muslims are lumped together, and some social network sites have become hubs for exchange of hate, lies and death threats against refugees, Muslims and those who support them. In some posts, Nazi-fantasies seem to have resurrected, for example when posts demanded that the concentration camp Mauthausen should be re-opened and the refugees sent there.

Overall, the level of public awareness on this phenomenon has increased, but there are still shortcomings in the referral of reports to the social networks abuse teams and the relevant authorities. In many cases, hateful postings and comments are not removed, even when they clearly violate the law. Whenever ZARA assesses posts as illegal under criminal law, they send information to the authorities but often there is no feedback on whether criminal charges were pressed or not.

Until the beginning of 2016, the legal situation posed another obstacle to ZARA's work: according to the Austrian criminal code and its strict interpretation, "incitement to hatred" only protected groups on grounds of "race", skin color, language, religion, ideology, citizenship, descent or national or ethnical origin". Refugees did not fall within any of these groups and were therefore not protected from discrimination.

An amendment to the criminal code which came into effect in 2016 addressed this legal vacuum, but it remains to be seen whether the law enforcement authorities will take more effective action against incitement to hatred in practice.

This summer a national "no hate speech committee" was formed in the framework of the "no hate speech movement" of the Council of Europe. Some politicians have also raised the issue of cyber hate and started inter-institutional campaigns such as #GegenHassImNetz and #DigitaleCourage in close cooperation with civil society organizations. In doing so, these politicians have started to adopt positions against racism and discrimination into their public profiles and political programs.

Yet these activities have not led to a significant change in hateful messages against marginalized groups, especially refugees, Muslims and woman. Unfortunately some media outlets have also contributed to

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<sup>22</sup> ZARA Racism Report 2010, Cyber Hate, March 2011, pg. 63-69

<sup>23</sup> INACH, Claudia Schaefer & Dina Malandi, "Kick them back into the sea – Online hate speech against refugees", Oct. 2016, pg. 8

<sup>24</sup> ZARA Racism Report 2015, Internet statistics, March 2016, pg. 23

this by failing to monitor their own social media sites and by deliberately increasing their audience by re-publishing controversial content from social network sites without being sure of its veracity.<sup>25</sup>

#### **Recommendations:**

- Internet users should be provided with information materials and educational tools that enable them to recognize, deal with and counter unlawful, harmful content on the internet. In addition, contact points should be established that help victims and witnesses to assess the harmful content and support them in taking action. The government should support and fund activities that provide these necessary services to the users.

Furthermore, government officials and politicians should:

- ensure the establishment of the infrastructure to monitor agreements such as the code of conduct on countering illegal hate speech online which has been agreed upon between the European Commission and IT companies;
- foster the positions of the established counseling and reporting units to enable internet providers to take swift action on harmful and illegal content;
- support and establish measures to monitor and analyze online content and developments to gather information about the authors of hateful content as well as their messages and aims;
- lead by example and issue clear statements of support for victims of online hate.

#### **General recommendations**

Structural racism manifests itself in legislation, in administrative acts, in the police force and the judicial system as well as in education, media and on the labour market. There is hardly any official data available documenting racism.<sup>26</sup> The official data focuses on racism in connection to right wing extremism and does not reflect racism as an everyday social phenomenon. Since 2000 ZARA and subsequently other NGOs have been documenting this kind of racism and since 2005 it has also been documented in biannual reports of the OET.<sup>27</sup> Studies by the EU Fundamental Rights Agency show that far too few people in Austria know about their rights when confronted with discrimination.

Therefore, the Austrian government should:

- harmonize the collection of data among its institutions at all levels which deal with cases of discrimination in order to obtain comparable data that would allow for sound research, analysis and the subsequent development of effective policies to address discrimination;
- support awareness-raising campaigns for the broader public as well as education and training activities for civil servants, educators and young people to increase general awareness on racism and prevent segregation, discrimination, hate and the negative effects on society.

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<sup>25</sup> Fleischmagazin.at, Markus Huber: „Too far away from the population“, summer 2016

<sup>26</sup> With the exception of some reports such as one on the Protection of the Constitution Site:

[http://www.bmi.gv.at/cms/bmi\\_verfassungsschutz/](http://www.bmi.gv.at/cms/bmi_verfassungsschutz/)

<sup>27</sup> ZARA, UPR Shadow Report Austria, Oct 2010, pg. 3-4

## 2. Shrinking space / Role of civil society

Although, when compared to the developments in other countries of the OSCE region, one can hardly speak of shrinking space for civil society in Austria, it is also true that this space is not expanding. This applies also to civil society working on human rights issues, where the structured input of civil society in policy discussions is of key importance. For example the negotiations for the establishment of a National Preventive Mechanism (OPCAT) were conducted behind closed doors and without consultation with civil society.<sup>28</sup> The promised National Action Plan on Human Rights which was to be finalized this summer is currently no nearer completion and members of the NGO consultation group felt that their role in the process was so unsatisfactory that they withdrew their engagement.

While government officials periodically meet with civil society to discuss specific human rights concerns, there is no mechanism or process in place to ensure and facilitate a regular substantive dialogue with civil society on current and structural human rights concerns. Neither is there an adequate mechanism or process in place to ensure and facilitate systematic follow-up to and implementation of Treaty Body recommendations, such as by making all views and concluding observations concerning Austria publicly available in German and by engaging in regular substantive dialogue with civil society on their recommendations.<sup>29</sup>

### Recommendations

- Austria should, in close consultation with civil society, develop a National Action Plan on Human Rights as well as a National Action Plan on Racism and Xenophobia. The existing National Action Plan on Integration should be revised to include clear aims and measures to combat racism and discrimination and progress indicators.
- In collaboration with civil society, Austria should establish a mechanism to ensure and facilitate regular substantive dialogue with civil society on current and structural human rights concerns, including on follow-up to and implementation of Treaty Body recommendations.

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<sup>28</sup> OHCHR; Summary on Austria, February 2011, pg. 3, point 12. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/172/07/PDF/G1017207.pdf?OpenElement>

<sup>29</sup> Ibid, pg. 4, point 15



## MIGRATION, THE “REFUGEE CRISIS”, AND XENOPHOBIA

In the outcome documents of OSCE Parallel Civil Society Conferences in 2014 and 2015 we highlighted a number of negative trends linked to migration, in the broadest sense, across the OSCE region. These included the so-called refugee crisis; the terrorist attacks by Islamic fundamentalists causing rifts in societies; the influx of migrants to receiving countries lacking adequate integration policies; and the rise of far-right populist parties with strong anti-migration messages which deepened the existing gaps in societies as well as in international communities like the EU.

These trends have continued to develop over 2016. The so-called refugee crises led to further divisions among EU member states over immigration policies. Governments of some countries in Europe have made anti-migration policies central to their agendas and refuse to cooperate with other states in sharing the burden of accepting and integrating migrants.

The terrorist attacks in Istanbul, Ankara, Brussels and Nice, among others, caused an increase in hate speech and hate crimes against migrants across the EU. Too many OSCE participating States still lack an integration policy that unites societies. This poses a risk in the near future of the emergence of increasing numbers of isolated communities. Far-right populist parties have increased their gains across the OSCE area, spreading an anti-migration rhetoric.

In Germany, the anti-migration party AfD won in Mecklenburg-Vorpommern, signalling what many believe become a change of attitude in Germany. In Austria, the candidate from the far-right populist party FPÖ almost emerged victorious from the presidential elections.

In the United States, president-elect Donald Trump made migration a key issue of his campaign - choosing a harsh and unforgiving tone and combining it with the ‘America first’ rhetoric. It is extremely worrying that a key member of his staff is closely linked to a news site known for being an outlet for hate against minorities, including migrants, women, and members of the LGBT community. Donald Trump’s victory was welcomed by far-right populist parties across the EU who have expressed hope that this would set a precedent which would help them win their respective upcoming elections.

Therefore, it is evident that the situation in the OSCE region concerning migration is rapidly deteriorating. We have observed negative sentiments influencing policy makers across the OSCE region far more significantly than in previous years. Given the growing influence of the far-right populist parties who channel societal discontent, our key recommendations centre on strengthening the fight against hate speech and hate crimes and on the adoption of just and fair integration policies which will serve both migrants and the general public in receiving countries.

At the beginning of this year, migration experts from the Civic Solidarity Platform and its partners met in Berlin and formulated a number of comprehensive recommendations in relation to migration. The most important thread which runs throughout the recommendations is that: “The protection of the fundamental human rights of all individuals should be the main guiding principle in the response(s) to the challenges of the current movements of people through the OSCE region. This equally applies to the situation of people while they are on the move, arriving at and crossing borders, and to their reception in countries of arrival.”

This key thread remains central to our recommendations as we witness further discontent and rifts in societies, the erosion of core values such as tolerance and increasing abuses of fundamental rights such as non-discrimination and freedom of religion.

**Excerpts from the recommendations of OSCE Civil Society Expert Workshop 2016 on Migration/ Refugees, Berlin, 22-23 February 2016**

The protection of fundamental human rights of all individuals should be the main guiding principle in the response(s) to the challenges of the current movements of people through the OSCE region. This equally applies to the situation of people while they are on the move, arriving at and crossing borders, and to their reception in countries of arrival.

While international law currently only recognizes the right to seek asylum on specific grounds, and not the right to migrate in general, the treatment of all individuals should be fully in line with human rights standards on the right to life, prohibition of torture and ill-treatment, fair trial and protection from discrimination and intolerance, and all related procedures should be governed by rule of law principles (transparency, effective opportunity to appeal against decisions of officials, etc.).

All OSCE participating States should live up to existing commitments relating to refugees and migrants, including “to respect the right to seek asylum and to ensure the international protection of refugees as set out in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol”, “to facilitate effective legal migration schemes, such as circular migration and other forms of voluntary labour mobility programmes,” and “to respect the human rights of migrants and increase efforts to combat discrimination, intolerance and xenophobia towards migrants and their families”.

The most fundamental way of addressing the problems facing asylum seekers such as travelling in dangerous circumstances and exposure to the extortion of smugglers is by offering refugees organised procedures of relocation such as the resettlement programme of the UNHCR, direct transfer to potential receiving states, and family reunification. The employment of such procedures should be greatly expanded.

People should be able to present asylum claims in an orderly manner at normal border crossings, without push backs being practiced. Registration of all arrivals has to be put in place and every effort should be made to provide sufficient capacity for running asylum seekers reception centres in a humane way.

Asylum seekers should have access to accurate legal and factual information, in a language they can understand, about procedures they are subject to and services they can access. Reception centres should not be de facto detention centres. There should be no detention of people for purely asking for asylum.

Vulnerable persons should be identified, including (unaccompanied) minors, (single) women, LGBTI persons, victims of torture. According to their specific needs, there should be appropriate service provision. Gender considerations should be taken into account in line with UN SC resolution 1325 on women, peace and security.

Civil society organisations should be granted access to reception centres. Activities to support the people living in reception centres should be supported and stimulated. These activities should facilitate the inclusion of the newly arrived persons in society.

The OSCE should step up its efforts to promote implementation of its commitments relating to refugees and migrants. Rights and proper treatment of refugees and migrants should be given increased attention in the work of field offices and in OSCE programmes on the rule of law and border and police procedures. Efforts to combat racism, xenophobia and discrimination, including the work of the Personal Representatives of the Chairperson-in-Office on Tolerance and Non-Discrimination should be strengthened.



## FREEDOM OF EXPRESSION

In the past year freedom of expression has further regressed in many OSCE participating States, both west and east of Vienna, meaning this issue is still very much of concern to civil society.

### ***Pressure, threats, and violence against journalists and communicators***

Journalists and other communicators are faced with numerous threats including killings, death threats, arbitrary arrest and imprisonment, torture, physical abuse, legal and financial harassment, legal, administrative and financial harassment, smear campaigns and intimidation. These measures do not only endanger the lives and violate the fundamental rights of journalists and other communicators, but also aim to suspend freedom of expression and suppress dialogue in the wider society. Particularly worrisome is the trend of mass repression of journalists and communicators during periods of emergency and the ever-growing dangers for journalists in conflict zones.

States are not taking adequate steps to prevent, investigate, prosecute or punish the threats and abuses, and in too many incidents are themselves complicit in the violence, censorship and persecution perpetrated against those who exercise their right to freedom of expression.

### ***Freedom of Expression and Security Concerns***

The increasing number of security threats in the OSCE region is a subject of major and legitimate concern. However, a balance between state security on the one hand and freedom of expression on the other can be achieved only if participating States respect the OSCE principles and commitments and other international human rights documents including the UN Covenant on Civil and Political Rights. In the Belgrade Ministerial Council Decision on Preventing and Countering Violent Radicalization that Lead to Terrorism and on Counter-terrorism (2015), OSCE participating States upheld the commitment to apply counter-terrorism measures “in compliance with applicable obligations under international law, including human rights law.” In the Astana Declaration (2010), participating States reiterated their commitment to the comprehensive security concept, “which relates the maintenance of peace to the respect for human rights and fundamental freedoms”. Most recently, in September 2016, the OSCE Representative on Freedom of the Media pointed out that “even in difficult times, governments must create environments conducive to the free flow of information and should take particular care not to adopt restrictive measures.”

Many participating States use legislation on terrorism and extremism to limit freedom of expression and prevent the free flow of information, which contradicts OSCE commitments. These cases include legislative amendments, prosecution of journalists on the grounds of threats to national security, and accusations for hate speech and incitement of hatred, etc. Some countries employ mass monitoring of journalists without proper judicial oversight, including the countries to the west of Vienna, such as Great Britain and Austria. This is a violation of the public’s right to information, since journalists are discouraged from undertaking investigative journalism on terrorism and counter-terrorism measures and informing the public about it.

## ***Propaganda***

Although for the past two years the Office of the OSCE Representative on Freedom of the Media has been warning about increasing misuse of the media for propaganda and the devastating consequences it has on media freedoms, this trend continues. Propaganda encourages hatred and provokes violence, division and conflicts between people. Particularly worrisome is its influence in fragile countries with unfinished processes of statehood and identity building, post-conflict societies and countries in crisis. Media outlets involved in disinformation and propaganda do not respect professional standards, breach the code of ethics, strengthen nationalism, divide OSCE participating States and support frozen conflicts.

## ***Media pluralism***

Diverse, independent and pluralistic media play a crucial role in democracy. This is a politically binding principle upon the OSCE participating States, stated in a series of OSCE documents such as the Permanent Council Decision (1997), the Budapest Document (1994), and the Document of the Moscow Meeting (1991). However, political influences, censorship, self-censorship and economic pressure on the media are widespread in the OSCE region, and these constitute a breach of the OSCE commitments. The unification of content, dismantling of independent media, lack of public dialogue and critical opinion in the media are consequences of different control mechanisms employed by governments.

While some countries implement legislation that endangers media freedoms and put severe pressure on journalists, other use soft mechanisms such as increasing governmental control of public media. Such “soft” mechanisms are equally efficient in the suppression of media diversity. Steps taken against media freedom and pressure on journalists erode the profession and suppress necessary investigative and analytical journalism.

In many countries, government officials and pro-government media run smear campaigns against journalists and the media who criticise the government. Their usual targets are non-profit media, particularly journalists investigating corruption and sensitive issues such as transitional justice, impunity and the rights of minority and vulnerable groups, including national and religious minorities and LGBTI people, as well as opposition activists.

State funding of the media in some countries is a powerful mechanism of information control. In some countries in the past year, the government has regained control over print and broadcast public media.

While in some countries strict legal limitations exist in relation to foreign investments in the media, in other countries pro-government and government actors run smear campaigns against the media and journalists who receive funding from international sources and actively persecute them.

Media pluralism is particularly threatened in small towns where pressure comes particularly from the local administrations.

Although in many countries the Constitutions and other legislation ban censorship, it is nevertheless widespread across the OSCE region. Many governments continue to arbitrarily block and filter websites and other communication on the Internet. In some participating States, access to information from independent domestic and foreign sources is blocked.

## Recommendations

### To OSCE institutions and political bodies

- ODIHR and the Office of the OSCE Representative on Freedom of the Media should develop a set of recommendations to participating States with the aim of protecting freedom of expression and media freedoms at this time of increased threat of terrorism.
- The OSCE Representative on Freedom of the Media in cooperation with ODIHR should encourage the creation of strategies for the growth of non-profit media in participating States.
- OSCE actors should refrain from attempts to change the mandate of the OSCE Representative on Freedom of the Media, avoid weakening the institution's independence, ensure swift succession in the RfoM leadership, and chose a strong new Representative.
- OSCE actors should adopt an inclusive OSCE Ministerial Council decision on freedom of expression that would include ensuring the safety of all journalists in all situations, recognising the rights and security for citizen journalists, and protecting freedom of expression online.

### To OSCE participating States

- Participating States should ensure safe conditions for journalists, bloggers, whistle-blowers and others exercising the right to freedom of expression, by observing and implementing existing international commitments, legal decisions and frameworks, including those of the OSCE related to the protection of journalists and human rights defenders.
- Participating States should ensure accountability for all attacks on journalists and others through the conduct of effective, prompt, thorough, independent, and transparent investigations, by bringing perpetrators as well as those who conspire to commit, aid and abet or cover up such crimes to justice, and by ensuring that victims have access to appropriate remedies.
- Participating States should publicly and unequivocally condemn all killings, attacks and disappearances of journalists, media workers and others exercising the right to freedom of expression online and offline, and create safe and enabling conditions for the exercise of journalistic activities. The OSCE bodies should support States to develop specialised protection programmes, in full consultations with journalists, media workers and bloggers.
- Participating States should review their legislation pertaining to countering extremism and terrorism and harmonise it with OSCE commitments and other international documents of the Council of Europe and the UN. Such legislation must not be an excuse for the arbitrary restriction of media freedoms. Participating States should draft and adopt new legislation or amend existing laws in cooperation with ODIHR, the Office of the Representative on Freedom of the Media and representatives of independent civil society.
- Participating States should implement the recommendations of the OSCE Representative on Freedom of the Media in the Communiqué on Free Expression and the Fight against Terrorism.<sup>30</sup>
- Participating States must refrain from widespread, untargeted surveillance and data collection and adopt, comply with, and implement legislation that ensures any communications surveillance: conforms to strict tests of legality; pursues a legitimate aim, necessity and

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<sup>30</sup> Communiqué by the OSCE Representative on Freedom of the Media on free expression and the fight against terrorism, 2 September 2016. <http://www.osce.org/fom/262266>

proportionality; is subject to strict judicial review by an impartial and independent judicial authority; and that strong independent oversight mechanisms are in place to ensure the transparency and accountability of communications surveillance.

- Participating States should implement recommendations of the expert meeting “Propaganda for War and Hatred and Freedom of the Media” organised on 12 February 2016 by the Office of the OSCE Representative on Freedom of the Media, together with the German Chairmanship<sup>31</sup>, and support activities implemented by this office with the purpose of countering propaganda.
- Participating States must strengthen conditions for independent national and international media and ensure media pluralism, recognising that professional, free and diverse media is the most effective tool in countering propaganda. In cases when independent national media is operating in exile, host countries and the international community must ensure support to such media.
- Criminal sanctions should be applied only in the most severe cases of incitement to discrimination, hostility or violence. States should apply a broad set of measures to sanction and prevent incitement. These include policies that promote intercultural dialogue, pluralism and diversity, and positive measures for the protection of minorities and vulnerable groups. States should involve civil society actors in the development and implementation of such policies, and include a focus on strengthening access to alternative opinions and sources of information.
- Participating States must ensure that criminalisation of speech amounting to incitement to discrimination, hostility or violence, including cases of alleged propaganda, should fully comply with existing international freedom of expression standards. An independent judiciary should ensure consistent interpretation of incitement, assessing messages through a comprehensive threshold test. The Rabat Plan of Action refers to a six-part incitement test as a way of achieving this and provides a clear blue print for what incitement laws should look like and how they should be interpreted.
- Participating States should reaffirm OSCE principles related to the development of media pluralism and withdraw the laws restricting the freedom of expression, as well as uphold legislation guaranteeing media diversity both in relation to ownership and content. States should enable the free development of independent non-profit media, as the best indicator of media pluralism.
- Participating States should include a provision on the unequivocal ban of censorship in their Constitutions.
- Participating States should cease arbitrary blocking and filtering websites and other content on the Internet.
- Participating States should cease blocking access to information from independent domestic and foreign sources.

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<sup>31</sup> Recommendations following the expert meeting Propaganda for War and Hatred and Freedom of the Media Vienna, the OSCE Representative on Freedom of the Media, 1 March 2016. <http://www.osce.org/fom/225351?download=true>

## PREVENTION OF TORTURE AND ENFORCED DISAPPEARANCES

Torture has continued to be among the worst human rights violations in many OSCE participating States throughout 2016. In some countries and regions, torture is widespread and systematic and is practiced with impunity. Prosecution rates against perpetrators are shamefully low, which also proves the systemic nature of torture in many contexts. 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 investigative mechanisms. Civil society actors believe that OSCE participating States, political bodies and institutions should do much more to address this major problem.

Civil society actors also believe that special attention should be paid to identifying ways to include the issue of enforced disappearances in OSCE work. The failure of the OSCE and other international organisations to address the numerous past and ongoing cases of enforced disappearances in the region has created an atmosphere of impunity and facilitated conditions for the commission of new crimes.

Driven by these concerns, participants of the OSCE Parallel Civil Society Conference in 2013 in Kiev adopted a document entitled “The Kyiv Declaration: The OSCE Should Make Combating Torture a Priority”, which called for a more resolute OSCE action to address the problem of torture, and recommended several concrete steps. This appeal resonated with the position of the incoming Swiss Chairmanship, which included combatting torture among its thematic priorities for 2014. Thus, the OSCE began to work more actively on torture in 2014. The Swiss Chairmanship supported four regional civil society workshops, organised by the Civic Solidarity Platform, all of which produced recommendations on torture that served as a basis for the chapter on prevention of torture in the Basel Recommendations adopted at the OSCE Parallel Civil Society Conference at year’s end. It was most regrettable that the participants of the Ministerial Council Meeting in Basel in 2014 failed to adopt a decision on combating torture, despite it gaining the support of an overwhelming majority of participating States.

To build on the momentum developed in 2014, in September 2015 the Civic Solidarity Platform organized a workshop on “Developing OSCE approaches to prevention of torture and enforced disappearances” in Warsaw with support of the Chairmanship Troika. The workshop brought together specialised NGOs, representatives of the Troika, OSCE/ODIHR, the OSCE Secretariat and other relevant OSCE bodies to discuss previous civil society recommendations and draft decisions of the Ministerial Council meetings, choosing the most important and feasible recommendations and identifying ways of implementing them, and focusing on those that can be implemented over the next two or three years.

Unfortunately, at the Ministerial Council Meeting in Belgrade in 2015, participating States again failed to adopt a decision on combating torture, despite the continued massive support from the overwhelming majority of States. The inability of the 57 States to come to a joint position with regard to one of the most pressing human dimension concerns and agree on joint actions to address it leads civil society actors to conclude that those States who practice torture are the ones blocking consensus on this issue. It can also be concluded that such States find torture permissible despite it being a violation of their OSCE commitments. This situation is intolerable and cannot continue.

At the same time, we commend ODIHR for establishing the Focal Point on Torture Prevention in 2015 and Switzerland for supporting its activities. This development is fully in line with civil society

recommendations. Civil society actors have high expectations of this ODIHR project and have engaged in regular consultations with the Focal Point which started its work in 2016.

In 2016 the CSP continued its work on torture prevention. Its activities included not only participation in the HDIM but also of the organization of several side events on the fight against torture in many OSCE participating States at various OSCE events throughout the year. HDIM this year provided an important opportunity to meet OSCE officials and national delegations and exchange views with them on combatting torture.

Throughout the year, the CSP Working Group on Torture Prevention worked closely with the ODIHR Focal Point on Torture Prevention and had regular monthly teleconferences to update and synchronise activities. . This close cooperation resulted in the establishment of an informal Panel of Experts for Torture Prevention that will work as an advisory body for the ODIHR and will be able to implement research projects, in coordination with the ODIHR Focal Point. At the initial meeting of the Expert Panel in Warsaw during the HDIM, many issues including the mandate of the Panel were discussed and several research and project ideas were presented. This ongoing work with ODIHR proves that practical partnership between the CSP and the ODIHR is progressing well.

In October 2016, ODIHR and the Danish MFA organised an expert meeting in Vienna on “Rehabilitation of Torture Victims”. During the meeting, a representative of the CSP reiterated CSP recommendations in relation to the fight against torture and ill treatment.

Torture prevention remains a priority topic for the CSP. Partnership with the ODIHR aimed at eradication of torture is an important element of this work, and we urge ODIHR to adopt an inclusive approach and grant civil society full access to its events on this issue.

## **Recommendations**

### **To the OSCE Chairmanship-in-Office and the OSCE Secretary General**

- The OSCE Chairmanship should make every possible effort to organise the successful negotiation of an OSCE Ministerial Council decision on torture prevention to be adopted in Hamburg. The Chairmanship should ensure that the negotiated text of the decision does not weaken States’ existing commitments on torture prevention but effectively responds to the new challenges.
- Incoming OSCE Chairmanships should ensure that torture prevention is a priority for the organisation, building on the work of the Swiss Chairmanship in 2014 and ODIHR since then, and using civil society recommendations.
- The OSCE Chairmanships should oversee the preparation of updated OSCE commitments on eradicating torture which should address the new challenges and include enforced disappearance as a form of grave human rights violation and torture.
- The OSCE Chairmanship, in cooperation with the ODIHR, should develop an OSCE strategy outlining measures to eradicate torture in participating States, including monitoring of places of deprivation of liberty, prevention, investigation and documentation, prosecution, and ensuring redress, including reparations and the right to rehabilitation.
- The OSCE Chairmanship should task OSCE ODIHR to produce a baseline study on the situation regarding torture in participating States and the necessary steps for its eradication, including

prevention, prosecution and redress, including rehabilitation. The baseline study should identify shortfalls and gaps in existing legislation and practice as well as best practice examples.

- The OSCE Secretary General should improve coordination among all OSCE bodies with the goal of ensuring that torture prevention is included centrally in activities in all dimensions and ensuring the transparency of all activities conducted by OSCE institutions and field presences.

**To the OSCE participating States:**

- Make every possible effort to negotiate an OSCE Ministerial Council decision on torture prevention to be adopted in Hamburg, without making compromises on the existing commitments. Should some States again block the consensus on this decision, the overwhelming majority of the States supporting it should adopt a joint declaration on torture prevention and make it clear that a consistent position of those States not supporting a Ministerial Council decision on torture prevention contradicts OSCE commitments and undermines the Helsinki principles.
- All states must criminalise torture in their domestic legislation, recognise it as a gross human rights violation, and make sure that amnesty clauses are not applicable to people convicted of the crime of torture.
- All States must criminalise torture in their domestic legislation, recognise it as a gross human rights violation, and make sure that amnesty are not applicable to people convicted of the crime of torture.
- Evidence and confessions obtained under torture and ill-treatment must be non-admissible in court and due investigation should be conducted into all reports or allegations of torture. States have the positive obligation to conduct effective investigations into all cases of torture or ill-treatment and bring the perpetrators to justice.
- Ensure that any deprivation of liberty is properly documented from the moment of apprehension of a suspect in accordance with procedures prescribed by law.
- Guarantee that alleged victims of torture and inhuman and degrading treatment have unhindered access to qualified legal assistance, which should, where relevant, be offered free of charge.
- Guarantee access to an alternative forensic examination for any alleged victim of torture and ill-treatment and ensure that the findings of such examinations carry equal weight under domestic procedural legislation.
- Ensure that the work of doctors and other medical personnel in detention facilities is truly independent. Participating States should not subordinate medical services in detention facilities to the Ministry of the Interior or the administration of the penitentiary system.
- Ensure that adequate medical services are available to all detainees at all times and that medical personnel working inside detention facilities are trained on the application of the provisions of the Istanbul Protocol.
- Take steps to ensure appropriate recording of events in places where torture and ill-treatment are most prevalent (for example, audio and video monitoring of police stations).
- Increase citizens' awareness of their rights and provide information about existing legal and procedural safeguards while in police detention.
- Ensure that no person is expelled, forcibly returned or extradited to a country where he or she is at risk of being subjected to torture or ill-treatment, and create effective domestic mechanisms, including judicial review, to prevent the transfer of people to such countries.

#### **To OSCE/ODIHR:**

- Aim to make the newly- established Focal Point on Torture Prevention a permanent programme and seek support from participating States towards this goal.
- To support the work of the newly established Focal Point on Torture Prevention, establish an expert panel on combating torture, similar to the expert panel on freedom of peaceful assembly. The panel should meet at least twice a year to assess relevant laws and practices in participating States, monitor progress, give advice to participating States on implementation of their commitments on the eradication of torture, and provide advice and assistance to the ODIHR Focal Point on Torture Prevention in implementing its mission.
- Identify and promote best practices for the effective use of safeguards in participating States.
- Conduct a baseline study on the situation with torture in OSCE participating States, including its occurrence, prevention, prosecution, and redress. The baseline study should identify shortfalls and gaps as well as best practices.
- Encourage inclusion of the Istanbul protocol in the curricula of higher education establishments in participating States;
- Make sure that all the events or discussions co-organised by ODIHR in relation to fight against torture are open to the wider civil society working to combat torture and are not limited to certain groups of the torture prevention movement.

# HUMAN RIGHTS IN THE CONTEXT OF CONFLICTS

## PROBLEM ANALYSIS

### Conceptual approaches to dealing with conflicts in the OSCE

OSCE work on conflicts is based on a continuous framework of early warning, conflict prevention, crisis management/conflict resolution, and post-conflict transformation/peace building, also termed the “conflict cycle”. While in OSCE documents conflicts are treated on the basis of the OSCE’s comprehensive approach to security which includes the three dimensions equally as essential for security, in practice conflicts are too often addressed in the OSCE through the prism of the first dimension of military-political security. Civil society groups strongly believe that dealing with conflicts effectively requires consistent inter-dimensional approach, with the human dimension playing a much stronger role.

This approach would not only correspond to the Helsinki principle of comprehensive security but would allow in practice for earlier and more efficient identification of warning signs of potential conflict; more effective conflict prevention by decreasing and defusing tensions; mitigation of suffering when a crisis unfolds, engagement of non-governmental experts and local actors in mediation; and also for building more durable post-conflict peace through positive actions and the delivery of justice on the basis of documentation of human rights crimes by civil society.

The inter-dimensional nature of conflicts on which civil society insists as an analytical approach is obvious because violations of human rights both result from armed conflict, and are an important factor in and a cause of unrest, upheaval and armed conflict. All OSCE participating States have agreed that lasting security cannot be achieved without respect for human rights and functioning democratic institutions. It is important that this commitment is put into action.

Today, civil society groups are concerned that the key Helsinki principle of the comprehensive security where the human dimension is as important as political-military and economic dimensions, often remains merely declaratory in OSCE conflict work. “Hard security” concerns dominate discussions and actions on conflicts in the OSCE, while the human dimension is given secondary attention. This problem is of a conceptual nature and has been exacerbated recently, especially after the beginning of the conflict in Ukraine. This conceptually erroneous approach has been practiced both by some OSCE actors and many academic experts.

The primacy of the “hard security” considerations over the human dimension leads to the situation when the early warning signs of a conflict such as large-scale human rights violations which contradict international commitments, the deterioration of democratic principles in governance and autocratic backsliding, and the growing use of propaganda and hate speech are neglected.

Dealing with conflicts in the OSCE is increasingly driven by the desire to overcome growing mistrust and divisions amongst participating States and engage political leaders on both sides of the divide in dialogue. As a result, the focus on conflict management is more than ever narrowed down in the OSCE to political dialogue among leaders of states and mediation between them, rather than participation of a broad range of actors and action to address the root causes of conflicts, including human rights problems. Such “engagement at any cost” makes all parties involved hostages of political bargaining

and focuses on “negative peace”, to the detriment of the implementation of the Helsinki principles and the building of durable “positive peace”. The political will of the OSCE Chairmanship and Secretary General is too often conditioned and limited by this narrow focus on political negotiations.

### **Institutional problems**

Moreover, expert knowledge on conflict prevention, crisis management, post-conflict transformation and peace building is often insufficient within the OSCE bodies and institutions. A set of tools and approaches applied in the OSCE, including confidence and security building measures, early warning and early action, mediation and dialogue facilitation, programme management and evaluation, round the clock monitoring, support to field operations, etc., is rarely supported by in-depth analysis of country situations, the root causes of conflicts, political, social and economic situations, historical backgrounds, profiles of key actors, and so on.

Even when expertise exists inside the OSCE structures, it is not fully utilised when decisions and actions are elaborated and implemented by political bodies. Because of the deficit inside OSCE of the expert capacity related to conflicts, Chairmanships often rely on expertise at the national level in their own country. This varies in quality from state to state and is conditioned by the political traditions of the country and the historical peculiarities of the development of the national expert community. In addition, the timeframe of the active engagement of experts at the national level is limited to a maximum of three years of membership of the Chair country in the OSCE Troika. Records of the results of analysis and discussions at the national level are rarely kept inside the OSCE institutional framework afterwards. This, in turn, leads to a lack of continuity and weak institutional memory in the OSCE. Therefore, we observe a gap between the OSCE expert legacy in the conflict management field and actual actions undertaken in conflict situations.

The problem of the discrepancy between the declared principle of comprehensive security and a narrow military-political approach to conflict management has not only a conceptual, but also an institutional aspect. The lack of political will at the leadership level to address conflicts from a comprehensive security perspective is exacerbated by institutional deficiencies. Too many aspects of conflict-related problems fall into cracks between various OSCE bodies and institutions. Due to problems in communication and coordination, different elements of relevant expertise available inside the OSCE often fail to be accumulated and used by the Conflict Prevention Centre (CPC) which has limited analytical capacity. As a result, even the available expertise is not translated into action when a conflict folds and a fast reaction by the Chairmanship and Secretary General is required.

While the Vilnius MC Decision 3/2011 on the conflict cycle was aimed at enhancing OSCE capacities for early warning and conflict prevention by giving an additional mandate to the Secretary General to compliment the role of the Chairmanship and strengthening the CPC, in practice, this has not been used enough.

While the key OSCE body dealing with conflicts, the CPC, takes political direction from the Chairmanship and interacts with the Troika, institutions and field operations, its weak point is cooperation in the human dimension and engagement with civil society. In theory, this is easier to do in countries where there are OSCE field operations on the ground but the operation’s mandate is often restricted, and many experience pressure from the government of the host country. Moreover, the CPC has no capacity to carry out analysis and relies on think tanks for this. The CPC’s ability to follow

developments on the ground is mostly restricted to press monitoring, and only in some languages. Monitoring reports and information on early warning signs from civil society rarely reaches the CPC.

We also observe a clear disconnect between the processes of political negotiations/mediation on particular conflict situations such as the Minsk Group on the Nagorno Karabakh conflict or the Normandy Four on the conflict in Ukraine, and the executive structures in charge of the conflict-related work in the OSCE, including the Conflict Prevention Centre.

### **Growing divisions and mistrust in the OSCE**

These systemic difficulties are exacerbated by the current unprecedented lack of trust among OSCE participating States, resulting in their inability to engage and agree on activities. Unresolved conflict in and around Ukraine representing a blatant breach of the Helsinki Accord and a new divide between east and west, is still a fresh and bleeding wound. The continued violence in Donbas, the occupation of Crimea accompanied by very serious human rights violations and lack of progress in the implementation of the Minsk agreements fuel the mistrust and are accompanied by a hybrid war of mass propaganda and cyber attacks as well as increasing military build-up by different actors in the OSCE region. In this atmosphere other conflicts in the region that have been frozen are increasingly likely to deteriorate to acute confrontation. New conflicts may also break out in other locations.

The rise of the right-wing parties and populist thinking in many states, both western and eastern, contributes to international confrontation by offering simple solutions to complex problems, creating stereotypical images of the enemy, painting the world as black and white, and mobilising public support around nationalistic, xenophobic, and revanchist ideas. Certain types of non-democratic political regimes thrive on conflicts and use confrontation to consolidate their grasp on power inside their countries and in doing so change the balance of power and influence at the international level. Nothing is further from the Helsinki principles of security through dialogue and cooperation than a realpolitik approach based on a perception of international relations as a zero-sum game. The economic dimension of conflicts should not be underestimated either: people and structures benefit financially from conflict.

The OSCE is a unique platform for security through dialogue and cooperation, but in the absence of political support for cooperation we cannot create a secure Europe, especially against the will of participating States. The theory based on the Helsinki principles and the actual developments on the ground are increasingly divergent. The risk of more conflicts breaking out is very high, and the OSCE should take this into account.

In this context of mistrust and growing confrontation between states the role of civil society in dealing with conflicts is more important than ever.

### **Early warning, conflict prevention and rapid response**

A human dimension crisis may develop into a security crisis. Therefore, a human dimension crisis should be seen as one of the key warning signs for a possible “hard security” conflict. Internal repression, when massive violations of international human rights obligations continue unabated without provoking a strong reaction from the international community, may generate a sense of

encouragement to the government of the state concerned to take aggressive steps towards other countries.

The notion of a “human dimension crisis” should be introduced and mainstreamed in the OSCE, at least informally. Acceptance of this notion could lead to the establishment of emergency procedures and the creation of a coordination mechanism within the OSCE to exchange information among key actors, including civil society, to coordinate with other international structures like the UN or the Council of Europe, and to take concrete decisions on relevant steps. In situations which could be defined as unfolding human dimension crisis, such emergency procedures should already be in place and ready for activation.

Violations of the rights of national minorities could lead not only to internal violent conflict but also to external aggression. National minorities’ enclaves, even if a conflict is unfolding for different reasons, should be under close international attention with a heavy international monitoring presence.

Non-cooperation of a participating State is major obstacle to effective monitoring on the ground, as was seen in the case of Crimea. In such cases, the OSCE should be more actively engaged in distant monitoring and use civil society documentation and the testimonies of experts, witnesses and victims in locations outside of the area.

The Moscow Mechanism is an important tool for reaction to human dimension crises, even if some consider it too “confrontational”. It allows for the credible documentation of human rights abuses and for maintaining the situation in the spotlight until positive changes take place. This is exactly why a number of governments would prefer to “bury” it, since in the case of gross human rights violations it allows invoking participating States to put a crisis situation in the spotlight and attract high level attention to it.

The lessons of recent conflicts in the OSCE region, including in Osh in 2010 and the events on Maidan in Kyiv and elsewhere in Ukraine in 2013-14 demonstrate that the physical presence of international monitors at an early stage of a conflict, before violence breaks out, is essential to prevent violence. Everybody knew what was about to happen in Osh, everyone saw the early warning signs but no action was taken in time because of the lack of political will and the bilateral interests of the country holding Chairmanship. Human rights defenders were sending information and giving warnings but to no avail. Only five OSCE monitors were present in Osh, and the early warning was issued by HCNM only on the day when the violence had already started. If there had been 200 OSCE personnel on the ground in Osh, it is highly likely that the massacre could have been prevented. And yet, the lessons have not been learned: only five OSCE monitors are now stationed in Nagorno Karabakh, another explosive hot spot.

Civil society had a similar experience on Maidan in Kyiv: when the first violence by the government forces occurred in November-December 2013, human rights defenders appealed to OSCE for the rapid deployment of a monitoring mission. This did not happen; and only expressions of concern were issued. As a result, serious bloodshed took place in February, leading soon to a fully-fledged war. Had sufficient numbers of OSCE monitors been dispatched in January to Ukraine, the war could have been avoided.

Civil society activists involved in the work in conflict areas believe that no effective mechanism of rapid response exists in OSCE, despite what is written in the organisation’s documents. When a conflict starts brewing, States and OSCE political bodies raise their concerns on reams of paper, but do very little or

nothing to intervene in a practical sense to prevent bloodshed because of the lack of political will. The OSCE always comes in too late, it seems. It takes weeks or months for it to start acting while a response is needed in a matter of days.

Civil society monitors on the ground could play a preventive role but they need formal status and an OSCE “flag”. They do not have such endorsement and mandate.

The lessons of many conflicts, including in the West Balkans, Transnistria, South Ossetia and Nagorno Karabakh (at different stages of this protracted conflict), as well as from the ongoing conflict in and around Ukraine, show that early warning signs include not only military build up such as an increase in military personnel and military spending and acquisition of arms, but also human dimension problems. These included problems with freedom of speech and independence of the media and increasing government control of media channels, a dramatic increase in nationalistic propaganda, disinformation, hate speech and “enemy images” in the media, pressure on judges on all levels, politically-motivated persecution of the opposition, a backlash against civil society with accusations of treason, the widespread use of torture in detention, etc. Human rights defenders and civil society groups gave warnings in each of these cases but their voice was not heard.

### **Crisis management and conflict resolution**

#### *Lessons from the conflicts in the South Caucasus*

Since parties to the Nagorno Karabakh conflict are so entrenched today, it is difficult to change the nature of the conflict from the ground. Therefore, the role of civil society in conflict resolution is very important.

However, peace negotiations on Nagorno Karabakh do not involve civil society in any way. In theory, civil society input could be channelled through field missions but the OSCE field mission in Yerevan has no mandate on the conflict, and the field mission in Baku was closed several years ago following demands from the government of Azerbaijan. It is not acceptable that the OSCE has no field presence in a country involved in a conflict such as Azerbaijan. The mission in Yerevan does not engage in discussion with civil society groups that are critical of the government of Armenia.

Renewed violence in Nagorno Karabakh is very likely. No positive developments have occurred since the latest breakout of violence in April. Impunity for war crimes is one the main problems, with perpetrators of past war crimes being hailed as heroes of the country and allowed to be active in political and social life. Connections between the conflict and current social and business life are evident everywhere.

Monitoring by OSCE on the ground is now almost non-existent. There is a strong need for monitoring of ceasefire violations and the human rights situation. In addition, the problem of small arms should be addressed by OSCE. Nationalistic propaganda and hate speech in the mass media continues; and the media is under governmental control. . The pervasive problem of corruption reinforces the conflict because the military is a stronghold of corruption and has vested interests in the continuation of the confrontation.

The problem of the lack of investigations into and legislation on the issue of enforced disappearances is important. Should a law be adopted, it would make the government responsible for investigating and taking responsibility for the disappeared and their families.

The official OSCE mediators in the Minsk Group lack new creative ideas, and civil society ideas from both sides are not being properly considered.

Neither governments include civil society groups in discussions on the conflict. Interaction between Armenian and Azeri civil society is viewed with strong suspicion by both governments, even on the neutral territory such as Tbilisi.

## **Post-conflict rehabilitation and peacebuilding**

### *Transitional justice*

Durable peace after the end of hostilities is not possible without justice, truth and accountability for war crimes. Accountability and peace building do not contradict each other as many claim: there is no peace without justice since impunity leads to new conflicts and renewed war crimes. In frozen conflicts the lack of accountability reinforces impunity and opens the door for more violence.

Insufficient or absent persecution for war crimes has led to a situation when many persons accused of war crimes are now part of the political elite in Bosnia and Herzegovina and are even given awards by the parliament of Republika Srpska. Similarly, suspected war criminals in other Western Balkan countries as well as in Armenia and Azerbaijan are national heroes.

While civil society's ability to act during the acute stage of a conflict is limited, its representatives can contribute to transitional justice by documenting violations of international humanitarian law (war crimes and crimes against humanity) and thus help in prevention of new conflicts.

Documentation by civil society groups may be used in legal processes (prosecution in domestic courts or in tribunals that might have jurisdiction in this territory, including ICC or special tribunals; also for universal jurisdiction), help to provide legal representation to victims of conflict, and be used to counter propaganda spread by parties to the conflict. The work is challenging because of security threats to civil society documenters who receive death threats and sometimes are even killed.

This work requires cooperation with other international bodies since the OSCE is the least legally oriented and focuses mostly on peace building.

Use of universal jurisdiction is also a challenge: only 15 EU member states have universal jurisdiction in their legal systems. However, this is required by the Rome Statute of the ICC, meaning that many parties to the Rome statute in the EU violate it. Civil society sees this problem as one of its main advocacy goals.

In the context of the conflict in Ukraine, it is important to ensure that no amnesty for war crimes is possible under universal law, contrary to what is written in art. 5 of Minsk Agreement-II.

## *Peacebuilding*

Developing infrastructure for peace requires a shift from “negative peace” (no violence) to positive peace (rule of law, protection of human rights, including minority rights, strong democratic institutions, social cohesion and resilience to violence, etc.). Traditionally in the OSCE this is seen as the task of field operations; their activities are thought to support this kind of transition and empower locals to be resilient to violence. However, in reality their ability to act in most countries is limited by their mandates. Host governments increase pressure on the field missions and, in many States, have insisted on downgrading or closing them. OSCE field missions in some regions, such as the Western Balkans, play an important role in moving towards positive peace by supporting judicial reform, monitoring trials, and addressing historical memory issues. However, this work is not sufficient and the approach needs to be more comprehensive since in many post-conflict states the process of the state consolidation is not finished and new national identities are being created that further deepen conflict. Therefore, dealing with the post-conflict transformation should not be left to field missions alone; civil society has to play a more prominent role.

### *Dealing with the past: Lessons from the Western Balkans*

Reconciliation is a long-term process that requires substantial investment. When lessons from past conflicts are not learnt and historical memory is not addressed, nationalistic narratives prevail and aggressive propaganda persists. Negative sentiments about neighbours and resentment are promoted by media, at schools and universities. War crimes are often dealt with on the local level; however, members of the elites are rarely, if ever, prosecuted. Members of the elites often play a destructive role in the transition processes. The Western Balkans is a good example: many years after the war security has still not been established.

Propaganda encourages hatred and provokes violence, division and conflicts between people. Particularly worrisome is its influence in fragile countries with unfinished processes of statehood and identity building, post-conflict societies and countries in crisis. Media outlets involved in disinformation and propaganda do not respect professional standards, breach the code of ethics, strengthen nationalism, divide OSCE participating States and support frozen conflicts.

Changing the narrative, educating the public to resist propaganda and develop critical thinking is an important task. Historians, educators, and media professionals have a special role here. The role of civil society in analysing past conflicts, dealing with historical memory, and developing critical reflection is crucial. Therefore, it is important to prevent the weakening and marginalisation of civil society in post-conflict and conflict areas such as the Western Balkans, South Caucasus, Transnistria and Central Asia, and protect them from accusations in treason and espionage, crackdown by governments and attacks from non-state actors.

### *Post-conflict transformation: Lessons from Tajikistan*

For quite some time, Tajikistan was seen as an example of “best practice” of the peace process after a devastating civil war. The international community, under the auspices of the UN, invested a lot in the peace process and post-conflict transformation in this country.

However, investments in the democratic governance and rule of law were apparently insufficient. Striving to consolidate his control of power and eliminate any potential challenge to his rule, President

Rakhmon gradually increased his authoritarian grip, dismantling weak democratic institutions, suppressing freedom of expression, and cracking down on civil society. The international community did not pay adequate attention to these early warning signs. Last year, President Rakhmon used the pretext of an alleged coup attempt to rupture the peace accord agreement, outlawed the leading opposition part and sentenced its leaders to long prison terms on bogus charges of terrorism. In the absence of clear universal criteria defining terrorism, autocrats use the fight against terrorism as a convenient excuse to repress and even to kill their opponents living abroad. President Rakhmon has taken exactly this line: he uses the fight against terrorism to justify his increasingly dictatorial reign. In a country divided along regional, cultural and linguistic lines, with fresh wounds from the previous conflict, such developments could easily lead to a new internal conflict. Widespread corruption contributes to problems of instability. The situation is further complicated by pressure from the government on the OSCE field office: the Tajikistani authorities threatened to close it altogether after the recent confrontation with opposition members at HDIM-2016. Should the office be closed down, the OSCE would be lacking tools to prevent a new violent conflict.

Kyrgyzstan is also heading toward autocracy with a recent crackdown on civil society, increasingly aggressive nationalistic rhetoric from the authorities and the announced constitutional referendum in December this year which will very likely result in a major shift in checks and balances, the accumulation of power in the hands of the executive and the significant weakening of parliamentary and judicial authority. These developments should be treated as early warning signs, especially given the multi-ethnic composition of Kyrgyzstani society and the painful experience of ethnic violence in 2010 and before that.

### **Role of civil society in addressing conflicts**

Civil society plays an important role in conflict prevention, countering propaganda, monitoring early warning signs of conflicts, protecting human rights of victims during conflict, post-conflict rehabilitation, transitional justice and dealing with the past.

Civil society can play a particularly important role in peace building by being active in the protection of civilians against violence from all parties; monitoring human rights violations and the implementation of peace agreements; advocacy for peace and human rights; socialisation to values of peace and democracy as well as development of the in-group identity of marginalised groups; building inter-group social cohesion by bringing people together from adversarial groups; facilitation of dialogue on the local and national level between various actors; and service delivery which helps to create entry points for all of the above elements of peace building.

However, nowadays space for civil society is shrinking across the OSCE region even in peaceful circumstances. Moreover, pressure on civil society is typically systematic in countries involved in violent conflicts. NGOs and activists who are involved in conflict prevention, documenting human rights abuses and violations of international humanitarian law in conflict zones are often labelled “traitors” and “enemies”. Some OSCE participating States demand a full list of OSCE projects involving civil society and names of partner organisations funded by OSCE budgets.

Pressure on civil society in conflict situations is not gender neutral: women activists are often particularly targeted and are disproportionately affected. This has highly negative consequences for

their work at all stages of the conflict cycle, including prevention/early warning and post-conflict rehabilitation/transitional justice.

The biggest challenge in the OSCE work with conflicts is decision making, especially when rapid responses are required. Civil society could play a bigger advocacy role here.

The role of civil society in reconciliation processes is especially crucial in the current situation where historical prejudice, enemy images, and xenophobic narratives are again on the rise in many countries due to the surge of nationalistic and populist parties who use black and white political tools to manipulate public opinion and increase tensions.

## **RECOMMENDATIONS TO OSCE POLITICAL BODIES, INSTITUTIONS, AND PARTICIPATING STATES**

### **On conceptual approaches**

The human dimension should be an important part of the conceptual framework of the OSCE work to address conflicts alongside the military-political dimension. A more systematic link between the three OSCE dimensions (security, economic and human) is important to increase the effectiveness of efforts to prevent human rights violations that may cause violent conflicts, to resolve conflicts, and to ensure durable post-conflict peace.

Improved coordination and cooperation between all relevant OSCE political bodies, institutions, and structures is necessary to ensure the best use of expertise available inside the OSCE and well-informed decision-making.

Coordination, communication and cooperation of the OSCE with civil society regarding early warning, monitoring, conflict resolution, mediation, transitional justice, and peace building should be enhanced, including by establishing a communications platform for each specific crisis.

OSCE bodies, institutions, and field operations should systematically and simultaneously work to promote the participation and engagement of civil society and broader society actors' in all relevant processes in the political, social, economic, and human rights sphere.

Gender sensitive conflict analysis, including differential impact of the conflict, needs to be developed in the OSCE. The active involvement of women, especially conflict-affected women and their respective networks should be safeguarded.

### **On capacity and institutional arrangements**

OSCE actors, including institutions and field operations, should enhance their capacity for comprehensive conflict- and stakeholder-analysis. In particular, OSCE actors should give more attention to capacity building on the legal framework, the structure and roles of different local actors in specific country contexts, as well as on conflict transformation, violence reduction, human rights work and gender sensitivity. OSCE political bodies and institutions, OSCE participating States, other international actors and donors should enhance capacity on these issues among their diplomatic, policy and administrative staff in their offices and field units. Capacity building should be obligatory for all OSCE

staff and tailored to relevant country contexts as part of the preparation of staff recruited to OSCE field missions and/or institutions.

OSCE has multiple mechanisms of rapid response to crises and conflict situations. Some of them require modification, political will or creativity to be applied effectively, such as the Vienna Mechanism, the Moscow Mechanism, or the “consensus minus one” mechanism. Possibly, in addition to the Vienna Mechanism, the Moscow Mechanism, and special monitoring missions new rapid response mechanisms should be established, including an emergency reaction procedure and a coordination platform between OSCE and civil society actors.

In cases when the human dimension situation deteriorates and the monitoring access to the country is limited, a Chairmanship action should be taken, possibly in the form of a Chairmanship-commissioned report.

The personnel and budget of the Conflict Prevention Centre should be increased, to ensure that its analytical capacity is substantially developed.

In the case of a cross-dimensional crisis, a coordination and communication platform should be established immediately, both among the OSCE actors and between them and civil society actors.

OSCE mediation capacities should be strengthened. OSCE actors should engage civil society, women’s networks and youth in mediation processes.

The OSCE should develop stronger cooperation with the UN, the Council of Europe and the EU in dealing with conflicts: these inter-governmental actors should complement one another and not be afraid of duplication.

### **On early warning and conflict prevention**

A stronger leadership role of the Chairmanship is required when the first warning signs of an unfolding human dimension crisis and/or conflict are detected and a rapid response is needed.

The Secretary General should more effectively use his/her mandate for early warning action on the basis of the MC decision 3/2011 on the conflict cycle.

In addition to Chairmanship and Secretary General, the OSCE Troika should play a more active role in early warning actions and decision-making on rapid response. Lessons of past conflicts have taught us that a Chairmanship’s ability to act in conflict situations may be restricted by bilateral interests, as was the case in the Osh conflict.

ODIHR needs to have better rapid response/ standby capacity in order to deal with emergencies and crisis situations, such as for sending human dimension assessment missions. This includes relevant budgets for rapid response that could be used throughout the whole year.

Human dimension crisis should be seen as one of the key warning signs for a possible “hard security” conflict. Therefore, deterioration of implementation of human dimension commitments should be fed

into the monitoring of early warning signs, including systematic human rights violations, increase in nationalistic propaganda, and backslide in democratic governance.

Different ways to improve rapid response to early warning signs includes the better utilisation of civil society monitoring reports. Local and international NGOs have been actively involved in monitoring, fact-finding and reporting in the majority of these crisis situations.

Small arms acquisition by civilians and military build-up by states has been documented at early stages in many past conflicts, including in Osh in Kyrgyzstan, South Ossetia and East Ukraine. Awareness-raising on the need of more stringent limitations on the production, shipping, selling of arms, in particular of small arms and monitoring of military spending by governments is needed.

Propagandistic outlets should be treated as propagandistic ones and not as mass media.

More public information by inter-governmental organisations and with their support is needed to combat propaganda and disinformation.

Journalists and civil society actors should take more responsibility for combating propaganda, disinformation, and hate speech.

The OSCE should develop mechanisms for monitoring propaganda, disinformation, and hate speech, in cooperation with civil society.

A regular dialogue between Russian and Ukrainian journalists should be developed with support of the OSCE.

### **On crisis response and conflict resolution**

In all conflicts, in particular in Nagorno Karabakh and Ukraine, civil society should be included in negotiations on the peace process and the monitoring of implementation of agreements.

The OSCE field presence in Nagorno Karabakh should be substantially increased. Five monitors is woefully inadequate to monitor the cease-fire and the human rights situation.

The OSCE should insist on the re-establishment of the field office in Baku and ensure continuation of its field mission in Dushanbe. The mandates of field missions in other countries in actual or potential conflict situations should include addressing the conflict.

The mediation capacity of OSCE should be enhanced and strengthened.

The OSCE should develop programs on the security of journalists and human rights defenders in conflict situations.

### **On post-conflict transformation and peace building**

The OSCE should develop a transitional justice and post-conflict transformation framework and strategy for each conflict region, based on social, political and other characteristics of the situation and

local context. OSCE institutions should include civil society in drafting such strategies. Such strategies should include not only the building of democratic institutions, good governance and rule of law, but also cover broad post-conflict dialogue in the society, de-construction of stereotypes, combating propaganda, culture of remembrance, critical reflection, including through cultural activities,

The OSCE should introduce the practice of issuing periodical reports about the impact of transitional justice strategies, including recommendations on how to improve this process.

Observation of the principle of equality of everyone before the law is particularly important in post-conflict states; justice should be the same for all. No impunity for the war criminals should prevail.

The OSCE should develop training programmes in post-conflict transformation for civil society actors.

### **On the role of civil society in addressing conflicts**

It is crucial that civil society actors continue to play an active role in early warning, crisis prevention and conflict transformation for preventive reasons and for the purpose of achieving sustainable peace.

An inclusive approach is necessary to prevent and overcome violent conflict affecting various sections of the population, if not all of it, as well as a broad range of civil society actors. The active inclusion of human rights defenders, other civil society groups and representatives of women, minorities, and other vulnerable groups is critically important for conflict transformation and crisis prevention. OSCE actors, other international actors and donors should therefore enhance their political and financial support of civil society groups, human rights experts and women activists and networks in their conflict transformation and peace building efforts.

OSCE institutions and field operations should regularly involve local civil society actors and human rights experts in joint analyses and the development of policies and country strategies. Conflict cycle work organised by the Chairmanship should include civil society in strategic thinking, not just in implementation.

Early warning and human dimension crisis prevention indicators and actions should be developed by OSCE institutions and bodies jointly with civil society.

The Conflict Prevention Centre has no structured way of working with civil society and therefore should develop a mechanism for such interaction, possibly by appointing a civil society liaison officer.

Early warning and crisis prevention mechanisms in the OSCE should not limit their interaction to representatives of the academia but also engage with local and international civil society representatives.

Civil society representatives should be able to participate in relevant events such as Security Days, the Working Group on migration, etc. The last Security Days were not open to civil society following a decision by the Secretary General.

Training programmes for civil society on early warning and mediation skills should be developed with OSCE support.

OSCE actors, other international actors and donors involved in conflict management in conflicts regions and separatist-controlled territories should recognise the key role of civil society in monitoring, collecting and analysing information and providing assistance to victims. They should provide support to civil society groups, regardless of their national origin.

The OSCE Minsk group on the conflict in Nagorno-Karabakh should establish channels of direct communication with civil society organisations.

The OSCE Special Monitoring Mission in Ukraine should improve channels of communication with civil society at all levels, including missions on the ground, and ensure that non-registered volunteer groups and concerned citizens are also part of the communication chain. The Special Monitoring Mission should be more accountable to the Ukrainian public.<sup>32</sup>

In Ukraine, grassroots civil society peace infrastructure exists: namely Justice for Peace Coalition for Donbas, which has been engaged in monitoring of the human rights situations since early 2014. It plans to develop a platform for distribution of information and comments on the Minsk process in order to promote implementation of Minsk process and exercise public oversight over it.

The OSCE should facilitate the establishment of negotiation platforms on social and human rights issues in disputed territories and frozen conflict areas and involve civil society groups in such processes.

The protection of civil society space should be treated as a matter of conflict prevention. OSCE actors should consider repressive legislative and policy changes regarding civil society space as early warning signs of a human dimension crisis which may lead to destabilisation and the development of a conflict situation.

Civil society groups should develop stronger networking efforts and strategies to link up with actors which currently do not listen to human dimension early warning signs of conflicts, including various OSCE actors and embassies in countries where we are working, and build strategic links and trust with them.

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<sup>32</sup> For more detailed recommendations on this subject, please see recommendations adopted at the OSCE Parallel Civil Society Conference in Basel in 2014, "Civil Society Should Be Included in OSCE Response to Ukraine Crisis, <http://civicsolidarity.org/article/1056/civil-society-should-be-included-osce-response-ukraine-crisis>, and Cessation of the armed conflict in eastern Ukraine and the effective overcoming of its legacies. Statement addressed to the incoming OSCE Chairmanship, the OSCE Ministerial Council, and OSCE participating States, p. 57 of this Outcome Document.



## **ANTI-DEMOCRATIC CONSTITUTIONAL CHANGES, MANIPULATION OF CONSTITUTIONAL PROVISIONS, AND MISUSE OF THE STATE OF EMERGENCY**

A number of OSCE participating States have recently adopted anti-democratic amendments to their constitutions which undermine democratic institutions, erode the rule of law, and weaken constitutional safeguards for fundamental rights. 2016 has been particularly marked by such worrying developments in a number of states. Regardless of whether this happened to the east or west of Vienna, such changes have usually been aimed at altering the system of checks and balances by weakening the role of Constitutional Courts or governments which are appointed by a parliamentary majority, and shifting the balance of power in favour of president.

In Central European countries with stronger democratic traditions which are currently witnessing illiberal and populist backlashes, such changes have been made to allow the ruling parties to maintain their grip on power. In more authoritarian countries in Asia, constitutional changes have been used to further consolidate power in the hands of the ruling families and have considerably weakened constitutional guarantees of fundamental rights and freedoms. In some instances, when the lack of a parliamentary constitutional majority rendered it impossible to push for constitutional amendments, legislative measures were adopted which weakened democratic institutions of the country to attain anti-democratic changes in the political system. In some instances, failed coup attempts provided justification for sweeping anti-democratic legislative changes and the manipulation of constitutional provisions in the framework of a state of emergency, and were accompanied by large-scale violations of fundamental rights and freedoms. In all of the countries that have undertaken constitutional changes, judicial independence, the freedom of the media and civil society are under growing pressure. Several important country examples are described below.

### **Hungary**

Hungary has seen the most far-reaching systemic changes of EU member states in recent years. The Hungarian Constitution requires a four fifths majority in order to make changes to the constitution. In July 2010, the parliament annulled this provision by a two thirds majority, thus allowing the ruling party to amend the Constitution more easily.

At the same time, the rules for nomination of Constitutional Court judges were changed, resulting in the committee responsible for nominating judges being composed of ruling party representatives. In June 2011, further constitutional amendments were introduced, increasing the number of Constitutional Court judges from 11 to 15. This allowed the ruling “Fidesz” party to appoint three additional judges, thus shifting the balance in its favour.

In April 2011, a new Constitution was adopted, which reduced important civilian protections and distorted the checks and balances of power. The new Constitution excluded budgetary and tax regulations from Constitutional Court oversight. It gave parliament the power to appoint the president of the Constitutional Court and abolished the individual claims mechanism. Further changes in the functioning of the Constitutional Court were introduced to the Constitution in March 2013, when all previous judgments of the Court were annulled, resulting in the erasure of the institutional memory

and legacy of the Court. Moreover, these changes introduced sanctions against homeless persons, complicated the registration of churches, and banned political advertising in private media.

## **Poland**

Poland has been facing a constitutional crisis since 2015. There are two aspects to crisis: the first is related to the appointment of new judges to the Constitutional Tribunal, and the second concerns the legislative trend aiming at paralysing the work of the Tribunal and undermining its independence.

In June 2015 the previous government adopted a new Act on the Constitutional Tribunal. One of the temporary provisions of this Act enabled the ruling coalition led by the Civic Platform party to appoint five judges to the Constitutional Tribunal (a third of the entire bench) to replace three judges whose tenures were expiring in November and another two whose tenures were expiring in December. After the parliamentary elections at the end of October 2015, the new ruling party “Law and Justice” annulled the previous government’s decision and appointed five new judges. The Constitutional Tribunal then ruled that the governing majority has the right to appoint the same number of new judges as those whose tenures expire during the term of the parliament. The Constitutional Tribunal therefore ruled that the previous governing majority could appoint three judges since the term of the parliament ended in November, and the new governing majority could appoint two new judges. However, the President and the governing majority have not abided by this judgement. The Constitutional Tribunal is currently composed of 12 acting judges while the three judges appointed by the previous ruling coalition are waiting to be sworn into the office by the President.

The second aspect of the crisis is related to legislative changes concerning the functioning of the Tribunal. Since 2015 the new government has adopted three new pieces of legislation regulating the work of the Tribunal, which have in effect paralysed it. Each piece of legislation caused heated debates in which representatives of the governing majority tried to publicly undermine the role and prestige of Constitutional Tribunal judges.

The constitutional crisis has provoked widespread controversy and protest. The legal community, non-governmental organisations, some media and social movements have strongly objected to the changes affecting the Constitutional Tribunal. Furthermore, these events attracted the attention of international organisations including the European Union, the Council of Europe, and the United Nations. The Venice Commission issued two opinions strongly criticising the legislative changes. Furthermore, the European Commission launched the Rule of Law procedure in response to the changes.<sup>33</sup>

In the meantime, the ruling party has passed a number of laws which have enabled it to take control over public media, enhance the surveillance competences of the police and state agencies and to merge the office of Prosecutor General with the office of the Minister of Justice. This last change has given the ruling party political control over the prosecution services.

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<sup>33</sup> The constitutional crisis in Poland. 2015-2016. Helsinki Foundation for Human Rights. [http://www.hfhr.pl/wp-content/uploads/2016/09/HFHR\\_The-constitutional-crisis-in-Poland-2015-2016.pdf](http://www.hfhr.pl/wp-content/uploads/2016/09/HFHR_The-constitutional-crisis-in-Poland-2015-2016.pdf)

## Turkey

Turkey's Constitution has undergone 17 major amendments since 1982. In recent years, the ruling Justice and Development party (AKP) has assumed the task of pushing more amendments through to consolidate its control of power.

A failed coup attempt in July 2016 provided a convenient justification for the long-sought constitutional changes. In August 2016, AKP prepared amendments to the Constitution. Now, in order to gain the constitutional majority, the government is negotiating with one of the opposition parties, the Nationalist Movement Party. No agreement on this has been reached yet.

One of the proposed changes concerns the restoration of the death penalty. The overall purpose of the amendments is to change the political system of the country from a parliamentary one to a presidential system. The main changes consist of removing the position of prime minister and replacing it with a vice president. This would lead to an increase in the power of the president as the post-holder would have the authority to issue decrees which would have the status of laws. In essence, the president would assume powers which are currently held by the government. The new role of the president will be very different from the current symbolic role of head of state. The president will be elected when parliamentary elections are held.

As a result of the failed military coup on 15 July 2016, the Turkish government declared a state of emergency under Articles 119 and 120 of the Constitution. Since then the government has passed a number of decrees which seriously restricted civil liberties and also invoked Article 4 of the ICCPR which allows a government to derogate from key civil and political rights provisions. President Erdogan and his government have been able to pursue these restrictive measures with no judicial oversight and only minimal dependence on parliamentary approval, threatening constitutionalism and the rule of law. In October, the state of emergency was extended by three months. Consequently, the attack on human rights that began after the coup attempt continues to date.

The government has targeted anyone it deems connected to the coup, which it alleges was orchestrated by Fetullah Gulen who currently lives in the United States. Any person the government perceives to be Gulenist, or to be at all critical of governmental policies is at risk of being fired, detained, or prosecuted. Current statistics indicate that over 32,000 people have been arrested or detained and over 80,000 more have fired or suspended from their jobs. Under the state of emergency, individuals can be held in pre-trial detention for up to 30 days, and their conversations with lawyers can be recorded. Emergency decrees have also eliminated crucial safeguards on treatment of individuals in custody, resulting in reports of torture and ill-treatment by police. Those most vulnerable to the government's actions have been judges, prosecutors, journalists, and academics, especially those perceived to be involved in the Gulen movement, which was subsequently labelled a terrorist organisation. Many organisations have been forced to shut down, including at least 132 media outlets and over 2,000 private schools, foundations and charities. Human rights defenders, human rights lawyers and other members of the human rights community have been subject to ongoing and systemic attempts to silence them, including through arrests and detentions based on their human rights work. The targets among human rights groups have included lawyers' associations working on torture, shelters for survivors of domestic violence, those that aid refugees and internally displaced persons, and children's rights NGOs. Furthermore, freedom of assembly has been under threat, as increased police powers have allowed the authorities to remove protestors via violent means. In response to EU

criticism of the government's response to the coup-attempt, Turkey has refused to honour its agreement regarding the care and processing of refugees entering the country from Syria. This has also threatened the safety and welfare of thousands of refugees fleeing violence. Almost six months after the coup attempt, the human rights situation remains dire.

## **Azerbaijan**

Constitutional referendums have been held several times in Azerbaijan over the last 15 years and have always been aimed at reinforcing the power of President Aliyev and his clan. The first constitutional referendum in 2002 laid the groundwork for Ilham Aliyev's succession to power after the death of his father, former President Heydar Aliyev. The second constitutional referendum in 2009 abolished the limit of consecutive presidential terms enabling Ilham Aliyev to hold presidency for unlimited time. The third constitutional referendum on 26 September 2016 was no exception to the tradition of the ruling family to adjust the Constitution in order to accommodate its ambitions.

The Constitutional amendments introduced in 2016 include the extension of the presidential term from five to seven years; establishment of an office of vice-presidents; according the president the power to dismiss parliament and call for early parliamentary elections, as well as the abolition of age limits for presidential candidates. The changes have made Azerbaijan even more authoritarian, strengthening the already substantial position of the President, shifting the balance of power significantly in his favour, tightening President Aliyev's grip on power and paving the way for his son's future presidency. The Venice Commission of the Council of Europe issued a preliminary opinion in advance of the referendum in which it said that many of the proposed constitutional changes would bestow "unprecedented" control upon the President.

The amendments also contain serious new restrictions to Azerbaijani citizens' fundamental rights. The Constitution stipulates that every citizen from birth enjoys inviolable, undeniable and inalienable rights and freedoms. However, the new Article 24 introduces a restrictive clause, allowing for the limitation of citizens' freedoms in cases where rights are abused. Such a general limitation without any reference to proportionality or concrete conditions of derogations of rights raises serious concerns. These considerations may be purely academic in the context of President Aliyev's repressive regime, but by introducing the mysterious clause "abuse of the rights is not allowed", Azerbaijan's new Constitution puts the cart before the horse and effectively removes these rights. Amendments also authorise demonstrations provided they do not "disrupt public order and public morals". This will in effect legalise the current practice of suppressing assemblies and rallies.

In addition, the amendments contain alarming provisions that allow the authorities to expropriate private property under the pretext social justice and the effective use of land. This could lead to massive violations of social and economic rights.

It is not only the content of the constitutional changes but the circumstances leading up to the September 2016 referendum that have severely eroded the legitimacy of the popular vote.

Two months ahead of the referendum the government failed to ensure the rights to freedom of expression, association, and peaceful assembly. In particular, opposition groups were refused the right to officially campaign against the referendum, and only three pro-governmental groups were allowed to campaign. Opposition groups were also barred from their legal right to free air time on national

television while officially registered groups declined to use their airtime voluntarily. The lack of coverage explaining the essence and implications of the proposed constitutional amendments in national media which completely neglected to reflect opposition arguments, created a vacuum of information that effectively deprived people of Azerbaijan from making an informed decision.

The right to a peaceful assembly was also impinged by the government. After the first opposition rally that attracted around ten thousand protesters, the authorities began repressions against organisers and participants: dozens of activists were detained and subject to beatings. These illegal actions by the authorities were carried out publicly in front of journalists in order to deter people from protesting. The government also employed intimidation tactics by questioning some protesters at police stations to prevent them from participating in future rallies.

Allowing the full and free access for international and domestic election observers is a prerequisite for the legitimacy of any elections or referendums. However, the government decided not to extend an invitation to the OSCE/ODIHR election observation mission. Local civil society actors were also unable to effectively monitor the referendum due to ongoing crackdown on independent NGOs.

The voting day was also marred with countless electoral violations: CCTV cameras which had been installed in some electoral polling stations recorded thousands of serious voting violations including ballot stuffing and carousel voting whereby a group of voters cast votes multiple times in different districts. In addition, the footage from the polling stations suggests that the voter turnout was significantly lower than reported 69 percent. The extent of the fraud strongly suggests that the referendum was not representative of the will of the Azerbaijani people.

Restrictions on freedoms of expression, assembly and association, the absence of adequate explanation on the constitutional amendments in the national media coupled with reports of pervasive electoral fraud have completely destroyed the legitimacy of the referendum. Continued repressions against members of opposition, civic activists, and regular citizens in the months preceding the referendum clearly show that the referendum was held with the aim of consolidating the power of the ruling family.

## **Tajikistan**

Recently the human rights situation in Tajikistan has seriously deteriorated because of repressive measures taken against the political opposition, as well as growing pressure on media, civil society, lawyers and those considered to endorse so-called non-traditional religious views. The authorities have used arguments about protecting national security to restrict the legitimate and peaceful exercise of fundamental rights.

In late 2015, President Rakhmon was declared a “Leader of the Nation” in a move which further strengthened the authoritarian rule of the country. He was granted immunity from prosecution, and amendments to the Constitution approved in a May 2016 referendum abolished the limitations on how many times he may be re-elected.

Moreover, other provisions approved during the referendum introduced changes to the requirements for candidates for president and other public offices, e.g. by lowering the age limit for presidential candidates and requiring candidates to have Tajikistani citizenship, as well as banning political parties of “national or religious character” and banning foreign funding of political parties. Experts have suggested that some of

these changes are aimed at strengthening the power of President Rakhmon's family: many of its members already occupy high-level positions and are being groomed for top roles.

The amendments also broadened the grounds on which fundamental rights and freedoms protected by the Constitution may be restricted, while failing to abolish the death penalty, which is still set out in the Constitution. According to the new provisions, individual rights and freedoms could be restricted in order "to ensure the rights and freedoms of citizens, public order, protection of the constitutional order, national security, national defense, public morals and public health". Such notions as "national security, national defense and public morals" provide broad powers for imposing greater legislative restrictions on human rights and their arbitrary enforcement in violation of international human rights standards.

During the referendum voters were only asked one question: whether or not they approved all the proposed amendments, thus depriving them of the opportunity to express their position on the individual provisions of the draft constitution.

The Islamic Renaissance Party of Tajikistan (IRPT), a moderate Islamic party and the country's largest opposition party, (which played a key role in the political system for many years following the internationally-brokered peace arrangements after the end of the civil war in the 1990s) was banned as "extremist" by the Supreme Court in September 2015 after the authorities linked the party and its leadership to two armed attacks that took place in Dushanbe and a nearby city that month. After the September 2015 attacks, mass arrests of IRPT members were carried out and at least 30 party members were charged with crimes. In June 2016, following a trial that was shrouded in secrecy and fell short of international fair trial standards, 14 IRPT leaders were sentenced to lengthy prison sentences on multiple charges relating to their alleged involvement in the September 2015 events.

In an alarming development, lawyers defending the rights of persecuted IRPT members have been arrested and criminally charged in apparent retaliation for their professional activities. Lawyers Buzurgmehr Yorov and Nuriddin Mahkamov were both arrested in autumn 2015. On 6 October 2016, they were given staggering prison sentences of 21 and 23 years, respectively, on charges of fraud, swindling, inciting national and religious hostility and extremism, following a trial that was closed to independent monitors. International human rights experts and NGOs, as well as other representatives of the international community have expressed serious concern about these sentences. The UN Human Rights Office in Central Asia stated that "their conviction appears to have been closely linked to their legitimate professional activity and in retaliation for their legal counsel for IRPT members." It continued: "These sentences continue the worrying pattern of prosecutions against lawyers and are in stark contravention of the State's obligation to respect and ensure the independence of lawyers."

In the 2016 World Press Freedom Index published by Reporters without Borders, Tajikistan was one of the countries whose ranking fell the most dramatically compared to the previous year: the country plunged 34 places to 150 out of 180 due to growing pressure on independent media and journalists. Self-censorship is widespread and journalists have been subjected to intimidation, including online attacks aimed at discrediting them. While libel was de-criminalized in 2012, insulting the President and government officials is still subject to criminal liability, which has a chilling impact on freedom of expression. Civil defamation lawsuits are used as a form of retaliation against outspoken media and journalists.

The arbitrary blocking of news sites, social media and other online resources has become a regular occurrence in Tajikistan in the last few years. The government's Communications Service has consistently

denied responsibility for the unavailability of these sites, which do not feature on official lists of banned sites. However, internet providers have reportedly received informal orders from the Communications Service to block sites. Text messaging services have also repeatedly been restricted in connection with particular political developments in the country, such as the launch of the special security operation after the armed attacks in September 2015.

## **Turkmenistan**

In September 2016 Turkmenistan adopted new Constitution, which included changes similar to those adopted by some other authoritarian countries. However, the case of Turkmenistan is of particular importance, because selected democratic countries and the OSCE had been trying to prevent the adoption of anti-democratic constitutional amendments by engaging the Turkmenistani authorities in negotiations, sharing ODIHR's comments on the draft Constitution and offering advice that could have addressed some of the more controversial provisions. Regrettably, Turkmenistan's leadership chose to disregard this advice and to adopt the original draft ahead of the planned schedule without taking account of the comments of the OSCE and broader international community.

Turkmenistan's previous Constitution was adopted in 2008. Although this document repealed many of the absurd provisions dating back to President Niyazov's time and brought the structure of the fundamental law into line with internationally accepted standards, it also served to legalise the questionable manner in which President Berdymukhammedov had come to power which violated the Constitution in force at the time. The 2008 Constitution introduced a new order of succession of presidential power by delegating this decision to the National Security Council, an unconstitutional body with non-transparent functions, composition and principles of formation.

In 2015 President Berdymukhammedov announced a new constitutional reform – the reasons for this were unclear as there was no objective need for this and the 2008 Constitution contained no limitation on the number of times a person could be elected President. President Berdymukhammedov could, therefore, easily continue to be re-elected indefinitely. Nonetheless, the constitutional reform seems to be motivated by the upcoming 2017 presidential election for which Berdymukhammedov intends to run for a third consecutive term. The new constitution was to address the so-called "third term problem" – where even though running for a third consecutive presidential term is permitted by the national constitution, leaders running for presidency after a second term in office are frowned upon by the international community as clinging to power in violation of democratic principles. Adopting a new constitution is often used by autocratic rulers as a partial solution to this problem as it allegedly "resets" the count of presidential terms, "nullifies" the previous terms, and allows the new term to be considered as the first – as if the ruler starts from scratch on the basis of the new Fundamental Law. Berdymukhammedov is now very keen to reaffirm his legitimacy in the eyes of the international community given the dubious nature of his ascent to power and the urgent need for economic cooperation with the West such as obtaining investment for the construction of the gas pipelines.

The constitutional reform was announced in February 2016, but any genuine public debate about the content of the new Constitution was out of the question due to the government's total control of the media and the powerful machinery of intimidation used to silence Turkmenistani society. The authorities scheduled the adoption of the new Constitution for late 2016 and ostensibly invited everyone to send their comments to the Constitutional Commission for what they promised would be careful consideration. However, neither the comments nor any responses to them have ever been

published; thus it is impossible to say whether the public raised any concerns or if they were considered.

Turkmenistani human rights defenders did respond by preparing, with support from their international colleagues, a civil society review of the draft Constitution. This document entitled *Civil Society's Brief Comments on the Draft Constitution of Turkmenistan* examines certain provisions of the first two key chapters of the draft: General Provisions and Human Rights.

In particular, civil society experts noted that the wording of many provisions was apparently designed to prevent any direct application of the Constitution. It is drafted in a manner favouring multiple and selective interpretations and certain articles appear to have been deliberately formulated so as to make them generally unenforceable.

A major shortcoming is the absence of the explicitly stated principle of equality before the law; instead, the constitution contains lengthy wording to the effect that national law is not binding on the president.

The adopted Constitution fails to impose an unequivocal ban on censorship. Instead, Article 15 includes the provision: "the State shall encourage scientific and artistic activity and dissemination of its positive results," which effectively legitimises censorship practiced daily in the country.

Another fundamental problem is the failure to guarantee the right to freely leave the country and return to the country. Turkmenistan has long imposed arbitrary bans on leaving the country in retaliation against its critics and opponents and for the purposes of collective punishment of their family members, affecting thousands of people.

Likewise, the text of the Constitution does not specify a maximum term of detention without a court order – another typical and pervasive human rights violation in Turkmenistan. In addition to this, Article 44 regulating the creation of political parties mentions the "moral values of the people" – a vague term which defies clear interpretation and thus enables selective enforcement.

Civil society ran an advocacy campaign aimed at mobilising international pressure on the Turkmenistani government on the issues of concern in the draft Constitution. Civil society and international partners urged the Turkmenistani authorities to send the draft to the Council of Europe Venice Commission and/or the OSCE ODIHR for review and to adapt the text following their recommendations. Representatives of the international community heard the appeal of NGOs and raised this proposal twice with the Turkmenistani government. It was first raised in June during the annual EU-Turkmenistan human rights dialogue. The Deputy Foreign Minister of Turkmenistan reacted in a reserved yet positive manner, saying "we are not planning to make such a request, but if any international recommendations get formulated, we will be prepared to listen." A similar proposal was made again by German Chancellor Angela Merkel during her meeting with President Berdymukhammedov in Berlin in August 2016, which was attended by the foreign ministers of both countries. The Turkmenistani President's reaction was once again reserved yet positive.

Between July and August 2016 - on the request of the OSCE Office in Ashgabat and with the unofficial consent of the Turkmenistani authorities, the OSCE ODIHR reviewed the draft Constitution and came up with recommendations on how it may be aligned with Turkmenistan's international obligations as an OSCE participant and party to international human rights treaties which guarantee the democratic

rotation of power. The Turkmenistani authorities received ODIHR's report and recommendations in August, at around the same time that they agreed, during the meeting with Angela Merkel, to take into account the findings from an international review of the draft.

However, instead of considering ODIHR's recommendations and adapting the draft Constitution accordingly, the Turkmen authorities decided to expedite the process and pass the new fundamental law with almost no changes in the draft. This was clearly done to avoid public discussion of the OSCE recommendations at international fora, such as the annual Human Dimension Implementation Meeting in September 2016, and the global media. Such discussions would have made it much harder for Turkmenistan to disregard the OSCE/ODIHR recommendations. Instead, the Council of Elders meeting in Ashgabat on 14 September, just a few days before HDIM, advised the Parliament to adopt the new Constitution without delay, which the Parliament did right away by a simple show of hands in an open vote, and a minute later the bill was signed into law by the president of Turkmenistan.

This parody of constitutional reform in Turkmenistan has as its sole purpose the legitimisation of further unlimited rule of President Berdymukhammedov (in particular the new Constitution extends the presidential term from five to seven years, and ensures power succession within his family by lowering the minimum age of being eligible to run for president. Claims that the new Constitution is designed to serve the benefit of the people do not stand up to criticism, given that the new legislation fails to guarantee free movement into and out of the country, to ban censorship, to support the principle of equality before the law, etc.

This situation could have been avoided had more countries who are the main international trading partners of Turkmenistan, the leadership of the OSCE and the EU had reacted to the draft constitution at an earlier stage, with a united and firm message, and using the leverage of economic cooperation. Instead, Berdymukhammedov celebrates his victory and does not expect to encounter problems either at the "elections" in February 2017 or in his government's relations with the international community. What many refer to as a dictatorial, medieval-type regime in Turkmenistan has been consolidated as a result of the adoption of the new constitution. This is a striking example of how the lack of a timely, principled, coordinated and consistent position of the international community towards autocrats such as Berdymukhammedov could encourage other authoritarian leaders to follow in his steps. Authoritarian leaders like those in Turkmenistan use their membership of international organisations such as the OSCE and the United Nations as a convenient way to affirm their legitimacy even after rising to power in a dubious manner.

According to observers and civil society activists, the Turkmen authorities' blatant disregard of the ODIHR's recommendations and advice from the European Union and Germany as the OSCE presiding country is a slap in the face for the entire international community. Human rights defenders strongly believe that this challenge should not be ignored, for otherwise it may discredit the OSCE and the EU and give the green light to other authoritarian chieftains to follow suit. To some degree, even Chancellor Merkel's personal reputation is at stake. A possible response to this challenge could be a decision not to send international observers to the presidential election in Turkmenistan in February 2017 and refrain from extending congratulations to the "winner" on behalf of democratic states and the OSCE (or at least limit them to very restrained greetings signed by officials below the top level). It is also essential that the OSCE Centre and ambassadors of democratic countries in Ashgabat act consistently with this shared position.



## ANNEXES

### HUMAN RIGHTS DEFENDERS AT RISK: SELECTED CASES

The trend of shrinking space for civil society continued in the FSU region and beyond in 2016, and the security of human rights defenders was under threat in many countries in the region. Below we outline only some of the most worrying cases of persecution of human rights defenders during the year, with a focus on those who were criminally prosecuted and imprisoned because of their human rights engagement.

Following consistent advocacy efforts and international interventions, several wrongly imprisoned human rights defenders, including Rasul Jafarov, Intigam Aliyev, Khadija Ismaylova, Rauf Mikradirov, Leyla and Arif Yunus and Anar Mammadli were released in **Azerbaijan** in late 2015-early 2016. However, their convictions on trumped-up charges have not been overturned. Moreover, dozens of youth activists, journalists and other individuals remain imprisoned on politically motivated grounds, and new arrests have been carried out in recent months. Some human rights defenders, such as Emin Huseynov, have been forced into exile due to the threat of persecution.

In **Russia**, human rights defender Valentina Cherevatenko from the NGO “Women of Don” became the first NGO leader to face criminal charges over non-compliance with the notorious “foreign agents” law, under which almost 150 NGOs have been given this stigmatising label against their will.<sup>34</sup> The outcome in the proceedings against Cherevatenko, who faces up to two years in prison, is expected to set a precedent for other cases. Crimean Tatar activists have faced persecution after Russia’s unlawful annexation of Crimea. In one such case, Crimean Tatar activist and human rights defender Emir Huseyn Kuku was detained by Russia-controlled Crimean authorities in February 2016 on accusations of membership of a banned group and remains in pre-trial detention<sup>35</sup>.

A growing number of **Kazakhstani** civil society activists have recently faced criminal charges. Following a trial deemed “political” even by the judge, activists Max Bokayev and Talgat Ayan were both sentenced to five years in prison because of their involvement in peaceful land reform protests.<sup>36</sup> **Tajikistani** lawyers Buzurgmehr Yorov and Nuriddin Mahkamov received prison sentences of over 20 years after providing legal assistance to defendants in politically sensitive cases. There has been no news about **Turkmenistani** freelance journalist Saparmamed Nepeskuliev, who was sentenced to three years in prison on trumped-up charges last year after a reporting on corruption and other human rights related issues. Similarly, the fate of many dozens of others imprisoned on politically motivated grounds in this country remains unknown.<sup>37</sup> While human rights defender Bobumurad Razzokov was released for health reasons in **Uzbekistan** in October 2016<sup>38</sup>, many other defenders such as Ganihon Mamathanov, Nuraddin Dzhumaniyazov, Fakhriddin Tillaev and Azam Farmonov – to mention but a few - remain behind bars and have often had their sentences arbitrarily prolonged.

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<sup>34</sup> Figures provided by Human Rights Watch as of 7 November 2016, <https://www.hrw.org/russia-government-against-rights-groups-battle-chronicle>

<sup>35</sup> <http://iphronline.org/stop-persecution-emir-kuku-family-20160927.html>

<sup>36</sup> See a statement by the by the Civic Solidarity Platform, Kazakhstan: Ruling against civil society activists sets dangerous precedent, 01.12.2016 <http://www.civicsolidarity.org/article/1169/kazakhstan-ruling-against-civil-society-activists-sets-dangerous-precedent> at <http://iphronline.org/kazakhstan-freedom-assembly-trial-20161011.html>

<sup>37</sup> See materials of the “Prove They Are Alive!” campaign at <http://provetheyarealive.org/1534-2/> and <http://provetheyarealive.org/prove-they-are-alive-report/>.

<sup>38</sup> <http://iphronline.org/uzbekistan-hrd-released-20161026.html>

In an anticipated decision, the UN Human Rights Committee concluded that human rights defender Azimjan Askarov – who was imprisoned for life in **Kyrgyzstan** following a manifestly unfair trial in 2010 - should be immediately released and his conviction quashed. However, the country’s Supreme Court failed to comply with these requests and sent the case back for re-trial at a regional court, where hearings began in October 2016<sup>39</sup>. Human rights defenders Tolesan Ismailova and Aziza Abdurasulova were the targets of threats and calls for criminal prosecution in apparent retaliation for their participation in the 2016 OSCE Human Dimension Implementation Meeting<sup>40</sup>.

In **Belarus**, civil society activists were penalised in relation to their participation in peaceful, unsanctioned protests. For example, “critical Mass” cycling activist Dzmitry Paliyenka was given a two-year suspended prison sentence and youth activist Pavel Vinhradau was sentenced to six months of “preventive supervision”, which may be converted into imprisonment if he violates the conditions imposed.<sup>41</sup> Human rights defender Elena Tonkacheva was still not allowed to return to Belarus. A Russian citizen who has lived in Belarus for 30 years, she was expelled from the country and banned from returning for three years after her residence permit was revoked in October 2014 because of speed limit infractions.

In the **Transnistrian region of Moldova**, human rights defenders continued to be subjected to intimidation and harassment in retaliation for their criticism of the policies of the separatist authorities<sup>42</sup>. Members of the Promo-LEX Association continued to be barred from entering Transnistria because of a criminal case against the organisation on allegations of threatening the region’s security which the separatist security services announced in an accusatory statement issued in April 2015.<sup>43</sup>

Human rights defenders working outside the former Soviet Union region were also subject to pressure, in particular in **Turkey**. Following the failed July 2016 coup attempt, the Turkish government unleashed a widening crackdown on critical voices in the name of ensuring security. As part of this crackdown, hundreds of NGOs, including human rights groups were suspended and the pattern of intimidation and harassment of human rights defenders was reinforced. In recent months, a number of human rights defenders, journalists and lawyers have been arrested, questioned and charged with criminal offenses in apparent retaliation for their work. Among these are: Şebnem Korur Fincancı, Erol Önderoğlu and Ahmet Nesin<sup>44</sup>; Ramazan Demir and Ayşe Acinikli; Orhan Kemal Cengiz; Serdar Küni; and Levent Pişkin<sup>45</sup>.

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<sup>39</sup> <http://iphronline.org/kyrgyzstan-iph-statement-sc-ruling-askarov-20160712.html>

<sup>40</sup> <http://civicsolidarity.org/article/1163/kyrgyzstan-stop-threatening-human-rights-defenders>

<sup>41</sup> For more information on these and other cases, see the website of Viasna at <http://spring96.org/>.

<sup>42</sup> For more details, see report by Promo-Lex to the UN Human Rights Committee, August 2016, at <https://promolex.md/wp-content/uploads/2016/09/Raport-CCPR-eng-1.pdf>

<sup>43</sup> This statement is available at: <http://www.kgb-pmr.com/news/370> In October 2016, Promo Lex was informed that its members will not be granted access to the proceedings in the supposed criminal case against the organization.

<sup>44</sup> For more information about this, see statement on their arrest issued by CSP members in June 2016, at <http://civicsolidarity.org/article/1152/turkey-arrests-human-rights-defenders-and-journalists>. The three human rights defenders and journalists were subsequently released, but the legal proceedings against them on terrorist propaganda and other charges continue.

<sup>45</sup> For more information on the cases of Ramazan Demir and Ayşe Acinikli; Orhan Kemal Cengiz; Serdar Küni; and Levent Pişkin, see statements issued by the Observatory for the Protection of Human Rights Defenders, a joint initiative by the World Organisation against Torture (OMCT) – a CSP member - and the International Federation for Human Rights (FIDH), which are available at: <https://www.fidh.org/en/region/europe-central-asia/>

Teacher Ayşe Çelik was charged with promoting terrorist propaganda after calling in to a popular TV show to plead for more media coverage of serious human rights abuses in southeast Turkey.<sup>46</sup>

In a development that represented an escalation of harassment targeting members of the **Bulgarian Helsinki Committee**, its chair Krassimir Kanev was violently attacked by unknown perpetrators in October 2016<sup>47</sup>. In **Serbia**, human rights defenders continued to be attacked by pro-government media, including by being accused of receiving foreign funds to destabilise the situation in the country.<sup>48</sup>

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<sup>46</sup> See campaign by CSP members in support of Ayşe Çelik, at

<https://www.facebook.com/IPHOnline/posts/1299274210084846>

<sup>47</sup> <http://civicsolidarity.org/article/1167/we-condemn-violent-attack-against-krassimir-kanev>

<sup>48</sup> See statement by Civil Rights Defenders from 15 November 2016, at <https://www.civilrightsdefenders.org/news/human-rights-defenders-made-scape-goats-in-serbia/>



# A LIST OF SELECTED PUBLICATIONS BY THE CIVIC SOLIDARITY PLATFORM AND ITS MEMBERS IN 2016

## Statements by the Civic Solidarity Platform in 2016

Poland: Call for respect for constitutional guarantees. 12.01.2016.

<http://civicsolidarity.org/article/1149/poland-call-respect-constitutional-guarantees>

Azerbaijan: Solidarity movement relieved about the release of member. 18.03.2016.

<http://civicsolidarity.org/article/1150/azerbaijan-solidarity-movement-relieved-about-release-member>

Russian diplomat sent death threat to human rights advocate. 21.06.2016.

<http://civicsolidarity.org/article/1153/russian-diplomat-sent-death-threat-human-rights-advocate>

Turkey arrests human rights defenders and journalists. 22.06.2016.

<http://civicsolidarity.org/article/1152/turkey-arrests-human-rights-defenders-and-journalists>

Chancellor Merkel, take action on Askarov's case! 11.07.2016.

<http://civicsolidarity.org/article/1154/chancellor-merkel-take-action-askarovs-case>

Kyrgyzstan: Stop threatening human rights defenders! 26.09.2016.

<http://civicsolidarity.org/article/1163/kyrgyzstan-stop-threatening-human-rights-defenders>

Turkmenistan: Information Blockade and Fomenting Terror through Propaganda Must Be Stopped. 28.10.2016.

<http://civicsolidarity.org/article/1165/turkmenistan-information-blockade-and-fomenting-terror-through-propaganda-must-be>

We condemn violent attack against Krassimir Kanev (on the attack against the Chair of the Bulgarian Helsinki Committee). 31.10.2016. <http://civicsolidarity.org/article/1167/we-condemn-violent-attack-against-krassimir-kanev>

Kazakhstan: Ruling against civil society activists sets dangerous precedent. 01.12.2016

<http://www.civicsolidarity.org/article/1169/kazakhstan-ruling-against-civil-society-activists-sets-dangerous-precedent>

## Selected publications by members of the Civic Solidarity Platform in 2016

### *Country-focused publications*

#### **ALBANIA**

##### **Albanian Helsinki Committee**

Report on the situation of respect for human rights in Albania in 2015

[http://ahc.org.al/web/images/Raporte/AL/Report\\_on\\_the\\_human\\_rights.pdf](http://ahc.org.al/web/images/Raporte/AL/Report_on_the_human_rights.pdf)

#### **ARMENIA**

##### **Helsinki Citizens Assembly – Vanadzor**

The Situation of Human Rights Violations by the Police According to the 2015 Media Monitoring Results. January 2016. <http://hcav.am/en/publications/24-02-2016-51453/>

Indices Characterizing Actions of Law Enforcement Agencies in the Republic of Armenia. February 2016.  
<http://hcav.am/en/publications/16-02-2016-354789-en/>

Situation of Execution of European Court of Human Rights Judgments by Republic of Armenia 2007-2015.  
November 2016. <http://hcav.am/en/publications/08-09-2016-9874566-en/>

### **Helsinki Committee of Armenia**

Human Rights in Armenia – 2015. January 2016.  
<http://armhels.com/wp-content/uploads/2016/01/Ditord-2016-01English.pdf>

Monitoring of Freedom of Peaceful Assembly Report (July 2015 – June 2016). July 2016.  
[http://armhels.com/wp-content/uploads/2016/07/HCA\\_Monitoring-of-Freedom-of-Peaceful-Assembly\\_2016\\_Eng3.pdf](http://armhels.com/wp-content/uploads/2016/07/HCA_Monitoring-of-Freedom-of-Peaceful-Assembly_2016_Eng3.pdf)

Report on the events that occurred in the Republic of Armenia from July 17 through August 5, 2016. August 2016. [http://armhels.com/wp-content/uploads/2016/08/HCA\\_Report\\_July-17-Aug-5\\_Eng.pdf](http://armhels.com/wp-content/uploads/2016/08/HCA_Report_July-17-Aug-5_Eng.pdf)

### **International Partnership for Human Rights and partners in the framework of the CSP**

Burnt, beaten and betrayed: Armenians awaiting accountability for police violence. September 2016.  
<http://iphonline.org/wp-content/uploads/2016/09/Beaten-Burned-and-Betrayed-Armenia-report-Sept-2016.pdf>

## **AUSTRIA**

### **ZARA – Zivilcourage und Anti-Rassismus-Arbeit**

Racism Report 2015. Individual case report about racist attacks and structures in Austria. March 2016.  
[http://www.zara.or.at/\\_wp/wp-content/uploads/2008/11/Zara\\_RR15\\_English\\_RZ\\_kl.pdf](http://www.zara.or.at/_wp/wp-content/uploads/2008/11/Zara_RR15_English_RZ_kl.pdf)

Requirements for digital courage - recommendations from an NGO perspective, in Grünbuch Digitale Courage Im Auftrag des Präsidenten des Bundesrates Mario Lindner, p. 85 (in German). October 2016.  
[https://parlament.gv.at/ZUSD/PDF/Gruenbuch\\_Digitale\\_Courage\\_Republik\\_Oesterreich\\_Bundesrat.pdf](https://parlament.gv.at/ZUSD/PDF/Gruenbuch_Digitale_Courage_Republik_Oesterreich_Bundesrat.pdf)

Contribution by ZARA to the annual report by the Austrian League of Human Rights (in German). December 2016. <http://www.liga.or.at/>

## **AZERBAIJAN**

### **Institute for Reporters Freedom and Safety**

The Unsolved Murder of Rasim Aliyev. October 2016.  
<https://www.irfs.org/news-feed/the-unsolved-murder-of-rasim-aliyev-2/>

Suffocating Freedom of Expression in Azerbaijan. October 2016.  
<https://www.irfs.org/news-feed/suffocating-freedom-of-expression-in-azerbaijan/>

Freedom of Expression Ahead of Controversial Constitutional Referendum. November 2016.  
<https://www.irfs.org/wp-content/uploads/2016/11/Freedom-of-Expression-Ahead-of-Controversial-Constitutional-Referendum.pdf>

## **Netherlands Helsinki Committee and Helsinki Foundation for Human Rights (Poland)**

The Functioning of the Judicial System in Azerbaijan and its Impact on the Right to a Fair Trial of Human Rights Defenders. September 2016. [http://www.hfhr.pl/wp-content/uploads/2016/09/Azerbaijan\\_judiciary.pdf](http://www.hfhr.pl/wp-content/uploads/2016/09/Azerbaijan_judiciary.pdf)

Azerbaijan's Unconstitutional Future. August 2016.

<https://www.opendemocracy.net/od-russia/dominika-bychawska-siniarska/azerbaijan-s-unconstitutional-future>

## **BELARUS**

### **Barys Zvozkau Belarusian Human Rights House**

Answers to the List of issues and questions prior to the submission of the eighth periodic report of Belarus: CEDAW shadow report. October 2016.

[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BLR/INT\\_CEDAW\\_NGO\\_BLR\\_25453\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BLR/INT_CEDAW_NGO_BLR_25453_E.pdf)

### **Belarusian Helsinki Committee**

Analytical review of the human rights situation in Belarus in 2015

[http://www.belhelcom.org/sites/default/files/analytical\\_review\\_of\\_the\\_human\\_rights\\_situation\\_in\\_belarus\\_in\\_2015.pdf](http://www.belhelcom.org/sites/default/files/analytical_review_of_the_human_rights_situation_in_belarus_in_2015.pdf)

### **Freedom Files Foundation**

“EU Policy on Belarus at the Crossroads: Pragmatism vs Value-Based Approach”, in The European Answer to the Eurasian Challenge for Eastern Europe. Collection of analytical papers and policy recommendations, p. 23. Published by Charter-97 Foundation. May 2016.

<http://pasos.org/wp-content/uploads/2016/09/european-answer-publication.pdf>

### **Human Rights Centre “Viasna”**

Human Rights Situation in Belarus in 2015: Analytical Report. Spring 2016.

[http://spring96.org/files/reviews/en/review\\_2015\\_en.pdf](http://spring96.org/files/reviews/en/review_2015_en.pdf)

The Death Penalty in Belarus. 2016. <http://spring96.org/files/book/en/2016-death-penalty-belarus-en.pdf>

## **BULGARIA**

### **Bulgarian Helsinki Committee**

Human Rights in Bulgaria in 2015: Annual report. April 2016

[http://www.bghelsinki.org/media/uploads/annual\\_reports/annual\\_bhc\\_report\\_2015\\_issn-2367-6930\\_en.pdf](http://www.bghelsinki.org/media/uploads/annual_reports/annual_bhc_report_2015_issn-2367-6930_en.pdf)

Agenda on Alternatives to Detention Relating the Third Country Nationals in Bulgaria

[http://www.bghelsinki.org/media/uploads/documents/reports/special/2016-10\\_Alternatives\\_to\\_Detention\\_-\\_Agenda\\_and\\_draft\\_amendments\\_EN.pdf](http://www.bghelsinki.org/media/uploads/documents/reports/special/2016-10_Alternatives_to_Detention_-_Agenda_and_draft_amendments_EN.pdf)

Annual Border Monitoring Report for 2015: Access to Territory and International Protection. July 2016.

[http://www.bghelsinki.org/media/uploads/documents/reports/special/2015\\_annual\\_report\\_access\\_to\\_territory\\_and\\_asylum\\_procedure\\_en.pdf](http://www.bghelsinki.org/media/uploads/documents/reports/special/2015_annual_report_access_to_territory_and_asylum_procedure_en.pdf)

## CENTRAL ASIA

**International Partnership for Human Rights, Kazakhstan International Bureau for Human Rights and Rule of Law, Nota Bene, Turkmen Initiative for Human Rights, the Association for Human Rights in Central Asia, the Voice of Freedom Foundation, and the Human Rights Movement Bir Duino-Kyrgyzstan**

Central Asia's civil society at 25 years of independence: Appeal for solidarity. Statement at OSCE HDIM-2016. 21 September 2016. English: <http://iphronline.org/central-asia-civil-society-appeal-20160921.html>  
Russian: <http://iphronline.org/grazhdanskoe-obshchestvo-tsa-prizyv-k-solidarnosti-20160921.html>

**International Partnership for Human Rights, Helsinki Foundation for Human Rights and the NGO Coalitions against Torture in Kazakhstan, Kyrgyzstan and Tajikistan**

Torture and ill-treatment in Kazakhstan, Kyrgyzstan and Tajikistan. 23 September 2016. Statement at OSCE HDIM-2016. English: <http://iphronline.org/osce-hdim-statement-torture-ca-20160923.html>  
Russian: <http://iphronline.org/obse-hdim-primeneniye-pytok-v-tsa-20160923.html>

## FRANCE

**Human Rights First**

Breaking the Cycle of Violence Countering Antisemitism and Extremism in France. August 2016.  
<http://www.humanrightsfirst.org/sites/default/files/HRF-Breaking-the-Cycle-final.pdf>

## GEORGIA

**Analytical Center on Interethnic Cooperation and Consultations**

Statement at the OSCE HDIM-2016, working session "Tolerance and non-discrimination I"  
<http://www.osce.org/odihr/267821?download=true>

**Georgian Young Lawyers' Association**

Judgments of Femicide Cases (study on how the investigative bodies and the courts dealt with gender-motivated killings in Georgia). July 2016.

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# CESSATION OF THE ARMED CONFLICT IN EASTERN UKRAINE AND THE EFFECTIVE OVERCOMING OF ITS LEGACIES

## **Statement addressed to the incoming OSCE Chairmanship, the OSCE Ministerial Council, and OSCE participating States**

Since the beginning of the armed conflict, eastern Ukraine has seen over 9,700 people killed, some 22,000 people injured, around two million people forced to flee their homes and regional infrastructure badly damaged.<sup>49</sup> Frequent violations of international humanitarian law have been documented in the conflict zone, such as torture, illegal executions, the indiscriminate shelling of civilian facilities, including medical facilities, and the use of civilian facilities and means of transport for military purposes. Access to the conflict zone for international humanitarian organisations remains severely limited. The ongoing confrontation continues to significantly complicate Ukraine's progress towards becoming a democratic state based on the values of justice and integrity.

Dozens of civilian groups and organisations from Ukraine and other OSCE participating States are actively working in the crisis region and, where they have access, they play a substantial role in the protection of fundamental human rights. Their important work includes documenting human rights violations; educating the population regarding their fundamental rights; creating platforms of dialogue and running reconciliation initiatives to mitigate the consequences of the armed conflict. Co-operation between Ukrainian and Russian civil society groups and organisations, as well as with organisations from other European countries is the basis for numerous civic initiatives aimed at achieving peace.

However, in certain areas of the Donetsk and Luhansk regions<sup>50</sup> human rights protection is non-existent due to the lack of access to justice both on national and international levels. As emphasized in the latest PACE resolution number 2133 (2016)<sup>51</sup> of 12 October 2016, the Russian Federation is responsible under international law for human rights violations in these areas as it effectively controls the armed groups there.

**Based on our experience of working in the armed conflict zone in eastern Ukraine and our knowledge of the region and its problems, we consider the following conditions as essential prerequisites for achieving a lasting resolution to the conflict and mutual understanding among all sections of the Ukrainian population:**

1. Restoration of safety: A stable ceasefire is required for the successful implementation of the Minsk Agreements, the restoration of trust between the OSCE participating States following the blatant violation of interstate agreements regarding the integrity of borders and the peaceful settling of disputes. The restoration of security is impossible without complete restoration of Ukrainian control over its borders.

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<sup>49</sup> Report on the human rights situation in Ukraine 16 May to 15 August 2016 by the Office of the United Nations High Commissioner for Human Rights, <http://www.ohchr.org/Documents/Countries/UA/Ukraine15thReport.pdf>

<sup>50</sup> This term is used in the Minsk Agreements to refer to territories controlled by Russia-backed separatists and currently outside of control of Ukrainian government.

<sup>51</sup> Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities. Resolution of the Parliamentary Assembly of the Council of Europe, 12 October 2016. <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=23167&lang=2>

2. Protection of fundamental rights and freedoms: The protection of fundamental civil and political rights is an essential precondition for holding free and fair local elections. The possibility for free expression of choice requires the unimpeded participation of Ukrainian parties throughout the election process, open and free coverage by Ukrainian media in the region before and during the elections, and that internally displaced people should be allowed to participate.
3. An amnesty for participants in the conflict (provided they have not committed war crimes or crimes against humanity) could incite them to cease such activities. The principle of inevitability of punishment for perpetrators of war crimes and crimes against humanity must remain firm. Bringing perpetrators to justice is a key step in the peace process – restoring justice to tens of thousands of victims of the conflict and their families.
4. The population in certain areas of the Donetsk and Luhansk regions and other Ukrainian citizens must be involved in a dialogue on the shared future of the country.

**We call upon Austria as the Chair country of the OSCE in 2017, and all OSCE participating States to cooperate in implementing the following recommendations:**

1. Full adherence to the ceasefire, as well as to international human rights and international humanitarian law by all parties to the conflict.
2. Monitoring of adherence to the ceasefire along the line of contact 24/7 and extension of the mandate of the OSCE Special Monitoring Mission to the whole of the Ukrainian-Russian border and all border crossing points.
3. Facilitation of free access of international humanitarian, human rights and peace-building organisations to the whole Donbas region and especially to certain areas of the Donetsk and Luhansk regions.
4. Guaranteed direct, constant and immediate participation of civil society organisations in the monitoring and reconciliation processes, through:
  - regular consultations between the OSCE Secretariat, the OSCE Conflict Prevention Centre, the OSCE SMM, and specialised civil society organisations;
  - the organisation of a first consultative meeting in early 2017;
  - elaboration of mechanisms for participation of civil society in the negotiation and peace-building process on all levels.
5. Guaranteed monitoring of the situation in places of detention (including places of illegal detention), by assuring access to detention facilities with the aim of collecting full details about detained individuals and examining detention standards.
6. The involvement of international experts and NGOs in the process of securing the urgent release of prisoners and unlawfully detained individuals from detention in accordance with the Minsk Agreements.

7. Provision of international legal advice to Ukrainian legislators on the development of amnesty laws. An amnesty is essential to the peace process but should not become a synonym for impunity. Any amnesty should be implemented in accordance with Ukraine's international commitments and international humanitarian law.
8. Improved knowledge and qualifications of national and regional Ukrainian officials through activities aimed at improving legal expertise of civil servants, military personnel and members of elected local, regional and national authorities in Ukraine.
9. Communication and clarification of the current and any future OSCE SMM mandates amongst the population, particularly in the conflict region in order to ensure transparency and a better understanding of the work of the OSCE.
10. Support for NGO projects in the fields of civil monitoring, improvement of the living standard of the local population and the establishment and development of peacekeeping initiatives.

We intend to develop joint proposals for sustainable conflict resolution at both regional and international levels.

**Adopted by members of the initiative group for the creation of "CivilMPlus"<sup>52</sup>, an open platform of civic organisations for the furthering of the peace process in eastern Ukraine, and signed by other NGOs and activists**

Berlin, 9 November 2016

Signatures:

- Association EASTERN PERSPECTIVE, Kraków
- Association of Middle East Studies, Kyiv
- Valentina Cherevatenko (Chair of the Council of the Women of the Don Union), Novocherkassk
- Centre for Civil Liberties, Kyiv
- East-Ukrainian Center for Civic Initiatives, Luhansk / Kyiv
- German-Russian Exchange (DRA e.V.), Berlin
- Human Rights Centre "Memorial", Moscow
- Helsinki Foundation for Human Rights, Warsaw
- Olga Koreniuk (Women's International League for Peace and Freedom), Kyiv
- Sergey Krivenko, Human Rights Initiative "Citizen and Army", Moscow
- Luhansk Regional Human Rights Center "Alternative", Luhansk/Kyiv
- Oleksiy Matsuka, head of Donetsk Institute of Information, Donetsk/Kyiv/Slovyansk

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<sup>52</sup> The members have set up an open and free platform, in which civil non-profit organisations (human rights, peacekeeping, and humanitarian, among others) and independent representatives of civil society from Ukraine, Russia and other European countries have the opportunity to contribute to in a meaningful, cooperative way to the international negotiations regarding the rebuilding of Donbas as a peaceful region of a democratic Ukraine – part of a common, open Europe. The association intends to form and complete a plan of initiatives for the resolution of the armed conflict and to ease the hardship of those people who have suffered its consequences in Eastern Ukraine. In doing so, a precedent shall be created for an effective civil influence in the role of an equal participant in the process of international reconciliation of similar conflicts. This will show that consolidated international civil associations can act together to defend fundamental human rights principles and oppose violations of universally recognised security standards in Europe. The organisations entering into this association acknowledge the following common goals: a guarantee of adherence to international human rights principles, support for the restoration of peace and the primacy of law in all conflict territories in Ukraine.

- MEMORIAL Germany e.V.
- Galina Pokhmelkina, PhD (psychotherapist, mediator, coach), Moscow
- Ilona Sologoub, VoxUkraine, Kyiv
- Ukraine Action, Paris
- Vostok SOS, Luhansk / Kyiv
- Łukasz Wenerski, Analyst/ Project coordinator, Institute of Public Affairs, Warsaw
- Center for the Development of Democracy and Human Rights, Moscow
- Human Rights Movement “Bir Duino-Kyrgyzstan”, Bishkek
- Public Verdict Foundation, Moscow
- Helsinki Citizens Assembly – Vanadzor, Armenia
- Promo LEX Association, Chişinău
- Institute Respublica, Kyiv
- The Netherlands Helsinki Committee, the Hague
- Kazakhstan International Bureau for Human Rights and Rule of Law, Almaty
- Moscow Helsinki Group
- The Kosova Rehabilitation Center for Torture Victims, Pristina
- Ukrainian Helsinki Human Rights Union, Kyiv
- The Barys Zvozkau Belarusian Human Rights House, Vilnius
- Protection of Rights without Borders, Yerevan
- Bulgarian Helsinki Committee, Sofia
- Andrey Yurov, human rights defender, Voronezh/Moscow
- Swiss Helsinki Committee, Bern

[collection of signatures continues]