

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

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Adopted by the participants of the
OSCE Parallel Civil Society Conference
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INTRODUCTION

The Civic Solidarity Platform, a network of more than 90 human rights NGOs from throughout the OSCE region,¹ convened the 2017 OSCE Parallel Civil Society Conference in Vienna on 5-6 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, Belgrade in 2015, and Hamburg in 2016. At the conference, activists and experts from Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Denmark, Georgia, Germany, Hungary, Italy, Kazakhstan, Kosovo, Kyrgyzstan, Macedonia, Moldova, the Netherlands, Norway, Poland, Russia, Serbia, Slovakia, Spain, Sweden, Switzerland, Tajikistan, Turkey, Turkmenistan, Ukraine, the United Kingdom and the USA discussed and adopted the Outcome Documents of the conference, developed by the Civic Solidarity Platform. The Outcome Documents include the Vienna Declaration “Preventing security measures from eclipsing human rights and the rule of law” and Civil Society Recommendations to Participants of the Ministerial Council Meeting in Vienna. Some of the chapters in the Recommendations are based on the results of OSCE civil society expert workshops and round table discussions, held in 2017.

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 to all OSCE political bodies and institutions, including the current and the incoming Chairmanships, Secretary General, the Human Dimension Committee, ODIHR, the OSCE High Commissioner on National Minorities, the OSCE Representative on Freedom of the Media, the OSCE Parliamentary Assembly, the OSCE Secretariat, 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 by all OSCE actors. We look forward to reaction from all interested stakeholders. While some of our recommendations may be implemented immediately, others relate to systemic problems and will require consistent effort over a longer period of time. We express our commitment as civil society actors to continue to actively engage in the work of OSCE in the spirit of the Helsinki Principles and our determination to contribute to the full realization of respect for human rights and fundamental freedoms, democracy and the rule of law throughout the OSCE region.

¹ The Civic Solidarity Platform was established in December 2011 in Vilnius on the eve of the OSCE Parallel Civil Society Conference. Since then it has grown to more than 90 member organisations from across the OSCE region. For more information about the Civic Solidarity Platform, please visit the Platform’s web site civicsolidarity.org. The core group of the 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, Belgrade and Hamburg please visit <http://civicsolidarity.org/page/osce-parallel-civil-society-conferences-outcome-documents>.

SHRINKING SPACE FOR CIVIL SOCIETY

In December 2016 participants of the OSCE Parallel Civil Society Conference in Hamburg adopted a Declaration on Protecting and Expanding Civil Society Space.² The adoption of this Declaration was driven by the dramatic deterioration of the situation for non-governmental organisations and the rapidly diminishing possibilities for civic participation in public policy matters across the OSCE region. The trend of growing legal and policy restrictions affecting civil society was exacerbated by the persecution of human rights defenders and increasing onslaught on fundamental rights and freedoms limiting the ability of NGOs and activists to act without fear of reprisals. Space for civil society began being eroded several years ago not only in countries to “the East of Vienna” with authoritarian regimes and traditions of stifling independent voices but also in democratic countries to the West, especially in the context of security measures fighting terrorism and addressing “migration crisis”, as well as in Central European countries with more recent experience of transition to democracy which are affected by the rise of national-populist politics with a focus on the protection of national sovereignty.

The recommendations made by civil society in the 2016 Hamburg Declaration remain absolutely valid today. Moreover, they have become ever more urgent and therefore we reiterate our call for immediate action by the OSCE political bodies, institutions and participating States. The developments witnessed in Russia, Turkey, Azerbaijan, and countries of Central Asia where pressure on civil society has grown from restrictions into blatant repression demonstrates all too clearly what happens when shrinking civil society space is not given due attention at the international level.

These extremely worrying tendencies have persisted throughout 2017, continuing unabated in countries like Azerbaijan and states in Central Asia, escalating further in Russia and Turkey, and spreading to new countries where until recently civil society was able to work without obstructive state interference. In particular, space for civil society visibly shrank in Poland, Hungary, Ukraine, Italy, and the USA, to give but a few examples. Below are several country examples illustrating the negative developments which occurred over 2017.

Ukraine

Worrying developments in Ukraine have included increased pressure and persecution of anti-corruption activists, in the form of restrictive legislation on e-declarations³, criminal investigations and smear campaigns against well-known anti-corruption organisations and activists, as well as physical attacks against individuals and a lack of effective investigations in such cases. In October 2017 several well-known NGOs were searched in relation to their alleged participation in Russian propaganda or for allegedly providing financial support to the so-called LNR/DNR in the Donbas region. The searches were characterized by multiple procedural violations.

The Presidential Administration actively lobbies for the enactment of new laws⁴, which would abolish e-declarations for anti-corruption organisations, but at the same time introduce additional reporting and accountability requirements for all NGOs and provide for disproportionate sanctions such as the deprivation of non-profit status. As the obligatorily re-registration of NGOs last summer illustrated, legislative and procedural changes are used by the state as opportunities to arbitrarily deprive NGOs of non-profit status and to interrupt and interfere in their activities.

Lobbying by authorities also continues for adoption of laws that threaten freedom of peaceful assembly in Ukraine. The draft law “On the guarantees for the freedom of peaceful assembly”⁵ would introduce excessive legal regulation and bureaucratization of the freedom of assembly and give the National Guard of Ukraine

² Outcome Documents of the OSCE Parallel Civil Society Conference, Hamburg, 6-7 December 2016, <http://civicsolidarity.org/article/1172/osce-parallel-civil-society-conference-2016-outcome-documents>

³ Individual income and tax declarations, published online and publicly accessible, are mandatory for all civil servants. Since March 2017 they became mandatory also for members of anti-corruption NGOs.

⁴ Laws #6674 and #6675.

⁵ Draft law #3587.

disproportionate powers during the policing of rallies. Additionally, law #6232 adopted at the end of November as part of the ongoing process of judicial reform has significantly reduced possibilities for civil society to monitor court proceedings.

Armenia

Civic space in Armenia is limited not so much by the laws regulating the work of non-governmental organisations, but rather by legal acts regulating particular fields of their activity and by abuse of their rights in practice.

For example, Constitutional amendments adopted by the referendum of 6 December 2015 signalled a regression in protection of social, economic and cultural rights; in particular Armenian citizens were deprived of the right to apply to the Constitutional Court if these rights of theirs were violated. Moreover, the legislation also deprived the Human Rights Defender (Ombudsperson) from appealing to the Constitutional court in such cases.

The Law on Non-Governmental Organizations of 16 December 2016 allows NGOs to represent the public interest in court only in relation to issues of environmental protection.

In May 2016 a new Electoral Code was adopted which established significant restrictions for election observers and mass media representatives. The Code particularly restricted the number of observers and mass media representatives entitled to be present at a polling station and stipulated that electoral commission members may vote to remove observers, mass media representatives and proxies from a polling station. In recent years, widespread restrictions on the freedom of assembly have increased in Armenia, negatively affecting civil society's ability to raise public awareness about their concerns. Police officers who used disproportionate violence against protesters or committed other violations of their rights were not often held responsible.

Smear campaigns against pro-democracy and human rights NGOs have increased recently, originating particularly from organizations financed by Russian sources. Such campaigns were especially aggressive on the eve of the signing of the EU-Armenia agreement. The Russian Ambassador to Armenia Ivan Volynkin summarized the official Russian position in 2014 when he said "it's time to start neutralising NGOs operating in Armenia that want to drive a wedge in Russian-Armenian relations."⁶

Italy

Growing pressure on human rights organisations in Italy became especially evident during the summer of 2017, in the context of a prolonged smear campaign against humanitarian NGOs that were carrying out search and rescue missions for migrants in the Mediterranean sea.⁷ Humanitarian NGOs were branded as "facilitators of illegal immigration", required by the government to commit to a controversial "code of conduct"⁸ and ultimately forced to downsize or cease their humanitarian operations at sea.⁹ This attack on humanitarian NGOs is the clearest indication of a broader tendency to criminalise solidarity with migrants and de-legitimise civil society actors.¹⁰ Occasional attacks and threats made to NGOs in Italy have also been registered.

⁶ Ivan Volynkin: It is necessary to neutralize ill-disposed NGOs. A1+, 7 May 2014. <http://en.a1plus.am/1188543.html>

⁷ Francesco Floris and Lorenzo Bagnoli. Accusations against NGOs at sea: what is false or misleading in that smear campaign. Open Migration, 19 May 2017. <http://openmigration.org/en/analyses/accusations-against-ngos-at-sea-what-is-false-or-misleading-in-that-smear-campaign/>

⁸ What is changing in the Med: five things you must know. Editorial. Open Migration, 28 July 2017, <http://openmigration.org/en/analyses/what-is-changing-in-the-med-five-things-you-must-know/>

⁹ Ben Hayes and Frank Barat. Europe's offensive against people helping refugees. Euractiv, 31 October 2017, <https://www.euractiv.com/section/global-europe/opinion/europes-quiet-offensive-against-people-helping-refugees/>

¹⁰ Susi Meret and Sergio Goffredo. Solidarity under attack. Open Democracy, 18 October 2017, <https://www.opendemocracy.net/can-europe-make-it/susi-meret-sergio-goffredo/solidarity-under-attack>

Poland

In the last two years, NGOs in Poland have faced numerous difficulties in gaining access to public funds. For example, since early 2016 the Ministry of the Interior has effectively suspended the distribution of EU funds in support of legal aid for migrants and refugees. The Ministry was supposed to distribute over 2,500,000 PLN (approx. 625,000 EUR) over the course of four calls for proposals, but decisions on applications for support of projects have never been issued. The delay in resolving these calls has reduced NGOs ability to provide legal aid to migrants and refugees. Furthermore, the government has limited access to public funds for women's rights organisations, especially those supporting victims of domestic violence.

In September 2017, the parliament adopted a law establishing a National Institute of Freedom, which will be responsible for distributing European Union funds to civil society organisations at the national level. The law fails to provide detailed information on competitive procedures necessary to ensure the fair distribution of funds and provides that the director of the Institute will be able to make discretionary decisions to distribute 200.000 PLN (ca 50.000 EUR) per year to selected organizations for their institutional development. The law provides that another newly established institution: the Committee for Public Benefit Activity, chaired by a member of the Polish government, will be responsible for appointing the director of the National Institute of Freedom and the majority of its council members. Civil society representatives will sit on the council, but only in 5 of the 11 seats.

The conservative government's disdain for NGOs role in promoting gender equality strongly manifested itself when in October police searched the offices of two women's rights organisations - BABA and the Centre for Women's Rights. It is thought that the police searches were in retaliation for the two organizations involvement in the national women's protest "Black Tuesday", which took place the day before their premises were searched.

Hungary

Pressure by Hungarian government directed at NGOs receiving foreign funding began several years ago and increased significantly in 2017. In June, a "transparency law" similar to the "foreign agent" law in Russia, was adopted by parliament. It requires any NGO that receives more than 25,000 Euro of foreign funding to register with court as an "organisation funded from abroad". These NGOs must also clearly label their publications stating they are foreign funded. In the context of increasingly strong nationalist and populist policies and the rhetoric of the ruling conservative coalition, such a label has a clear negative connotation and is used by the government to identify groups which allegedly work against national interests and to stigmatise and undermine these organizations in the eyes of the public. This legislation has a disproportionate impact on human rights and anti-corruption NGOs.

Human rights organisations have been particularly targeted as part of the ongoing campaign against migrants and refugees by the government and state-controlled media, which culminated in a national consultation (referendum) which began in October and will end on 1 December. Voters are asked whether they support what the government calls a "Soros plan" for the annual resettlement of 1 million migrants and refugees from the Middle East to Europe. The government claims that the "Soros plan" gives the European Commission the power to assign immigrants to EU member states, including Hungary, without the approval of the national governments.¹¹ According to George Soros, the statements in the national consultation contain distortions and outright lies that deliberately mislead Hungarians about his views on migrants and refugees.¹² The government provided expanded explanations to the questionnaire and a letter from Prime Minister Victor Orbán, asking the voters to support the government in protecting national interests and European values. The campaign has been accompanied by anti-Muslim and anti-Semitic statements on billboards and posters and government-funded TV advertisements. Human rights NGOs working to protect and assist migrants have emerged as a new "enemy" and are labelled as

¹¹ Here are the "Soros Plan" national consultation questions! The Budapest Beacon, 28 September 2017, <https://budapestbeacon.com/soros-plan-national-consultation-questions/>

¹² Rebuttal of the October 9 National Consultation in Hungary. George Soros, 20 November 2017, <https://www.georgesoros.com/rebuttal/>

“the mafia-like Soros agents”. The Hungarian Helsinki Committee and Amnesty International are directly referred to in the government explanations of the questions put forward in the referendum questionnaire.¹³

Victor Orbán’s government has held a total of seven national consultations, including the national consultation on Immigration and Terrorism and the “Let’s Stop Brussels!” national consultation. The government uses the results of these national consultation questionnaires, which are carefully worded to ensure that an overwhelming majority of respondents will select the response the government wishes, in order to demonstrate that its policies reflect the popular will of the citizens of Hungary. This latest consultation is believed to be aimed at mobilizing public support ahead of the parliamentary elections in April 2018.

United States

Over the course of the past year, civil society space in the US has been under threat as the government has imposed increasing limitations at state and national levels which threaten core civil liberties. These attacks on protections that have historically been enshrined in law and protected by the government—often following hard-won battles by civil rights groups-- have thrown civil society into a tailspin, requiring citizen groups to fight daily to protect rights previously thought to have been guaranteed in law. Whereas many countries in the OSCE region that face shrinking civic space have a long tradition of authoritarian or autocratic tendencies in government, the United States has long prided itself on expanding civic space over time. Although plagued with a history of institutionalized racism, failure to grant women the right to vote until 1920, and discrimination against minorities, including LGBTIQ people, tolerance and non-discrimination has been expanding in the United States over the past fifty years.

Not since the 1950s and McCarthyism, have the rights of the American public been under such widespread attack as in 2017.¹⁴ These include attacks on rights to environmental protection; LGBTIQ rights; voting rights; ethnic minority and immigrant rights; the rights of religious minorities, especially Muslims; and women’s rights. The repeal of protective legislation has created an environment in which citizens must call their elected representatives to account loudly, vociferously, and repeatedly, or risk the rollback of laws that protect the most vulnerable.

The rise in hate speech and actions has made demonstrating risky, and in some cases life threatening. In the last quarter of 2016, the number of reported hate crimes rose by 25.9 per cent in comparison to the last quarter of 2015, from 1388 to 1747.¹⁵ Citizens exercising their legal right to challenge and protest against environmental damage and discriminatory or violent practices are increasingly labelled as “terrorists”. Two examples of this are the water protectors at Standing Rock and the Black Lives Matter movement.

At Standing Rock protesters who obstructed the construction of the DAPL pipeline were labelled as “jihadists” by the private security company hired by the government to “police” them. According to “TigerSwan”, the company contracted to provide security, this label warranted them taking additional precautions against the protectors, which resulted in violence and hundreds of arrests.¹⁶ In the case of Black Lives Matter, an FBI report (see below) labelled them as “black identity extremists.”

Hate crimes in the United States have increased since Donald Trump was elected president as has membership of hate groups. There are now 917 hate groups - 17 per cent more than in 2014.¹⁷ White nationalists, led by the Alt Right, held a rally on 12 August 2017 in Charlottesville, Virginia, in which participants carried torches and

¹³ National Consultation on the “Soros Plan”. The Orange Files, 27 October 2017, <https://theorangefiles.hu/2017/10/27/national-consultation-on-the-soros-plan/>

¹⁴ <https://www.theatlantic.com/politics/archive/2015/07/donald-trump-joseph-mccarthy/399056/>

¹⁵ <https://www.splcenter.org/hatewatch/2017/11/13/fbi-hate-crimes-reach-5-year-high-2016-jumped-trump-rolled-toward-presidency-0>

¹⁶ For more information, see “Dangerous Work: Increasing Pressure on Environmental NGOs and Activists in the Countries of the Former Soviet Union and the U.S.” Crude Accountability and EcoForum of NGOs Kazakhstan, September 2017, pp. 57-60. www.crudeaccountability.org

¹⁷ <http://www.cnn.com/2017/08/14/politics/charts-explain-us-hate-groups/index.html>

chanted anti-Semitic and racist chants as they walked across the campus of the University of Virginia. Ostensibly meeting to express their opposition to the removal of a Confederate statue, the white supremacists were armed with torches, semi-automatic rifles, and other weapons.¹⁸ Three people were killed and dozens were injured as white supremacists attacked peaceful counter-protesters.¹⁹ The police, who, according to the Governor of Virginia, “had planned for a long time for today’s incidents,” failed to intervene as white nationalists attacked peaceful counter-protesters.²⁰

Police violence against citizens continues to be a very serious problem throughout the country: to date police have killed 1079 people in the United States in 2017,²¹ 26 per cent of which were African Americans, although they account for only 13 per cent of the general population.²² The Black Lives Matter movement, established four years ago after George Zimmerman was acquitted in the killing of Trayvon Martin,²³ has pledged to protect Black Americans from police violence and to create a more inclusive community for people of colour, including women, the transgender community and other vulnerable groups.²⁴ In August 2017, an FBI report stated: “The FBI assesses it is very likely Black Identity Extremist (BIE) perceptions of police brutality against African Americans spurred an increase in premeditated, retaliatory lethal violence against law enforcement and will very likely serve as justification for such violence.”²⁵

The number of anti-Muslim hate groups has tripled in the last year²⁶ with Muslims being a main target for those committing religiously motivated hate crimes.²⁷ President Trump’s travel ban against Muslims continues to give the green light for discrimination against Muslims in the US, which is at an all-time high.²⁸

In the first six months of 2017 alone, 100 anti-LGBTIQ bills were proposed in 29 states.²⁹ In August, President Trump banned transgender service in the military, threatening to roll back existing legislation guaranteeing transgender people the right to serve. Non-profit legal groups GLBTQ Legal Advocates and Defenders (GLAD) and National Center for Lesbian Rights (NCLR) filed a lawsuit challenging the directive,³⁰ and two federal judges have since ruled the directive unconstitutional.³¹ Worryingly, 2016 was the most violent year on record for LGBTIQ people, and the shooting at the Pulse nightclub in Miami was a stark example.³²

Similarly, by April 2017, over one thousand new pieces of legislation targeting women’s reproductive health services had been proposed in state legislatures. Over 400 of those would restrict women’s access to abortion services.³³ While some measures are intended to expand access to birth control, 28 states have introduced 88 measures that would ban abortion or prohibit it in specific circumstances.³⁴ The non-profit organization Planned Parenthood, one of the nation’s top reproductive healthcare providers for women is at risk of losing federal funding because of the abortion services it provides, even though federal tax dollars are not used for that purpose.³⁵

¹⁸ https://www.washingtonpost.com/graphics/2017/local/charlottesville-timeline/?utm_term=.a4e7bf593d5e

¹⁹ https://www.washingtonpost.com/graphics/2017/local/charlottesville-timeline/?utm_term=.a4e7bf593d5e

²⁰ <http://www.motherjones.com/politics/2017/08/police-stood-by-as-mayhem-mounted-in-charlottesville/>

²¹ <https://mappingpoliceviolence.org/>

²² Ibid.

²³ <http://www.nytimes.com/2013/07/14/us/george-zimmerman-verdict-trayvon-martin.html>

²⁴ <https://blacklivesmatter.com/about/what-we-believe/>

²⁵ For information on the FBI report entitled “Black Identity Extremists Likely Motivated to Target Law Enforcement Officers”, see: <http://foreignpolicy.com/2017/10/06/the-fbi-has-identified-a-new-domestic-terrorist-threat-and-its-black-identity-extremists/>

²⁶ <http://www.cnn.com/2017/08/14/politics/charts-explain-us-hate-groups/index.html>

²⁷ <https://ucr.fbi.gov/hate-crime/2016/tables/table-1>

²⁸ <http://www.cnn.com/2017/09/24/politics/trump-travel-restrictions/index.html>

²⁹ <https://www.usatoday.com/story/news/nation/2017/06/01/onslaught-anti-lgbt-bills-2017/102110520/>, <https://www.hrc.org/blog/100-anti-lgbtq-bills-introduced-in-2017>

³⁰ <http://www.nclrights.org/press-room/press-release/nclr-and-glad-file-lawsuit-challenging-trumps-transgender-military-ban/>

³¹ <https://www.nytimes.com/2017/11/21/us/transgender-ban-military.html>

³² <https://www.usatoday.com/story/news/nation/2017/06/12/2016-deadliest-year-lgbtq-pulse/373840001/>

³³ <http://www.motherjones.com/politics/2017/04/gutmacher-report-abortion-restrictions-proactive-legislation-first-quarter-2017/#>

³⁴ <http://www.motherjones.com/politics/2017/04/gutmacher-report-abortion-restrictions-proactive-legislation-first-quarter-2017/#>

³⁵ <https://www.plannedparenthoodaction.org/blog/what-the-house-obamacare-repeal-vote-did-and-didnt-do?ga=2.153554545.8302182.1511824687-1833805376.1511824687>

With regard to immigrants, the Trump administration's rollback of protections for "dreamers"—children who immigrated to the US as children but who are undocumented—threatens hundreds of thousands of young people with deportation.³⁶ In addition, the administration has proposed to eliminate eligibility for federal grants to "sanctuary cities" – municipalities that provide protection to "dreamers" and undocumented immigrants.³⁷ Non-profit organizations in cities and towns across the country provide outreach services to vulnerable families in an effort to ensure they know their rights when police and Immigration and Customs Enforcement agents approach them.³⁸

Turkey

Even before the State of Emergency laws were introduced in Turkey following the failed military coup in the summer of 2016, civil society activists were often subject to judicial harassment, criminal prosecution, violent attacks, threats, surveillance, prolonged arbitrary detention, and ill-treatment. Freedom of expression was increasingly challenged through arbitrary and restrictive interpretation of laws; political pressure, politically motivated dismissals and frequent court cases against journalists. Freedom of assembly was restricted through the disproportionate use of force by the police during protests and impunity of law enforcement officers. The rights of minority groups were not sufficiently upheld. Finally, the country's criminal law and the anti-terror law are not in line with ECtHR case law.

The repressive environment in which civil society operates in Turkey became particularly hostile after the authorities introduced State of Emergency laws, according the government wide-ranging powers to infringe on the already-restricted rights to freedom of expression, media, assembly, and association. Human rights defenders, civic activists and journalists are under constant threat. The unlimited and broad powers granted to the state security forces render an already weakened civil society unable to document the full scope of the violations taking place.

According to international human rights NGOs human rights defenders, journalists, cultural workers, and academics who promote and defend the rights of the Kurdish community and the rights of religious, cultural, and sexual minorities, or women and labor rights, continue to undergo various forms of reprisals, discrimination, and attacks throughout 2017. These men and women are often falsely accused of propaganda for terrorism, or membership of a terrorist organization, insulting the president, or revealing state secrets. Lawyers and rights defenders representing these cases are subject to additional pressure and hindered from carrying out their professional activities. The infamous case of #Istanbul10 is a clear example of this crackdown.

The news this summer that Turkey's prominent rights defenders known as #Istanbul10³⁹ were arrested on Buyukada Island in Istanbul as they attended a training deeply shook the human rights community. Although in October an Istanbul court ordered the release on bail of eight of those arrested, the group continues to face charges of terrorism. The rights defenders attending the training were Ozlem Dalkiran, from Citizens' Assembly; Nalan Erkem, lawyer and member of Citizens' Assembly; Ilknur Ustun, from Women's Coalition; Idil Eser, Amnesty International Turkey director; Veli Acu and Gunal Kursun, from Human Rights Agenda Association; Seymus Ozbekli, from Rights Initiative; Nejat Tastan from Equal Rights Watch Association; Ali Gharavi, a Swedish information security trainer; and Peter Steudtner, a well-being trainer and coach from Germany. Members of the #Istanbul10 face terrorism charges although their defence lawyers have provided ample evidence that the defendants did not engage in any form of criminal wrongdoing.

³⁶ <https://www.reuters.com/article/us-usa-immigration-senate/trump-administration-backpedals-on-citizenship-for-dreamers-idUSKCN1C82DV>

³⁷ <https://www.politico.com/story/2017/10/08/trump-immigration-plan-dreamers-243586>

³⁸ <https://www.immigrantdefenseproject.org/ice-home-and-community-arrests/>

³⁹ Who Are the #Istanbul10? Learn About the Work of Jailed Human Rights Defenders in Turkey. Advox, 26 July 2017, <https://advox.globalvoices.org/2017/07/26/who-are-the-istanbul10-learn-about-the-work-of-jailed-human-rights-defenders-in-turkey/>

A month earlier, Taner Kilic, Amnesty International's chairperson was arrested during a workshop in Izmir and his case was later merged with those of the #Istanbul 10. Kilic was accused of having used ByLock, a mobile phone application used by putschists during the planning of the 2016 coup attempt. Kilic's legal team have proved that Kilic never used the application and that it was never downloaded on his phone. Amnesty International described the arrests as a cruel and retrograde step and numerous calls for the release of the #Istanbul10 have been made by inter-governmental organizations, civil society, and governments.

In January 2016, Turkish academics signed a petition in support of peace and an end to violence in the south-east of Turkey. Over 2,000 people supported the cause and 1,128 signed the petition. The signatories also condemned state violence against the Kurds and the government's violation of domestic laws and international treaties. More than a year and a half later, on 23 September 2017, members of the group who initiated the petition were accused of producing and disseminating "terrorist propaganda". The indictment was published by the Istanbul Chief Public Prosecutor's Office and accepted by the Istanbul High Criminal Court. If they are found guilty those who signed the petition could face up to seven and a half years in prison. It is not yet clear how many signatories are accused as lawsuits were filed separately. This obviously constitutes a blatant violation of the right to freedom of expression on the part of the Turkish authorities.

On 24 July 2017, seventeen journalists and executives of Turkey's newspaper Cumhuriyet went on trial in Istanbul. They stood accused of aiding a terrorist organization and faced between 7.5 and 43 years in jail on terrorism charges. Twelve out of the seventeen had been held in pre-trial detention for nine months before trial. In September 2017, after 11 months in pretrial detention, Cumhuriyet columnist and International Press Institute Turkey representative Kadri Gursel was released from detention, although his colleagues remain behind bars. Since the failed coup, at least 150 media outlets have been closed, and at least 152 journalists are currently in prison. In October 2017 alone at least 48 journalists appeared in court. Turkey is ranked 155th out of 180 countries in Reporters Without Borders 2017 World Press Freedom Index.

The state of emergency was extended once again by three months on 17 October 2017. The future of democracy and the rule of law remain bleak as Turkey's educational institutions, civic associations, and media organizations are attacked, and tens of thousands of people are dismissed or arrested.

Russia

Attacks on civil society space by the government of Russia have continued throughout 2017. Currently close to 90 NGOs feature on the government-maintained list of "foreign agents" against their will, while over 70 groups have been removed from the list in the last two years after being forced to close or to stop receiving foreign funding. Although fewer new NGOs have been added to the "foreign agents" list in 2017, the aggressive implementation of this law from 2013 to date has already dealt a major blow to Russian civil society.

Forms of pressure on civil society include: prohibitive financial penalties imposed on organisations and their leaders for alleged violations of the law on "foreign agents"; the law on "undesirable foreign organisations"; the use of tax, anti-extremism and other laws for persecution of NGOs and their members; forcing foreign donors to cease operating in the country; hostile smear campaigns aired on government-controlled TV channels; state direct and indirect support of "patriotic" groups responsible for physical attacks on human rights defenders and journalists. These deliberate measures have led to the closure of numerous NGOs, the drastic reduction of their budgets, a significant decrease in international financial support, the termination of many important NGO programmes, curtailing of NGO cooperation with state and municipal organisations, the emigration of activists because of threats to their life and freedom, and to self-censorship amongst those NGOs who remain active. The government strategy of combining the principles "repression of dissenters" and "divide and rule" has led to a serious split in Russian civil society between the so-called "socially-oriented" charitable organisations who are desperately trying to avoid being included in the list of "foreign agents", and human rights, environmental, anti-corruption, social research NGOs which are already experiencing persecution after being falsely labelled as "foreign agents" by the government.

If in the past the Russian authorities attempted to convince Russian society and the international community that the adoption of “foreign agents” law was justified by the need to increase NGO transparency and public accountability and that the law was not restrictive or discriminatory in nature, today Russian legislators state openly that the recently adopted legislation regulating NGO activities (such as the “foreign agents” law, the “Dima Yakovlev law”, the law on “undesirable foreign organisations”) and similar draft laws pending with parliament are part of a strategy to protect Russian state sovereignty and prevent foreign interference in its domestic affairs. The Preliminary Report⁴⁰ of the newly established Interim Commission of the Council of Federation on the Protection of the State Sovereignty and Prevention of Interference into Internal Affairs of the Russian Federation expresses this clearly.⁴¹ The report identifies nine “channels” of foreign interference: the first three list NGOs, mass media (including social networks), and educational organisations, in relation to which the report suggests adopting further restrictive measures. In particular it recommends adopting legislation defining “interference in domestic affairs”; forbidding the implementation of programmes funded by foreign government sources except when implemented jointly with authorised government bodies or with their explicit approval; expanding the notion of a “foreign agent” and “undesirable activity” to cover individuals, and adopting restrictive measures in relation to US and other foreign media.

In the short time since the report was published its recommendations have already been partially implemented, including the swift adoption of the law on the application of the “foreign agent” status to mass media and on the extrajudicial blocking of websites containing information on “undesirable foreign organisations”.⁴² In addition, legislators are actively discussing how to legally define notions of “undesirable behaviour” and “undesirable cooperation” in respect of Russian and foreign citizens and introduce administrative and criminal liability for them. The adoption of such measures will inevitably lead to new repressions against independent civic activists, an increased atmosphere of fear, self-imposed isolation for Russia and will cause civil society space to shrink still further.

We reiterate the importance and urgency of the recommendations set out in the **Hamburg Declaration on Protecting and Expanding Civil Society Space**. Some of the key recommendations in this declaration include:

- OSCE Chairmanships should prioritise the protection of civil society space and the security of human rights defenders, similarly to the 2014 Swiss Chairmanship,
- 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,
- OSCE political bodies and institutions, including OSCE Chairmanships and ODIHR, should develop a system of prompt 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 restore its focal point for human rights defenders and establish an expert panel on freedom of association,
- All OSCE institutions, structures, and field presences should designate liaison officers for civil society. These should not only disseminate information about their work to civil society, but also collect information from and consult with civil society in a regular and consistent manner,

⁴⁰ Preliminary Report of the Interim Commission of the Council of Federation on the Protection of the State Sovereignty and Prevention of Interference into Internal Affairs of the Russian Federation (in Russian: Предварительный доклад Временной комиссии Совета Федерации по защите государственного суверенитета и предотвращению вмешательства во внутренние дела Российской Федерации), October 2017, <http://www.council.gov.ru/media/files/f8SAIXEeNH3T8krO2G1fHZA2W2hTRuMJ.pdf>

⁴¹ The Commission was created in July 2017 and its preliminary report was published in October.

⁴² This law came into force on 25 November 2017.

- 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 include human rights conditionality. Benchmarks should include implementation of UN Human Rights Committee views and European Court of Human Rights judgments on cases of persecution of civil society activists,
- Attempts by some OSCE participating States to restrict the participation of civil society in 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 the principle of government approval should be clearly and strongly resisted,
- OSCE actors should ensure that civil society continues to play an active role in early warning, crisis prevention and conflict transformation; regularly involve local civil society actors 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.

SELECTED CASES OF PERSECUTION OF HUMAN RIGHTS DEFENDERS AND OTHER INDIVIDUALS EXERCISING THEIR FUNDAMENTAL RIGHTS IN THE OSCE REGION⁴³

The situation of human rights defenders and the overall environment for civil society continued to deteriorate in many OSCE participating States in 2017. Civil society representatives who criticise repressive government policies and defend human rights and the rule of law have faced increased intimidation and harassment across the region. It is of particular concern that human rights defenders, civil society activists and journalists were arrested, criminally prosecuted and imprisoned following unfair trials because of their engagement in support of core OSCE values. Below we describe a number of cases of persecution in 2017 which targeted individuals and organisations engaged in the protection and the promotion of universal human rights and who therefore can be considered human rights defenders in accordance with the definition set out in the UN Declaration on Human Rights Defenders⁴⁴ and the OSCE/ODIHR Guidelines on the Protection of Human Rights Defenders⁴⁵. In addition to individuals who primarily identify themselves as human rights defenders, these include civil society activists, lawyers, journalists, bloggers, environmental rights defenders and critics of arbitrary and unlawful actions of authorities.

The chapter also covers a few prominent cases of other individuals subjected to persecution for exercising their fundamental rights to freedom of expression or belief, association and/or peaceful assembly, who do not necessarily fall under the definition of human rights defenders established by the UN Declaration, but whose cases are of our serious concern. The cases included in the chapter do not represent an exhaustive list. Many other civil society representatives also faced retaliation in the OSCE region during the year for speaking out against injustice and human rights violations, but the cases featured illustrate the overall backlash against core OSCE values across the region, as well as the growing repression seen in a number of OSCE participating States.

In **Azerbaijan**, a new wave of arrests of government critics has taken place in recent months. Among those arrested is well-known blogger **Mehman Huseynov**, who was sentenced to two years in prison on charges of defaming police in May 2017 after he spoke out about ill-treatment to which he was subjected.⁴⁶ At the beginning of November, a new appeal trial began in his case after the Supreme Court sent the case back for reconsideration. In another recent case, in May 2017, journalist **Afgan Mukhtarli** was abducted in **Georgia** by individuals he believes were local police officers, and handed over to Azerbaijani authorities close to the border. He was subsequently charged with illegally crossing the border, using force against border guards and smuggling. He is currently in pre-trial detention in Azerbaijan. The Georgian authorities have failed to properly investigate this case, and NGO research shows that Azerbaijani journalists, human rights defenders and civil society activists who have sought protection in Georgia are increasingly at risk.⁴⁷

Mehman Aliyev, director of Azerbaijan's last remaining independent media outlet – the *Turan* News Agency, was arrested in August 2017 on tax evasion and related charges, similar to those previously used against government critics.⁴⁸ He was held in pre-trial detention for two weeks before being placed under house arrest. At the beginning

⁴³ This chapter is an updated and expanded version of a statement that was developed by International Partnership for Human Rights (IPHR) and co-signed and issued by 45 CSP members on the occasion of the 2017 HDIM. It reflects developments up to mid-November 2017.

⁴⁴ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 1998. <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>

⁴⁵ OSCE/ODIHR Guidelines on the Protection of Human Rights Defenders, 2014. <http://www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders?download=true>

⁴⁶ See joint statement by 24 NGOs, "Azerbaijan: Crackdown on Free Expression Accelerates With Conviction of Prominent Blogger, 3 March 2017", <https://rsf.org/en/news/azerbaijan-crackdown-free-expression-accelerates-conviction-prominent-blogger>

⁴⁷ For more information on his case, see report issued by IPHR, Freedom Now and the International Human Rights Education and Monitoring Center in September 2017, at <http://iphronline.org/repression-beyond-borders-exiled-azerbaijanis-georgia.html>

⁴⁸ See statement by the IRFS on 31 August 2017, <https://www.irfs.org/news-feed/irfs-statement-the-european-union-and-the-council-of-europe-must-strongly-respond-to-the-human-rights-violations-committed-by-the-azerbaijani-authorities/>

of November 2017, all charges against Aliyev and his agency were dropped. This was a welcome outcome, although he should not have been charged in the first place.

Despite the releases of a number of human rights defenders, journalists and activists in Azerbaijan since late 2015, many others who have been wrongly imprisoned in previous years remain behind bars. The case of opposition activist **Ilgar Mammadov** is emblematic: the authorities have persistently failed to release him, although the European Court of Human Rights (ECtHR) ruled three years ago that he had been deprived of his liberty because of his criticism of the government, in violation of the European Convention on Human Rights.⁴⁹ In October 2017, the Committee of Ministers of the Council of Europe initiated unprecedented legal action to return Mammadov's case to the ECtHR for a so-called infringement procedure because of the non-execution of the ruling.⁵⁰ The following month the ECtHR issued a second ruling on Mammadov's case, concluding that he was denied a fair trial, in response to a separate complaint filed by the activist.⁵¹

It is also of serious concern that several prominent lawyers have been disbarred or are currently threatened by disbarment in Azerbaijan because of their work on high-profile cases.⁵²

Valentina Cherevatenko, chair of the CSP member organisation Women of the Don, became the first NGO leader in **Russia** to face criminal charges over non-compliance with the notorious "foreign agents" law. In July 2017, she was informed that the charges against her had been dropped. While this announcement was welcome, the threat of criminal prosecution of NGO leaders remains as long as the "foreign agents" law is in place. Currently close to 90 NGOs feature on the government-maintained list of "foreign agents" against their will⁵³, while over 70 groups have been removed from the list after being forced to close down or stop receiving foreign funding. In September 2017, the SOVA Centre for Information and Analysis – a CSP member involuntarily listed as a "foreign agent" – and its director **Alexander Verkhovsky** learned that charges have been filed against them for violating another repressive law, the law on so-called undesirable foreign organisations. The charges relate to two links to foreign donors listed as "undesirable organisations" posted on the centre's website.⁵⁴ A local Moscow court subsequently returned the case to the prosecutor's office because of shortcomings in the case preparation; however, an appeal against this decision is scheduled to be heard on 21 November.⁵⁵ A conviction could result in heavy fines. In another similar case, in mid-November 2017, the Andrey Rylkov Foundation for Health and Social Justice was fined 50 000 rubles (some 700 Euro) over an article on its website that featured a link to a foreign organisation deemed "undesirable" by the Russian authorities.⁵⁶ The article was published several years ago before the law on "undesirable" organisations came into force. A recent development of concern is also that of Olga Romanova, director of the Russia Behind Bars NGO that defends the rights of prisoners. She announced in November 2017 that she had left Russia for fear of persecution after the deputy head of the Federal Prison Service requested that a criminal case on embezzling state funds be opened against her and police searched the office of her organisation, despite the fact the NGO has never received state funding.⁵⁷

⁴⁹ See joint statement by members of the CSP and the Sport for Rights coalition, "Azerbaijan: Time for Justice for Ilgar Mammadov", 22 May 2017, <http://iphronline.org/azerbaijan-time-justice-ilgar-mammadov.html>

⁵⁰ "Ilgar Mammadov case: Council of Europe notifies Azerbaijan of intention to launch a special procedure for the execution of the judgment", 25 October 2017, <https://www.coe.int/en/web/portal/-/ilgar-mammadov-case-council-of-europe-notifies-azerbaijan-of-intention-to-launch-unprecedented-legal-action>

⁵¹ See press release by the ECtHR, at <http://hudoc.echr.coe.int/eng-press?i=003-5916921-7553809>

⁵² See joint statement by CSP members and other NGOs, "Azerbaijan: legislative amendments raise alarm", 9 November 2017, at <http://iphronline.org/azerbaijan-legislative-amendments-raise-alarm.html>

⁵³ The NGO register is available at: <http://unro.minjust.ru/NKOForeignAgent.aspx>

⁵⁴ See press release by SOVA Center, "Charges filed against SOVA Center for alleged violation of the law on 'undesirable organisations'", 7 September 2017, <http://www.sova-center.ru/en/announ/2017/09/d37832/>

⁵⁵ SOVA Center, "Басманный районный суд рассмотрит протест на решения мирового суда о возврате в прокуратуру административных дел против Центра Сова", 25 October 2017, <http://www.sova-center.ru/announcement/2017/10/d38135/>

⁵⁶ "Фонд имени Рылькова оштрафовали за ссылку на Фонд Сороса", 13 November 2017, https://takiedela.ru/news/2017/11/13/fond_soros/

⁵⁷ RFE/RL, "Head Of Russian Rights Group Confirms She Has Fled Russia", 8 November 2017; Facebook post by Olga Romanova, 7 November 2017, <https://www.facebook.com/Ooo.Romanova/posts/1739302599437306>

Environmental rights defenders are also among those subjected to pressure in Russia. **Environmental Watch on the North Caucasus** (EWNC), an organisation based in Krasnodar Krai, has faced persecution for its failure to “report” its “foreign agent” status⁵⁸ in publications.⁵⁹ Because EWNC did not mention this status when publishing a eulogy in honour of Aleksey Yablokov, the Russian nuclear physicist and environmental leader, in early 2017, its coordinator **Andrey Rudomakha** was fined 300,000 rubles (approximately 4250 Euro).⁶⁰ The organisation won an appeal in court in October 2017, but only after months of legal fees and time spent defending themselves. Previously, EWNC and Rudomakha had already been fined close to a million rubles (some 14,000 euro) for omitting its “foreign agent” status in other publications. In addition, in July 2017 criminal charges of libel were filed against Rudomakha and **Dmitry Shevchenko**—deputy coordinator of EWNC—by State Duma deputy Aleksander Remezko who claimed that EWNC made false statements about his ownership of luxury properties. These charges are ongoing as of mid-November 2017. In April 2017, police officers and members of the Federal Investigative Committee broke into the office of EWNC and took documents and valuables from the organization’s safe, destroyed furniture, confiscated equipment and documents, and turned the office upside down in what they called part of the investigation into libel charges against Remezko.^{61, 62} The actions of the authorities to charge EWNC with fines that are nearly impossible to pay, requiring it to fulfil stigmatising reporting obligations, and destroying its office and confiscating its materials have severely limited the organisation’s ability to conduct its peaceful environmental protection work. In another case of serious concern involving an environmental defender in Russia, in April 2017, **Yaroslav Nikitenko** found threatening graffiti painted next to the entrance of his Moscow home, alongside a drawing of a gravestone bearing his name. Nikitenko has been active in a high-profile campaign against development of one of Moscow’s districts, protesting the developer’s violations of environmental legislation and potential negative consequences for the local green area, including a pine forest and part of Moskvoretsky Park.⁶³

Critics of Russia’s unlawful annexation of **Crimea** also face persecution. In September 2017, journalist **Mykola Semena** was convicted of separatism and given a 2.5-year suspended prison sentence for writing an article critical of Russia’s seizure of Crimea. He was also banned from engaging in journalism for three years. The same month **Ilmi Umerov**, the deputy head of the Mejlis of the Crimean Tatars and another outspoken critic of Russia’s annexation of Crimea, was convicted of separatism and sentenced to two years in a colony settlement and banned from engaging in public activities for two years.⁶⁴ In a third case in September 2017, another deputy head of the Mejlis, **Akhtem Chiygoz**, was given an eight-year prison sentence on charges of organising mass riots because of his participation in a rally against Russia’s annexation of the peninsula. These convictions were widely criticised by the international community. On 25 October 2017, following diplomatic intervention by Turkey, Umerov and Chiygoz were both released and flown to Ankara, from where they returned to Ukraine. However, other critics remain behind bars on the peninsula and the campaign against dissident voices continues. In a recent example, Crimean Tatar activist **Suleiman Kadyrov** was charged with separatism in October 2017 because of a social media post criticising the occupation of Crimea.⁶⁵ According to human rights defenders, over 60 people, including many members of the Crimean Tatar community, have been prosecuted on politically motivated criminal charges since the Russian take-over of Crimea.

⁵⁸ EWNC was assigned foreign agent status against its will in October 2016.

⁵⁹ <http://www.rightsinrussia.info/hro-org-in-english/foreignagents-1>

⁶⁰ <http://ewnc.org/node/23702>

⁶¹ <http://www.ewnc.org/node/24082>

⁶² <https://www.novayagazeta.ru/news/2017/04/14/130734-v-krasnodare-proshli-obyski-i-vyemki-v-dome-gde-ne-bylo-ni-ofisa-pravozaschitnoy-organizatsii-ni-kogo-by-to-ni-bylo-iz-ee-uchastnikov>

⁶³ <https://www.novayagazeta.ru/news/2017/04/13/130700-eko-aktivist-nikitenko-pozhalovalsya-v-spch-posle-ugroz-v-svoy-adres>

⁶⁴ See statement by CSP members, “Civic Solidarity Platform calls for the immediate release of Crimean Tatar leader Ilmi Umerov”, 2 October 2017, <http://civicsolidarity.org/article/1503/civic-solidarity-platform-calls-immediate-release-crimean-tatar-leader-ilmi-umerov>

⁶⁵ “В Крыму завершено следствие по делу обвиняемого в сепаратизме Сулеймана Кадырова”, 25 October 2017, https://ovdinfo.org/express-news/2017/10/25/v-krymu-zaversheno-sledstvie-po-delu-obvinyayemogo-v-separatizme-suleymana?utm_source=rightsinnrussia&utm_medium=referral&utm_campaign=this_week; and Human Rights Watch, “Crimea: Persecution of Crimean Tatars Intensifies”, 14 November 2017, <https://www.hrw.org/news/2017/11/14/crimea-persecution-crimean-tatars-intensifies>

In **Ukraine**, activists who fight against corruption, advocate for environmental and land rights, promote LGBT rights or work in the conflict zone in Donbas, have been subjected to intimidation and harassment.⁶⁶ Anti-corruption activists have been subjected to smear campaigns, physical attacks and criminal investigations believed to be retaliation for their work, and it is feared that new anti-corruption legislation may be used to put pressure on their work. In October 2017, law enforcement authorities raided the office of the Charitable Fund “Patients of Ukraine” and seized its documents as part of a criminal investigation on the alleged misappropriation of funds received from donors fighting against corruption in the healthcare sector. **Vitaliy Shabunin**, the head of the Anti-Corruption Action Centre, is under investigation on charges of allegedly hitting a journalist, an offence that carries a prison sentence of three years.⁶⁷

A series of human rights defenders, civil society activists, trade union leaders, journalists, social media users and other critics have recently faced criminal charges in **Kazakhstan**. The case of civil society and land rights activists **Max Bokayev** and **Talgat Ayan** illustrates this crackdown: they were sentenced to five years in prison in November 2016 because of their involvement in peaceful land reform protests.⁶⁸ The UN Working Group on Arbitrary Detention concluded that they had been detained in retaliation for their exercise of freedom of expression and assembly and called for their release.⁶⁹ There are concerns that Bokayev has not been granted access to independent medical examinations and adequate treatment for urgent medical problems in prison.⁷⁰ In another case that has been widely criticised, trade union leaders **Nurbek Kushakbayev** and **Amin Yeleusinov** were charged with criminal offenses and imprisoned after participating in a peaceful hunger strike to protest the closure of an independent trade union. According to information from human rights defenders, over a dozen activists, journalists and other critics of the authorities are currently in prison on politically motivated grounds in Kazakhstan, while others convicted on such grounds have been sentenced to years of restrictions on their freedom of movement and civic engagement. As is the case in several other countries of the former Soviet Union, lawyers have increasingly been subjected to threats and pressure.

Freelance journalist **Saparmamed Nepeskuliev**, who had reported on corruption and other issues, remains in prison in **Turkmenistan** after being given a three-year sentence on spurious charges of unlawful possession of pharmaceuticals in August 2015. Pro-democracy activist **Gulgeldy Annaniyazov** has been held in incommunicado detention since 2008 when he was sentenced to 11 years in prison after being arrested for allegedly crossing the border illegally. The UN Working Group on Arbitrary Detention has declared the detention of both men unlawful.⁷¹ Civil society groups have documented⁷² over 100 cases of enforced disappearances in prison of individuals convicted in unfair and politically motivated trials. The total number of such cases is likely to be much higher. New cases of disappearances include nine cases of individuals accused of “Islamic extremism” in February 2017, as well as that of **Annamurad Atdaev**, who was convicted on similar charges in a closed trial in December 2016 after returning to Turkmenistan to renew his passport.⁷³ A growing number of deaths in prison of disappeared individuals has been reported in the last two years.⁷⁴ In another alarming development, Turkmenistani human rights defenders and dissidents have recently been subjected to renewed pressure both in- and outside Turkmenistan. In an appalling

⁶⁶ As researched by Human Rights Information Centre (Kyiv), https://humanrights.org.ua/en/material/girshe_krivavogo_kuchmi_pravozahisniki_nazvali_nebezpechni_tendenciji_shhodo_jihnoji_dijalnosti

⁶⁷ See more in open letter to the Ukrainian authorities issued by CSP members, “Stop persecution of anti-corruption activists”, 7 November 2017, at <http://www.civicsolidarity.org/article/1514/stop-persecution-anti-corruption-activists-open-letter-ukrainian-authorities>

⁶⁸ See statement by CSP members, “Kazakhstan: Ruling against civil society activists sets dangerous precedent”, 1 December 2016, <http://iphronline.org/kazakhstan-ruling-cs-activists-20161201.html>

⁶⁹ Opinion No. 16/2017 of the Working Group on Arbitrary Detention concerning Max Bokayev and Talgat Ayanov (Kazakhstan), published on 27 June 2017.

⁷⁰ See appeal by Kazakhstani human rights defenders and civil society representatives, November 2017, <http://pana-defenders.info/petitions/maxbokayevneedhelp2017/>

⁷¹ Opinions No. 40/2015 and No. 22/2013 of the Working Group on Arbitrary Detention.

⁷² See report by the Prove They Are Alive! Campaign, “List of the Disappeared in Turkmenistan Prisons”, September 2017, http://provetheyarealive.org/wp-content/uploads/2017/09/List-of-the-disappeared-in-TM-prisons_Prove_Sept-2017_eng.pdf

⁷³ <http://provetheyarealive.org/the-disappeared/>

⁷⁴ See statement by the Prove They are Alive! Campaign, “Another Victim of Enforced Disappearance in Turkmenistan: Akmurad Redjepov Dies in Custody”, 24 August 2017, <http://provetheyarealive.org/another-victim-of-enforced-disappearance-in-turkmenistan-akmurad-redjepov-dies-in-custody/>

incident believed to constitute retaliation against the head of the exile Turkmen Initiative for Human Rights (TIHR), his elderly mother had stones and bricks thrown at her apartment in Turkmenistan in November 2017.⁷⁵ Turkmenistan-based activists and journalists have been threatened by security services, subjected to surveillance and attacked with impunity.⁷⁶

In **Uzbekistan**, as of mid-November 2017, at least ten human rights defenders, journalists and government critics had been released since current President Shavkat Mirziyoyev came to power in September 2016 after the death of long-time ruler Islam Karimov. However, many others remain behind bars, including human rights defenders **Mekriniso Khamadova**, **Zulkumor Khamadova**, **Gaybullo Dhalilov**, **Chuan Matmakulov**, **Zafarjon Rakhimov**, **Yuldash Rasulov**, **Isroil Kholdorov**, **Fakhriddin Tillaev**, **Dilmurod Saidov**, and independent journalists **Aziz Yusupov**, **Gairat Mikliboev** and **Yusuf Ruzimuradov**. New detentions have also been carried out. Independent journalist **Bobomurad Abdullayev** was detained by security services in late September 2017⁷⁷, held incommunicado for two days and subsequently charged with anti-constitutional activities and remanded to pre-trial detention in a centre known for widespread torture and ill-treatment. Another independent journalist and blogger, **Haetkhon Nasreddinov** was detained by security services in October 2017 and is believed to be being held in a pre-trial detention centre in Tashkent. As of mid-November, his family had not been allowed to see him or been informed about the reasons for this detention.

Lawyers **Buzurgmehr Yorov** and **Nuriddin Mahkamov** received prison sentences of over 20 years in **Tajikistan** in October 2016 after providing legal assistance to defendants in politically sensitive cases, and Yorov's sentence has since been further extended on additional spurious charges. The UN Special Rapporteur on freedom of opinion and expression has stated that their cases "raise serious concerns about the Government's commitment to due process and independent legal mechanisms".⁷⁸ Yorov's family has voiced concerns that the lawyer has been subjected to torture and ill-treatment in detention⁷⁹, charges that have not been thoroughly and impartially investigated by the Tajikistani authorities.

In January 2017, the life sentence of human rights defender **Azimjan Askarov** was upheld at a re-trial in **Kyrgyzstan**, based on the flawed 2010 investigation of his case. Therefore, the authorities of the country failed to release him and quash his conviction, as called for by the UN Human Rights Committee in its 2016 decision on the case⁸⁰ and by numerous governments and civil society organisations. In a welcome development, in September 2017, a local court in the Jalal-Abad region finally repealed a decision to sanction the confiscation of Askarov's family house, where his wife lives, as part of the implementation of the ruling in his case.⁸¹ A criminal case on inciting inter-ethnic hatred was opened against journalist **Ulugbek Babakulov** in connection with his article about aggressive nationalism against ethnic Uzbeks published in May 2017. He subsequently fled the country, fearing politically motivated imprisonment.⁸² Human rights defender **Cholpon Djakupova** and journalists **Narynbek Iidinov** and **Dina**

⁷⁵ See statement by TIHR, The Rights and Freedoms of the Citizens of Turkmenistan, IPHR and Memorial Human Rights Centre, "Turkmenistan: Attack on activist's mother highlights unrelenting pressure on critical voices", 3 November 2017, <https://iphronline.org/turkmenistan-attack-highlights-unrelenting-pressure-critics.html>; and statement by the CSP's Turkmenistan Civic Solidarity Group, 2 November 2017, <http://civicsolidarity.org/article/1511/turkmenistan-attack-home-prominent-turkmen-human-rights-defender-farid-tukhbatullins>

⁷⁶ For a number of recent examples, see TIHR, The Rights and Freedoms of the Citizens of Turkmenistan, IPHR and Memorial Human Rights Centre, "Turkmenistan: Attack on activist's mother highlights unrelenting pressure on critical voices", 3 November 2017, <https://iphronline.org/turkmenistan-attack-highlights-unrelenting-pressure-critics.html>

⁷⁷ See statement issued by CSP members in response to his arrest, 2 October 2017, <http://www.civicsolidarity.org/article/1502/independent-journalist-bobomurod-abdullayev-arrested-osce-prepares-discuss-media>

⁷⁸ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Tajikistan, published in June 2017.

⁷⁹ See more at Fergana News, "Таджикистан: Адвоката Бузургмехра Ёрова отправили на полмесяца в карцер – 'за нарушение режима содержания'", 4 October 2017, <http://www.fergananews.com/news/26960>

⁸⁰ IPHR statement on Supreme Court ruling on the case of Azimjan Askarov, 12 July 2016, <http://iphronline.org/kyrgyzstan-iphhr-statement-sc-ruling-askarov-20160712.html>

⁸¹ See more in update by IPHR and the Legal Prosperity Foundation (LPF) from October 2017, <http://iphronline.org/kyrgyzstan-free-speech-restrictions-cloud-presidential-election.html>

⁸² For more information on this case, see update by IPHR and the LPF from July 2017, <http://iphronline.org/kyrgyzstan-president-slams-criticism.html>

Maslova were ordered by court to pay huge sums in compensation to President Almazbek Atambayev for allegedly defaming him.⁸³ Journalist **Kabay Karabekov** was again ordered by court to pay the equivalent of about 60 000 EUR to president elect Sooronbay Jeenbekov over an investigative article deemed to tarnish the reputation of this politician.⁸⁴ In October 2017, a Bishkek district court ruled that a press release issued by the security services in January, which groundlessly accused CSP member Bir Duino Human Rights Movement of obstructing a law enforcement operation, was inaccurate and that the services should publish a retraction.⁸⁵

In **Belarus**, **Henadz Fiadynich** and **Ihar Komlik**, representatives of an independent trade union that was involved in wide-scale peaceful protests against so-called social parasitism legislation earlier this year, were charged with tax evasion on grounds similar to those on which human rights defender Ales Bialiatski was previously imprisoned.⁸⁶ Komlik was held in pre-trial detention for two months before being released pending trial in early October 2017. Travel restrictions have been imposed on both men while the investigation continues. Activist **Dzmitry Paliyenka** is currently behind bars since the two-year suspended sentence he was given after participating in a peaceful cycling protest in 2016 was changed into a real prison sentence in April 2017, and activist **Mikhail Zhemchuzhny** continues to serve the 6.5-year prison sentence he was given in 2015 following an unfair trial. Both Paliyenka and Zhemchuzhny have been declared political prisoners by Belarusian human rights NGOs.⁸⁷ A criminal investigation is still under way against more than a dozen Belarusian opposition activists because of an alleged plot to use armed violence during the mass protests in February-March 2017⁸⁸, to which the authorities responded with heavy-handed tactics and the arbitrary detention of hundreds of people.⁸⁹ Human rights NGOs have voiced concerns that lawyers working on politically motivated and human rights related cases have recently faced growing pressure, including government-initiated re-accreditation procedures.⁹⁰ In September 2017, the Ministry of Justice revoked lawyer Anna Bakhtina's licence on the grounds that she lacks "sufficient professional skills", although she has practiced law for several decades. Without waiting for a final court decision on an appeal filed by Bakhtina, the Minsk Bar Association excluded her from its ranks.⁹¹ Anna Bakhtina has worked on numerous politically motivated cases.

In the **Transnistrian region of Moldova**, human rights defenders continue to be subjected to intimidation and harassment in relation for their criticism of the policies of the separatist authorities.⁹² Members of the Promo-LEX Association have been barred from entering Transnistria because of a criminal case on allegedly threatening the region's security opened by separatist security services against the organisation in 2015.⁹³

During the crackdown unleashed by the **Turkish** government following the failed July 2016 coup attempt, dozens of journalists, lawyers, human rights defenders and political activists have been detained. In a case that has caused widespread dismay, eight representatives of civil society groups and two foreign digital and information security consultants were detained at a human rights training in July 2017 and subsequently charged with terrorist-related offenses. These include Özlem Dalkıran (Helsinki Citizens' Assembly), lawyer **Nalan Erkem** (Helsinki Citizens' Assembly), İlknur Üstün (Women's Coalition), İdil Eser (Amnesty International Turkey director), **Veli Acu** (Human

⁸³ See more in update by IPHR and the LPF from August 2017, <http://iphronline.org/kyrgyzstan-pressure-critical-voices-mounts-ahead-election.html>

⁸⁴ See more in update by IPHR and Legal Prosperity Foundation from October 2017, <http://iphronline.org/kyrgyzstan-free-speech-restrictions-cloud-presidential-election.html>

⁸⁵ Press release issued by Bir Duino on 30 October 2017.

⁸⁶ See joint statement by Belarusian human rights NGOs issued on 3 August 2017, <http://spring96.org/ru/news/87537>

⁸⁷ See List of Political Prisoners, <http://spring96.org/en/news/49539>.

⁸⁸ Viasna update, August 2017, <http://spring96.org/ru/news/87731>

⁸⁹ See more in IPHR mission report, prepared together with Truth Hounds and issued in the framework of the CSP, <http://iphronline.org/mission-report-released-human-rights-abuses-committed-belarusian-authorities-peaceful-protests-february-march-2017.html>

⁹⁰ See joint statement by Belarusian human rights NGOs, "Требуем прекратить вмешательство государственных органов в деятельность адвокатуры", 13 September 2017, <http://spring96.org/ru/news/87826>

⁹¹ Viasna, "Коллегия адвокатов не дождалась решения суда и исключила из своего состава Анну Бахтину", 27 October 2017, <https://spring96.org/ru/news/88167>

⁹² 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>

⁹³ 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 organisation.

Rights Agenda Association), lawyer **Günel Kurşun** (Human Rights Agenda Association), **Nejat Taştan** (Equal Rights Watch Association) and Şeymus Özbekli (Rights Initiative), as well as **Ali Gharawi** and **Peter Steudtner** (foreign consultants).⁹⁴ The court proceedings in their cases, as well as that of Amnesty International's Turkey Chair **Taner Kılıç** began in late October 2017.⁹⁵ While the ten defendants detained at the human rights training have been released pending the outcome of the proceedings, Kılıç remains in pre-trial detention. New arrests of civil society representatives have also been carried out. For example, Osman Kavala, chair of the Anatolian Culture Centre, was detained in October 2017 and is currently in custody on charges of anti-constitutional and anti-government activities.⁹⁶ Over a dozen staff members of the daily newspaper *Cumhuriyet* are on trial on terrorism related charges, with several journalists remaining in pre-trial detention pending the outcome of the proceedings.⁹⁷ The OSCE Representative on Freedom of the Media has called for dropping the charges and releasing the journalists.⁹⁸

Arayik Papikyan, Mushegh Shushanyan and Nina Karapetyants from the Helsinki Association of **Armenia**, as well as other independent lawyers working on high-profile cases in this country have faced harassment and obstruction in the performance of their professional duties.⁹⁹ A CSP fact-finding mission in September 2017 found that lawyers working on the so-called Sasna Tsrer cases have faced threats, arbitrary and unwarranted restrictions on accessing their clients and defending them, as well as frequent disciplinary proceedings requested by court.¹⁰⁰

In many countries in the region, human rights defenders continue to be attacked and smeared by government officials and pro-government media, who accuse them of using foreign funding to influence the political agenda and destabilise the situation in their countries. Rhetoric of this kind is commonly used in countries in the post-Soviet region, but has increasingly been heard in European countries, for example in **Serbia, Macedonia, Hungary, and Poland**. In Hungary, such arguments were used to justify the recent adoption of legislation requiring NGOs that receive foreign grants to register and label themselves as foreign-funded organisations.¹⁰¹ In Poland, new legislation signed by the president in mid-October 2017 has been criticised for endangering independent NGOs. The legislation provides that a new body linked to the government will allocate funds to civil society organisations, including funds from the EU and other international donors.¹⁰²

In the **United States**, environmental defenders at the Standing Rock Sioux reservation in North Dakota were subjected to abuse and violence in late 2016 and early 2017 as they defended their drinking water and land from damage caused by the construction of the Dakota Access Pipeline, which would transport oil across Standing Rock Sioux territory. Activists were beaten, shot, and according to information from the UN, 412 people were arrested because of their attempts to protect tribal land, including cultural and sacred sites.¹⁰³ Private security forces worked in conjunction with federal, state, and local law enforcement in at least five states to monitor and repress resistance at Standing Rock and used military-style counterterrorism measures and sweeping and

⁹⁴ See statement by CSP members, "Holding a meeting on human rights is not a terrorist conspiracy", 10 July 2017, <http://civicsolidarity.org/article/1486/holding-meeting-human-rights-not-terrorist-conspiracy>

⁹⁵ See Amnesty International, "Eyes of the world on Turkey as show trial of human rights activists begins", 25 October 2017, <https://www.amnesty.org/en/latest/news/2017/10/eyes-of-the-world-on-turkey-as-show-trial-of-human-rights-activists-begins/>

⁹⁶ See *Hurriyet*, "Court arrests Turkish activist Osman Kavala over failed coup attempt", 1 November 2017, <http://www.hurriyetdailynews.com/court-arrests-turkish-activist-osman-kavala-over-failed-coup-attempt-121694>

⁹⁷ See *Hurriyet* article from 25 September 2017, <http://www.hurriyetdailynews.com/turkish-court-releases-prominent-journalist-kadri-gursel-from-jail--118332>

⁹⁸ "OSCE media freedom representative calls on Turkey to release imprisoned journalists", 24 July 2017, at <http://www.osce.org/fom/331586>

⁹⁹ See statement by CSP members, "Armenia: harassment of lawyers working on high-profile cases", 9 August 2017, <http://civicsolidarity.org/article/1490/armenia-harassment-lawyers-working-high-profile-cases>

¹⁰⁰ See more in forthcoming report on mission carried out by IPHR in the framework of the CSP.

¹⁰¹ See "NGOs: We're here to stay and to continue our work", <http://www.helsinki.hu/en/ngos-were-here-to-stay-and-to-continue-our-work/>

¹⁰² See Deutsche Welle, "Poland's right-wing government takes steps to control NGO funding", 15 September 2017, <http://www.dw.com/en/polands-right-wing-government-takes-steps-to-control-ngo-funding/a-40535610>; and overview of the situation of civil society organisations in Poland prepared by the Helsinki Foundation for Human Rights, http://www.hfhr.pl/wp-content/uploads/2017/09/HFHR_situation_ngos_in_Poland_brief.pdf

¹⁰³ <https://www.un.org/development/desa/indigenouspeoples/news/2016/11/statement-from-the-chair-and-pfi-members-dalee-dorough-and-chief-edward-john-on-the-dakota-access-pipeline/>

invasive surveillance against peaceful protesters.¹⁰⁴ TigerSwan, the private security company hired by Energy Transfer Partners, described Standing Rock water protectors as “an ideologically driven insurgency with a strong religious component” and compared the non-violent protesters to jihadist fighters, characterizing them as unpredictable and menacing, thus justifying extraordinary security measures.¹⁰⁵ Some arrested water protectors were strip searched and left naked in their jail cells.¹⁰⁶ Others described being locked in cells that resembled dog cages and having their arms marked with numbers by the authorities.¹⁰⁷ The UN Permanent Forum on Indigenous Peoples expressed serious concerns about the events at Standing Rock and the “total lack of presence and action by the United States government, at the federal level”. It called on the government to take urgent action to put a stop to the criminalization of indigenous peoples in their peaceful attempts to safeguard their human rights and fundamental rights.¹⁰⁸

RECOMMENDATIONS

We call on all OSCE participating States to implement the **OSCE/ODIHR Guidelines on the Protection of Human Rights Defenders**, which are based on OSCE commitments and universally recognised human rights standards that the participating States are legally bound to respect. In particular, the States should:

- Ensure that no one is subjected to arbitrary arrest, criminal charges, unwarranted legal proceedings or any other forms of misuse of judicial authority for acts related to their human rights engagement (OSCE Guidelines, article 23).
- In the event that criminal charges are brought against them, ensure that human rights defenders are granted a fair trial before a competent, independent and impartial tribunal, in full accordance with international standards (OSCE Guidelines, article 36).
- Ensure that human rights defenders who are deprived of their liberty are always treated in accordance with international standards, without discrimination of any kind and without being singled out for selective treatment in retribution for their activities (OSCE Guidelines, article 34).
- Refrain from engaging in smear campaigns, negative portrayals or the stigmatisation of human rights defenders and their work and take proactive steps to counter misinformation about human rights defenders (OSCE Guidelines, article 37).
- Take action, through diplomatic missions, to support human rights defenders at immediate risk of arbitrary detention, imprisonment and persecution in other states; and raise threats, arbitrary arrests and other serious human rights violations against human rights defenders through appropriate means with the states concerned, for example, in high-level meetings or at international forums (OSCE Guidelines, articles 98 and 99).
- Whenever required, facilitate the issuance of emergency visas and relocation support for individual human rights defenders to allow them to promptly leave the country where they are at risk and to ensure effective protection of their family members (OSCE Guidelines, article 100).

¹⁰⁴ <https://theintercept.com/2017/05/27/leaked-documents-reveal-security-firms-counterterrorism-tactics-at-standing-rock-to-defeat-pipeline-insurgencies/>

¹⁰⁵ Ibid.

¹⁰⁶ <https://bsnorrell.blogspot.com/2016/10/morton-co-police-strip-search-lakota.html>, https://www.democracynow.org/2016/10/20/actress_shailene_woodley_reveals_she_was

¹⁰⁷ https://www.washingtonpost.com/news/morning-mix/wp/2016/11/01/dakota-access-protesters-accuse-police-of-putting-them-in-dog-kennels-marking-them-with-numbers/?utm_term=.9cc3585c4513, <http://www.latimes.com/nation/la-na-north-dakota-pipeline-20161028-story.html>

¹⁰⁸ <https://www.un.org/development/desa/indigenouspeoples/news/2016/11/statement-from-the-chair-and-pfii-members-dalee-dorough-and-chief-edward-john-on-the-dakota-access-pipeline/>

FREEDOM OF EXPRESSION

Since 2010 the participants of the OSCE Parallel Conferences have repeatedly highlighted freedom of expression as one of utmost concern among the human dimension issues. The 2015 Belgrade Declaration focused specifically on the protection of this right¹⁰⁹, delineating 20 comprehensive recommendations that disappointingly have largely not been adopted by either OSCE bodies or by OSCE participating States.

Freedom of expression is important both in itself and as an enabling right. However, it faces numerous threats across the OSCE region. Throughout 2017, CSP members were particularly concerned by the impact on freedom of expression of States' counter terrorism initiatives. We also note a shift towards placing responsibility to regulate the Internet onto non State actors, undermining the rule of law and risking overbroad restrictions on online content. Further challenges across the region include: aggressive "propaganda" linked to hateful speech and incitement to discrimination and violence; a reduction in media pluralism; restrictions to free and independent media; and continued harassment, attacks and murders of journalists.

Freedom of Expression and Countering Terrorism

In 2017, terrorist attacks and security threats in the OSCE region have continued with alarming regularity. The need to prevent such attacks is essential and urgent; however, government responses are eroding the human rights and fundamental freedoms on which the societies they are trying to protect are built. Guaranteeing the protection of human rights at this time is particularly critical: not least to prevent the abuse of counter terrorism initiatives, which often grant sweeping powers to governments while limiting judicial oversight.

Many participating States utilise counter-terrorism or anti "extremism" legislation in ways that limit freedom of expression and prevent the free flow of information, contradicting OSCE commitments. There is clear evidence that such measures are employed in some States as a pretext to stifle independent voices, including through arrests on groundless terror charges. Mass surveillance, justified on the grounds of national security, not only violates the right to privacy, but also jeopardises protection of journalists' sources and exerts a chilling effect on freedom of expression. Through this and other forms of harassment, journalists are discouraged from undertaking investigations into terrorism and counter-terrorism measures, undermining the public's right to know and the possibility for democratic debate. The further proliferation and abuse of counter-terrorism laws is therefore of serious concern and all such measures should only be adopted in line with international human rights standards and after thorough, robust public debate.

Spread of Disinformation and "Propaganda"

Debates around issues of disinformation and "propaganda", particularly with reference to the term "fake news", reached fever pitch over the last year.

Disinformation and "propaganda" have the power to advance political agendas and extreme viewpoints as well as to exacerbate violence, division and conflict between people. They also undermine citizens' ability to trust information regarding their wider political environment, no matter what the source, thus limiting their ability to effectively engage in public debate. As described in the 2017 'Joint Declaration on Freedom of Expression, "Fake News", Disinformation and Propaganda', issued by the OSCE Representative on Freedom of the Media (together with the three other international free expression rapporteurs), disinformation and propaganda are "often designed and implemented so as to mislead a population, as well as to interfere with the public's right to know

¹⁰⁹ Belgrade Declaration: "Freedom of Expression under Threat: A Strong Response from the OSCE and Its Participating States Is Vital", 1-2 December 2015, <http://civicsolidarity.org/article/1143/osce-parallel-civil-society-conference-outcome-documents>

and the right of individuals to seek and receive, as well as to impart, information and ideas of all kinds, regardless of frontiers.”¹¹⁰

However, initiatives aimed at preventing the spread of such information may unduly affect freedom of expression. Across the region we have seen the imposition of repressive rules on the establishment and operation of media outlets; harassment of, and restrictions on journalists deemed to be engaging in “propaganda”; the introduction of restrictive legislation on the dissemination of information; and blocking and closing down websites, in the name of fighting propaganda. In many cases such initiatives do not uphold international standards on freedom of expression.

Most recently, we have been concerned by requirements for media outlets to register as “foreign agents”. On 25 November, President Putin approved amendments to Russia’s infamous 2012 ‘Foreign Agents Law’, extending its provisions to foreign-owned media outlets. They now face being labelled as “foreign agents” by the Russian authorities based on the mere fact that they receive funding from foreign sources. The label means they need to register voluntarily as “foreign agents”, provide regular reports to the authorities, and label all their publications and media materials as such – failure to do so will lead to astronomical fines and bans of publications and materials. The amendments were passed in retaliation to an order by the US Department of Justice, requiring state-funded Russian TV channel *RT* to register under the US Foreign Agent Registration Act (FARA). The order was issued after US intelligence agencies determined that the television channel acted as ‘Russia’s state-run propaganda machine.’ The Russian amendments could paralyze the work of foreign-funded media broadcasting inside Russia. In light of the decimation of independent media in Russia, foreign registered media outlets play a critical role in ensuring the public has access to diverse viewpoints, and the legislation represents another attempt to ensure state dominance of public discourse. In response to the developments, Special Rapporteur Désir stated, “branding media entities as ‘foreign agents’ is a dangerous practice, as it can narrow the space for freedom of the media.”¹¹¹

Politicians and government officials should be discouraged from using the term “fake news” and dismissing any negative or critical coverage of their policies as simply “propaganda”. Disagreement and debate play a key role in any democratic society, and politicians in particular should be prepared to tolerate a higher level of scrutiny given their public positions. At the same time, media outlets should adhere to professional codes of ethics, maintaining high standards that serve the public interest.

Restrictions to Freedom of Expression Online

Across the OSCE region, the internet continues to be the focus of an increased number of legislative restrictions on a variety of grounds, including countering terrorist activity and targeting the spread of poorly defined concepts such as “extremism”, “propaganda” and “hate speech” online.

Most notably on 1 October 2017, in Germany a new act to “Improve Enforcement of The Law on Social Networks,” came into force which introduces an intermediary liability regime that incentivises, through severe administrative penalties of up to 5 million Euros, the removal and blocking of “clearly violating content” and “violating content”, within time periods of 24 hours and 7 days respectively. Such initiatives set an alarming precedent for internet regulation where non-State actors, such as internet companies, are required to judge whether content should be considered illegal and therefore restricted, rapidly, on a mass scale (potentially with automated aspects), without judicial oversight. Overly-broad definitions or ill-defined concepts are an issue in many member States which have a heightened potential for misuse when applied to restrictions online.

¹¹⁰ Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda. Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information. 3 March 2017, <http://www.osce.org/fom/302796>

¹¹¹ OSCE, ‘Registration of media as “foreign agents” not acceptable says OSCE media freedom representative’, 16/11/2017 <http://www.osce.org/fom/357111>

The recently adopted Russian law on media as “foreign agents” allows the extra-judicial blocking of any website or personal page on social media containing “appeals to mass riots, extremist activity or participation in mass (public) events organised in violation of legal procedure or publications of foreign or international non-governmental organisations whose activity is recognised as undesirable on the territory of the Russian Federation”. Given the major problems with Russian legislation and implementing practices regarding freedom of assembly, the prevention of “extremism”, “undesirable foreign organisations”, and regulation of the internet, this new provision will have serious repercussions and will likely lead to further arbitrary restrictions of online freedoms.

The potential for jigsaw legislation, with several domestic parliaments introducing conflicting proposals, that contravene international human rights standards on freedom of expression and access to information online, is troubling and will undoubtedly continue. The OSCE should play a stronger role in ensuring consistency on this issue amongst its participating States to ensure that non-State actors uphold human rights and not be required or incentivised into violating them.

States should refrain from using internet in such a way as to undermine freedom of expression or access to information, including mass surveillance and blocking and filtering of online content.

Media Freedom and Security of Journalists

Restrictions to media freedom and attacks on journalists and media workers, continue to be of grave concern in the OSCE region, with media pluralism in decline, exacerbated by a concentration of media ownership or its control by ruling elites, violent attacks on, and criminal prosecution of, journalists and bloggers.

Violence against journalists remains a major concern. In 2017, six journalists were killed within the OSCE region: Dmitri Popkov and Nikolai Andrushchenko in Russia; Kim Wall in Denmark; Halla Barakat and Saaed Karimian in Turkey, and Daphne Caruana Galizia in Malta. In his report to the OSCE Permanent Council in November 2017, the new OSCE Representative on Freedom of the Media Harlem Désir stated that violence and threats against journalists are on the rise in large parts of the OSCE region, while there are more than 170 journalists currently imprisoned.¹¹² He also noted that, since taking office in July 2017, he has already intervened in 109 cases of media freedom violations in 31 of the 57 OSCE participating States, largely concerning “the safety of journalists and their right to work freely”.

In several OSCE countries, journalists and bloggers are imprisoned on spurious criminal charges in retaliation for critical reporting. In Turkey, there are at least 150 journalists and media workers in jail on charges of terrorism, following a crackdown on critical journalism following last year’s unsuccessful coup attempt. In Azerbaijan, at least 12 journalists and media workers are in prison. A number of journalists are behind bars in several Central Asia states: we are particularly concerned by the detention of Saparmamed Nepeskuliev, a freelance journalist who contributed to Alternative Turkmenistan News, in Turkmenistan since July 2015, and the September arrest of independent journalist Bobomurod Abdullaev in Uzbekistan. In Crimea, Radio Free Europe journalist Mykola Semena was handed a two and a half year suspended sentence in September 2017 on charges of calls for separatism.

RECOMMENDATIONS

We recommend that the OSCE participating States implement recommendations outlined in the 2016 “Joint Declaration on Freedom of Expression and countering violent extremism”¹¹³ and the 2017 “Joint Declaration on

¹¹² Regular Report to the Permanent Council for the period from 18 July 2017 to 9 November 2017 by the OSCE Representative on Freedom of the Media Harlem Désir, 9 November 2017, <http://www.osce.org/permanent-council/356511?download=true>

¹¹³ Joint Declaration on Freedom of Expression and Countering Violent Extremism. Joint declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, May 3 2016. <http://www.osce.org/fom/237966>

Freedom of Expression and “Fake News”, Disinformation and Propaganda”¹¹⁴, issued by the OSCE Representative on Freedom of the Media, together with the three other international freedom of expression rapporteurs.

Furthermore, as civil society recommendations to OSCE pertaining to freedom of expression adopted in the 2015 Belgrade Declaration¹¹⁵ and the Outcome Document of the OSCE Parallel Conference in Hamburg in 2016¹¹⁶ have largely not been taken up by the OSCE participating States, we strongly reiterate the call for these to be implemented.

While all these recommendations should be taken into account, we have highlighted those below we believe to be of primary importance in 2017:

To OSCE institutions and political bodies

- The OSCE Chairmanship and the OSCE Representative on Freedom of the Media should lead negotiations amongst participating States on the adoption of 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.
- 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 in the context of combating terrorism and violent extremism.

To OSCE participating States

- Participating States should recommit to the human dimension standards related to the freedom of expression and media freedoms in the OSCE area. In particular, they should ensure full respect for editorial independence and refrain from exerting any pressure – legal or otherwise – on media outlets and those who are exercising their right to freedom of expression.
- 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 by conducting 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 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.

¹¹⁴ “Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda”. Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information. 3 March 2017, <http://www.osce.org/fom/302796>

¹¹⁵ Belgrade Declaration: “Freedom of Expression under Threat: A Strong Response from the OSCE and Its Participating States Is Vital”, 1-2 December 2015, <http://civicsolidarity.org/article/1143/osce-parallel-civil-society-conference-outcome-documents>

¹¹⁶ Outcome Documents of the OSCE Parallel Civil Society Conference, Hamburg, 6-7 December 2016, <http://civicsolidarity.org/article/1172/osce-parallel-civil-society-conference-2016-outcome-documents>

- 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, pursuing a legitimate aim, necessity and proportionality; is subject to strict judicial review by an impartial and independent judicial authority and strong independent oversight mechanisms to ensure transparency and accountability of communications surveillance.
- Participating States should protect the internet as a space for open and public debate, by respecting that the established international standards regarding freedom of expression offline apply equally to online activity; and ensuring that any legislation limiting online expression strictly conforms to international freedom of expression standards.
- 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.
- 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 expressing standards.
- Participating States should refrain from shutting down the media, labelling them as “foreign agents” based on the mere fact that they receive funding from foreign sources, and persecuting or expelling media workers on the basis of arbitrary accusations in incitement or propaganda. Any sanctions against the media and individuals should be applied only after a fair and public hearing by a competent, independent and impartial tribunal; the practice of summary justice in cases against the media should be abolished.
- Participating States should recognise that professional and self-regulatory bodies play an important role in promoting equality and intercultural dialogue. They should create an enabling environment to facilitate the voluntary development of self-regulatory mechanisms such as press councils, professional ethical associations and media ombudspersons.

MIGRATION, THE “REFUGEE CRISIS”, AND XENOPHOBIA

The outcome documents of OSCE Parallel Civil Society Conferences in 2014, 2015 and 2016 highlighted a number of negative trends related to migration across the OSCE region. These included the so-called “refugee crisis”; terrorist attacks by Islamic fundamentalists causing rifts in societies; the influx of migrants to receiving countries lacking adequate reception solutions and integration policies; and the rise of far-right populist parties with strong anti-migrant messages, which widened existing gaps in societies as well as in international communities like the EU.

These trends have continued to develop over 2017. The so-called “refugee crisis” exacerbated divisions among EU member states over immigration policies, as some governments refuse to cooperate with others in sharing the burden of accepting migrants. The numerous terrorist attacks continued to fuel hate speech and an increase in hate crimes against migrants across the EU. Many OSCE participating States still lack comprehensive integration policies, which could result in the emergence of isolated migrant communities.

Far-right populist parties, which channel societal discontent, have enjoyed increased support across the OSCE area and have been actively spreading anti-migrant rhetoric. At *the Netherlands* general elections, the Party for Freedom (PVV) led by Geert Wilders became the second largest party in parliament. In *French* presidential elections Marine Le Pen, leader of the far-right Front National, came gained almost 34 per cent of votes in the first round before coming second to Emmanuel Macron. The far-right Alternative for *Germany* (AfD) gained almost 13 per cent of votes in federal elections, becoming the first openly nationalist political force to enter the German Bundestag since WWII. Finally, the populist Freedom Party of *Austria* (FPÖ) came third in parliamentary elections with more than 20 per cent of votes and was invited to participate in forming the coalition government.

A number of participating States adopted and enforced new anti-migration policy measures. Thus, in *the United States*, President Donald Trump in January signed executive orders placing limits on travel to the U.S. for people from several Muslim-majority countries (Iran, Libya, Somalia, Sudan, Syria, and Yemen) and by all refugees who do not possess either a visa or valid travel documents. As a result, hundreds of travellers were detained and tens of thousands of visas were revoked. Although these measures faced strong opposition inside the US from civil society, politicians and federal courts, the slightly adapted measures nevertheless remain in force.

Italy re-launched its highly controversial cooperation on migration and border control with Libya by signing a bilateral “Memorandum of Understanding” (dubbed by experts as “a bad replication of the EU-Turkey deal”); training and support for the aggressive Libyan Coastguard force; and a mission by the Italian Navy into Libyan waters. As a result, most migrant boats are now intercepted and the people on board returned to Libya’s inhumane detention centers, in a development which may be regarded as *de facto* violating the principle of non-refoulement. The new immigration law adopted in 2017 also provides for a significant increase in immigration detention and reduces fundamental guarantees for asylum seekers (e.g., they will no longer have the chance to appeal the rejection of their asylum claims).

In *Austria*, an amendment to the Aliens’ Police Act entails severe consequences for some asylum seekers. It extended the period of detention of asylum seekers from 6 to 18 months and made the submission of fraudulent information during the examination of the entry criteria punishable by a fine of up to 5,000 Euro. In addition, refused asylum seekers are no longer informed about their deportation dates, meaning they do not have sufficient time to collect their belongings.

Polish border police officers in Terespol flagrantly violate the UN Refugee Convention by systematically refusing to accept asylum applications from hundreds of Russian nationals from Chechnya who attempt to enter Poland by train from Brest, Belarus. Most of them are forcibly returned back to Belarus and have no other choice than to repeat their attempts to cross the border daily.

The situation in *Hungary* regarding refugees has been a special case since the beginning of 2015, not just as a sad example of state failure to offer proper assistance to migrants and asylum seekers and blocking every European attempt in the framework of a common EU strategy, but even more so on the political level. The conservative-nationalist government launched several openly xenophobic, anti-immigrant, and anti-Semitic campaigns labeling every asylum seeker as a potential terrorist or a “social beneficiary - economic migrant”, refusing to accept asylum seekers under the Dublin agreement from Sweden and Austria, building multi-kilometer long walls on its borders, or registering no more than 15 migrants a day on the southern border. Moreover, the authorities label human rights NGOs assisting migrants as a threat to national security and claim that they support and encourage illegal migration, smuggling and violence. As a direct result of this smear campaign, several cases of violence have occurred against migrants and NGO members who run integration and support services.

Thus, the situation in the OSCE region with regard to migration and related xenophobia has continued to deteriorate. We witness further discontent and growing 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.

The Civic Solidarity Platform welcomed the report presented in 2016 by the OSCE Informal Working Group on Migration led by Ambassador Claude Wild, and deeply regrets the fact that the specific recommendations contained in it have not been implemented to date. We further regret that the Ministerial Council decision No. 3/16 “OSCE’s role in the governance of large movements of migrants and refugees” adopted in Hamburg lacked substantial content and failed to propose a vision of the Organisation’s further response to migration-related challenges.

The fact that the incoming Italian Chairmanship has declared migration as one of its thematic priorities gives hope that specific OSCE efforts in this field will get a new impetus in 2018.

In the light of the above mentioned tendencies, we consider that our earlier recommendations contained in the Basel Declaration on rising intolerance, discrimination, and hate crimes adopted by the OSCE Parallel Civil Society Conference in 2014, and the outcome report of the 2016 OSCE Civil Society workshop on migration/refugees held in Berlin are still relevant today and would therefore like to reiterate them.

Excerpts from the Basel Declaration “Rising intolerance, discrimination, and hate crimes pose a major risk for security and require a coordinated response from the OSCE” adopted by the participants of the OSCE Parallel Civil Society Conference, Basel, 2-3 December 2014

- OSCE political bodies should develop a comprehensive OSCE action plan to combat racism, xenophobia, discrimination on all grounds, hate crimes and other forms of intolerance, in order to pool resources and enhance cooperation between various stakeholders within the OSCE framework, as well as to improve cooperation with other relevant international institutions;
- Personal Representatives of the Chairman-in-Office on Tolerance and Non-Discrimination should increase the visibility of their work and enhance their cooperation with civil society (including by seeking increased media coverage of their country visits, wider dissemination of their reports and more active participation in international and national events on topics relevant to their mandates, including those organized by NGOs);
- ODIHR should develop comprehensive guidelines for participating States on addressing racism, xenophobia, discrimination on all grounds, hate crimes and other forms of intolerance through education and youth policies, including specific methods for anti-racism education, building on its experience of developing educational materials in the field of teaching of anti-Semitism, Holocaust education, education against Islamophobia and human rights education for various social and professional groups;
- ODIHR should develop recommendations on the review of school curricula with the goal of removing elements that may promote negative stereotypes, incite hatred and intolerance, and strengthening measures to combat bullying;

- ODIHR, together with the Venice Commission, should review the legislation of participating States for discriminatory provisions targeting religious and ethnic minorities, Roma and Sinti, migrants, LGBT, and other groups, and issue relevant recommendations; participating States should request such reviews and follow their recommendations;
- ODIHR should organize expert consultations on ways to address violations of fundamental rights, including incitement to hatred, in the context of elections in participating States, by using, inter alia, existing tools such as ODIHR election observation missions and the Panel of experts on political party regulation;
- The Representative on Freedom of the Media should develop and promote guidelines for participating States on combating hate speech in the media and on the internet as well as by public officials and politicians, while also respecting the principles of freedom of expression.

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

The protection of the fundamental human rights of all individuals should be the main guiding principle for response(s) to the challenges posed by the current movements of people through the OSCE region. This 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 official decisions etc.).

OSCE participating States should, without exception, observe their 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 effective and safe way of addressing the problems facing asylum seekers travelling in dangerous circumstances and circumventing them being exposed to extortion by people traffickers is by offering refugees organised procedures of relocation such as the UNHCR resettlement programme, 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 procedures for all those arriving have to be established every effort should be made to provide adequate and humane reception centres for asylum seekers.

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. People should not be routinely detained purely because they seek asylum.

Vulnerable persons should be identified, including (unaccompanied) minors, (single) women, LGBTI persons, victims of torture, and given access to appropriate services according to their specific needs. 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 people living in reception centres should be supported and encouraged as they are key to facilitating the eventual smooth integration of newly arrived persons in society.

The OSCE should step up its efforts to promote the 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.

HUMAN RIGHTS IN THE CONTEXT OF CONFLICTS

PROBLEM ANALYSIS

All OSCE participating States have agreed that lasting peace and security cannot be achieved without the respect for human rights, the rule of law and functioning democratic institutions. This is reflected in the 1975 Helsinki Final Act¹¹⁷ as well as in the OSCE concept of ‘comprehensive security’ encompassing three complementary dimensions [military/political, economic/environmental, and human], all of which are viewed as being of equal importance.¹¹⁸ Thus, there is no comprehensive security and ‘positive peace’¹¹⁹ if one dimension is neglected. Civil society groups strongly believe that dealing with conflicts effectively requires a consistent cross-dimensional approach with the support and expertise from civil society (Track 2 and 3)¹²⁰, and with the human dimension playing a much stronger role than OSCE currently does in practice, mainly focusing on hard security and Track 1/1.5¹²¹ negotiations and ‘negative peace’¹²². This is particularly evident at present with the ever more visible violent conflicts and human rights violations in the OSCE region.

The discrepancy between the declared concept of ‘comprehensive security’ and a narrow military/political approach to conflict management has not only a conceptual, but also an institutional aspect within the OSCE. Even the understanding of ‘civil society’ and its role within the OSCE framework is interpreted differently by different OSCE bodies, institutions and participating States. The often perceived lack of political will at leadership level to address conflicts from a comprehensive security perspective is exacerbated by institutional deficiencies. Too many aspects of conflict-related problems fall into the cracks between various OSCE bodies and institutions. Due to problems in communication and coordination, elements of relevant expertise available inside the OSCE often fail to be utilised and are thus not translated into action when a conflict unfolds.

The Outcome Documents¹²³ of the ‘OSCE Parallel Civil Society Conference 2016’ incorporated a comprehensive chapter on ‘human rights in the context of conflicts’, and many civil society recommendations remain valid and have even gained in importance and urgency today. Therefore, we strongly reiterate our recommendations from 2016 and develop a few of them below:

RECOMMENDATIONS TO OSCE POLITICAL BODIES, INSTITUTIONS, AND PARTICIPATING STATES

On conceptual approaches to dealing with conflicts in the OSCE

The human dimension should, alongside the military and political dimension, be an equal part of the conceptual framework of OSCE work to address conflicts. A more systematic link between the three OSCE dimensions is vital to increase the effectiveness of efforts to prevent human rights violations that may cause violent conflicts, to resolve conflicts, and to ensure sustainable peace.

¹¹⁷ Conference on Security and Co-operation in Europe Final Act 1975, Helsinki. <http://www.osce.org/helsinki-final-act?download=true>, [29.11.2017].

¹¹⁸ Organization for Security and Co-operation in Europe 2009, p. 1. *The OSCE Concept of Comprehensive and Co-operative Security: An Overview of Major Milestones*: <http://www.osce.org/cpc/37592?download=true>, [29.11.2017].

¹¹⁹ Galtung, Johan 1967. *Theories of Peace: A Synthetic Approach to Peace Thinking*. Oslo: International Peace Research Institute. <https://www.galtung-institut.de/wp-content/uploads/2014/11/Mini-Theory-of-Peace.pdf>, [29.11.2017].

¹²⁰ Lederach, John Paul 1997. *Building Peace: Sustainable Reconciliation in Divided Societies*. Washington: United States Institute of Peace Press.

¹²¹ Ibid.

¹²² Galtung, Johan 1967. *Theories of Peace: A Synthetic Approach to Peace Thinking*. Oslo: International Peace Research Institute. <https://www.galtung-institut.de/wp-content/uploads/2014/11/Mini-Theory-of-Peace.pdf>, [29.11.2017].

¹²³ Outcome Documents of the OSCE Parallel Civil Society Conference 2016, pp. 37-49. Hamburg: Civic Solidarity Platform. http://www.civicsolidarity.org/sites/default/files/parallel_civil_society_conference_outcome_documents_hamburg_december_2016_final.pdf, [29.11.2017].

OSCE coordination, communication and cooperation with civil society on early warning, monitoring, conflict resolution, mediation, transitional justice, and peacebuilding should be enhanced, including by establishing a communications platform for each specific crisis.

An inclusive approach is necessary to prevent and overcome violent conflict affecting different sections of the population, 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 as an integral part of their conflict transformation and peacebuilding efforts.

Conflict analysis, early warning and conflict prevention

OSCE actors, including institutions and field operations, should enhance their capacity for comprehensive conflict- and stakeholder-analysis.

OSCE institutions and field operations should regularly involve local civil society actors as well as human rights and peacebuilding experts in joint analyses and in the development of policies and country strategies. Conflict cycle work organised by the Chairmanship, the OSCE Secretariat (including the Conflict Prevention Centre) and the High Commissioner on National Minorities should include civil society in strategic thinking, not just in implementation.

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

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

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

OSCE actors should pay more attention to capacity building on legal issues, 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 the diplomatic, policy and administrative staff in their offices and field units as well as their civil society partners. Capacity building should be obligatory for all OSCE staff and tailored to relevant country contexts as part of staff training for OSCE field missions and/or institutions.

The implementation of human dimension commitments serves to prevent conflict, and human dimension crisis should be seen as one of the key warning signs of a possible 'hard security' conflict. Therefore, a failure to implement human dimension commitments should be considered an early warning sign, including systematic human rights violations, increase in nationalistic propaganda and hate speech, and backsliding in democratic governance.

The protection of civil society space (see also the 'Hamburg Declaration on protecting and expanding civil society space' in the Outcome Documents of the OSCE Parallel Civil Society Conference 2016)¹²⁴ should be treated as a

¹²⁴ Outcome Documents of the OSCE Parallel Civil Society Conference 2016, pp. 4-8. Hamburg: Civic Solidarity Platform. http://www.civicsolidarity.org/sites/default/files/parallel_civil_society_conference_outcome_documents_hamburg_december_2016_final.pdf, [29.11.2017].

matter of conflict prevention. OSCE actors should consider repressive legislative and policy changes affecting 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 strategies to connect with actors which currently do not listen to information from civil society on human dimension early warning signs of conflict, including various OSCE actors and embassies in countries where we are working, and build strategic links and trust with them.

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

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

Ways to improve rapid response to early warning signs include the better utilisation of civil society monitoring. Local and international NGOs have been actively involved in monitoring, fact-finding and reporting in the majority of the ongoing crises in the OSCE region.

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

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.

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, collecting and analysing information and providing assistance to victims. They should provide support to civil society groups, regardless of their location.

Since spring 2016, human rights defenders, like most humanitarian organizations, have been unable to access non-government controlled areas in Eastern Ukraine and therefore cannot monitor the human rights situation there. In 2018 OSCE participating States should strengthen their efforts to improve access for humanitarian and human rights organizations to these areas, in order to ensure the distribution of humanitarian aid, the monitoring of human rights and prevent (further) alienation between people in all parts of Eastern Ukraine.

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

On post-conflict transformation and peacebuilding

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 the local context. OSCE institutions should include civil society in drafting such strategies, which should include not only the strengthening of democratic institutions, good governance and rule of law, but also prioritise broad post-conflict dialogue in society, the de-construction of stereotypes, measures to combat propaganda, promoting a culture of remembrance and critical reflection, including through cultural activities.

The OSCE should develop training programmes for civil society actors in transitional justice (in particular with regards to different approaches/ methodologies of systematic data collection of human rights violations and archiving/ security of archives) and in post-conflict transformation.

PREVENTION OF TORTURE AND ENFORCED DISAPPEARANCES

Torture continued to be among the worst human rights violations in many OSCE participating States throughout 2017. In some countries and regions, torture is still widespread and systematic and is practiced with impunity. In many countries, governments increasingly justify using torture and ill-treatment by referring to security concerns in the context of measures to prevent terrorism and combat violent extremism. Across the OSCE region, policing of assemblies is often practiced with disproportionate violence and excessive use of force by law enforcement officers. Migrants and people seeking asylum often experience inhuman treatment at state borders as well as in detention centres for migrants. They often lack adequate access to medical and psychosocial support. Torture victims often do not receive the necessary treatment and rehabilitation services. Prosecution rates against perpetrators of torture are shamefully low, which illustrates 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 egregious abuse of power.

Civil society organisations call for special attention to be paid to identifying ways to include the issue of enforced disappearances in OSCE work beyond statements by representatives of participating States at the Permanent Council meetings and HDIMs. The failure of the OSCE and other international organisations to address the numerous past and ongoing cases of enforced disappearances in the OSCE region has led to an atmosphere of impunity and facilitated conditions for the committing of new crimes. Activities of the CSP members to address enforced disappearances in Turkmenistan, Belarus and other countries need much stronger support from OSCE actors.

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 more resolute action by the OSCE to address the problem of torture, and recommended several concrete steps. This appeal resonated with the position of the incoming Swiss Chairmanship, which included combating torture as a thematic priority for 2014. Thus, the OSCE resumed working more actively on torture in 2014, in particular by opening the ODIHR Focal Point on Torture Prevention which started its activities in 2015.

Unfortunately, at the Ministerial Council Meetings in Basel in 2014, Belgrade in 2015 and Hamburg in 2016 participating States failed to adopt a decision on combating torture, despite continued solid support from the overwhelming majority of States. The inability of the 57 States to come to a joint position regarding one of the most pressing human rights issues 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 acceptable despite it being a violation of their OSCE commitments. This situation is intolerable and cannot continue.

The CSP has actively worked on torture prevention since 2014. Its activities include not only participation in human dimension implementation meetings (HDIM) but also the organization of side events on the fight against torture with presentations about the situation in many OSCE participating States at various OSCE events throughout the year. In September 2015, the CSP organised a workshop on “Developing OSCE approaches to prevention of torture and enforced disappearances” in Warsaw with the 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. In October 2016, ODIHR and the MFA of Denmark organised an expert meeting in Vienna on “Rehabilitation of Torture Victims”. During the meeting, a representative of the CSP reiterated the CSP recommendations in relation to the fight against torture and ill treatment. The CSP Working Group on Torture Prevention participated in Human Dimension Committee hearing on Torture Prevention in Vienna in March 2017, presenting the issue and reiterating the main CSP recommendations. During the HDIM in 2017, the Working Group on Torture Prevention organised a side event on the situation with torture in Armenia, Russia, Moldova,

Kyrgyzstan and Kazakhstan. HDIM this year provided an important opportunity to meet OSCE officials, including the newly assigned ODIHR Director and national delegations to exchange views with them on combatting torture.

Torture prevention will remain a priority 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. In 2016-2017, 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. In 2016, the CSP established an informal Panel of Experts for Torture Prevention that would work as an advisory body for the ODIHR and would 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 2016, many issues (including the mandate of the panel) were discussed and several project ideas were presented. However, in order to ensure that the panel functions effectively, it requires funding and it should be endorsed by ODIHR, similar to the existing advisory panels at ODIHR such as the ones on freedom of peaceful assembly and freedom of religion or belief.

RECOMMENDATIONS

To the OSCE Chairmanship-in-Office and the OSCE Secretary General:

- The Austrian 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 Vienna. 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.
- The incoming OSCE Chairmanships of Italy and Slovakia should ensure that torture prevention is an OSCE priority, 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 grave human rights violation and a form of torture.
- The incoming OSCE Chairmanships, in cooperation with 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 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 OSCE participating States:

- Make every possible effort to negotiate an OSCE Ministerial Council decision on torture prevention to be adopted in Vienna, without compromising on the existing commitments. Should States again block a consensus on this decision, the States in the majority supporting it should adopt a joint declaration on torture prevention and make it clear that the consistent position of 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 perpetrators are charged with the crime of torture and other crimes such as abuse of power or other irrelevant and unrelated charges, and that amnesty clauses 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 swift and effective investigations into all cases of torture or ill-treatment and bring the perpetrators to justice.
- Guarantee that alleged victims of torture and inhuman and degrading treatment have unhindered access to qualified legal, medical and psychological assistance, which should, where relevant, be offered free of charge.
- Guarantee access to an alternative forensic, medical and psychological 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 and create the necessary conditions for their professional trainings and capacity building in accordance with Istanbul protocol. Medical services in detention facilities should be independent of the Ministry of the Interior/Justice.
- Take steps to ensure the appropriate documentation and 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.
- Take the necessary steps to guarantee the right to rehabilitation for all victims of torture residing in the country, without discrimination on the basis of citizenship, race, ethnic origin, sexual orientation, gender identity, or religious conviction.
- Provide holistic rehabilitation to victims of torture which should be adequate, affordable, accessible and of decent quality guaranteeing a victim-centred approach.
- Ensure respect for the principles of non-refoulement under international human rights law, so 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:

- Establish an expert panel on combating torture, similar to the ODIHR expert panel on Freedom of Peaceful Assembly, to support the work of the ODIHR Focal Point on Torture Prevention. The panel should meet regularly to assess relevant laws and practices in participating States, monitor progress, give advice to participating States on policy and implementation of their commitments to eradicate torture, and provide advice and assistance to the ODIHR Focal Point on Torture Prevention.
- Identify and promote best practices for the effective use of safeguards in participating States.
- Conduct a baseline study on the situation regarding torture in OSCE participating States, covering its occurrence, prevention, prosecution, and redress. The baseline study should identify shortfalls and gaps as well as best practices.
- Encourage the inclusion of the Istanbul protocol in the curricula of higher education establishments in participating States.
- Make sure that all events or discussions co-organised by ODIHR in relation to the fight against torture are open to wider civil society working to combat torture and that participation is not limited to certain groups of the torture prevention movement.

ACCESS TO JUSTICE FOR THE VICTIMS OF ENFORCED DISAPPEARANCES AND THEIR FAMILIES

The issue of access to justice for victims of enforced disappearances and their families remains a major problem in many countries of the OSCE region and a matter of deep concern for civil society.

Most often, enforced disappearances occur in the context of violent conflicts; they affect a large number of people, and in most instances lead to extrajudicial executions of the victims of disappearances. Uncovering the truth about grave crimes committed during past conflicts, the fate of the disappeared, and bringing the perpetrators to justice, is essential for effective conflict resolution, sustainable peace, overcoming of divisions, and reconciliation.

Enforced disappearances also occur in contexts other than violent conflict. Non-democratic regimes have used them as a tool of intimidation and political repressions against government opponents. Victims may be murdered quickly or may disappear in the prison system and held in complete isolation for long years, with or without legal justification by the authorities.

Lately, enforced disappearances have been used by many state actors in the context of combating terrorism and violent extremism. State officials often justify the use of incommunicado detention, torture, and enforced disappearances by the fact that the apprehended persons are “terrorists” or “extremists” and therefore it is argued that they can be treated differently. This contributes to the ongoing erosion of the rule of law, societal division, and further destabilisation, all of which entail serious implications for security in the future.

Ensuring the delivery of justice is essential when democratic transition after violent conflicts or repressive dictatorships is managed with the help of transitional agreements, truth commissions and historical memory work. Truth and justice should come first, and only then reconciliation is possible.

Given the extreme seriousness of this human rights violation, enforced disappearance committed systematically on a large scale has been defined in international law as a grave crime and a crime against humanity. Moreover, enforced disappearance is an ongoing crime which lasts until the moment when the fate and whereabouts of a disappeared person have been established, regardless of when the disappearance started. Finally, enforced disappearance has no term of limitations, and regardless of when the crimes were committed, cases should be investigated, perpetrators brought to justice, and remedy provided.

Enforced disappearances in different contexts are similar in several regards: no information is provided to the relatives of the disappeared; relatives are denied a voice, threatened, and often accused of defamation; effective investigation is absent; there is no remedy in courts which turn down complaints by relatives, or relatives do not appeal to courts because they do not trust them; perpetrators enjoy impunity; and the decisions of international courts or bodies establishing state’s responsibility are not implemented. In some countries, these problems are exacerbated by blanket amnesties for crimes committed during past conflicts or under former repressive regimes being instigated as part of transitional national reconciliation processes.

For example, in **the Chechen Republic in Russia**, human rights groups documented up to 5 thousand disappearances which occurred during the second war in Chechnya in 1999-2009, when these crimes were committed by the federal troops, and later, by Chechen law enforcement officers under Ramzan Kadyrov when abductions and disappearances formed part of the “counter-terrorism operations” against alleged jihadists. To date there is no justice for the victims and relatives, no effective investigation even when suspects are easily identifiable, and the perpetrators enjoy total impunity. Of several thousand cases, national courts identified and punished the perpetrators in only four (!). Two of these cases concerned victims who were relatives of Ramzan Kadyrov, and two cases were investigated on the basis of data provided by investigative journalist Anna Politkovskaya, human rights activist Natalya Estemirova, and human rights lawyer Stanislav Markelov. All three of them were

assassinated later. ECtHR has delivered over a hundred judgements on enforced disappearances in Chechnya. The Russian authorities duly pay the monetary compensation awarded by the court but take no steps to conduct further investigations. Importantly, due to threats by Ramzan Kadyrov against those who seek truth and justice and in particular after the murder in July 2009 of Natalya Estemirova who played a key role in investigation of enforced disappearances, relatives of the disappeared in Chechnya no longer submit complaints and appeals to the investigation bodies and domestic courts. It is therefore impossible to estimate how many people are still being disappeared in Chechnya at the current time. We know there are many such cases but people are too afraid to speak up and seek justice.

In **Spain**, tens of thousands of people fell victims of enforced disappearances during the civil war in the 1930s and mass repressions by the Franco dictatorship for several decades after the war. They are buried in numerous mass graves across the country, and their second and third generation relatives have not been able to establish the truth about their fates and receive proper remedy. The 1977 Amnesty Law, which was seen as an important element of transition to democracy and of the process of national reconciliation after the end of the Franco regime, barred all investigations related to “criminal offenses with a political aim”, including disappearances, committed prior to the adoption of the law, and provided a blanket amnesty for all alleged perpetrators. The search for truth was only made possible 20 years later, in 2007, when the law on Historical Memory was adopted by the socialist government. However, when the conservative Popular Party came to power in Spain three years later, public funding for historical memory work was terminated, archives were half-closed, and judges and prosecutors who tried to open investigations into the cases of disappearances were punished and dismissed for abuse of power, like the famous judge Baltasar Garzón. For more than 10 years, several UN treaty bodies and special procedures have repeatedly argued that the 1977 Amnesty Law should be amended and that the government of Spain has an obligation to investigate past enforced disappearances and bring perpetrators to justice, regardless of when the crimes were committed. The Spanish government refuses to do this, citing the sensitivity of the issue for national reconciliation and claiming terms of limitation, in direct contradiction to international norms. We believe that without addressing the grave and massive crimes of the past, transition to democracy in Spain is incomplete, society remains divided, faith in the justice system is undermined, and the rule of law is eroded which paves the way to new conflicts and tolerance of human rights abuses.

In **Turkmenistan**, the Prove They Are Alive! campaign has meticulously documented 112 cases of enforced disappearances in the prison system over the last 15 years, with the total number likely to be around 200. Public officials, democracy activists, and independent journalists who were perceived by the authorities as a threat, have been convicted in politically motivated trials to very long sentences including life imprisonment, and held incommunicado in prisons in unbearable conditions. No one has access to them and no one knows whether they are dead or alive. In the last two years, several people from the list of the disappeared died in custody. When their bodies were given back to their relatives for burial, it was the first time they learned about their fate of their loved ones since their arrests many years ago. Recently, new arrests have taken place of persons accused of participation in radical Islamic organisations, who were convicted for long sentences in unfair trials and then disappeared in prisons. Relatives of the disappeared do not turn to the domestic justice system for fear of reprisals and because of direct threats against them. Courts are not independent, and it is common knowledge that they do not mete out justice. In a handful of cases, relatives who live abroad have sought justice through UN mechanisms. However, the Turkmen authorities have failed for over two years to implement the decision of the UN Human Rights Committee on the emblematic case of former Minister of Foreign Affairs Boris Shikhmuradov who was found a victim of enforced disappearance and numerous other human rights violations. Their replies to questions from UN treaty bodies, the UN Working Group on Enforced Disappearances, and in the framework of the OSCE are at best deliberately evasive and provide no specific information on the whereabouts or state of health of the disappeared.

In **Belarus**, in the end of 1990s, a secret group of former special services officers was created by high-level government officials for the purpose of assassinating dangerous criminals and political opponents of the regime. This was to be done by total annihilation of the bodies or hiding them without trace. In 1999-2000, four high-

profile cases of disappearance and alleged murder of political opponents of the government took place, including a former deputy prime minister, a former minister, a leading journalist, and a businessman who provided support to the opposition. The official investigation carried out in these cases was inefficient and failed to establish the circumstances of the crimes and identify the perpetrators. These cases were in the focus of attention of a special report by the PACE Committee on Legal Affairs and Human Rights in 2004 and of the OSCE Moscow Mechanism report on Belarus in 2011. The UN Human Rights Committee reviewed individual complaints by the relatives of the disappeared and concluded that Belarus must carry out a full, impartial and thorough investigation, bring the perpetrators to justice, pay compensation to the relatives, and make public the findings. However, the government replied that it does not recognise competence of the Human Rights Committee to review individual complaints and took no action.

These country examples are by no means exhaustive. The truth has not been established and justice not delivered in cases of enforced disappearances committed during past violent conflicts in the **Western Balkans** or in current conflicts such as that in Donbass in the **east of Ukraine**, during the ongoing political repressions in **Turkey** and **Russia-annexed Crimea** and elsewhere. The OSCE must address this issue as a priority and ensure justice for the victims of enforced disappearances in its participating States.

Finally, we would like to make the following concrete **recommendations**

- Those OSCE participating States that have not ratified the International Convention for the Protection of All Persons from Enforced Disappearances should do so without further delay.
- OSCE participating States should bring their domestic legislation into compliance with international human rights standards, by defining enforced disappearance as a stand-alone grave crime, crime against humanity, with no statute of limitations, and as a lasting crime which is considered to be ongoing until the fate of the victim is established.
- It is particularly important that in cases of disappearance, investigations should be not closed or forbidden and the alleged perpetrators should not be eligible for amnesty under amnesty laws or national reconciliation processes or made exempt from liability due to the terms of limitation.
- States where laws allow the application of international jurisdiction in the cases of grave human rights crimes committed in other countries should actively apply it to investigate enforced disappearances and bring perpetrators from other countries to justice.
- Investigators, prosecutors, judges, and lawyers should receive appropriate training and instructions in addressing enforced disappearances and delivering justice, including in applying international standards, using forensic expertise, using data from non-governmental organisations, and recognising relatives of the victims as key actors in the process of establishing truth and achieving justice.
- OSCE institutions should prioritise the issue of enforced disappearances in the third and the first dimensions and incorporate relevant activities in their training and capacity building programmes with National Human Rights Institutions, judges, prosecutors, and lawyers, and strongly support NGOs who facilitate access to justice for victims of enforced disappearances.

BACKSLIDING ON THE RULE OF LAW: THE DETERIORATING SITUATION IN SELECTED COUNTRIES OF THE OSCE REGION

A year ago in Hamburg, participants of the OSCE Parallel Civil Society Conference expressed their strong concern about the negative trend in several OSCE participating States of the adoption of anti-democratic constitutional amendments which undermine democratic institutions, erode the rule of law, and weaken constitutional safeguards of fundamental rights.¹²⁵ Examples of these worrying developments included constitutional amendments adopted in Azerbaijan, Tajikistan, and Turkmenistan.

In more authoritarian countries in Central Asia and the South Caucasus, constitutional changes were used to further consolidate power in the hands of the ruling families and have considerably weakened constitutional guarantees of fundamental rights and freedoms. In Central European countries with stronger democratic traditions which are currently experiencing illiberal and national-populist backlashes, such as Poland and Hungary, changes to constitutions and/or critically important laws were made to allow the ruling parties to maintain their grip on power. In some instances, as in Turkey, failed coup attempts were cited by states as justification for sweeping anti-democratic legislative changes and the manipulation of constitutional provisions during the state of emergency. The legislative changes were accompanied by large-scale violations of fundamental rights and freedoms.

Developments in 2017 have confirmed our fears as we witnessed the negative impact of these legislative changes and the ongoing intense backlash against fundamental human rights and rule of law in these countries.

While in 2017 no new constitutional changes have been adopted in OSCE participating States, several countries¹²⁶ of the OSCE region have either faced the consequences of the crises in rule of law (e.g. Hungary and Poland) or have seen a strengthening of authoritarian tendencies (e.g. Armenia). The pace and scope of these changes show that the illiberal trend is spreading among the countries of the OSCE region, affecting the functioning of checks and balances mechanisms and undermining the protection of fundamental freedoms.

The functioning of the justice system

In at least two countries of the OSCE region, Poland and Armenia, the parliaments have worked in revision of laws concerning key judiciary institutions. In Armenia, the parliament drafted a new Law on the Constitutional Court. In the opinion of the Venice Commission, the law included provisions which could impair or even jeopardize the implementation of the Constitutional Court's tasks. The draft law changes the process of appointing judges to the Constitutional Court in a way which fails to provide a comprehensive legal procedure, widens the scope of judges' criminal liability in the exercise of their judicial functions and strengthens the remit of the Chairperson of the Court. The new law is a follow-up to amendments to the Constitution of Armenia adopted in 2015, which weakened the position of the Court in the human rights protection system by abolishing citizens' rights to appeal to the Court when their rights were violated.

In Poland in 2017, the parliament drafted two highly controversial pieces of legislation concerning the functioning of the Supreme Court and the National Council of the Judiciary of Poland (an administrative body responsible for protecting judicial independence and appointing judges). Both pieces of legislation increase the scope for political supervision by the executive authorities over these judicial institutions. The former alters provisions concerning the retirement age of Supreme Court judges, while the latter changes, inter alia, the process of appointing members to the Council. Both legislative acts will allow the ruling party to appoint its representatives to these judicial bodies and thus ensure control over them. It is expected that the draft laws will be adopted by the end of 2017.

¹²⁵ See chapter "Anti-democratic constitutional changes, manipulation of constitutional provisions, and misuse of the state of emergency" in the Outcome Documents of OSCE Parallel Civil Society Document, Hamburg, 6-7 December 2016, <http://civicsolidarity.org/article/1172/osce-parallel-civil-society-conference-2016-outcome-documents>

¹²⁶ This analysis focuses mainly on the situation in Armenia, Hungary, Moldova, Poland and Ukraine.

Civic oversight of the law enforcement system

Another disturbing trend concerns the restriction of civil society oversight of the functioning of the justice and law enforcement systems in general. For example, in 2017 in Ukraine the parliament adopted legislation, which significantly limits transparency and possibilities for public monitoring of court proceedings.

Also in 2017, the Hungarian authorities unilaterally terminated four agreements with the Hungarian Helsinki Committee on the basis of which the NGO had carried out independent monitoring of conditions in detention centers.¹²⁷

In Armenia, members of the public observers' group monitoring penitentiary facilities and institutions run by the Ministry of Justice, were illegally banned to meet the "Sasna Tsrer" group members detained at the "Nubarashen" penitentiary facilities.

Election laws

Backsliding on the rule of law and further consolidation of the authoritarian state lead to a negative prognosis for upcoming elections in several OSCE participating States. In some countries, changes to the justice system are accompanied by amendments to election legislation. For example, this year the Moldovan parliament adopted a law changing the proportional electoral system for electing MPs into a mixed one (combining proportional and single-mandate systems). The changes introduced disregarded the recommendations made by the Venice Commission. The new law increases the minimum threshold of votes required for parties to enter the Parliament. For example, under the proportional system, at a general voter participation rate of 50%, if a party is able to reach a minimum electoral score of 6%, it will be able to delegate only three of its members to parliament (101 MPs seat parliament) from its nationwide list of candidates, which equals about 28,000 votes per mandate. At the same time, in single-mandate constituencies, at the same participation rate an MP would be elected with only about 3,000-5,000 votes.

In Poland, the governing majority has proposed amending the Election Code to change provisions regulating local elections. The proposed changes include abolishing single-mandate constituencies and changing the structure of the National Election Council. Currently, the Council is composed of judges of the highest instance courts who are responsible for the supervision of the election process. The proposed changes would mean that the Council will still be responsible for supervising elections, but it will be composed of only two judges accompanied by seven other members who are politicians. This will inevitably compromise the impartiality of judicial oversight of the election process.

Freedom of peaceful assembly

In several countries across the OSCE region increasing limitations on freedom of assembly can be observed. In Poland, regulations on recurring assemblies was adopted at the end of 2016, giving preferential treatment to demonstrations which commemorate important events from Polish history or Polish traditions. In practice, preference is given to state and religious institutions or organizations who closely cooperate with them.

In Armenia, widespread restrictions on freedom of assembly have been observed. As a rule, police officers who used violence against protesters or violated their rights in other ways are not held liable for their actions. Armenian law enforcement officials have often used excessive force to suppress protests. For example, in the summer of 2016, protests ensued in the aftermath of the seizure of a police station in Yerevan by the "Sasna Tsrer" group. On 29 July 2016, protesters started a march towards a hill above the police station, but were attacked by police officers. There is convincing evidence gathered by human rights organisations which indicates the use of

¹²⁷ Hungarian Helsinki Committee, National authorities terminated cooperation agreements with Hungarian Helsinki Committee, available at: <http://www.helsinki.hu/wp-content/uploads/termination-of-agreements-summary.pdf>

disproportionate and excessive force by police officers.¹²⁸ No effective investigation was conducted into the acts of police misconduct and use of force in the events of July 2016.¹²⁹

Conclusions

The illiberal trend which has been spreading in recent years over several countries of the OSCE region severely affects not only how states function but also the freedoms and security enjoyed by the general public. Anti-democratic developments progress through several stages: they begin with the erosion of the rule of law; entail the dismantling checks and balances mechanisms, undermine the independence of the judiciary, weaken civilian oversight over the law enforcement system and, as a consequence, lead to more severe violations of fundamental rights and freedoms and increased impunity for perpetrators. This serious regression in the protection of fundamental rights and the safeguarding of the rule of law requires international attention and a strong, comprehensive reaction.

¹²⁸ International Partnership for Human Rights: Beaten, burnt 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>

¹²⁹ Monitoring report on implementation of ENP in Armenia in 2015-2017, p. 4. Open Society Foundations Armenia, 20 October 2017, http://www.osf.am/wp-content/uploads/2017/10/ENP_report_20.10.pdf.

GENDER IMPLICATIONS FOR THE OSCE ACTIVITIES

Women are a powerful force for peace. They bridge divides between groups, have a unique understanding of societal needs, and access to information that men cannot have. Because of the influence they wield over their communities and families, they have the potential to increase the operational effectiveness of security forces and inspire a culture of inclusion for the next generation. Women's contributions are valuable not only for themselves but for the collective well-being of society. This was the wisdom behind UNSCR1325, which acknowledges that women are not just victims of conflicts and human rights violations, but agents of peace and justice.¹³⁰

In order to move from rhetoric to action, we want to strengthen the design, implementation, monitoring and evaluation of national action plans and re-load the existing ones with the necessary integration of an economic focus for women, specifically as regards care work.¹³¹

The Women, Peace and Security agenda¹³² underlines the need for substantial changes in political commitments towards conflict, which are very well laid out in the logic of the *Global Study* from 2015¹³³. Key elements include the creation of a gender sensitive environment. The structural criticism of patriarchal dominance and integration of gender issues should be taken into account throughout the whole conflict cycle. Conflict prevention should be based on a cross-dimensional approach; conflict management should include meaningful participation; and post-conflict situation has to consider the economic dimension of rehabilitation. A key element for security change should be raising public awareness of the benefits of increased inclusiveness.

In order to implement a holistic and transformative human rights approach, a progressive gender perspective towards preventing conflict and creating peace by bridging global and local efforts is needed.

Analysis of the root causes of conflicts requires increased use of a distinctive gender analysis and expanded grassroots NGO participation within human rights mechanisms. In 2017, recommendations for specific gendered approaches were made by members of the Civic Solidarity Platform's Working Group on Women and Gender Realities in the OSCE Region after their two fact-finding events in Ukraine and Kyrgyzstan.¹³⁴

Transforming gendered power structures requires states not only to move away from militarism and war but to create and develop economies of peace (including particularly the care economy) by prioritising gender equality and socio-economic justice to achieve economic prosperity and sustainable peace in conflict-affected societies. Experiences in the field (e.g. Balkans) have shown how economic reforms that do not take into account gender or conflict considerations simply sustain conditions which allow for a conflict relapse in the future.

Experience shows also that it is necessary to improve accountability on gendered violence, strengthen government's crisis response and recovery plan and create an enabling environment that addresses the militarised environment. Security issues are often erroneously perceived as requiring uniquely military responses whereas issues of human security include women's security and freedom from fear. Therefore, a priority goal across the OSCE region must be to develop concrete mechanisms which will increase women's participation at all levels of decision making and negotiation.

In many countries in the OSCE region, the prevalence of patriarchal values that institutionalise militarised masculinity, the proliferation of arms, the lack of accountability and an environment which enables exploitation, violence and other forms of (political) extremism directly or indirectly induce sexual, gender-based and other

¹³⁰ <https://www.inclusivesecurity.org/topic/national-action-plans/>

¹³¹ "Re-loading UNSCR1325" – study done by e.g. Annemarie Sancar, Swisspeace

¹³² <http://peacewomen.org/why-WPS/solutions>

¹³³ <http://wps.unwomen.org/>

¹³⁴ See summaries and recommendations at <http://civicsolidarity.org/member/1451/working-group-women-and-gender-realities-osce-region>.

forms of violence that impact women disproportionately and prevent their effective and meaningful participation. The Women, Peace and Security Agenda has become increasingly politically-loaded; states are less open to hearing civil society's recommendations and concerns, preferring to present women in the role of victims rather than seeing them as actors for change. This victimisation of women goes against the need for their protection and empowerment as important mediators central to societal transformation.

The obstacles to women's meaningful participation we observe in states across the OSCE region include reduced funding opportunities for local civil society; huge cuts in direct funding for women's organisations; increased military spending and measures of "securitisation", and criminalisation and restrictions of women human rights defenders and feminist peace activists.

Recent counter-terrorism financing (CTF) rules fail to take into account the specifics of organisations led by women and the environments in which they operate, and the potential of women to contribute positively to long term security solutions. In practice, legal and regulatory CTF frameworks often restrict transnational financial flows (e.g., from Western donors to grassroots groups); involve heavy compliance requirements; cause delays in, or block receipt of, funds; favour larger, more-established and often international organisations; require detailed information on civil society's activities, including in some cases about beneficiaries and decrease the appetite of donors and banks for risk - all of which severely impact women's capacity to work practically in conflict situations to achieve peace on the ground in the OSCE region.

In order to combat "shrinking spaces", women-led organisations must work together to push back against these restrictive policies and carry out a substantive dialogue between themselves. Such discussions must take place across borders and must include donors who see small grassroots women-led organisations not simply as "service providers" but who recognize their true transformative potential. Such organizations must be allowed to engage on their own terms with donors and can create supportive partnerships allowing them to carry out necessary and effective work on the ground. Equally, the "Friends of 1325"¹³⁵ must recognise that they must not give with one hand while taking with the other, and take measures to ensure that any security action taken does not undermine women-led civil society. They should also substantially strengthen political, financial and other support for the important work that the women's peace movement does for accountability and action.

If we fail to provide adequate answers to the growth of fear in most of our societies, we will be increasingly occupied with debates centred on "securitisation" rather than focusing on justice, freedom and rights. Current trends lead to emerging nationalism, populism and exclusiveness where strong (male) leaders are seen as the solution. This way lies conflict and we must act in the name of prevention.

RECOMMENDATIONS TO OSCE INSTITUTIONS, POLITICAL BODIES AND PARTICIPATING STATES

- Given the lack of equal participation of women in decision-making and representation of gendered issues, OSCE actors should ensure meaningful participation of women in decision-making structures and at all levels of negotiations, including in conflict resolution activities.
- If a position of a Special Representative on civil society is established by the OSCE Chairmanship, preference in selection of candidates should be given to a woman, given the lack of gender balance in leading positions in the OSCE now.
- OSCE should ensure equal representation of women in field representatives and liaison officers in institutions.
- In OSCE activities on providing protection and support to human rights defenders, special focus should be made on women human rights defenders and their multi-vulnerability and exposure to patriarchal discrimination and sexual violence.

¹³⁵ <http://www.peacewomen.org/content/group-friends-1325>

- Taking in consideration the traditionally patriarchal and hierarchical structure of the media, local and international women's voices should be strengthened in the media reporting.
- OSCE institutions and participating States should work with each other and with other international actors towards full Implementation of the UNSCR 1325 and the Women, Peace and Security agenda.

STRENGTHENING THE OSCE WORK IN THE HUMAN DIMENSION: A DISCUSSION ON THE EFFECTIVENESS OF INSTRUMENTS

In the last few years, the OSCE's ability to ensure effective implementation of its commitments in the human dimension and respond to new challenges has diminished for several reasons, including:

- political divisions among participating States, leading to the absence of consensus on a number of key issues and the actions necessary to address them;
- lack of systematic assessment of the implementation of commitments and follow-up action required to address identified gaps;
- lack of capacity and political will to effectively respond to crisis situations;
- inefficient use of existing OSCE instruments and a lack of resolve and ingenuity to test new approaches;
- attacks by some States on independence and the mandate of OSCE institutions,
- systematic attempts by some States to limit the role of civil society.

In 2014-2016, the Civic Solidarity Platform (CSP) undertook several initiatives to stimulate and advocate for more effective OSCE work in the human dimension. The CSP supported active dialogue among OSCE actors on strengthening OSCE instruments and developed a range of concrete proposals in this regard. The July 2015 Berlin workshop, supported by the then-upcoming German Chairmanship, played an important role in this development. A number of CSP proposals were taken on board in some form or another but promoting others requires additional research, ongoing dialogue among relevant actors, and consistent advocacy.

The CSP believes that the OSCE needs to take new steps to ensure it is able to live up to the Helsinki principles and ensure the effective implementation of the human dimension commitments by participating States. The CSP encourages open dialogue and brainstorming for new ideas among key reform-minded actors.

In order to take this work forward, in 2017 the CSP held a series of three roundtable discussions in Vienna aimed at increasing the support, willingness and ability of key OSCE actors to increase the effectiveness of existing OSCE instruments in the human dimension, to test out new instruments, and empower those actors that saw the need for reform.¹³⁶ Participants in the discussions included representatives of OSCE institutions, delegations of participating States and civil society. They examined the application of existing instruments, recent reform efforts, ongoing challenges, and provided concrete recommendations for 2017-2019. This document summarizes the key conclusions and recommendations made by the participants. A full report of the project will be published separately.

ROUND TABLE 1: STRENGTHENING OF IMPLEMENTATION OF HUMAN DIMENSION COMMITMENTS THROUGH STRONGER FOLLOW-UP TO REPORTS, RECOMMENDATIONS, AND EVENTS

Voluntary reporting to the Human Dimension Committee: prospects for meaningful follow-up

Voluntary reports by participating States to the Human Dimension Committee (HDC) are oral testimonies with the help of visual aids – they are often not distributed in written form and not made available outside the HDC. Currently distribution of the report contents in advance is dependent on the good will of the reporting country. States take decisions regarding the content of and the follow-up to their reports. Over the last six years a tradition of participation has built up, although some States tend to choose easier, “self-congratulatory” topics and avoid the more challenging ones. Lack of specific expertise and preparation time is a serious issue for participants of the HDC meetings, hindering the meaningful discussion of the reports presented.

¹³⁶ The project entitled “Strengthening of OSCE instruments in the Human Dimension” was implemented by the CSP under the coordination of the Netherlands Helsinki Committee with support from the Ministry of Foreign Affairs of Germany, the Taskforce of the Austrian OSCE Chairmanship 2017 and the Delegation of France to OSCE.

The presence of external experts in the room, in addition to the representative of the reporting State, is beneficial for interaction and for the verification of reports. Delegations could invite external government or civil society experts to contribute to discussion of voluntary reports at HDC meetings more often. ODIHR assistance and expertise would be beneficial for the preparation of such reports, and ODIHR experts' presence would help the process of discussion and follow-up.

Some States fear criticism from external experts. The HDC Chair and States should work with their peers to overcome the negative connotations around "criticism" and understand that the purpose of frank discussions is to improve situations on the ground.

To ensure that discussions are more meaningful, a tradition of submitting written reports in advance of meetings (or unofficial "non-reports") should be introduced, in order to ensure that other meeting participants are well prepared for a discussion. This would set precedents for standards and expectations regarding the quality of reports. Suggestions could be included in the guidelines, for example, a paragraph on "How can the OSCE assist?" which would also help with subsequent follow-up. Some States have already been leading by example and have published their reports on the web.

Effective follow-up to voluntary reports could be ensured by:

- encouraging the participation of civil society in the preparation and discussion of the report; civil society could then push for follow-up action;
- discussion of the report and steps for improvement in relevant parliaments;
- publishing reports or summaries to make them accessible to stakeholders to facilitate effective follow-up;
- publishing a summary of the comments and recommendations from external experts (including civil society) and other participating States with the reports.

ODIHR

Legal opinions

Each year, ODIHR departments produce a number of documents presenting the results of monitoring, analysis, and various events. Legal opinions are an important example of this. Since 2004, ODIHR has produced dozens of commentaries on draft laws. These are published online, and ODIHR discusses the results with parliaments, NHRIs, and Ombudspersons. This work requires more follow-up by ODIHR itself, and also improved collaboration with other international organizations.

Securing requests from States for legal opinions from ODIHR is mandatory, but remains challenging. It would be better if ODIHR's legal opinion could be requested via delegations of States in Vienna, OSCE field missions, as well as OSCE PA. It is important that States themselves request ODIHR's opinion more often, persuade their peers to do so, and, most importantly, follow the suggestions of experts and do not reduce these requests for opinions to a mere tick-box exercise. Those issuing requests should also allow reasonable time for the production of a legal opinion.

Election monitoring

In 2016 ODIHR published a Handbook on Election Follow-up, which is available online. ODIHR engages in a number of regional follow-up mechanisms to election observation. States should not only invite ODIHR missions well in advance, agree the necessary number of observers, but also undertake to engage in meaningful improvements of election-related issues in between elections, asking for assistance from ODIHR and other OSCE institutions.

Human rights monitoring

Using information from human rights monitoring conducted by ODIHR is an important part of follow-up to ensure the implementation of existing commitments and guidelines. Monitoring leads to recommendations on standards and remedial recommendations, which ODIHR makes not only to authorities, but also in relation to other stakeholders.

In order to facilitate human rights monitoring, participating States should invite and facilitate ODIHR monitoring missions, extend standing invitations to ODIHR similar to those extended by many states to UN special procedures, lending similar weight to ODIHR missions.

The Chairmanship should fully utilize ODIHR's crisis mandate. The Budapest Document mandates ODIHR to give special support to the Chairmanship in situations of serious human rights violations. This is especially important at times of emergency.

OSCE Parliamentary Assembly (PA)

The OSCE PA has enjoyed enhanced cooperation with ODIHR over the past several years, including in the follow-up on election observation. The OSCE PA and ODIHR present a joint final report on election observation to States, and this is a starting point for follow-up work regarding improvements to the election process and related legislation such as on freedoms of assembly, association, and expression which are necessary pre-conditions for free and fair elections.

The OSCE PA engages in negotiations with States. Multi-lateral discussions could be held in the form of hearings. Possibly the OSCE PA could be an arena for such hearings which would not necessarily concern only the electoral process but could cover related issues of fundamental freedoms.

Follow-up to election observation reports is important, but equally important is its evaluation; the objectives need to be clear and measurable.

Representative on Freedom of the Media (RFoM)

Insufficient follow-up is taken by States on reports and specific cases raised by the RFoM. The RFoM reports biannually to Permanent Council on the work undertaken but only 10 per cent of States reply, and few reply meaningfully. The recommendations contained in legal reviews by RFoM are rarely implemented.

The RFoM usually raises individual cases and sends reminders requesting more information, but does not receive many replies. In serious cases the RFoM follows up publicly, e.g. on the anniversary of murders of journalists, particular cases of impunity, etc.

Standing invitations for RFoM visits would be helpful. Sometimes it took several years for a RFoM visit to be granted by States.

It would be extremely helpful if the Chairmanship and States were to provide more support to the RFoM efforts, encouraging other States to react and to follow up on the RFoM's recommendations.

Human Dimension Implementation Meeting (HDIM)

The HDIM is currently in crisis as each year its agenda is held hostage to politics. The decisions on the agenda often do not reflect the opinion of the majority but merely a "lowest common denominator" compromise.

HDIM currently competes with sessions of the UN Human Rights Council. Moreover, its dates in the second half September allow little time for follow-up before the Ministerial Council meeting takes place in early December. Moving the HDIM to April or May would be preferable, but this move should not be undertaken at the expense of sacrificing the content.

To make HDIM more relevant, its procedures require modification. The chairs of sessions could allocate the first half an hour to a panel discussion, with questions to panelists and no statements. The questions should be short, and not provide an opportunity to make statements. Some delegations could be invited to prepare questions to speakers in advance. Currently, the moderator often gives quite a lengthy introduction which could be shortened, and official speaking time could be reduced. Some HDIM sessions could be organized in parallel break-out sessions with narrower focus requiring expert participation which could allow for more informed discussion on country situations. Some HDIM sessions could possibly be modeled on the UPR process to ensure an open peer discussion between States.

The HDIM report is currently not used to maximum effect - as minutes of the sessions' are taken unevenly by the note-takers. ODIHR and/or the Chairmanship should think of producing a separate perception/ summary paper based on HDIM outcomes, outlining the most important issues and challenges.

ROUND TABLE 2: STRENGTHENING THE MECHANISMS OF REACTION TO ACUTE HUMAN DIMENSION SITUATIONS IN OSCE

Mechanisms of reaction to human dimension crises

Actions by States and the Permanent Council

Participating States should voice important human dimension issues at meetings of the Permanent Council and keep the focus on them by following up at the next meetings. States should coordinate better and closer with civil society, and lead by example. Some of the issues can be addressed bilaterally, some multilaterally; OSCE is bridging the bilateral approach with a multilateral one.

Statements by States at the Permanent Council are important. Examples include reactions to extraordinary situations like the killing of journalists, adoption of undemocratic constitutional amendments or repeated statements by different participating States on protracted crisis situations. The Permanent Council agenda should be published/ shared with others within OSCE institutions, units and field presences, to enable them to prepare contributions. The Permanent Council could be used more effectively to invite ODIHR to report more regularly, where its recommendations could receive vocal support from like-minded States. Relevant statements at the Permanent Council should be made more accessible for civil society.

Joint declarations by like-minded States on various occasions, such as on IDAHO (43 countries signed), on torture and enforced disappearances (signed by 48 countries), on civil society, etc. demonstrate the high level of support of concerned States around difficult human dimension issues.

Likewise, joint statements on crisis situations made by States at HDIM and side events at HDIM organized with their support are important. States could benefit from better cooperation between their delegations and civil society at HDIM.

OSCE Chairmanship

Statements by the OSCE Chairmanship potentially have a strong impact and should be used more often. The Chairmanship has an important role to play in helping to address human rights crises. Such statements should reflect the gravity of the situation in question.

The Chairmanship should appoint special envoys more often to visit countries with a human dimension crisis situation.

Special Representatives' reports are useful for assessing the situation on the ground and can help prevent further negative developments. Unfortunately, the reports of Special Representatives can only be published with the approval of the host countries. The Special Representatives' presence at the Human Dimension Committee meetings at least once a year would be important, depending on what they are allowed to disclose.

Short-term ad hoc Special Representatives of the Chairmanship would be also useful, both to keep focus on the situation and to take pressure off other entities and institutions.

Institutions

The RFoM has been playing the most active role in reacting to crisis situations. Her statements have been used by civil society and the media in various countries to hold their governments accountable.

ODIHR Director's statements are also very important, and for this reason the selection of issues is important.

Human Rights Assessment Missions (HRAMs) are a powerful tool. They are often implemented by ODIHR jointly with the RFoM and HCNM and provide objective information and recommendations. It is recommended that participating States experiencing emerging or existing crisis situations invite HRAM, accept their findings and follow their recommendations.

The results of monitoring by ODIHR of peaceful assemblies and trial observations should be fully utilized and accepted by States.

OSCE has many instruments of reaction to acute human dimension situations at its disposal; they should complement one another. Better coordination between OSCE institutions, States, and civil society is needed and they should make sure that their messages complement one another. Important messages should be repeated by different OSCE actors in various settings so that people understand that certain issue remains in focus and attention will not go away.

The Moscow Mechanism

The Moscow Mechanism (MM) is an important reaction tool for human dimension crises, even if some consider it to be too confrontational. It allows to document human rights abuses, suggest ways to address the crisis, and keep the situation in the spotlight in the OSCE and beyond. In the case of gross human rights violations, it allows the OSCE to attract high level attention to them from the heads of States and the UN. The mechanism also allows the OSCE community to show the highest degree of concern.

There are many ways an MM rapporteur can gather information, even if the State in question refuses to cooperate. One major caveat here is the lack of a formalised follow-up procedure after the submission of the MM report to the Permanent Council. In practice, follow-up to a MM report is any action taken by States, OSCE institutions, or civil society after the presentation of the report. In case a situation in the country in question remains unsatisfactory, a new MM should be invoked.

With a roster of experts full for at least 2020, participating States should not shy away from using MM more actively in situations of protracted or acute human dimension crises.

Inter-dimensional aspects: Reactions to the human dimension crises in the context of violent conflicts

There is a need for better coordination between different OSCE bodies and institutions to react to violent conflicts, as well as for a stronger leadership role of the Chairmanship. The role of ODIHR in conflict situations should be enhanced and supported.

Civil society reports should be utilized more actively by the OSCE. Relevant and professional civil society reports should be used for early warning procedures, situation assessment, and as a basis for action. Civil society has the skills and capacity to carry out effective monitoring on the ground. The need for better communication with civil society missions is obvious, as professional reports by civil society experts are currently underused.

A human dimension crisis may develop swiftly into a security crisis. Therefore, a human dimension crisis should be seen as warning sign for a possible “hard security” crisis. Even if the requirements for consensus amongst states force the compartmentalization of monitoring areas, as in the case of the mainland Ukraine and Crimea, a way to monitor and focus on such areas must be found.

In principle the OSCE already has most of the instruments that are needed for a rapid response to crises. Some of them require modification, political will or creativity in order to be properly and effectively utilized – like the Moscow Mechanism and its follow-up actions. Some tools require further development and routine use in order to be easily used in crises.

In order to guarantee swift access to a country in crisis for monitoring of assemblies, trials, and prisons, a tradition of standing invitations should be introduced in “normal times” by different States to mainstream this approach. HRAMs also should be accepted by the countries in question.

Programs or projects on the security of journalists and HRDs in conflict situations should be developed.

In cases when the human dimension situation is deteriorating while the monitoring access to the country is limited and a rapid response mechanism cannot be used, a Chairmanship action could and should be taken.

ROUNDTABLE 3: INTRODUCTION OF MORE SYSTEMATIC AND DIVERSE WAYS OF INTERACTION WITH CIVIL SOCIETY IN OSCE

Positions of OSCE institutions and entities towards engagement with civil society

ODIHR and RFoM work in close contact with civil society in a systematic manner. HCNM has a non-public mandate, and possibilities for closer work with non-academic or broad expertise NGOs are worth exploring. An initial contact with the Secretariat and the Conflict Prevention Centre has been established, but this needs pursuing further.

ODIHR engages civil society in the development of guidelines, for the work of expert panels and organisation of human dimension events. ODIHR sees a need to expand and reach out to organizations that are not within the traditional scope of the OSCE, to use instruments that will enhance the effect in civil society and have a spill-over effect on communities. There is a need to overcome societal distrust towards international organizations and raise awareness about OSCE’s role. Trust should be built through civil society, which can play a central role in offering solutions to address human dimension problems.

ODIHR provides training for civil society on monitoring of elections, assemblies and trials according to ODIHR’s standards. The use of civil society reports from places where ODIHR and other OSCE institutions now have access to, has increased, and such reports are seen of a great value. However, they could be used still further.

The OSCE work on agenda setting and reaction to human dimension problems should better utilize results of monitoring by civil society on the ground and respond to issues raised by them.

Should participating States not consent to host an official observation mission, OSCE actors should use NGO observation reports more actively. NGOs are able to conduct observation missions according to the established methodology of OSCE institutions. Their materials and conclusions should be studied and taken into account by the Chairmanship and the Human Dimension Committee. The results of election observations, trials and peaceful assemblies by NGOs should receive proper consideration and follow-up, especially when ODIHR or other OSCE institutions' observation missions are not allowed into the country.

Currently there is no OSCE mechanism for collecting information from NGOs on early warning on crises and conflicts. NHRIs should have a larger role in this respect, but in autocratic countries, where NHRIs are not independent this is unlikely to work. There is a lack of mechanisms in OSCE which are able to fully utilize what civil society has to offer. In crises situations, there is a need for designated entry points to whom civil society can submit their information and proposals. Coordination, communication and cooperation with civil society regarding early warning, monitoring and fact-finding should be enhanced through establishing permanent communications channels.

The OSCE Secretariat and the Conflict Prevention Center should develop their own mechanisms for interaction with civil society. This could include, in particular, an NGO contact point for human dimension emergencies and crisis situations. Communications should be held both on problems with implementation of commitments and country situations.

Chairmanship and the Ministerial Council meetings

For several years in a row, cooperation with civil society has been a priority for successive Chairmanships. This experience should be reviewed and analyzed and cooperation developed further on the basis of lessons learned.

Civil society should be consulted in the process of drafting and discussing decisions of the Ministerial Council related to the human dimension. This could be done by the Chairmanship and interested State delegations, either informally or through a new more formalized procedure.

Since 2014, expert seminars and roundtable discussions have been regularly held by civil society throughout the year on human dimension issues, and the results fed into outcome documents of the annual Civil Society Parallel Conference. This experience has been successful and should be built upon in the coming years and supported by incoming Chairmanships, OSCE institutions and States.

Regular group meetings between representatives of participating States and civil society over the year would also help to enhance communication and make it more systematic. Communication could be also improved by the production and dissemination among State delegations of regular newsletters with a list of upcoming civil society events and links to recent reports and statements. Similarly, regular information from OSCE institutions, political bodies and State delegations distributed among civil society groups would improve the situation.

It is important that civil society recommendations delivered to the Chairmanship/Troika and heads of institutions at the end of the Parallel Civil Society Conferences are followed up. A creative way should be found to allow civil society to present a summary of the recommendations directly to the participants of the Ministerial Council meeting. The recommendations should be presented and discussed in detail at a meeting of the Human Dimension Committee at the start of the year to give an impetus to possible actions. The recent tradition of inviting civil society to HDC meetings should be expanded.

Dangers and retaliation

Civil society is perceived by some states not as a solution to problems but rather as a part of the problem, a dangerous troublemaker, demanding the impossible. Alarming initiatives are increasingly proposed by some participating States, aimed at limiting civil society's role in OSCE activities. There is also a growing number of instances of reprisals against NGOs for their engagement with the OSCE and other international bodies.

We consider it of paramount importance for the OSCE to firmly adhere to the principle of inclusive NGO participation spelled out in the OSCE documents, in particular, the Helsinki Document of 1992 and the Budapest Document of 1994, and ensure the safety of those NGOs and activists who experience pressure for their engagement with the OSCE.

CONDITIONS FOR PEACE IN THE GREY ZONE OF THE DONBAS CONFLICT: HUMANITARIAN AID, HUMAN RIGHTS PROTECTION, BUILDING TRUST

According to data from the UNHCHR Monitoring Mission in Ukraine, since the start of the armed conflict in eastern Ukraine in April 2014 to 15 May 2017, there have been 34,056 casualties amongst the civilian population, Ukrainian soldiers and members of illegal armed units.¹³⁷ This figure includes 10,090 deaths (of which at least 2,479 are civilians) and 23,966 injured. In the period 2014-2017, 314 people have been reported missing on both sides of the demarcation line according to data from the Ukrainian civil organisation 'Mirnyi bereg' ('Shore of Peace').¹³⁸ Non-governmental organisations of the coalition "Justice for the Sake of Peace in Donbas" report that in 2014 over 14,864 buildings/facilities in Ukrainian government controlled territory and more than 3,665 on territory controlled by illegal armed units in Donbas were destroyed. These figures have been confirmed by the Norwegian Refugee Council.¹³⁹

All these losses are accompanied by numerous war crimes and crimes against humanity, which have been recorded by non-governmental organisations, as well as official law enforcement agencies. These events have a pronounced negative effect on the lives of the civilian population across Ukraine, especially in the so-called "grey zone" – areas situated close to the line of contact and in the districts of the Donetsk and Luhansk oblasts not controlled by the Ukrainian government, or PDDLLO.¹⁴⁰

Violations of the ceasefire continue on both sides: OSCE Special Monitoring Mission (SMM) reports that so far in 2017 some 411 civilian casualties have been recorded.¹⁴¹ OSCE observers' access to monitor the ceasefire is limited in many places on both sides of the line of contact, particularly in the PDDLLO on the border with the Russian Federation.

The intensity of shelling, which decreased after the signing of the Minsk-2 agreement in February 2015, increased again in 2016. Field missions run by International Partnership for Human Rights (IPHR) and Truth Hounds in areas under Ukrainian government control, interviewed some 80 people from 10 towns in Donetsk and Luhansk oblasts who had been subjected to shelling a total of more than 60 times from December 2016 – March 2017 alone. The missions also collected information on victims of shelling and analysed 113 shell craters.¹⁴²

The priority **issue of control of the border with Russia** – an essential prerequisite for the reintegration of the uncontrolled districts into Ukraine – remains unresolved.

The humanitarian situation in the conflict zone remains very troubling: key sources of danger for inhabitants, other than direct shelling, include mines, unexploded shells and the remnants of explosives. According to the Norwegian Refugee Council's "Humanitarian Responses Plan", the armed conflict affected around 4.4 million people in 2017, of whom around 4 million required humanitarian aid (an increase of 200,000 people since the start of the year). Civilians living in the "grey zone" on both sides of the contact line are most in need of humanitarian aid. Many people have left the conflict zone and live as internally displaced people elsewhere in Ukraine and as refugees abroad. As of November 2017, there were around 1,494,806 internally displaced people registered or 1,219,467 families from eastern Ukraine and Crimea (data from the Ukrainian Ministry of Social

¹³⁷ http://www.ohchr.org/Documents/Countries/UA/UAReport19th_EN.pdf

¹³⁸ The report "Executed in Donbas: The facts of torture and executions in the East of Ukraine", 2017 <https://mb.net.ua/wp-content/uploads/2017/09/angl.pdf>

¹³⁹ <https://www.nrc.no/countries/europe/ukraine/>

¹⁴⁰ This abbreviation denotes "Particular districts of the Donetsk and Luhansk oblasts" (Rus: ОПДЛО) and is used in the text of the Minsk agreements regarding areas which are not under Ukrainian government control.

¹⁴¹ SMM OSCE report as of 1 November 2017, <http://www.osce.org/ru/special-monitoring-mission-to-ukraine/354631?download=true>

¹⁴² The report "Hot Winter 2016-2017: Analysis of shelling of towns in Eastern Ukraine" <http://truth-hounds.org/wp-content/uploads/2017/08/%D0%A1%D0%BF%D0%B5%D0%BA%D0%BE%D1%82%D0%BD%D0%B0-%D0%B7%D0%B8%D0%BC%D0%B0-2016-2017-1.pdf>

Politics).¹⁴³ IDPs' political rights are currently restricted and they are subjected to discrimination. A clear strategy for their re-integration and return is still lacking in Ukraine.

Vital services have been disrupted in many populated areas that have suffered from the armed fighting, especially in zones on the front line; civilians in some settlements have limited access to employment, medical care¹⁴⁴, and supplies such as food, heating, electricity and water.

Freedom of movement across the contact line remains a serious problem: up to 36,000 civilians cross the contact line daily at five checkpoints to see family, maintain properties, access health care and social benefits on Ukrainian-controlled territory. Freedom of movement is complicated due to damaged infrastructure, but also due to a strict system of permits that has been introduced for crossing the line of demarcation, leading to lengthy waiting times for those wishing to cross.

Human rights are not protected in the conflict zone. According to the Irina Herashchenko, the Ukrainian Presidential Representative for peaceful resolution of the conflict in Donbas, the authorities of the so-called 'LPR' and 'DPR' continue to illegally detain 152 Ukrainian citizens, and 402 people are unaccounted for in Donbas.¹⁴⁵ Such 'arrests' are sometimes accompanied by attempts by the authorities of the so-called 'LPR' and 'DPR' to imitate trials based on hybrid law, comprised of the criminal codes of Ukraine and Russia, but generally fair trials or due legal process are not guaranteed to the population of PDDL. Since the Ukrainian judicial system is no longer used on the territory¹⁴⁶, the population of PDDL has to cross the demarcation line in order to access it. Freedom of speech, association, religion and the right to peaceful protest are no longer guaranteed as FIDH reports.¹⁴⁷

It is difficult to assess the scale of human rights violations in PDDL. Illegal armed units have obstructed independent monitoring of the situation by Ukrainian and international human rights organisations. The monitoring and humanitarian work of international organizations including the UN, the International Committee of the Red Cross and the OSCE, has also been blocked by the de-facto authorities of the PDDL and Russia. Although the UN Human Rights Mission in Ukraine has an office in Donetsk, their capacity to carry out monitoring in PDDL is extremely limited.

In the 'grey zone' on Ukrainian-controlled territory, a civilian-military administration has been introduced, but it is unable to effectively cover all populated areas near the contact line due to a lack of qualified personnel and also the fact that some places are inaccessible due to damaged infrastructure. As internet and news services are inaccessible in the 'grey zone', the inhabitants of these areas lack information about their rights.

The international community is also paying now much less attention to the situation in Donbas. International media barely cover developments in the dramatic humanitarian and legal situation, giving the impression that the conflict in the east of Ukraine is frozen or solved, despite the fact that the confrontation in this region continues. Only selected political and diplomatic representatives of Western countries have certain information about the current situation, thanks to the active information and advocacy work of international and Ukrainian non-governmental organisations.

Work to mitigate the consequences of the armed conflict and ensure the protection of human rights in the east of Ukraine has only just begun. Numerous international and humanitarian organisations in cooperation with Ukrainian, Russian and European humanitarian initiatives, are working to minimise the humanitarian consequences of the conflict for civilians. Several associations of Ukrainian and international human rights organisations have been created to document violations of human rights and war crimes, to search for missing persons and to provide legal support for victims. In addition, a special government agency, the "Ministry for the

¹⁴³ <http://www.msp.gov.ua/news/14396.html>

¹⁴⁴ https://jfp.org.ua/system/reports/files/76/uk/Justice_for_peace_in_Donbas_Alternative_Healthcare.pdf

¹⁴⁵ <http://portal.rada.gov.ua/news/Povidomlennya/150688.html>

¹⁴⁶ <http://ccl.org.ua/en/reports/report-justice-in-exile/>

¹⁴⁷ <http://ccl.org.ua/en/reports/zvit-tyvilne-naselennya-pid-perehresnym-vozhnem/>

Temporarily Occupied Territories and the Affairs of Internally Displaced People”, has been set up in Ukraine, and new legislation adopted to mitigate the consequences of the conflict.

Based on their experience of work in the conflict zone in eastern Ukraine, members of the Civic Solidarity Platform agree that the necessary prerequisites to restore human rights and peace in the conflict zone in the east of Ukraine include:

1. Restoration of security by ensuring a lasting ceasefire, demilitarisation of the territory and the restoration of Ukrainian control over the border with the Russian Federation.
2. Restoration of fundamental rights and freedoms and provision of minimum levels of socio-economic protection of the population in the conflict region.
3. Release of all prisoners and amnesty of participants in the conflict in line with international practice.
4. Active work of civil and human rights organisations to engage all actors in the conflict zone in dialogue on the prospects of restoring justice and peaceful coexistence.

We call on all OSCE participating States, particularly Italy as the country holding the OSCE Chairmanship in 2018, to use their influence to translate the following recommendations into action:

1. Within the framework of both the regular work of the OSCE and the Minsk process, motivate all parties involved in the resolution of the conflict to achieve concrete improvement in the situation for the civilian population and create preconditions for long-term peace.
2. Obtain guarantees from the authorities of the so-called ‘LPR’ and ‘DPR’ that international monitors of the security regime and the human rights situation will be allowed unhindered access to all the territory of PDDL0 and that deliveries of humanitarian aid will be allowed unhindered to the territory of PDDL0.
3. Strengthen international political and public pressure on the Russian government to cease its military, financial and political support for the de-facto authorities of PDDL0.
4. Strengthen international political and public pressure on Ukraine to guarantee legal and social protection of the population in the conflict zone.
5. Support the work of civil society organisations advocating for the resolution of problems connected with the armed conflict and promoting accurate reporting and coverage of the situation in Donbas in their countries.
6. Support the development of civil society in the conflict region by providing financial, informational and technical support to civic organisations, through projects aimed at strengthening trust and dialogue between different groups of the population, with the participation of both national and international partners, including collaboration with local government structures.

We call upon the OSCE political bodies, institutions, and participating States to influence the authorities of the Russian Federation to ensure that they:

1. Cease military, financial and political support for the de-facto authorities of PDDL0.
2. Guarantee the release of prisoners of war and civilians illegally detained by the authorities of the so-called ‘LPR’ and ‘DPR’ and free Ukrainian political prisoners who are being held in prisons in Russia and Crimea.
3. Guarantee access of international organisations to PDDL0 with the aim of effective monitoring of the security regime and human rights violations as well as providing humanitarian aid.
4. Guarantee the possibility for Ukraine to control the border with the Russian Federation.
5. Cease systematic media efforts to escalate aggression and misunderstanding, as well as the language of hate in the zone of armed conflict.

6. Cease persecution of human rights organisations as well as their individual members, whose work is aimed at peaceful transformation of the conflict as well as at support of international projects in this sphere.

We call upon the OSCE political bodies, institutions, and participating States to influence the authorities of Ukraine to ensure that they:

1. Guarantee the observation of constitutionally guaranteed fundamental rights and freedoms in the conflict zone and the provision of necessary socio-economic support to victims of the conflict.
2. Bring the Criminal and Criminal Procedural Codes in line with international humanitarian law and international criminal law, and ratify the Rome Statute of the International Criminal Court.
3. Guarantee the effective and independent investigation and prosecution of perpetrators of all serious violations of human rights and international crimes in the conflict zone, guarantee fair trials to the alleged perpetrators, regardless of their side, and guarantee adequate redress to all victims.
4. Cease detention of individuals in unofficial and extra-judicial places of imprisonment and carry out effective investigations into cases of illegal detention reported by international human rights organisations.
5. Adopt a comprehensive national strategy regarding the territory of PDDL0 which is under the effective control of the Russian Federation, guaranteeing educational, medical, legal and other services for people there, including job creation on territories under Ukrainian jurisdiction to facilitate re-integration for these populations in the future.
6. Eliminate discriminatory legislative provisions which disproportionately limit the rights of internally displaced persons and inhabitants of occupied Crimea and parts of the Donetsk and Luhansk oblasts, which are under the effective control of the Russian Federation, in particular the resolutions of the Government of Ukraine №1035 from 16.12.2015 and №509 from 01.10.2014. Provide a mechanism to guarantee voting rights for internally displaced persons.

Work on joint analysis and recommendations on various aspects of conflict management in Donbas continues, in particular in the framework of the European civil platform CivilMPlus.

HUMAN DIMENSION ISSUES IN AUSTRIA: KEY AREAS OF CONCERN AND RECOMMENDATIONS

In June 2016, a small group of Austrian non-governmental organizations (NGOs) accepted the invitation of the Civic Solidarity Platform (CSP) to learn about the platform, its goals and work programme as well as about its planned activities with regards to the upcoming Austrian OSCE chairmanship in 2017. At the invitation of the CSP, ZARA – Zivilcourage und Anti-Rassismus-Arbeit – drafted a brief overview of the situation in Austria covering the most significant and pressing human dimension issues in Austria with a strong focus on its area of expertise, racism. The Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern (Litigation Association of NGOs against Discrimination) assisted with the relevant parts on the equal treatment law.

The resulting document “Human Dimension Issues in Austria” was published in the Outcome Document of the Parallel OSCE Civil Society Conference in Hamburg in 2016.¹⁴⁸ Although many of the recommendations from that document remain pertinent today, other important issues have emerged over the past 12 months. We hope that this analysis and recommendations will be helpful in formulating and implementing policies to tackle the country’s many human dimension issues.

RACISM / HATE SPEECH ONLINE/ INTOLERANCE / INTEGRATION OF MIGRANTS

Combating racism and intolerance has been hampered in Austria by insufficient and over-complicated legislation, discriminatory provisions by local authorities, government reluctance to collect and harmonize data on racism, an unwillingness to investigate police misconduct and the spread of racist and xenophobic attitudes in the mainstream media. As a result, 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.

Legal situation

Constitution

The Austrian Constitution¹⁴⁹ 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 but not to aliens. This provision made it possible to exclude third-country nationals from receiving social, housing and family benefits. The EU Directive concerning 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 refugees continue to be excluded.¹⁵⁰

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 Laws and Institutions

There are approximately 60 state and federal anti-discrimination laws. The sheer number of laws dealing with anti-discrimination has led to a plethora of uncertainties and legal gaps, where the legal competence of bodies responsible for overseeing equality is severely restricted. Public awareness of anti-discrimination legislation and

¹⁴⁸ Outcome Documents of the OSCE Parallel Civil Society Conference 2016. Hamburg: Civic Solidarity Platform. http://www.civicsolidarity.org/sites/default/files/parallel_civil_society_conference_outcome_documents_hamburg_december_2016_final.pdf, [29.11.2017].

¹⁴⁹ Art 7 para. 1

¹⁵⁰ ZARA, UPR Shadow Report Austria, Oct 2010, pg. 2

the relevant bodies responsible is poor, especially amongst minority groups.¹⁵¹ A recent survey among members of ethnic minorities conducted by the EU Fundamental Rights Agency, published in September 2017, showed that only 21% of the interviewees in Austria had heard of at least one equality body in their country; the EU-average was 35%).¹⁵²

Nevertheless, some progress has been achieved. On 1 July 2017 a regulation of the Federal Chancellor came into effect which expanded the competencies of regional offices of the Ombuds Office for Equal Treatment (Gleichbehandlungsanwaltschaft)¹⁵³ to include equal treatment on grounds of ethnic origin, religion or belief, age or sexual orientation in the workplace, in addition to equal treatment on grounds of gender and ethnic origin in other areas.

Recommendations

- Despite some amendments, the Equal Treatment Law currently in force does not offer adequate and effective protection against racial discrimination. To date, effective legal tools to combat discrimination are still absent in the private sector, including the access to and supply of goods and services on grounds of religion, sexual orientation or age. Furthermore, the options available to sanction offenders are insufficient. Therefore, a comprehensive legal anti-discrimination package that streamlines state and federal laws should be developed in consultation with NGOs.
- The human rights infrastructure needs to be supported through awareness-raising campaigns and training; providing contact points for victims and witnesses of discrimination; supplying NGOs with adequate resources and actively monitoring the implementation of anti-discrimination policies.¹⁵⁴

Aliens' Police Act

On 1 November 2017 an amendment to the Aliens' Police Act came into effect, entailing severe consequences for some asylum seekers, that has been heavily criticized by NGOs and human rights defenders.¹⁵⁵ For example, the previous regulation stipulated that detention of asylum seekers on the grounds of the same act may not exceed six months in one calendar year unless there are specific circumstances that warrant an extension.¹⁵⁶ The amendment to this Article now extends the period of potentially uninterrupted detention to 18 months.¹⁵⁷ Furthermore, the (knowing) submission of fraudulent information during the examination of the entrance or entry criteria can now result in a fine of up to 5,000 Euro.¹⁵⁸ The Austrian Ombudsman Board (Volksanwaltschaft) raised concerns that affected persons are no longer informed about deportation dates, meaning they do not have enough time to collect their belongings.¹⁵⁹

Recommendations

- Refrain from holding asylum seekers in detention for lengthy periods of time, as described in article 80(7);
- Take into account that due to their traumatic experiences and other circumstances, refugees may not be able to provide the necessary truthful information in initial interviews and remove punitive fines.

¹⁵¹ Klagsverband, Anti-Discrimination Law in Austria, December 2014, pg. 1

¹⁵² http://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-eu-minorities-survey-muslims-selected-findings_en.pdf, pg. 37-38.

¹⁵³ http://www.gleichbehandlungsanwaltschaft.at/site/cob__67171/6880/default.aspx

¹⁵⁴ ZARA, UPR Shadow Report Austria, Oct 2010, pg. 3

¹⁵⁵ <https://www.asyl.at/de/information/stellungnahmen/>

¹⁵⁶ https://www.parlament.gv.at/PAKT/VHG/XXV/SNME/SNME_08640/imfname_608526.pdf, pg. 6.

¹⁵⁷ https://www.parlament.gv.at/PAKT/VHG/XXV/SNME/SNME_08640/imfname_608526.pdf, pg. 7.

¹⁵⁸ https://www.parlament.gv.at/PAKT/VHG/XXV/SNME/SNME_08640/imfname_608526.pdf, pg. 7.

¹⁵⁹ https://volksanwaltschaft.gv.at/downloads/b7cqj/Fremdenrechts%C3%A4nderungsgesetz_2017.pdf

While the authorities have improved their response to acts of online hate speech, there remain considerable shortcomings in Austria's Criminal Code. Racist acts committed over the internet have significantly increased in recent years.¹⁶⁰ Austria has still not ratified the additional protocol to the Convention on Cybercrime, which would provide the necessary tools. This means that “incitement of discrimination without context to violence or hate [and] ... Material that promoted or incites discrimination that is not associated with hatred or violence”¹⁶¹ is not covered by the criminal code. The criminal code also limits punishment to perpetrators who disseminate racist or xenophobic material “in a manner of justifying or endorsing the content.”¹⁶²

Recommendation

- Ratify the Additional Protocol to the Convention on Cybercrime which include procedural and international cooperation provisions covering offences of racist and xenophobic cyber propaganda to improve the criminalization of acts of racism and xenophobia committed through computer systems.

The Islam Act 2015 and the Anti-Face Veiling Act 2017

As described in detail in Farid Hafez's “European Islamophobia Report”, islamophobia has become more widespread in Austria, with the first legal restrictions being implemented in 2008.¹⁶³ Against the background of the Islam Act 2015, replacing the previous act dating from 1912, the most recent ECRI report on Austria from 2015 states: “Until now, Muslims could set up associations, religious communities and religious societies, which are composed of one or more communities of worship. 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).”¹⁶⁴ This could leave Islamic religious societies vulnerable to being exploited for political reasons. Furthermore, the Venice Commission concluded that the “blanket prohibition on all foreign funding (...) is arguably unreasonable, and not necessary in a democratic society.”¹⁶⁵ The 2015 Islam Act could be regarded as a reaction to the growing suspicion towards Muslims, particularly as other religious organizations are treated differently.

This notion has recently been strengthened with the 2017 Anti-Face Veiling Act (also known as the anti-burqa law) which has been greeted with international skepticism.¹⁶⁶ Although the law is drafted neutrally with regard to religion, it seems to be politically directed against the veiling of Muslim women, despite the fact that there are thought to only be around 80 persons who practice full-face veiling.¹⁶⁷ Accordingly, the Austrian Bar Board (Rechtsanwaltskammer) argued that the new legislation, which punishes any form of facial covering in public with fines of 150 Euros, was “equally as unnecessary as it is inappropriate, as well as constitutionally dubious.”¹⁶⁸ While the law does not apply to professionals who need to cover their faces, the implementation has led to unintended consequences: Cyclists wearing scarfs have been stopped and a man was fined for wearing a shark mask.¹⁶⁹

¹⁶⁰ ZARA, Statistik 2016, 2016, https://www.zara.or.at/_wp/wp-content/uploads/2017/03/ZARA_Statistik_2016_Detail__Internet.pdf, pg. 1

¹⁶¹ ZARA, Comments on the Implementation of ECRI's Priority Recommendations (ECRI Report 2015) 2017 pg. 2.

¹⁶² ZARA, Comments on the Implementation of ECRI's Priority Recommendations (ECRI Report 2015) 2017pg. 3.

¹⁶³ http://www.islamophobiaeurope.com/reports/2015/en/EIR_2015.pdf, pg. 26.

¹⁶⁴ ECRI Report Austria, 2015, pg. 28.

¹⁶⁵ Venice Commission, 2003. 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), pg. 47.

¹⁶⁶ http://diepresse.com/home/kultur/medien/5300216/Funny-Joke_Internationaler-Spott-ueber-Austrias-AntiHijab-Law

¹⁶⁷ <http://www.osce.org/odihr/343366?download=true>

¹⁶⁸ <http://orf.at/stories/2382608/2382621/>

¹⁶⁹ https://www.washingtonpost.com/news/worldviews/wp/2017/10/09/austria-wanted-to-ban-burqas-now-it-also-fines-mascots-and-stops-cyclists-who-wear-scarves/?utm_term=.06fd55164d7c

Recommendations

- Muslim communities' right to freedom of religion and freedom from discrimination should be protected;
- Implement OSCE recommendations on the draft of the Islam Act 2015¹⁷⁰ that indicated greater autonomy should be given to religious societies and that the ban on foreign funding would need to be carefully worded in order to prevent religious societies from being exploited for political reasons;
- Implement OSCE recommendations to remove provisions on the freedom of peaceful assembly, to address such issues under existing legislation where applicable, and to only close down religious organizations as a last resort, if previous penalties and sanctions do not have the desired effect.
- Legally and practically implement the findings of the European Court of Human Rights, which concluded that a state may place restrictions on religions to protect a democratic society, but such restrictions must "correspond to a pressing social need and must be proportionate to the legitimate aim pursued."¹⁷¹

Emergency decree on asylum

In 2016, Austria drafted an emergency decree preventing asylum seekers from entering Austria once an annual quota of 37,500 persons has been reached. The move was aimed to curb asylum claims following the record 90,000 asylum applications received in 2015. The governing coalition claimed that uncoordinated migration would "put pressure on Austria's labor market, housing market and challenge public security."¹⁷² This measure eventually seemed redundant as in 2016 only 22,307 asylum applications were accepted,¹⁷³ totaling to 0.26% of Austria's population for that year (8,699,700).¹⁷⁴ This was not the first time that the so-called "refugee crisis" has been used by a European country to warrant extraordinary measures that run contrary to national and international law. Furthermore, the emergency decree contravenes Austrian commitments under the Geneva Refugee Convention and the European Convention of Human Rights, which are integrated into its Constitution. Austria is obliged to fulfill these obligations and neither legal instrument includes any limit on the number of refugees.

Recommendation

- The Austrian authorities should rescind the emergency decree that runs counter to its Constitution. The authorities should also cease referring to the "refugee crisis" as a threat to social and state security.

Police

For the past 17 years, ZARA's counseling unit for victims and witnesses of racism has documented improper behavior by law enforcement officials, including disrespectful behavior, threats, violence and ethnic/racist profiling. The results show that the discriminatory practices of some police officials have reduced trust in the police service whose primary purpose should be to protect and ensure security for everyone. Impunity is a persistent problem: when the competent police departments assess allegations of racist violence by police officers, the alleged perpetrators are often absolved of any criminal offenses before the case has even been investigated. There are currently no legal provisions that guarantee the independence of these investigations and assessments.¹⁷⁵

Recommendation

- Establish an independent mechanism to investigate improper behavior, discrimination and violence by police officers against ethnic minorities as well as allegations of ethnic profiling.

¹⁷⁰ OSCE/ODIHR, "Opinion on the Draft Federal Law of Austria Amending the Law on the Recognition of Adherents to Islam as a Religious Society," November 7, 2014. Site: <http://www.osce.org/odihr/126575>

¹⁷¹ European Court of Human Rights on Sect/Cult issues, §56, pg 11. Site: <http://www.hrwf.net/images/reports/2013/2013jurisprudence.pdf>

¹⁷² https://www.parlament.gv.at/PAKT/PR/JAHR_2016/PK0928/

¹⁷³ http://www.bmi.gv.at/301/Statistiken/files/Jahresstatistiken/Jahresstatistik_Asyl_2016.pdf, pg. 7.

¹⁷⁴ http://wko.at/statistik/jahrbuch/2016_k3.pdf, pg. 1.

¹⁷⁵ UPR Shadow Report Austria, ZARA, Oct 2010, pg. 3

Politics and the media

The Freedom Party of Austria is one of the most dominant players in the right-wing movement and has spent years bringing racist ideologies back onto the political spectrum. As a result, anti-Muslim racism, ethnopluralism, and xenophobia have increasingly found their way into the discourse of other parties and groups as well as the mainstream media.¹⁷⁶ The 2015 ECRI report claimed that “certain media publish clearly racist content and do not respect the Press Council’s decisions and members of vulnerable groups are given too little space to express their views. Hate speech on online forums is not systematically monitored; such content was also posted on the web pages of the Federal President and several ministers. There are no official statistics on homophobic and transphobic incidents; numerous racist, homo- and transphobic acts go unreported.”¹⁷⁷ Anti-Muslim racism and ethnopluralism have become particularly popular as they label certain sections of the population as “others” and present them as posing 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 falsehoods. The media potentially has the opportunity to fulfill its democratic responsibilities by implementing ethical standards and using corrective measures, but unfortunately, insufficient research and political agendas mean that instead it often promotes and encourages discriminatory prejudices.

Recommendation

- In order to tackle newspapers that are detrimental to a functioning democracy, media subsidies should be used 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).

Social media and Online Hate Speech

After paying little attention to the rise of hateful, harmful, and discriminatory content on social network sites (SNS) despite early warnings from civil society¹⁷⁸, members of the Austrian government have started to react to these worrisome developments. ZARA’s counseling unit for victims and witnesses of racism received significantly more reports on online hate in 2016 than in previous years, and the upward trend has continued unabated.¹⁷⁹ The majority of reports received by ZARA include hate speech against refugees and Muslims, which have increasingly become the target for hostile comments and discriminating offences. Often refugees and Muslims are lumped together and some social network sites have become hubs for the 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 a user demanded that the concentration camp Mauthausen should be re-opened and that refugees should be sent there.¹⁸⁰ Some media outlets have further contributed to this by re-publishing controversial content from social networks in order to deliberately increase their audiences, without prior fact-checking.¹⁸¹ Hate speech is also often posted in the online comment section of media websites, which sometimes fail to monitor and remove such content.

Overall, the level of public awareness of this phenomenon has increased, but social media platforms do not always remove offensive content quickly enough. Although Twitter, Facebook, Google and Microsoft agreed with the European Commission on a code of conduct on countering illegal hate speech, monitoring exercises conducted by

¹⁷⁶ Edma Ajanovic & Stefanie Mayer, “Racism in political discourse” in ZARA, Racism Report 2015, pg. 76

¹⁷⁷ ECRI Report Austria, 2015, pg. 9-10.

¹⁷⁸ ZARA Racism Report 2010, Cyber Hate, March 2011, pg. 63-69

¹⁷⁹ ZARA Racism Report 2016, Internet statistics, March 2017, pg. 12

¹⁸⁰ “Kick them back into the sea” - Online hate speech against refugees, INACH, November 2016

¹⁸¹ Markus Huber, “Too far away from the population,” 2016. Site: Fleischmagazin.at

civil society organizations such as ZARA have shown that although removal procedures have improved overall, much clearly illegal content remains online.¹⁸²

Until the beginning of 2016, the legal situation posed another obstacle, as the Austrian criminal code §283 “incitement to hatred” only protected groups on grounds of “race,” skin color, language, religion, ideology, citizenship, descent or national or ethnical origin.” An amendment to the criminal code came into effect in 2016 to ensure the article affords protection to foreigners, migrants, refugees and asylum seekers.¹⁸³

In 2016, some politicians have taken up the issue on a broader level and started inter-institutional campaigns in close cooperation with civil society organizations such as the initiatives #GegenHassImNetz and #DigitaleCourage followed in 2016. Muna Duzdar, State Secretary for Diversity, Public employment and Digitalization, initiated the establishment of a counseling service for victims of online hate and cyber mobbing which is operated by ZARA.¹⁸⁴ The newly established service helps internet users that are affected by hate speech, smear campaigns and cyber bullying to take effective action against harmful and discriminatory online content and against those who have posted it.

Recommendations

- Provide stable funding and support to counseling and support services against online hate (Beratungsstelle #GegenHassimNetz) and
- Support structures such as the National Committee No Hate Speech and the Network Against Online Hate (Netzwerk #GegenHassimNetz) to ensure information exchange, knowledge transfer and fruitful cooperation between civil society organizations, public institutions, academics and other relevant stakeholders;
- Support civil society organizations to monitor and analyze removal practices as agreed upon in the code of conduct on countering illegal hate speech between the European Commission and IT companies;
- Require online news platforms to minimize the spread of hate speech by developing and implementing ethical standards, code of conducts and procedures.
- Establish monitoring and analysis of online content to gather information about the authors of hate speech, their messages and aims;
- Follow the 2017 recommendations of the International Network Against Cyber Hate (INACH)¹⁸⁵ and take measures to “improve feedback on reports by trusted flaggers and regular users [...] [and to] provide sufficient information on how take-down procedures are executed and on what basis.”
- Adopt the INACH 2017 Recommendation to state authorities: “to provide NGOs with a mandate and funds to take cases to court.”¹⁸⁶
- Adopt the INACH 2017 Recommendation: “Governments should support capacity building in order to create a national and international infrastructure to combat online hate speech. This includes guaranteeing that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat hate speech include (where appropriate) sanctions for infringements and the provision of adequate reparation to victims of hate speech.”¹⁸⁷

¹⁸² Positives Resultat der 2. Überprüfung der Löschrouten illegaler Online Hetze, Presseaussendung ZARA, 01.06.2017, <https://www.zara.or.at/index.php/archiv/10219#more-10219>

¹⁸³ CounterACT! – Aktiv gegen Hass und Hetze im Netz, Site: <https://www.counteract.or.at/know-more/>

¹⁸⁴ Die Beratungsstelle #GegenHassimNetz startet heute, Presseaussendung ZARA, 15.09.2017 <https://www.zara.or.at/index.php/archiv/10363#more-10363>

¹⁸⁵ INACH, “Hate speech-the online threat to democracy,” October 12, 2017. Site: http://www.inach.net/fileadmin/user_upload/INACH2017Final_Recommendations-OSCE.pdf, pg. 2

¹⁸⁶ INACH Conference 2017, “Hate speech-the online threat to democracy,” October 12, 2017. Site: http://www.inach.net/fileadmin/user_upload/INACH2017Final_Recommendations-OSCE.pdf, pg. 2.

¹⁸⁷ INACH Conference 2017, “Hate speech-the online threat to democracy,” October 12, 2017. Site: http://www.inach.net/fileadmin/user_upload/INACH2017Final_Recommendations-OSCE.pdf, pg. 2.

- Lead by example – state representatives and institutions should take a clear position against hatred on the internet to support victims of online hate;
- Trainings on countering cyber hate should be provided educational and youth workers but also employees of the judicial and security sector so that all relevant actors and multipliers can acquire the necessary competencies to counter hatred on the internet.

General recommendations

Structural racism manifests itself throughout legislation, in the law enforcement bodies, the judicial system as well as in education, media and on the labor market. However, there is a lack of publicly available official data documenting racism.¹⁸⁸ Official data focuses on racism in connection to right-wing extremism and does not reflect racism as an everyday social phenomenon. ZARA and other NGOs have documented this kind of racism for over 17 years and since 2005 the Office of the Ombuds Office for Equal Treatment (Gleichbehandlungsanwaltschaft) has reflected this issue in its biannual reports.¹⁸⁹ Studies by the EU Fundamental Rights Agency show that very 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 for research, analysis and the 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 their negative effects on society.

SHRINKING SPACE / ROLE OF CIVIL SOCIETY

In comparison with developments in other countries of the OSCE region, one can hardly speak of shrinking space for civil society in Austria, however it is true that this space is not expanding. This particularly applies 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.¹⁹⁰ The promised National Action Plan on Human Rights which was to be finalized last summer is currently no nearer completion, and members of the NGO consultation group felt that their role in the process was so unsatisfactory that most withdrew their engagement.

While government officials periodically meet with civil society to discuss specific human rights concerns, there is no mechanism 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 in place to ensure and facilitate systematic follow-up on the implementation of recommendations by human rights treaty bodies, 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.¹⁹¹

¹⁸⁸ With the exception of some reports such as one on the Protection of the Constitution Site: http://www.bmi.gv.at/cms/bmi_verfassungsschutz/

¹⁸⁹ UPR Shadow Report Austria, ZARA – Zivilcourage und Anti-Rassismus-Arbeit, Oct 2010, pg. 3-4

¹⁹⁰ Summary on Austria, OHCHR; February 2011, pg. 3, point 12. Site: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/172/07/PDF/G1017207.pdf?OpenElement>

¹⁹¹ Ibid, pg. 4, point 15

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 the follow-up to and implementation of human rights treaty body recommendations.
- Adapt the recommendation from the INACH Conference 2017, which highlighted the importance of exchanging information and expertise between the government, civil society and academia: “Initiate and maintain networks between civil society organizations, politicians and academics in order to foster information exchange and knowledge transfer.”¹⁹²

¹⁹² INACH Conference 2017: “Hate speech-the online threat to democracy,” October 12, 2017. Site: http://www.inach.net/fileadmin/user_upload/INACH2017Final_Recommendations-OSCE.pdf, pg. 2.

KEY HUMAN DIMENSION ISSUES IN ITALY

Given Italy's incoming OSCE Chairmanship in 2018 it is important to thoroughly assess the situation in the country with regard to key challenges on fundamental rights and liberties. This analysis has been produced by CILD [Italian Coalition for Civil Liberties and Rights]¹⁹³, a coalition of 35 Italian NGOs which became a member of the Civic Solidarity Platform in 2017.

Firstly, it is important to note that Italy still does not have a National Human Rights Institution (NHRI). The lack of a NHRI strongly hampers the implementation of a comprehensive and coherent national strategy to promote and protect human rights. The establishment of an Italian NHRI is a fundamental priority required to underpin Italy's participation in international and regional human rights fora, ensure compliance with international commitments and to enhance the promotion and protection of human rights on the national and local levels.

Shrinking space for civil society

Human rights defenders are increasingly coming under pressure everywhere in the world, and Italy is no exception. This was especially evident during the summer of 2017, in the context of a prolonged smear campaign against humanitarian NGOs that were carrying out search and rescue missions in the Mediterranean.¹⁹⁴ Humanitarian NGOs have been branded as facilitators of illegal immigration, requested to commit to a controversial "code of conduct"¹⁹⁵ and ultimately forced to downsize or cease their humanitarian operations at sea.¹⁹⁶ The attack on humanitarian NGOs is a clear indication of the broader tendency to criminalize solidarity with migrants and delegitimise civil society.¹⁹⁷ Occasional attacks and threats made to NGOs have also been registered.

Rights of refugees and migrants

Immigration remains one of the most heated topics of debate in Italy. A new era of cooperation on migration and border control with Libya¹⁹⁸ - which was previously halted in 2012 after the judgment of the European Court of Human Rights (*Hirsi*) condemning Italy for its push-backs of migrants to Libya¹⁹⁹ - was re-launched by the Italian government in 2017 in order to reduce arrivals of migrants on Italian coasts. This has included a controversial Memorandum of Understanding²⁰⁰ signed between the Italian Prime Minister Gentiloni and Fayez al-Serraj, Head of the UN-backed Libyan Government of National Accord which was dubbed by experts as "a bad replication of the EU-Turkey deal"²⁰¹; training and support for the aggressive Libyan Coastguard²⁰²; and even a mission by the Italian Navy into Libyan waters. As a result of this, most migrant boats are now intercepted²⁰³ and the people on board returned to Libya's inhumane detention centres by the Libyans themselves - in what the Association for Judicial Studies on Immigration (Asgi)²⁰⁴ defined a "**de facto violation of the principle of non-refoulement**"²⁰⁵ that is

¹⁹³ <https://cild.eu/>

¹⁹⁴ Floris, F. and Bagnoli, L. (2017). *Accusations against NGOs at sea: what is false or misleading in that smear campaign*. *Open Migration*.

¹⁹⁵ Petrillo, M. (2017). *What is changing in the Med: five things you must know*. *Open Migration*.

¹⁹⁶ Hayes, B. and Barat, F. (2017). *Europe's offensive against people helping refugees*. *Euractiv*.

¹⁹⁷ Meret, S. and Goffredo, S. (2017). *Solidarity under attack*. *Open Democracy*.

¹⁹⁸ This is only a part of a much broader strategy of the EU on externalization of borders management to third States. ARCI. (2016). *Steps in the process of externalisation of border controls to Africa*. Lopez Curzi, C. (2016). *The externalisation of European borders: steps and consequences of a dangerous process*. *Open Migration*.

¹⁹⁹ ECtHR. (2017). *HIRSI JAMAA AND OTHERS v. ITALY*. *Hudoc*.

²⁰⁰ *Memorandum of understanding* on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic.

²⁰¹ Palm, A. (2017). *The Italy-Libya Memorandum of Understanding: The baseline of a policy approach aimed at closing all doors to Europe?* *EU Immigration Law Blog*.

²⁰² Floris, F. (2017). *Training the Libyans is not enough to stop migrants*. *Open Migration*.

²⁰³ Vice News. (2017). *Italy is paying Libya to intercept migrants on the Mediterranean*. *Vice News*.

²⁰⁴ Association for Juridical Studies on Immigration (Asgi). <https://www.asgi.it/>

²⁰⁵ ASGI. (2017). *The EU and Italy de facto violate the principle of non-refoulement*.

extremely troubling in terms of human rights compliance, as the Council of Europe Commissioner for Human Rights Nils Muižnieks has highlighted.²⁰⁶

Things are not much better for those migrants who make it to Italy. To start with, the implementation of a **“hotspot approach”** has led to systematic arbitrary detentions of migrants: as the National Ombudsman noted, these “hotspots” constitute a legal “no man’s land”, where migrants are *de facto* deprived of their liberty without any proper judicial control to ensure immediate identification and screening.²⁰⁷ The Ombudsman’s report raised concerns about the extremely poor conditions in the detention centres and cases of violence and ill-treatment have been denounced by Amnesty International.²⁰⁸ This gives deep cause for concern considering that unaccompanied minors remain stuck in these “hotspots” for longer periods than adults as they await a place in a reception centre.²⁰⁹

Inadequate **reception conditions** are a serious issue across the country, with most people still being housed in emergency centres as the redistribution of asylum-seekers encounters continued opposition from some local authorities and residents. Specific consideration must be given to the reception conditions for **unaccompanied minors** - some 25,000 of whom arrived in Italy in 2016 (twice the number of 2015) and a reception system still blatantly inadequate to properly accommodate them.²¹⁰ Notwithstanding the improvements introduced in the new law dedicated to this issue²¹¹, grave concerns remain with regard to reception conditions, and Asgi is currently bringing some cases before the European Court of Human Rights.

Migration continues to be criminalized, and migrants continue to be detained. Not only does irregular entry into or stay on the Italian territory remain punishable under criminal law²¹² but the new immigration law²¹³ provides for a significant increase in immigration detention: from four to twenty detention centres throughout Italy, with a total capacity rising from 400 to 1,600 places. The inhumanity of detention conditions in these centres and the frequent grave violations of fundamental rights that occur there have been repeatedly denounced in recent years.²¹⁴

The new immigration law has also introduced **reduced guarantees for asylum seekers**: in the name of simplifying judicial procedures, those seeking international protection will no longer have the chance to appeal the rejection of their asylum claims²¹⁵, a move which has been harshly criticized by rights organizations across the board, including Asgi²¹⁶ and Cild.²¹⁷

The push for forced returns leads to collective expulsions. The government claims that “irregulars” must be sent back at all cost. Nationals of countries with which Italy has negotiated repatriation agreements continued to be forcibly returned to their countries of origin, despite concerns that they were not given adequate access to asylum procedures and that they were expelled without an objective assessment of the individual’s potential risk upon return, and despite the prohibition of collective expulsions central to international law. Notable cases included

²⁰⁶ CoE Commission for Human Rights. (2017). *CommHR/INM/sf0345-2017*.

²⁰⁷ Garante Nazionale dei diritti delle persone detenute e private della libertà personale (2017). <http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/6f1e672a7da965c06482090d4dca4f9c.pdf>. Lopez Curzi, C. (2017). *Guilty of Travelling: When Immigration Detention is Worse than Prison. Border Criminologies*.

²⁰⁸ Amnesty International (2016). *Hotspot Italy*.

²⁰⁹ According to the *Ombudsman’s report*, the average length of *de facto* detention in hotspots is: for adults, 5 days in Trapani, 10 in Taranto, 15 in Lampedusa, 2,5 in Pozzallo; for minors, 5 days in Trapani, 13 in Taranto; 15 in Lampedusa; 17 a Pozzallo.

²¹⁰ Zandonini, G. (2017). *The long wait of unaccompanied migrants in Italy. Open Migration*.

²¹¹ Legge 07/04/2017 n° 47, G.U. 21/04/2017.

²¹² Notwithstanding the fact that the government was tasked by the Parliament with abolishing the offence already back in 2014.

²¹³ Open Migration. (2017). *Why the new Italian law on immigration and asylum is not good news at all. Open Migration*.

²¹⁴ CILD. (2017). *CIE: what has happened over the last 20 years?. CILD*.

²¹⁵ Lopez Curzi, C. (2017). *The new Italian law on immigration and asylum is not good news at all. Open Migration*.

²¹⁶ Asgi. (2017). *D.L. 13/2017: le principali ragioni di illegittimità*.

²¹⁷ Cild. (2017). *I nostri argomenti costituzionali, giuridici, sociali e culturali contro i due decreti del Governo in materia di Immigrazione e Sicurezza*.

the forced repatriation of a group of 48 Sudanese citizens²¹⁸ in summer 2016, for which a case against Italy is now pending before the ECtHR²¹⁹, and the so-called “*Nigerian hunt*”²²⁰, with a spike in repatriations to the country where Boko Haram are active.²²¹

Statelessness and access to citizenship continue to be problematic despite Italy’s recent ratification of the 1961 Convention on the Reduction of Statelessness and legislative provisions designed to prevent statelessness of children born on Italian soil.²²² Legislative gaps and shortcomings in the interpretation of norms by the authorities remain, however, leaving many children born on Italian soil at risk of remaining stateless like their parents. Access to citizenship poses a challenge for children born in Italy to third-country nationals or those who arrived at a young age. Rights to Italian citizenship are largely based on *jus sanguinis* and, by law, children born in Italy to non-Italian parents must apply for Italian nationality after their 18th birthday, provided they have resided in Italy continuously for their whole life. The naturalization process is long and complicated and leaves many young people unable to access citizenship.²²³ A draft reform which would allow for citizenship on the principle of (tempered) *jus soli* or *jus culturae* has been stuck before the Italian Senate for more than a year.

Victims of trafficking

Italy adopted its first National Action Plan against Trafficking and Serious Exploitation of Human Beings in February 2016. Notwithstanding this, ongoing challenges persist regarding the process of identification of victims of trafficking, as there is neither a clear procedure nor enough qualified personnel to carry out effective screening of persons in immigration detention.

Recent data shows increased numbers of women and girls from Nigeria arriving in Italy, the majority of whom appeared to be victims of human trafficking.²²⁴ The European Group of Experts against Trafficking (GRETA) has recently published a report expressing concern over cases in which possible victims of trafficking in human beings were returned from Italy to Nigeria on forced return flights.²²⁵

Non-discrimination and equality

Roma rights. Discrimination against Roma remains an issue in Italy. Data collected by the Associazione 21 Luglio demonstrates that hate speech targeting Roma is a deep-rooted and endemic phenomenon.²²⁶ In 2012, Italy approved its National Roma Integration Strategy, which foresees a set of integrated policies focusing on four key areas - housing, employment, education, and healthcare. Concerns remain however regarding its effective implementation in practice especially in the light of ongoing practices of housing segregation and forced evictions.

LGBTI rights. Italy lags behind many European countries when it comes to equality for homosexual people and parental rights for gay couples. The much-awaited civil unions bill²²⁷ for same-sex couples was finally adopted in 2016, as a result of the groundbreaking ECtHR judgment in the *Oliari* case.²²⁸ The Italian Civil Unions Bill was a milestone in the struggle toward legal recognition for same sex-couples but its restrictive adoption provisions for same-sex couples still deny some children the legal protection and security they deserve.²²⁹

²¹⁸ In pursuance of a controversial Memorandum of Understanding on migration management between Italian and Sudanese police authorities.

²¹⁹ Alleging violations of the principle of non refoulement, of the prohibition of collective expulsion and of the right to effective remedy before a national authority. Lopez Curzi, C. (2017). *Forced returns to Sudan, the case against Italy at the ECHR. Open Migration.*

²²⁰ Vice News Italia (2017). *Il Viminale ha ufficialmente aperto la stagione della “caccia al nigeriano”.*

²²¹ Bagnoli, L. (2017). *Why Nigerians top the list of ethnicities most often deported from Italy. Open Migration.*

²²² As highlighted by the Italian Council for Refugees (Cir).

²²³ As denounced by the national campaign for citizenship rights “l’Italia sono anch’io”.

²²⁴ IOM. (2017). *Rapporto tratta in Italia.*

²²⁵ GRETA (2017). *Report on Italy GRETA (2016)29.*

²²⁶ Associazione 21 Luglio, *Osservatorio Hate Speech.*

²²⁷ Legge 20/05/2016, n. 76.

²²⁸ ECtHR. (2015). *Oliari and Others v. Italy.*

²²⁹ As highlighted by LGBTI NGOs Rete Lenford and Associazione Certi Diritti.

Women's rights. Violence against women has been deemed a “national emergency” in recent years.²³⁰ While recent legislative initiatives on this issue²³¹ have been welcomed by women rights organizations, measures to ensure their implementation remain weak. Furthermore, inadequate funding and imperfect implementation procedures put the existence of anti-violence centres and shelters at risk.

Women's access to safe abortions also is a critical issue, as the law allows doctors to conscientiously object to the practice which means that although by law Italy allows abortion in practice very few doctors would perform them.²³² Many women thus face difficulties in gaining access to abortion facilities and are forced to go abroad or to bypass the authorities and undergo illegal abortion procedures.

Torture and prisoners' rights

After decades of delay, Italy finally criminalized torture in 2017,²³³ but, according to the leading criminal justice NGO Antigone, the definition of torture provided in the criminal code still fails to meet international standards.²³⁴

Following the infamous *Torreggiani* judgement²³⁵ where the ECtHR called on Italy to resolve the problem of overcrowding in prisons, reforms of the penitentiary system were undertaken in the first half of the 2010s.²³⁶ However, at the beginning of 2016 overcrowding in prisons began to increase again. By the end of October 2017, Italian prisons held almost 58,000 detainees for little more than 50,000 places.

Other critical issues with regard to human rights and criminal justice include: the excessive use of pre-trial detention; discrimination against foreign prisoners (who represent one third of the prison population and are more often put in pre-trial detention, receive harsher sentences and encounter more difficulties in benefiting from non-custodial alternative measures); the harshness of the special regime for mafiosi and other criminal mobsters under art 41-bis²³⁷ and the use of solitary confinement, even for minors.

Accountability for abuses by law enforcement officials is still not yet fully ensured in Italy. In recent years, a string of harsh judgements by the ECtHR have found Italy responsible for abuses committed by law enforcement officials and for the fact that those abuses went unsanctioned. These include judgements on many acts of violence committed in the context of 2001 G8 summit in Genoa²³⁸ as well as judgements on police abuses on detainees

²³⁰ According to a 2015 Italian National Institute of Statistics report, almost 1 in 3 women in Italy (almost 7 million) have been victims of some forms of violence, either physical or sexual, during their life. No national observatory on violence against women to provide official statistics on femicide has yet been created but feminist network Casa delle Donne has been monitoring the phenomenon for years and reports 1274 cases between 2005 and 2015, with more than 100 women killed each year.

²³¹ A national plan against gender-based violence and stalking was officially enacted in 2010 as a first attempt to develop an organic response to address violence against women in the country, followed by the ratification of the Istanbul convention in 2013 and the adoption of a special plan against gender-based violence in 2015.

²³² According to official data by the Health Ministry, around 70% of gynecologists - up to 83% in some regions - are conscientious objectors to the law and do not perform abortions for religious or personal reasons.

²³³ Legge 14/07/2017, N. 110.

²³⁴ In the Italian definition, torture is considered a generic crime, the conduct requires “violence” and “threats” in the plural form (which implies multiple acts are necessary for the offence to occur). The psychological trauma needs to be “verifiable”. The “inhuman or degrading treatment” of the Convention becomes “inhuman and degrading treatment” in the new Italian law.

²³⁵ ECtHR. (2013). *Torreggiani and others v. Italy*. In its ruling in the *Torreggiani and others vs. Italy* case issued on 8 January 2013, the European Court on Human Rights in Strasbourg condemned Italy for violating article 3 of the European Convention on Human Rights (ECHR) due to prison conditions experienced by seven detainees in prisons in Lombardy and Emilia-Romagna. This was a “pilot” sentence, in view of the structural and systemic problem of overcrowding in the Italian prison system for which a state of emergency was declared in 2010. The “several hundreds” of applications against Italy that it has received “from different Italian prisons” on similar grounds indeed confirmed the “chronic dysfunction” of the Italian prison system.

²³⁶ A string of reform laws were indeed adopted between 2013 and 2016. This should have included an organic reform of criminal and penitentiary law which is still undergoing.

²³⁷ In Italian law, Article 41-bis of the Prison Administration Act (also known as Italy's “hard prison regime”) is a provision that allows the Minister of Justice or the Minister of the Interior to suspend certain prison regulations. Currently it is used against people imprisoned for particular crimes: Mafia involvement; drug-trafficking; homicide; aggravated robbery and extortion; kidnapping; importation, buying, possession or cession of huge amounts of drugs; and crimes committed for terrorism or for subversion of the constitutional system.

²³⁸ From *Cestaro* in 2015[#] and *Bartesaghi Gallo* in 2017[#] on the police abuses at the school Diaz to *Blair* in 2017[#], which condemned torture inflicted on detained activists at the Bolzaneto military barracks).

in prisons.²³⁹ Despite judgments by ECtHR no specific code of conduct has been adopted and the government has failed to introduce identity tags for law enforcement officers that would facilitate accountability for abuse.

Freedom of information

The right to freedom of information has been called “the oxygen of democracy” as it is essential for openness, accountability and good governance. Italy has long lagged behind with regard to ensuring access to information and has adopted a Freedom of Information Act (FoIA) only in 2016. The approval of the FoIA has greatly improved Italy’s positioning in the Right to Information Rating Index (from 97th to 54th place).²⁴⁰ Nevertheless, an international NGO Access Info Europe has expressed concern that Italy’s newly adopted FoIA still falls far behind international standards.²⁴¹

Overall the situation with regard to human rights in Italy is not as rosy as one may think. There is much to be done to ensure that fundamental rights are truly ensured and protected. With the fight against terrorism becoming a common argument used by governments to justify abuse of rights and the shrinking space of civil society, and with populist politics, racism and xenophobia on the rise in Italy and Europe, it is more important than ever to ensure that human rights are not sidelined.

Italian civil society groups hope that the OSCE Chairmanship will inspire Italy to put human rights at the heart of its national and international agenda.

²³⁹ Most recently, with the *Cirino and Renne* case[#] for grave violations committed by penitentiary police on two detainees in Asti prison.

²⁴⁰ *The Global Right to Information Rating Index*, curated by Access Info and Centre for Laws and Democracy, analyses the quality of the world’s access to information law.

²⁴¹ As it forces requesters to go through the infamously slow and inefficient Italian court system in order to challenge non-disclosure of information, making it difficult to hold public officials accountable.



