

Civil Society Space and Security of Human Rights Defenders

Civil society work embodies the essential human right, the right to participate in the public life, individually and together with others. This right is protected by a number of key OSCE human dimension commitments – first and foremost, freedom of association, freedom of expression, freedom of peaceful assembly, and security of human rights defenders. Moreover, the ability of civil society activists and groups to operate depends on the effective implementation of a number of other human dimension commitments – the rights to freedom of movement, personal liberty, fair trial, access to information, privacy, and many others.

What we are witnessing today is a war against civil society and human rights defenders waged by governments of a number of OSCE participating states. For many years ago we talked about shrinking space for civil society; now we talk about a real war, aimed at the complete elimination of independent civil society. This attack is an important part of a global backlash against democracy, human rights, and rule of law. It is not surprising that civil society organisations and activists are targeted, because they are key actors in promoting and defending these corner stones of comprehensive security, promoted by the OSCE. Without them, it would be much more difficult if not impossible for governments of democratic states, diplomats, and experts in the OSCE and other international bodies to do their work on human rights and democracy, not speaking of people in these societies who may be deprived of legal assistance, vital information, social support, and many other services provided by NGOs.

If the trend aimed at shutting down civil society in a growing number of states is not reversed, in a few years' time participants in OSCE human dimension events will simply not meet at them many civil society representatives working on the ground and will be able only to assist civil society members in their relocation to safe places and to award prizes to activists in prison – or even posthumously.

The main trends in laws, policies and practices that restrict civil society space in the OSCE region include the following:

1. Murders, threats, physical attacks on civil society activists, NGO offices and events, including beatings and other forms of violence and destruction of property by agents-provocateurs, government proxies, private pro-government groups, self-proclaimed proponents of “traditional values” and “patriotism”, or hired thugs. Such attacks are most often followed by a lack of reaction by law enforcement bodies which creates atmosphere of impunity and a breeding ground for new attacks. In addition to human rights and pro-democracy groups, such attacks target anti-corruption, environmental, and local community activists fighting against illegal construction and developments projects. In such cases, businesses and corrupt officials act jointly against civil society, propped up by the law enforcement bodies.

2. Trans-border repression, targeting activists in exile have been increasingly used by some states. They send thugs to assault and beat activists and make threats at their life; abuse international agreements on cooperation in criminal matters and international agreements on cooperation against money-laundering, tax evasion, and financing of terrorism. They request deportation of activists, including by abusing the Interpol red notice system, and in some instances simply abduct activists on the territory of another state with assistance of local law enforcement bodies, to bring them back home, arrest and often subject to unfair trial, torture and enforced disappearance. Such practices have been used by Russia, Azerbaijan, Turkmenistan and most recently by Belarus.

3. Criminal prosecution of activists on fabricated charges totally unrelated to their work, including those that cause strong public indignation, such as possession of drugs or pornography, sexual assault, hooliganism, etc. This has been happening in many places, including Russia, states of Central Asia, and

Azerbaijan. In all the instances described above, NGOs and activists are often subjected to unfair trial on politically motivated grounds. Persecution of a member of the Memorial Society in Russia, a distinguished researcher of the history of Stalin's repressions Yuri Dmitriev who was convicted for 13 years on absurd charges of pornography and sexual assault, is a striking example.

4. Closing NGOs and persecuting their members and supporters on charges of very broadly defined “extremist activity” or support of extremist groups, in retaliation for their peaceful legitimate work and often without a court decision. Recent examples include banning the Foundation Against Corruption and persecution of its numerous supporters in Russia, the attack on many leading pro-democracy organisations in Belarus, and the persecution of many civil society groups in Central Asia. Recently, use of charges in “abuse of freedom of expression”, including for “distribution of fake news”, slander, insult, incitement of hatred against certain social groups, including public officials and police officers, has been on the rise as a tool of pressure on civic activists and groups in many states, especially in the context of the Covid-19 pandemic.

5. Closing NGOs and persecuting their members on unjustified or fabricated charges of “terrorism” or “justification of terrorism” as it happens in the occupied Crimea against Crimean-Tatar activists such as Server Mustafayev, a leader of the Crimean Solidarity group, who was convicted to 14 years on trumped-up charges of participating in a terrorist organisation, but also in Tajikistan, Turkmenistan, Kazakhstan, Turkey, Belarus, with no evidence of any violent actions or calls for violence. A recent lawsuit in Russia to liquidate the Human Rights Centre “Memorial” based on charges of its alleged “justification of terrorism and extremism” in its work on the list of political prisoners is a striking example of abuse of this legislation.

6. Persecuting NGOs and their members on charges of violating restrictive legislation on public assemblies, including organisation or funding of protests that allegedly “threaten public order and state security”. Most notable examples include harassment of NGOs and activists on this ground in Russia, Azerbaijan and Belarus, including criminal charges against members of the Human Rights Centre “Viasna” and other leading NGOs. Recently, charges in violation of “sanitary restrictions” in the course of public protests during the Covid-19 pandemic have been arbitrarily used against NGOs and activists in many states, in particular in Russia.

7. Pressure on NGOs for their work which contradicts alleged “traditional values” proclaimed by governments and allied political forces, targeting women's rights groups, LGBTI groups, ethnic minorities, and groups protecting migrants. This has been the case in Russia, Georgia, Poland, Hungary, North Macedonia, and also, in respect of NGOs working to protect migrants' rights, in Austria, Italy, Spain, etc.

8. Persecuting of NGOs and activists on trumped-up charges of tax evasion and illegal entrepreneurial activity, most notably in Azerbaijan, Belarus, and Russia. Most recent examples include persecution of numerous NGOs and their members in Belarus, including leaders of the Human Rights Centre “Viasna”.

9. Harassment of relatives of NGO activists, using them as hostages, and threats to take away activists' children. Examples include incidents in Russia, Belarus, Azerbaijan, Turkmenistan, etc.

10. Branding NGO cooperation with international partners and governments of other states as “foreign interference in domestic affairs” and persecuting them on the basis of “foreign agent” legislation or similar laws. This labelling stands in direct contradiction to the key OSCE principle stipulating that “human dimension commitments are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned”.

To block the work of independent NGOs under this pretext, legislation on “foreign agents” was adopted in Russia in 2012 and has been repeatedly expanded since then, recently introducing new categories of “foreign agents” – individuals such as civic activists and journalists, unregistered civic groups, and mass media. In order to present NGOs and activists to the public in negative light, officials and propagandists refer to them as “marionettes of foreign masters” and “enemies of the state”. Once NGOs, activists and media receive any, even the smallest funding from abroad, they are designated as “foreign agents”, irrespective of the content of their work, since any public activity is considered “political” according to the legislation. In Russia, several hundred NGOs and individuals have been labelled with this derogatory and discriminatory term.

The “foreign agent” legislation seriously hinders their work, discredits them in the eyes of the public, cuts off their cooperation with various partners inside the country, and bans them from certain activities such as participation in the commissions for public oversight of places of detention, election observation, anti-corruption expert assessment of draft laws, etc. Moreover, it puts them at a serious risk of administrative and criminal persecution for even minor violations in reporting and failing to mark even a few of their publications as “produced by a foreign agent”, including posts in social networks. Dozens of NGOs and individual activists have been penalised with heavy financial fines, pushing them on the brink of bankruptcy.

Recent lawsuits by prosecutors to liquidate two most distinguished and oldest human rights organisations in Russia who are the backbone of civil society, the International Society “Memorial” which has 50 member organisations, and the Human Rights Centre “Memorial” on the grounds of alleged violations of the “foreign agent” legislation, signify a new level of government crackdown on civil society and pose the most serious threat to its existence in Russia. It stands in direct contradiction to international norms which state that liquidation of an NGO should be applied only as a measure of last resort when it cannot be rectified and when the violation threatens public order and security.

This restrictive approach to NGO work has been followed in other states. Pressure on civil society groups in relation to their foreign funding and “connections” has been observed in Belarus, Kazakhstan, other states in Central Asia, Hungary, Poland, Bulgaria, and Western Balkan countries.

11. Cutting off international NGO cooperation by designating as “undesirable organisations” foreign NGOs working in the country or supporting local NGO partners. Russian legislation on “undesirable organisations” includes a ban on their work in the country and makes it a criminal offence for Russian citizens to continue engaging with such NGOs. In Russia, 50 foreign and international NGOs have been included in the list of “undesirable organisations”, and a number of Russian activists are persecuted for alleged “continued cooperation” with them, notably Andrei Pivovarov who is kept in pre-trial detention and faces 6 years in prison for organising the work of an “undesirable organisation”, based on his Facebook posts and tweets.

Both designations, “foreign agents” and “undesirable organisations”, are made arbitrarily by government agencies in an extra-judicial procedure; no justification is provided; and it is impossible in practice to overturn such decisions in courts. In addition, representatives of foreign NGOs or foreign citizens working in local NGOs are often deemed a “national security threat” and are banned from the country without justification.

12. Liquidation of NGOs based on minor or non-existent irregularities in reporting, in direct contradiction to international norms which state that liquidation of an NGO should be applied only as a measure of last resort when it cannot be rectified and when the violation threatens public order and security. Most

notably, such extreme practices have been applied in Belarus where more than 270 NGOs were shut down by the authorities between July and September 2021 but also in Russia, Azerbaijan, etc.

13. Ungrounded denial of registration of independent NGOs on extremely formal grounds or no grounds at all, most visibly in the states of Central Asia, Belarus, Azerbaijan, and Russia.

14. Smear campaigns in the media where independent NGOs and activists are portrayed as enemies of the state, foreign spies, thieves, etc. as well as illegal collection and publication of information about private life of activists, using it as “compromising materials”. This ugly practice has been widespread in Russia, Belarus, Azerbaijan and some other states.

15. Particular security risks for activists and groups working in conflict areas. They are branded “traitors”, “enemies”, are threatened with violence, arbitrarily detained, and are denied access to territories controlled by de facto authorities.

16. Proliferation of GONGOs (government organized or government controlled quasi NGOs) which not only verbally attack independent NGOs and subvert their activities but also take space of genuine civil society in public domain and at international events.

In addition to the backlash at the national level, we see problems with civil society space at the level of inter-governmental organisations. At the OSCE level, the potential of civil society contribution remains untapped. Moreover, civil society participation in OSCE activities and events is under assault by some states who demand that NGO participation is restricted based on the approval by individual governments. These views are based on arbitrary and politically-motivated grounds and are aimed at substituting the existing OSCE commitment for unrestricted participation of civil society organisations, excluding only those who engage in or support violence and terrorism, by a principle of governments approval, in direct contradiction to par. 16 of the 1992 Helsinki document.

Given the increasingly difficult and dangerous context in which CSOs and human rights defenders operate in many places, our recommendations to participating States and OSCE institutions are focused both on enhancing cooperation with civil society in the OSCE framework and on reversing the dramatic negative trend of an attack on civil society in many participating States.

Recommendations

On the protection of civil society space and security of human rights defenders

In the OSCE framework:

1. OSCE Chairpersonships should include protection of civil society space and security of human rights defenders in its programmatic priorities.
2. OSCE Chairpersonships should establish a position and appoint a Special Representative on Civil Society, whose mandate should be extended annually and include assistance in protection and expansion of civil society space and the security of human rights defenders in the OSCE region, developing instruments of cooperation with NGOs and mainstreaming civil society engagement in OSCE activities. This decision does not require approval of participating States.
3. Concerned States should establish an informal OSCE Group of Friends of Civil Society, similar to the existing informal OSCE Group of Friends on the Safety of Journalists, to develop joint strategies

on reversing the backlash against civil society and to expand civil society space in the OSCE, analyse the situation, and engage with civil society actors. This does not require consensus.

4. Protection of civil society space and security of human rights defenders should be included in the standard agenda of OSCE human dimension events.
5. Participating States should consistently raise the issue of shrinking civil society space at the OSCE and other international fora as well as in bilateral meetings with representatives of the States concerned, and issue joint statements or declarations on this issue at the level of the Ministerial Council, the Permanent Council, and at the HDIM.
6. OSCE Chairpersonships and ODIHR, in consultations with participating States and civil society, should develop a system of prompt and effective reaction to the most important cases of pressure on civil society and persecution of NGOs and activists. We thank delegations of States for making statements in this regard at the Permanent Council meetings but this is not enough.
7. OSCE bodies should consider establishing a mechanism of reaction to reprisals against NGOs and activists for their cooperation with the OSCE, similar to the mechanism developed in the United Nations, where it is coordinated by a Deputy Secretary General.
8. ODIHR should more actively advise and support States in the implementation of their relevant OSCE commitments and the standards outlined in the OSCE/ODIHR Guidelines on the Protection of Human Rights Defenders¹⁸ and the Joint OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association¹⁹ and in establishing specialised national programmes of protection of human rights defenders and civic activists.
9. ODIHR should more systematically monitor and regularly report on the situation of civil society and security of human rights defenders and expand the circle of States subject to monitoring.
10. ODIHR should set up an expert panel on freedom of association and security of human rights defenders, similar to the existing expert panel on freedom of peaceful assembly, to monitor implementation of relevant commitments and guidelines, make recommendations to participating States, and advise ODIHR on its relevant programmes. Concerned States should contribute EB funds to the ODIHR for its expanded work on civil society space.

In their foreign policy, OSCE participating States should:

11. Put the issue of civil society space and security of human rights defenders high on their foreign policy agenda, raise the issue of the backlash against civil society and repression against activists in all interactions and dialogues with the governments of States concerned, include ending repression and creating enabling environment for civil society as conditions for economic cooperation and assistance programmes.
12. Prioritise in their foreign policy the promotion of the implementation of relevant international instruments, including the UN and the CoE conventions, the UN Declaration on Human Rights Defenders²⁰, in the OSCE/ODIHR Guidelines on the Protection of Human Rights Defenders and the Joint OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association.
13. Demand repeal of discriminatory laws such as legislation on “foreign agents” and “undesirable organisations” and an end to restrictive and repressive policies and practices.

¹⁸ <https://www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders>

¹⁹ <https://www.osce.org/odihr/132371>

²⁰ <https://www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx>

14. Make sure that diplomats and visiting delegations always meet with independent civil society during their trips, avoid agreeing to meetings with GONGOs, and refuse to meet with MPs who are authors of repressive laws.
15. Make sure that diplomats attend trials of persecuted activists and organisations and reach out to their families to provide support.
16. Establish a list of activists at risk and issue express long-term visas to them and their family members upon request, make recommendations to relevant government bodies on granting political asylum to persecuted activists, when necessary, and support shelter programmes for civic activists at risk.
17. Review their own implementation of international agreements on cooperation in criminal matters and the work of relevant inter-governmental organisations such as Interpol to ensure that other States do not abuse such agreements and organisations for prosecuting civic activists.
18. Review their own implementation of international agreements on countering tax evasion, money laundering and terrorism financing to prevent the misuse of these agreements, including agreements on automatic exchange of banking information, to restrict civil society activities, and provide safeguards for activists from countries with repressive governments. Consider establishing a system of waivers from automatic exchange of banking information for exiled activists.

In domestic policy, governments of OSCE participating States should:

19. Fully recognise the importance of the independent voice of civil society actors, including by respecting the independence of their organisations and initiatives and acknowledging publicly the important and legitimate role of civil society in the promotion of human rights, democracy, the rule of law, social development and many other areas of public interest. Political leaders should do so through public statements, policies and laws, including by condemning publicly all cases of violence and discrimination against human rights defenders.
20. Prioritise the adherence to norms, guarantees, and guiding principles enshrined in relevant international instruments, including the UN and the CoE conventions, the UN Declaration on Human Rights Defenders, the OSCE/ODIHR Guidelines on the Protection of Human Rights Defenders and the Joint OSCE/ODIHR and Venice Commission Guidelines on Freedom of Association.
21. Adopt legislation and procedures governing the registration and funding of civil society organisations which is transparent, clearly defined, and non-discriminatory. It must not inhibit the functional autonomy of NGOs. Any limitations placed on civil society must be lawful, proportionate, and necessary in a democratic society.
22. Ensure that the protection of human rights is not criminalised and that human rights defenders are not prevented from enjoying universal human rights owing to their work.
23. Refrain from referring to civil society groups critical of government policies as political tools of “foreign interference in domestic affairs”.
24. Refrain from imposing restrictions on potential sources of funding for civil society work, other than those ordinarily laid down for any activity to ensure transparency and accountability. No law should criminalise or delegitimise civil society activities based on the origin of funding.
25. Refrain from adopting (or repeal) “foreign agents” laws and lift restrictions on international funding of civil society activities.
26. Refrain from adopting (or repeal) laws on “undesirable” foreign organisations.

27. Refrain and ensure adequate protection from any act of intimidation or reprisals against those who cooperate, have cooperated or seek to cooperate with foreign NGOs and international organisations.
28. Refrain from describing civil society groups critical of government policies as a threat to “traditional values”, state security and political stability.
29. Refrain from engaging in smear campaigns and making discrediting statements against civil society groups and activists.
30. Promptly and effectively investigate all attacks against human rights defenders and bring their perpetrators and masterminds to justice; combat impunity by effective investigation and pursuing accountability for all attacks and threats by State and non-State actors against civil society activists.
31. Refrain from conflating civic activism and extremism and imposing excessive and disproportionate restrictions of freedoms of association, assembly, and expression in the name of security, including countering terrorism.
32. Refrain from using the judicial system as a means of repression and pressure on civil society, including through unfair trials, politically motivated convictions, approval of surveillance and travel bans.
33. Refrain from using “collective punishment” to intimidate and repress civil society activists by targeting their relatives and threatening to take away their children.
34. Refrain from using economic mechanisms, including tax, financial, anti-money-laundering, and other regulations, and international mechanisms of cooperation in criminal matters and on countering tax evasion, money laundering and terrorism financing, to restrict civil society activities and persecute civil society activists.
35. Establish national mechanisms of protection of human rights defenders, based on relevant UN and OSCE instruments.

On a more effective engagement with civil society in the OSCE work:

OSCE institutions and executive bodies should take the following steps:

36. Attempts by some OSCE participating States to restrict NGO participation in OSCE events on arbitrary and politically-motivated grounds and their efforts to substitute the existing OSCE commitment for unrestricted participation of civil society organisations, excluding only those who engage in or support violence and terrorism, by a principle of approval by governments, should be clearly and strongly resisted.
37. OSCE Chairpersonships, participating States and OSCE institutions should seek and utilise civil society contribution in their various activities, give proper consideration to information, analysis, policy suggestions and recommendations for actions from civil society groups, engage in discussing them, and provide substantive feedback on them to civil society.
38. OSCE Chairpersonships, participating States and institutions should increase their support for events organised by civil society in the OSCE framework, including by attending parallel civil society events, speaking there, accepting their outcome documents, giving them proper consideration and following up on them. Outcome documents of parallel civil society conferences held on the eve of the OSCE Ministerial Council meetings should be officially distributed among all participants of MC Meetings or at least put on the Chairpersonship’s website as it is done by

UN human rights bodies. A creative way should be found to allow CSOs to present a summary of their recommendations directly to the participants of the Ministerial Council meeting.

39. Civil society recommendations should be presented and discussed in detail at meetings of the Human Dimension Committee at the start of the year to give impetus to possible actions.
40. The OSCE work on agenda setting and reaction to human dimension problems should better utilise results of monitoring by civil society on the ground and respond to issues raised by them. For example, results of NGO monitoring of elections, trials, places of detention and peaceful assemblies should receive proper consideration and follow-up, especially when OSCE institutions' observation missions are not allowed into the country.
41. Incoming Chairmanships should begin consultations with civil society on their thematic priorities early on, before they announce them at a Permanent Council meeting. Such consultations should be held both inside their own country and OSCE-wide.
42. Civil society expertise and insights could play a useful role in the process of drafting decisions of the Ministerial Council. This could be done by the Chairmanship and interested State delegations, either informally or possibly through a new, more formalised procedure.
43. Chairperson-in Office and Special Representatives of the Chairperson should always meet civil society representatives while on official visits to participating States and during OSCE events.
44. Delegations of participating States, Chairpersonships, OSCE institutions, structures, units, and field presences should all designate liaison officers/ focal points for civil society. These should not only disseminate information about their work to civil society, but also collect information, network and consult with civil society in a regular and consistent manner.
45. The OSCE could benefit by looking at best practices of other inter-governmental organisations, including a number of the UN bodies, the Council of Europe, and international financial institutions. In these organisations, systematic engagement with NGOs, requesting their input at the preparatory stage of meetings and in drafting documents, and holding consultations at all stages of work have become a standard practice and is institutionalised.
46. Various ways of enhancing civil society participation should include not only the human dimension where civil society has been historically more active but also the first and the second dimensions.

The two goals, protecting civil society space across the OSCE region and enhancing civil society engagement in the OSCE work, should go hand in hand.