



Forum 18 News Service

<http://www.forum18.org>*The right to believe, to worship and witness**The right to change one's belief or religion**The right to join together and express one's belief*

Tolerance and non-discrimination II including discrimination on grounds of belief - WS14

Our Agenda states the importance of a 'common approach' to prevent intolerance and discrimination. A common approach is repeatedly stressed in human dimension commitments, Kyiv 2013 "reaffirming the commitments of participating States to respect, protect, and ensure the right of everyone to freedom of thought, conscience, religion or belief, emphasizing the link between security and full respect for the freedom of thought, conscience, religion or belief". As 2016 Chair Germany reminded us in the HDIM opening session, the human dimension commitments are "the linchpin of European security". This can be seen in freedom of religion or belief and other violations in Crimea documented by the ODIHR with the OSCE High Commissioner on National Minorities, and by Forum 18 and others.

ODIHR Director Link noted this month that in many participating States "the voices of civil society actors are not heard or those actors are discredited; in some cases, they are persecuted" instead of being recognised "as natural partners in the establishment of true, participatory and inclusive democracies". The most systemic and consistent threats to freedom of thought, conscience, religion or belief and other fundamental freedoms come from participating States. Their targets are not isolated categories of 'Anti-Semitism', 'Muslims', and 'Christians and Members of Other Religions', but any and all people who exercise their fundamental freedoms outside state control.

Azerbaijan - as in previous years - is one of too many participating States this year demonstrating the interlinked nature of attacks on all fundamental rights. Some books are banned including Islamic texts by theologian Said Nursi, Jehovah's Witness texts, as well as the Old Testament or Hebrew Bible used by both Christians and Jews. Police have long confiscated such texts, as well as other texts during raids on private homes and meetings of people exercising their right to freedom of religion or belief. The crime of meeting people and reading such book the state has not censored has led to five Sunni Muslims now being tried after a Baku home was raided by armed police in April 2014. They face up to three years in jail if convicted. After 5 months NSM secret police detention the three were transferred to house arrest. The NSM has beaten people up to gather "evidence" in the case.

These trials and detention are part of a broader state crackdown, involving the jailing of many other prisoners of conscience, such as human rights defenders and others exercising human rights Azerbaijan has solemn international obligations to protect. Three prisoners of conscience are in an NSM prison awaiting trial for exercising freedom of religion or belief - all three (two Jehovah's Witnesses, one Shia Muslim) have been detained since 17 February this year. Irina Zakharchenko and Valida Jabrayilova, the two Jehovah's Witnesses, face up to 5 years' jail if convicted of distributing religious literature without state permission. Shia Muslim theologian and translator Jeyhun Jafarov faces between 12 years and life in jail if convicted of treason. Five Sunni Muslim prisoners of conscience from the Lezgin Mosque in Baku's Old City which the regime wants to close - following the state-enforced closure of many Sunni mosques - were jailed in May for the "crime" of selling uncensored religious texts. Imam Mubariz Qarayev of the Mosque was among those jailed, and there are many other prisoners of conscience jailed for exercising freedom of religion or belief and other fundamental freedoms.

Naming particular kinds of intolerance and discrimination against some groups - for example women - can be helpful. But as Azerbaijan shows us a belief-based split of this fundamental freedom does not grasp the reality and seriousness of violations, or the linkages with other human rights. The three-way split encourages negative stereotyping while discouraging co-operative responses and the use of the tools of legally-binding international human rights standards to address the issues. Indeed, splitting freedom of religion or belief is like having three isolated groups of election observers: for those who vote for governing parties; for those who vote for opposition parties; and for those who do not vote.

So it is excellent that ODIHR work on freedom of religion or belief is within the Human Rights Department and is building on the work of the Tolerance and Non-discrimination Department. As we

saw at this year's SHDM on Freedom of Religion of Belief, Fostering Mutual Respect and Understanding, this organisational positioning maximises the opportunities to adopt a comprehensive and realistic approach to facilitating everyone's freedom of religion or belief and other fundamental freedoms within the OSCE region. In this context use can and should be made of tools as the *Guidelines for Review of Legislation Pertaining to Religion or Belief*¹ the recently-published *Guidelines on the Protection of Human Rights Defenders* and *OSCE/Venice Commission Joint Guidelines on the Legal Personality of Religion or Belief Communities*² and participating State initiatives such as the *European Union Guidelines on the promotion and protection of freedom of religion or belief*³. My colleagues Mine Yildirim from the *Norwegian Helsinki Committee: Turkey Freedom of Belief Initiative* and Susan Kerr from *Christian Solidarity Worldwide* will highlight the need for a human rights-based equal and non-discriminatory approach to freedom of religion or belief within the OSCE region and beyond.

The need for a human rights-based approach is highlighted by another equal opportunity oppressor, Kazakhstan, which has used state intimidation against people wanting dialogue with the UN Special Rapporteurs on both Freedom of Religion or Belief and the rights to Freedom of Peaceful Assembly and of Association. This participating State has among other things: closed all non-Sunni Hanafi and other mosques outside state control, and all belief communities with less than 50 members; jailed Baptists and Muslims for "offences" such as meeting for worship without state permission; and the ongoing criminal cases against retired Presbyterian Pastor Bakhytzhan Kashkumbayev and atheist writer Aleksandr Kharlamov, who was detained in a psychiatric hospital because he is - as a doctor told him - "an inconvenient person for the authorities". Among the regime's other human rights violations are its ludicrous claim to have won almost 98 per cent of the vote in April's "election".

Among Kazakhstan's prisoners of conscience is Saken Tulbayev, a Muslim sentenced in July 2015 to 4 years 8 months jail in a labour camp and a ban on exercising freedom of religion or belief from his release due in December 2019 until December 2022. Tulbayev was jailed despite his family and others pointing to evidence planted by police and false witnesses. The ban on "activity directed at meeting the religious needs of believers" appears, a Kazakh legal expert told Forum 18, to include praying alone or with others, reading the Koran or other religious literature, attending a mosque, or going on pilgrimages. Another prisoner of conscience is Seventh-day Adventist Yklas Kabduakasov, arrested by police on 14 August after a search of his Astana home and confiscation of religious books. Also searched the same day was the Adventist church where he worships. On 15 August a court ordered he be held in two-month pre-trial detention by the KNB secret police. The secret police claim he was spreading "religious discord" when discussing his faith with and offering Christian books to others.

Kazakhstan, Azerbaijan and certain other participating States normally deny their own actions, sometimes claiming security or an alleged "tolerance" as the excuse for oppression. Yet implementing freedom of religion or belief and related rights including democracy is the form of security. For as Helsinki 2008 put it, participating States "reaffirm the inseparable connection between ensuring respect for human rights and maintaining peace, justice, well-being for peoples and stability".

What can constructively be done? Participating States, OSCE institutions and field operations could:

- insist that human dimension commitments are implemented in full by all participating States;
- situate freedom of religion or belief work within an all human rights for all perspective, making its aim assisting implementation of the freedoms of religion or belief and other fundamental freedoms including those of expression, assembly, and the right to be free from torture;
- mainstream work to ensure and promote freedom of religion or belief with its interlinked human rights, building on the other work of the ODIHR Human Rights and Tolerance and Non-Discrimination departments;
- use tools such as the *EU Guidelines on the promotion and protection of freedom of religion or belief*, the *OSCE/Venice Commission Joint Guidelines on the Legal Personality of Religion or Belief Communities* and the *OSCE Guidelines on the Protection of Human Rights Defenders*.⁴

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¹ <http://www.osce.org/odihr/13993?download=true>

² http://www.legislationline.org/download/action/download/id/5719/file/VC_ODIHR_Guidelines_Legal_personality_religious_communities_2014_en.pdf

³ http://consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/137585.pdf

⁴ <http://www.osce.org/gsearch?qr=Guidelines>