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Supplementary Human Dimension Meeting

Rule of Law in the Promotion and Protection of Human Rights

**11-12 July 2013
Vienna, Austria**

FINAL REPORT

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1. EXECUTIVE SUMMARY

The second Supplementary Human Dimension Meeting (SHDM) in 2013 provided a forum to discuss how the rule of law in the promotion and protection of human rights can be enhanced in the OSCE area. It brought together 135 participants, including 87 delegates from 46 OSCE participating States, one representative from one OSCE Partner for Co-operation, 29 representatives of 28 non-governmental organizations, one representative of one OSCE field operation, six participants from three OSCE institutions, and 11 representatives of ten international organizations.

The meeting was organized into three sessions:

- The role of legislative, regulatory and institutional frameworks as well as governments and civil society in the promotion and protection of human rights;
- Effective national and international instruments to protect human rights and prevent human rights violations: best practices, current challenges and solutions;
- Strengthening the rule of law in the promotion and protection of civil, political, social, economic and cultural rights.

2. SYNOPSIS OF THE SESSIONS AND RECOMMENDATIONS

This section summarizes the discussions which took place during the opening session and the three thematic sessions and presents recommendations made by participants. The recommendations were directed towards a variety of actors, in particular: OSCE participating States, OSCE institutions and field operations, and representatives of international organizations. These recommendations have no official status and are not based on consensus. The inclusion of a recommendation in this report does not suggest that it reflects the views or policies of the OSCE. Nevertheless, these recommendations serve as useful indicators for the OSCE to reflect on how participating States are meeting their commitments related to the rule of law and human rights, and their views on OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) follow-up in the area of the rule of law and human rights.

OPENING SESSION

Opening remarks were delivered by Ambassador Ihor Prokopchuk of Ukraine, Chairperson of the OSCE Permanent Council and by Ambassador Janez Lenarčič, Director of the OSCE/ODIHR, followed by the keynote speech by Mr. Tsog Log, Vice-Chairman of the Mongolian parliament.¹

Ambassador Prokopchuk emphasized the role of the rule of law as a cornerstone of OSCE's human dimension and an integral element of the OSCE comprehensive concept of security. He underscored the importance of the principle of accountability and of equality of everyone before the law, while stressing that laws must be publicly promulgated, equally enforced and independently adjudicated. Ambassador Prokopchuk recalled relevant commitments undertaken by the participating States, including the 1975

¹ The texts of the opening session remarks and keynote speech can be found in Annexes 2 and 3.

Helsinki Final Act, the 1990 Copenhagen Document, the 2008 Helsinki Document and the 2010 Astana Commemorative Declaration.

Ambassador Prokopchuk noted in particular the fundamental importance of an independent judiciary to the promotion and protection of human rights, urging the participating States to strengthen the independence and professionalism of the courts. He also acknowledged the key role of civil society actors in reinforcing democratic values and the respect for human rights, specifically mentioning the assistance provided to participating States by the OSCE, and ODIHR in particular, in developing participatory mechanisms to involve civil society in decision-making at all levels and to strengthen advocacy capacities of non-governmental organizations.

Ambassador Lenarčič recalled the vital importance of the rule of law and the respect for human rights for the stability and security, which found its clear expression in the 2008 Helsinki Document. While stressing the universality, interdependence and indivisibility of human rights, Ambassador Lenarčič referred specifically to the World Conference on Human Rights in June 1993 and the adoption of Vienna Declaration and Programme of Action, hailing it not only as an express affirmation of the said principles, but also as a clear pronouncement of the interrelated and mutually reinforcing nature of democracy, development and respect for human rights.

At the same time, Ambassador Lenarčič noted the toll on human rights taken by years of economic recession. He clarified that, while budget cuts have obviously undermined the implementation of economic and social rights, the effect of decreasing resources on civil and political rights has been no less profound. Noting that the promotion and protection of civil and political rights and freedoms requires adequate resource allocation, in particular investment into training of relevant State officials, Ambassador Lenarčič cautioned against saving on human rights as ultimately detrimental to confidence in the government. He urged a human-rights centered approach in resource allocation, ensuring in particular that law enforcement bodies, judiciaries, and other justice sector actors, as well as national human rights institutions are adequately trained and resourced.

Recalling the importance of sound legislative frameworks to the rule of law and human rights, Ambassador Lenarčič stressed the supremacy of international law and the requirement of domestic law to comply with international standards, as emphasized by the 1975 Helsinki Document. He added that no restrictions on human rights can be acceptable unless permissible under international law and compliant with the principles of proportionality, necessity and legality.

On a final note, Ambassador Lenarčič stressed the pivotal importance of civil society and free media to upholding human rights standards. He specifically noted work carried out by human rights defenders, including whistleblowers, to protect human rights and reinforce State accountability for violations.

Mr. Tsog Log outlined the basic premises of the rule of law, stressing the role of transparency and participatory democratic processes in ensuring the rule of law and respect for human rights. In particular, he emphasized the importance of transparent development and implementation of public policies and the involvement of wider society in decision-making. He also specifically mentioned accountability of public officials as an integral element of a sound human rights protection system, noting that accountability can

be fostered through the adoption of quality legislation, establishing viable checks and balances mechanisms, providing appropriate redress to victims of violations, and ensuring that State officials are trained on human rights. Mr. Tsog pointed out that strengthening human rights protection requires addressing the needs of the marginalized and vulnerable, with a view to ensuring their inclusion and representation in decision-making.

Mr. Tsog gave a snapshot of the progress of democratic reforms in Mongolia since the 1990s. In particular, he mentioned building capacities of judges and defense lawyers, improving court infrastructure, and developing a community policing model as priorities where certain progress has been achieved. At the same time, he noted the continued need for advisory and technical assistance by international organizations, in particular the OSCE and ODIHR, will be crucial to the success of the reform.

SESSION I – THE ROLE OF LEGISLATIVE, REGULATORY AND INSTITUTIONAL FRAMEWORKS AS WELL AS GOVERNMENTS AND CIVIL SOCIETY IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Introducer:

Mr. Harry Hummel, Executive Director, Netherlands Helsinki Committee

Moderator:

Ms. Snježana Bokulić, Head of the OSCE/ODIHR Human Rights Department

The first session provided an opportunity to discuss the role of legislative, regulatory and institutional frameworks in the promotion and protection of human rights and to review the implementation of related OSCE commitments.

The introducer, Mr. Harry Hummel, gave an overview of the concept of national human rights protection systems, stressing that the rule of law requires consistency with international law, and noting that the OSCE, in particular ODIHR, and other international organizations, can play an important role in assisting the participating States to bring their legislation in line with international standards. The introducer also mentioned the challenges that remain, including a gap in enforcement of court decisions, primarily but not limited to the European Court of Human Rights. That said, he noted that the struggle for justice does not end with the court judgment, and that improved respect for victims' rights is beneficial for the functioning of the justice system as a whole, as it contributes to better prosecution. Mr. Hummel stressed the importance of human-rights centered police reform, urging participating States to make every effort to eradicate torture. Torture undermines the rule of law also because, if the alleged perpetrator really committed the crime, proper prosecution against him/her is no longer possible where torture has taken place. He also called for the immediate release of those imprisoned for legitimate human rights work.

Some participants raised the issue of selective justice, stressing that it erodes public confidence in democratic institutions. An overall need to improve legislative quality to enable better legal security was also noted.

Appreciation for OSCE assistance in this field, as well as that provided by ODIHR specifically was expressed by a number of participants. In particular, ODIHR's work on the independence of the judiciary, including the Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, and ODIHR's trial monitoring activities, was praised.

A number of challenges were mentioned, among them the continued harassment of human rights defenders and crackdowns on peaceful protest, observed across the OSCE area. Concern was expressed about the arbitrary application of the law and impunity of public officials for violations and crimes committed. Other participants noted that participation by minorities in public affairs in many instances remains inadequate, one particular obstacle being the denial of the right to citizenship.

The importance of ensuring justice for past human rights violations was stressed by some participants. Guaranteeing access to legal counsel for accused and detained persons as well as eliminating the practice of indefinite detention were mentioned as essential.

The following specific recommendations were made in Session I:

Recommendations to OSCE participating States:

- To conduct a proper needs assessment to identify what should be done in the area of minority protection, including addressing the issue of statelessness. A specially designated event could be organized to look at these issues;
- To improve capacity-building for judges and public servants keeping in mind the pivotal role of structural reform of the judiciary;
- To make requisite adjustments in the legislative framework and rely on the justice system to address past human rights violations and factors contributing to interethnic violence;
- To ensure adequate policing of peaceful assemblies;
- To improve the enforcement of court decisions;
- To improve the protection of victims and witnesses of crimes;
- To work towards the eradication of torture;
- To ensure adequate protection of human rights defenders and the release of detained or imprisoned human rights defenders.

Recommendations to the OSCE institutions and field operations:

- To continue assisting participating States in bringing domestic laws in line with international standards;
- To provide assistance to participating States, especially in matters of prison reform, combating torture, drug trafficking and violent extremism and radicalization that lead to terrorism (VERLT).

SESSION II – EFFECTIVE NATIONAL AND INTERNATIONAL INSTRUMENTS TO PROTECT HUMAN RIGHTS AND PREVENT HUMAN RIGHTS VIOLATIONS: BEST PRACTICES, CURRENT CHALLENGES AND SOLUTIONS

Introducer:

Mr. Johannes Thoolen, Secretary of the Board, Martin Ennals Foundation

Moderator:

Mr. Omer Fisher, Deputy Head of the OSCE/ODIHR Human Rights Department

The second working session presented the participants with an opportunity to discuss the role of national and international instruments to protect human rights and prevent human rights violations, in particular how their effectiveness can be strengthened and what solutions may be used to address the outstanding concerns.

In his speech, the introducer, Mr. Johannes Thoolen, covered the main concepts and elements of international human rights law and systems, stressing the importance of drawing a distinction between non-intervention and non-interference in domestic affairs. He described the monitoring mechanisms currently available and noted that even though human rights efforts by international bodies often are not very visible (as in the case of “quiet diplomacy” by the OSCE High Commissioner on National Minorities), there is a vast amount of positive

experience accumulated. The introducer also made a plea to find new, innovative ways to monitor (non)compliance by States with human rights standards.

In the discussion, the participants – representing both participating State authorities and civil society organizations – stressed the importance of robust state mechanisms for human rights protection and closer co-operation between participating States and civil society, both in consultative and monitoring capacities. In this connection, one participant highlighted the role of civil society in torture prevention noting, in particular, Kyrgyzstan's model of a National Preventive Mechanism as a good practice. The participation of civil society in public scrutiny of draft legislation was also urged.

Some participants underscored the importance of human rights defenders in ensuring that human rights violations do not go unnoticed. At the same time, continued persecution and harassment of human rights defenders in some participating States have been noted as a concern. In particular, overbroad interpretation of national security laws to restrict legitimate work by human rights defenders was criticized. Some participants praised ODIHR's work on promoting effective protection of human rights defenders through the development of recommendations for governments.

In connection with the issue of human rights defenders, a number of participants also pointed out the vital importance of the freedoms of assembly and association. They criticized unduly restrictive laws, such as those limiting NGO access to foreign funding, and called for their repeal. They also drew attention to the importance of human rights compliant policing of assemblies.

Several participants highlighted the role of national human rights institutions (NHRIs) as a key component of effective human rights protection mechanisms, stressing that efforts should be made to ensure NHRIs' independence. It was also noted that NHRIs should not duplicate the functions of the prosecution. The need for continued legislative and technical assistance to NHRIs was mentioned, suggesting it may present a potential area of co-operation between the OSCE/ODIHR and the EU.

The participants also reiterated the need for continued efforts to ensure the independent functioning of key institutions, such as the judiciary and prosecutorial systems.

Finally, and more broadly, participants stressed the need to protect the human rights of everyone, including members of marginalized and vulnerable groups, and minority groups. In particular, one participant called for improved access of minority groups to quality education.

The following specific recommendations were made in Session II:

Recommendations to OSCE participating States:

- To ensure better involvement of minorities in decision-making;
- To make efforts to strengthen the independence of NHRIs;
- To encourage exchange of expertise with a view to assisting participating States in strengthening the rule of law, promoting NHRIs;
- To ensure that reformed laws are properly implemented in practice;
- To promote the involvement of civil society in the promotion and protection of human rights, both in consultative and monitoring capacity;

- To ensure that freedoms of assembly and association are respected and to repeal unduly restrictive legislation, in particular laws limiting NGO access to foreign funds;
- To ensure that the policing of assemblies complies with human rights.

Recommendations to the OSCE institutions and field operations:

- OSCE/ODIHR should continue its work on human rights defenders, in particular through the development of “Recommendations on the Protection of Human Rights Defenders”;
- OSCE, and OSCE/ODIHR in particular, should monitor more closely the implementation of human dimension commitments and make public information in this regard;
- OSCE/ODIHR should co-operate with the EU on strengthening the role of NHRIs, especially with regard to legislative and technical assistance to NHRIs;
- To encourage and facilitate co-operation between the Council of Europe and OSCE’s institutions and other structures.

For intergovernmental organizations:

- Strengthen the legitimacy of international human rights monitoring mechanisms.

SESSION III – STRENGTHENING THE RULE OF LAW IN THE PROMOTION AND PROTECTION OF CIVIL, POLITICAL, SOCIAL, ECONOMIC AND CULTURAL RIGHTS

Introducer:

Mr. Georgy Kunadze, Deputy Head of the Office of the Commissioner for Human Rights in the Russian Federation, Assistant Commissioner

Moderator:

Mr. Steven Wagenseil, Adviser, Chief Program Officer, Council for a Community of Democracies

The introducer, Mr. Georgy Kunadze, presented the work of the Russian Ombudsinstitution, outlining the independence safeguards, the admissibility criteria for complaints, follow-up options available to the Ombudsperson and the reporting requirements. He also summarized the human rights challenges that still persist, noting that legislation and its enforcement in the areas of indigenous rights as well as employment remain in need of improvement. With regard to legislative quality, Mr. Kunadze noted hasty passage of laws and lack of prior impact assessment as problematic practices that result in laws having unintended consequences and ultimately affecting the human rights situation. He mentioned the amendments to the law on non-governmental organizations requiring NGO recipients of foreign funding to register as “foreign agents” as an example of a law that falls short of achieving its declared goals of transparency and accountability and therefore in need of revision.

In the discussion the importance of protecting human rights in times of economic recession, especially in relation to the situation of the most vulnerable groups was mentioned. It was noted that the implementation of social and economic rights would benefit from strengthened

monitoring mechanisms. A special mention was made of the EU Fundamental Rights Agency's work as an example of good practice in terms of raising awareness of issues affecting vulnerable groups.

Among the groups that require special attention due to their vulnerability, minority religious communities and lesbian, gay, bisexual, transgender and intersex (LGBTI) people received a specific mention. The plight of the Roma, who continue to suffer pervasive discrimination and exclusion in some participating States, was highlighted. One participant, referring to this point, presented the experience of Serbia as a good practice example, noting that the 2012-2014 Action Plan on Roma specifically addresses the need to improve access to education, housing and social services by Roma as well as to ensure gender equality and participation in decision-making.

Children were mentioned as being especially vulnerable; physical and sexual abuse, labour exploitation and discrimination of minority children in education were highlighted in this regard. The OSCE and ODIHR in particular were urged to conduct an analysis of legislation on child protection in the participating States, stressing the need to reinforce commitments to protect children, to strengthen relevant national institutions and to raise media awareness of the situation.

Access to legal aid was mentioned as essential in ensuring that vulnerable groups are not left excluded from access to certain rights. This comment was in line with an intervention made by another participant, stressing the importance of access to justice, while also urging to adopt a broader understanding of justice, which would not be limited to courts only but would include all institutions mandated to protect human rights.

The following specific recommendations were made in Session III:

Recommendations to OSCE participating States:

- To increasingly address the needs of vulnerable groups to guarantee their full enjoyment of human rights;
- To learn from others' experience in addressing the effects of the economic downturn and co-ordinate relevant efforts;
- To improve access to justice for marginalized or otherwise vulnerable groups;
- To increase reliance on transitional justice mechanisms, in particular truth commissions, inquiry commissions or inquiries through NHRIs; and especially with a focus on the situation of vulnerable groups such as the Roma;
- To give more careful consideration to the future impact of draft regulatory initiatives to prevent unintended negative consequences;
- To give more prominence to the role of the media in promoting open debate on human rights;
- To facilitate access to the media for civil society, including increased access to TV time;
- To strengthen commitments and national mechanisms for child protection.

Recommendations to the OSCE institutions and field operations:

- ODIHR should carry out an analysis and research on the situation of vulnerable groups in the times of economic recession, including the impact of the latter on wages, health care, and education;
- The OSCE and its institutions should conduct an analysis of the situation of children and applicable laws.

3. ANNEXES

Annex 1: Agenda



Supplementary Human Dimension Meeting

RULE OF LAW IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

11-12 July 2013
Hofburg, Vienna

AGENDA

Day 1 **11 July 2013**

15:00 – 16:00 OPENING SESSION

Opening remarks:

Ambassador Ihor Prokopchuk, Chairperson of the OSCE Permanent Council, Permanent Representative of Ukraine to the OSCE

Ambassador Janez Lenarčič, Director of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR)

Keynote speech:

Mr. Tsog Log, Vice-Chairman and Member of parliament of Mongolia

Technical information by **Ms. Snježana Bokulić**, Head of the OSCE/ODIHR Human Rights Department

16:00 – 18:00 **SESSION I: The Role of Legislative, Regulatory and Institutional Frameworks as well as Governments and Civil Society in the Promotion and Protection of Human Rights**

Introducer:

Mr. Harry Hummel, Executive Director, Netherlands Helsinki Committee

Moderator:

Ms. Snježana Bokulić, Head of the OSCE/ODIHR Human Rights Department

18:00 – 19:00 Reception hosted by the Ukrainian Chairmanship

Day 2 **12 July 2013**

10:00 – 12:00 **SESSION II: Effective National and International Instruments to Protect Human Rights and Prevent Human Rights Violations: Best Practices, Current Challenges and Solutions**

Introducer:

Mr. Johannes Thoolen, Secretary of the Board, Martin Ennals Foundation

Moderator:

Mr. Omer Fisher, Deputy Head of the OSCE/ODIHR Human Rights Department

12:00 – 14:00 Lunch break

14:00 – 16:00 **SESSION III: Strengthening the Rule of Law in the Promotion and Protection of Civil, Political, Social, Economic and Cultural Rights**

Introducer:

Mr. Georgy Kunadze, Deputy Head of the Office of the Commissioner for Human Rights in the Russian Federation, Assistant Commissioner

Moderator:

Mr. Steven Wagenseil, Adviser, Chief Program Officer, Council for a Community of Democracies

16:00 – 16:30 Break

16:30 – 17:30 CLOSING SESSION
Reports by the Moderators of the Working Sessions
Comments from the floor

Closing remarks

Ambassador Janez Lenarčič, Director of the OSCE/ODIHR

17:30 Closing

Annex 2: Opening Remarks

Opening Remarks
by Ambassador Ihor Prokopchuk,
Chairperson of the OSCE Permanent Council at the
Second Supplementary Human Dimension Meeting
on Rule of law in the promotion and protection of human rights
(11-12 July 2013, Vienna)

Excellencies,
Ladies and Gentlemen,

On behalf of the Ukrainian Chairmanship I would like to warmly welcome all participants of the Second Supplementary Human Dimension Meeting, devoted to the topic of the "Rule of Law in the Promotion and Protection of Human Rights". The aim of this Supplementary meeting is to discuss how the rule of law in the promotion and protection of human rights can be enhanced in the OSCE area.

In its Priorities for Action for 2013 the Ukrainian Chairmanship has underlined the important role the Organization can play in fostering co-operation between participating States aimed at building a community with the highest standards of respect for fundamental human rights and freedoms and the rule of law.

The concept of rule of law forms a cornerstone of the OSCE's human rights and democratization activities. It aims at ensuring justice based on the full acceptance of human dignity. The 1990 Copenhagen Document can be considered a linchpin for the OSCE concept of the rule of law. It defines the rule of law as "justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression".

This understanding of the interconnectedness and mutual influence of the rule of law and the respect, protection and guarantee of human rights has been reflected since then in all the fundamental documents of the OSCE, including the 2008 Helsinki Document and the 2010 Astana Commemorative Declaration. It has become an integral element of the OSCE comprehensive concept of security and of the Organization's work in practice.

The principle that everyone – from the individual right up to the State itself – is accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, is a fundamental concept. It is deeply linked to the principle of justice, involving an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. *Establishing respect for the rule of law is fundamental to achieving a durable peace in the aftermath of conflict, to the effective protection of human rights, and to sustained economic progress and development.*

Distinguished participants,

The UN High Commissioner for Human Rights, Navi Pillay, maintains that "*the rule of law without human rights is only an empty shell*". I cannot agree more.

Over the years the OSCE participating States have undertaken extensive commitments to respect, protect and promote universal human rights which are inherent to all human beings without discrimination. In accordance with international law and the OSCE commitments *human rights are universal, interrelated, interdependent and indivisible and constitute the basis of peace, security and development.*

Therefore the promotion and protection of human rights *has to take into account the comprehensive and indivisible nature of human rights*, where non-compliance with standards in one area can impact on the exercise of other rights and freedoms. In the Helsinki Final Act and 1983 Madrid document the participating States reaffirmed “their determination to promote and encourage the effective exercise of human rights and fundamental freedoms, all of which derive from the inherent dignity of the human person.”

Considering that all rights are equally important and should be treated in a fair and equal manner, on the same footing, and with the same emphasis, one cannot prioritize some rights above others.

The OSCE plays a significant role in that sense as it embeds this complex of human rights perspective in the institutional and political fabric of the State. Moreover, the consensus-based nature of the OSCE commitments makes them immediately applicable. *Not only does this strengthen the implementation of other, treaty-based, international standards by adding a layer of politically binding commitments, but also provides a mechanism to respond to new, continuously evolving challenges* while making sure a set of common principles applies across country borders that all domestic laws must conform to.

Let me recall that in the 1983 Madrid Concluding Document the participating States reaffirmed their determination to give legislative expression in their respective legislations to the ten principles set forth in the Final Act and to develop their laws and regulations in the fields of civil, political, economic, social, cultural and other human rights and fundamental freedoms and to ensure the effective exercise of these rights and freedoms. The Vienna Meeting in 1989 added considerable detail to this reaffirmation, lending it enhanced political weight. One of the many fundamental breakthroughs there was the participating States' commitment to develop their own laws and regulations on human rights and fundamental freedoms.

The existence of an independent judiciary is one of the main guarantees for the defense of human rights as it plays an important role in this process and is at the core of the rule of law and a democratic system of governance. *All that a State does to strengthen the independence and professionalism of the courts contributes directly to strengthening observance of human rights.* In this context I am pleased to note a growing interest in the 2010 "Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia" as reported by the ODIHR. Along with other OSCE commitments and recommendations this document forms a valuable ground for further strengthening judicial independence in the OSCE region.

Another key factor in efficient promotion and protection of human rights is the civil society. The OSCE participating States have acknowledged the vital role civil society actors play in furthering democracy and the respect for human rights. In 1999 Istanbul document they have pledged “to enhance the ability of NGOs to make their full contribution to the further development of civil society and respect for human rights and fundamental freedoms”. In

this regard I am pleased to note that the OSCE and ODIHR, in particular, assist the participating States in developing participatory mechanisms involving civil society actors in decision-making, promoting the public nature of lawmaking processes, as well as empowering civil society to advocate for legislative change and monitor the implementation of specific human rights and freedoms, in line with the commitment to “welcome NGO activities, including, inter alia, observing compliance with CSCE commitments in the field of the human dimension”.

Dear colleagues,

This Supplementary Human Dimension Meeting seeks to address how the rule of law can be advanced while promoting and protecting human rights and how further progress could be achieved in this field.

Participants will have an excellent opportunity to discuss the role of legislative, regulatory and institutional frameworks as well as governments and civil society in the promotion and protection of human rights. With respect to effective national and international instruments to protect human rights and prevent human rights violations, we will share best practices, current challenges and solutions. This SHDM will also provide a forum to explore means for strengthening the rule of law in the promotion and protection of civil, political, social, economic and cultural rights.

The issues that constitute the agenda of our meeting are of high importance as they affect directly the daily lives of our citizens.

I wish therefore everyone a stimulating and practical discussion helping us to deepen the implementation of the commitments and to commit ourselves again - governments, judiciary, national human rights institutions and civil society - in the defense and promotion of human rights.

I am confident that we shall all benefit from the inclusive dialogue on this important issue during this meeting.

Following the conclusion of the first working session today, the Ukrainian Chairmanship is happy to host a reception to which you are cordially invited.

Thank you very much for your attention!

Opening Address by Ambassador Janez Lenarčič
Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR)
Supplementary Human Dimension Meeting
on the Rule of Law in the Promotion and Protection of Human Rights
Vienna, 11 - 12 July 2012

Excellencies, Distinguished Colleagues, Ladies and Gentlemen,

It is a great pleasure to welcome you to Supplementary Human Dimension Meeting on the Rule of Law in the Promotion and Protection of Human Rights.

Greek philosopher Aristotle said that “[t]he only stable state is the one in which all human beings are equal before the law” (Politics). This statement shows how from early on people came to recognize the fundamental importance of the rule of law and human rights for the stability and security. This recognition found its clear expression some millennia later in the commitment of the OSCE participating States in Helsinki in 2008 to uphold “the rule of law and equal protection under the law for all, based on respect for human rights and effective, accessible and just legal systems.”

This year also marks an anniversary of undisputed relevance to the issues we will be discussing at this Supplementary Human Dimension Meeting. Twenty years ago in June 1993 representatives of the state authorities, international organizations and civil society assembled in Vienna for what was to become a landmark event: the World Conference on Human Rights, where the foundation of the Office of the UN High Commissioner for Human Rights was set. As all of you know, one of the most important outcomes of that conference was the adoption of the Vienna Declaration and Programme of Action, which is a groundbreaking document as it affirmed, once and forever, that all human rights are universal, indivisible, interdependent and interrelated.

That document also affirmed that democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing; and that international community should support the strengthening and promotion of democracy, development and respect for human rights and fundamental freedoms in the entire world.

I have to emphasize that even earlier, in 1975, our own participating States recognized “the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and cooperation among all States”. They also pledged to “promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.” (Helsinki 1975).

This very day, however, marks another anniversary of an event in which the pledges from Helsinki to Vienna have come to a colossal failure. On 11 July 1995, eighteen years ago, more than 8,000 Bosniak men and boys were summarily executed in what is now known as the Srebrenica genocide. Only two years after having solemnly declared its obligation to support the respect for human rights and fundamental freedoms in the entire world, the international community failed in its responsibility to prevent human rights violations and the most egregious of crimes resulting from them.

Today, more than 400 newly identified victims are to be buried at the Potočari Memorial Center. Although much effort has been devoted since the 1990s to strengthen international and domestic instruments and mechanisms for the protection of human rights - which is a matter of immediate and legitimate concern to all states - we are still witnessing too many examples throughout the OSCE area, and not limited to the Western Balkans, where national and international criminal justice have failed the victims. This has to change. It is imperative that we do better.

In their deliberations two decades ago, participants in the World Conference spoke of the 1990s as an 'age of uncertainty.' Just last month, then, reconvening to celebrate its twentieth anniversary, they spoke of our time as, again, an 'age of uncertainty.' An age of uncertainty indeed it is: uncertainty for security in global counter-terrorism effort; uncertainty for development given unrelenting global economic crisis, and uncertainty for human rights and the rule of law the substance and foundation of which are being questioned.

The global “war on terror” has shaken some of our fundamental human rights not just because of the impact of acts of terrorism but also because of the measures taken in the name of its prevention. We continue to see a negative impact on rights and freedoms such as the right to privacy, freedom of expression, freedom of religion, freedom from arbitrary detention or freedom from torture - this is all impermissible.

Years of economic crisis likewise have taken their toll on human rights. And make no mistake: the economic crisis has undermined economic, social, and cultural, but also civic and political rights alike. Amidst decreasing resources, economic and social rights have been hit hard by the financial crisis. Education and welfare programs are often the first in line for budget cuts. Healthcare is no exception.

If we look more attentively, however, we will see that civil and political rights are likely to be affected by the recession just as significantly as the other rights, with consequences no less dramatic. Take, for instance, freedom of peaceful assembly, a right resorted to with increasing frequency across the OSCE area and beyond. Facilitating peaceful assembly in line with international standards and OSCE commitments requires ample resources not just on the occasion of the assembly but also in equipping and training law enforcement officials to police assemblies in a human rights compliant manner. Training police more generally on the benefits of human rights compliant policing and its effectiveness requires not only a shift in paradigms but also resources. Similarly, it may appear easier and less expensive, in the short term (from the resources perspective), to extract confessions under torture than to invest time, effort and funds into how to conduct proper investigations.

Another example is the judiciary and its fundamental role in safeguarding human rights and providing effective remedies, as this meeting will seek to explore in the upcoming working session. Under-resourced judicial systems, with inadequately trained and equipped staff cannot live up to their role and be an effective mechanism of protection of human rights.

The impact trickles down even further. Across the OSCE area, we have seen national human rights institutions facing increasing difficulties in their work due to budget cuts and consolidation for the purpose of financial saving, and at the same time are these same institutions faced with increased demands on their mandates. Yet, the human rights architecture, if it is to be effective, must rely not only on the international bodies for the

promotion and protection of human rights, but primarily on national human rights institutions.

We end up paying dearly for saving on human rights and the ultimate price being that of confidence in the government, which in turn will undermine stability and security. It is in such circumstances that the OSCE comprehensive concept of security becomes more relevant than ever.

Ladies and Gentlemen,

The effectiveness of national and international instruments to protect human rights and prevent human rights violations, of course, does not depend only on budgets. It depends very much on the rule of law and sound legislative frameworks. In this connection, I would like to stress the supremacy of international law and the requirement for domestic law to be in line with international standards, as emphasized also by the commitments undertaken by the participating States in Helsinki 1975. I would like to draw your special attention to the word "legitimate," making it clear that legitimacy has to be assessed against international standards, and no restrictions on human rights can ever be acceptable unless they comply with the key requirements of proportionality, necessity and legality.

There can be no effective protection of human rights without civil society. OSCE participating States have repeatedly recognized this and reiterated in Astana, the important role played by civil society, and free media, in helping them ensure full respect for human rights, fundamental freedoms, democracy, including free and fair election, and the rule of law.

Vital work in this regard is carried out by human rights defenders, and I take this opportunity to call for intensified effort to ensure better protection of human rights defenders in line with the commitment the participating States have undertaken in Budapest in 1994. Human rights defenders are a highly diverse group that includes persons who individually or with others, act to promote or protect human rights. This group also includes whistleblowers, individuals who, in the public interest, may disclose information on human rights violations. Their work is essential to ensuring accountability, which is one of the key premises of the rule of law. To assist the participating States to live up to their commitments our Office has recently launched a project to develop a set of recommendations on effective protection of human rights defenders.

Ladies and Gentlemen,

It is my hope that we will have fruitful discussion over these two days and that the meeting will result in a renewed and shared impetus to find solutions and act upon the concerns identified.

Once again thank you for your participation.

Annex 3: Keynote speech by Mr. Tsog Log²

The rule of law is a set of institutions, laws and practices that are established to protect and promote human rights and prevent arbitrary exercise of power.

The rule of law is based on the following universal principles:

- The government and its agents as well as individuals and private entities shall be accountable under the law;
- The laws shall be clear, public, stable, and just, and uniformly applied, and shall protect fundamental rights, including the security of persons and property;
- The process whereby laws are enacted, administered and enforced shall be accessible, fair and efficient;
- Justice shall be delivered in a timely manner by competent, ethical, neutral and independent professionals who should be adequately resourced and reflect the makeup of the communities they serve.

These principles relate to the extent to which a country protects fundamental human rights. However, given the impossibility of assessing compliance of the full spectrum of civil, political, social, cultural and environmental rights recognized in the Universal Declaration on Human Rights, they should be used to assess compliance with a smaller set of rights, primarily civil and political, that are firmly established under international law and bear the most immediate relationship to the rule of law.

These principles also relate to access to justice in terms of access to legal representation and access to the courts, rather than in terms of broad legal empowerment of the poor and disfranchised.

The rule of law and human rights are closely interconnected. For example, access to public services without the need to bribe a government officer; peaceful and cost-effective resolution of basic disputes among neighbours or companies by independent courts; the ability for people to go about their daily activities without fear of becoming a victim of crime or police abuse all concern situations that commonly occur in people's lives and that are directly influenced by the degree of rule of law in the society.

Public participation and diverse social partnerships are vital for the protection of human rights. The protection of human rights is not exclusively a government affair. Public participation contributes to policies that respect civil and political as well as economic, social and cultural rights. Also, policies resulting from participatory processes are likely to be perceived as legitimate by the population. There are many ways to create avenues for public participation, including ad hoc public hearings, advisory boards or formal consultative bodies.

- Negotiation and consensus-building facilitate transformation of social and legal practices for the protection of human rights. Societal reform is a conflict-ridden process, which may be improved by a number of good governance practices. These include: provision of credible and objective information on specific social problems; use of research evidence

² This is a full text of the keynote speech. At the Opening session of the SHDM, the keynote speaker presented the shorter version of his speech.

to foster informed debate on social problems; framing such debate in a culture-specific manner, at the same time ensuring it is compatible with human rights principles; and transparency in decision-making. Without wide consensus, social reform may not be sustainable.

- Access to information and transparency contribute to the protection of human rights. Transparency in the formulation and implementation of public policies empowers the public to access social services and demand protection of their rights.
- Public education and awareness-raising on human rights strengthen efforts to reform social and legal practices. Public education efforts raise awareness of human rights and social issues, spark debate and enable informed social dialogue. Rights awareness is especially important for vulnerable and disadvantaged groups as well as the State and civil organizations working with them.
- Strengthening accountability of public officials is an important contributor to human rights protection. This may be strengthened through adoption of sound legislation, establishment of institutional checks and balances, establishment of systems providing redress to victims of violations, and training of State officials on human rights and good governance principles.
- Addressing inequalities requires a focus on the marginalized and vulnerable groups. Good governance practices for human rights can empower members of disadvantaged and minority groups to defend their rights by ensuring their inclusion and representation in politics and policymaking.

In 1990, the Mongolian people abolished the totalitarian regime, rejected the planned economy, and began a comprehensive transition toward a new political system. This new choice was to develop a country that respects human rights, democratic values, market economy, and the rule of law. From a narrow perspective, this has led to a complete reform of the legislative system and structure. This reform did not take place all at once, but has been rather a gradual and still on-going process.

A new constitution was adopted in 1990 and has become the main guideline of Mongolia's future development in the social, economic and legal areas.

Based on the concept of the Constitution, the Civil and Criminal Codes of Mongolia and other related laws have been adopted. In addition to national laws and regulations, Mongolia has ratified 45 international treaties on human rights.

The reform of Mongolia's criminal justice system is key to the rule of law. In 2006, a judicial reform was initiated, spurred by public demand and socio-economic changes. People realized that human rights should be protected and promoted by fair courts and independent judges. Since then, several projects have been implemented in the area of judicial reform. Following the elections in 2012, a new government was appointed, called by the people as the "Government of reform". The government has implemented reforms across all sectors, attaching much importance to the legal reform, implemented by the Ministry of Justice. Recently draft laws on the Investigative Agency; Police Service; Legal Aid to Indigent Defendants; Marshal Service; Protection of Witnesses and Victims have been submitted to the Parliament of Mongolia. Some of them were adopted in the spring session. Moreover, several draft laws are pending submission.

In the scope of the legal reform we are aiming to implement complex reforms in the areas of police service and law enforcement.

Regarding judicial independence, we are focusing on four main areas, namely:

- Selection of the most qualified and experienced judges through transparent and independent process;
- Setting up a Court Administration Unit. Formerly, judges had to deal with court administration by themselves, which made judges vulnerable to undue influence by parties to cases or higher level judges. Thus, we are eradicating such influence by separating court administration work from judges and promoting judicial independence.
- Development of service to provide security of judges and court administrative staff as well as to ensure security during trial, protection of victims and witnesses.
- Development of court infrastructure. Court infrastructure is a prerequisite for judicial independence. Without proper courthouses or courtrooms security during trial cannot be provided. The capital city of Mongolia, Ulaanbaatar has a population of almost 1.2 million, one third of whom are in contact with the judiciary at some level. Overall, we have only 14 courtrooms, so judges sometimes hear court cases with fewer participants (such as divorce cases) in their offices. This example illustrates the need for proper infrastructure. We are planning to build courthouses that meet international standards.

With regard to lawyers' capacity-building, we are in the process of establishing the Bar Association of Mongolia, which will be vested with a number of powers, for instance, to accredit law schools that prepare lawyers, advocates and judges. Fair and independent lawyers and judges are the core asset for successful implementation of the legal reform.

Another crucial reform concerns the police service. Similar to other former Soviet countries, the police service of Mongolia is structured as a military organization rather than a public service. This brings the introduction of community policing to the forefront. Through community oversight and participation, the police service will better perform its function of protecting human rights and providing open service to the community.

Legal reform is not only about adopting laws. The implementation stage is crucial. In order to achieve success in the reform, a sophisticated set of activities and action plans is planned for implementation in the coming years. Unfortunately, our current human resource capacity is not sufficient either in education or ethics terms. We are addressing this problem through efficient cooperation with the bilateral and international organizations such as the OSCE, the WB, and the IFC.

Since the legal reform involves institutional changes and restructuring, an immense amount of funding is required, for instance, to implement the court infrastructure reform or capacity-building, which are some of the most urgent priorities. Even where an action plan has been adopted or a needs assessment successfully performed, lack of financial resources can stall the implementation.

Annex 4: Biographical Information on Introducers and Moderators

Supplementary Human Dimension Meeting

RULE OF LAW IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

**11-12 July 2013
Hofburg, Vienna**

Biographical Information: Speakers and Moderators

Keynote speaker:

Mr. Tsog Log

Mr. Tsog is the Vice-Speaker and a Member of the Mongolian parliament. He has previously served as the Minister of Justice, Chairman of the Standing Committee on Legal Affairs in the lower house of parliament, Secretary General at the Secretariat of parliament and a prosecutor. Mr. Tsog has degrees from the Law Faculty of the University of Irkutsk and the Academy of Social Sciences of the U.S.S.R.

SESSION I: **The Role of Legislative, Regulatory and Institutional Frameworks, as well as Governments and Civil Society in the Promotion and Protection of Human Rights**

Mr. Harry Hummel (Introducer)

Mr. Harry Hummel started working on human rights in 1972 at Amnesty International, as a volunteer at the local level, as a member of the national board and as delegate in international meetings, and continued at Amnesty as a staff member working in a range of different positions including Head of Campaigns, Senior Strategy Director and Acting Executive Director. In 2008, he was Executive Secretary of the first Human Rights Defenders Tulip award.

In 2010, Mr. Hummel joined the Netherlands Helsinki Committee (NHC). The NHC has been working for over 25 years on building capacities of professionals involved in protecting human rights, both in the governmental and non-governmental sectors, in countries across the OSCE-region. Current focus subjects of the NHC are prison reform and rights of victims of human trafficking. Mr. Hummel's priorities include building national and international human rights coalitions aimed at increased effectiveness of civil society human rights campaigning, at advocacy towards the OSCE and OSCE participating States, and at improved implementation of decisions of the European Court of Human Rights.

Ms. Snježana Bokulić (Moderator)

Ms. Snježana Bokulić is Head of the Human Rights Department at the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw, Poland. Prior to joining ODIHR in April 2010, she worked for Minority Rights Group International, from 2003 to 2010, and Open Society Institute, from 2000 to 2003. Ms. Bokulić holds an M.A. in

Southeast European Studies from the Central European University in Hungary and an LL.M in International Human Rights Law from the University of Essex in the United Kingdom.

SESSION II: Effective National and International Instruments to Protect Human Rights and Prevent Human Rights Violations: Best Practices, Current Challenges and Solutions

Mr. Johannes Thoolen (Introducer)

Mr. Thoolen is Secretary of the Board of the Martin Ennals Foundation (MEF). He (co-)founded several NGOs, including the Dutch Lawyers Committee for Human Rights (NJCM, 1974), HURIDOCS, International Alert, True Heroes and the MEF itself. Mr. Thoolen is a former Executive Secretary of the International Commission of Jurists and a first Director of the Netherlands Institute of Human Rights. His record includes 15-years of service in the UN, mostly with the High Commissioner for Refugees. Until April 2012, Mr. Thoolen was Chair of the Martin Ennals Foundation.

Mr. Omer Fisher (Moderator)

Mr. Fisher is the Deputy Head of the OSCE/ODIHR Human Rights Department, which he joined in 2010 as a Human Rights Advisor, working mainly on freedom of peaceful assembly. Between 2003 and 2010 he worked at the International Secretariat of Amnesty International in London as a Researcher on the Balkans and as Senior Research Policy Advisor. Omer Fisher holds a PhD in Politics from the University of Strathclyde in Glasgow, and a degree in Economics from Bocconi University in Milan.

SESSION III: Strengthening the Rule of Law in the Promotion and Protection of Civil, Political, Social, Economic and Cultural Rights

Mr. Georgy Kunadze (Introducer)

Mr. Georgy Kunadze is Deputy Head and Assistant Commissioner at the Office of the Commissioner for Human Rights in the Russian Federation. He is also Senior Fellow at the Institute of World Economy & International Relations of the Russian Academy of Sciences. His career spans over 40 years and includes appointments as Deputy Minister for Asia at the Ministry of Foreign Affairs of the Russian Federation and Deputy Director, Institute for United States & Canada Studies of the Russian Academy of Sciences.

Mr. Steven Wagenseil (Moderator)

Mr. Wagenseil spent 28 years as a U.S. Foreign Service Officer (1974-2002) with concentration in Africa, Europe and International Organizations. He has worked especially on Human Rights, the Rule of Law, and Democracy Promotion with the UN in Geneva, the Council of Europe in Strasbourg, and the Department of State in Washington. For three years he was First Deputy Director of the OSCE's Office for Democratic Institutions and Human Rights (ODIHR). Since then, he has served as a Consultant with the United Nations on Elections Support projects in four world regions, and with the Council for a Community of Democracies, working with NGOs to support the Community of Democracies, particularly in Education for Democracy.