CHECK AGAINST DELIVERY!

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at the

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Thank you, Mr. Chairperson. It is an honour and, indeed, a great privilege for me to deliver a report to this Review Conference.

Excellencies,
Ladies and Gentlemen,

The 2010 Astana Summit will not merely be the highlight of this year, but – within the political world of the OSCE – it is one of the most important milestones in this decade.

The Review Conference that has opened today should ensure that before we move forward to the Summit we first take a candid look at the progress that has been made in the relevant areas of the OSCE's human dimension, and at the areas where the promise of commitments has not been realized.

It is therefore with great pleasure that I can present a report covering a range of key human dimension commitments and the status of their implementation.

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Human rights

In the area of human rights, participating States have undertaken numerous commitments, both within the framework of this Organization - by agreeing to specific OSCE documents - and more broadly by ratifying or acceding to the large number of international human rights instruments created by the United Nations and other international organizations. It is obviously not possible for me to review, within the constraints of this report, the level of implementation of each of the many human rights that OSCE participating States have committed themselves to uphold, but allow me to note some areas where challenges remain.

In the area of non-derogable rights, we have seen a worrying trend of nibbling away at existing crystal-clear commitments and international obligations of states. Attempts have been made to justify various forms of **torture and inhuman or degrading treatment** of persons accused of terrorist acts. Attempts have also been made to justify sending individuals back to countries where they are likely to face torture or other ill-treatment. Individuals still face torture and ill-treatment in prisons in many parts of the OSCE region. The freedom from slavery and servitude is still not adequately guaranteed, with thousands becoming victims of the scourge of human trafficking every year, including the most vulnerable groups in society, such as migrant, undocumented, separated and unaccompanied children, and children seeking asylum.

In the area of criminal justice, we have seen similar attempts to chip away at the guarantees built up – sometimes over centuries – in our region. We have seen proposals to justify the **incommunicado detention** of terrorism suspects, and proposals - sometimes accepted, sometimes, thankfully, rejected – to deny suspects in grave crimes access to the courts and to a fair hearing. We have seen attempts to justify massive and often excessive operations to detain or spy on citizens in the name of national security and the prevention of terrorism, radicalization, separatism and extremism – terms that are not always adequately defined and that are often applied too widely to cover everyone engaged in activity that is not to the liking of the state.

In the area of civil and political rights, as we all know, **limitations and derogations** are possible. What we have seen in this area, however, is a frequent misunderstanding of the level of justification required for such limitations. What is required for the limitation of rights such as the freedom of association, the freedom of assembly, the freedom of expression and the freedom of religion or belief is not just a law, or just a reason, or even a good reason. What is required is that the limitation is, to quote the European Court of Human Rights, "*strictly necessary in a democratic society.*" Criticism of the government, or of government officials – however high up – is not a sufficient reason for limitations. Offending anyone – whether governments or private citizens – is not a sufficient reason for limitations. Yet we have seen public assemblies of those not toeing the government line, or those ostensibly "offending" public opinion, or some segment of it, broken up by excessive use of force, and the participants in those assemblies arrested, fined and sentenced. And we have seen assemblies not get adequate protection. We have seen brave and honorable human rights advocates threatened, beaten up and even killed. We have seen human rights NGOs harassed using a myriad of subtle and not-so-subtle techniques, direct and indirect, and sometimes even closed down or not registered at all. We have seen those with religions or beliefs that differ from those of the majority or powerful segments of society harassed and threatened, making it very difficult for them to exercise their fundamental freedom to believe what they wish, when they wish, and where they wish.

I wish to focus for a moment on **freedom of assembly**, which is well-respected in a number of participating States and for which no permission or notification for demonstrations is required. In recent years, a number of participating States have introduced legislation, in part to address challenges related to the impact of new technologies on the form and organization of demonstrations, rallies and parades. Many states have understood that their role is to facilitate and protect assemblies, irrespective of whether participants may be conveying a message that is unpopular, offensive in the eyes of some, or even calling for a – peaceful – change in the constitutional order. New legislation often reflects an understanding of the sometimes spontaneous nature of assemblies, and that assemblies are often a reaction to events that cannot always be foreseen. Such legislation also takes into account the importance of the location of an assembly and that it must be possible to express one's opinion within sight and sound of the object of a demonstration. In short, the legislation of many OSCE participating States now enshrines one of the main principles related to the exercise of the right to freedom of assembly – the presumption in favour of holding assemblies.

Unfortunately, there are also participating States which have adopted legislation that serves to restrict assemblies rather than facilitate them. This includes the introduction of regulations requiring permission for assemblies, rather than mere notification. It also includes blanket restrictions on the time and place of assemblies, although such restrictions are in violation of international law and OSCE commitments. Regrettably, we have also seen that some states with freedom of assembly legislation in line with international standards fall short of those standards when it comes to implementation. It is crucial for state authorities to ensure that banning an assembly can only be the last resort and is only permissible under international law under very limited circumstances. The *Guidelines on Freedom of Peaceful Assembly*, presented by ODIHR and the Council of Europe's Venice Commission in its second edition at this Review Conference, are a useful tool for lawmakers, officials, the organizers of assemblies and human rights

activists for the improvement of freedom of assembly laws and their implementation.

In the area of **equal treatment of men and women**, we still see that women are underrepresented in political and public life and in important sectors, such as the security sector, and especially when it comes to leading positions. Women have, in many participating States, been allowed to join the armed forces and the wider security sector and to rise within them, enriching the security sector with a talent they bring to their jobs that many other participating States are, unfortunately, still not tapping into. I think there is evidence that progress is possible in all of these areas, and that participating States have much to learn from one another.

Careful monitoring of **prisons** in the OSCE region, by civil society, national human rights institutions and international bodies, has led to many improvements in the way prisons are run, and reduced the risk of torture and ill-treatment of those deprived of their liberty. In a number of participating States, we have seen that National Preventive Mechanisms, which often operate under national human rights institutions, are being set up and in some cases taking full advantage of civil society's expertise, to ensure that the rights of the individual are observed in places of detention. In some participating States "terrorism" suspects have been tried and convicted in regular, civilian trials under ordinary rules of evidence.

In many OSCE States, **human rights organizations** operate freely and contribute actively to the protection of the human rights and fundamental freedoms of all members of society. Human rights education has been included in the training curricula of many school systems, universities and other training and educational institutions throughout the OSCE region, ensuring that future generations are aware of their own rights and, no less importantly, the rights of others. However, in a number of situations, undue administrative burdens have obstructed the work of international or domestic NGOs and foundations working on democracy issues. Broadly interpreted restrictions on foreign funding have also affected domestic civil society's ability to collaborate with, and learn from, foreign counterparts. More attention must be paid to creating a legislative and regulatory framework that fulfils these commitments.

These are just some points that show that progress in achieving OSCE commitments is possible. Much work still needs to be done, however, to uphold the solemn promises included in the commonly agreed documents. One way of doing this is through peer-review exercises, such as the one we are to undertake now with this Review Conference.

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Tolerance and Non-Discrimination

The OSCE is at the forefront of combating all forms of intolerance. Our record as an organization is impressive: a mere six years after the first High Level Meeting on Racism and Xenophobia took place in Vienna, participating States have agreed consensually on a comprehensive body of commitments. Among these are commitments that directly address some of the most egregious forms of intolerance and discrimination. For example, the most recent Decision on hate crimes, adopted by the Ministerial Council in December 2009 in Athens, is the only international document dealing exclusively with bias motivated violence, and

states have shown their political commitment to the issue by organizing a series of high-level meetings, thereby providing a forum in which to convene and discuss these issues. In one sentence, the OSCE is the only international organization addressing the specific characteristics of intolerance and offering rapid, responsive assistance at a technical level.

ODIHR is mandated to collect and disseminate **data on hate-motivated crimes** and incidents and on responses from participating States. Our annual report on hate crimes reveals that an increasing number of participating States are submitting information, and that the quality of information has improved since the publishing of our first report in 2007. The improvement is to be attributed to the efforts and commitment of the various National Points of Contact on Hate Crime. Further, our reports indicate that, since 2005, 19 participating States have enacted or amended hate crime legislation, all of them with varying degrees of assistance from ODIHR. 17 states informed us that they had undertaken capacity-building initiatives for law-enforcement personnel, including training for police, prosecutors and judges, as well as outreach to affected communities. Five of these initiatives were conducted within the framework of ODIHR's Law Enforcement Officers' Programme (LEOP), and a further five states have expressed their interest in the programme.

ODIHR applauds these efforts, but they are not sufficient. Intolerance, violence and hate crime are continuing and even growing problems in the OSCE region. Hate crime and other forms of intolerance against Jews, Muslims, Christians and members of other religions, minorities, migrants and, particularly, Roma are frequently reported to ODIHR, as are crimes against persons based on their sexual orientation and gender identity. But the picture we have is still blurred by the absence of comprehensive and reliable data. Without sufficiently relevant data we cannot win the battle against hate crime, specifically, and against intolerance in general.

There are two issues that provide an indication about the current state of affairs. The first is an increase in the number of incidents that are reported to us. Migrants, Roma and ethnic minorities are often the targets of these incidents. Second, I would like to mention the issue of **hate speech**. We all acknowledge that freedom of speech and expression is a fundamental right, but we also agree that hate speech can be poison for the minds and hearts of societies. Sadly, across the region we record accounts of hate speech from public figures, stigmatizing specific groups and spreading insidious misperceptions and prejudices. In 2006 and 2007, OSCE participating States expressed deep concern at the use of racist, xenophobic and discriminatory public rhetoric, and particularly the rise of political parties and movements preaching hate. It is high time for public officials to act responsibly and to be held accountable for their words, especially when these might trigger violence against vulnerable parts of societies.

Preventing violence and countering stereotypes can also be achieved through **educational measures**. ODIHR has received information on initiatives aimed at promoting mutual respect and understanding in school settings in seven participating States and, notably, the implementation of ODIHR's teaching materials to combat anti-Semitism in 14 states. We invite other OSCE States to make use also of our future guidelines for educators on combating intolerance against Muslims.

This brings us to the issue of **freedom of religion or belief**, which has regained significant attention over the past ten years and is at the heart of discussions - often very passionate - among religious/belief communities, broader society and state authorities. Religion seems to acquire an ever more public dimension, and the repercussions of these debates spread through different areas – politics, education, migration, social development – and have transnational and trans-border echoes. Wherever one stands in these debates, respecting freedom of religion or belief is a key to maintaining stability. The limitation of this freedom should be subject to tight criteria spelled out in international law and jurisprudence.

Examples of violations of this right include the obstacles faced by some religious groups or communities in being recognized as possessing legal personality; the violation of the right of religious communities to freely provide religious education to worshippers; the difficulties some individuals face when attempting to disseminate religious literature; and the impossibility for some religious communities, especially minority communities, to establish places of worship in some participating States. Worryingly, there are instances of discrimination as the *result* of governmental policies or legislation that directly or indirectly prevents individuals or communities from enjoying their rights.

OSCE participating States have at their disposal the unique expertise of ODIHR's Advisory Panel of Experts on Freedom of Religion or Belief. I would like to encourage participating States to take full advantage of this assistance. In mentioning this, I am pleased to note that, since 2005, eight states have requested us to review their legislation. We would also like to remind states of a variety of ODIHR-led capacity-building initiatives that encourage a discourse on tolerance and respect.

In the past few years, we have seen a large number of events devoted to tolerance and non-discrimination. Earlier I highlighted the sustained political interest in the topic. Some may say this discussion is so broad and extensive because there is no consensus on "difficult topics", while others deplore the fact that the OSCE is moving away from core fundamental rights issues. I would like to remind everyone that tolerance is not a matter of merely "tolerating the other" or even "liking them". At its core, tolerance is about respecting the fundamental rights of others. It has a firm place within the OSCE's human dimension.

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Roma and Sinti

The human rights situation of Roma and Sinti was recognized as a matter of serious concern in the OSCE area as early as 1990. Since then, participating States have repeatedly addressed it in various OSCE commitments and documents. These include the 2003 Action Plan on Improving the Situation of Roma and Sinti and the Ministerial Council decisions on Roma and Sinti, adopted in Helsinki in 2008 and Athens in 2009. This was complemented by initiatives within the Council of Europe, the European Union and other bodies.

Today, despite the commitments and good intentions included in all of these documents, the picture is bleak. Progress in integrating Europe's Roma populations has, frankly, been minimal and often does not extend beyond the adoption of legal frameworks and policies. Recent events in a number of states illustrate the huge

gaps that still divide Roma communities from mainstream society in virtually all areas of life, including housing, education, employment and access to public services. And they illustrate how Roma and Sinti continue to be the target of **stigmatization, discrimination and hate crimes**. Time and again, they have to pay the price for politicians trying to make capital by stirring up public anger against the Roma.

What is the reason for this patent failure to make progress in integrating Roma communities? Interestingly, there are promising pilot projects being tested at the local level in a few countries. But only rarely are these translated into country-wide practices and policies. There is a lack of proactive approaches at the national, regional and local level, as well as insufficient efforts to ensure the **sustainability of policies** through the allocation of adequate financial support and institutional and human resources. Data on the situation of Roma and Sinti is often incomplete and not systematically collected. This, in turn, negatively impacts on the design of Roma-related policies and their effective implementation and evaluation.

Another important factor is the emergence of what can be described as a climate of **intolerance** against Roma (and other minorities). What we are seeing in some countries is that anti-Roma hate speech is shifting from "traditional" prejudice to outright racist attitudes, preached by marginal yet increasingly visible political groups and left largely unchecked by mainstream society. These radical groups have learned that anti-Roma rhetoric pays off politically and attracts votes. It is even more disquieting that today not even mainstream parties are immune from using anti-Roma rhetoric for short-term political gain – something that would not have been tolerated a decade ago.

The increase in anti-Roma rhetoric goes hand in hand with changing patterns of violence against Roma and Sinti. While at the beginning of the 1990s we witnessed cases of impromptu community violence against Roma, we see today a growing number of attacks on Roma committed by individuals mobilized by racist anti-Roma ideology. These are premeditated attacks, with the intent to kill, that target random individuals or families because of their ethnicity. Some hate crimes targeting Roma and Sinti communities are reported and prosecuted, such as the series of killings in one participating State in 2008/09, but many cases of violence against Roma remain unreported.

Another challenge we face today is the **cross-border migration** of Roma and Sinti communities. We can only tackle this challenge if we address the push factors and, at the same time, fight discrimination against and ill-treatment of Roma and Sinti migrants. State actions against Roma migrants in some participating States, including deportations and offers of voluntary-return assistance, raise multiple concerns regarding the legality of the measures taken and their non-discriminatory nature. This concerns both EU citizens of Roma origin and third-country nationals, mainly Roma from the Western Balkans.

Discrimination has a devastating impact on the opportunities of minorities to integrate into mainstream society. Nowhere else can this be seen more clearly than in the area of education. **Discriminatory practices in education systems** persist across Europe. The main concern is the overrepresentation of Roma children in special-education facilities. In some participating States, more than a quarter of Roma children still end up in special schools, although governments are aware of

how harmful this is to these children and their future, and despite rulings by the European Court of Human Rights on the issue. We urge governments to eradicate this discriminatory and socially costly practice as a matter of urgency.

Education is crucial for making progress in the social inclusion and integration of Roma communities. This was recognized by Helsinki Ministerial Council decision 6/08, in which OSCE States committed themselves to providing for equal access to education and to promoting early education for Roma children. In line with the MC tasking, ODIHR sent a questionnaire to participating States to map the participation of Roma and Sinti in early education. The information received indicates that the participation of Roma children falls far below the average level for majority populations, and is dramatically low when compared with numbers in countries where such participation is the highest. The situation demands pro-active efforts. Broader information campaigns targeting both educational authorities and Roma and Sinti communities are required. There is an urgent need to raise broader awareness among Roma and Sinti parents on the benefits of early education for their children.

Finally, let me comment on the **EU's evolving policy** on Roma. Such a policy should endeavor to maintain the right balance between the responsibilities of the EU and its institutions, and the member states. It should not be an alibi for state inaction and neglect, and should not lead to the view that 'Brussels' should be dealing with Roma issues from a distance and alone. The main challenge we see is that existing initiatives and programmes confront a lack of political will, both at national and local levels. We therefore need to focus on how the EU can mobilize its member states in this direction.

The EU has both the legal and financial means to pursue and support an effective Roma policy. But it needs to ensure that funds reach their target and that there are mechanisms to monitor and assess the outcomes. This is one of the weaknesses of current EU-funded Roma projects and has negatively affected their impact and sustainability.

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Democracy

Recent evidence suggests that more attention needs to be paid to the essential relationship OSCE commitments draw among pluralism, democracy and the rule of law. While fundamental constitutional commitments to pluralism exist in practically all participating States, in some cases their implementation is undermined by both *de jure* and *de facto* obstacles. For example, laws on **political parties**, particularly provisions on the registration and dissolution or deregistration of parties, have created obstacles for pluralism in some states. As called for by the 1990 Copenhagen Document, pluralism requires "regularity and consistency" in the impartial application of such legislative and regulatory frameworks for political parties. Clear and reasonable requirements for their registration and operation should not create excessive disincentives or obstacles to the formation and stable existence of political parties.

The maintenance of a "level playing field" for parties in the use of financial and other resources should also be considered crucial for pluralism. In a number of states, the regulatory framework for the private and public financing of political

parties and candidates could benefit from greater assistance in terms of sharing good practices and improving the quality of legislation and its implementation. The commitments also speak clearly of the "separation between the State and political parties", yet political pluralism continues to be challenged on this count. The abuse of administrative and state resources by ruling parties during election campaigns has frequently been noted by ODIHR Election Observation Missions. The problem is not limited to elections alone. More effective ways need to be found for the OSCE to monitor and, if necessary, assist participating States in developing legal rules that place effective restraints on the abuse of governmental power.

Migration stands at the core of OSCE commitments and work, and has been high on the OSCE's political agenda. Over the last decade, migration patterns have shifted. Mixed migration flows have become increasingly common and migration routes have changed, thereby transforming many of the former countries of origin into countries of destination. Urban displacement has grown in proportion and the impact of environmental and development-related displacement causes serious concern. Finally, conflict and state fragility both underpin much human displacement and, at times, are a consequence of it.

As a result, OSCE States face many challenges in meeting their commitments on **refugees** and **internally displaced persons**, as well as on the treatment of citizens of other participating States. While remarkable advances have been made in this area – such as accession to relevant international treaties and the enacting of national laws on migration, asylum and non-discrimination – progress is uneven across the region. Forcibly displaced persons often continue to face obstacles in their access to protection, assistance and determination of status, and experience various direct and indirect barriers to the enjoyment of their basic human rights. The social fabric and cohesion of receiving societies has been under strain, at times resulting in the discriminatory treatment of the citizens of other participating States. Additionally, several OSCE participating States are faced with the challenges of solving protracted displacement situations that bear serious consequences both to the displaced and to the communities they find themselves in. In general, the humanitarian space is shrinking.

In order to further facilitate the fulfillment of OSCE commitments in this area, it is vital that the importance of the legal and normative principles of the 1951 Geneva Convention and other relevant international instruments, as well as of relevant anti-discrimination laws, are reaffirmed. It is also recommended that the *Guiding Principles on Internally Displaced Persons* are recognized as providing valuable assistance in dealing with internal displacement. The implementation of OSCE commitments would be strengthened by the development of humane and equitable migration policies, as well as protection-sensitive border management mechanisms that help ensure access to asylum and to the exercise of basic human rights. Active pursuit of policies for the integration of citizens of other states would promote equal treatment and the development of more cohesive and representative receiving societies.

OSCE documents recognize that successful integration policies that include respect for cultural and religious diversity and the promotion and protection of human rights and fundamental freedoms are a factor in promoting stability and cohesion within societies. They include specific commitments on enabling **migrants to participate in the life of the society** they live in, on creating harmonious relations between migrant workers and the rest of society, and on encouraging migrants to

actively pursue their integration. Although considerable progress has been made by OSCE States in engaging resident non-citizens to participate in public affairs, the potential of immigrants to be active local, national and global citizens has not been fully realised. Access to political rights, such as the right to vote and stand in elections or join a political party, is circumscribed, and policies to promote the participation of non-citizens in conventional public life remain underdeveloped.

Participating States have made significant progress in ensuring that citizens are able to enjoy their right to **freedom of movement**. Highly restrictive *propiska* residency-registration systems inherited by many participating States have undergone significant legislative reforms and, under the existing legal frameworks, citizens are generally free to travel within state borders while they are required to register their place of residence. However, existing practice shows that administrative requirements for registration in some states cannot be met by certain categories of the population. Also, administrative restrictions still exist in some states for travel and establishing permanent residency for refugees, asylum seekers and internally displaced persons. Failure to register leads to limited access to social services and the job market, and is punishable by administrative fines. It is worth emphasizing that the denial of rights for failing to register constitutes a disproportionate response by the state. Registration should be viewed primarily as an administrative requirement.

Facilitating cross-border travel should have been placed high on the OSCE agenda in the context of promoting human contacts. In this respect we have witnessed increased efforts by the participating States to simplify visa-issuance procedures when it comes to family contacts, as well as professional, tourist and other legitimate travel. States continue to co-operate in further liberalizing visa regimes and creating visa-free travel areas while addressing existing security concerns. However, where visa regimes exist, application procedures tend to be perceived more as a barrier to legitimate travel than a necessary system to prevent illegal migration.

The last decade has seen a proliferation of **legislation** in the OSCE space. In particular, those OSCE participating States that went through, or are currently going through, the EU accession/approximation process, have undergone massive legislative efforts. Indeed, while the trend in modern theory for drafting legislation is to reduce, rather than increase, the amount of legislation drafted and passed, it nonetheless remains true that laws continue to be central instruments of state governance.

Experience has shown that the most effective laws result from a legislative process that operates on the basis of a set of comprehensive, uniform and coherent rules, and allows for consultations with those who will be affected by the legislation or responsible for its enforcement. Effective and implementable laws are those that are intelligible to the population at large. The main “users” of a law must be aware of their rights and obligations and their point of view must be taken into account. Some states have understood that the greater the **transparency and inclusiveness in the law-making process**, the larger the probability of effective implementation. Furthermore, increased transparency has been shown to raise the quality of laws themselves. Therefore, the concept of “legislative transparency”, which is specifically referred to in key OSCE documents, may now be considered one of the essential principles of a democratic law-making process. Many states have taken steps to ensure that their law-making process is more transparent and efficient, in

several cases with assistance from ODIHR. However, it has been disconcerting to see that legislation has also been drafted behind closed doors, due to national security concerns or under the guise of anti-terrorism measures.

When it comes to the **rule of law**, we have every reason to hope for progress in the implementation of our commitments: participating States have paid consistent attention to this theme in the last decade. This is reflected in the choice of topics for human dimension meetings and in comprehensive Ministerial Council decisions. Indeed, much has been done in the last decade to ensure that the legislative framework in the OSCE area reflects our shared commitment to the rule of law, including the independence of the judiciary and the right to a fair trial. We will not find a participating State whose constitution and laws do not proclaim adherence to these values. Those states that emerged from legal systems that lacked conceptions of the rule of law and the separation of powers have undertaken a major overhaul of their legislative frameworks, the scale of which should not be underestimated. But neither should we underestimate the scale of the challenges we still face. Just like democracy, the rule of law is easier to preach than it is to practice. Governments must lead by example, and this takes political wisdom and courage. In the absence of such leadership, the rule of law cannot become what it should be according to our commitments: an entrenched principle of governance that empowers individuals and keeps the state accountable to the public.

The participating States of the OSCE have also agreed on a number of commitments related to creating and maintaining an **independent judiciary**. Constitutions and laws in all participating States proclaim the independence of the judiciary, and, indeed, many legal safeguards have been introduced to protect the independence of judges. But it is obviously not enough to sign up for commitments, introduce general standards on judicial independence into national constitutions and laws, and keep on reiterating them. Judiciaries do not become truly independent by just calling them independent and passing laws requiring them to make their decisions impartially and independently. In fact, many states lag behind in translating these principles into reality. A meeting of independent experts that ODIHR organized together with the Max Planck Institute in Kyiv in June this year re-confirmed that more needs to be done to raise the level of implementation with regard to commitments on judicial independence. The recommendations adopted by the group of experts at that meeting will be presented at a side event of this Review Conference.

As long as judicial councils and court chairpersons, for example, are under strong government influence, they will not be able to strengthen the independence of the judiciary. The competences of judicial councils and court chairpersons in administering the judiciary, as well as their own independence from the government, should therefore be re-examined closely, particularly with regard to key decisions affecting judges' careers.

In a number of participating States, the promotion of judges or renewal of their terms still depends on the discretion of the government or head of state. In order to staff the judicial corps with independent and impartial minds, the discretion of government authorities in decisions affecting judges' careers has to be reduced. If such decisions are solely merit-based and follow transparent procedures, this will help exclude nepotism and corruption, too.

Lawyers are, and should be, at the front line of human rights protection. Unfortunately, we have seen a tendency of excessive executive interference in membership in the bar in many countries over the last decade, endangering the right to a **fair trial**. Let me emphasize: just as is the case with the judiciary, a dependent legal profession will not serve the interests of the wider public. Policymakers in the OSCE area should devote serious attention to ensuring access to legal assistance, especially in criminal matters. Governments in some states have handed this responsibility over to bar associations, but this solution produces positive results only if the bar itself is a strong and accountable institution. Low rates of legal representation and substandard professional performance by lawyers are realities that must be addressed in many justice systems.

When speaking of fair-trial guarantees, we cannot ignore the principle of equality of arms. Simply put, the prosecution and defence should be given equal opportunities to present their cases. Regrettably, this is still far from reality in many systems, where lawyers have no real opportunity to gather their own evidence and present it in court. One powerful indicator of the existing imbalance between the prosecution and defence is the extremely low rate of acquittals in some legal systems. In several participating States the acquittal rate is below 1 per cent. This strong accusatorial bias in criminal justice systems also suggests that the role and powers of prosecutors must be adjusted to correspond to the principles of separation of powers and the rule of law.

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Elections

One of the salient features of a genuine democracy is the holding of periodic, transparent, and democratic elections. It is unfortunate that this commitment, which is so central to the OSCE, is still not fully implemented in all participating States, and that we continue to observe how the will of the people – supposedly the "*basis of the authority and legitimacy of all government*", as it was termed 20 years ago - is at times flagrantly manipulated and tampered with.

Since the last Review Conference in 1999, ODIHR has observed over 160 elections throughout the OSCE region, thereby accumulating comparative knowledge on the implementation of election-related OSCE commitments contained in the 1990 Copenhagen document. Our election reports have emphasized areas where progress has been made in complying with OSCE commitments, but they have also underscored remaining shortcomings in conducting democratic elections.

Political **pluralism** is a pivotal element of any functioning democracy. Different policy options must exist for the electorate to choose from. Generally, political pluralism has increased in the OSCE area. However, there are a few participating States where voters continue not to have a genuine choice on election day.

All participating States hold elections at regular and **periodic intervals**, although these elections are not always fully free. Negative development has been noted in a few OSCE states where there is not at least one chamber of the legislature in which all members are freely elected by popular vote, in contradiction to OSCE commitments.

The respect for the fundamental individual **right to stand for public office** has grown in the OSCE region. Administrative hurdles to prevent or remove legitimate

candidates from the ballot have become less prevalent in the OSCE area, although this remains problematic in certain states. Legislation in some states goes beyond acceptable restrictions to the right to stand for elections, such as citizenship, residency or age. Also, some OSCE states do not allow independent candidates to run for office but require individuals to be affiliated with a political party in order to stand for office, which is not in line with the OSCE Copenhagen Document.

Overall, the **right to vote** is respected in the OSCE region. However, we continue to observe retribution, pressure and intimidation of voters. This violates the right of voters to make their choices freely. Vulnerable groups, such as civil servants and national minorities, remain the most common targets of these unacceptable practices.

Mechanisms in place for the **registration of voters** in some countries do not adequately ensure the guarantee of universal and equal suffrage for all adult citizens. Improper procedures at times prevent citizens with full voting rights from exercising them, while flaws in systems may open opportunities for multiple voting.

The respect for the principle of the **secrecy of the vote** remains a serious concern in many OSCE states. Family voting, group voting and proxy voting violate the right to secrecy. Such practices also challenge the principle of the equality of the vote commonly known as “one person, one vote”. The use of new voting technologies, especially remote voting in an uncontrolled environment, such as Internet voting, also raises issues regarding the secrecy of the vote. Secrecy of the vote is at the core of democratic principles that protect voters against possible intimidation and undue influence. The awareness of the importance of this right to secrecy greatly varies from one country to another.

In a number of participating States, the **campaign environment** is characterized by a lack of respect for fundamental freedoms, such as assembly, association and expression. I will not go into more details, as there will be a specific session dedicated to these essential foundations of democracy. A lack of equitable conditions for contestants during electoral campaigns is a common feature in several OSCE states. In many states, ODIHR continues to note abuses of administrative resources by public officials and civil servants for partisan purposes, often in favor of incumbents. This contributes to an uneven playing field between contestants and raises issues regarding a lack of clear separation between the state and political parties.

This lack of fairness is further compounded by a lack of pluralistic media and **equal access to the media** in some OSCE states. State-controlled media often display a bias in favour of governing parties and do not provide sufficient coverage to opposition candidates for them to make their views known to the electorate, thus limiting diversity and balance of information.

Effective election **complaints mechanisms** are crucial to ensure that individuals whose rights have been infringed upon receive timely remedies. A lack of timely and effective remedies remains an issue in many OSCE States. In some states, complaints are summarily dismissed without respect for due process, such as providing sound legal reasoning or informing plaintiffs of their right to appeal. In others, there is no possibility of judicial review of decisions taken by administrative bodies, such as election commissions. In some states, critical aspects of an

electoral process cannot be appealed at all, either to an administrative body or to courts of law.

Concern also remains with regards to **the counting of ballots** and the tabulation of results. In some states, ODIHR continues to note issues regarding the honest counting and tabulation of results due to inexperience or at times due to outright fraud.

All OSCE participating States, with a handful of exceptions, have routinely invited ODIHR to observe their elections. Furthermore, almost half of the participating States have facilitated access to elections below the national level, thus at times resulting in observation of local and regional elections. However, some participating States continue not to provide, either by law or in practice, **access for national and international observers** to all phases of the election process. Some states allow election observers without explicitly delineating their rights and responsibilities. This could lead to unequal treatment and biased decisions. Although some progress has been seen, domestic observers remain susceptible to intimidation and pressure. This curtails their vital role in providing checks and balances, and limits much needed transparency.

ODIHR remains committed to engaging with OSCE participating States to discuss how to improve the conduct of elections through the formulation of targeted recommendations and through active, sustained and effective follow-up activities. This cannot, however, succeed without commensurate political will on behalf of participating States to initiate meaningful electoral reform. In this area, progress is limited; in fact, it is hardly discernable. Much remains to be done to ensure that participating States promptly follow up on ODIHR recommendations as they agreed to do at the Istanbul Summit 11 years ago.

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Ladies and Gentlemen,

Let me, in conclusion, say a few words on the larger debate about the way forward in implementing the universal principles enshrined in the OSCE *acquis*, including the common commitments states have all made to transformative values such as human rights and the rule of law.

When reviewing the state of implementation of commitments by individual OSCE States, we keep hearing a number of excuses for putting off democratic reform. Each of them deserves an answer, as they have accompanied the development of the OSCE's human dimension and have impacted upon the implementation of commitments.

First, we hear that certain countries are "not ready" for democracy and human rights because of their specific traditions and history. Full-scale democracy would only lead to instability, we hear, as people have not learned to exercise their rights in a responsible way. True, country-specific traditions and history matter. They have to be taken into account when choosing and developing an appropriate political and institutional system. OSCE commitments do not prescribe any specific model of democracy. But they prescribe certain principles that need to be applied, no matter what system is chosen. And this includes the protection of universally agreed human rights standards. There is no such thing as 'unpreparedness' in a people's desire for freedom and the protection of their human rights.

A second and similar charge claims that democratization means the imposition of values. On the eve of an OSCE summit, I wish to refute this charge. The work of the OSCE is not about value imposition. Neither United Nations treaty obligations nor OSCE commitments were invented by some to be imposed on others. We all know they were negotiated and voluntarily agreed upon by all. That is why I believe that we share a common notion of democracy. It is things like independent courts, the verdict of the ballot box and a free media that, as we all agree, strengthen our security.

A third set of arguments pitches democracy as a threat to the stability of certain territories and regions. According to this view, democracy is a dangerous formula in particular geographic settings. Working for an organization that sees security and stability in an essential context with human rights and the rule of law, you will not be surprised to hear that I cannot agree with this position. Democracy and the protection of human rights, of course, foster stability in the long run, while their abrogation sooner or later leads to popular dissent and instability.

"Give us more time", is a closely related – fourth – plea. Frankly, I have always found such pleas for 'postponement' quite suspicious. Perhaps this is because I have myself seen how a people can be deprived of its political rights. Thus I am clearly not among those who say it could be worthwhile to forego, or postpone, democracy for an indefinite period in order to achieve economic growth, or to consolidate societal peace or stability. Postponing the rule of law and democratic entitlements will not fast-track sustainable economic development. Those who demand more democratic rights cannot – and should not – be silenced by arguments that the creation of growth and productivity come first. Again: people are ready for democracy at every stage of their economic and social development.

Recently, at the height of the ongoing financial and economic crisis that has struck much of the world, some have started to question whether democracy is still valuable even though it does not always deliver economic prosperity. Has democracy really lost its appeal as other methods of government appear, at the moment, to produce better GDP growth rates? It hasn't. Vague stability concerns do not trump the benefit of open societies for millions of people; and money cannot be allowed to trump democracy. The intrinsic value of democratic government does not depend on the oscillations of economic cycles and the movements of stock market indexes.

Democracy remains the only system of government that ensures the respect for human dignity and freedom. The development of democracy has not passed its zenith. It is under permanent construction. We need to nurse and foster it.

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Excellencies,

That democratic governance involves more than democratic elections is broadly accepted in our organisation. This conviction reaches back to the OSCE's Copenhagen Document whose 20th anniversary we celebrated this year. In plain words, no OSCE state can claim to be a democracy without respect for human rights; human rights can only be guaranteed in a democratic system; and the rule of law means more than the formality of following the law – it means justice based on the supreme value of the human personality and guaranteed by institutions.

It has become commonplace to say that, furthermore, democracy requires a vibrant civil society and that interest groups are able to exist and prosper; that the wider public should be able to participate effectively in government, and that government needs to conduct public affairs transparently and be accountable.

Trust in government is a highly perishable commodity and must be constantly maintained and renewed – something that can only happen if the initial conditions of transparent government are fulfilled and where legislation is the outcome of a serious, informed and participatory public debate.

Too often in some parts of the OSCE region we see state administrations surrounded by mystery and inscrutability. Yet democracy can only breathe and prosper with a vigilant population actually supporting, challenging and guarding it - a population that is in a position to scrutinize the work of government and question the gloriole of power.

Too often in our region, we see "Potemkin democracies" that display facades of neat constitutions, human rights commissions and ombudspersons, and all the rest of the 1990s transition-to-democracy toolkit. But behind these facades there lurk practices that go against the very goals for which all these institutions were put in place.

My wish for the next week is that all of us are able to be honest about the state of implementation of the promises the OSCE participating States have made to their citizens, as well as to each other. Looking back at the last OSCE Summit, in Istanbul in 1999, I hope we can ask ourselves and provide honest answers to the following questions:

- Have States reinforced their "efforts to ensure full respect for human rights and fundamental freedoms", as promised in paragraph 3 of the Charter for European Security agreed in Istanbul in 1999?

- Have threats to security such "as violations of human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief and manifestations of intolerance…" been effectively countered, as promised eleven years ago in paragraph 19?

- According to this pledge, have sufficient measures been taken "to promote tolerance and to build pluralistic societies where all, regardless of their ethnic origin, enjoy full equality of opportunity"?

- Further, has "equality between men and women" become "an integral part of our policies", as set out in paragraph 23?

- Have States enhanced the "ability of NGOs to make their full contribution to the further development of civil society and respect for human rights and fundamental freedoms, as they promised in paragraph 27 in Istanbul?

- And finally, has the commitment to "follow up promptly the ODIHR's election assessment and recommendations", as set out in paragraph 25, been implemented?

Without wanting to prejudge the result of this Review Conference, I believe that in many cases the answer to these questions will not be in the affirmative.

This should not dishearten us. The challenge here for all of us is to discuss how to make significant progress in implementing the commitments. Only then will the Review Conference, including the sessions on human dimension issues that begin today, truly contribute to a successful Astana Summit.

I am looking forward to an inspiring debate that should reflect on the great challenges that lie ahead, but also on the twofold opportunities the Summit brings. First, we should acknowledge that the main problem in the human dimension is uneven and incomplete implementation of commitments; second, we should agree on what needs to be done to rectify this. We owe this to the citizens of OSCE states, states owe it to each other and, of course, to this Organization if we want to preserve its relevance in the next decade.

Thank you.