



## **SUPPLEMENTARY HUMAN DIMENSION MEETING**

# **RULE OF LAW IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS**

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

## **ANNOTATED AGENDA**

The rule of law is a fundamental pillar on which the protection of human rights rests. Unless the rule of law is embedded in the fabric of governance, there is no effective legal protection for rights and entitlements. The OSCE participating States have reaffirmed their commitment to “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” (Helsinki 2008). A sound rule-of-law framework ensures that victims of human rights abuses are provided redress and the perpetrators are held accountable, which in turn deters future violations. Conversely, lack of the rule of law, by elevating the risk of arbitrary action and impunity for human rights violations, creates a climate of mistrust and instability, which may be further compounded by corruption and lack of transparency.

OSCE participating States have committed to “support and advance those principles of justice which form the basis of the rule of law,” [...] while recognizing that “the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but 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” (Copenhagen 1990). With regard to the institutions, the participating States have emphasized the key role played by an independent judiciary in providing remedies for human rights violations and ensuring due process and protecting human rights before, during and after trials (Istanbul 1990, Ljubljana 2005).

OSCE participating States agree that “human rights and fundamental freedoms, the rule of law and democratic institutions are the foundations of peace and security” and committed themselves to “protection of human rights, including the rights of persons belonging to national minorities”, as an essential foundation of democratic civil society” (Budapest 1994). The participating States thus agree that a functioning rule-of-law sector is key to building respect for human rights and long-lasting stability in the region. It can be strengthened by concerted efforts to improve independent functioning of rule-of-law institutions, in particular with regard to access to justice and fair trial. Civil society should be empowered, and should perform a watchdog function to enhance the accountability of such institutions. These efforts should extend equally to the protection of civil, political, economic, social and cultural rights. It is a multifaceted process which requires efforts of different stakeholders – legislative, executive, judicial branches of government, local and regional authorities, ombudsman institutions and civil society. With regard to the role of civil society actors specifically, the OSCE participating States have underscored “the important role played by civil

society [...] in helping us to ensure full respect for human rights, fundamental freedoms, [...] and the rule of law” (Astana 2010).

A sound rule of law framework for the promotion and protection of human rights implies, inter alia, that “participating States [...] fulfill in good faith their obligations under international law” (Helsinki 1975). As international human rights obligations take priority over national standards, the participating States have agreed that, “in exercising their sovereign rights, including the right to determine their laws and regulations, they will conform to their legal obligations under international law” (Helsinki 1975). At its 16<sup>th</sup> meeting, the OSCE Ministerial Council further reinforced the priority of international obligations by calling on the OSCE participating States “to honour their obligations under international law and to observe their OSCE commitments regarding the rule of law at both international and national levels” (Helsinki 2008).

**Day 1: 11 July 2013**

**15:00 – 16:00 Opening Session**

**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**

The OSCE participating States agree that “all action by public authorities must be consistent with the rule of law, thus guaranteeing legal security for the individual” (Budapest 1994). Legal security and respect for human rights cannot be guaranteed in the absence of clear and predictable legislation. OSCE commitments call for legislative processes to be open and public. Legislation must be published, that being the condition for its applicability (Copenhagen 1990).

Compliance with the principles of necessity and proportionality when restricting human rights that are not absolute in domestic legislation is a hallmark of a rule-of-law framework designed to best protect the core of key human rights and freedoms. OSCE participating States have agreed that “[a]ny restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law” (Copenhagen 1990). Recent years have seen laws passed in the OSCE participating States that aim to limit the exercise of fundamental freedoms on grounds that are *per se* permissible. However, the potentially disproportionate extent of restrictions thus imposed is a cause for concern.

The concept of regulation is not limited to primary laws. Lower-level regulatory instruments are often instrumental to facilitating human rights compliance by public servants. Since regulatory acts are generally subject to less scrutiny, there is a need to ensure public access to such regulatory acts. In addition, mechanisms should be put in place to review their compliance with human rights standards and to ensure redress against administrative regulations (Moscow 1991).

An independent judiciary plays an important role in this process and is at the core of the rule of law and a democratic system of governance. The participating States have committed to ensure “the independence of judges and the impartial operation of the public judicial service” (Copenhagen 1990, Moscow 1991), as well as to recognize and protect “the independence of legal practitioners (Copenhagen 1990). In that, the participating States have specifically stressed the “key role [of the judiciary] in providing remedies for human rights violations” (Istanbul 1999). It falls on the courts, therefore, to ensure that no one is above the law, and their independence and impartiality is a prerequisite for performing this function. At the same time, the importance of the independence of the judiciary goes beyond fair adjudication in individual cases into the realm of lawmaking; it is vital to ensure that courts can independently exercise their powers of judicial review – i.e., scrutinize

compliance of legislative and regulatory acts with relevant international standards and the constitutional framework.

In accordance with the OSCE commitments, the right to be tried fairly is essential to any democratic state governed by the rule of law. Another central aspect is equal protection under the law for all, based on respect for human rights and effective, accessible and just legal systems. OSCE participating States committed themselves to combat discrimination and acknowledged that “practices related to discrimination and intolerance both threaten the security of individuals and may give rise to wider-scale conflict and violence” (Maastricht 2003).

Recognition within the State of the plurality of communities and interests that comprise the State and of the value of harmonious inter-ethnic relations strengthens the stability and the cohesion of the State. The development of constructive minority policies and policies that promote integration while respecting diversity are gaining increasing importance in the OSCE region.

OSCE participating States have acknowledged the vital role civil society actors play in furthering democracy and the respect for human rights. 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” (Istanbul 1999). In this regard the OSCE and ODIHR in particular assist participating States in developing participatory mechanisms involving civil society actors in decision-making, promoting the public nature of lawmaking processes (Copenhagen 1990), 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” (Moscow 1991).

**Issues that can be discussed in connection with this topic include:**

- What are the gaps or deficiencies in the rule-of-law sector that need to be addressed to improve the protection of human rights?
- What are some ways to protect individuals against arbitrary and/or discriminatory application of laws?
- How can the participating States ensure clear and quality legislation that does not permit arbitrary interpretation or application, to ensure that all segments of the population are protected equally?
- How can participating States ensure respect for the principles of legality, necessity and proportionality when legislating on issues that potentially affect human rights?
- How can legislation and regulations help strengthen a proactive approach to human rights, focused on the promotion of human rights and deterrence of violations?
- How can civil society actors contribute to the promotion and protection of human rights? What challenges do they face as they strive to do that? How can civil society become more involved in consultations on legislation affecting human rights of the population as a whole or certain identifiable segments of the population?
- What steps are being taken by participating States to ensure that there is no interference with the absolute protection afforded by the right to be free from torture?

**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**

National and international legal frameworks play a key role in human rights protection. OSCE commitments add to legally binding standards derived from international treaties, which become effective upon their ratification, a political commitment that is immediately binding on the governments. While individual States exercise sovereignty in conceptualizing, drafting and adopting legislation and regulations, any legislation or regulations thus adopted must “conform with [the participating State’s] legal obligations under international law” (Helsinki 1975).

The principle of equality before the law is a fundamental characteristic of the rule of law. However, in many instances states and individuals continue to violate the rule of law without consequence to them, but with severe consequences for individuals, in particular those belonging to marginalized or otherwise vulnerable groups, in particular women and children.

Participating States have committed to “fulfill in good faith their obligations under international law, both those obligations arising from the generally recognized principles and rules of international law and those obligations arising from treaties or other agreements, in conformity with international law, to which they are parties” (Helsinki 1975). At the same time, issues raised at OSCE human dimension events, by United Nations human rights treaty monitoring bodies, through the United Nations Universal Periodic Review process, in reports by key civil society organizations, and other types of reporting, illustrate that many challenges remain.

Strengthening the effectiveness of national and international instruments to protect human rights is best achieved through multifaceted approaches. This includes legal review and holding to account those responsible for conduct resulting in human rights violations, in which connection the essential role of a robust, independent and impartial judiciary comes to the forefront. It also includes public awareness-raising and civil society capacity-building, including in matters of strategic litigation and alternatives to official inquiry into allegations of human rights abuse, monitoring impact of laws and policies on various groups, including vulnerable or marginalized ones, human rights education, and international co-operation and sharing of best practices. While States bear primary responsibility for implementation, independent national human rights institutions and civil society also play an important role in promoting effective implementation of national and international instruments.

**Issues that can be discussed in connection with this topic include:**

- What are the essential elements of effective national and international human rights instruments and related mechanisms for their implementation?
- How can the OSCE and other intergovernmental organizations assist in building effective institutional mechanisms for the protection of human rights?
- What examples of good practices in the effective protection of human rights through national and international instruments are available?
- What are some examples of inconsistency between domestic laws and international human rights obligations and how can these be overcome?
- What are the challenges and good practices in improving the accountability of government actors?

- What should the OSCE participating States do to further promote a rule-of-law approach to the promotion and protection of human rights?
- What measures have been taken by the participating States in order to address vulnerable groups, including women and children?

**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**

Human rights are universal, indivisible, interdependent and interrelated. They are upheld through the rule of law, and strengthened when duty bearers are held to account in accordance with international human rights standards.

The 1993 Vienna Declaration and Programme of Action, affirming the indivisibility of rights, stated that, “[t]he international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.” The participating States have further emphasized the indivisible and comprehensive nature of human rights by stressing “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” (Helsinki 1975 and Madrid 1983). In a similar vein, the participating States have recognized that “civil, political, economic, social, cultural and other rights and freedoms are all of paramount importance and must be fully realized by all appropriate means,” while committing themselves “to consider acceding to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Covenant on Civil and Political Rights and other relevant international instruments, if they have not yet done so” (Vienna 1989). In this context, OSCE participating States decided to “pay special attention to problems in the areas of employment, housing, social security, health, education and culture” (Vienna 1989, Copenhagen 1990). Furthermore, they committed themselves to “work for improved access for all to basic social benefits, such as affordable health services, pensions and education, and for adequate levels of protection of socially vulnerable groups, and the prevention of social exclusion” (Maastricht 2003).

A comprehensive and consistent approach to the promotion and protection of human rights is largely premised on the principles of partnership and cohesion. The participating States have stated that “[g]ood governance and sustainable development imply policies and systems that promote social partnership and cohesion” and committed themselves to work towards improved access for all to basic social benefits [...] They also committed to work towards “protection of socially vulnerable groups and the prevention of social exclusion” (Maastricht 2003), while endeavoring to “achieve or maintain [...] [p]olicies that promote social justice” (Bonn 1990). In 2012, participating States reaffirmed that “peace, good international relations, the security and stability of the State and the security and safety of the individual within the State, based on the rule of law and respect for human rights, are crucial for the creation of a climate of confidence which is essential to ensure positive economic and social development” (Dublin 2012). The participating States have also emphasized their attachment to creative freedom (Paris 1990) and undertaken “to promote and protect the free and unhindered development of artistic creativity” (Cracow 1991). In particular, they stressed that the publication of written works, the performance and broadcasting of musical, theatrical and audiovisual works, and the exhibition of pictorial or sculptural works will not be subject to restriction or interference by the State save such restrictions as are prescribed by domestic legislation and are fully consistent with international standards. They have, moreover, expressed their conviction of the “enrichment which regional and local cultures, including those connected with national minorities, bring to cultural life” (Cracow 1991).

Weaknesses in rule of law, corruption, lack of transparency and social exclusion continue to hamper the ability of individuals to exercise their human rights in many parts of the OSCE region. The global economic recession has predictably entailed a lower standard of the implementation of economic and social rights, in particular, resulting in deteriorated access to social services, especially for traditionally vulnerable groups. However, the recession has equally impacted on the exercise of civil and political rights, due, in part, to budget cuts affecting such key institutions as the judiciary, prosecution, and the police. Where states fail to fulfill legal obligations, rights-holders are entitled to institute proceedings for appropriate redress in accordance with rules and procedures provided by law. However, legal frameworks and mechanisms designated to provide redress are not always fully effective.

**Issues that can be discussed in connection with this topic include:**

- What are the main obstacles to addressing human rights violations through legal mechanisms? To what extent should these rights be justiciable, and how can this be achieved in practice?
- What challenges do vulnerable groups face in accessing formal justice mechanisms? Can other actors or institutions facilitate such access? How can the participating States ensure that redress is provided in a holistic and victim-centred manner?
- What challenges do participating States face when trying to ensure the implementation of human rights, in particular social and economic, in times of global financial crisis? What measures are taken by the participating States to enhance the protection of marginalized or otherwise vulnerable groups?
- How can the OSCE and ODIHR assist participating States in strengthening the capacity of government actors, including members of the judiciary, in the fulfillment of human dimension commitments through legal processes?

**16:00 – 16:30**            **Break**

**16:30 – 17:30**            **Closing Session**  
Reports by the Moderators of the Working Sessions

**17:30**                    **Closing of the meeting**