



## **United States Mission to the OSCE**

### **OSCE SUPPLEMENTARY HUMAN DIMENSION MEETING Rule of Law in the Promotion and Protection of Human Rights Vienna, 11-12 July, 2013**

#### *Session 1: The Role of Legislative, Regulatory and Institutional Frameworks as well as Governments and Civil Society in the Promotion and Protection of Human Rights*

As prepared for delivery by Chad Wilton, Political Officer  
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We look forward to today's exchange because it touches on one of the most fundamental elements of the OSCE's approach to comprehensive security -- rule of law and its explicit link to human rights, democracy and lasting stability. We value the opportunity to hear about participating States' experiences in addressing challenges such as the need to protect individuals from arbitrary or discriminatory application of laws, and welcome the chance to share best practices, too. We have a lot to learn from each other, but it might be useful to pause for a moment to consider what we mean when we talk about rule of law. U.S. Supreme Court Justice Anthony Kennedy articulated a clear vision with three components:

- The law is superior to, and thus binds, the government and all its officials;
- The law must respect and preserve the dignity, equality, and human rights of all persons. To those ends, the law must establish and safeguard the constitutional structures necessary to build a free society in which all citizens have a meaningful voice in shaping and enacting the rules that govern them.
- And, the law must devise and maintain systems to advise all persons of their rights, and it must empower them to fulfill just expectations and seek redress of grievances without fear of penalty and retaliation.

Where these conditions exist, citizens thrive and economies flourish. Where they don't, societies and individuals pay a high price. Where even one of these components is missing, rule of law does not genuinely exist. Rule of law protects human rights, enables citizens to contribute to law-making, and fosters an expectation that laws are applied in a just, non-arbitrary fashion.

When we survey the state of rule of law across the OSCE space, it is clear that not only does much work remain to be done to achieve the state that Justice Kennedy describes, but that, in many cases, the trends are negative. We are seeing the promulgation of laws that restrict, rather than protect, the exercise of human rights and fundamental freedoms by individuals, including members of civil society organizations. Among these are laws that limit freedom of assembly, make it difficult for NGOs to operate, restrict the import and distribution of religious material, criminalize libel, and restrict the exercise of human rights and fundamental freedoms via the Internet and other digital tools, to name a few.

In too many participating States, courts are used as tools of government intimidation and persecution. In many of the same countries where we have seen restrictive new laws, we also see the use of vague or spurious charges against human rights defenders or opposition

activists and their relatives. Prosecutors, law enforcement, and courts that lack independence bend to political pressure from regime authorities. Robust and independent bar associations are lacking or have been undercut by administrative measures. My delegation has highlighted in our Permanent Council interventions numerous examples from a number of OSCE participating States of shortcomings in the rule of law.

So, one of the questions before us today is how we can address effectively some of these negative trends and deficiencies in the rule of law to improve the protection of the human rights of all. We know from experience that the struggle to ensure a genuine state of rule of law is never ending and requires constant vigilance. I would like to address briefly some areas in which I think the U.S. experience might be instructive.

In the United States, various constitutional, regulatory, judicial, and civil means are available to protect individuals against discriminatory application of laws. The 14th Amendment to the United States Constitution prohibits state or local government from denying “to any person within its jurisdiction the equal protection of the laws.” The Supreme Court has also held that the Constitution’s requirement of equal protection applies to the federal government through the Due Process Clause of the Fifth Amendment to the Constitution.

This equal protection clause protects individuals from arbitrary discrimination by government officials. Over time, courts have recognized the amendment to include protection for many vulnerable groups of people in the United States -- African Americans and other ethnic groups, religious organizations, and women. The 14th Amendment allows any citizen who believes his or her “equal protection rights” have been violated by the government to go to court and seek to correct the injustice.

The Constitution’s guarantee of equal protection of the laws protects individuals from arbitrary discrimination by government officials. The Constitution thus prohibits the government from invidiously discriminating based on classifications such as race, ethnicity, or gender. Over time, courts have recognized that the Constitution includes protection for many vulnerable groups of people in the United States -- African Americans and other ethnic groups, religious organizations, and women to name a few. The Constitution allows any citizen who believes his or her “equal protection rights” have been violated by the government to go to court and seek to correct the injustice.

Recently, the Supreme Court of the United States ruled that section 3 of the Defense of Marriage Act (DOMA) was unconstitutional, citing the 14th Amendment, on the grounds that it called for unequal treatment of same-sex couples who are married under the laws of the states. The Court found that the principal purpose and effect of the law was “to impose inequality” on legally married same-sex couples.

Public scrutiny of legislation is another powerful means to protect individuals from discrimination under the law. Public comment by individuals, civil society, and media organizations, using any of the forms of online and offline means of communication available, can bring to light discriminatory activities, and rally protection for those affected. It is important that the OSCE’s Representative on Freedom of the Media, Dunja Mijatovic, has the scope within her mandate to identify good and bad practices by governments, broadcasters, and others.

Throughout the OSCE space, Human Rights Ombudsmen act as “watchdogs” for governments to ensure that States enforce their laws fairly and evenhandedly. In the United States, a number of federal agencies are charged with investigating and enforcing civil rights violations, as well as making recommendations concerning civil rights issues that face the nation. For example, the U.S. Department of Justice enforces federal civil rights laws, as do

the Equal Employment Opportunity Commission (employment discrimination), the Department of Housing and Urban Development (fair housing), and the Consumer Finance Protection Board (lending discrimination), among others. The U.S. Commission on Civil Rights is another of these institutions, and is charged with the responsibility for investigating, reporting on, and making recommendations concerning civil rights issues that face the nation. As an example of its influence, the Americans with Disabilities Act in 1990 was spurred by a report by the U.S. Commission on Civil Rights. In addition, a diverse number of civil and human rights organizations in the United States work to advance human rights through public engagement, formal proposals to Congress, and litigation.

We must be on the lookout for attempts to limit the promotion and protection of human rights everywhere, even here at the OSCE. Just as some participating States seek to limit the influence of civil society domestically, those same participating States offer proposals that attempt to limit civil society's participation and input into our OSCE deliberations.

As the participating States reaffirmed at the Summit in Astana, "civil society and free media play an important role in helping us to ensure full respect for human rights, fundamental freedoms, democracy, including free and fair elections, and the rule of law." And the OSCE has long recognized the right of individuals to freedom of association, allowing them to participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms, including human rights monitoring groups. Human rights defenders and monitoring groups help States gain a coherent picture of conditions on the ground, how we are implementing our commitments, and how we can improve our implementation. The OSCE has a very useful practice of inviting civil society groups to identify their priority concerns and provide recommendations to our Ministerial Council, and NGO representatives take part alongside government representatives at the annual Human Dimension Implementation Meeting and various specialized meetings of the OSCE. We welcome their recommendations, and welcome their involvement in the OSCE and encourage participating States to engage with civil society as a way to bring about a more effective rule of law in their States.