

ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE

Office for Democratic Institutions and Human Rights

**“The Responsibility of States”:
Protection of Human Rights Defenders
in the OSCE Region (2014–2016)**

*Implementation of the international standards outlined in the
ODIHR Guidelines on the Protection of Human Rights Defenders*



2017

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LIST OF ABBREVIATIONS

ACLU	American Civil Liberties Union
ADC Memorial	Anti-Discrimination Centre “Memorial”
BLM	#BlackLivesMatter
CEDAW Committee	UN Committee on the Elimination of Discrimination Against Women
CESCR	UN Committee on Economic, Social and Cultural Rights
CoE	Council of Europe
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
GKNB	Kyrgyz State Committee on National Security
HCLU	Hungarian Civil Liberties Union
HCNM	OSCE High Commissioner on National Minorities
HDIM	OSCE Human Dimension Implementation Meeting
HRAC	Human Rights Advocacy Centre
HRD	Human rights defender
ICNL	International Center for Not-for-Profit Law
LGBTI	Lesbian, gay, bisexual, transgender and intersex
MFA	Ministry of Foreign Affairs
MIA	Ministry of Internal Affairs
NGO	Non-governmental organization
NHRI	National human rights institution
NPM	National Preventive Mechanism
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OGP	Open Government Partnership
OHCHR	Office of the UN High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
RFoM	OSCE Representative on Freedom of the Media
SMMU	OSCE Special Monitoring Mission to Ukraine
UN	United Nations
US	United States

Executive Summary

1. In the foundational commitments of the Organization for Security and Co-operation in Europe (OSCE), participating States recognized the vital role of human rights defenders¹ in the protection of human rights, which is a core objective of the OSCE.²
2. Targeted abuses and violations against human rights defenders strike at the heart of accountability and the right to effective remedies for victims of human rights violations, who are often from vulnerable groups. For this reason, OSCE participating States in 1994 emphasized “the need for the protection of human rights defenders”, in line with the UN Declaration on Human Rights Defenders.³ More than 20 years later, however, human rights defenders continue to face serious restrictions, threats, attacks and other abuses in all corners of the OSCE region.
3. In this report, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) provides an overview and analysis of critical challenges faced by human rights defenders in the OSCE region, as well as good practices by OSCE participating States in their protection. The report also provides recommendations of how to close identified protection gaps, which should be considered in conjunction with the ODIHR *Guidelines on the Protection of Human Rights Defenders* (the *Guidelines*).⁴ In and of themselves, the *Guidelines* are a comprehensive set of recommendations to States, reflecting international standards. This report assesses implementation of those standards by OSCE participating States in the two-year period following the June 2014 publication of the *Guidelines*.

¹ The term “human rights defenders” is defined according to the UN Declaration on Human Rights Defenders, in which the UN General Assembly recognized the right of all people to act, “individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms”, through peaceful means and without discrimination. General Assembly Res. 53/144, “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms” (Declaration on Human Rights Defenders), UN Doc. A/RES/53/144 (9 December 1998), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement>.

² Helsinki Final Act 1975 (Questions Relating to Security in Europe: 1(a) Declaration on Principles Guiding Relations between Participating States – Principle VII): “The participating States recognize the universal significance of human rights and fundamental freedoms [...]. They confirm the right of the individual to know and act upon his rights and duties in this field. [...] They confirm that [...] organizations and persons have a relevant and positive role to play in contributing toward the achievement of these aims of their cooperation.” See also, Copenhagen Document, 1990 (n. 19 below); and Budapest Document 1994 (n. 3 below).

³ Budapest Document 1994 (Budapest Declaration, “Towards a Genuine Partnership in a New Era”, 6 December 1994), available at: <http://www.osce.org/mc/39554>.

⁴ OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders* (Warsaw: OSCE/ODIHR, 2014). Available at: <http://www.osce.org/odihr/119633>.

4. Based on extensive consultations with civil society and OSCE participating States, ODIHR published the *Guidelines on the Protection of Human Rights Defenders* to assist participating States in fulfilling their commitments and obligations to protect human rights defenders. In a joint launch of the *Guidelines* in Berne (Switzerland) with ODIHR, the Swiss Chairperson-in-Office of the OSCE called on participating States to co-operate with ODIHR and civil society in the implementation of the *Guidelines*.⁵ Other participants at the Berne Conference – including OSCE participating States, non-governmental organizations (NGOs), and OSCE field operations – similarly called upon ODIHR to follow up on the *Guidelines*, in order to identify good practices and challenges, and further support participating States in this regard.
5. Toward that end, ODIHR conducted extensive monitoring in 2016 on the situation of human rights defenders in the OSCE region, in order to gather comprehensive baseline data to assess the adherence of State practices to the international standards outlined in the *Guidelines*. In total, ODIHR received one or more inputs from governments, national human rights institutions (NHRIs), human rights defenders and/or OSCE field operations in 48 of the 57 OSCE participating States (84 per cent of the OSCE region), including from every sub-region. Those inputs included 125 written responses to questionnaires from stakeholders in 46 participating States and Kosovo,⁶ including from 72 human rights defenders (34 of them women); and 48 interviews with human rights defenders from 20 participating States and Kosovo (including 22 women).
6. OSCE participating States informed ODIHR of many good practices in the protection of human rights defenders under law and policy, as well as significant shortcomings. Among the good practices identified were strong examples of: gender-responsive policies, programmes and mechanisms for the protection of human rights defenders; recognition of the bias motivation of crimes against human rights defenders, as an aggravating factor in sentencing; judicial review of criminal cases against human rights defenders, to prevent abuses of power; legal and judicial enforcement of international human rights standards for the protection of human rights defenders; strong legal protections of journalists and whistleblowers; the decriminalization of defamation and slander; consultation of human rights defenders in the drafting of legislation and policies impacting the enjoyment of human rights; financial support for human rights organizations; and the adoption by participating States of guidelines for the protection of human rights defenders, both domestically and internationally. On the international level, some OSCE participating States also adopted protective measures to support at-risk human rights defenders in other countries,

⁵ See, Swiss Chairperson-in-Office recommendations in the “Berne Conclusions” (June 2014), available at: <http://www.osce.org/cio/120294>.

⁶ This designation is without prejudice to positions on status, and is in line with United Nations Security Council resolution 1244 (adopted on 10 June 1999), UN Doc. S/RES/1244 (1999), and the International Court of Justice’s Advisory Opinion of 22 July 2010 on the Kosovo Declaration of Independence.

including through the provision of humanitarian visas, temporary relocation programmes, political asylum, interventions before international bodies on the situation of human rights defenders, and other measures.

7. OSCE participating States, NHRIs, OSCE field operations and human rights defenders also identified frequent challenges in the implementation of domestic legal protections, and reported that human rights defenders experienced the fiercest threats and attacks in systems with weak respect for the rule of law and legal protection gaps. During the reporting period, ODIHR received allegations of intimidation, threats, attacks and undue restrictions on the activities of human rights defenders in 29 OSCE participating States (60 per cent of the 48 States on which ODIHR received information). The threats and attacks were conducted by both State and non-State actors, and were often engendered by a climate of impunity. In some cases, States directly subjected human rights defenders to arbitrary detentions, torture and other ill-treatment, or politically motivated prosecutions, which also resulted in violations of fair-trial rights. Additionally, law enforcement and judicial authorities reportedly failed to adequately investigate, prosecute and punish attacks on human rights defenders.
8. Stigmatization and marginalization of human rights defenders have further undermined their human rights, including their rights to security of person and equal access to justice. Human rights defenders have faced discriminatory smear campaigns related to their legitimate human rights activities, not only arising from their political or other opinions, but also the characteristics of the groups whose rights they defend. According to OSCE participating States, NHRIs, OSCE field operations and human rights defenders, those who faced the most extreme smear campaigns and targeted attacks were frequently human rights defenders protecting the rights of women, ethnic minority communities, and lesbian, gay, bisexual, transgender or intersex (LGBTI) people.
9. Human rights defenders have also reported frequent and undue restrictions on their fundamental freedoms of association, assembly, expression and movement. In some cases, restrictions on defenders' freedom of movement also undermined their right to access international bodies in order to raise their human rights concerns, including about their own security.
10. In some cases, these recent trends highlight a lack of progress in the improvement of protections for human rights defenders. The ongoing restrictions, threats, attacks and other abuses against human rights defenders resemble many of the same problems identified in ODIHR's comprehensive thematic reports on this topic in 2007 and 2008.⁷ Those reports followed dedicated OSCE conferences in 2001 and 2006 on the protection of human

⁷ ODIHR report, *Human Rights Defenders in the OSCE Region: Our Collective Conscience* (10 December 2007, available at: <http://www.osce.org/odihr/29714>); and ODIHR report, *Human Rights Defenders in the OSCE Region: Challenges and Good Practices* (15 December 2008, available at <http://www.osce.org/odihr/35652>).

rights defenders in the OSCE region, in which hundreds of participants in attendance (including representatives of the majority of OSCE participating States) identified many of the same problems and recommendations as ODIHR now reports.⁸

11. While the characteristics of these abuses are familiar, the persistence and volume of newly reported restrictions, threats and attacks against human rights defenders are a phenomenon that should be of deep concern to all OSCE participating States.
12. OSCE participating States have reaffirmed that such threats against civil society in *any* State are a matter of responsibility for *all* States.⁹
13. In order to put the plights and protection of human rights defenders higher on the OSCE agenda, ODIHR recommends that future Chairpersons-in-Office increasingly engage both the OSCE Permanent Council and ODIHR on this vital matter, including by appointing a Special Representative on the protection of human rights defenders in the OSCE region.¹⁰
14. Such actions would be a welcome continuation of the strong and long-term leadership displayed by consecutive Chairpersons-in-Office on the protection of human rights defenders, including (but not limited to):
 - The German¹¹ Chairperson-in-Office, who endorsed efforts of the Civic Solidarity Platform in 2016 to follow up on the *Guidelines*, and urgently called on participating States to address the “growing threats to the security of human rights defenders”, alongside the incoming Austrian Chairperson-in-Office at the start of the Ministerial Council summit in Hamburg in December 2016;

⁸ Final report of the OSCE Supplementary Human Dimension Meeting (30–31 March 2006), “Human Rights Defenders and National Human Rights Institutions: Legislative, State and Non-State Aspects”, available at: <http://www.osce.org/odihr/18960>.

⁹ Astana Commemorative Declaration (2010), para. 6: “Convinced that the inherent dignity of the individual is at the core of comprehensive security, we reiterate that human rights and fundamental freedoms are inalienable, and that their protection and promotion is our first responsibility. We reaffirm categorically and irrevocably that the commitments undertaken in the field of the human dimension are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned. We value the important role played by civil society and free media in helping us to ensure full respect for human rights, fundamental freedoms, democracy, including free and fair elections, and the rule of law.”

¹⁰ This new Special Representative could: promote the protection of human rights defenders; facilitate dialogue between participating States in this area; and co-operate with, and invite the participation in the activities and discussions of the CiO, Permanent Council and its committees, by other independent international actors on the protection of human rights defenders.

¹¹ OSCE Chairperson-in-Office statement, “OSCE Chairperson-in-Office Steinmeier receives civil society recommendations ahead of the Ministerial Council in Hamburg” (7 December 2016), available at: <http://www.osce.org/cio/286911>.

- The Swiss¹² Chairperson-in-Office, who co-organized the public launch and presentation of the ODIHR *Guidelines on the Protection of Human Rights Defenders* in Berne in June 2014; and
 - The Irish¹³ Chairperson-in-Office, who during the 2012 Ministerial Council summit in Dublin embraced the call of civil society for ODIHR to elaborate the *Guidelines*.
15. The three sections of this report directly mirror the three main sections of the *Guidelines*. This is intended to assist OSCE participating States in their implementation of the international standards that the *Guidelines* comprise. As the *Guidelines* themselves already embody a complete set of recommendations of necessary measures and good practices to protect human rights defenders, ODIHR encourages States to consult and apply the *Guidelines* as a tool to address the challenges identified in this report.
 16. Each section of this report includes examples from many OSCE participating States of specific challenges and good practices in the protection of human rights defenders. These examples are *illustrative*, rather than *exhaustive*, including since not all OSCE participating States provided inputs to this survey. Moreover, the examples provided in any one sub-section often equally pertain to other sub-sections as well, as they may involve the simultaneous violations of several interrelated human rights. Whether a participating State is mentioned – or not mentioned – is intended neither to indicate the full scope of protection available in that given State, nor all the challenges that human rights defenders may encounter there.
 17. For that reason, this report does not gather and reiterate all of the many other credible secondary reports by international organizations and NGOs of threats and attacks on human rights defenders, based on their own research and reporting. Instead of seeking to provide exhaustive details of all allegations, ODIHR has sought wherever possible to verify significant trends, protection gaps and needs. Those trends often span across borders and sub-regions, showing that many OSCE participating States face analogous challenges – and have the opportunity to adopt common concerted solutions to close those protection gaps.
 18. In this sense, the findings of this report provide OSCE participating States with means to increase their attention and co-ordinate their responses – whether at home or in other States – to the grave and frequent threats and attacks on human rights defenders.

¹² OSCE Chairperson-in-Office event, “The OSCE and Human Rights Defenders: The Budapest Document 20 Years On” (10–11 June 2014), available at: <http://www.osce.org/cio/118637>. See also, “Berne Conclusions” (n. 5 above).

¹³ OSCE Chairperson-in-Office statement, “Dublin OSCE Ministerial Council opens with calls to strengthen work on security community, including on human rights” (6 December 2012), available at: <http://www.osce.org/cio/97824>.

Recommendations

Recommendations to OSCE participating States:

- Consult and implement the international standards relevant to the protection of human rights defenders that are outlined in the ODIHR *Guidelines on Freedom of Peaceful Assembly* and the ODIHR *Guidelines on Freedom of Association*.
- Consult and implement the recommendations of OSCE executive structures and human dimension institutions related to the protection of human rights defenders, including the recommendations of ODIHR, the OSCE Special Representative on Freedom of the Media, the OSCE High Commissioner on National Minorities, and OSCE field operations.
- Consult and implement the decisions (including remedial recommendations) and interim measures of United Nations (UN) human rights treaty bodies in relation to any individual communications of human rights defenders to those bodies through their individual or group complaint procedures.
- Undertake to abide by the final judgments and interim measures of the European Court of Human Rights in any cases to which the State is party, including those pertaining to the protection of human rights defenders.
- Investigate any potential motivation of alleged crimes or abuses against human rights defenders, whether by State or non-State actors, in order to establish whether the motivation is related to their human rights-related activities or views.
- Review prosecutorial and judicial conduct in any criminal cases brought against human rights defenders, in order to ensure that the charges against them are not motivated by and/or being used to impede their legitimate human rights work.
- In consultation with human rights defenders and NHRIs, if applicable, review any legislative restrictions alleged to be unduly impacting the work of human rights defenders, in order to ensure the laws' legal clarity and that they are not applied abusively – including, but not limited, to criminal laws punishing “extremism” and “terrorism”.
- Review any restrictions on the funding of human rights defenders and their organizations (e.g. foreign-funding restrictions, asset freezes, etc.), with a view to removing any disproportionate impediments on their ability to obtain and utilize their funds, whether from domestic or international sources.
- Investigate, prosecute and, if there is sufficient admissible evidence, punish appropriately all allegations of torture and other cruel, inhuman or degrading treatment or punishment against human rights defenders, including where alleged to have been utilized to compel them to make forced confessions to crimes.
- Adopt protection measures proportionate to the level of threat faced by human rights defenders domestically, including but not limited to the adoption of aggravated criminal penalties for crimes against individuals or organizations motivated by their activities to defend human rights.

- Facilitate peaceful assemblies organized by human rights defenders, including through the adoption of adequate protection measures, without discrimination in relation to the political or other opinions of the organizers and participants.
- Co-operate with human rights defenders to facilitate their access to and independent monitoring of conditions in places of detention and closed institutions, including through memoranda of understanding, as appropriate.
- Involve and consult human rights defenders in the drafting, implementation and review of national human rights strategies and action plans.
- Conduct meaningful dialogue with human rights defenders in relation to their human rights-related concerns, and refrain from conducting or tacitly supporting public smear campaigns against human rights defenders, including in the media.
- Protect human rights defenders, including whistleblowers, from criminal prosecution for their human rights-related expression, including through the decriminalization of defamation where it remains criminally punishable.
- Adopt national guidelines for authorities on the protection of human rights defenders, if not yet done already, including on the protection of foreign nationals from reprisals on account of their human rights work.
 - Include among any such guidelines the protection of defenders from detention, extradition and/or other internationally co-ordinated actions under politically motivated circumstances, including but not limited to the execution of international arrest warrants.
- Facilitate ODIHR's human rights monitoring activities, ODIHR's needs assessment missions to identify protection gaps, ODIHR's capacity-building activities to support authorities on the protection of human rights defenders, and ODIHR's facilitation of dialogue between human rights defenders and authorities.
- Consider offering a standing invitation to OSCE human dimension institutions – including ODIHR, the Representative on Freedom of the Media (RFoM), and the High Commissioner on National Minorities (HCNM) – to conduct country visits for the purpose of supporting authorities in the fulfilment of their human dimension commitments and obligations, including in relation to the protection of human rights defenders.
 - For those participating States that have already issued standing invitations to all UN Special Procedures to conduct country visits, consider extending those invitations to OSCE human dimension institutions, and encouraging other participating States to do the same.¹⁴
- Invite UN Special Procedures to conduct country visits, particularly the UN Special Rapporteur on the situation of human rights defenders.
- Consider adopting all relevant provisions of the Model Law for the Recognition and Protection of Human Rights Defenders.¹⁵

¹⁴ See, OHCHR list of standing invitations (by country) to UN Special Procedures, available at: http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/StandingInvitations.aspx.

¹⁵ See, International Service for Human Rights (ISHR), “Ground-breaking Model Law to recognise and protect human rights defenders” (June 2016), available at: <http://www.ishr.ch/news/groundbreaking-model-law-recognise-and-protect-human-rights-defenders>.

- Request ODIHR to review and comment upon any draft legislation or amendments to existing legislation that may regulate or otherwise impact upon the work and protection of human rights defenders.
- Support resolutions and decisions of international organizations to improve the protection of human rights defenders, including within the OSCE, the UN (i.e. General Assembly and Human Rights Council), and other representative bodies.
- Raise individual cases of human rights defenders at risk, in bilateral and multilateral diplomatic forums, with a view to facilitating both immediate relief and long-term remedies.

Recommendations to OSCE Chairperson-in-Office:

- Make full use of the mandate of ODIHR to monitor, report on, and advise the Chairperson-in-Office and Permanent Council regarding serious cases of alleged non-implementation of human dimension commitments, including human rights violations committed against human rights defenders.
- Appoint a Special Representative on the protection of human rights defenders in the OSCE region.
- Endow this Special Representative with a mandate to:
 - Promote the protection of human rights defenders;
 - Facilitate dialogue between participating States in this area; and
 - Co-operate with, and invite the participation in activities and discussions of the CiO, Permanent Council and its committees by, other independent international actors on the protection of human rights defenders, such as:
 - ODIHR;
 - UN Special Rapporteur on the situation of human rights defenders;
 - UN Assistant Secretary-General for Human Rights, as the high-level focal point on reprisals against human rights defenders;
 - Council of Europe (CoE) Commissioner for Human Rights;
 - Parliamentary Assembly of the Council of Europe (PACE) rapporteur on ‘Strengthening the role and protection of human rights defenders in Council of Europe member States’;
 - EU Agency for Fundamental Rights;
 - Rapporteur on Human Rights Defenders of the Inter-American Commission on Human Rights (IACHR); and
 - Representatives of civil society at the national, regional and international levels who are active in the protection of human rights defenders.
- When conducting country visits to OSCE participating States: raise individual cases of at-risk human rights defenders with governments; and continue to meet with human rights defenders in the course of such visits.
- In those participating States where human rights defenders are detained or imprisoned at the time of country visits, request for the government to facilitate visits to those human rights defenders in places of detention, in order to assess their situation, conditions of detention and needs.

Recommendations to OSCE Parliamentary Assembly:

- When conducting country visits to OSCE participating States: raise individual cases of at-risk human rights defenders with governments and parliaments; and continue to meet with human rights defenders in the course of such visits.
- In those participating States where human rights defenders are detained or imprisoned at the time of Parliamentary Assembly members' country visits, request for the government to facilitate visits to those human rights defenders in places of detention, in order to assess their situation, conditions of detention and needs.

Recommendations to OSCE field operations:

- Whenever possible, assign a focal point on the protection of human rights defenders, to share relevant good practices and build the capacities of authorities and other stakeholders on this topic, in line with the OSCE field operation's mandated programmatic activities in the human dimension.
- Engage ODIHR to co-operate in the identification, design and implementation of capacity-building activities in support of the protection of human rights defenders.

Methodology

19. This report assesses implementation by OSCE participating States of the international standards elaborated in the *Guidelines* since their publication in June 2014. As a basis for this report, ODIHR conducted extensive monitoring on the situation of human rights defenders in the OSCE region during the second half of 2016. In total, ODIHR received one or more inputs from governments and/or other stakeholders in 48 of the 57 OSCE participating States (84 per cent of the OSCE region), including from every sub-region. (See annexes presenting statistics on inputs received.)
20. While the preliminary period of reporting of written questionnaires was June 2014 to May 2016, ODIHR also considered developments in the latter half of 2016 that arose in relation to reported cases and trends, particularly as relayed through later interviews and secondary sources consulted for verification.
21. As a core part of its monitoring activities, ODIHR drafted and disseminated detailed questionnaires to all OSCE participating States, national human rights institutions (NHRIs), OSCE field operations, and over 600 human rights defenders in 54 OSCE participating States.¹⁶ ODIHR also disseminated the questionnaire for human rights defenders through international partner organizations and civil society networks, in order to broaden the survey sampling throughout the OSCE region.
22. The questionnaires disseminated by ODIHR (annexed to this report) closely reflected the structure, scope and content of the *Guidelines*, as well as the international standards they comprise, in relation to which ODIHR analysed responses. Written responses were accepted in both the English and Russian languages.
23. From June to December 2016, ODIHR received and reviewed written inputs from 29 OSCE participating States, 12 NHRIs, 11 OSCE field operations, the OSCE Representative on Freedom of the Media, and 72 human rights defenders from 26 participating States and Kosovo.¹⁷ Of the 72 written inputs received from human rights defenders, 34 of the respondents were women (from 18 States), and 29 respondents provided inputs in the Russian language (from 8 States). Many human rights defenders also provided copies of official documents and other primary sources (such as arrest warrants, police reports, court decisions, photographs, computer screenshots, news reports related to smear campaigns, etc.) to verify the substantive contents of their responses.

¹⁶ ODIHR did not have contacts for relevant human rights defenders to send the questionnaire in three participating States: the Holy See, Liechtenstein, and San Marino.

¹⁷ See UN Security Council resolution 1244 (10 June 1999), and the International Court of Justice's Advisory Opinion of 22 July 2010 (n. 6 above).

24. Additionally, from May to November 2016, ODIHR conducted in-person interviews with 48 human rights defenders (including 22 women) from 20 participating States and Kosovo.¹⁸ Those interviews were conducted on the margins of international events related to the protection of human rights defenders, in all of which ODIHR was an organizer or participant. Interviewees were self-selected, in response to open invitations by email to approximately 150 participants in those events. The interviews were semi-structured in line with the areas covered by the *Guidelines*, allowing interviewees to guide the specific topics discussed in relation to their experiences. Of the 48 interviewees, 22 also provided written inputs before or after the interview.
25. Throughout 2016, in addition to written inputs and interviews, ODIHR maintained regular contact with human rights activists, NGOs and international organizations on urgent developments related to the protection of human rights defenders. Based on that correspondence, ODIHR identified and verified individual cases of at-risk human rights defenders and engaged OSCE participating States to seek further details and offer remedial recommendations. Those engagements included: public statements; private letters of concern; in-person meetings with State representatives; and direct provision of relevant information to OSCE field operations, OSCE institutions and the Chairperson-in-Office of the OSCE Permanent Council. Additionally, ODIHR regularly co-ordinated its engagements on general trends and individual cases of at-risk human rights defenders with the independent experts and institutions of the United Nations and the Council of Europe.
26. For the purpose of trend analysis and verification, ODIHR also considered on a secondary basis other key documentation during the reporting period, such as: the concluding observations, reports and views of UN human rights treaty bodies and UN Special Procedures; reports of Universal Periodic Reviews (UPRs) conducted by member States of the UN Human Rights Council; publications of the CoE Commissioner for Human Rights; publications of national, regional and international NGOs; and others.
27. ODIHR notes with appreciation the considerable time of all those who contributed information to this study, which as a result of their effort provides an extensive survey and assessment of the protection situation of human rights defenders in the OSCE region.

¹⁸ See UN Security Council resolution 1244 (10 June 1999), and the International Court of Justice's Advisory Opinion of 22 July 2010 (n. 6 above).

International Standards: The ODIHR Guidelines on the Protection of Human Rights Defenders

28. The OSCE participating States have made a number of commitments regarding the protection of human rights defenders. In the Helsinki Final Act (1975), OSCE participating States recognized “the universal significance of human rights and fundamental freedoms” and confirmed “the right of the individual to know and act upon his rights and duties in this field.” In the Copenhagen Document (1990), they affirmed “the right of the individual to seek and receive assistance from others in defending human rights and fundamental freedoms, and to assist others in defending human rights and fundamental freedoms.”¹⁹
29. In the Budapest Document (1994), OSCE participating States further emphasized “the need for the protection of human rights defenders”, in line with the draft UN Declaration on Human Rights Defenders, which was later adopted in 1998.
30. In line with those and other commitments, civil society organizations issued a joint declaration at the 2012 OSCE Ministerial Council in Dublin, calling upon the OSCE to develop guidelines for the protection of human rights defenders in the OSCE region, in order to assist participating States in the implementation of their commitments and corresponding international standards.²⁰
31. From June 2013 to May 2014, ODIHR conducted an in-depth consultation process with civil society and OSCE participating States throughout the OSCE region. That process culminated in the elaboration and publication of the *Guidelines on the Protection of Human Rights Defenders* at the Berne Conference in June 2014, co-organized by ODIHR and the Swiss Chairperson-in-Office of the OSCE.
32. A culmination of ODIHR’s long-term monitoring, reporting and other programmatic support for participating States on co-operation with civil society in the OSCE region, the *Guidelines* collate and summarize the relevant OSCE commitments and other international obligations of participating States on the protection of human rights defenders.
33. While the *Guidelines* are concisely presented in 22 pages, they are accompanied by an extensive *Explanatory Report* in annex form, which provides background information on all of the international human rights standards related to the protection of human rights defenders, following the headings of each section and sub-section.

¹⁹ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (29 June 1990), available at: <http://www.osce.org/odihr/elections/14304>.

²⁰ See, Civic Solidarity Platform, “OSCE Parallel Civil Society Conference: Outcome Documents,” available at: <http://civicsolidarity.org/page/osce-parallel-civil-society-conferences-outcome-documents>.

34. The sections of the *Guidelines* – as well as this report, which mirrors the structure of the *Guidelines* – generally reflect the nature of States’ human rights obligations.
35. International law generates a tripartite obligation upon States to *respect*, *protect* and *fulfil* the human rights of all within their jurisdiction. The duty to *respect* prohibits States from directly interfering with the enjoyment of rights; the duty to *protect* entails the prevention of violations by third parties, including non-State actors; and the duty to *fulfil* requires States to adopt legislative, administrative, budgetary, judicial and other policy measures to fully realize each right. As part of the obligation to *fulfil* rights, States have specific duties to facilitate, provide and promote each right to the fullest extent possible.
36. Correspondingly, the *Guidelines* and this report (in Section 1) focus on the responsibility of States to *respect* and *protect* human rights defenders – specifically their rights to “physical integrity, liberty and security and dignity.” The *Guidelines* and Section 2 of this report then examine States’ *fulfilment* of the rights of human rights defenders, through the creation of “a safe and enabling environment conducive to human rights work.” The final section of the *Guidelines* and Section 3 of this report conclude by examining the “Framework for Implementation of the Guidelines” in OSCE participating States, many of which have also adopted their own guidelines on the protection of human rights defenders.
37. To dispel a common misunderstanding, ODIHR noted at the start of the *Guidelines* that they: “do not set new standards or seek to create ‘special’ rights for human rights defenders, but concentrate on the protection of the human rights of those who are at risk as a result of their human rights work. As such, the guidelines aim to contribute to promoting equal protection of human rights for all.”
38. A number of OSCE human dimension commitments notably recognize the vital importance of participating States’ realization of their binding human rights obligations under international treaties.²¹ In that regard, all but one of the OSCE participating States have ratified the International Covenant on Civil and Political Rights²² (ICCPR); and all but three participating States have ratified the International Covenant on Economic, Social and Cultural Rights²³ (ICESCR). Additionally, 47 of the 57 OSCE participating States are party to the European Convention for the Protection of Human Rights and Fundamental

²¹ See, for instance, Budapest Document (n. 3 above), at para. 14.

²² International Covenant on Civil and Political Rights, GA Res. 2200A (XXI), UN Doc. A/6316 (1966), entered into force 23 March 1976.

²³ International Covenant on Economic, Social and Cultural Rights, GA Res. 2200A (XXI), UN Doc. A/6316 (1966), entered into force 3 January 1976.

Freedoms²⁴ (European Convention on Human Rights, or ECHR). Those are just a few of the many UN and regional treaties providing for human rights, which OSCE participating States have agreed to *respect, protect* and *fulfil*, without discrimination.²⁵

39. With regard to accountability for human rights violations, the UN Human Rights Committee has observed that States must prevent not only abuses by State agents, but also violations caused by “permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.”²⁶
40. When investigations reveal violations, the Human Rights Committee has further stressed the importance of “guarantees of non-repetition and changes in relevant laws and practices, as well as the bringing to justice of perpetrators of human rights violations.”²⁷ Failure to investigate and prosecute those responsible, whether for domestic crimes or human rights abuses, may amount to new and separate violations by the State.²⁸
41. Human rights defenders include those who pursue accountability when human rights obligations are violated. Protecting human rights defenders is part of States’ obligation to provide effective remedies for violations, and guarantee they are not repeated.²⁹
42. Upon the release of the *Guidelines*, the Swiss Chairperson-in-Office of the OSCE “encourage[d] ODIHR to assist participating States in implementing the *Guidelines*”. Since then, ODIHR has worked to promote the *Guidelines* among OSCE participating States, other OSCE executive structures, human rights defenders themselves, as well as media and the general public.

²⁴ European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS No. 5, entered into force 3 September 1953.

²⁵ For an elaboration of OSCE commitments and international human rights obligations related to the prohibition on discrimination, see below at nn. 124–127.

²⁶ See, Human Rights Committee, *General Comment No. 31 on the nature of the general legal obligation imposed on State parties to the Covenant* (26 May 2004), UN Doc. CCPR/C/21/Rev.1/Add.13, at para. 8. The UN Special Rapporteur on extrajudicial executions similarly explained the State’s responsibility in a 2010 report to the Human Rights Council: “Where there is a pattern of killings and the government’s response (in terms either of prevention or of accountability) is inadequate, the responsibility of the State is engaged. Under human rights law, the State is not only prohibited from directly violating the right to life, but is also required to ensure the right to life, and must meet its due diligence obligations to take appropriate measures to deter, prevent, investigate, prosecute and punish perpetrators.” See, Report of the Special Rapporteur on extrajudicial executions to the Human Rights Council, 20 May 2010, A/HRC/14/24, para. 46(d).

²⁷ Ibid, para. 16.

²⁸ Ibid, para. 18.

²⁹ See, Human Rights Committee, *General Comment No. 31* (n. 26 above); and text below at n. 32.

43. In order to promote the *Guidelines* and make them more accessible to a larger audience, ODIHR has also published translations of the *Guidelines* in French, Hungarian, Russian, Serbian, Spanish, Turkish and Ukrainian.
44. For further information on the nature of human rights obligations outlined in the *Guidelines*, all eight language versions are available at:
<http://www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders>.

1. Physical Integrity, Liberty and Security, and Dignity of Human Rights Defenders

45. During the reporting period, ODIHR documented allegations of intimidation, threats, attacks and undue restrictions against human rights defenders in 29 OSCE participating States. The threats and attacks were conducted by both State and non-State actors, and were often engendered by a climate of impunity. In some cases, States directly subjected human rights defenders to arbitrary detentions, torture and other ill-treatment, or politically motivated prosecutions, which also resulted in violations of fair-trial rights. Additionally, law enforcement and judicial authorities reportedly failed to adequately investigate, prosecute and punish attacks on human rights defenders.
46. The marginalization and stigmatization of human rights defenders have further undermined their human rights, including their rights to security of person and equal access to justice. Human rights defenders have faced persistent smear campaigns related not only to their political or other opinions, but also to the gender, ethnicity, sexual orientation or other characteristics of those whose rights they defend. According to OSCE participating States, NHRIs, OSCE field operations and human rights defenders, the defenders who faced the most extreme smear campaigns and targeted attacks were frequently human rights defenders protecting women, minority communities, or LGBTI people.
47. To respond to those challenges, some OSCE participating States adopted significant protection policies, programmes and mechanisms, in order to protect human rights defenders when they come under threat. Those policies, programmes and practices included gender-responsive protection mechanisms adopted in consultation with human rights defenders, in order to meet their specific protection needs.

1.1 Protection from threats, attacks and other abuses

48. The *Guidelines* observe that States must, *inter alia*: Refrain from any acts of intimidation or reprisals by threats, physical attacks, torture and other ill-treatment, killing, enforced disappearance or other physical or psychological harm targeting human rights defenders and their families; protect human rights defenders from such acts by non-State actors, and take steps to prevent abuses; and publicly condemn such acts, and apply a policy of zero tolerance.³⁰

³⁰ *Guidelines* (n. 4 above), para. 12.

1.1.1 Impunity and effective remedies

49. The right to effective remedies requires States to guarantee the non-repetition of human rights violations,³¹ including by preventing and responding adequately to any threats and attacks against human rights defenders.
50. In that regard, the OSCE participating States have recognized the work of human rights defenders as a fundamental element of the right to effective remedies, affirming that:

“where violations of human rights and fundamental freedoms are alleged to have occurred, the effective remedies available include [...] the right of the individual to seek and receive assistance from others in defending human rights and fundamental freedoms, and to assist others in defending human rights and fundamental freedoms”.³²

51. In order to ensure human rights, States must therefore protect human rights defenders and ensure their access to justice when rights come under threat. Conversely, threats and attacks against human rights defenders often undermine access to justice for already vulnerable groups and accountability for human rights abuses.
52. In particular, the *Guidelines* highlight that authorities should promptly, thoroughly and independently investigate alleged abuses against human rights defenders in a transparent manner, regardless of whether the perpetrators are State or non-State actors. *Effective investigations* should identify perpetrators for *prosecution* and proportionate *punishment*, where possible, and complainants must not face *reprisals*.

Abuses by law enforcement authorities

53. In line with those standards, several OSCE participating States reported taking proactive actions to hold law enforcement authorities accountable for their alleged abuses against human rights defenders. For instance, **Georgia** reported that it brought charges against a senior police officer in November 2015 for abuse of authority, following his unit’s allegedly serious beating of a defense lawyer after he advised his juvenile client to exercise his right to remain silent.³³ **Romania** reported that prosecutors in Braşov initiated legal proceedings against

³¹ See, Article 30 (“Cessation and non-repetition”) of the draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001), available at: http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf. UN International Law Commission, Report on the work of its fifty-third session (2001), General Assembly, Official Records, Fifty-fifth Session, Supplement No. 10 (A/56/10). See also, Human Rights Committee, General Comment No. 31 (n. 26 above).

³² Copenhagen 1990 (n. 19 above).

³³ Questionnaire response by the Government of Georgia. For more details of the case, see also the article by Human Rights House Network, “Police officer vs lawyer” (16 December 2015), available at: <http://humanrightshouse.org/Articles/21370.html>.

a village police chief in March 2016 for organizing a group attack by four villagers against a Roma human rights defender, who was seriously injured in the incident.³⁴ The attack occurred in April 2015 after the defender visited the village to educate members of the local Roma community on how to “exercise their right of petition against the police staff from the village’s precinct, who allegedly abused them repeatedly”, according to the government. There was no indication of the reason for the delay in filing charges. According to authorities, the criminal cases in both Georgia and Romania were pending before courts at the time of reporting.

54. The NHRI in **Armenia** reported that law enforcement authorities frequently failed to adequately prevent, investigate, prosecute or punish threats and attacks against human rights defenders, including when allegedly committed by police.³⁵ The NHRI recorded allegations of threats and attacks against human rights defenders by authorities and non-State actors, including the targeting of journalists and human rights activists by police, both during peaceful assemblies and in their daily life. For example, a civil society activist distributing leaflets was reportedly attacked in August 2015 by a group of four unidentified men he believed were plainclothes police, allegedly after days of police surveillance. According to the NHRI, the case received considerable media attention, but police never initiated a criminal investigation into the case. The NHRI further noted: “The primary issue of ensuring the protection of HRDs [human rights defenders] in Armenia is the absence in the legislation of a coherent definition of HRD. In addition, there is no legal prohibition of obstructing the legitimate activities of HRDs.”

Recognition of bias motivation

55. OSCE participating States have acknowledged by definition that “hate crimes are criminal offences committed with a bias motive”.³⁶ Such bias-motivated crimes include attacks against human rights defenders due to their association with a group against whom there is discrimination.³⁷
56. The *Guidelines* recommend that States consider adopting national legislation recognizing the **bias motivation** of crimes committed against human rights defenders in relation to the nature of their work and the vulnerable groups they protect, as an aggravating factor in sentencing.³⁸ Authorities and human rights

³⁴ Questionnaire response by the Government of Romania. The case of defendant C.D.M., chief of the police precinct of R. village was filed under indictment no. 770/P/2015 from 31 March 2016 of the Prosecutor’s Office attached to Braşov Tribunal, for committing instigation to violence against D.G.C.

³⁵ Questionnaire response by the Human Rights Defender (Ombudsman) of Armenia.

³⁶ OSCE Ministerial Council, Decision No. 9/09 “Combating Hate Crimes” (2 December 2009), available at: <http://www.osce.org/cio/40695>. See also, ODIHR, *Prosecuting Hate Crimes: A Practical Guide* (September 2014), at p. 35; available at: <http://www.osce.org/odihr/prosecutorsguide>.

³⁷ ODIHR, *Prosecuting Hate Crimes: A Practical Guide* (ibid), at p. 35.

³⁸ *Guidelines* (n. 4 above), paras. 15–16. As a basis for such provisions, see the Model Law for the Recognition and Protection of Human Rights Defenders (n. 15 above).

defenders in **Georgia**³⁹ and **Serbia**⁴⁰ reported as a good practice the inclusion of such provisions in the criminal codes, though observed uneven application of those provisions to criminal cases in practice.

57. In **Serbia**, where there are strong criminal penalties for discriminatory violations against human rights defenders and NGOs for their work defending equality, law enforcement authorities reported that they did not prosecute any cases under that specific offense during the reporting period,⁴¹ despite allegations of such crimes. In one example, a Serbian human rights NGO reported that it lodged a criminal complaint against the spokesperson of the anti-terrorist unit of the Ministry of Interior, after he allegedly called for violence against a feminist human rights organization. However, prosecutors reportedly pursued a lesser charge, and the proceedings were still underway at time of reporting.⁴²
58. In **Georgia**, the government and local NGOs verified that police had swiftly responded to several threats and attacks against women and LGBTI human rights defenders, and took note of the apparent bias motivations in the attacks on them “by association” with women and LGBTI people. In one case example, according to authorities, the investigation resulted in an aggravated criminal

³⁹ Georgia noted in its written submission that “HRDs are highly likely to become victims of hate crime”, and that the Chief Prosecutor’s Office of Georgia has recommended the application of aggravated criminal charges when bias motivation has been established, including based on “homophobic motive and others, as an aggravating circumstance of criminal liability in order to ensure the effective implementation of anti-discrimination provisions of Criminal Code of Georgia.” Since 2012, Article 53.3¹ (“Principles of Sentencing”) of the Criminal Code of Georgia has prescribed the commission of crimes with a bias motivation (including on the basis of gender, sexual orientation, political or other beliefs, ethnic or social origin, or other discriminatory grounds) as an aggravating circumstance of criminal liability, in order to ensure the effective implementation of anti-discrimination provisions of Criminal Code of Georgia. Article 156 (“Persecution”) of the Criminal Code of Georgia also declares punishable the persecution of individuals based on their public or professional activities, based on which the government informed ODIHR: “if the fact of the persecution of HRDs due to their professional work will be established, the given provision may be used in order to punish an offender.” The Criminal Code of Georgia is available at:

<https://matsne.gov.ge/en/document/download/16426/157/en/pdf>.

⁴⁰ Article 387 of the Criminal Code provides for a punishment of six months to five years against anyone who violates human rights or fundamental freedoms “on grounds of race, colour, religious affiliation, ethnic origin or other personal characteristics”, or “whoever persecutes organizations or individuals due to their commitment to equality of people.” Available at: <http://www.legislationline.org/documents/action/popup/id/18732>. In addition to that anti-discrimination provision, Article 54a of the Criminal Code includes aggravating circumstances of bias motivation for crimes committed against individuals due to their sexual orientation or gender identity, among other grounds. Available at: <http://www.legislationline.org/documents/action/popup/id/18731>.

⁴¹ Statistics of Serbia’s Ministry of Justice indicate that authorities brought some charges under Article 387 of the Criminal Code (six in 2014, and three in 2015, though none led to convictions), yet none of those charges were brought under Article 387.2 related to violations against human rights defenders and NGOs defending equality. The Ministry provided the statistics in December 2016, upon the request of the Lawyers’ Committee for Human Rights (YUCOM). YUCOM reported that it was not aware of charges ever having been brought under the provision, even prior to the period covered by the Ministry of Justice statistics.

⁴² Lawyers’ Committee for Human Rights (YUCOM).

charge against the alleged perpetrator of a bias-motivated beating of an LGBTI rights activist; the case was on trial at the time of reporting.⁴³

Accountability for abuses against human rights defenders

59. OSCE participating States have a duty of due diligence to adequately *investigate, prosecute, punish* and *redress* crimes against human rights defenders, including to ensure their right to effective remedies and guarantee the non-repetition of human rights abuses against them.
60. However, OSCE participating States, NHRIs, OSCE field operations and human rights defenders informed ODIHR of many instances in which law enforcement authorities did not initiate adequate investigations into such threats and attacks, or failed to identify perpetrators and hold them to account.
61. In the **Russian Federation**, two human rights NGOs reported multiple attacks in 2014, 2015 and 2016 on their offices, properties and staff.⁴⁴ The NGOs reported that police did not initiate criminal proceedings in relation to any of the four reported incidents of vandalism against the NGOs' offices and properties. In 2015 and 2016, both organizations reported that those incidents then escalated into separate physical attacks against representatives of their organizations, which were widely reported in the news media and by international NGOs. Following one of the two physical attacks, however, the NGO noted that police initiated criminal proceedings, after which the situation improved: "after criminal proceedings had been instituted in relation to the attack on human rights defender [...] this kind of actions and attacks at the homes of human rights defenders stopped."
62. ODIHR received numerous reports from throughout the OSCE region of **attacks on journalists** reporting on human rights issues during the reporting period, with mixed results of criminal investigations.
63. The government of **Ukraine** reported 14 successful convictions of perpetrators of threats and attacks against journalist and lawyer human rights defenders during 2014 and 2015. The governments of **Montenegro, Georgia** and especially **Italy** all positively reported opening investigations into attacks on journalists, though most of the incidents were still under investigation without resolution at the time of reporting. The NHRI in **Montenegro** noted the

⁴³ Questionnaire response by the Government of Georgia. In this case, an individual threw a brick at and verbally abused an LGBTI human rights defender from the NGO Identoba. This case was one of several investigations initiated regarding attacks in which homophobic motives were identified and mentioned in the criminal complaints.

⁴⁴ The organizations provided ODIHR with a police report of properties, and photographs of vandalism on the offices. For further details of the attack on the Russian NGO "Committee on the Prevention of Torture", see the RFoM statement, "OSCE Representative condemns attack on journalists in Russian Federation, calls for swift investigation" (10 March 2016), available at: <http://www.osce.org/fom/226776>.

difficulty of identifying perpetrators, or proving their criminal guilt in court, including when the attacks on human rights defenders followed apparently State-sponsored smear campaigns targeting the same individuals in the media:

“On several occasions there were noted campaigns against human rights defenders who have been in operation compromising their privacy and reputation in society. These campaigns were justified by the same State officials or some State-controlled media which these NGOs or their representatives accused as violating their honour and reputation.”

64. Civil society in **Kyrgyzstan** and the OSCE field operation in **Bosnia and Herzegovina** also identified instances of law enforcement authorities failing to adequately investigate, prosecute and punish threats and attacks against human rights defenders – including journalists, lawyers, and defenders of the rights of women, ethnic minorities, and LGBTI people.
65. The **OSCE Special Monitoring Mission to Ukraine (SMMU)** reported some diligent and effective responses by police to threats and attacks against human rights defenders, though noted it had received complaints that “police are reluctant to be involved in political cases”, with regard to which “there is a pattern of not registering complaints.”
66. The SMMU reported that many pro-Ukrainian and Crimean Tatar human rights defenders had fled from **Crimea** to mainland Ukraine, following persecution by *de facto* authorities in Crimea with impunity, which ODIHR and the HCNM also documented in the report of their joint Human Rights Assessment Mission on Crimea in 2015.⁴⁵
67. In mainland **Ukraine**, the SMMU reported that several criminal cases had been opened into the alleged murders of human rights defenders during the reporting period, including of a civil society activist in 2014, a journalist in 2015, and the lawyer of two detained Russian intelligence officers in 2016.⁴⁶ In all three cases, the SMMU reported that law enforcement authorities had detained suspects and were conducting criminal investigations; however, the suspect in the 2014 murder of a civil society activist reportedly fled the country while released on bail during the investigation.
68. The SMMU reported mixed law enforcement responses to attacks against LGBTI human rights defenders, including at public assemblies.⁴⁷ In March 2016, the SMMU reported that nationalist youth groups attacked four activists

⁴⁵ ODIHR/HCNM, *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, 17 September 2015, available at: <http://www.osce.org/odihr/report-of-the-human-rights-assessment-mission-on-crimea>.

⁴⁶ The SMMU reported that authorities had opened a criminal investigation into the March 2016 disappearance and killing of the lawyer, Mr. Yuriy Grabovsky, which was ongoing at time of reporting.

⁴⁷ See text below at n. 266.

before and after an LGBTI event in Lviv, in response to which the police reportedly made no arrests, but had “preventive conversations” with the alleged attackers, according to the Kyiv-based LGBT organization Insight. In contrast, police provided strong protection for the annual LGBTI “Equality March” in Kyiv, in both June 2015 and June 2016. During the 2015 march, the police effectively protected LGBTI activists from co-ordinated violent attacks, which resulted in the injury of nine police officers. According to the SMMU, four of the attackers were investigated, prosecuted and convicted in March and April 2016 to suspended sentences for their crimes, in hearings monitored by the SMMU. The organizer informed the SMMU that 10 activists were also attacked and injured as they dispersed after the Equality March had ended, with bruises to their faces, broken lips and a broken nose. Though they were partly escorted by police as they dispersed in small groups, it was reportedly difficult for the police to fully protect the participants as they separated.

69. The government, NHRI and NGOs in **Montenegro** also consistently reported numerous threats and attacks targeting LGBTI human rights defenders.⁴⁸ While the most common reported incidents were verbal and online threats, respondents and interviewees also described dozens of attacks targeting an LGBTI community centre during the reporting period, in addition to physical attacks on LGBTI defenders and community members at public assemblies. The NHRI noted that the police responded efficiently and effectively to the incidents, including by providing protection, whereas “the judicial authorities were very lukewarm and penalties symbolic.” According to the government authorities, most of the investigations into 21 incidents in 2015 resulted in fines, as well as two punishments of imprisonment and one acquittal.
70. In other participating States, human rights defenders criticized particularly inadequate and ineffective law enforcement responses to threats and attacks against LGBTI human rights defenders.
71. In **Poland**, two NGOs and several human rights defenders separately and consistently reported inadequate responses of law enforcement authorities and public officials to threats and attacks against human rights defenders campaigning for LGBTI human rights and against hate speech.⁴⁹ In **Armenia**, an LGBTI rights organization noted that police and prosecutors were generally unresponsive and declined to open criminal cases into widespread public threats against LGBTI people, including by authorities, news media and unknown individuals issuing online death threats. The resulting impunity reportedly

⁴⁸ See text below at n. 158.

⁴⁹ According to the human rights defenders, in February and March 2016, the offices of two LGBTI rights organizations were vandalized, and two individual human rights defenders received public threats online and offline. Police investigations were reportedly unsuccessful in all of the instances, and failed to identify any suspects. The government of Poland provided ODIHR with information on only one of the February 2016 threats against a human rights defender, which the police reportedly registered with the prosecutor (despite not having identified perpetrators), who then discontinued the investigation.

created a climate of fear, in which human rights defenders and victims were reluctant to pursue justice, believing it could expose them to further threats.⁵⁰ In **Kyrgyzstan**, an LGBTI human rights NGO reported that it did not submit a complaint to police following an April 2015 attack with Molotov cocktails on its former office, fearing the disclosure to police of the identities of LGBTI community members. On 17 May 2015, the NGO reported that about 30 members of several nationalist groups attacked about 30 LGBTI people at a restaurant on the International Day against Homophobia and Transphobia, while shouting abusive and homophobic slurs at them. The law enforcement response was reportedly so inadequate and traumatizing for the victims that the NGO indefinitely stopped all public outreach activities and large events, in order to prevent the recurrence of similar attacks.⁵¹

Barriers in access to justice

72. In several countries, human rights defenders reported in questionnaires and interviews encountering common barriers to access justice and pursue accountability for abuses against them, particularly due to what they described as weak judiciaries that they viewed as lacking independence. They characterized the law enforcement and judicial authorities as appearing to be biased due to corruption, political influence, and social discrimination against vulnerable groups represented by human rights defenders.
73. The governments of **Ukraine** and **Georgia** both indicated inadequate access to justice for human rights defenders in the “occupied territories” of their countries. In the Abkhazia region, **Georgia** reported a lack of effective remedies for the unlawful detention and restrictions on movement of human rights defenders by *de facto* authorities. In the Transnistria region of **Moldova**, a human rights NGO also reported increased pressure and threats against human rights lawyers during the reporting period. In particular, it noted a total lack of “access to justice and effective legal remedies for Transnistrian inhabitants”, as well as retaliatory threats and restrictions of movement against lawyers who sought to bring legal claims before the *de facto* courts in the region.
74. In the **United Kingdom**, the NHRI reported a potential protection gap and disincentive to pursue justice resulting from the Sentencing and Punishment of Offenders (LASPO) Act of 2012. Without identifying any specific incidents in which human rights defenders had been deterred from seeking justice, the NHRI

⁵⁰ Questionnaire response from the NGO, PINK Armenia.

⁵¹ After the NGO called police to the scene, police officers allegedly detained both the victims and perpetrators together at the police station for seven hours, where the victims continued to be verbally threatened by their assailants. Additionally, the NGO reported that “the officers discriminated and humiliated transgender persons, due to the discrepancy between their gender markers in the passports and the actual appearance. Some of the transgender persons were asked to undress to explain the differences between the information in their passports and contradicting physical appearance.” Legal proceedings were reportedly initiated against only one of the alleged attackers, whose case was pending as of June 2016.

voiced concern that the Act has diminished access to judicial review and effective remedies, potentially including for human rights-related cases.⁵² In particular, the NHRI reported that the Act conditions legal aid on courts' approval of cases to go ahead, meaning that practitioners may not take up cases against public authorities that could be rejected by the courts. As a result, legal aid is less available to human rights lawyers taking up sensitive cases against the State, including on behalf of alleged victims of human rights abuses, who may also include other human rights defenders.

1.1.2 Protection policies, programmes and mechanisms

75. As elaborated in the *Guidelines*, when human rights defenders are threatened or otherwise put at risk, OSCE participating States must develop and apply protection policies, programmes and mechanisms to ensure their safety and security. Such protection measures could include physical protection, temporary relocation or other measures necessary to prevent further harm, and should be gender-sensitive and determined in consultation with the beneficiaries of protection, in order to adequately address their vulnerabilities.
76. Most responding States indicated that no special protection programmes had been adopted or deemed necessary to protect human rights defenders, as they were adequately protected under existing legal frameworks.⁵³ Some of the existing protection mechanisms that States specified included physical protection by police (**Czech Republic, Montenegro**), and witness or victim protection programmes (**Bosnia and Herzegovina**).
77. **Italy** described many active cases under its extensive protection programmes for human rights defenders, including activists and journalists. The most frequent beneficiaries of special protection programmes were journalists investigating abuses by organized crime, who were often subjected to death threats and attacks by non-State actors, such as organized crime groups. Authorities indicated that they investigated and responded to such incidents with progressive levels of protection measures depending on the scale of the threats.
78. **Georgia** described a range of good practices in its victim-protection programme, including optional elements of: identity change; data protection

⁵² Questionnaire response of the Equality and Human Rights Commission (UK). As a result, the number of civil legal aid cases has declined by 70 per cent from the introduction of the LASPO Act in 2012 to 2015 – with the number of new legal aid cases falling from 573,672 in 2012/2013 to 170,617 cases in 2014/2015. The number of certificates granted for Civil Representation cases also reportedly fell by 38 per cent in that period (from 150,521 to 92,707). All nine legal aid centres in the city of Manchester (home to 1 million people) reportedly closed as a result of the LASPO Act.

⁵³ Bosnia and Herzegovina, Czech Republic, Finland, Georgia, Germany, Greece, Ireland, Latvia, Liechtenstein, Lithuania, Moldova, Montenegro, Poland, Romania, Slovakia, Spain, Ukraine, Uzbekistan.

(removal from the public registry); security measures (physical protection, emergency communications channels, etc.); temporary or permanent change of place of residence; and/or relocation to another country. However, authorities noted that no human rights defenders had applied for such elaborate protection measures. In interviews and written inputs, Georgian human rights defenders confirmed to ODIHR that the overall protection situation was adequate.

79. The **Czech Republic** and **Spain** both noted their active relocation and assistance programmes for at-risk human rights defenders from abroad;(neither had identified human rights defenders on the domestic level who were in need of special protection measures).

1.2 Protection from judicial harassment, criminalization, arbitrary arrest and detention

80. OSCE participating States reaffirmed in the Budapest Document not only “the need for protection of human rights defenders”, but also that “all action by public authorities must be consistent with the rule of law, thus guaranteeing legal security for the individual.”
81. Among those rule-of-law guarantees, as outlined in the *Guidelines*, human rights defenders must not be subjected to judicial harassment or other politically motivated abuses of power that result in the criminalization⁵⁴ or other undue restrictions of their legitimate activities. Furthermore, authorities must protect human rights defenders from arbitrary detention, torture and ill-treatment, and facilitate their access to effective remedies, including to challenge the lawfulness of their detention or any other sanctions imposed upon them.
82. In written inputs, interviews and correspondence with ODIHR, human rights defenders in several OSCE participating States⁵⁵ reported consistent patterns of rule-of-law violations during the reporting period, which consequently compromised their rights to liberty and security of person, a fair trial, and freedom from torture and other ill-treatment.
83. In the cases communicated to ODIHR, violations of multiple human rights were sometimes simultaneous and interrelated: in a climate of impunity, human rights defenders were subjected to arbitrary detentions, politically motivated criminal prosecutions, and/or torture or other ill-treatment, including to compel forced confessions, which alongside other procedural violations compromised their

⁵⁴ For an exhaustive analysis of this phenomenon, see the Protection International research report, *Criminalization of Human Rights Defenders: Categorisation of the Problem and Measures in Response* (December 2015), available at: http://protectioninternational.org/wp-content/uploads/2016/01/Criminalisation_PL_English_WebReady.pdf.

⁵⁵ The majority of such complaints came from: Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova (regarding Transnistria), Russian Federation, Tajikistan, Turkey, Ukraine (regarding Crimea), and Uzbekistan.

right to a fair trial. In other cases reported to ODIHR, judicial review provided an important safety valve and check on the abuse of power.

84. In annual reports on individual complaints in 2015 and 2016, the UN Special Rapporteur on the situation of human rights defenders identified the aforementioned problems as some of the most pervasive in the **Europe and Central Asia** region. He observed:

“In a number of communications, the Special Rapporteur has also highlighted a particularly worrying pattern of arbitrary arrest and detention, judicial harassment, charges brought against and the sentencing of human rights defenders as a result of their human rights work. A number of prominent human rights defenders from the region have been and remain detained due to their work. In addition, there are reports of ill treatment in detention.”⁵⁶

85. ODIHR found the criminalization of human rights work to be widespread in some participating States in the OSCE region, both in law and in practice. However, it is not always simple to demonstrate that the judicial harassment and punishment of human rights defenders is intended to stifle their human rights work and critical voices, and thus amounts to targeted discrimination and persecution on the prohibited grounds of their political or other opinions.
86. In this regard, the European Court of Human Rights outlined a strong standard of how to identify and call out the politically motivated persecution of human rights defenders, in its March 2016 decision⁵⁷ on the case of the Azeri human rights defender Rasul Jafarov. The case of Mr. Jafarov was among several cases of imprisoned defenders that ODIHR raised with the Government of Azerbaijan on multiple occasions during the reporting period, as did the OSCE Representative on Freedom of the Media, several UN Special Procedures, and the CoE Commissioner for Human Rights, among others.⁵⁸

⁵⁶ See, Human Rights Council, Twenty-eighth session, “Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst – Addendum: Observations on communications transmitted to Governments and replies received” (4 March 2015), UN Doc. A/HRC/28/63/Add.1, at para. 364. See also, Human Rights Council (Thirty-first session), “Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst – Addendum: Observations on communications transmitted to Governments and replies received” (22 February 2016), UN Doc. A/HRC/31/55/Add.1.

⁵⁷ European Court of Human Rights, *Rasul Jafarov v. Azerbaijan* (application no. 69981/14), Decision of 17 March 2016, available at: <http://hudoc.echr.coe.int/eng?i=001-161416>. The Government of Azerbaijan pardoned and released Mr. Jafarov, among other human rights defenders, on the day of the Court’s judgment; however, the pardoning did not constitute an implementation of the judgment. Nonetheless, ODIHR welcomed the pardoning and release of Mr. Jafarov and others. See, “OSCE/ODIHR Director Link welcomes pardon of human rights defenders, activists and journalists in Azerbaijan” (19 March 2016): <http://www.osce.org/odihr/229061>.

⁵⁸ See, e.g., UN Special Rapporteur on the situation of human rights defenders, Case no: AZE 2/2015 State reply: 11/09/2015 “Alleged pre-trial detention, charges and sentencing of human rights defenders as a result of their legitimate human rights work”, JAL 29/05/2015. Letter of 29 May 2015 to Government of Azerbaijan, from the UN Special Rapporteurs on the situation of human rights defenders; the right to freedom of opinion and expression; the rights to freedom of peaceful assembly and of association; the right to health; the independence of judges and lawyers; and on torture and

87. The Court firstly found that authorities had not acted in **good faith**, as the existing facts of Mr. Jafarov's case did not provide a **reasonable justification** of the serious criminal offenses for which he was convicted and sentenced to 6.5 years in prison, including: large-scale embezzlement; illegal entrepreneurship; tax evasion; abuse of office; and forgery.
88. The Court also concluded that the case against Mr. Jafarov was part of a "larger campaign to crack down on human rights defenders in Azerbaijan". The Court based this assessment on the **general context** of: (1) "the increasingly harsh and **restrictive legislative regulation** of NGO activity and funding"; (2) the **smear campaigns** against human rights defenders by public officials and pro-government media; and (3) a pervasive **trend of similar abuses** against other human rights activists. In light of that general context, the Court found that Mr. Jafarov was unlawfully prosecuted and punished on account of his human rights activities: "The totality of the above circumstances indicates that the **actual purpose** of the impugned measures was to silence and punish the applicant for his activities in the area of human rights".⁵⁹
89. The Court's reasoning is applicable to other cases in OSCE participating States, where there is an apparent trend of the criminalization of human rights activities, demonstrated by increasingly restrictive legal frameworks, targeted smear campaigns, and apparently politically motivated prosecutions, detentions and other violations of the rights of human rights defenders.
90. This section highlights a selection of related cases brought to the attention of ODIHR during the reporting period, as well as good practices of OSCE participating States to prevent such trends and abuses.

1.2.1 Criminalization or arbitrary and abusive application of legislation

91. Several OSCE participating States informed ODIHR of their strong rule-of-law protections against judicial harassment and discriminatory conduct that could compromise equality under the law.⁶⁰ Some also noted the vital roles played by their NHRIs in backstopping the judicial system, monitoring the protection of human rights, and preventing judicial interference.⁶¹ States differed as to

other cruel, inhuman or degrading treatment or punishment (available at [https://spdb.ohchr.org/hrdb/30th/public - AL Azerbaijan 29.05.15 \(2.2015\).pdf](https://spdb.ohchr.org/hrdb/30th/public - AL Azerbaijan 29.05.15 (2.2015).pdf)), and State response (available at: [https://spdb.ohchr.org/hrdb/31st/Azerbaijan 11.09.15 \(2.2015\).pdf](https://spdb.ohchr.org/hrdb/31st/Azerbaijan 11.09.15 (2.2015).pdf)).

⁵⁹ *Rasul Jafarov v. Azerbaijan*, Decision of 17 March 2016 (supra n. 57), paras. 156–162 (emphasis added).

⁶⁰ Finland, Greece, Ireland, Italy, Lithuania, Moldova, Montenegro, Poland, Romania, Sweden.

⁶¹ Bulgaria, Finland, Moldova, Sweden.

whether their NHRIs enjoyed functional immunity (**Moldova**), did not have immunity (**Bulgaria**), or had their immunity questioned (**Poland**)⁶².

92. **Uzbekistan** highlighted several safeguards of judicial control, but also observed that “activities of human rights defenders must not encroach on the lawful interests, rights and freedoms of other persons, the state and society”, listing a range of criminal liabilities related to participation in public assemblies and associations. Two human rights NGOs from **Uzbekistan** independently alleged that the government selectively applied those legal restrictions to criminalize peaceful human rights-related activities of human rights defenders. One of the NGOs identified nine cases of human rights defenders (including independent lawyers and journalists, among others) who had allegedly been arrested, tortured and sentenced to long prison terms, after denial of their fair-trial rights. Human Rights Watch reportedly verified the same pattern of abuse, and independently identified the same defenders as having been convicted on politically motivated charges, among other activists.⁶³
93. The Government of **Ukraine** transmitted open letters to ODIHR on several occasions during the reporting period, alleging the politically motivated arrest, detention, conviction, and/or torture or other ill-treatment of Ukrainian human rights defenders⁶⁴ by the **Russian Federation**, including in the occupied territory of Crimea.
94. ODIHR has also received multiple reports from NGOs in **Ukraine** and **Russia** regarding politically motivated criminal cases against human rights defenders in both the **Russian Federation** and **Crimea** during the reporting period.⁶⁵ Following its addition to the Russian Federation’s list of “undesirable organizations”, the Crimean Human Rights Field Mission (CHRFM) suspended its activities in July 2015, in order to avoid the potential criminal prosecutions of its staff members and affiliates.⁶⁶ Since then, the human rights defender Emir-Usein Kuku was arrested on 11 February 2016 and charged for the alleged organization of activities of a terrorist organization by Russian Federation authorities in Crimea.⁶⁷ Mr. Kuku has worked since 2010 to document human

⁶² See, e.g., CoE Commissioner for Human Rights, Country visit report, “Erosion of rule of law threatens human rights protection in Poland” (15 June 2016), available at: <http://www.coe.int/en/web/commissioner/-/erosion-of-rule-of-law-threatens-human-rights-protection-in-poland>.

⁶³ See, Human Rights Watch statement, “Uzbekistan: 3 More Years for Long-Held Activist – President Should Amnesty Political Prisoners” (4 November 2016); available at: <http://www.hrw.org/news/2016/11/04/uzbekistan-3-more-years-long-held-activist>.

⁶⁴ Including, among others: Gennadiy Afansiev; Oleg Sentsov; Oleksandr Kolchenko.

⁶⁵ See, e.g., the case of Mykola Semena (at n. 198 below).

⁶⁶ See, ODIHR/HCNM, *Report of the Human Rights Assessment Mission on Crimea* (n. 45 above), at paras. 84 and 86. See also, the website of the Ministry of Justice of the Russian Federation, which lists “undesirable” organizations: <http://minjust.ru/ru/activity/nko/unwanted>. According to the current list, CHRFM appears to have since been removed.

⁶⁷ Mr. Kuku was charged under Article 205.5 of the Criminal Code of the Russian Federation (“organization of the activities of a terrorist organization and participation in the activities of such

rights abuses both before and after the Russian occupation of Crimea, and had been affiliated with CHRFM and other human rights initiatives.

95. In their 2015 report of the Human Rights Assessment Mission on Crimea, ODIHR and HCNM verified that the *de facto* authorities in **Crimea** abusively applied vague charges of “extremism” and “separatism” under criminal law of the Russian Federation to a wide variety of assemblies, speech and activities during the reporting period in 2014 and 2015. Based on interviews with those targeted and the review of primary documentation in the cases, numerous such criminal proceedings appeared to be politically motivated – directed especially at pro-Ukrainian human rights defenders, without due process guarantees for the accused and without effective remedies for alleged procedural violations.⁶⁸ In legal opinions on the **Russian Federation** law “On Combating extremist activity”, the CoE Venice Commission and the CoE Expert Council on NGO Law similarly expressed concerns over the vague definition of “extremism” and its broad interpretation by law enforcement authorities.⁶⁹
96. Human rights defenders in **Tajikistan**, **Moldova** and **Kyrgyzstan** also expressed concerns regarding the application of criminal legislation on “extremism” to their human rights-related professional activities.
97. In **Tajikistan**, three Tajik human rights NGOs and international organizations independently reported a widespread crackdown against human rights defenders since 2014, particularly targeting defense lawyers in politically sensitive cases.⁷⁰ During the reporting period, ODHR received reports of several human rights lawyers being arrested, criminally prosecuted, convicted and sentenced to long

organization”). Mr. Kuku’s Russian and Ukrainian lawyers, as well as Ukrainian human rights activists, have informed ODIHR about Mr. Kuku’s case, and maintain he is being persecuted for his opinions and beliefs. His representatives have lodged an application with the European Court of Human Rights on his behalf. On 23 August 2016, Mr. Kuku’s Ukrainian lawyer, Yevgeniya Zakrevskaya, was prevented by Russian Federation border guards from crossing into Crimea from mainland Ukraine, and was reportedly banned from entering the territory of the Russian Federation until 2020. Ms. Zakrevskaya was traveling to Crimea to document new cases of torture and other human rights violations on the peninsula.

⁶⁸ ODIHR/HCNM, *Report of the Human Rights Assessment Mission on Crimea* (n. 45 above), at paras. 145 and 177.

⁶⁹ See, CoE/Venice Commission, Opinion no. 660/2011, *Opinion on the Federal Law Combating Extremist Activity of the Russian Federation* (Strasbourg, 20 June 2012), available at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)016-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)016-e) ; and Federal Law No. 114-FZ “On Combating Extremist Activity” (25 July 2002); available at: <http://base.garant.ru/12127578/>. See also, Conference of INGOs of the Council of Europe, Expert Council on NGO Law, *Regulating Political Activities of Non-governmental Organisations* (October 2014), Doc. No. OING Conf/Exp (2014) 2, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680306eb8>.

⁷⁰ For background related to those reports, see the statement of Human Rights Watch, Norwegian Helsinki Committee, and the Association of Human Rights in Central Asia, “Tajikistan: Long Prison Terms for Rights Lawyers – Serious Blow to Independence of Legal Profession”, available at: <http://www.hrw.org/news/2016/10/07/tajikistan-long-prison-terms-rights-lawyers>.

prison terms on a variety of charges, including public calls for “extremist activities”. In some cases, the charges appeared to be politically motivated, including based on the timing of prosecutions for years-old allegations, which were accompanied by public smear campaigns. Tajik human rights defenders also reported that lawyers, activists and journalists regularly faced more subtle pressure and threats for their work on human rights, including through informal interrogations and repeated administrative inspections by authorities, which have created an atmosphere of repression against civil society, taking significant time away from their work and discouraging open debate on issues in the public interest. In his February 2016 report to the Human Rights Council, the UN Special Rapporteur on the situation of human rights defenders also expressed alarm at the recent trend of arbitrary detentions, politically motivated prosecutions and convictions of human rights lawyers, especially those “known for taking on politically sensitive cases.”⁷¹

98. In a recent case in **Tajikistan**, the lawyers Buzurgmehr Yorov and Nuriddin Mahkamov were convicted on 6 October 2016 and sentenced to 23 and 21 years, respectively, for a range of charges including “public calls for carrying out extremist activities”.⁷² Mr. Yorov and Mr. Mahkamov are defense lawyers who were representing members of the banned political party Islamic Renaissance Party of Tajikistan (IRPT). Mr. Yorov was initially arrested and detained on charges of fraud and forgery on 28 September 2015, the day after he informed the media that Ministry of Internal Affairs (MIA) agents had tortured his detained client, the deputy leader of the IRPT.⁷³ Upon Mr. Yorov’s detention, the newly formed legal defense committee for the IRPT members was reportedly disbanded. The day after his arrest, the MIA published an article on its official website, featuring Mr. Yorov under the headline “Lawyer Swindler”.⁷⁴ On 26 October 2015, media reported that Mr. Mahkamov, who had been assisting in the legal defense, was also arrested for fraud. By the time their

⁷¹ See, Report of the UN Special Rapporteur on the situation of human rights defenders (22 February 2016), at para. 454 (n. 56 above); case no. TJK 2/2015, “Alleged arbitrary detention, prosecution and sentencing of a human rights lawyer, Mr Shukhrat Kudratov.”

⁷² On 6 October 2016, the court announced its verdict. The court found Buzurgmehr Yorov guilty of inciting regional and religious enmity (Article 189 of Tajikistan’s Criminal Code), public calls for the forcible overthrow of or change to the constitutional order in Tajikistan (Article 307), public calls for carrying out extremist activity (Article 307.1), fraud (Article 247) and forgery (Article 340). The court sentenced Yorov to 23 years in prison. The court found Nuriddin Mahkamov guilty of inciting regional and religious enmity (Article 189), public calls for the forcible overthrow of or change to the constitutional order in Tajikistan (Article 307), public calls for carrying out extremist activity (Article 307.1) and fraud (Article 247). The court sentenced Mahkamov to 21 years in prison. Their sentences will be served in a high-security penal colony.

⁷³ Written memo from human rights monitors in Tajikistan. Pursuant to Articles 247 and 340 (respectively) of the Criminal Code. The alleged fraud supposedly occurred in 2010, and the forgery allegation apparently concerned falsified vehicle documents. See, <http://rus.ozodi.mobi/a/lawyer-islamic-party-arrested-/27276622.html>.

⁷⁴ Available at: <http://www.mvd.tj/index.php/ru/glavnaya/8796-advokat-moshennik>. The 29 September 2015 article concluded by urging any citizens who had been harmed by Mr. Yorov through fraudulent acts to contact the MIA through its telephone hotline. Similar articles about Mr. Yorov followed on the MIA’s site, under headlines such as “Abusing the Trust of Citizens”.

cases went to trial in April 2016, authorities had introduced additional charges of “public calls for forcible government overthrow” and “calls for extremism”. Their convictions on those later charges reportedly accounted for most of their long prison sentences, and also disqualified them from any form of amnesty.⁷⁵

99. Following his March 2016 country visit to Tajikistan, the UN Special Rapporteur on the right to freedom of opinion and expression called on the authorities of Tajikistan to release the IRPT lawyers and uphold both the fair-trial rights of both them and their clients. Additionally, the Special Rapporteur voiced serious concern that “the counter-terrorism and extremism laws do not sufficiently define ‘extremism’ or ‘terrorism,’ investing broad discretion to the Prosecutor General and leaving the judiciary with limited tools to constrain the use of these laws against parties and associations.” For this reason, the Special Rapporteur recommended to the government that: “The law should provide clear legal definitions of, and clarify what evidence is sufficient to prove, ‘extremism’ and ‘terrorism’.”⁷⁶
100. Following the entry into force of a decree on “response to extremism”,⁷⁷ issued by *de facto* authorities in the Transnistria territory of **Moldova**, one Moldovan human rights NGO reported increased online censorship of websites in Transnistria during 2015 and 2016. In the same period, the NGO noted an increase in surveillance, harassment, intimidation, and restrictions on the freedom of movement of human rights defenders, including expulsion from and bans on entry into Transnistria from elsewhere in Moldova.⁷⁸
101. In **Kyrgyzstan**, human rights defenders reported (and the government acknowledged by letter to ODIHR) that authorities had unlawfully seized lawyers’ confidential and privileged documents on human rights-related cases, in broad searches for alleged “extremist materials”.⁷⁹ In March and April 2015,

⁷⁵ Written memo from human rights monitors in Tajikistan. Those charges were reportedly based on a series of seven news commentaries from 2011 and 2012, which Mr. Yorov and Mr. Mahkamov had supposedly penned. The articles themselves were reportedly never entered into evidence, but were a basis for testimony by religious and academic “experts” who testified as to their subversive and extremist content, which the defendants denied.

⁷⁶ See, “Preliminary observations by UN Special Rapporteur on the right to freedom of opinion and expression, Mr. David Kaye at the end of his visit to Tajikistan” (9 March 2016), available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17197&LangID=E>.

⁷⁷ Decree No. 241 on response to extremism (Tiraspol, 2014). Available at: <http://president.gospmr.ru/ru/news/ukaz-prezidenta-pmr-no241-o-nekotoryhmerah-napravlennyh-na-preduprezhdenie-ekstremistskoy>.

⁷⁸ ODIHR reviewed two letters from *de facto* authorities in Transnistria to the NGO Promo-LEX in November 2015, which noted that the NGO was banned from entering Transnistria since its “presence is undesirable”.

⁷⁹ Under Article 13 of the Law of the Kyrgyz Republic on Countering Extremist Activity, information materials are declared extremist by a court at the request of a prosecutor’s office, following which they are forwarded to justice authorities, which then compile a list of extremist materials and make it public. The NGO Bir Duino noted that, according to official letters issued by Deputy Minister of Justice U. Dootaliyev, dated 11 December 2014, and acting State Secretary of the Ministry of Justice N. Tashtanov, dated 19 March 2015, the Ministry of Justice of the Kyrgyz Republic had not received any

the State Committee on National Security (GKNB) summoned, questioned, monitored, searched, and/or seized properties from several lawyers' homes and the Osh office of the human rights NGO Bir Duino. On 30 April 2015, the Osh Province Court overturned three lower court rulings based on which the GKNB conducted the searches, finding unlawful the procedural activities and actions of investigators, in the seizure of the lawyers' case files, computers and other properties. On 24 June 2015, the Supreme Court also ruled in favour of Bir Duino.⁸⁰

102. On 26 September 2014, the GKNB launched a criminal investigation against the NGO Human Rights Advocacy Centre (HRAC), for allegedly inciting inter-ethnic hatred,⁸¹ by conducting a survey among minority communities in Osh province. The survey aimed at determining the conditions of minorities in the south of Kyrgyzstan, specifically their access to economic opportunities, politics and justice. With a court order, the GKNB searched the HRAC office, seized its computers and other materials, and charged two members of the NGO with incitement of inter-ethnic hatred. In November 2014, HRAC's defense lawyers appealed the decision to the Osh Province Court. In a subsequent hearing on 4 December 2014, the prosecutor withdrew the charges, as the survey was neither publicly conducted nor used by the mass media for its dissemination, so did not constitute a crime or represent a danger for society.⁸²
103. The two aforementioned cases in **Kyrgyzstan** provide positive examples of the important role of judicial review to provide a check on potential abuses of power, including through legal appeals to remedy procedural violations.
104. In contrast, ODIHR has also received reports that authorities have leveraged courts to conduct politically motivated criminal prosecutions against human rights defenders in OSCE participating States, including **Azerbaijan** and **Kazakhstan**, without recourse for alleged procedural violations.
105. In **Azerbaijan**, ODIHR has received consistent reports from human rights defenders and international organizations of a widespread pattern of politically motivated criminal prosecutions against human rights defenders in retaliation for their activities. During the reporting period, ODIHR was informed of 20 cases of human rights defenders who were allegedly convicted of fabricated charges of drug possession, in some cases based on forced confessions obtained

copies of final and binding judgments declaring any information materials extremist, which indicates that the court issued unlawful search warrants under the pretext of confiscating extremist materials while no information materials had been recognized as extremist in the Kyrgyz Republic.

⁸⁰ For background on the cases, see Report of Bir Duino Kyrgyzstan, "Situation on human rights for freedom of association and the use of prosecutions against human rights defenders", available at: <http://www.osce.org/odihr/265816>.

⁸¹ Article 299.1 "attempt to incite national, racial, religious or inter-regional strife".

⁸² Information on this case was verified by the OSCE Centre in Bishkek.

through torture and other ill-treatment.⁸³ Activists from the NIDA youth movement have reportedly been especially targeted with such prosecutions.

106. In its November 2016 concluding observations on **Azerbaijan**, the UN Human Rights Committee voiced serious concern about this pattern of abuse, which it described among “extensive restrictions on freedom of expression in practice,” including:

“Consistent reports of intimidation and harassment, including arbitrary arrest and detention, ill-treatment and conviction of human rights defenders, youth activists, political opponents, independent journalists and bloggers on allegedly politically motivated trumped-up administrative or criminal charges of hooliganism, drug possession, economic crimes, tax evasion, abuse of office, incitement to violence or hatred, etc.”⁸⁴

107. In two cases, on 25 October and 8 December 2016 respectively, the NIDA youth activists Bayram Mammadov and Giyas Ibrahimov were convicted and sentenced to 10 years in prison for drug possession.⁸⁵ The two students were arrested on 10 May 2016 following their alleged painting of political graffiti on a statue of the former President of Azerbaijan on the anniversary of his birthday, which was caught on CCTV. They reportedly refused the police’s initial order to publicly apologize on video in front of the vandalized statue, as a condition for their release. Instead, they were then reportedly tortured to extract forced confessions of drug possession, which they later recanted in court. On 16 January 2017, the NIDA youth activist Elgiz Gahraman was convicted and sentenced to 5.5 years in prison on charges of drug trafficking. Following his arrest in August 2016, Mr. Gahraman was reportedly subjected to torture and other ill-treatment in order to extract a forced confession. His arrest and prosecution followed a critical and ironic Facebook post he made about Azerbaijan’s 2016 referendum. Other NIDA activists who were convicted on drug charges include Shahin Novruzlu, Omar Mammadov and Mammad Azizov, who were among those released in a series of presidential pardons in December 2014, March 2015 and March 2016.

108. In **Turkmenistan**, the Radio Liberty correspondent Saparmamed Nepeskuliev was sentenced in August 2015 to three years in prison for drug possession, following his journalistic reporting on government corruption and shortages in public services. In a December 2015 decision, the UN Working Group on

⁸³ Human Rights Watch has also reported extensively on the prosecution of activists based on fabricated drug charges. *See*, Human Rights Watch statement, “Azerbaijan: Activists Face Bogus Drug Charges” (13 May 2016), available at: <http://www.hrw.org/news/2016/05/13/azerbaijan-activists-face-bogus-drug-charges>.

⁸⁴ Human Rights Committee, Concluding observations on the fourth periodic report of Azerbaijan (2 November 2016), UN Doc. CCPR/C/AZE/CO/4, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fAZE%2fCO%2f4&Lang=en.

⁸⁵ Information on these cases was confirmed by the activists’ lawyer, as well as by other human rights defenders in Azerbaijan, both in interviews and written inputs.

Arbitrary Detention found that Nepeskuliev had been arbitrarily deprived of his liberty for peacefully exercising his right to freedom of expression. The Working Group called for his release and compensation.⁸⁶

109. In **Kazakhstan**, three human rights NGOs provided examples of different forms of judicial harassment that they and other Kazakh human rights defenders had experienced during the reporting period.⁸⁷ Two of those NGOs,⁸⁸ both of them members of the National Preventive Mechanism (NPM), independently reported that the management of closed places of detention brought legal complaints against NPM members in retaliation for their critical reporting. In a May 2016 court decision reviewed by ODIHR, the court ruled in favour of the complainant that the heads of two NPM member NGOs had “humiliated the dignity” and “violated the business reputation” of the detention facilities’ managers. The court ordered the NGO heads to publicly denounce their own reporting of increased corruption at the facility, to publicly apologize to its management, as well as to pay monetary damages and legal fees.
110. In addition to examples of judicial harassment, resulting in significant legal costs and fines, the head of NGO “Aru Ana” reported that she and her family members had come under targeted financial attacks in parallel. After winning an allegedly spurious tax lawsuit in April 2015, she claimed she was nearly evicted from her home, her daughter was fired from her job, and her brother’s nightclub was forced to be closed. The NGO head reported that the various forms of alleged harassment had caused financial hardship and stress for the family, and that Kazakhstan’s Ombudsperson institution had rejected appeals for support.

1.2.2 Arbitrary detention and treatment in detention

111. OSCE commitments⁸⁹ and other international human rights standards place an obligation on participating States to ensure that no one is subjected to arbitrary arrest or detention, and to prohibit, prevent and punish torture and other cruel, inhuman or degrading treatment or punishment.
112. In practice, the *Guidelines* elaborate that any deprivation of liberty must be lawful, subject to judicial review, in conformity with international human rights standards, and in that regard compliant with decisions and opinions issued by

⁸⁶ See, UN Working Group on Arbitrary Detention, Opinion No. 40/2015, UN Doc. A/HRC/WGAD/2015/40 (21 March 2016), available at: <http://www.ohchr.org/EN/issues/Detention/Pages/Opinionsadoptedin2015.aspx>.

⁸⁷ For similar examples from 2016, see also the Human Rights Watch statement, “Kazakhstan: Rights Groups Harassed – Non-governmental Organizations Targeted for Their Work” (21 February 2017), available at: <https://www.hrw.org/news/2017/02/21/kazakhstan-rights-groups-harassed>.

⁸⁸ NGOs “Aru Ana” and the Legal Center for Women’s Initiatives “Sana Sezim”.

⁸⁹ Those commitments include: Concluding Document of the Vienna Meeting (Third Follow-up Meeting to the Helsinki Conference, 15 January 1989, Vienna), available at <http://www.osce.org/mc/40881> (Vienna 1989); Copenhagen 1990 (n. 19 above); Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (4 October 1991), available at <http://www.osce.org/odihr/elections/14310> (Moscow Document 1991); and others since then.

international human rights mechanisms. Human rights defenders should moreover not be held in temporary or administrative detention to prevent or discourage them from carrying out their human rights work. When detained, they must moreover be treated without discrimination of any kind, including on account of their human rights work, and must be protected from any form of torture and other ill-treatment. All allegations of torture and other ill-treatment must be promptly, independently and effectively investigated and referred to prosecution authorities. Authorities should also take into account specific problems that women and other human rights defenders who are at particular risk may face in detention, and protect them from gender-specific violations while in detention.

113. Some OSCE participating States (**Georgia, Lithuania, Moldova and Romania**) reported that their constitutional guarantees and legal systems afforded broad and effective protection from arbitrary detention. As a good practice, **Moldova** highlighted the constitutional requirement of its Supreme Court to observe and apply the case law of the European Court of Human Rights in its interpretation of domestic human rights guarantees, especially regarding the rights to a fair trial and the fundamental freedoms of assembly, association and expression. Moldova noted that its Supreme Court website recently summarized the case of *Rasul Jafarov v. Azerbaijan*,⁹⁰ as an example of arbitrary detention in violation of the right to liberty and security of person (Article 5) and the permissible restrictions on rights (Article 18) provided by the ECHR.
114. **Uzbekistan** reported that it had received “no complaints or other types of petitions concerning violations against human rights defenders, including unlawful detention or torture” during the reporting period. However, the UN Human Rights Committee reported in August 2015 that it had received “numerous reports” of arbitrary detention, torture and ill-treatment in detention against “human rights defenders, government critics and persons convicted of religious extremism or of membership in Islamic movements banned in the State party”.⁹¹ The UN Committee on the Elimination of Discrimination Against Women (CEDAW Committee) in November 2015 also expressed concerns over gender-based discrimination, including “the forced sterilization, ill-treatment and abuse of women human rights defenders in detention”, and their inability to lodge complaints about their ill-treatment.⁹²
115. Such reported abuses were also reported by three human rights defenders from **Uzbekistan**, who informed ODIHR of their being subjected to arbitrary detention, torture and other ill-treatment. One woman human rights defender informed ODIHR she was subjected to arbitrary detention, torture and ill-

⁹⁰ Described above at n. 57 (*Rasul Jafarov v. Azerbaijan*, Decision of 17 March 2016).

⁹¹ Human Rights Committee, Concluding observations on the fourth periodic report of Uzbekistan (17 August 2015), UN Doc. CCPR/C/UZB/CO/4, at paras. 17-18.

⁹² CEDAW Committee, Concluding observations on the fifth periodic report of Uzbekistan (24 November 2015), UN Doc. CEDAW/C/UZB/CO, at paras. 31-32.

treatment, including forced sterilization and gang rape. During the reporting period, the UN Human Rights Committee found in its decision on the individual complaint of that woman defender that she had been arbitrarily detained on account of her political opinion and activities, denied fair-trial rights, and was subjected to torture and ill-treatment, including rape and forced sterilization, which additionally constituted discrimination on the basis of her sex.⁹³ Two of three human rights defenders who informed ODIHR of the practice of forced sterilization in places of detention were from the **Republic of Karakalpakstan**, an autonomous republic within Uzbekistan. One defender also alleged that authorities attempted to kidnap her while abroad, and had abducted, tortured and abused her family members as collective punishment in retaliation for her human rights activities.

116. Both the CEDAW Committee and the Human Rights Committee called on **Uzbekistan** to facilitate independent monitoring of places of detention, in order to prevent further torture and ill-treatment, and to effectively investigate, prosecute and punish the perpetrators of such abuses.
117. Human rights defenders in other OSCE participating States reported various levels of access to closed facilities for the purpose of detention monitoring. As a good practice, one NGO in **Albania** reported strong co-operation with State bodies and especially closed institutions, with whom they had signed an agreement to conduct monitoring of detainees' human rights.⁹⁴ In **Kosovo**,⁹⁵ an NGO reported temporarily being denied access to monitor pre-trial detention facilities in late 2013 (following critical reporting) and early 2015, despite a longstanding agreement for such monitoring; however, the correctional services restored access after interventions by the NGO and international partners, including the OSCE, EU and diplomatic community.⁹⁶ In **Kazakhstan**, human rights defenders also reported instances of closed facilities' retaliation for public scrutiny, including by filing legal complaints against NGO members of Kazakhstan's NPM, which includes NGO observers in line with the "Ombudsman Plus" model.⁹⁷ In a July 2015 decision reviewed by ODIHR, the Department of Corrections in **Belarus** refused a human rights defender's request to conduct detention monitoring, despite citizens' right to visit detention

⁹³ See Human Rights Committee, *M.T. v Uzbekistan*, Communication No. 2234/2013, UN Doc. CCPR/C/114/D/2234/2013 (1 October 2015).

⁹⁴ Albanian Helsinki Committee. See also, *Report of the Working Group on the Universal Periodic Review: Albania (2014)* (UN Doc. A/HRC/27/4), which observes that the General Directorate of Prisons signed 14 agreements with NGOs in 2014, in order to enable them to carry out inspections.

⁹⁵ See UN Security Council resolution 1244 (10 June 1999), and the International Court of Justice's Advisory Opinion of 22 July 2010 (n. 6 above).

⁹⁶ Kosova Rehabilitation Centre for Torture Victims (KRCT). The OSCE Mission in Kosovo has also supported this detention-monitoring arrangement in recent years.

⁹⁷ Legal Center for Women's Initiatives "Sana Sezim" (n. 88 above).

facilities under the Criminal Procedure Code, noting that this right does not generate an obligation of authorities to grant such access.⁹⁸

118. Also in **Belarus**, a human rights defender reported being arbitrarily detained temporarily in Minsk by the Ministry of Internal Affairs in November 2015, on the day of the inauguration of the president. The activists intended to appeal to the president on that day about alleged violations of the constitutional rights of Belarusian citizens. According to official documents reviewed by ODIHR, the human rights defender was searched, seized and questioned until after the inauguration event had ended, at which time she was released.⁹⁹

119. During the reporting period, in its concluding observations on the periodic reports of **Azerbaijan**,¹⁰⁰ **Kazakhstan**¹⁰¹ and **Turkey**,¹⁰² the UN **Committee against Torture** voiced serious concerns over the numerous and grave allegations of arbitrary detention, torture and ill-treatment against human rights defenders in those OSCE participating States.

120. ODIHR also expressed concern in November 2016 over widespread reports of torture and ill-treatment by police in **Turkey** against persons in detention,

⁹⁸ Information provided by Pavel Sapelko. Decision of the Department of Corrections No. 29/C-2873 (28 July 2015); available at: <http://spring96.org/ru/news/78809>.

⁹⁹ ODIHR reviewed the following documents: complaint of arbitrary detention; official notification of criminal warning; review of criminal case; detention report; search report; and release report.

¹⁰⁰ See, Committee against Torture, Concluding observations on the fourth periodic report of Azerbaijan (27 January 2016), UN Doc. CAT/C/AZE/CO/4, at paras. 10-11. The Committee reported that it was “deeply concerned about consistent and numerous allegations that a number of human rights defenders have been arbitrarily deprived of their liberty, subjected to ill-treatment and, in some cases, denied adequate medical treatment in retaliation for their professional activities. Among those human rights defenders are Leyla and Arif Yunus, Ilgar Mammadov, Intigam Aliyev, Mahamad Azizov, Rashadat Akhundov and Rashad Hassanov.” Citing numerous credible reports by international organizations and independent experts of politically motivated restrictions, prosecutions, arbitrary detentions and ill-treatment, the Committee called on Azerbaijan to: “(a) Investigate promptly, thoroughly and impartially all allegations of arbitrary arrest, denial of adequate medical treatment and torture or ill-treatment of human rights defenders, including those listed above, prosecute and punish appropriately those found guilty and provide victims with redress; (b) Release human rights defenders who have been deprived of their liberty in retaliation for their human rights work; (c) Amend and bring into line with international standards its legislation to facilitate the registration of human rights organizations and financial grants for the work of such organizations and change its practice to ensure that all human rights defenders are able to freely conduct their work.”

¹⁰¹ See, Committee against Torture, Concluding observations on the third periodic report of Kazakhstan (12 December 2014), UN Doc. CAT/C/KAZ/CO/3, at para. 19. The Committee reported that it was “gravely concerned at the reports of a number of cases of forced psychiatric detention of human rights defenders”, as well as reports of the use of torture and other ill-treatment, including to extract forced confessions.

¹⁰² See, Committee against Torture, Concluding observations on the fourth periodic report of Turkey (2 June 2016), UN Doc. CAT/C/TUR/CO/4, at paras. 43-44, 49. The Committee reported that it was “seriously concerned about numerous consistent reports of intimidation and harassment of and violence against human rights defenders, journalists and medical doctors who provide assistance to victims of torture.” It also remained “concerned about the numerous reports received of arbitrary detention of journalists and human rights defenders on terrorism-related charges because of their reporting, including journalist Nedim Oruç and human rights defender Muharrem Erbey.”

including human rights defenders, following an emergency decree issued on 23 July 2016, which removed crucial safeguards against torture and ill-treatment, following an attempted coup d'état.¹⁰³ While the Turkish government informed the Council of Europe on 22 July 2016 that it would suspend the ECHR during the state of emergency it proclaimed, the absolute prohibition on torture is notably non-derogable and cannot be suspended even when the life of a nation is under threat. A Turkish human rights lawyer interviewed by ODIHR, who regularly conducts detention visits in Istanbul to represent indigent clients, expressed concern over reduced access to closed facilities since the attempted coup d'état, as well as alleged encroachments on the rule of law and judicial independence in political cases, which have allegedly impeded administrative review. In its input to ODIHR, the NHRI of Turkey did not report receiving any complaints of any kind from human rights defenders, yet noted that if it encountered "any violation of rights or receive[s] a complaint on this matter by any of the human rights defenders in Turkey, we as the Ombudsman Institution, are ready to take action and start investigations immediately."

121. In 2014 and 2015, **Azerbaijan** declined requests by ODIHR to visit imprisoned human rights defenders, in order to conduct private interviews with them on their cases and assess their detention conditions.¹⁰⁴ Since the rejection of those requests, ODIHR issued a series of public statements in 2015 and 2016 welcoming the release and pardoning of some human rights defenders by the Government of Azerbaijan, while also calling on authorities to release those defenders who remained in detention.¹⁰⁵ In 2016, ODIHR individually interviewed six Azeri human rights defenders who had been detained during the reporting period, including four political prisoners who were pardoned by the president in March 2016.

¹⁰³ See, ODIHR statement, "OSCE/ODIHR Director Link expresses grave concern over Turkish President's statement on reintroducing the death penalty" (2 November 2016), available at: <http://www.osce.org/odihr/278597>. The statement cited reports by Human Rights Watch and Amnesty International, in particular, of torture and abuse against human rights defenders and others. See, for example, the Human Rights Watch statement and report, "Turkey: Emergency Decrees Facilitate Torture" (25 October 2016), available at: <http://www.hrw.org/news/2016/10/25/turkey-emergency-decrees-facilitate-torture>. Front Line Defenders, FIDH, the Observatory on Human Rights Defenders and others have also reported widespread arbitrary detentions and ill-treatment of human rights defenders in Turkey, particularly since the failed July 2016 coup d'état in Turkey.

¹⁰⁴ In two October 2014 letters, ODIHR requested to visit the then-imprisoned human rights defenders Leyla Yunus, Arif Yunus, Anar Mammadli, Rasul Yafarov and Intigam Aliev. In two May 2015 letters to the Ombudsperson and Minister of Justice of Azerbaijan, respectively, ODIHR again requested to visit Rasul Yafarov and Intigam Aliev in detention. Authorities declined each of the requests.

¹⁰⁵ Some of those ODIHR public statements include: "OSCE/ODIHR Director Link commends release of Arif Yunus" (13 November 2015): <http://www.osce.org/odihr/199841>; "OSCE/ODIHR Director Link praises release of Leyla Yunus" (9 December 2015): <http://www.osce.org/odihr/208366>; "OSCE/ODIHR Director Link welcomes pardon of human rights defenders, activists and journalists in Azerbaijan" (19 March 2016): <http://www.osce.org/odihr/229061>; "OSCE/ODIHR Director Link welcomes lifting of travel ban for Azerbaijani human rights defenders" (20 April 2016): <http://www.osce.org/odihr/235076>; and "OSCE media freedom representative, human rights chief welcome release of Khadija Ismayilova" (25 May 2016): <http://www.osce.org/fom/242746>.

122. All of the interviewed human rights defenders from **Azerbaijan** described their detentions as part of a widespread and on-going crackdown on civil society, which intensified in October 2013, following their criticism of alleged fraud in Azerbaijan's disputed elections. Reflecting the **political motivation** of their detentions, three former prisoners recounted explicit warnings by authorities of pre-trial detention facilities and prisons not to engage in any political speech or other human rights-related activity while in detention. One former prisoner said the prison chief overtly threatened retaliation if he became aware of any such activities. The defenders described consistently poor detention conditions, as well as worse treatment in Azerbaijan's prisons for human rights defenders based on their political activities. For instance, they were forbidden from receiving opposition newspapers and books, and had their written communications heavily restricted and often confiscated. Human rights defenders and their lawyers continued to smuggle out letters to international organizations and the diplomatic community regarding their situation, as well as statements to commemorate Human Rights Day from prison, to be presented before human rights bodies or to be posted on Facebook. In two cases, prison authorities threatened consequences against the human rights defenders when their communications were discovered. When one defender transmitted four statements through his lawyer, he was then reportedly subjected to ill-treatment and harassment, and was disallowed from communicating with his family. When another defender transmitted communications out of the prison through his lawyer, the government complained to the Bar Association, which issued him a warning for violating prison rules, putting him and his lawyer at risk of losing their law licenses.
123. The human rights defenders interviewed who were previously imprisoned in **Azerbaijan** consistently reported the use of **torture** and other **ill-treatment**, especially during initial detentions by police. They reported that torture was often used to extract forced confessions, through beatings and ill-treatment, including humiliating acts that were photographed in some instances. Two former prisoners also described rampant torture and abuse inside the prisons, which one of them experienced directly. He described being tortured and beaten so badly during his initial detention that he could not walk for two weeks, and could not hear properly for three months. When sent to prison after his conviction, he described being beaten by over 50 other prisoners, and claimed that it was the "project" of prison directors to ensure worse treatment for political activists. He noted that other prisoners told him they recognized the abuses against him were on account of his previous political activity, which he believed was particularly harsh due to the visibility of his activism and work with other activists. However, he described the worst mistreatment to be against gay and transgender people, who he reported were quarantined to a specific part of the prison, where they were subjected to daily beatings, as well as sexual assault and other ill-treatment.

124. In the preliminary findings of the UN Working Group on Arbitrary Detention following its country visit to **Azerbaijan** in May 2016, it reported widespread allegations of the use of torture, including to extract forced confessions, and documented detention conditions appearing to amount to ill-treatment. The Working Group also reported the apparent political motivation of detentions and ill-treatment of human rights defenders, as a violation of the rule of law intended to silence their political criticism:

“The Working Group holds the view that human rights defenders, journalists, political and religious leaders continue to be detained under criminal or administrative charges as a way to impair the exercise of their basic human rights and fundamental freedoms and to silence them. These practices constitute an abuse of authority and violate of the rule of law that Azerbaijan has agreed to comply with.”¹⁰⁶

1.2.3 Fair trial

125. OSCE participating States have repeatedly reaffirmed that the rule of law must be based on respect for “the right to a fair trial, the right to an effective remedy, and the right not to be subjected to arbitrary arrest or detention” (Ljubljana 2005). The *Guidelines* recall that the right to a fair trial further requires that human rights defenders are able to challenge their detention and criminal charges against them before a competent, independent and impartial tribunal; and they must enjoy equality of arms in their legal defense, confidential communications with their legal representatives, and evidence or testimonies against them that are extracted through torture must be excluded.

126. ODIHR received reports from human rights defenders and other actors of judicial irregularities and the denial of fair trial rights of human rights defenders in a range of countries, including **Azerbaijan, Kazakhstan, Kyrgyzstan, the Russian Federation, Tajikistan, and Ukraine and Uzbekistan**. Those reports have detailed surveillance, threats, attacks and other forms of retaliation against lawyers for representing human rights defenders in politically contentious cases.¹⁰⁷ As noted in cases described above, human rights defenders have also reported to ODIHR that their arbitrary detention and ill-treatment were followed

¹⁰⁶ See, UN Working Group on Arbitrary Detention, “UN Working Group on Arbitrary Detention Statement upon the conclusion of its visit to Azerbaijan (16–25 May 2016)”, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=2--21&LangID=E>.

¹⁰⁷ In contrast, the UN Basic Principles on the Role of Lawyers provide: “Governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.” See, UN Basic Principles on the Role of Lawyers (1990), at para 16; available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>. The UN Special Rapporteur on the independence of judges and lawyers has also noted that States “have to put in place mechanisms to protect [...] lawyers against pressure, interference, intimidation and attacks and to ensure their security.” See, Report of the UN Special Rapporteur on the independence of judges and lawyers (5 April 2016), at para. 40; available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/068/03/PDF/G1606803.pdf?OpenElement>.

by politically motivated prosecutions, convictions and heavy sentences against them, in some cases without a corresponding factual basis. In other cases, confidentiality of communications with legal representatives has been denied; torture and ill-treatment have been used to extract forced confessions; or equality of arms and the right to an effective remedy have been otherwise undermined through retaliatory threats and criminal procedures against defense attorneys representing human rights defenders.

127. In September and October 2016, the Ukrainian human rights defender Gennadiy Afanasiev provided ODIHR with extensive details of his arbitrary arrest and detention, politically motivated prosecution, torture and ill-treatment by **Russian Federation** authorities in **Crimea**. Mr. Afanasiev described in detail his abduction and torture by Russian intelligence personnel in Crimea in May 2014, which he claimed was on account of his journalistic work and participation in public protests opposing the annexation of Crimea. Through the use of torture including beatings, suffocation and electrocution, interrogators extracted his forced confession to extremism and terrorism charges, as well as his testimony against the Crimean human rights activists Oleksandr Kolchenko and Oleg Sentsov, which he later recanted in court at their trial as having been extracted through torture.¹⁰⁸ Mr. Afanasiev was ultimately convicted and sentenced to seven years in prison under the Criminal Code of the Russian Federation, but was released to Ukrainian authorities in June 2016, as part of a prisoner exchange for two detained intelligence officers of the Russian Federation's Main Intelligence Agency (GRU), Aleksandr Aleksandrov and Evgeniy Yerofeev. The Government of Ukraine confirmed those and other details in an open letter to ODIHR in June 2016, following Afanasiev's release after more than two years in detention.

¹⁰⁸ Amnesty International monitored the hearing, and reported on Afanasiev's recanting of his testimony. See Amnesty International, "'The system does not forgive' – Crimean activists hauled before a Russian military court" (10 August 2015), available at: <https://www.amnesty.org/en/latest/news/2015/08/crimean-activists-hauled-before-a-russian-military-court>. The activists Oleg Sentsov and Oleksandr Kolchenko were convicted on 25 August 2015 for alleged pro-Ukrainian terrorism-related charges, and remain in prison. As in the case of Afanasiev, they were tried on extremism and terrorism charges, after having Russian citizenship imposed upon them. In a 10 August 2015 letter to Russian authorities, ODIHR requested to observe the trials of those defendants in Rostov-on-Don, and to be granted access to them in their places of detention, as well as to be granted such access in any other similar cases in the future. On 24 August 2015, the day before their convictions, the delegation of the Russian Federation declined to facilitate access to the defendants in their places of detention, though did confirm that any ODIHR monitors would be provided with the same level of access as "Russian citizens" to any public proceedings in Russia. See, ODIHR/HCNM, *Report of the Human Rights Assessment Mission on Crimea* (n. 45 above), at nn. 49. On 27 August 2015, ODIHR issued a statement on the convictions of Mr. Sentsov and Mr. Kolchenko, recalling that OSCE participating States have "reaffirmed their commitment to international humanitarian law guaranteeing fair-trial rights in occupation situations." See, ODIHR statement, "ODIHR Director expresses concern about continued detention and sentencing of foreign nationals in the Russian Federation", available at: <http://www.osce.org/odihr/178921>.

128. In **Ukraine**, the lawyer of those two Russian officers, Yuriy Grabovskiy, was abducted and killed in March 2016, apparently on account of his work.¹⁰⁹ Grabovskiy was shot dead in an abandoned former collective farm garden 27 kilometers from Zhashkiv Cherkasy region. His body was found on 25 March 2016. Two suspects in the abduction and murder were detained, and were under investigation by Ukraine's military prosecutor, who reportedly confirmed that the crimes appeared linked with the lawyer's role in the GRU case. In video footage, his captors reportedly forced him to promise to stop providing legal assistance to the accused and state that it was a mistake to provide such assistance. The criminal proceedings were ongoing at the time of reporting.¹¹⁰
129. ODIHR was also informed by the SMMU of allegations of abductions and disappearances of civilians in Donetsk Oblast, **Ukraine**, by uniformed paramilitaries in eastern Ukraine since mid-2014. The abductions reportedly resulted in legal practitioners being afraid to represent civilians and bring legal complaints against those enforced disappearances, out of fear of retaliation. In June 2016 in Odessa, **Ukraine**, nationalist civilians reportedly threatened at court and blocked the exit of the defense attorney of a Russian Federation citizen who was accused of rioting on 2 May 2014. The lawyer reportedly filed criminal complaints over his arbitrary detention and interference in his work, which the investigating judge accepted but police did not pursue. According to the lawyer, the lack of responsiveness by Ukraine's police resulted in the intimidation of defense lawyers, who subsequently declined to represent pro-Russian defendants, thereby undermining the equality of arms.
130. In **Azerbaijan**, three human rights lawyers provided examples of intimidation, harassment, threats and retaliation against attorneys representing human rights defenders. Two human rights defenders reported the dismissal of lawyers from the Bar for actively defending persons arrested on politically motivated charges. In its decision on the case of *Rasul Jafarov v. Azerbaijan*, the European Court of Human Rights similarly found that "the suspension of his representative's licence to practise law had been politically motivated", and "that his representative had been refused permission to meet with him in the prison", resulting in a violation of the complainant's right to appeal to the Court (Article 34 ECHR).¹¹¹
131. The defense attorney of several human rights defenders in **Azerbaijan**, Elchin Sadigov, reported being subjected to harassment by authorities, apparently in retaliation for his legal representation of human rights activists. In October 2016, following harshly critical closing remarks in court by a human rights defender he was representing (Giyas Ibrahimov), Mr. Sadigov reported that he was under "constant pressure" by the Bar Association and law enforcement agencies, among others. His email and Facebook accounts were reportedly

¹⁰⁹ See above at n. 46.

¹¹⁰ Information provided by the OSCE Special Monitoring Mission to Ukraine.

¹¹¹ *Rasul Jafarov v. Azerbaijan*, Decision of 17 March 2016 (n. 57 above), at paras 172, 173, 186.

subjected to hacking attempts, following which both those accounts and his phone became blocked for six hours.¹¹²

132. Two student members of the NIDA pro-democracy youth movement in **Azerbaijan**, who were represented by Mr. Sadigov – Bayram Mammadov and Giyas Ibrahimov – reported to Mr. Sadigov that they were forced through ill-treatment and threats of violence to make written confessions of drug possession.¹¹³ During their initial detention at Baku’s Narimanov district police station, police reportedly beat the two youth activists and threatened them with sexual violence (rape with a bat), in order to compel the confessions. When their lawyer met with the activists two days after their detention, both Mr. Ibrahimov and Mr. Mammadov reportedly complained of serious pain and had visible bruises on their bodies.
133. During its country visit to **Azerbaijan** on 16 to 25 May 2016, the UN Working Group on Arbitrary Detention met with Mr. Ibrahimov and Mr. Mammadov in pre-trial detention, and reported that it “observed what seemed to be physical sequels of such treatment” as “both reported having been subjected to violent interrogation techniques at a police station” before their transfer to pre-trial detention facilities. ODIHR was informed by their lawyer and a human rights defender that Mr. Ibrahimov and Mr. Mammadov also complained of the torture and ill-treatment at their remand hearing, and recanted their allegedly forced confessions. The handwritten remarks that Mr. Ibrahimov prepared for his final hearing while in prison were also reportedly confiscated from him en route to the court, for which reason he was unable to read a final statement in his own defense, and instead had to deliver them orally without full preparation. On 25 October and 8 December 2016, respectively, Mr. Ibrahimov and Mr. Mammadov were each convicted and sentenced to 10 years in prison on charges of drug possession.
134. ODIHR also received reports from human rights defenders in **Kazakhstan** of the denial of fair-trial rights in 2015 and 2016, particularly in politically motivated cases against journalists and land rights activists.
135. On 28 November 2016, a court in Atyrau in western **Kazakhstan** convicted and sentenced human rights defenders Max Bokayev and Talgat Ayan each to five years in prison for their leading roles in organizing peaceful protests in April and May 2016, in opposition to proposed amendments to Kazakhstan’s land code. The court also banned them from engaging in public activities for three years after serving their sentences. Their alleged crimes were “inciting social discord”, “disseminating information known to be false”, and “violating the procedure for holding assemblies”. In a January 2017 statement by the

¹¹² See also the following accounts in the news media of harassment and intimidation against the lawyer: <http://www.contact.az/docs/2016/Social/110200173701en.htm?66#.WBoDRtSLRko>; and <http://www.contact.az/docs/2016/Social/110300173758en.htm?37#.WBxSHSOrKJA>.

¹¹³ Described above at n. 85.

Government of Kazakhstan to the OSCE Permanent Council, it defended the activists' long sentences, noting that they "used the social networks (WhatsApp, Facebook) and financed the largest unauthorized rally. Such actions are obvious violations of the rules and laws of the Republic of Kazakhstan."¹¹⁴

136. International experts and human rights organizations reported numerous procedural violations in the trial of Mr. Bokayev and Mr. Ayan, including reports that the court rejected the majority of legal motions by the defendants' lawyers.¹¹⁵ For instance, on 9 November 2016, the Bokayev lawyer made a motion during the trial to request testimony before the court by a member of ODIHR's Expert Panel on Freedom of Assembly: Mr. Yevgeniy Zhovtis, director of the Kazakhstan International Bureau for Human Rights and Rule of Law. The motion was supported by both defendants and their lawyers, but opposed by the prosecutors. The judge rejected the motion, saying she did not need any expert opinion on freedom of assembly as she understood the right fully. In 2014, the UN Committee against Torture voiced serious concerns to **Kazakhstan** regarding these precise types of procedural irregularities, which undermine equality of arms, making specific reference to the same problem in the trial of Mr. Zhovtis, which also resulted in his imprisonment.¹¹⁶

137. As noted above, a number of defense lawyers in **Tajikistan** had criminal cases filed against them, apparently in retaliation for their working on politically sensitive cases.¹¹⁷ Additionally, one human rights organization in Tajikistan reported to ODIHR that the relatives of some lawyers had been arrested in retaliation for their work.

¹¹⁴ Statement by the Permanent Representative of the Republic of Kazakhstan to the International Organizations in Vienna at the 1129th meeting of the OSCE Permanent Council in response to the statements about the verdict of the court on Maks Bokaev and Talgat Ayan" (26 January 2017), Doc. No. PC.DEL/9417.

¹¹⁵ See also, statements on this case by UN Special Rapporteurs (available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20990&LangID=E>), Human Rights Watch (available at <http://www.hrw.org/news/2016/11/29/kazakhstan-2-activists-sentenced-5-years>), the Observatory for the Protection of human rights defenders (available at <http://www.omct.org/human-rights-defenders/urgent-interventions/kazakhstan/2016/11/d24080/>), and International Partnership for Human Rights (available at <http://iphronline.org/kazakhstan-ruling-cs-activists-20161201.html>).

¹¹⁶ See, Committee against Torture, Concluding observations on the third periodic report of Kazakhstan (12 December 2014), UN Doc. CAT/C/KAZ/CO/3, at para. 15: "the Committee is concerned at the reported lack of balance between the respective roles of the procurator, the defence counsel and judges. The Committee is particularly concerned about the dominant role of the procurator throughout judicial proceedings and the lack of power of defence lawyers to collect and present evidence, which reportedly results in court decisions relying disproportionately on evidence presented by the prosecution, an allegation that the Committee previously raised in the context of the trial of human rights defender Evgeniy Zhovtis. [...] The Committee remains concerned at reports that there is a lack of judicial control over the actions of prosecutors and that judges are overly deferential to prosecutors owing to their lack of independence from the executive branch (arts. 2 and 10). The State party should undertake structural reform of the system of administration of justice with a view to balancing in practice and ensuring equality of arms [...]."

¹¹⁷ See, text at nn. 70 and 71 above.

138. In **Uzbekistan**, the human rights organization “Fiery Hearts Club” also reported a range of fair-trial violations, arising from the aforementioned case of *M.T. v Uzbekistan*.¹¹⁸ When the complainant’s defense attorney in that case (who was also the complainant’s sister) publicized cases of torture in Uzbek prisons, authorities allegedly threatened attacks on her family members in retaliation. Other lawyers had reportedly refused to defend the complainant, due to threats and intimidation. In May 2014, when the same human rights defender organized an event dedicated to the ninth anniversary of the Andijan events, she reportedly was tried in absentia and had her Uzbek citizenship revoked. When she initiated a tenth-anniversary campaign in 2015, authorities allegedly initiated a smear campaign against her grandchildren, and a trial in absentia in Uzbekistan of her daughter and her husband, who also lived in exile in Europe. The UN Human Rights Committee has observed that trials in absentia should be exceptional, and when necessary “the strict observance of the rights of the defense is all the more necessary.”¹¹⁹
139. In the case of the human rights defender Azimjan Askarov in **Kyrgyzstan**, ODIHR noted with serious concern the 24 January 2017 court decision confirming the life sentence against Mr. Askarov. The court’s decision contravened the April 2016 views on Mr. Askarov’s case by the UN Human Rights Committee, which had called upon authorities to immediately release Mr. Askarov, quash his conviction, and provide reparations for his unlawful and arbitrary detention, torture and ill-treatment, and violations of his fair-trial rights. The UN High Commissioner for Human Rights also noted serious shortcomings in relation to both this latest judgment and the handling of Mr. Askarov’s case by Kyrgyzstan’s judicial system, and called on authorities to release Mr. Askarov in line with the UN Human Rights Committee’s views.¹²⁰ In April and July 2016 public statements¹²¹ ODIHR urged the Kyrgyz authorities to implement the remedial recommendations of the UN Human Rights Committee on the case of Mr. Askarov.¹²²

¹¹⁸ See, note 93 above.

¹¹⁹ See, Article 14(3)(d) of the ICCPR; and UN Human Rights Committee, *General Comment 13 – Administration of justice (Article 14)*, available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/INT_CCPR_GEC_4721_E.doc.

¹²⁰ See, OHCHR statement, “Azimjan Askarov verdict in Kyrgyzstan ‘deeply troubling’ – Zeid” (24 January 2017), available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21113&LangID=E>.

¹²¹ See, ODIHR statement, “ODIHR Director calls on Kyrgyzstan to free human rights defender Azimjan Askarov” (22 April 2016), available at: www.osce.org/odihr/235736. See also, ODIHR statement, “OSCE/ODIHR Director Link welcomes Kyrgyzstan’s review of Askarov’s case, calls on Kyrgyz authorities to implement UN Human Rights Committee decision” (9 July 2016), available at: <http://www.osce.org/odihr/251936>.

¹²² Notably, Article 41.2 of the Constitution of the Kyrgyz Republic provided for the direct implementation of views and decisions of international human rights bodies. Following a December 2016 referendum, however, Kyrgyzstan amended its constitution to repeal Article 41.2, among others, despite the recommendations of ODIHR and the CoE Venice Commission in an August 2016 legal

140. **Kyrgyzstan** accepted several relevant recommendations during its 2015 periodic review before the Human Rights Council, including to: “Protect human rights defenders from intimidation and violence and ensure prompt, impartial and thorough investigation of allegations of harassment, torture and ill-treatment of human rights defenders”; and “Examine allegations of ill-treatment and torture in custody and failures to ensure fair trial guarantees to those arrested and prosecuted following the 2010 violence”.¹²³

1.3 Confronting stigmatization and marginalization

141. As evident in the preceding sections, the stigmatization and marginalization of human rights defenders on multiple grounds of discrimination – most frequently political or other opinion, gender, sexual orientation, and ethnicity – often precede more targeted attacks on their human rights and fundamental freedoms. State-sponsored smear campaigns and social discrimination erode the core guarantees of the rights to effective remedies and a fair trial, liberty and security of person, and freedom from torture and other ill-treatment. Discriminatory denial of due process and accountability further undermines the enjoyment of the rights to freedom of association, expression, peaceful assembly, movement, as well as to enjoy a private life and participate in public affairs.
142. The OSCE participating States have committed to ensure the equal enjoyment and exercising of human rights and fundamental freedoms by all people – without distinction of any kind¹²⁴ – and committed to publicly condemn violent acts motivated by discrimination and intolerance.¹²⁵ Additionally, OSCE participating States have committed to act in conformity with their binding international human rights obligations, which obligate States to ensure non-discrimination with regard to the full enjoyment of all human rights and fundamental freedoms of those in their jurisdictions.¹²⁶ The prohibited grounds

opinion to retain the provision. (See, ODIHR and Venice Commission, “Kyrgyz Republic – Preliminary Joint Opinion on the Draft Law ‘On Introduction of Amendments and Changes to the Constitution’” (29 August 2016); available at: <http://www.osce.org/odihr/261676>.) Under international law, Kyrgyzstan is still obligated to release Mr. Askarov, in accordance with the Human Rights Committee’s views and irrespective of the referendum, which did not alter Kyrgyzstan’s obligations. (See, Article 27 of the Vienna Convention on the Law of Treaties (1969), which provides: “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”)

¹²³ Human Rights Council, Report of the Working Group on the Universal Periodic Review (Kyrgyzstan), Twenty-ninth session, UN Doc. A/HRC/29/4 (9 April 2015), at paras. 117.114 and 117.48.

¹²⁴ See, Copenhagen Document, 1990 (n. 19 above), para. 5.9: “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground.”

¹²⁵ See, Vienna 1989 (Questions Relating to Security in Europe: Principles), at 13.7 and 13.8 (n. 89 above); and Maastricht 2003 (Decisions: Decision No. 4/03 on Tolerance and Non-discrimination).

¹²⁶ See e.g., Budapest 1994 (n. 3 above), at para. 14. See also, Madrid 1993: “The participating States [...] reaffirm the particular significance of the Universal Declaration of Human Rights, the international Covenants on Human Rights and other relevant international instruments [...]; they call on all

of discrimination include, among others: national or social origin, political or other opinion, language, religion, property, birth or other status (including nationality, place of residence, health status, sexual orientation, disability, etc.).¹²⁷

143. In their protection of human rights defenders, OSCE participating States must therefore neither discriminate directly, nor tolerate or condone incitement to discrimination, hostility or violence by any segment of the population, including when it is conducted online. In practice, the *Guidelines* elaborate that “State institutions and officials must refrain from engaging in smear campaigns, negative portrayals or the stigmatization of human rights defenders and their work,” and “should take proactive steps to counter smear campaigns against and the stigmatization of human rights defenders, including by third parties.” Moreover, “Governments and State institutions at all levels – national, regional and local – should publicly condemn any such manifestations or actual attacks against human rights defenders whenever they occur.” Participating States should likewise strengthen their NHRIs to safeguard the protection of vulnerable groups from stigmatization, marginalization, and discriminatory threats and attacks.¹²⁸
144. In their written inputs to ODIHR, OSCE participating States largely did not provide official data on the extent of bias-motivated threats and attacks against human rights defenders on account of their work, including such incidents based on their association with other social groups subjected to discriminatory treatment. Several participating States¹²⁹ and NHRIs¹³⁰ reported that they had no information on specific cases of threats and attacks against human rights defenders.
145. For instance, **Sweden** noted that it did not keep data on bias-motivated incidents targeting human rights defenders, as they had not been a significant problem. **Finland** indicated that it had tracked an increase in hate speech targeting defenders of migrants’ and refugees’ rights, though perpetrators appeared deliberately to keep their actions just short of criminal liability. **Moldova** and **Montenegro** identified social discrimination against LGBTI people as a major

participating States to act in conformity with those instruments and on those participating States, which have not yet done so, to consider the possibility of acceding to the Covenants.”

¹²⁷ UN Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (Article 2, para. 2), UN Doc. E/C.12/GC/20 (10 June 2009), paras. 30–35. Notably, all but one participating State have ratified the ICCPR; and all but three participating States have ratified the ICESCR. *See* Articles 2(1) and 26, International Covenant on Civil and Political Rights; and Article 2(2), International Covenant on Economic, Social and Cultural Rights, 1966 (993 UNTS 3). With regard to sexual orientation, the OSCE Parliamentary Assembly has also called on participating States to fulfil their international human rights obligations of non-discrimination. *See*, Ottawa Declaration of the OSCE Parliamentary Assembly (8 July 1995), at para. 29. Available at: <http://www.osce.org/pa/38133>.

¹²⁸ *Guidelines* (n. 4 above), at paras. 38–40.

¹²⁹ Bosnia and Herzegovina, Finland, Sweden, Uzbekistan.

¹³⁰ Austria, Belgium, Moldova, Slovakia.

challenge in protecting human rights defenders from threats and attacks by third-party actors, to which both States responded through robust security arrangements, and criminal prosecutions in several cases.

146. **Poland** reported that there were no negative actions against human rights defenders, so no special measures were necessary to confront their stigmatization or marginalization through positive portrayals. However, human rights defenders in **Poland** reported a rising trend of bias-motivated threats and attacks against human rights defenders and NGOs, on account of their work protecting LGBTI people and combating hate speech against migrants and other vulnerable groups.¹³¹ Following those recent incidents, the Prime Minister reportedly remained unresponsive to a written appeal of concern signed by over 300 Polish NGOs.¹³² After an attack on its office, one LGBTI rights NGO praised the strong public response of Poland's NHRI as an important sign of support for those targeted.¹³³
147. The NHRI in **Armenia** also reported bias-motivated threats, attacks and hate speech targeting especially women human rights defenders, as well as NGOs on account of their politically sensitive activities, reporting "cases of violence against women defenders", who "had become the target of threats and attacks, as well as hate-speech for carrying out their legitimate activities". In **Serbia**, the Ombudsperson informed ODIHR of persistent and widespread threats, physical attacks and State-sponsored smear campaigns against human rights defenders, which especially targeted NGOs, independent journalists, and the Ombudsperson himself. The Ombudsperson reported "open and brutal campaigns against such individuals and institutions, where clear lies or half-truths are used. Most important political leaders are strongly involved in such campaigns, which leads the human rights defenders to a conclusion on the creators and inspirers thereof. The key support for conduction of such campaigns is provided by tabloid media" The smear campaigns against human rights defenders frequently alleged that they had foreign financial and political influences, which purportedly undermined Serbia's traditional culture and sovereignty.
148. Several States also informed ODIHR of good practices they had undertaken to confront and counter the stigmatization and marginalization of human rights defenders. **Bulgaria** noted strong *co-operation* between its NHRI and marginalized groups, which helped to support human rights defenders in the protection of those groups from social discrimination. **Finland, Italy, Spain** and

¹³¹ See above at n. 49.

¹³² To read the open letter signed by 318 Polish NGOs, urging the Prime Minister to take action in response to the recent incidents, see: <http://ptpa.org.pl/aktualnosci/2016-03-09-318-organizacji-apeluje-do-premier-beaty-szydlo&nid=530>.

¹³³ The Ombudsperson of Poland called for prejudice-based violence to be met with a strong reaction from authorities, as unresponsiveness could be read as tacit acceptance of discrimination, and legitimization of hatred against those exposed to unequal treatment; see: <https://rpo.gov.pl/pl/content/rzecznik-w-sprawie-atakow-na-osoby-i-organizacje-dzia%C5%82ajace-na-rzecz-promowania-i-ochrony-praw>.

Sweden stressed the importance they placed on human rights *education* and *promotion* (Spain and Sweden), including to protect young people at risk of marginalization and vulnerability (Finland), and to promote a culture of rights among government officials, law enforcement, the judiciary, media and the general public (Italy). **Lithuania, Moldova** and **Montenegro** all reported dedicated anti-discrimination campaigns to empower human rights defenders (Lithuania), confront hate speech (Moldova), and de-stigmatize human rights defenders and the vulnerable groups they protect (Montenegro). **Ireland** highlighted its prioritization of *consultation* with civil society and marginalized groups in the development of human rights-related policies, in order to empower them and meet their needs.

149. Human rights defenders throughout the OSCE region reported that **smear campaigns** and **stigmatization** were some of the most serious challenges they encountered in their work. The smear campaigns propagated against human rights defenders by State officials, public institutions, and government-sponsored or far-right media outlets had reportedly intensified stigmatization and marginalization against human rights defenders in some cases, exposing them to increased threats and attacks by non-State actors. The human rights defenders who reportedly experienced the most extreme stigmatization were those defending the rights of women, LGBTI people, and ethnic minorities.
150. The following sub-sections highlight illustrative examples and trends of the cases brought to the attention of ODIHR, which were too numerous to reproduce exhaustively.

1.3.1 Smear campaigns against human rights defenders

151. Human rights defenders reported being subjected to smear campaigns in: **Armenia, Azerbaijan, Belarus, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Montenegro, Poland, Russian Federation, Serbia, Slovenia** and **Uzbekistan**.
152. In **Georgia**, three human rights NGOs independently voiced concerns over the same early 2015 smear campaign by public officials against human rights defenders, which they said had led to a mild deterioration of the working environment of civil society organizations. In January 2015, the founder of the ruling Georgian Dream–Democratic Georgia party, former Prime Minister Bidzina Ivanishvili, reportedly announced that the activities of the leaders of three prominent Georgian human rights NGOs should be “studied” publicly.¹³⁴ On 5 March 2015, Member of Parliament Gogi Topadze, whose political party was in the ruling Georgian Dream coalition, reportedly called for the shutting down of NGOs in Georgia – suggesting that authorities follow the example of

¹³⁴ Statement of the former Prime Minister, dated 29 January 2015, reported at: <http://www.civil.ge/eng/article.php?id=28010> and <http://www.liberali.ge/ge/liberali/news/123407/>

other countries that close NGOs which “undermine” the functioning of the States.¹³⁵ The human rights defenders also pointed to several other minor verbal attacks on NGOs and media professionals.

153. In **Hungary**, human rights defenders consistently described a protracted and on-going smear campaign against civil society from 2014 to 2016. One human rights NGO described widespread stigmatization of human rights activists by government officials, including the Prime Minister and governing parties, who explicitly portrayed human rights defenders as serving foreign interests and as enemies of the nation. In November 2014, ODIHR held a forum in Budapest at which it presented the *Guidelines* (in Hungarian translation), and facilitated dialogue between 35 civil society organizations and the government.¹³⁶ Participants voiced concerns over stigmatization, threats and attacks against human rights defenders, especially those receiving foreign funding. In October 2015, Hungarian human rights defenders again informed ODIHR of the generally deteriorating environment for human rights work, including ongoing intimidation, threats and attacks by far-right groups against human rights activists defending the rights of ethnic minorities and LGBTI people. Law enforcement authorities allegedly failed to effectively investigate and prosecute several such cases. Human rights defenders of migrant rights also reported being intimidated and discredited in news media and by senior politicians. Following a visit to **Hungary** in February 2016, the UN Special Rapporteur on the situation of human rights defenders called on Hungarian authorities to stop stigmatizing and intimidating human rights defenders, and to create an enabling regulatory environment for their work, criticizing the on-going efforts of public officials to de-legitimize defenders and undermine their human rights-related activities.¹³⁷
154. Human rights defenders also reported constant smear campaigns against them in the pro-government media of several OSCE participating States, including: **Azerbaijan, Belarus, Kazakhstan, the Russian Federation, Serbia and Uzbekistan**. The media reportedly fixated on human rights defenders’ receipt of foreign grants for their work, branding them as criminals (**Uzbekistan**), a “fifth column” (**Russian Federation**), or servants of foreign interests (**Serbia**).¹³⁸ In

¹³⁵ Statement of Mr. Gogi Topadze, dated 5 March 2015, reported at:

http://maestro.ge/menu_id/12/id/18938/lang/1 and <http://17mai.si/2015/03/16/georgia/>.

¹³⁶ A news item on the event, including a link to the unofficial Hungarian translation of the *Guidelines*, is available at: <https://www.osce.org/odihr/128056>.

¹³⁷ See, OHCHR statement, “UN expert urges Hungary not to stigmatise and intimidate human rights defenders” (16 February 2016), available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17037&LangID=E>. See also, Report of the Special Rapporteur on the situation of human rights defenders on his mission to Hungary (19 January 2017), UN Doc. A/HRC/34/52/Add.2, available at: http://ap.ohchr.org/documents/dpage_e.aspx?m=70&m=166.

¹³⁸ In Serbia, two human rights NGOs shared with ODIHR scanned copies of a series of articles published in the State-run daily newspaper *Politika*, calling the NGOs agents of foreign interests based on their receipt of foreign funds. See, “Who is receiving US Dollars in Serbia”, available at: <http://www.politika.rs/sr/clanak/346224/Drustvo/Kome-stizu-dolari>.

Kazakhstan, three human rights defenders separately reported their being smeared as “foreign agents” seeking to provoke instability with foreign grant funding, in one case by a journalist on public television, in another case by a government advisor on Facebook, and in a third by pro-government NGOs. In **Serbia**, the NHRI (“Protector of Citizens”, Saša Janković) reported a “brutal” and months-long smear campaign against him in pro-government tabloid media, while high-ranking members of government called for his dismissal and accused him of conspiracy against Serbia with the United States and European Union.

155. In **Slovenia**, one human rights organization reported smear campaigns against it by conservative political parties, right-wing NGOs and conservative media, including through online social media. The NGO observed that co-ordinated smear “attacks” largely arose at the time of a public referendum campaign against same-sex couples’ rights, suggesting that the NGO had misspent public funding on pro-LGBTI human rights campaigns. While the smear campaign reportedly failed to gain traction outside of narrow demographics, the NGO noted as a **good practice** that a Member of Parliament challenged the public smear campaign against the NGO with a parliamentary question to the Minister of Finance, asking if its public funds had been used appropriately. The affirmative and detailed response of the Minister of Finance reportedly vindicated the NGO.¹³⁹

1.3.2 Women human rights defenders

156. Women human rights defenders have reportedly been subjected to smear campaigns, threats and attacks on account of their gender and/or the gender of those whose rights they defend. ODIHR received accounts of such gender-specific incidents in several OSCE participating States, including **Armenia, Bosnia and Herzegovina, Montenegro, Serbia** and the **United States**.
157. In **Armenia**, the NGO Women’s Support Center reported that it was bringing two cases to the European Court of Human Rights, in which the State’s protection response was inadequate. Police reportedly did not respect confidentiality of the organization’s safe house location, putting staff and protection recipients at risk. Police also reportedly provided inadequate protection during court trials of the organization’s beneficiaries in domestic violence cases, at which the alleged abusers were threatening and harassing staff outside of the court.¹⁴⁰ According to the NGO, the head of the police investigations department also noted that shelters were the responsibility of the State, rather than civil society, and threatened to find the NGO’s donors to discourage them from sponsoring the organization.

¹³⁹ A link to the response of the Ministry is available at: <http://www.sds.si/novica/ali-so-proracunska-sredstva-ki-jih-prejema-mirovni-institut-porabljena-namensko-896>.

¹⁴⁰ The organization provided ODIHR with letters requesting protection, among other documents, in the cases mentioned.

158. In **Serbia**, two human rights NGOs provided ODIHR with extensive information on stigmatization, threats and attacks against women human rights defenders. The most prominent cases were repeated threats and attacks against the members and offices of the anti-war feminist movement Women in Black in 2014, 2015 and 2016.¹⁴¹ The threats and attacks, including gender-specific slurs against the activists, were particularly intense and violent in relation to the activists' commemoration of the 20th anniversary of the Srebrenica genocide. In September 2015, a lesbian human rights defender was also attacked in a local café.¹⁴²
159. In **Montenegro**, ODIHR was informed by three human rights NGOs of a gender-specific and targeted smear campaign against the head of the anti-corruption NGO "MANS". In June 2014, the pro-government newspaper *Informer* released a video it claimed offered proof that the NGO head was an "animal abuser", whom the paper accused of bestiality with her two dogs. The paper published front-page stories in Serbia and Montenegro asking readers to "investigate" the identity of the woman appearing in the video. The Basic Court in Podgorica temporarily banned the distribution of the *Informer*, in which the tabloid wrote about the NGO head.¹⁴³
160. In **Bosnia and Herzegovina**, a human rights NGO working on the rights of women and LGBTI people informed ODIHR it had documented several minor incidents of online harassment, verbal threats, and attacks against women human rights defenders.¹⁴⁴ In late 2014 and early 2015, at open plenaries of widespread popular protests, women human rights defenders' concerns were reportedly excluded by male protestors from petitions to the government, and in a few cases women had microphones taken away by men to silence them.
161. In the **United States**, the American Civil Liberties Union (ACLU) informed ODIHR of commonplace legislative restrictions on doctors defending women's right to health, including at clinics that support women's reproductive rights.¹⁴⁵

¹⁴¹ See details of the 2014 and 2015 attacks in, "Repression against human rights defenders – Attacks against Women in Black", dossiers nos. 1–4, available at: http://www.helsinki.org.rs/otpor%20ekstremizmu/incidents_t01.html. For a report by Women in Black on 2016 attacks against the NGO, see:

http://zeneucrnom.org/index.php?option=com_content&task=view&id=1164.

¹⁴² Though the incident was characterized as bias-motivated, two human rights defenders interviewed by ODIHR said it appeared to be a random rather than pre-planned attack.

¹⁴³ The case was detailed by Civil Rights Defenders and the news site *Balkan Insight*, available at: <http://www.balkaninsight.com/en/article/montenegro-rights-activist-sex-claims-spark-outrage>; and <https://www.civilrightsdefenders.org/news/intimidation-against-vanja-calovic-at-new-heights>.

¹⁴⁴ The OSCE Mission in Bosnia and Herzegovina confirmed numerous online and in-person threats in September and October 2014 against the president and members of a different NGO, the Banja Luka Association of Queer Activists, following the NGO's participation in Belgrade Pride.

¹⁴⁵ In addition to numerous legal challenges it brought against such restrictions, the ACLU highlighted the joint 2014 publication of OHCHR, UNFPA and the Danish Institute for Human Rights, "Reproductive Rights Are Human Rights: A Handbook for National Human Rights Institutions", available at:

The ACLU also reported widespread threats, restrictions, and harassment against women human rights defenders in the United States, especially those who worked in clinics that provide abortions.¹⁴⁶ In 2015 alone, ACLU reported the introduction of nearly 400 provisions to restrict abortion, of which 57 were enacted.¹⁴⁷

1.3.3 LGBTI human rights defenders

162. During the reporting period, ODIHR received especially frequent and intense reports of stigmatization, threats and attacks targeting human rights defenders protecting the rights of LGBTI people.¹⁴⁸ Human rights defenders reported such incidents in several OSCE participating States, including in: **Armenia**,¹⁴⁹ **Bosnia and Herzegovina**,¹⁵⁰ the **former Yugoslav Republic of Macedonia**, **Georgia**,¹⁵¹ **Kosovo**,¹⁵² **Kyrgyzstan**,¹⁵³ **Montenegro**, **Poland**,¹⁵⁴ **Serbia**¹⁵⁵ and **Ukraine**.¹⁵⁶

163. In **Armenia**, five human rights defenders independently reported on the difficult situation of those defending LGBTI people's human rights, and several reported the same incidents of threats and attacks against LGBTI human rights defenders. Public officials, political parties and authorities reportedly remained mostly silent on attacks against LGBTI defenders, which the defenders interpreted as tacit support for the discriminatory acts. In other accounts in 2014 and 2015, public officials also made public remarks denouncing LGBTI people. In Armenia, sexual orientation is not a prohibited ground of discrimination under national law, and the courts were also reportedly unresponsive to claims by LGBTI human rights defenders.

<http://www.ohchr.org/Documents/Publications/nhrihandbook.pdf>; and the Center for Reproductive Rights 2009 report, "Reproductive Rights Are Human Rights", available at:

http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/rrarehr_final.pdf.

¹⁴⁶ See the Center for Reproductive Rights 2009 report, "Defending Human Rights", available at:

<http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/DefendingHumanRights.pdf>.

¹⁴⁷ See, the ACLU article, "43 Years After Roe: We've Come a Long Way, Maybe?" (22 January 2016), available at: <https://www.aclu.org/blog/speak-freely/43-years-after-roe-weve-come-long-way-maybe>.

¹⁴⁸ This trend is also consistent with ODIHR findings in its annual reporting on hate crimes in the OSCE region. In 2015, ODIHR received more reports from civil society organizations of threats and violent attacks against LGBT people than against any other social group (including 434 violent attacks, and 232 threats). See, the ODIHR Hate Crime Reporting (2015), "Bias against LGBT people", available at: <http://hatecrime.osce.org/what-hate-crime/bias-against-lgbt-people>.

¹⁴⁹ See n. 50 above.

¹⁵⁰ See above at n. 144.

¹⁵¹ See n. 43 above.

¹⁵² See UN Security Council resolution 1244 (10 June 1999), and the International Court of Justice's Advisory Opinion of 22 July 2010 (n. 6 above).

¹⁵³ See n. 51 above.

¹⁵⁴ See n. 49 and n. 133 above.

¹⁵⁵ See above at n. 142.

¹⁵⁶ See above at n. 47 and below at n. 266.

164. In one case to which several human rights defenders in **Armenia** referred, the newspaper *Iravunk* published an article on its website on 17 May 2014,¹⁵⁷ which included links to Facebook profiles of 60 human rights activists at the end of the article, whom it described as “enemies of the state” and “homo-addicted lobbyists”. The paper appealed to readers to wage a campaign against the “lobbyists” through “zero tolerance [...] in every sector and area where the activities of gay-lobbyists can be restricted”. The article called on the public to boycott the human rights defenders’ businesses, fire them from their jobs, refuse to interview them in the media. A human rights NGO initiated civil court proceedings on behalf of the activists against the newspaper, but it continued to publish smear articles on each of the LGBTI human rights defenders. Some of them reportedly left the country, while one lost her job, and others continued to receive a variety of threats. The judiciary rejected the human rights defenders’ claim that their rights were violated, so they appealed to the European Court of Human Rights. A member of parliament reportedly attended the hearings, and gave interviews to media afterward in defense of the paper. In the aftermath of the incidents, the president of Armenia and the president of the National Assembly reportedly awarded the newspaper, its staff and editorial board for their work.
165. Three human rights organizations in **Montenegro** praised the police and prosecutor’s office for their effective responses to threats and attacks against LGBTI human rights defenders, and for adequately meeting their protection needs. They also noted the positive example of the Ministry of Minorities and Human Rights, which consistently and promptly condemned attacks on Montenegrin human rights defenders, including LGBTI human rights defenders. The Ministry itself and the Ombudsperson institution also both reported that they consistently reacted to and strongly condemned the attacks through public statements. However, the rest of the government reportedly remained mostly silent in response to the incidents, and judicial authorities imposed mostly “symbolic” penalties.¹⁵⁸ Several human rights defenders noted that the Ministry of Minorities and Human Rights was underfunded and received inadequate support from the government.
166. The organization LGBT Forum Progress noted as a good practice the inclusion of sexual orientation as a prohibited ground of discrimination under the Anti-Discrimination Law in **Montenegro**. While noting opportunities for improved implementation of those provisions, the organization credited law enforcement authorities’ responsiveness with the low direct reports of hate crimes to police, and a recent increase in reports and investigation of incidents as hate crimes. To illustrate the volume of threats and attacks received by the organization, LGBT Forum Progress informed ODIHR that it received (and deleted) around 500

¹⁵⁷ The date 17 May is recognized as the annual International Day against Homophobia and Transphobia; see: <http://dayagainsthomophobia.org/>.

¹⁵⁸ See above at n. 48.

online threats on its Facebook page before and after its LGBTI rights activities in the 2015 “Pride” events, and that its social centre for community beneficiaries was violently attacked approximately 30 times in 2014 and 2015.¹⁵⁹ The previous head of the organization fled Montenegro after being violently attacked in Podgorica, and has since been granted asylum in Canada. The government, NHRI and NGOs in **Montenegro** all identified shortcomings in law enforcement authorities’ repeated banning of LGBTI public assemblies in 2015 on security grounds.¹⁶⁰

167. The **OSCE Mission to Skopje** reported a pattern of “prolonged attacks” against LGBTI human rights defenders, including one incident at a private assembly during the reporting period.¹⁶¹ The Mission reported that those attacks mainly targeted the Macedonian Helsinki Committee and its branch the LGBTIQ Support Centre. In October 2014, during a celebration of the LGBTIQ Support Centre’s second anniversary, around 30 masked perpetrators attacked participants in the event, injuring several people. Prior to the attack there were calls on social media to “get rid” of the LGBTIQ community in the country. Those and previous attacks were reported to police, though the cases remained under investigation, and no suspects were charged. Public condemnation of the attacks was minor, according to the OSCE Mission in Skopje, and mostly limited to the international community.

1.3.4 Ethnic minority human rights defenders

168. Human rights defenders have also reported facing stigmatization and human rights violations based on their association with vulnerable groups of ethnic minorities whose rights they work to protect, including migrants. That trend has reportedly intensified in response to the refugee crisis in Europe, both in countries with large recent influxes such as **Hungary**,¹⁶² as well as less-affected countries such as **Finland**¹⁶³ and **Poland**.¹⁶⁴ However, human rights defenders have also reportedly faced stigmatization and protection concerns in participating States with pre-existing communities of ethnic minorities and migrants, including **Italy**, **Latvia**, **Romania**,¹⁶⁵ **Ukraine** and the **United States**.

169. In **Italy**, a Roma women’s network reported that widespread anti-Roma attitudes manifest themselves in public hate speech, street harassment, and

¹⁵⁹ For more comprehensive information from LGBT Forum Progress on these incidents, see: <http://media.lgbtprogres.me/2016/09/legal-protection-web.pdf> and <http://media.lgbtprogres.me/2016/08/prihvatanje-lgbt-osoba-u-crnoj-gori-web1.pdf>.

¹⁶⁰ A compilation of videos of the reported attacks against the Centre is available at: <https://www.youtube.com/watch?v=cMWyu4BuOfY>.

¹⁶¹ See below at n. 262.

¹⁶² See above at n. 136.

¹⁶³ See above in this section.

¹⁶⁴ See above at n. 132.

¹⁶⁵ See above at n. 34.

smear campaigns against Roma people in the media, which populist politicians reportedly tacitly encourage. As a result, Roma human rights defenders and NGOs reported lacking the capacity and resources to challenge commonplace “antiziganism” in the public arena and in the media, which marginalized them in public media, as “so very few non-Roma public figures denounce the situation or champion for Roma.”¹⁶⁶

170. In **Latvia**, a human rights defender informed ODIHR of discrimination by government authorities against himself and two other activists defending the rights of ethnic Russians.¹⁶⁷ In **Ukraine**, ODIHR and the HCNM documented institutionalized stigmatization and human rights violations against ethnic Ukrainians and Crimean Tatars by **Russian Federation** authorities in **Crimea**.¹⁶⁸
171. Human rights defenders protecting the rights of primarily Latin American migrant workers in the **United States** also reported serious restrictions on their work, arising from stigmatization against them by association with the ethnic minorities whose rights they were defending. In their efforts to improve access to justice for migrant farmworkers in 14 US states, the human rights defenders reported cases of discrimination, arbitrary arrest and detention of their outreach workers when conducting visits to farm workers at migrant labor camps in 2014 and 2015.¹⁶⁹

2. A Safe and Enabling Environment Conducive to Human Rights Work

172. Since the foundational Helsinki Final Act of 1975, OSCE participating States have repeatedly reaffirmed their commitment to “fulfil in good faith their obligations under international law”, including the rule of law and their international obligations under human rights treaties.
173. As elaborated in the *Guidelines*, OSCE participating States should respect, encourage and facilitate human rights activity by creating safe and conducive

¹⁶⁶ Association Romni onlus / Association ROWNI-Roma women network Italy.

¹⁶⁷ Input from the Latvian Human Rights Committee of the International Federation of Human Rights Leagues, which provided two case examples of criticism against the activists in the annual reports of Latvia’s Security Police, available at: <http://www.dp.gov.lv/en/>.

¹⁶⁸ See, ODIHR/HCNM, *Report of the Human Rights Assessment Mission on Crimea* (n. 45 above).

¹⁶⁹ Input from the Legal Aid of North Carolina and the Texas RioGrande Legal Aid, which provided examples of the handcuffing of a union worker (available at: <https://theconsiderateomnivore.wordpress.com/2014/07/23/handcuffed-in-defense-of-farmworkerrights/>), and no-trespass warnings in Montgomery County, MD (available at: http://www.aclu-md.org/uploaded_files/0000/0772/aclu-farmworkers_complaint.pdf).

environments that enable and empower human rights defenders to pursue their activities freely, without undue limitations.¹⁷⁰

174. Under international law, any restrictions on human rights and fundamental freedoms must be prescribed by law, necessary in a democratic society in the interests of one of the specific legitimate aims set out in international human rights standards, and proportionate to those legitimate aims.
175. During the reporting period, ODIHR has been informed by OSCE participating States, NHRIs, OSCE field operations and human rights defenders across the OSCE region of excessive restrictions, in both law and practice, on the rights of human rights defenders, including: their fundamental freedoms of expression, peaceful assembly, association and movement, and the right to freely participate in public affairs, without discrimination.

2.1 Freedom of opinion and expression and of information

176. Even in extreme circumstances such as states of emergency, OSCE participating States have committed to “endeavor to maintain freedom of expression and freedom of information, consistent with their international obligations and commitments, with a view to enabling public discussion on the observance of human rights and fundamental freedoms”.¹⁷¹
177. In their inputs to ODIHR, OSCE participating States identified significant legal protections of journalists, whistleblowers, freedom of expression and access to information of public interest, as well as some restrictions on those rights and freedoms.
178. With concern, human rights defenders and other stakeholders in numerous States provided detailed information on many cases of excessive restrictions of the rights to freedom of opinion, expression and access to information, including frequent online censorship and prosecutions of whistleblowers and journalists, among other limitations on those rights and the work of media professionals.

2.1.1 Access to information of public interest and whistleblowers

179. The *Guidelines* identify a range of good practices for States to ensure access to information in the public interest, including through the protection of whistleblowers who may disclose details of human rights abuses, corruption, or other public wrongdoing. Notably, freedom of opinion and expression applies online, such that States must also protect bloggers and other social media users

¹⁷⁰ *Guidelines* (n. 4 above), at para. 41.

¹⁷¹ Moscow Document 1991 (n. 89 above), at para. 28.9.

from repercussions for posting content and comments critical of their governments.¹⁷²

180. OSCE participating States that indicated their protections for access to information and/or whistleblowers included: **Bosnia and Herzegovina, Georgia, Germany, Latvia, Lithuania, Montenegro, Slovakia and Sweden.**
181. As a good practice, **Georgia** emphasized its strong legal protection of freedom of information and sources of information, including in courts of law. Georgia's Law on Freedom of Speech and Expression expressly protects whistleblowers from any criminal prosecution for defamation, and provides procedural guarantees to ensure the effectiveness of such protection, including when they disclose "professional secrets" to "a member of parliament, doctor, journalist, human rights defender, or advocate in the course of their professional activity".¹⁷³
182. In **Germany**, while the Criminal Code punishes dissemination of propaganda and disclosure of State secrets in some cases, it also provides exceptions and special protections for media and journalists, including among others "that acts of aiding by a journalist shall not be deemed unlawful if these acts are restricted to the receipt, processing or publication of the secret."¹⁷⁴ **Latvia** has also adopted a new law on protection of whistleblowers, approved by the Cabinet on 7 March 2017 and awaiting consideration by the Saeima (Parliament) thereafter, which would increase protection of the activities and identities of whistleblowers.
183. **Montenegro** identified as good practices its decriminalization of defamation and slander in 2011,¹⁷⁵ as well as the protection of disclosing confidential information that reveals criminal action.¹⁷⁶ ODIHR also received consistent reports from several human rights defenders in **Montenegro** of a serious smear campaign against an anti-corruption NGO,¹⁷⁷ as well as alleged retaliation

¹⁷² *Guidelines* (n. 4 above), paras. 42–54.

¹⁷³ Article 11.1 of Georgia's Law on Freedom of Speech and Expression provides that: "the sources of professional secrets shall be protected by an absolute privilege, and nobody shall have the right to require disclosure of the source. In litigation on the restriction of the freedom of speech, the respondent shall not be obliged to disclose the source of confidential information." The law further defines "absolute privilege" as a complete and unconditional release of a person from liability provided for by law, and "professional secret" as "information disclosed to a member of parliament, doctor, journalist, human rights defender, or advocate in the course of their professional activity", among other types of information.

¹⁷⁴ Criminal Code of Germany (StGB), Section 86 (1) and (3), and Section 353b (3a).

¹⁷⁵ Law on Amendments to the Criminal Code of Montenegro (Official Gazette of Montenegro no. 32/2011) of 1 July 2011.

¹⁷⁶ Amendments to the Criminal Code of Montenegro (2013) stipulate exclusion of existence of the criminal offenses under Articles 172 to 176.

¹⁷⁷ See above at n. 143. The *Guidelines* specifically observe that anti-corruption reporting in the public interest can serve to protect the right to seek, receive and impart information. *Guidelines* (n. 4 above), at para. 53.

against a whistleblower who publicly disclosed information on the abuse of public resources by the Ministry of Transport.¹⁷⁸

184. Human rights defenders reported online and offline censorship, among other restrictions on freedom of expression, in several OSCE participating States including: **Azerbaijan, Belarus, Hungary, Kazakhstan, Moldova, Mongolia, Tajikistan** and the **United States**.
185. In **Azerbaijan, Belarus, Kazakhstan, Tajikistan** and the Transnistria region of **Moldova**, human rights defenders reported the blocking of websites of human rights organizations, apparently to obstruct public access to their reporting. Ukrainian human rights defenders also noted the blocking of websites in **Crimea**,¹⁷⁹ and lack of access to information in the areas of eastern **Ukraine** not controlled by the government. In **Hungary**, human rights defenders voiced concern that requests for public information were subject to increased fees.
186. In **Mongolia**, the director of the NGO Globe International Center identified that the greatest challenge for local human rights defenders was their lack of legal protection, including from strict laws on criminal defamation. She noted that **Mongolia** provides no protection for whistleblowers or confidential journalistic sources, and human rights defenders are additionally subject to intimidation, threats and attacks for the disclosure of sensitive information. In 2015, Globe International Center reported 37 civil cases and 14 criminal cases of libel and defamation. Five of the defendants and two-thirds of the plaintiffs in the criminal defamation cases were reportedly elected politicians, public officials and public organizations, which was consistent with previous years.¹⁸⁰
187. In the **United States**, the ACLU expressed alarm over the ongoing lack of protection and recognition as whistleblowers of Edward Snowden and Chelsea Manning (to both of whom ACLU provided legal advice), as well as the alleged ill-treatment in detention of Ms. Manning, following her conviction and prior to her commutation in January 2017. The ACLU had called for the pardoning of Mr. Snowden¹⁸¹ based on his central role in exposing unlawful and

¹⁷⁸ According to the Montenegrin human rights NGO, Civic Alliance, the ex-manager of the Hotel Ramada appeared to lose her job on account of disclosing the misuse of public resources by the Ministry of Transport, following which her contract was not renewed. The anti-corruption agency reportedly did not grant the ex-manager the status of whistleblower, on what Civic Alliance called a “very unconvincing reading of the law”, also noting few examples of adequate implementation of whistleblowers’ legal protection in Montenegro. The case was still awaiting action by the Office of the Prosecutor at the time of reporting. For further details, see Civic Alliance reporting on the case at: <http://www.gamn.org/index.php/mn/novosti/643-hitno-zastititi-zvzdace.html> and <http://www.gamn.org/index.php/mn/novosti/645-otvoreno-pismo-ga-milu-dukanovicu-predsjedniku-vlade-crne-gore-povodom-slucaja-zvzdaca-u-hotelu-ramada.html>.

¹⁷⁹ See, ODIHR/HCNM, *Report of the Human Rights Assessment Mission on Crimea* (n. 45 above).

¹⁸⁰ See, Global Information Center, “Media Freedom Report 2015 (January 2015–January 2016)”, available at: <http://www.globeinter.org/mn/images/upld/Hevleliinerhcholo2016eng.pdf>.

¹⁸¹ See, ACLU article, “President Obama: Grant Edward Snowden Clemency Now”, available at: <https://action.aclu.org/secure/grant-snowden-immunity>.

overreaching government surveillance,¹⁸² and called for the recognition of Ms. Manning as a whistleblower, in light of her disclosure of extensive information on unlawful actions by the US government.¹⁸³ In the case of Ms. Manning, the ACLU protested her post-trial conditions of confinement, and issued an appeal in relation to her conviction and purportedly excessive sentence.¹⁸⁴

188. In his communications with the **United States**, the UN Special Rapporteur on the situation of human rights defenders also expressed concern regarding apparent “retaliations for Mr. Snowden’s actions taken in defence of the right to privacy and freedom of expression.” In particular, the Special Rapporteur raised “the risk of disproportionate prosecution and life imprisonment of Mr. Snowden, if he were to return to the United States,” as well as “revocation of passport and alleged interference by the Government with Mr. Snowden’s efforts to seek political asylum in third countries.” The Special Rapporteur further recalled recommendations made to the **United States** during the Universal Periodic Review before the Human Rights Council in May 2015, including on “repealing the norms that limit freedom of expression and require journalists to reveal their sources, under penalty of imprisonment.”¹⁸⁵

2.1.2 *Freedom of the media*

189. The Helsinki Final Act, the Moscow Document, and other OSCE commitments have acknowledged and committed States to uphold the freedom of expression of both the media and the general public; as well as to prevent and investigate threats and attacks against journalists, and to hold the perpetrators of any such abuses to account.
190. As the *Guidelines* elaborate, journalists who promote human rights *are* human rights defenders, regardless of their accreditation status and the media through which they work. Journalists who report on human rights issues, corruption, or on information provided by whistleblowers should not face prosecution, arbitrary legal actions, or other repercussions or restrictions for doing so.

¹⁸² See, ACLU article, “Edward Snowden is a Patriot” (17 December 2013), available at: <https://www.aclu.org/blog/edward-snowden-patriot>; and ACLU article, “Edward Snowden is a Whistleblower” (2 August 2013), available at: <https://www.aclu.org/blog/edward-snowden-whistleblower>.

¹⁸³ See, ACLU article, “Why the Prosecution of Chelsea Manning Was Unconstitutional” (19 May 2016), available at: <https://www.aclu.org/blog/speak-freely/why-prosecution-chelsea-manning-was-unconstitutional>.

¹⁸⁴ See, ACLU amicus brief, available at: <https://www.aclu.org/legal-document/us-v-manning-aclu-amicus-brief>.

¹⁸⁵ See, Report of the UN Special Rapporteur on the situation of human rights defenders (22 February 2016), at para. 200 (n. 56 above); and letter of the UN Special Rapporteur to the United States on “Criminal charges against privacy rights activist, Mr. Edward Snowden” (case no. AL 14/10/2015), available at: [https://spdb.ohchr.org/hrdb/31st/public - AL USA 14.10.15 \(19.2015\).pdf](https://spdb.ohchr.org/hrdb/31st/public%20AL%20USA%2014.10.15%20(19.2015).pdf).

191. Several OSCE participating States informed ODIHR of their strong protections of media freedoms, including **Finland**, **Georgia** and **Ireland**. As a good practice, **Georgia** highlighted a Criminal Code provision that protects journalists from interference in their activities, with aggravating circumstances for threats of violence.¹⁸⁶ Georgian laws also provide specific legal protections of journalists from obstruction by law enforcement personnel when reporting from public assemblies.¹⁸⁷
192. Other OSCE participating States also highlighted a range of restrictions on freedoms of expression and the media, including criminal penalties for reporting on State secrets (e.g. **Turkey** and **Ukraine**) and criminal defamation (e.g. **Italy**, **Lithuania**, **Poland**, and **Uzbekistan**).
193. **Poland** noted that its Criminal Code provides for fines or imprisonment for slander against third parties in the mass media,¹⁸⁸ though reported no recent cases of prosecution of media under the provision in relation to their human rights reporting. **Italy** reported that defamation remains a crime under law, though the “defence of truth, public interest and responsible journalism are largely recognised by the Italian case-law.” **Italy** noted that its Parliament was considering amendments on criminal penalties for defamation, specifically to limit their application and abolish the penalty of imprisonment for defamation.
194. In its input to ODIHR, the Ministry of Justice of **Turkey** highlighted a long list of legal restrictions on Constitutional rights to freedom of expression and the media, which entered into force in 2012.¹⁸⁹ The provisions included, *inter alia*: increased penalties for disclosing confidential information through the media; a lengthened time period for the prosecution of crimes committed through the press; criminalization of printing and publishing notices and statements by “terrorist organizations”; criminalization of “legitimizing” or “praising” terrorist organizations, including by “attending illegal meetings and demonstrations”, among other acts; and the criminalization of “alienating” or “discouraging” people from enlisting for military service.
195. While **Turkey** provided no information on the application (or lack thereof) of these provisions, the CoE Commissioner for Human Rights issued a “Memorandum on freedom of expression and media freedom in Turkey” based

¹⁸⁶ Criminal Code of Georgia, Article 154 (Illegal interference in the professional activity of a journalist).

¹⁸⁷ Law of Georgia on Assemblies and Demonstrations, Article 2(4): “the organisers of assemblies or demonstrations and representatives of law enforcement bodies shall be obliged not to obstruct professional activity of journalists with identifying signs covering the assembly or demonstration”.

¹⁸⁸ Criminal Code of Poland, Article 212.2.

¹⁸⁹ See, the amendments introduced by Turkey with the Law No. 6352, which was published in Official Gazette and entered into force on 5 July 2012, on Amendments to Certain Laws to Enable Judicial Services and on Postponement of Litigation and Sentences Related to Crimes Committed through the Press; and the amendments introduced with the Law No. 6459, which was published in Official Gazette and entered into force on 30 April 2012, on Amendments to Certain Laws Regarding Human Rights and Freedom of Speech.

on the findings of his two visits to Turkey in April and September 2016. The Commissioner identified increased judicial harassment of journalists and infringements on media freedom, including through “overly wide application of the concepts of terrorist propaganda and support for a terrorist organization” noting:

“This situation has significantly worsened under the on-going state of emergency which confers almost limitless discretionary powers to the Turkish executive to apply sweeping measures, including against the media and NGOs, without any evidentiary requirement, in the absence of judicial decisions and on the basis of vague criteria of alleged ‘connection’ to a terrorist organization.”¹⁹⁰

196. The human rights organizations Article 19, PEN International, and Reporters Without Borders have also documented extensive criminal prosecutions against journalists and human rights defenders in Turkey during the reporting period, on allegedly politically motivated charges of propaganda for, or involvement in, terrorist organizations.¹⁹¹
197. **Ukraine** identified significant protections of media freedoms under the law,¹⁹² but also heavy criminal penalties for journalistic reporting on State secrets or that is considered to support Ukraine’s opponents in military and political conflicts.¹⁹³ Penalties for the expression of opposing views on the current conflict with the Russian Federation have appeared already to result in criminal prosecutions against journalists, as well as a chilling effect on freedom of expression.¹⁹⁴ The **OSCE Special Monitoring Mission to Ukraine** documented cases of journalists who were investigated or prosecuted by authorities on account of the opinions of their reporting, and who were

¹⁹⁰ See, Council of Europe Commissioner for Human Rights, “Memorandum on freedom of expression and media freedom in Turkey” (15 February 2017), available at: <http://www.coe.int/en/web/commissioner/-/urgent-measures-are-needed-to-restore-freedom-of-expression-in-turkey>.

¹⁹¹ See, joint statement of Article 19, PEN International and Reporters Without Borders, “Turkey: Politically-motivated trials of journalists and human rights defenders continue” (20 February 2017), available at: <https://www.article19.org/resources.php/resource/38639/en/turkey:-politically-motivated-trials-of-journalists-and-human-rights-defenders-continue>.

¹⁹² See, e.g., Article 17 of the Law of Ukraine “On the State Support of Mass Media and Social Protection of Journalists” (which notes, “activities carried out as part of journalists’ official duties may not be used as grounds for arrest or apprehension,” etc.); and Article 171 of the Criminal Code of Ukraine (“Obstruction of journalists’ legitimate work”).

¹⁹³ Article 2 of the Law of Ukraine “On Information Agencies” provides that media organizations may not divulge State secrets or other legally restricted sensitive information, call for a violent change or overthrow of the existing constitutional order, infringement of the territorial integrity of Ukraine or undermining of its security, promote war, violence or cruelty, incite racial, national or religious hatred, or any other information that undermines public morality or instigates others to commit offences, dishonors other people or harms human dignity.

¹⁹⁴ In one such case reported by the OSCE Special Monitoring Mission to Ukraine, a group of pro-Russian media activists reported that the detention and prosecution of their colleagues in November 2015 made them afraid of further repercussions for their work, particularly against those who had families to care for.

murdered by non-State actors for the same. On 24 November 2015, activist journalists Dmitry Vasilets and Eugene Timonin were detained in Kyiv and subjected to investigation by authorities. According to their colleague, the journalists were accused of supporting terrorism by co-operating with “Novo-Russia TV” during a trip in summer of 2014.¹⁹⁵ In April 2015, the SMMU documented the murder of a journalist in Kyiv, apparently on account of his views in opposition to the war in eastern Ukraine. Two Ukrainian military and paramilitary personnel were suspected in the killings, and were under investigation for the murder at time of reporting.¹⁹⁶ In July 2016, the OSCE Representative on Freedom of the Media called on authorities to investigate the murder by car bomb of another journalist in Ukraine, Pavel Sheremet, who was originally from Belarus and had received the 2002 OSCE Parliamentary Assembly’s Prize for Journalism and Democracy.¹⁹⁷

198. Human rights defenders also reported restrictions and violations of the freedom of the media, in some instances based on political or other opinion, in: **Armenia, Azerbaijan, Kazakhstan, Mongolia, the Russian Federation, Serbia, and Ukraine (in Crimea).**
199. In **Crimea**, two Ukrainian human rights defenders and a Russian human rights lawyer reported on the targeting of journalists and media professionals for criminal investigations and prosecutions, including under vague charges of “extremism” and “separatism”. In one case that all three defenders raised, Russian Federation authorities charged the RFE/RL journalist Mykola Semena with “calls to action aimed at violating the territorial integrity of the Russian Federation” reportedly in relation to a 2015 article he wrote. Mr. Semena has been subject to a travel ban since 19 April 2016, when Russian authorities briefly detained and interrogated him, searched his apartment, and seized his journalistic equipment. Mr. Semena delivered a written statement in absentia to the 2016 OSCE Human Dimension Implementation Meeting (HDIM), calling for a restoration of media freedom in Crimea.¹⁹⁸
200. The **OSCE Representative on Freedom of the Media** called for authorities to drop the charges against Mr. Semena, which she framed as part of “the arbitrary

¹⁹⁵ On 2 February 2016, an appeals court confirmed the 20 January 2016 decision of a district court to extend their detention. The investigation against them was ongoing at the time of reporting.

¹⁹⁶ On 16 April 2015, the journalist Oles Buzyna, opposed to the war in Donbas, was shot in the yard of his house. On 18 June 2016, the Ministry of Interior announced that two suspects had been detained: a Ukrainian Army lieutenant who had commanded a reconnaissance battalion in the eastern Ukraine conflict, and a member of the volunteer battalion Kyiv-2. The alleged perpetrators received significant support from members of the public, who considered them political prisoners. Police were reportedly investigating the crime under Article 115 of the Criminal Code (murder) at the time of reporting, and the suspects were under house arrest.

¹⁹⁷ OSCE Representative on Freedom of the Media, “OSCE Representative condemns murder of journalist Pavel Sheremet in Ukraine” (20 July 2016), available at: <http://www.osce.org/fom/255226>.

¹⁹⁸ To read excerpts of Mr. Semena’s statement to the 2016 HDIM, see: <https://humanrights.org.ua/en/material/mikola-semena-zaklikav-obse-stvoriti-pravovu-strukturu-iz-zahistu-gromadjanskih-svobod-i-prav-ljudini-v-krimu>.

practice of silencing critical voices in Crimea”.¹⁹⁹ The Representative on Freedom of the Media also expressed concern regarding the June 2014 detention and beating of a journalist and producer in **Crimea** with the Centre for Journalistic Investigations in Simferopol; followed by the seizure of the Centre’s property in August 2014, and the summoning of the Centre’s staff in September 2014.

201. **ODIHR** and **HCNM** also documented and reported on a systematic crackdown on freedom of expression in **Crimea**, which has targeted independent journalists and media professionals for some of the most serious restrictions. In addition to onerous registration requirements, and additionally restrictive accreditation procedures, news media have repeatedly been targeted for criminal investigations into the content of their reporting.²⁰⁰
202. In **Armenia**, two human rights defenders described widespread physical attacks against and arrests of journalists by police in 2015 and 2016, primarily in the context of public protests. The human rights defenders identified severe cases of abuse against journalists in 2016, which they both independently attributed to impunity for abuses by police. For example, they noted that the same police commander was allegedly responsible for both of the two most severe attacks on journalists and media, during public demonstrations in June 2015 and July 2016 respectively. According to the two defenders, violations of the freedom of the media included arbitrary detentions, beatings, and the hindering of their professional work, including through excessive restrictions on their freedom of movement, prohibitions on use of telephones, and the destruction of their technical equipment.²⁰¹
203. The NHRI of **Armenia** also identified persistent violations of journalists’ rights during the reporting period, and informed ODIHR it had received numerous complaints of abusive police conduct at public protests against electricity hikes in 2015. Recalling that the obstruction of journalistic activities is a criminal offence in Armenia, the NHRI elaborated:

“The study of numerous videos, which appeared in the media revealed disproportionate and inadequate use of physical force by police officers, including those disguised as civilians against number of journalists (including representatives of Azatutyun radio station, Hetq.am, GALA TV, Armenian

¹⁹⁹ See, RFoM statements on the incidents, available at: <http://www.osce.org/fom/119425>; <http://www.osce.org/fom/122209>; and <http://www.osce.org/fom/123314>.

²⁰⁰ ODIHR/HCNM, *Report of the Human Rights Assessment Mission on Crimea* (n. 45 above), section 2.1.3 on “Freedom of the media”, at paras. 116 *et seq.*

²⁰¹ For further information on violations of the freedom of the media during the 2015 and 2016 public demonstrations in Armenia, see also: the Helsinki Citizens’ Assembly-Vanadzor report, *Human Rights Violations of the Electricity Price Hike Protesters* (September 2015), available at <http://hcav.am/en/publications/report-human-rights-violations-of-the-electricity-price-hike-protesters/>; and the joint NGO report, *Burnt, beaten and betrayed: Armenians awaiting accountability for police violence* (September 2016), available at: <http://iphronline.org/report-armenians-awaiting-accountability-police-violence-20160908.html>.

Times, News.am, PanArmenian.net, Epress.am, 1in.am, ArmTimes.com). The latter suffered physical harm and had their cameras and other devices confiscated by force and damaged before being taken into custody.”

204. In **Azerbaijan**, a human rights defender and journalist described the working environment of media professionals as dangerous and challenging, with most mass media fully controlled by the State. As a result, the journalist reported that mass media would not carry the stories of independent journalists, or report on human rights-related activities. Independent journalists were reportedly denied access to official events, and were regularly searched in the airport on departure or arrival. The journalist reported that the government repeatedly smeared human rights defenders as a “fifth column”, and had prosecuted and imprisoned numerous journalists and bloggers.
205. In 2014 and 2015, the **OSCE Representative on Freedom of the Media** raised repeated concerns over cases of unlawful attacks, restrictions, arrests and prosecutions of media professionals and human rights defenders in **Azerbaijan**.²⁰² At the end of his first visit to **Azerbaijan** in September 2016, the UN Special Rapporteur on the situation of human rights defenders also expressed alarm that, “At least 20 journalists and bloggers have been sanctioned in some way for the expression of critical views, and independent media outlets have had their licences revoked.”²⁰³ In November 2016, the UN Human Rights Committee voiced concern over a range of human rights violations by **Azerbaijan** against journalists and bloggers, as well as “arbitrary interference with media freedom”.²⁰⁴
206. In 2014 to 2016, the **OSCE Representative on Freedom of the Media** issued statements of concern on several legal developments and individual cases of excessive restrictions on the freedom of the media in the **Russian Federation**. In May 2015, the president signed a law adopted by the State Duma, which gives the Prosecutor General and his or her deputies authority to declare foreign or international NGOs “undesirable”, and ban them on suspicion of threat to the

²⁰² See, RFoM statements on: the case of the prominent free expression advocate Rasul Jafarov (<http://www.osce.org/fom/122389>; and <http://www.osce.org/fom/151301>); searches and seizures of media properties and assets (<http://www.osce.org/fom/122481>); and the January 2015 attack on media lawyer and IRFS deputy chair, Gunay Ismayilova (<http://www.osce.org/fom/136806>).

²⁰³ See, OHCHR statement, “UN human rights expert calls on Azerbaijan to rethink punitive approach to civil society” (22 September 2016), available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20554>.

²⁰⁴ As manifestations of that arbitrary interference, the Human Rights Committee identified: “the reported revocation of broadcast licenses, allegedly on political grounds (e.g. of Radio Free Europe/Radio Liberty and ANS TV/Radio), allegations of politically motivated criminal proceedings against independent media outlets (e.g. online news outlet Meydan TV and its journalists) and alleged financial pressure on the Azadliq independent newspaper.” See, Human Rights Committee, Concluding observations on Azerbaijan (November 2016), n. 84 above, at para. 36.

country's constitutional order, defense or national security.²⁰⁵ The laws have already resulted in the stifling of opposing views online and offline, and the prosecution of journalists and other human rights defenders.²⁰⁶ In June 2014, the **Russian Federation** adopted amendments to the Criminal Code that further expanded government control of the Internet by increasing criminal liability to up to five years in prison for online calls for "extremist" activity.²⁰⁷ On 20 November 2014, the Ministry of Justice included the Regional Press Institute on the government's list of NGOs acting as a "foreign agent".

207. On 5 June 2014, **Russian Federation** authorities detained the media freedom defender Anna Sharogradskaya, Director of the Regional Press Institute, for several hours at the Pulkovo airport in Saint Petersburg without charges, and barred her from flying to the United States.²⁰⁸ All of her files and electronic devices were reportedly seized. On 24 February 2015, the regional Justice Department inspected the Mass Media Defence Centre (MMDC) in Voronezh, as part of an official procedure for including MMDC in the register of "foreign agents".²⁰⁹ On 20 November 2015, authorities designated as a "foreign agent" the media NGO Glasnost Defence Foundation, which has worked for 25 years to protect and advocate for the rights of journalists in Russia and the Commonwealth of Independent States (CIS) region.²¹⁰ On 9 March 2016 in the **Russian Federation**, unknown perpetrators attacked six journalists and two human rights activists, apparently in connection to their human rights-related reporting. At an administrative boundary of the Chechen and Ingush Republics, a minivan carrying the eight members of a press tour organized by the Russian NGO "Committee on the Prevention of Torture" was stopped; the passengers were beaten by about 20 assailants traveling in four vehicles, who then set the group's van on fire. At least four members of the group sought medical attention, some for severe injuries.²¹¹

208. In **Mongolia**, two human rights defenders consistently described examples of extensive judicial harassment, threats and attacks against journalists and other human rights defenders. The two defenders described widespread impunity for

²⁰⁵ See, RFoM statement, "OSCE Representative calls on President of Russia to veto new restrictive law that would have negative effect on free expression, free media" (20 May 2015), available at: <http://www.osce.org/fom/159081>. See the official list of "undesirable organizations", at n. 66 above.

²⁰⁶ See, above at n. 66.

²⁰⁷ See, RFoM statement, "OSCE representative criticizes steps to further increase government control of free expression and free flow of information online in Russia" (25 June 2014), available at: <http://www.osce.org/fom/120175>.

²⁰⁸ See, RFoM statement, "OSCE representative express concern about detainment of Russian media freedom defender" (5 June 2014), available at: <http://www.osce.org/fom/119564>.

²⁰⁹ See, RFoM statement, "Continued intimidation of media NGOs in Russia further endangers free media situation, Mijatović says" (24 February 2015), available at: <http://www.osce.org/fom/142391>.

²¹⁰ See, RFoM statement, "OSCE media representative deplores stigmatization of oldest media freedom NGO in Russia, Glasnost Defence Foundation" (20 November 2015), available at: <http://www.osce.org/fom/201741>.

²¹¹ See, RFoM statement, "OSCE Representative condemns attack on journalists in Russian Federation, calls for swift investigation" (10 March 2016), available at: <http://www.osce.org/fom/226776>.

attacks on journalists and media professionals, and reported that law enforcement authorities consistently failed adequately to investigate and ensure accountability for such crimes.²¹² The investigative journalist Luntan Bolormaa, editor-in-chief of the journal *Mongolian Mining*, reportedly died at home in November 2015 from a brain haemorrhage and concussion. Her sudden death reportedly followed her reporting in a series of articles on alleged corruption by the Minister of Social Welfare, though police investigators did not find evidence of a crime.²¹³ In May 2016, a Mongolian journalist was reportedly detained by authorities on her way to Washington, DC, to collaborate with a network of international investigative journalists reporting on Mongolian officials implicated in the “Panama Papers” scandal. Her detention allegedly resulted from allegations that she and her TV studio had violated laws in the past.²¹⁴

209. During 2014, the NGO Globe International Center reported a total of 78 cases of human rights abuses against journalists in **Mongolia**, including: threats; detentions or pressure by law enforcement and judicial authorities; civil and criminal defamation cases; demands to disclose sources; attempted censorship and bans on journalistic publications and programs; and others.²¹⁵ The NGO noted that a decreasing number of journalists were approaching it to publicize their cases, apparently due to frequent self-censorship and fear of retaliation.

210. In 2014 to 2016, the NHRI in **Serbia** reported quickly increasing rates of intimidation, threats and attacks on journalists,²¹⁶ which were accompanied by smear campaigns against independent journalists in the State-sponsored media. The NHRI reported that government authorities failed to condemn the violent episodes and smear campaigns against independent media, and that journalists’ associations complain of hidden pressure to undermine the media through restrictions on access to advertising revenue. Additionally, the NHRI reported that, during press conferences, the Serbian Prime Minister had personally criticized media who disputed the legality of actions and omissions by public

²¹² See, the Media Freedom Report (2015) of Globe International Center, which reported four deaths of journalists since 2013, including two during the reporting period: <http://www.globeinter.org.mn/images/upld/Hevleliinerhcholloo2016eng.pdf>.

²¹³ See, Globe International Center open letter to the government, signed by 23 human rights organizations: <http://globeinter.org.mn/?cmd=Record&id=1241&menuid=367>. See also, statement posted by IFEX on the case: http://www.ifex.org/mongolia/2016/03/09/investigate_case_journalist/; and the Reporters Without Borders and Press Institute website, “Media Ownership Monitor”, available at: <http://mongolia.mom-rsf.org/en/context/politics/>.

²¹⁴ See, Shuurhai.mn, “L.Mönkhbayasgalan: ‘Uncensored talk and interview’” (26 May 2016), available at: <http://www.shuurhai.mn/115908>.

²¹⁵ See, Globe International Center, Media Freedom report (2015), available at: <http://globeinter.org.mn/images/upld/GICAnnualreport2015.pdf>.

²¹⁶ According to the Independent Journalists’ Association of Serbia (NUNS), which systematically collects information on attacks and threats on journalists, there were reportedly 23 attacks in 2014 (11 physical assaults, 1 attack on property, 11 verbal assaults and threats), whereas in 2015 there were 50 attacks (12 physical assaults, 4 attacks on property, 34 verbal assaults, threats and pressures). From January to June 2016, there were reportedly 18 attacks in total (3 physical assaults, 1 attack on property, 14 verbal assaults, threats and pressures). See Independent Journalists’ Association of Serbia reports, available at: <http://nuns.rs>.

authority bodies, including the government's failure to adequately investigate and prosecute the April 2016 demolition of properties in the centre of Belgrade by a masked group with bulldozers.²¹⁷

211. In **Kazakhstan**, human rights defenders reported to ODIHR the detention and prosecution of several journalists and human rights defenders for the peaceful exercising of their freedom of expression in 2015 and 2016.²¹⁸

212. In 2015, the UN Human Rights Committee identified similar trends of restrictions on freedom of the media in **Uzbekistan**. The Committee expressed particular concern over:

“consistent reports of harassment, surveillance, arbitrary arrest and detention, torture and ill-treatment by law enforcement officers and prosecutions on trumped-up charges of independent journalists, government critics and dissidents, human rights defenders and other activists, in retaliation for their work. It is also concerned about reports that freedom of expression on controversial and politically sensitive issues is severely restricted in practice, that websites providing such information are blocked and that news agencies are forbidden to function.”²¹⁹

213. The Committee called on **Uzbekistan** to immediately provide “effective protection of independent journalists, government critics and dissidents, human rights defenders and other activists” from such practices, as well as to investigate, prosecute and punish those violations.

214. Human rights defenders also noted difficulties faced by journalists and media professionals in **Belarus, Hungary, Kosovo,**²²⁰ **Poland** and **Portugal**. In **Belarus**, an independent television journalist, who frequently covered human rights issues, reported the official rejection of three separate applications to obtain media accreditation, each time for different and minor technical reasons. A human rights defender in **Hungary** observed that the government exercised powerful influence over public media, both as an authority and a major advertiser, which had resulted in media self-censorship and public smear

²¹⁷ For background on this case, see “The Collapse of the Rule of Law in Serbia: the ‘Savamala’ Case”, available at: <http://pointpulse.net/magazine/collapse-rule-law-serbia-savamala-case/>.

²¹⁸ For related information on the detention and prosecution of journalists on account of their human rights-related reporting, see: Amnesty International, “Kazakhstan: as 2015 Draws to a Close, Rights to Freedom of Expression and Freedom of Association Remain under Threat” (available at: <https://www.amnesty.org/en/documents/eur57/3123/2015/en/>); Reporters without Borders, “Journalists Imprisoned” (available at: <https://en.rsf.org/press-freedom-barometer-journalists-imprisoned.html?annee=2016>); and International Partnership for Human Rights, “Kazakhstan: Activists on Trial over Social Media Posts” (available at: <http://iphronline.org/kazakhstan-activists-on-trial-over-social-media-posts-20160121.html>).

²¹⁹ See, UN Human Rights Committee, Concluding observations on the fourth periodic report of Uzbekistan (17 August 2015), UN Doc. CCPR/C/UZB/CO/4.

²²⁰ See UN Security Council resolution 1244 (10 June 1999), and the International Court of Justice’s Advisory Opinion of 22 July 2010 (n. 6 above).

campaigns in pro-State media, creating an inhospitable climate for human rights defenders.²²¹ An NGO in **Kosovo**²²² reported a generally difficult operating environment for journalists, who were vulnerable to threats and attacks and often put under political pressure, without institutional protections. In **Poland**, two journalists and an NGO reported the firing and replacement of several journalists and media professionals for political reasons.²²³ In one of those cases, the journalist was fired the day after the broadcasting of a news video she produced on the constitutional crisis in Poland. According to a human rights lawyer in **Portugal**, at public demonstrations during the reporting period, police harassed or threatened journalists who were photographing abuses against protestors.

2.2 Freedom of peaceful assembly

215. OSCE participating States have committed to guarantee the right to freedom of peaceful assembly, and not to restrict the right beyond circumstances permitted by international standards.²²⁴ Authorities have a responsibility to respect and ensure freedom of peaceful assembly, including by protecting assemblies – and human rights defenders who organize or participate in them – from attacks or disruption by third parties.

216. In their joint *Guidelines on Freedom of Peaceful Assembly*,²²⁵ ODIHR and the Venice Commission elaborated that there is a presumption in favour of holding public assemblies under international human rights law, and those wishing to assemble should generally not be required to obtain prior permission. Any restrictions on the right to freedom of peaceful assembly must be provided by law and proportionate to achieve a legitimate aim that is necessary in a democratic society.

2.2.1 Regulatory restrictions on freedom of peaceful assembly

217. Several OSCE participating States informed ODIHR of their strong protections of the right to freedom of peaceful assembly.²²⁶ **Switzerland** observed that

²²¹ See also, UN Special Rapporteur on the situation of human rights defenders, report on mission to Hungary (19 January 2017), at n. 137 above.

²²² See UN Security Council resolution 1244 (10 June 1999), and the International Court of Justice's Advisory Opinion of 22 July 2010 (n. 6 above).

²²³ See also, *Polityka*, Editorial (18 March 2016), available at: <http://www.polityka.pl/tygodnikpolityka/kraj/1654854,1,wyrzuce`ni-z-tvp-info-dziennikarze-napisali-poruszajacy-list-o-tym-jak-zostali-zwolnieni.read> .

²²⁴ Copenhagen Document, 1990 (n. 19 above).

²²⁵ See, ODIHR–Venice Commission, *Guidelines on Freedom of Peaceful Assembly* (second edition: 2010), available at: <http://www.osce.org/odihr/73405>.

²²⁶ Those States included: Bosnia and Herzegovina; Czech Republic; Finland; Germany; Ireland; Lithuania; and Switzerland. In Slovakia, the NHRI also identified strong constitutional and legal protections of the right to freedom of peaceful assembly.

regulations differ on the canton level for specific notification requirements, but that federal regulations prohibit content-based restrictions on assemblies, and allow restrictions only based on legality and proportionality for a legitimate goal in the public interest. **Finland**, **Germany**, and **Italy** reported that they allow the organization of and participation in public assemblies without a permit.

218. With regard to prior notification, **Germany** noted that it requires registration of outdoor public assemblies 48 hours prior to their public announcement, though only to facilitate authorities' preparation, and still without any permit requirement. Such a requirement of prior notification is in line with the ODIHR *Guidelines on Freedom of Peaceful Assembly*. **Italy** reported that "the lack of prior notice by the organizers triggers penal consequences", which could entail an excessive restriction on the freedom of peaceful assembly, if the punishment were disproportionate, inasmuch as it constitutes a request for permission rather than a notice of intent.²²⁷
219. **Moldova** and **Ukraine** both observed that the jurisprudence of the European Court of Human Rights is directly applicable under national law for the interpretation of constitutional protections of the right to freedom of peaceful assembly. **Ukraine** further noted the European Convention on Human Rights is directly enforceable as part of Ukrainian legislation, but that the organization and holding of peaceful assemblies remained unregulated under national law. Two alternative draft bills²²⁸ on the guaranteeing of freedom of peaceful assembly were registered in December 2015, and were under consideration by the Ukrainian Parliament at the time of reporting.²²⁹
220. **Georgia** highlighted as a **good practice** the December 2015 entry into force of its new rules of conduct for police officers during assemblies and protests, which specifically require the proportionality of any special measures, in accordance with the ODIHR *Guidelines on Freedom of Peaceful Assembly*. **Georgia** also reported that police undergo regular trainings on freedom of peaceful assembly, in order to better enforce protections.

²²⁷ See, ODIHR–Venice Commission *Guidelines on Freedom of Peaceful Assembly* (n. 225 above), para. 4.1, at pp. 17–18.

²²⁸ See, ODIHR–Venice Commission, *Joint Opinion on Two Draft Laws on Guarantees for Freedom of Peaceful Assembly of Ukraine* (18 October 2016), available at: <http://www.legislationline.org/documents/id/20079>.

²²⁹ The Ukrainian Center for Independent Political Research (UCIPR) contributed to the development of one of the two draft laws registered with Parliament. UCIPR reported general improvements in the enjoyment of the right to freedom of peaceful assembly in Ukraine, though noted it was in some cases still restricted by local authorities under the previous Soviet decree and special local acts (e.g. in Kharkiv City), which continued to be applied in lieu of more appropriate secondary legislation. According to UCIPR, court practice has upheld the application of those instruments, despite their lack of conformity with the Ukrainian Constitution. See, Decree of the Presidium of the Supreme Soviet of the USSR of 28 July 1988 on the procedure for organizing and holding meetings, rallies, street marches and demonstrations in the USSR (1988).

221. **Turkey** noted that it has imposed legal restrictions on its Constitutional protection of freedom of peaceful assembly, which provide a multi-faceted obligation of prior notification, among others.²³⁰ The government of Turkey informed ODIHR that the obligation comprises a notification requirement, rather than a preventive requirement of permission. However, the International Center for Not-for-Profit Law (ICNL) identified this and other restrictions of Turkey's secondary legislation as "mostly in breach of the Constitution and international standards," because they provide limitations that allow "arbitrariness in restriction of the exercise of freedom of assembly."²³¹
222. In a **positive development** in **Kyrgyzstan**, the Parliament's Committee on Constitutional Legislation, State Structure, Judicial and Legal Issues, and Regulations rejected the draft law "on peaceful assemblies", which provided for potentially excessive restrictions. The rejection of the draft law coincided with reports by the NGO Bir Duino of a generally positive trend in **Kyrgyzstan** in relation to the protection of the right to freedom of peaceful assembly.²³²
223. **Bosnia and Herzegovina** noted its protection of the right to freedom of peaceful assembly under the Constitution.²³³ The **OSCE Mission to Bosnia and Herzegovina** reported attempts in Republika Srpska during 2015 to adopt a new "Law on Public Gathering", which contained "numerous provisions that had a strong potential for enabling further restrictions of the right to freedom of assembly". The draft Law was reportedly withdrawn due to multiple interventions by human rights defenders, civil society and the international community, but was not entirely removed from parliamentary procedure.
224. In the **United Kingdom**, the NHRI (Equality and Human Rights Commission) reported the adoption of new restrictions under the Lobbying Act 2015 that were potentially contrary to international standards, though noted that several concerns in the draft law were adequately addressed. In particular, the Act imposes measures and restrictions on public rallies, events and other activities that could "influence the choices of voters". According to the NHRI, the Act was introduced with insufficient pre-legislative scrutiny, consultation and

²³⁰ See, Articles 3, 9 and 10 of Law No. 2911 on Demonstrations and Meetings (1983); and Article 34 of the Constitution of the Republic of Turkey (1982).

²³¹ See, ICNL, "Freedom of Assembly in Turkey" (2014), available at: <http://dev01.icnl.org/demo/assembly/wp-content/uploads/2014/09/Turkey-country-note.pdf>. In particular, the ICNL observed that Articles 9–11 of Law No. 2911 (ibid.) require, *inter alia*: an organizing committee of seven people over 18 years old, who will organize and participate in the assembly; who will all sign a notification to the province or district governorship, and will submit that notification during working hours, 48 hours prior to the assembly. The notification must include the purpose, date and exact duration of the meeting; the IDs, occupations, work addresses, and residence certificates of the organizing committee members, and any additional documents requested through bylaws. Under Article 23 of the Law, an assembly is illegal if the notification is not submitted in advance, giving security forces authority to intervene according to Article 24.

²³² See, Bir Duino, "The right to peaceful assembly in the Kyrgyz Republic" (3 October 2016), available at: <http://birduino.kg/en/press/508-the-right-to-peaceful-assembly-in-the-kyrgyz-republic>.

²³³ Article 3, Constitution of Bosnia and Herzegovina.

without a human rights memorandum, as required under the Human Rights Act,²³⁴ despite a request from the UK Parliament's Joint Committee on Human Rights for additional explanation, greater clarity on the face of the legislation, and more time to examine the human rights implications.

225. The NHRI of the **United Kingdom** also expressed concern over the May 2016 introduction of the Trade Union Act 2016, which introduces new requirements that may not conform to international standards on the right to freedom of peaceful assembly. In particular, the organizers of public assemblies must appoint an assembly supervisor, who individually must: wear something readily identifiable as such; carry an authorization letter; and notify police of that supervisor's contact details. The NHRI reported raising concerns over the law's regressive nature throughout its parliamentary review, specifically regarding the necessity and proportionality of the Act's apparently excessive new restrictions on the rights to freedom of peaceful assembly and association. Some proposed amendments to the bill were secured, according to the NHRI, particularly to improve compliance with Article 6 of the ECHR in relation to a right of appeal against a Certification Officer's decision.
226. In **Poland**, human rights defenders have raised concerns regarding the Counter-Terrorism Act adopted in June 2016, provisions of which allegedly breach the Constitution and disproportionately infringe upon the rights to freedom of peaceful assembly, a private life, and others guaranteed by the ECHR.²³⁵ The definitions and terms provided in Article 2.7 and Article 6 of the Law, respectively, appeared not to meet the requirement of foreseeability of a law, in relation to freedom of peaceful assembly.²³⁶ In relation to possible bans on public gatherings or mass events if heightened security levels were declared, the lack of temporal limitations on such bans in the Law (and the impossibility of appeal against the decision to declare a heightened state of security itself) could also potentially lead to excessive interferences with key human rights and fundamental freedoms, including the right to freedom of peaceful assembly. The Government of **Poland** has reported that the new restrictions were proportionate and justifiable for permitted reasons of national security and public safety, among others.
227. **Uzbekistan** informed ODIHR of a wide range of serious restrictions and criminal penalties for the unlawful organization of, or participation in, public assemblies. The scope and number of those restrictions, as well as the imposition of both administrative and criminal liability for violations of them, appear to violate international standards on the right to freedom of peaceful

²³⁴ Human Rights Act 1998, Section 19(1)(a).

²³⁵ Law on Anti-Terrorism of 16 June 2016, *inter alia* Article 2.7.

²³⁶ As required, *inter alia*, by Article 11 ECHR, Article 21 ICCPR, and paragraph 9.2 of the OSCE Copenhagen Document, 1990 (n. 19 above).

assembly.²³⁷ In July 2014, **Uzbekistan** adopted new “Rules for Holding Mass Events”,²³⁸ which require organizers of assemblies to apply for a permit at least one month prior to the planned event, through commissions established on the district, city and regional levels.²³⁹ The Rules further prohibit the organization of public assemblies: (a) without a permit; (b) by anyone previously imprisoned; (c) by anyone found guilty of violating the rules for holding mass events more than once during the previous year; (d) by NGOs whose activities were legally suspended or prohibited; and (e) subject to a long list of other broad claw-back provisions.²⁴⁰ While violations of the rules and procedures for organizing any type of public assembly generate administrative liability, second-instance offences give rise to criminal liability.²⁴¹

2.2.2 Restrictions and penalties imposed on peaceful assemblies

228. During the reporting period, human rights defenders and OSCE field operations reported restrictions and/or penalties imposed on human rights defenders for organizing or participating in peaceful assemblies, including in **Albania, Belarus, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kazakhstan, Romania, Serbia, Ukraine** and the **United States**.

229. In **Belarus**, five human rights defenders independently reported what they considered serious restrictions on freedom of peaceful assembly. A group of human rights lawyers reported six administrative proceedings had been brought against them for organizing and participating in peaceful assemblies at Freedom Square in Minsk in early 2016.²⁴² In May 2016, in the first decision on those

²³⁷ The Criminal Code prescribes criminal liability for: “incitement to participate in the activities of illegal public associations and religious organizations” (Article 216.1); “violation of the procedure for the organization and holding of gatherings, rallies, street processions or demonstrations” (Article 217); “management of an unauthorized strike or obstruction of the work of an enterprise, institution or organization in the state of emergency” (Article 218).

²³⁸ Government Resolution No. 205 of 29 July 2014, “On Measures to Further Improve the Procedure for Holding Mass Events”.

²³⁹ The decisions of those commissions are subject to appeal. According to Uzbekistan, commissions on the control of mass events are established within the Council of Ministers of the Republic of Karakalpakstan, regional hokimiyats, the Hokimiyat of Tashkent or city or district hokimiyats.

²⁴⁰ Those claw-back provisions include the following: “It is also prohibited to hold events aimed at destroying the moral fabric of the society or universal human values, unlawful change of the constitutional order or violation of the territorial integrity of the Republic of Uzbekistan, promotion of war, violence or cruelty, incitement of social, racial, national or religious hatred, or committing other actions prohibited by law. Organizers of mass events have the right, in accordance with the established procedure, to appeal to a higher authority or to a court against refusal to issue a permit and against the actions or omissions of a commission’s official or an authorized body.”

²⁴¹ Uzbekistan’s Code on Administrative Responsibility imposes liability for violation of the rules for holding mass events (Article 200), and violation of the procedure for organizing and holding gatherings, rallies, street processions and demonstrations (Article 201). In accordance with Article 217, the same offences committed after the imposition of an administrative penalty give rise to criminal liability.

²⁴² Authorities brought charges under Part 2 of Article 23.34 of the Administrative Procedure Code of the Republic of Belarus.

proceedings, a district court imposed an administrative fine on the human rights defender.

230. The Human Rights Center “Viasna” also reported administrative charges and heavy fines being brought against human rights defenders for monitoring unsanctioned peaceful assemblies in **Belarus**. In November 2015, administrative charges were brought against two observers of the Human Rights Center “Viasna” and the Belarusian Helsinki Committee, who monitored an unsanctioned meeting on 24 November in Minsk. The charges were eventually dropped. On 29 April 2016, during the Critical Mass cycling event in Minsk, police officers detained an observer of the Belarusian Helsinki Committee. After detaining him and others in a police bus, riot police officers reportedly beat them on the bus floor in the stomach and face. On 11 May 2016, the observer was found guilty and fined on administrative charges of violating traffic rules.²⁴³
231. According to the Barys Zvozkau Belarusian Human Rights House, starting in November 2015, authorities of **Belarus** reduced the frequency of administrative arrests of participants in peaceful assemblies,²⁴⁴ and have instead instituted a regular practice of imposing disproportionate fines on human rights defenders participating in the assemblies. As a result, there were fewer reported incidents of excessive use of force by police, but human rights defenders have instead been subjected to more crippling administrative fines.²⁴⁵ From 2015 to 2016, the total *number* of administrative fines against human rights defenders more than doubled (to at least 517 fines in 2016), while the average fine *amount* increased by 72 per cent to the equivalent of EUR 357, which is equal to the average monthly salary in Belarus.²⁴⁶ Such rapid increases in the frequency and amounts

²⁴³ The observer was found guilty of Part 1 of Art. 18.23 (violation of traffic rules by pedestrians) of the Administrative Code of the Republic of Belarus; he was also charged under Art. 23.4 (disobedience to the lawful demands of a police officer).

²⁴⁴ This apparent trend describes practices during the reporting period, and is not withstanding the early 2017 instances of mass arrests of participants in public assemblies protesting against the so-called “social parasite tax” in Belarus. See, ODIHR statement, “ODIHR Director calls on Belarus to uphold rights to freedom of peaceful assembly and expression in protests” (17 March 2017), available at: <http://www.osce.org/office-for-democratic-institutions-and-human-rights/305781>. See also, statement of the UN Special Rapporteur on human rights in Belarus, “UN Special Rapporteur concerned about recurring violence against demonstrators in Belarus” (14 March 2017), available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21375&LangID=E>.

²⁴⁵ A Belarusian journalist interviewed by ODIHR at the time of this shift from detentions to fines also confirmed that police only sporadically continued to harass and detain activists in public assemblies, and did so at random for the purpose of intimidation.

²⁴⁶ In the period from 1 January to 19 December 2016, Belarusian courts reportedly considered 517 administrative cases against pro-democracy activists and journalists with independent media, related to their participation in public assemblies. Those trials resulted in 415 fines amounting to BYR 295,085 (approximately EUR 157,000). Those figures represent a 105-per-cent increase in trials over the last year (versus 203 trials in 2015), and a 370-per-cent increase in the total sum of fines paid (versus approximately EUR 42,000 in 2015), in relation to participation in peaceful assemblies. Details of the recorded cases are available through the following database (in Belarusian):

of administrative fines appear to constitute a disproportionate restriction on the right to freedom of peaceful assembly, which appears to be politically motivated for reasons other than are permitted limitations under Article 21 of the ICCPR.

232. In **Kazakhstan**, ODIHR received multiple reports of cases of authorities excessively restricting, sanctioning and penalizing human rights defenders for exercising their right to freedom of peaceful assembly. In a May 2016 decision reviewed by ODIHR, a court ordered the head of NGO “Aru Ana” to pay an apparently disproportionate fine of EUR 250 for participating in an unauthorized public assembly in a park on 27 April 2016, and for allegedly seeking to organize another public meeting on 1 May 2016 opposite from a local administration.²⁴⁷

233. On 28 November 2016, the human rights defenders Max Bokayev and Talgat Ayan were convicted and sentenced to five years in prison for criminal charges arising from their leading roles in organizing peaceful protests in **Kazakhstan** in April and May 2016. The protests, which proceeded without official permission, were held in opposition to proposed amendments to Kazakhstan’s land code. The criminal charges against Mr. Bokayev and Mr. Ayan for organizing a peaceful assembly to express dissenting views included “inciting social discord”, “disseminating information known to be false”, and “violating the procedure for holding assemblies”. In addition to those provisions essentially criminalizing the exercise of the right to freedom of peaceful assembly, the severity of the sentences was disproportionate to the alleged crimes; along with the five-year prison terms, the court also banned the activists from engaging in public activities for three years after serving their sentences. During their trial, multiple procedural violations and an apparent lack of impartiality reportedly undermined their defense and raised serious fair-trial concerns.²⁴⁸

234. In an October 2016 intervention on the cases of Mr. Bokayev and Mr. Ayan in **Kazakhstan**, the UN Special Rapporteur on the rights to freedom of peaceful assembly and association cautioned that the lack of authorization for assemblies, in and of itself, justifies neither disproportionate interference with the freedom of peaceful assembly, nor the imposition of sanctions upon participants or organizers.²⁴⁹ The ODIHR *Guidelines on Freedom of Peaceful Assembly*

<https://spring96.org/persecution?show=all>; and the following info-graphic on the scale and recipients of fines (in Russian): <https://bydc.info/interview/492-tsena-belaruskoj-svobodyinfografika>.

²⁴⁷ The charges were brought under Article 488 of Kazakhstan’s administrative code on public assemblies. Violation of Article 488 are punishable by “a warning or a fine on individuals in the amount of 20 monthly calculation indices”, and more significant penalties for public officials found guilty of the same. The monthly calculation index is an index used in Kazakhstan for calculating pensions and other social payments, as well as for incrementing fines and calculating taxes and other payments.

²⁴⁸ See above at n. 115.

²⁴⁹ See, UN Special Rapporteur on the rights to freedom of peaceful assembly and association: <http://freeassembly.net/news/kazakhstan-max-bokayev-case/>.

provide similar guidance.²⁵⁰ In 2014, **Kazakhstan** rejected recommendations by two member States of the UN Human Rights Council to improve protections of human rights defenders, including their enjoyment of freedom of peaceful assembly and freedom of expression.²⁵¹

235. In **Serbia**, two human rights NGOs reported the imposition of excessive restrictions and sanctions on human rights defenders for the exercising of their right to freedom of peaceful assembly. On 10 July 2015, the Ministry of Interior imposed a blanket ban on all assemblies planned for 11 July in front of the Serbian National Assembly. Five assemblies that had been announced and scheduled to take place there to commemorate the 20th anniversary of the Srebrenica genocide were banned as a result.²⁵² On 11 July 2015, the director of Youth Initiative for Human Rights was among 200 activists who defied the ban in a flash mob; she was charged in January 2016 with violating the Law on Public Assembly by organizing the unauthorized assembly.

236. In the **United States**, the ACLU reported a pattern of potentially excessive restrictions and misconduct by law enforcement authorities in their policing of peaceful assemblies by human rights defenders, including the Movement for Black Lives, also known as “#BlackLivesMatter” (BLM).²⁵³ The ACLU documented militarized police responses to BLM assemblies in Ferguson, Missouri, and the excessive use of crowd-control weapons at BLM protests in other cities.²⁵⁴ For instance, the ACLU reported the use of teargas against protesters in the United States after dispersal orders without instructions for compliance, resulting in the arrest of 60 protesters.²⁵⁵ The ACLU of Missouri

²⁵⁰ See, ODIHR–Venice Commission, *Guidelines on Freedom of Peaceful Assembly* (n. 225 above), para. 4.1, at pp. 17–18.

²⁵¹ See, Human Rights Council, Universal Periodic Review – Report of the Working Group on the Universal Periodic Review (Twenty-eighth session), UN Doc. A/HRC/28/10 (10 December 2014), recommendations at paras. 126.44 and 126.46: “Repeal articles 400 and 403 of the Criminal Code to guarantee the right to peaceful assembly and freedom of association for all citizen, including human rights defenders (Switzerland); [...] Take the necessary measures to ensure that journalists, human rights defenders and activists of the civil society can freely practice their peaceful activities and without fear of administrative or other reprisals (Belgium)”.

²⁵² The justification of the ban was for security reasons, although less restrictive security arrangements had already been planned to prevent any security incidents.

²⁵³ See the BLM website at: <http://blacklivesmatter.com/>. BLM is “a call to action and a response to the virulent anti-Black racism that permeates [U.S.] society” and addresses the “extrajudicial killings of Black people by police and vigilantes.”

²⁵⁴ See ACLU, “Do Cops Really Need Tanks to Keep Us Safe?” (23 September 2014), available at: <https://www.aclu.org/blog/do-cops-really-need-tanks-keep-us-safe>; see also, Physicians for Human Rights and the International Network of Civil Liberties Organizations, “Lethal in Disguise: The Health Consequences of Crowd-Control Weapons (March 2016), available at: https://www.aclu.org/sites/default/files/field_document/lethal_in_disguise_inclo_single_page.pdf.

²⁵⁵ See, ACLU article in Human Rights Brief, “Social Protest and Human Rights in the Americas” (19 March 2015), available at: <http://hrbrief.org/2015/03/social-protest-and-human-rights-in-the-americas/>.

filed a lawsuit challenging a policy that prevented protesters from standing still on public sidewalks.²⁵⁶

237. The **OSCE Mission to Skopje** reported the summoning and fining of human rights defenders and political activists, under misdemeanor charges for throwing paintballs at public buildings. The human rights defenders reported viewing the charges as intimidation, in response to their participation in a series of largely peaceful protests since April 2016, colloquially known as the “Colorful Revolution”. On 3 June 2016, the Ministry of Interior reportedly filed criminal charges against seven activists from the city of Skopje and 26 from the city of Bitola for throwing paintballs against Governmental buildings.²⁵⁷
238. The **OSCE Presence in Albania** reported apparently excessive penalties against a human rights defender for organizing a protest, and excessively light disciplinary measures for law enforcement personnel implicated in abuses against protestors. On 4 May 2015, a civil society activist organized a protest in Kukës asking for forgiveness of debt related to electricity bills, following a government crackdown on non-payment of such bills. The protest became violent with clashes between police and protesters, and a police officer was filmed beating a protester in the back of a police vehicle. The organizer was convicted on two criminal charges, and sentenced to a four-month suspended sentence; two police officers implicated in the beating of protestors were given a reprimand and a delay on promotion, respectively.²⁵⁸
239. The **OSCE Mission to Bosnia and Herzegovina** provided several examples of limitations on the right to freedom of peaceful assembly of human rights defenders, who were representing opposition viewpoints. In a May 2015 case, the president and another member of the NGO Bosniak Movement for Equality of Peoples were arrested for displaying the wartime flag of the Army of the Republic of Bosnia and Herzegovina in front of the Banja Luka City Assembly (situated near an Orthodox Church). Their protest was reportedly organized to

²⁵⁶ See, ACLU, “Ferguson Ordered to Stop Enforcing Policy That Prevents Protesters From Standing Still” (5 November 2014), available at: <https://www.aclu.org/news/ferguson-ordered-stop-enforcing-policy-prevents-protesters-standing-still>.

²⁵⁷ The charges were filed under Article 388 of the Criminal Code (“Participating in a mob with the intent to commit a criminal offence”).

²⁵⁸ The organizer was arrested at the protest, charged and convicted of two criminal offences, “Public calls for violent actions” and “Organizing and participating in illegal protests or assemblies”, for which the potential combined maximum sentence totalled four years. He was sentenced to four months in jail, with a suspended sentence on the condition that he not re-offend, and was appealing the decision at the time of reporting. The OSCE monitored the trial and considered there to be reasonable concern that the criminal prosecution was politically motivated. The Prosecutor called 16 witnesses (most of them police officers present at the protest) to testify. The Professional Standards Directorate of the Albanian State Police reportedly took the disciplinary measure of “postponement of rank promotion for up to two years” against the senior police officer seen on video beating someone in the back of a police car. A police inspector involved in the violence during the protest was given the minor disciplinary measure “reprimand with a warning”. The NHRI reportedly demanded the initiation of a criminal investigation into the conduct of the more-senior officer; however, no charges were pressed.

“mark the anniversary of BiH accession to the UN and prevent further discrimination of Bosniak people in Republika Srpska”. Both protestors were arrested and criminally charged with “inciting national, racial or religious hatred, discord or hostility.”

240. The Government of **Romania** informed ODIHR of complaints from civil society organizations regarding the decisions of local authorities to restrict freedom of peaceful assembly, by establishing official protest areas located “infrequently” and in “marginal spaces”, outside of sight and sound of the intended audiences of public assemblies.
241. In **Mongolia**, one human rights defender reported the obstruction by police of the 2015 Pride Parade in Ulaanbaatar. According to reports at the time, police officers physically blocked participants from accessing the central Chinggis Square. The NGO LGBT Center filed an administrative complaint against the police as well as the metropolitan and district governments in October 2015, but the court dismissed the case on 10 December 2015.

2.2.3 Challenges in the protection of public assemblies

242. During the reporting period, ODIHR received reports of threats and attacks targeting human rights defenders in the context of peaceful assemblies, primarily perpetrated by non-State actors.
243. OSCE participating States, NHRIs, OSCE field operations and human rights defenders reported such attacks in, among others: the **Czech Republic, Georgia, Moldova, Montenegro, Serbia** and **Ukraine**. The most frequently reported attacks were perpetrated by far-right groups against human rights defenders advocating for the protection of vulnerable groups, particularly ethnic minorities and LGBTI people.
244. In **Serbia**, public assemblies of the anti-war feminist movement Women in Black came under repeated attack by non-State actors in 2014, 2015 and 2016, especially those commemorating the Srebrenica genocide.²⁵⁹
245. In the **Czech Republic**, the Police and Ministry of Interior recorded one case of an attack on a journalist of Czech Radio Broadcast, during a 6 February 2016 demonstration in Prague, organized by the group “We do not want Islam in the Czech Republic”. The Police reported that they investigated the case, but did not identify a perpetrator. According to news coverage of the incident, far-right protestors at the anti-refugee and anti-Islam assembly repeatedly attacked a

²⁵⁹ See details of these cases above at n. 141.

Czech Radio Broadcasting van, and nearby police were dismissive of requests from one of the reporters for assistance.²⁶⁰

246. The governments of **Georgia**, **Moldova** and **Montenegro** all described complex challenges in protecting public assemblies of LGBTI human rights defenders, which often attracted violent counter-demonstrations and required the proportionate use of force to protect participants. The protection measures adopted in **Moldova** by both the police and the NHRI presented **good practices** in the prevention, handling and accountability of discriminatory attacks on LGBTI human rights defenders.
247. **Moldova** informed ODIHR that protection of the annual LGBTI rights march “is a challenge, because each year, groups of religious fundamentalists or of others are intimidating the participants of the parade.” Most of the participants were reportedly members of the LGBTI human rights group that organizes the event. Among their efforts to maintain security for participants, police reportedly separated the human rights defenders and counter-protestors, and arrested and criminally prosecuted perpetrators of violence. The NHRI of Moldova confirmed the annual march to be one of the most sensitive assemblies held in Moldova. However, the NHRI reported that the march held in May 2016 was calm in comparison to previous years, with fewer recorded attacks, and that the “police have taken the necessary measures for the smooth running of the event.” The NHRI also noted its own public statements encouraging tolerance prior to the event.
248. In **Georgia**, on 12 May 2015, the European Court of Human Rights ruled against the government for its failure to facilitate a peaceful assembly by LGBTI human rights defenders in 2012. The assembly was a peaceful LGBTI rights rally and march held on 17 May 2012 (the International Day Against Homophobia and Transphobia), which was blocked by Orthodox activists who physically attacked and insulted participants. The European Court ruled in favour of claimants that law enforcement authorities had not adequately protected participants from the attacks, and found violations of ECHR Articles 3 (inhuman or degrading treatment) and 11 (freedom of assembly and association), both in conjunction with Article 14 (prohibition on discrimination).²⁶¹ At the time of reporting, Georgia informed ODIHR it had still not served the reasoned decision of the Court on the Ministry of Internal Affairs, and the decision had not yet entered into force.

²⁶⁰ See, Liberties.eu, “Czech Radio Journalists Attacked by Neo-Nazis” (15 February 2016), available at: <http://www.liberties.eu/en/short-news/9445>.

²⁶¹ European Court of Human Rights, *Case of Identoba and Others v. Georgia*, Decision of 12 May 2015, available at: http://echr.coe.int/Documents/CP_Georgia_ENG.pdf. On 11 December 2015, the Administrative Chamber of Tbilisi City Court satisfied the claim partially and ordered the Ministry of Internal Affairs of Georgia to pay GEL 12,500 for non-pecuniary damage.

249. In **Montenegro**, the government, the NHRI, and three human rights NGOs all described challenges and shortcomings in the facilitation and protection of public assemblies organized by LGBTI human rights defenders. They noted, however, the otherwise strong co-operation of law enforcement.²⁶² According to the Ministry of Minorities and Human Rights, the Police Directorate sequentially banned three LGBTI rights assemblies organized by two NGOs to be held in Nikšić: first on 22 April 2015; second on 6 May 2015; and for a third time on 14 September 2015. In all three cases, the Ministry of Interior banned the gatherings for security reasons.²⁶³
250. The NHRI in **Montenegro** confirmed the challenges faced by law enforcement authorities, but concluded that the third ban of “Pride” activities in Nikšić was a violation of the right to peaceful assembly. Organizers reported that they appealed the ban to basic, higher and constitutional courts, and in October 2016 were preparing a case for the European Court. Prior to 2015, Montenegro’s first two “Pride” assemblies in Budva and Podgorica were accompanied by a heavy police presence and were aggressively attacked by conservative counter-protesters. ODIHR monitored and reported on the previous Pride assembly in Podgorica, and observed strong co-operation between police and organizers, as well as efficient reactions by police to those attacks on the assemblies.²⁶⁴
251. In contrast with the repeated banning of LGBTI human rights assemblies in **Montenegro**, the Ministry of Interior authorized opposition party protests in Podgorica in September and October 2015. With permission from authorities, organizers built a protest stage in front of the parliament building from 27 September to 4 October 2015. When the permit to occupy the street expired, protestors asked for an extension, which was refused. On 17 October 2015, police forcibly removed the protestors after they refused to do so voluntarily and the assembly organizers rejected two reasonable alternatives presented by authorities for alternative venues or limited hours for the protest, which were still within “sight and sound” of the parliament.²⁶⁵ In smaller solidarity protests

²⁶² See above at n. 160.

²⁶³ As the first-instance institution for such decisions, the Ministry of Interior banned the assemblies under Article 9(b)(1.2), in relation to Article 9(a)(1.8), of Montenegro’s Law on Public Assemblies.

²⁶⁴ ODIHR, *Report on the Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States, May 2013–July 2014* (17 December 2014), available at: <http://www.osce.org/odihr/132281>.

²⁶⁵ At a 3 October 2015 meeting on the topic, the Ministry of Interior reportedly informed the protestors that police would forcibly move the protestors in the event they failed to do so voluntarily, but offered to allow them to use a park on that runs along the same street, or to use the street for several hours each day, from 19:00 to 22:00; but those alternatives were rejected by organizers. Between 5:00 and 7:00 am on 17 October, the Podgorica Communal Police, with the assistance of the Ministry of Interior Police Directorate, conducted an operation to clear the street. A number of scuffles between police and demonstrators ensued, causing some injuries. According to various reports, around 16 people were detained, including two members of parliament and three journalists. The Minister of Interior claimed the journalists failed to obey a police order and one may have tried to hit a police officer. All arrested were charged with misdemeanors. Sources: Minister of Interior Raško Konjević, Interview on “Živa istina” (19 October 2015); statement of the Supreme State Prosecutor (19 October 2015); interviews with human rights defenders in Montenegro.

in other towns, protestors were reportedly arrested on misdemeanour charges for failing to request permission from authorities in advance of their protests. The authorities in **Montenegro** apparently acted reasonably in requesting to limit the hours or change the location of the protest to an appropriate adjacent site, following one week of blocking traffic in front of the parliament. In contrast, the arrest of protestors in other cities for not acquiring advance permission for their protests did not seem to comply with international standards. Arrests of journalists who did not participate in protests or interfere with police work could also constitute violations of their rights to freedom of expression and access to information. Police reportedly indicated that journalists were arrested for not following police orders, which in at least one case were to stop filming police interactions with demonstrators.

252. The **OSCE Special Monitoring Mission to Ukraine** also reported challenges in relation to the protection and facilitation by law enforcement authorities of public assemblies organized by LGBTI human rights defenders. In addition to the violent attacks against the 2015 and 2016 “Pride Parades” in Kyiv,²⁶⁶ the SMMU reported violent incidents in Kherson,²⁶⁷ Lviv, Mykolaiv²⁶⁸ and Odessa.²⁶⁹ Police responses were mixed, but appeared to improve during the reporting period. Authorities were especially criticized for their handling of the March 2016 “LGBT Equality Festival” in Lviv. After first banning a public assembly, police then failed to protect participants from violent attacks, and subsequently failed to hold attackers to account, with whom police instead had “preventive conversations.”²⁷⁰

²⁶⁶ See text above at n. 47.

²⁶⁷ In early September 2015, the deputy director of Kherson-based feminist organization Insha was threatened on social media after announcing a performance of an LGBT-themed play entitled “Stigma”. The play could not be held publicly at a venue in Kherson city, reportedly due to threats of violence by a local militia co-operating with police on security activities. On 17 May 2016, a public speech held by a local journalist candidate to Kherson Mayor elections, including references to the rights of LGBTI community, was violently disrupted by right-wing activists who threatened the journalist.

²⁶⁸ On 5 September 2015, the SMMU monitored a bicycle parade in Mykolaiv for the Equality and Pride Human Rights Day. The planned event was approved by authorities, then banned, then quickly re-approved. During the event, 18 LGBTI human rights activists on bicycle encountered 16 men in camouflage, many wearing balaclavas, who the activists believed were a group who expressed on social media violent threats against the bicycle ride. The cyclists managed to avoid the men.

²⁶⁹ On 15 August 2015, three youths threw firecrackers into an LGBT group’s offices, where Odessa Pride 2015 was holding a reception for approximately 30 people. The police reportedly responded quickly and adequately, interviewed 13 male youths regarding hooliganism, some of whom were issued with written warnings and then released.

²⁷⁰ The LGBT rights organization “Insight” on 14 March 2016 notified authorities of its planned public gatherings in front of the Lviv Opera house on 19 and 20 March. On 17 March, the NGO Sokyl and seven other right-wing NGOs notified authorities of their intention to hold counter-demonstrations at the same time and location. Upon petition of the regional directorate of the Ministry of Interior, the city council filed a lawsuit to ban all of the public gatherings, because these organizations “had different opinions of what had happened during World War 2.” To prevent the violation of public order, the Lviv Oblast administrative court prohibited all public gatherings in the city on 19 and 20 March 2016. On 18 March, the NGO Insight appealed the court decision; however, only after the planned assembly did the appellate court nullify the prohibition of the public gathering by the first

2.3 Freedom of association and the right to form, join and participate effectively in NGOs

253. The right to form, join and participate effectively in NGOs is a critical basis for human rights defenders to engage State institutions in the protection of human rights.
254. OSCE participating States have repeatedly reaffirmed that the right to freedom of association will be guaranteed to all “without discrimination”,²⁷¹ and committed to “ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms, including [...] human rights monitoring groups”.²⁷²
255. The ODIHR *Guidelines on the Protection of Human Rights Defenders*, and the more recent joint *Guidelines on Freedom of Association*²⁷³ by ODIHR and the Venice Commission, elaborate *inter alia* that any limitations on the exercise of the right to freedom of association must have a clear legal basis; must be necessary in a democratic society in the interests of one of specific legitimate aims set out in international human rights standards; and must be proportionate to that legitimate aim.
256. In practice, however, some OSCE participating States have enacted an array of administrative regulations that disproportionately complicate the process of forming and operating NGOs. Often imposed in parallel with politicized smear campaigns, increased regulations have served to obstruct NGO operations through sometimes arbitrary, excessive and/or politically motivated restrictions. Restrictions have targeted the establishment, functioning and especially foreign funding of NGOs, and subjected them to onerous administrative hurdles and inspections. Ultimately, the most serious restrictions on the right to freedom of

instance court, and the ruling did not carry any administrative penalties for authorities. Instead of the banned assembly, the NGO Insight held the indoor event “Lviv Equality Festival” at the hotel Dniester. The event was violently disrupted by 150 to 200 young men, some wearing fatigues or balaclavas or with their faces covered, and all without insignias, flags or other symbols. At least four LGBT human rights defenders (including two women) were attacked during and after the festival by young men in balaclavas and sportswear. Police received a bomb threat and evacuated festival participants out of the hotel with special police. According to media sources on 21 March 2016, the volunteer paramilitary battalion “Azov” claimed responsibility for the attack. No violent protestors were arrested and the police only had “preventive conversations” with them; allegedly the special police had not accompanied the festival participants on the buses evacuating them.

²⁷¹ Copenhagen 1990 (n. 19 above), paras. 9.3; and Paris 1990 (A New Era of Democracy, Peace and Unity).

²⁷² Copenhagen 1990 (n. 19 above), paras. 9.3 and 10.3.

²⁷³ ODIHR–Venice Commission, *Guidelines on Freedom of Association* (Warsaw: OSCE/ODIHR, 2015): <http://www.osce.org/odihr/132371>.

association have had the result (and apparently intent) of incapacitating human rights defenders – in the worst cases, also putting them into deep debt or prison.

257. Participating States have also identified useful good practices in their regulation and empowerment of associations, including consultations of NGOs and human rights defenders on legislation impacting their operations and freedom of association. In some cases, States have previously requested ODIHR and the Venice Commission to assist them in legislative review.

2.3.1 Laws, administrative procedures and requirements governing the operation of NGOs

258. The *Guidelines* outline a range of international standards relevant to the regulation of NGOs – first and foremost that there should be no obligation to register or obtain legal personality in order to pursue human rights-related activities. Freedom of association is not contingent upon registration, so there is a presumption in favour of the legality of human rights defenders’ activities, even when they have not registered formally in a group or association.²⁷⁴ If NGOs wish to register officially or obtain legal personality, the administrative procedures should be clear and simple, and neither discriminate against nor stigmatize human rights defenders for their work. Among other standards noted in the *Guidelines*, any administrative and financial reporting requirements or inspections must be provided by law, reasonable, and not impose undue and burdensome requirements.
259. Numerous OSCE participating States²⁷⁵ provided ODIHR with details of their regulations and protections of the right to freedom of association, including good practices. As **good practices**, several States²⁷⁶ noted that their laws provide for freedom of association without any restrictions or registration requirements, allowing human rights defenders freely and informally to associate, or to register in order to establish formal associations (as registered legal entities). **Switzerland** noted that the registration of NGOs is the same as for all legal entities, though associations that do not pursue commercial goals do not have to register to gain legal personality. **Lithuania** also highlighted the legal prohibition of interference in an association’s activities by State institutions, officials, or others. **Italy** reported that any association can also register voluntarily for tax exemptions, if eligible.
260. None of the reporting Ministries of Justice or NHRIs said they were aware of any complaints from human rights defenders, or unlawful or controversial court orders prohibiting or dissolving human rights-related associations. However,

²⁷⁴ ODIHR–Venice Commission, *Guidelines on Freedom of Association* (ibid).

²⁷⁵ Czech Republic, Finland, Germany, Italy, Liechtenstein, Lithuania, Moldova, Montenegro, Slovakia, Switzerland, Turkey, Ukraine, and Uzbekistan.

²⁷⁶ Czech Republic, Finland, Germany, Italy, Liechtenstein, Lithuania, Slovakia, Switzerland, Turkey.

several States detailed mostly similar claw-back provisions for the dissolution of associations – such as when an association’s activities violate criminal laws (e.g. **Czech Republic**,²⁷⁷ **Turkey**²⁷⁸), the constitutional order (e.g. **Germany**,²⁷⁹ **Ukraine**²⁸⁰), or the human rights of others (e.g. **Slovakia**²⁸¹). **Italy** reported that the Constitution only prohibits the Fascist party and “secret associations and associations pursuing political aims by military organization.”²⁸² In addition to other standard grounds, **Ukraine** prohibits “the establishment and operation of public associations whose goal(s) or actions are aimed at [...] propaganda of communist and/or national socialist (Nazi) totalitarian regimes and their symbols.”²⁸³

261. **Uzbekistan** informed ODIHR of two Constitutional principles on the right to freedom of association, which in ODIHR’s view could potentially be subject to abuse, namely:

“public associations (trade unions, political parties, other associations) *must be registered* in accordance with the procedure prescribed by law; [and] state authorities and officials do not interfere with the work of public associations and *public associations do not interfere with the work of state authorities and officials*” (*emphasis added*).

262. One human rights NGO in **Uzbekistan** informed ODIHR that the requirement of NGOs to register results in sanctions for unregistered NGOs; and, for registered NGOs, results in a complicated process of registration²⁸⁴ that leads ultimately to other stifling bureaucratic procedures, licenses and requirements of permission for certain activities, as well as restrictions on access to foreign funding.

263. In its 2015 concluding observations on **Uzbekistan**, the UN Human Rights Committee expressed concern, in relation to the right to freedom of association, “about unreasonable, burdensome and restrictive requirements for registering political parties and public associations, as well as other obstacles to the work of human rights non-governmental organizations.”²⁸⁵

²⁷⁷ See, Sections 145 and 172 of the Civil Code of the Czech Republic.

²⁷⁸ See, Constitution, Article 33; and Turkish Civil Code No. 4721.

²⁷⁹ See, Article 9.2 of the Basic Law.

²⁸⁰ See, Article 4 of Law “On Public Associations”.

²⁸¹ See, Act No. 83/1990 Coll. on Association of Citizens.

²⁸² See, Disp. Trans. and Fin. XII and Act No. 645/1952; and Art. 18 of the Italian Constitution.

²⁸³ See, Article 4 of Law “On Public Associations”.

²⁸⁴ The NGO noted in particular that the regulation to register an NGO requires the submission of 35 documents and forms in order to register an NGO. See, the Regulation on Procedure on State Registration of Non-Governmental and Non-Commercial Organizations (10 March 2014), available at: http://www.lex.uz/pages/GetAct.aspx?lact_id=2356874. See also, ICNL, “Civic Freedom Monitor: Uzbekistan” (updated 6 January 2017), available at: <http://www.icnl.org/research/monitor/uzbekistan.html>.

²⁸⁵ Human Rights Committee, Concluding observations on the fourth periodic report of Uzbekistan (17 August 2015), UN Doc. CCPR/C/UZB/CO/4, at paras. 17-18.

264. In **Belarus**, three human rights defenders consistently reported the rejection by authorities of NGO registration requests, including from dozens of NGOs and some human rights organizations in 2014 to 2016.
265. In one example, in March 2016, the Supreme Court of **Belarus** reportedly rejected the appeal of the denial of registration to the Human Rights Public Union “For Fair Elections”, following its fourth attempt to register the organization. The rejection was despite an October 2014 decision of the UN Human Rights Committee on an individual complaint brought by the founder after the second registration denial, in which the Committee found the denial of the NGO’s first registration in 2011 to put Belarus in violation of the right to freedom of association.²⁸⁶ Ironically, in July 2014, the Ministry of Justice also denied registration to the Republican Human Rights Union “The Movement for the Implementation of the ICCPR”, which was founded to facilitate implementation by Belarus of the UN Human Rights Committee’s recommendations. The reasons for denial were a missing work phone number and incorrect address of a founding member. On 30 September 2014, the Supreme Court upheld the rejection.
266. In five official decisions by authorities in **Belarus**, which ODIHR reviewed, human rights NGOs’ registration applications were rejected for a variety of apparently arbitrary reasons. Some legal provisions cited by the Ministry of Justice with reasons for denial of NGO registration were sufficiently vague and open to interpretation that they allowed for the Ministry of Justice to arbitrarily reject registration applications on the basis of inconsequential errors or omissions in the documents provided. In the cases reviewed by ODIHR, registrations were denied because: a home, office or mobile phone number of one of the founders was not provided; or there was a mistake in the date of birth of one of the founders; or the authorities had a different address on record for a founder; or the name of the organization purportedly did not correspond with the NGO’s goals and objectives.²⁸⁷
267. In a decision reviewed by ODIHR, the Ministry of Justice in March 2016 denied registration to the Public Association “Gender Partnership” partly because the goal of the organization was “to eliminate gender-based discrimination”. The registration denial letter stated that the Constitution guarantees equal rights of men and women, such that: “Inclusion in the charter of reference to gender-based discrimination in the Republic of Belarus contravenes the law and cannot

²⁸⁶ Human Rights Committee, Communication No. 2153/2012 (10 October 2014).

²⁸⁷ The ODIHR–Venice Commission, *Guidelines on Freedom of Association* (n. 273 above, at para. 160) specifically observe that, in cases of technical omissions, applicants should be given: “a specified and reasonable time period in which to rectify any omissions, while at the same time notifying the association of all requested changes and the rectification required. The time period provided for rectification should be reasonable, and the association should be able to continue to function as an informal body.”

be rectified”, and “constitutes grounds for the refusal of state registration of a public association.” The Supreme Court upheld the decision in May 2016.

268. The operation of unregistered NGOs in **Belarus** is prohibited under law, and violation is punishable by up to two years of imprisonment.²⁸⁸ As such, the aforementioned rejections can also expose those NGOs to potential criminal prosecution if they operate without registration,²⁸⁹ and future registration applications can also be denied if an NGO was active without registration. An unregistered pro-bono legal network in **Belarus** reported to ODIHR that it was unable to register formally, so continued to operate informally, and that its members have been subjected to investigation by law enforcement authorities. In its decision noted above, the UN Human Rights Committee observed that the rendering of an association as unlawful based on rejection of its registration application constitutes, in and of itself, a violation of the right to freedom of association.²⁹⁰
269. In **Tajikistan**, the founder of several human rights NGOs reported burdensome registration requirements with both the Ministry of Justice and the tax committee, which took over a year to complete in the most recent instance. The NGO founder also reported increasingly frequent and onerous inspections since 2013, which have resulted in the closure of at least three human rights NGOs in Tajikistan on the basis of court orders for failure to comply with administrative and technical requirements. The founder reported that NGOs were routinely inspected by tax authorities, sanitation authorities, and the fire department, in addition to the Ministry of Justice. ICNL has also observed that the operating environment for civil society continues to deteriorate, noting: “These restrictive initiatives underscore the fact that the legal environment for civil society in Tajikistan is not fully enabling and faces ongoing challenges and threats.”²⁹¹
270. Notwithstanding those challenges, in a **positive development** in **Tajikistan** in December 2015, the Ministry of Justice adopted new rules of procedure for conducting inspections of NGOs’ activities, which reportedly specify a clear timeline for inspections, the powers of inspectors, and the list of documents and activities subject to inspection, thereby reducing the likelihood of abuse of authority on the part of inspectors. The new rules of procedure followed a December 2014 decision of the Constitutional Court of Tajikistan that such criteria were necessary.

²⁸⁸ Article 193.1 of the Criminal Code of the Republic of Belarus, available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2011\)051-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2011)051-e). The Venice Commission identified this provision as a violation of the right to freedom of association in its Opinion No. CDL-AD(2011)06.

²⁸⁹ ODIHR reviewed an official warning letter from the Office of the Prosecutor General of Belarus to one human rights organization, threatening prosecution under Article 193.1 of the Criminal Code if it did not cease its operations without registration.

²⁹⁰ Human Rights Committee, *Kalyakin v. Belarus*, Communication No. 2153/2012 (10 October 2014).

²⁹¹ See, ICNL, “Civic Freedom Monitor: Tajikistan” (19 June 2016), available at: <http://www.icnl.org/research/monitor/tajikistan.html>.

271. In another **positive development**, the **OSCE Mission to Bosnia and Herzegovina** reported that the government of Republika Srpska withdrew the draft law “On the Public Work of the Non-profit Organizations”, following several attempts to adopt the draft law in 2015, though did not entirely remove it from parliamentary procedure. The draft law reportedly contained provisions with the potential to restrict excessively the right to freedom of association, through closer scrutiny of the work of NGOs in Republika Srpska.

2.3.2 Access to funding and resources

272. Adequate funding is the lifeblood of any NGO, and is intimately tied to human rights defenders’ ability to operate independently and carry out their activities.
273. The *Guidelines* identify good practices for States to assist and facilitate NGO efforts to seek and obtain funds for their human rights work, as well as to make funds available to independent NGOs without discrimination. Most crucially, States should not place undue restrictions on NGOs’ ability to seek, receive and use funds in pursuit of their human rights work, including under the auspices of efforts to eradicate “money laundering” and “terrorism financing”, as pretexts for imposing discriminatory restrictions. In that regard, laws must not criminalize or delegitimize activities in defense of human rights on account of the origin of funding.
274. A few OSCE participating States identified **good practices** in financial support for independent human rights NGOs. **Liechtenstein** noted its central and municipal governments provided direct financial support to many associations and NGOs. **Moldova** noted its simple procedures related to the financing of NGOs. The NHRI in **Montenegro** reported the absence of any restrictions or legal impediments on the financing of human rights NGOs. In the **United Kingdom**, the NHRI note that it has provided direct financial support to human rights NGOs, as a stop-gap measure in response to austerity cuts of their public funding, yet that such measures may not be sustainable in the long term.
275. In other OSCE participating States, laws regulating the access of NGOs and human rights defenders to funds and resources reportedly provided disproportionate or unnecessary restrictions, including vague requirements that were applied arbitrarily, due sometimes to the lack of legal clarity in the instruments themselves.²⁹² During the reporting period, several international

²⁹² Having identified the utility of a comparative examination of laws and regulations restricting HRDs’ and NGOs’ right to freedom of association, ODIHR requested the Human Rights Law Clinic at the University of Sussex to produce a memorandum on the topic. The paper produced by Ms. Esnatt Gondwe, “The enjoyment by human rights defenders of their right to freedom of association” (May 2016), examines and outlines relevant case law and human rights legal principles in relation to relevant laws and regulations of several OSCE participating States (e.g. Azerbaijan, Belarus, Kazakhstan, Moldova, Russian Federation, Uzbekistan, and others), which she selected independently as relevant to

NGOs published useful studies mapping legal restrictions on foreign funding of civil society organizations.²⁹³

276. In their correspondence with ODIHR, human rights NGOs from **nine OSCE participating States**²⁹⁴ identified legal or administrative restrictions on access to funding as a core challenge in conducting their work. In addition to domestic sources of funding often being cut off to NGOs and individuals presenting critical views, their ongoing funding by foreign sources reportedly exposed them to criminal prosecutions for alleged money laundering, tax evasion, or other financial crimes. Examples of such criminal prosecutions of human rights defenders for politically motivated “financial crimes” are described above in Section 1.2.²⁹⁵
277. In **Azerbaijan**, three human rights NGOs reported that foreign funding restrictions and frequent allegations of financial crimes had threatened the life of their NGOs, and subjected them individually to financial penalties and hardship.²⁹⁶ All the NGOs were criminally prosecuted for financial crimes related to their use of international grants, which resulted in the freezing of their personal and professional bank accounts, as well as the accrual of large fines and interest.²⁹⁷ Unable to pay the fines and interest without access to funds in their frozen accounts, the NGOs reported being at risk of further penalties. The heads of two of those three NGOs, who were convicted and jailed on those among other charges, were interviewed by ODIHR following their releases from detention in 2016.

the inquiry. The memorandum is not an OSCE document, and OSCE is not responsible for the contents or findings of the paper with regard to any legislation assessed. Yet for general reference, it is available at: <https://www.sussex.ac.uk/webteam/gateway/file.php?name=gondwe-hrdsfoa-final.pdf&site=408>.

²⁹³ See, ICNL reports on foreign funding (available at:

<http://www.icnl.org/research/resources/foreignfund>); ICNL, “A Mapping of Existing Initiatives to Address Legal Constraints on Foreign Funding of Civil Society” (July 2014; available at: https://www.ihrfg.org/sites/default/files/Full_Report_ICNL_Mapping.pdf); International Commission of Jurists report (2014, available at: <http://www.icj.org/wp-content/uploads/2014/09/RUSSIA-FOREIGN-AGENTS-elec-version.pdf>); Carnegie Endowment report, “Closing Space” (2014, available at: http://carnegieendowment.org/files/closing_space.pdf); American Bar Association, “International and Comparative Law Analysis of the Right to and Restrictions of Foreign Funding of Non-governmental Organizations” (2015, available at: http://www.americanbar.org/content/dam/aba/administrative/human_rights/international-and-comparative-law-analysis-on-the-right-to-foreign-funding.authcheckdam.pdf).

²⁹⁴ Armenia, Azerbaijan, Belarus, Hungary, Montenegro, Poland, Russian Federation, Tajikistan, Uzbekistan.

²⁹⁵ See e.g., above at n. 59.

²⁹⁶ Legislative measures restricting operations and foreign funding of NGOs were introduced in 2013, and entered into force in 2014, since which time there have been several new amendments and regulations. For background on regulatory developments during the reporting period, see: Guluzade and Bourjaily, “Foreign funding in Azerbaijan: challenges and perspectives” (2016), available at: <http://www.icnl.org/research/resources/foreignfund/Article%20Guluzade%20foreign%20funding%20in%20Azerbaijan%20fv.pdf>.

²⁹⁷ Even following the pardoning of Azeri human rights defenders convicted of “financial crimes”, they reported to ODIHR that their personal bank accounts remained frozen, following years since their convictions, and in some cases multiple formal requests to release the funds.

278. In two 2014 decisions shared with ODIHR, a court in **Azerbaijan** found the third NGO guilty of money laundering for reportedly not having provided three grant letters to the Ministry of Justice, two of which were signed with the OSCE Office in Baku before its abrupt closure by authorities in 2014. The NGO president reported that the criminal allegations were demonstrably false and without factual basis, as the website of the Ministry of Justice had listed the contracts as registered. Additional to those fines and asset freezes, the NGO president reported that he was subject to a travel ban, impeding his ability to do human rights work abroad, and that his personal bank account was frozen following the receipt of payments from the European Court of Human Rights for his legal services, which were also deemed to be laundered funds.²⁹⁸

279. In November 2016, the UN Human Rights Committee called on **Azerbaijan** to end its “crackdown on public associations [so] that they can operate freely and without fear of retribution for their legitimate activities”, including by “ensuring that legal provisions regulating NGO grants allow access to foreign funding and do not put at risk the effective operation of public associations due to overly limited or overly-regulated fundraising options”.

280. The Committee voiced with particular alarm the application of:

“restrictive legislation negatively impacting the exercise of freedom of association, including stringent registration requirements for public associations/NGOs, broad grounds for denial of registration and temporary suspension or permanent closure of NGOs, restrictive regulations on grants and donations received by public associations/NGO, including the ban on foreign funding, and heavy penalties for violations of relevant legislation. The Committee is further concerned about threats against NGO leaders, including a high number of criminal investigations against NGOs, freezing of their assets and those of their members, as well as the significant number of NGOs that have been closed.”²⁹⁹

281. In May 2016, the Steering Committee of the Open Government Partnership (OGP) resolved to suspend the membership of **Azerbaijan** “due to unresolved constraints on the operating environment for Non-Governmental Organizations.” Azerbaijan was an OGP member since 2011, and is the first member to be suspended under the OGP Policy on Upholding the Values and Principles of OGP.³⁰⁰

²⁹⁸ Prior to its recent difficulties, the NGO reported submitting 294 complaints to the European Court of Human Rights, primarily on electoral rights, fundamental freedoms of association, assembly and expression, and protection from arbitrary arrests. Decisions reportedly remained pending on 127 of those communications, at the time of reporting.

²⁹⁹ UN Human Rights Committee, Concluding observations on the fourth periodic report of Azerbaijan (2 November 2016), at paras. 40–41 (n. 84 above).

³⁰⁰ See, OGP, “Azerbaijan Made Inactive in Open Government Partnership” (4 May 2016), available at: <http://www.opengovpartnership.org/blog/anonymous/2016/05/04/media-briefing-azerbaijan-made-inactive-open-government-partnership>.

282. In **Hungary**, the NGO Hungarian Civil Liberties Union (HCLU) observed that the unavailability of domestic financial support has made human rights defenders heavily reliant on foreign funding, thus making that funding a prime target of smear campaigns portraying human rights defenders as serving foreign interests.³⁰¹ In June 2014, news media reported the preparation of a governmental list identifying potentially “problematic” NGO projects receiving Norwegian funding.³⁰² The Government Control Office (GCO), a State audit agency, requested project documentation and organizational materials from HCLU and 57 other NGOs supported by the Norway/EEA Grants NGO Fund. The requests and insinuations of foreign political motives in relation to the funding of Hungarian human rights NGOs resulted in challenges from the NGOs affected, as well as a formal response from the Norwegian Ministry of Foreign Affairs.³⁰³

283. On 26–28 November 2014, ODIHR held a forum in **Hungary** at which it presented *Guidelines*, and facilitated dialogue between 35 participants from NGOs and the government.³⁰⁴ At the forum, some of the main concerns voiced by NGO representatives were what they viewed as unnecessary efforts to severely restrict their ability to receive foreign funding. ODIHR followed with concern reports after the forum that seven NGOs were subjected to new tax audits in the first half of 2015 (in addition to others undergoing the same scrutiny in 2014), yet welcomed media reports that the situation seemed to have stabilized by the end of 2015.³⁰⁵ NGOs viewed those audits and subsequent legal actions as a form of administrative intimidation or harassment.³⁰⁶

³⁰¹ See, for instance, the following speech of the Prime Minister, linking NGOs to foreign interests: <http://www.bloomberg.com/news/2014-07-28/orban-says-he-seeks-to-end-liberaldemocracy-in-hungary.html>; and <http://www.kormany.hu/hu/aminiszterelnok/hirek/a-munkaalapu-allam-korszaka-kovetkezik>.

³⁰² See, media reports available at: <http://444.hu/2014/05/30/itt-a-kormany-listajaa-szervezetekrol-akik-miatt-nekimentek-a-norveg-alapnak/>; and http://index.hu/belfold/2014/06/01/az_nfu_adta_ki_a_norveg_alap_titkos_nevsorat/.

³⁰³ For correspondence between the GCO and affected human rights defenders, who challenged the basis and motivation of the financial investigation, see: FOIA request to the GCO (available at: <http://tasz.hu/files/tasz/imce/kehiadatigenyles.pdf>); the GCO’s denial of the FOIA request (available at: <http://tasz.hu/files/tasz/imce/kehivalasz.pdf>); and a court judgment against the GCO, ordering it to reveal the information requested (available at: http://tasz.hu/files/tasz/imce/2015/elsofok_itelet.pdf). See also the press release and correspondence of the Norwegian Government, in response to the investigation (available at: <http://www.norvegia.hu/Norsk/EEA-and-Norway-Grants1/EEA-and-Norway-Grants/Proposed-investigation-of-the-NGO-Fund-by-the-Government-Control-Office/#.VBnPWVekPgH>); and http://www.regjeringen.no/upload/UD/Vedlegg/brev/svar_lazar.pdf).

³⁰⁴ See above at n. 136.

³⁰⁵ See, for instance: “Hungary and Norway agree on restarting Norway grant payments” (10 December 2015: <http://www.politics.hu/20151210/hungary-and-norway-agree-on-restarting-norway-grant-payments/>). See also, Human Rights First, “Anti-Semitism and Authoritarianism in Hungary: 2015 in Review” (23 December 2015: <http://www.humanrightsfirst.org/blog/antisemitism-and-authoritarianism-hungary-2015-review>).

³⁰⁶ See, Amnesty International, *Their Backs to the Wall: Civil Society Under Pressure in Hungary* (February 2015: http://www.amnesty.eu/content/assets/Reports/2015/FINAL_NGO_Briefing_Hungary_Feb_2015.pdf);

284. In the **Russian Federation**, five human rights NGOs expressed concerns to ODIHR regarding the restrictive regulations on foreign funding that they have faced under the so-called “foreign agents” law.³⁰⁷ Those legal restrictions were reportedly accompanied by public smear campaigns against the NGOs for their use of foreign funding. As of February 2017, Human Rights Watch reported that the official list of “foreign agents” included 102 groups;³⁰⁸ some of those groups have since been taken off of the list, which is available in its updated form on the website of the Ministry of Justice of the Russian Federation.³⁰⁹

285. The NGO Committee Against Torture, which was among those branded a “foreign agent”, described to ODIHR the practical ramifications of that designation on its ability to function in the **Russian Federation**:

“Our organization was labelled a foreign agent. Therefore, we have a number of difficulties. In particular, if we do not put a ‘foreign agent’ mark on all the materials we produce, we will be heavily fined. Although the State authorities (and the Constitutional Court in particular) claim that a foreign agent status does not influence an organization’s activities, in fact it does. The representative of the investigative bodies reiterated on several occasions their scepticism towards the document prepared by the lawyers of our organization as it is financed from abroad. Furthermore, State universities refuse to cooperate with us on different educational activities, though such cooperation existed before. I would also like to note that some private companies refuse to become our contractors as they are afraid of increased attention from the controlling bodies.”

286. In July 2014, the Ministry of Justice of the **Russian Federation** forcibly registered the Interregional Association of Human Rights Organizations “AGORA” as a “foreign agent”. In 2015, AGORA was reportedly ordered by the court to pay several heavy fines for the absence of a “foreign agent” label on its publications in the media and on the website of the Presidential Council for Civil Society Institutions Development and Human Rights, of which the head was a member. On 10 February 2016, following an application by the Ministry of Justice, the Supreme Court of Tatarstan ordered the closure of the AGORA

and Human Rights Watch, *Hungary: Outstanding Human Rights Concerns* (February 2015 briefing paper, section “Clampdown on Civil Society”: <http://www.hrw.org/news/2015/02/18/hungary-outstanding-human-rights-concerns>).)

³⁰⁷ For an overview of how the “foreign agents” law is enforced in Russia, see the report by the Public Verdict Foundation, *Crackdown on civil society in Russia* (September 2016), available at: http://en.publicverdict.org/articles_images/freedom_of_association_eng_June_2016_IS.pdf.

³⁰⁸ See, Human Rights Watch, “Russia: Government vs. Rights Groups – The Battle Chronicle” (21 February 2017), available at: <https://www.hrw.org/russia-government-against-rights-groups-battle-chronicle>. See also, Human Rights Watch, “Briefing on Shrinking Civil Society in Russia” (24 February 2017), available at: <https://www.hrw.org/news/2017/02/24/briefing-shrinking-civil-society-russia>.

³⁰⁹ See, Ministry of Justice of the Russian Federation, “Information of the register of NGOs performing the functions of a foreign agent”, available at: <http://unro.minjust.ru/NKOForeignAgent.aspx>.

Association. On 25 May 2016, the Supreme Court of Russia upheld the judgment.³¹⁰

287. In an April 2014 judgment, an appellate court ordered the NGO Anti-Discrimination Centre “Memorial” (ADC Memorial) to register as a “foreign agent”, following which it closed instead of being forcibly registered as such in the **Russian Federation**.³¹¹ ADC Memorial informed ODIHR that one reason given for the decision was a shadow report to the UN Committee Against Torture, as a demonstration of its political activities. Since its closure, the NGO re-registered in Belgium, from where it continued to work on human rights issues in the Russian Federation and post-Soviet space. Since its closure in 2014, ADC Memorial reported that it still faced stigmatization among partners in the Russian Federation, and could also no longer engage in consultations with authorities as a foreign-based NGO. As one of the few NGOs working on Roma rights issues in the Russian Federation, ADC Memorial noted that its absence had left a civil society protection gap in that area.

288. Due to the disproportionate restrictions and negative consequences faced by NGOs labelled as “foreign agents” in the **Russian Federation**, ODIHR issued public statements of concern in 2016 on the designation and confirmation as a “foreign agent” of the human rights group International Historical, Educational, Charitable and Human Rights Society “Memorial”.³¹²

289. ODIHR also observed, as a **positive development in Kyrgyzstan**, that the Kyrgyz Parliament rejected similar draft legislation on “foreign agents”, during the third reading on 12 May 2016.³¹³

2.4 Right to participate in public affairs

290. As the right to participate in public affairs is closely tied to the enjoyment of freedom of association,³¹⁴ the *Guidelines* identify good practices for States to

³¹⁰ Note that the association ordered to be closed is distinct from the Agora International Human Rights Group (Agora International), a network of 50 human rights lawyers in the Russian Federation who continue to handle prominent human rights cases (see: <http://www.agora.legal/>). In 2013–2015, Agora International reportedly provided legal defense to dozens of NGOs to protect them from designation as “foreign agents”, though was only successful in a few cases. The head of Agora International reported that more than 20 of its cases remain pending before the European Court of Human Rights.

³¹¹ See, Amnesty International, “Russian Court Forces Closure of Prominent Human Rights NGO” (8 April 2014), available at: <http://www.amnesty.eu/en/news/press-release/eu/human-rights-defenders/russian-court-forces-closure-of-prominent-human-rights-ngo-0736/#.WLQyDDyqEc>.

³¹² See, ODIHR joint statement, “ODIHR Director and OSCE Chair Special Representative Erler express concern over listing of Russian organization Memorial as a ‘foreign agent’” (7 October 2016, available at: <http://www.osce.org/node/272726>); and ODIHR statement, “ODIHR Director Link criticizes classification of Memorial as foreign agent (23 December 2016, available at: <http://www.osce.org/odihr/290956>).

³¹³ See, ODIHR statement, “ODIHR Director welcomes rejection of draft NGO law in Kyrgyz Republic” (14 May 2016), available at: <http://www.osce.org/odihr/240171>.

ensure the effective participation of human rights defenders in public decision-making. This includes participation through regular and institutionalized consultations at all points in the process of lawmaking and policymaking. Participation mechanisms and procedures should be leveraged especially to include marginalized or vulnerable groups – and human rights defenders who protect their rights – in order to ensure their equal participation and protection without discrimination.

291. OSCE participating States elaborated a strong list of policies and good practices to ensure the meaningful participation of NGOs in public consultations during the lawmaking process.³¹⁵
292. In a core commitment, the **Czech Republic** noted that its Government Policy Statement identifies the public participation of NGOs in decision-making as an “essential part” of its democratic rule of law. As good practices, **Finland** and **Switzerland** noted the regular involvement of NGOs in consultations with Ministries and the policymaking work of public advisory boards. **Finland** added that those include advisory boards on ethnic relations, the rights of persons with disabilities, Roma affairs, gender equality and human rights. **Bulgaria** additionally noted the inclusion of its NHRI in the drafting of legislation related to protection from discrimination.
293. **Georgia** described its strong involvement of NGOs in the drafting of its Human Rights Strategy and Action Plan, as well as the participation of civil society representatives in the Prosecutorial Council; the State Coordination Council on issues of persons with disabilities; the Consultative Group to the Inter-Agency Council on eliminating domestic violence, and other significant forums. Two NGOs in **Georgia** confirmed very strong co-operation and participation with authorities, while noting that political will was often still a challenge on socially controversial issues.
294. As **good practices**, several participating States (e.g. **Greece**, **Liechtenstein**, **Lithuania**, **Moldova**, and **Slovakia**) noted their provision under law for consultations with civil society regarding human rights-related legislation. The NHRI in **Slovakia** (the Slovak National Centre for Human Rights) provided the most detailed example of the institutionalization of human rights NGOs’ participation in public policymaking – through a permanent consultative expert body of several Committees on human rights-related areas (e.g. ethnicity, race, gender, age, LGBTI, human rights, development, etc.). Each of those Committees includes NGO representatives in its mandated responsibilities to prepare or consider relevant actions plans and their fulfilment. **Liechtenstein** noted that its Office for Foreign Affairs has conducted an annual human rights dialogue since 2009, which includes 30 to 40 NGOs and public commissions

³¹⁴ As per Articles 7 and 8 of the UN Declaration on Human Rights Defenders.

³¹⁵ Bosnia and Herzegovina, Bulgaria, Czech Republic, Finland, Georgia, Greece, Ireland, Italy, Liechtenstein, Montenegro, Poland, Sweden, Switzerland, Turkey, and Ukraine.

involved in human rights. **Ireland** also reported that its Department of Foreign Affairs and Trade facilitates meetings of an NGO Standing Committee on Human Rights, and hosts an annual NGO Forum on Human Rights.

295. **Turkey** indicated that NGOs are legally allowed to participate in public affairs on the municipal level, in certain policy areas.
296. Human rights defenders in some States relayed mixed reports of government practices to facilitate their participation in public affairs. One human rights NGO in **Albania** observed the existence of a strong parliamentary consultation process, though said that the notification period is often short, and civil society recommendations are often not considered or incorporated in it. In **Azerbaijan, Belarus, Hungary** and **Kazakhstan**, human rights defenders consistently reported weak inclusion of civil society in consultations on draft laws and policies, and noted preferential treatment was given to pro-government NGOs in this regard.
297. In 2016, ODIHR reviewed and provided a legal opinion on the draft Law on Public Consultations of **Ukraine**. Among many positive aspects in line with international standards and good practices, the draft Law envisaged a wide scope of documents that would undergo public consultations, with adequate transparency, accessibility, and accountability. ODIHR also made concrete recommendations for improvement of the draft Law, including to ensure the inclusivity of public consultation processes.³¹⁶

2.5 Freedom of movement and human rights work within and across boundaries

298. OSCE participating States have committed to respect and ensure the right of all people to leave and re-enter their own countries, as well as to travel freely within them, including human rights defenders.³¹⁷ States should also aim to facilitate human rights defenders' access to disputed territories, sites of assemblies, places of detention, and other locations relevant to their human rights monitoring, reporting and other activities.³¹⁸ Any limitation must strictly comply with the principles of legality, necessity and proportionality in accordance with international human rights standards. Furthermore, they must

³¹⁶ See, ODIHR, Opinion on the draft law of Ukraine "On Public Consultations" (1 September 2016), available at: <http://www.legislationline.org/documents/id/20027>.

³¹⁷ *Guidelines* (n. 4 above), Explanatory Report, para. 224.

³¹⁸ States should also grant foreign human rights defenders entrance visas to conduct their work, and/or longer-term international protection in the event that they must flee their country for fear of persecution on account of their human rights work. In such situations, States must also comply with their obligation of *non-refoulement* under international law, and not return defenders to countries where they face a real risk of serious human rights violations including torture or other ill-treatment.

be compatible with other fundamental human rights norms, such as the prohibition of discrimination.³¹⁹

299. Several OSCE participating States reported strong protections of the right to freedom of movement, without discrimination,³²⁰ as well as limitations in relation to individuals subject to criminal investigations, proceedings or the enforcement of penalties (e.g. **Finland**, **Turkey**³²¹).
300. With regard to human rights defenders who are foreign nationals, the **Czech Republic** noted that it assists defenders in their visa applications, as well as temporary relocation when necessary. **Finland** also highlighted its strong respect for the principle of *non-refoulement*, in relation to at-risk human rights defenders. As host of the Human Rights Council, **Switzerland** underscored that it seeks to facilitate the freedom of movement of human rights defenders from all over the world, and condemns restrictions on their travel by some States, when apparently applied to prevent their participation in international human rights forums.
301. In contrast, **Uzbekistan** provided an extensive list of grounds for denying its own citizens the right to leave the country (as they are required to obtain exit visas), as well as for denying the entry of foreigners.³²² During the reporting period, **Uzbekistan** reported that there were no known cases of human rights defenders being subjected to bans on travelling abroad or within the country.
302. However, one human rights NGO in **Uzbekistan** informed ODIHR that the exit visa system “is selectively applied against human rights defenders,” and that “there are numerous cases when human rights defenders and other civil activists are denied exit visas, and thus restricted from the freedom of movement to foreign countries.” According to the NGO, the exit visa system was amended in 2011 to include a newly restrictive sub-provision, which is (a) vague and undefined, (b) absent from other Uzbek laws, (c) not subject to appeal, and (d) applied in practice to prohibit human rights defenders’ exit from Uzbekistan, without explaining the reasons why.³²³ The provision appears to lack legal

³¹⁹ *Guidelines* (n. 4 above), Explanatory Report, para. 225.

³²⁰ Bosnia and Herzegovina, Czech Republic, Finland, Lithuania, Moldova, Slovakia, and Switzerland.

³²¹ Since the failed July 2016 coup d’état in Turkey, ODIHR has been informed that some human rights defenders have been prohibited from traveling abroad, including to participate in human rights-related events. The specific grounds were not provided to ODIHR, so it was unclear whether such restrictions were proportionate and permissible limitations on their right to freedom of movement. For more on the general situation of human rights defenders in Turkey, *see* above at n. 103.

³²² The grounds for such decisions were provided, respectively, from: the Resolution of the Cabinet of Ministers No. 8 (6 January 1995), “On the Approval of the International Travel Procedure for the Citizens of the Republic of Uzbekistan and Regulation on the Diplomatic Passport of the Republic of Uzbekistan”; and Resolution of the Cabinet of Ministers No. 408 (21 November 1996), “On the Procedure for the Entry, Exit, Residence and Transit of Foreign Citizens and Stateless Persons in the Republic of Uzbekistan”.

³²³ The NGO reported to ODIHR: “In 2011, the State adopted amendments to existing laws (Law on Exit visa) and 2015 (Law on Citizenship). According to the amendment to the Law on Exit Visa, the State

clarity, and is allegedly applied arbitrarily to restrict the movement of human rights defenders on the prohibited ground, under international law, of political or other opinion.

303. In August 2015, the UN Human Rights Committee voiced concern to **Uzbekistan** that it “still retains the exit visa system and [...] prevents the travel of human rights defenders, independent journalists or members of the political opposition abroad by delaying the issuance of exit visas”. The Committee called on Uzbekistan to “abolish the exit visa system”.³²⁴
304. In relation to occupied and contested territories, **Georgia, Moldova and Ukraine** presented serious concerns regarding *de jure* and *de facto* limitations upon the freedom of movement of human rights defenders. In **Moldova**, the government, the NHRI, local and international human rights NGOs all confirmed repeated problems faced by human rights defenders seeking to enter, travel freely within, or be released from arbitrary detention in the territory of Transnistria.³²⁵ **Georgia** expressed concern that human rights defenders have no or very limited access to Abkhazia, as well as that *de facto* authorities there have installed barbed wire fences and trenches along the administrative boundary line, which further undermine the right of freedom movement. According to **Georgia**, as of 1 April 2016, *de facto* authorities in Abkhazia only facilitate the movement of foreign nationals (including journalists and representatives of international organizations) based on a principle of “reciprocity”, which reportedly remained unclear but could further limit the freedom of movement of human rights defenders and others. **Ukraine** noted its current special restrictions on freedom of movement for entry to and exit from the territory of Crimea, which requires travel documents for Ukrainian citizens and special permits for foreigners and stateless persons, as established by regulations of the Cabinet of Ministers of Ukraine.³²⁶

provided itself with another vague provision to deny visa to its citizens. This provision literally states: ‘h) if Ministry of Interior or Ministry of Foreign Affairs has information from the competent organs that a person, being outside of the country, breached laws of the country of residence (the list of violations is determined by competent organs), and also information, showing inexpediency of exit – up to two years from the day of including to the list.’ Furthermore, according to the same law, this particular provision (h) is prohibited for further appeal in court or administrative organs. The terminology of ‘inexpediency of exit’ is not provided in any other legal document of Uzbekistan and it is confidential even to the person rejected exit visa. This law is not only vague, it also contradicts international obligations of Uzbekistan regarding freedom of movement. According to this provision of law, a citizen of Uzbekistan may be rejected from travelling outside of Uzbekistan without even knowing the reason and unable to appeal this decision. It should be noticed that exactly this part of the provision (h) is applied against human rights defenders in Uzbekistan.”

³²⁴ UN Human Rights Committee, Concluding observations on the fourth periodic report of Uzbekistan (17 August 2015), UN Doc. CCPR/C/UZB/CO/4, at para. 20.

³²⁵ ODIHR reviewed two letters from *de facto* authorities in Transnistria to the NGO Promo-LEX in November 2015, which noted that the NGO was banned from entering Transnistria since its “presence is undesirable”.

³²⁶ Cabinet of Ministers, Regulation No. 367 (adopted on 4 June 2015) and Regulation No. 722 (adopted on 16 September 2015).

305. In **Ukraine**, human rights defenders from Crimea have raised concerns regarding not only travel bans, expulsions and criminal prosecutions imposed by the *de facto* authorities in Crimea (all of which limit defenders' freedom of movement), but also restrictions on travel to and from Crimea under the current Ukrainian regulations.³²⁷ In particular, Ukrainian NGOs have noted that the exhaustive list of foreign citizens who can obtain permission from the Ukrainian authorities to enter Crimea does not include human rights defenders, and moreover that the process of requesting special permits for foreigners is unnecessarily complicated and bureaucratic.³²⁸ For instance, all application documents must be submitted in the Ukrainian language, and in person, without the option to request special permits through applications online or at consulates outside of Ukraine.
306. Human rights defenders have also reported unlawful and/or disproportionate restrictions on their right to freedom of movement in **Azerbaijan, Belarus, Latvia, Kyrgyzstan, and Mongolia**.³²⁹ While the right to freedom of movement is subject to common and legitimate limitations under the law³³⁰ – such as criminal legal enforcement, border control, etc. – those legitimate areas of limitation have reportedly been some of the most rife with disproportionate abuse.
307. In **Azerbaijan**, six human rights defenders separately provided details to ODIHR on a variety of restrictions on their right to freedom of movement. Given the timing of when such restrictions initiated, all of those limitations appeared to be motivated to obstruct their legitimate human rights-related activities. The human rights defenders all informed ODIHR that they were subjected to either (1) travel bans; or (2) extensive searches, questioning and delays at airports and land borders, upon arrival and departure, when traveling abroad.
308. Four human rights defenders reported that they are routinely searched and interrogated by authorities whenever traveling abroad from **Azerbaijan**,

³²⁷ See, the ODIHR/HCNM, *Report of the Human Rights Assessment Mission on Crimea* (n. 45 above), e.g., at para. 155.

³²⁸ The NGO Human Rights Information Centre noted that the Cabinet of Ministers of Ukraine slightly changed the rules of entry with Regulation No. 722 (adopted on 16 September 2015), which has added “representatives of international human rights missions” to the list of foreigners eligible for special permits, but still excludes attorneys (i.e. defense lawyers). As an example of the human impact of the bureaucratic regulations, the Human Rights Information Centre noted that it took a Russian human rights defender three months to acquire a special 90-day entry permit from Ukrainian authorities in late 2015. When it expired, his application for a second entry permit was rejected in February 2016. Ukrainian human rights NGOs have challenged Regulation No. 367 before the courts. Kiev County Administrative Court and Kiev Administrative Court of Appeal reportedly rejected the complaint, and the case was under consideration by the Supreme Administrative Court of Ukraine at the time of reporting.

³²⁹ In relation to the Mongolian case, see above at n. 214.

³³⁰ Such as in relation to individuals under criminal investigation (i.e. to prevent their absconding from justice), as well as in border management, and other areas.

including two who were pardoned and released from detention in March 2016. In addition to thorough searches of their luggage, the defenders reported being asked before and after travel to present all their credit cards and currencies, which they considered to be intended to prevent them from bringing additional funds into Azerbaijan from abroad.

309. One of the human rights defenders from **Azerbaijan** now lives in exile in the EU, where he has received refugee status. Nonetheless, in April 2016, he reported being detained by border officers at Boryspil Airport in Kyiv during his visit, and being held for 20 days on an INTERPOL international arrest warrant for “theft”, based on facts he disputes and charges he alleged were politically motivated. He reported being visited by Azerbaijani law enforcement authorities in detention, who sought to compel his “voluntary return” to Azerbaijan, yet said he refused and was ultimately released and allowed to return home from Ukraine.

310. In November 2016, the UN Human Rights Committee expressed concern over reports in **Azerbaijan** that “journalists, opposition politicians, human rights defenders and lawyers are allegedly subjected to travel bans in retaliation for their professional activities”. The Committee moreover called on **Azerbaijan** to:

“ensure that any travel ban is justified under article 12(3) of the Covenant and lift those not complying therewith, refrain from imposing travel bans against journalists, opposition politicians, human rights defenders and lawyers arbitrarily and guarantee full respect for their freedom to leave the country.”³³¹

311. In April 2016, ODIHR welcomed the lifting of travel restrictions for some human rights defenders in **Azerbaijan**.³³²

312. In **Belarus**, in February 2015, the prominent human rights defender Elena Tonkacheva, chair of the board of Legal Transformation Center (LawTrend), was expelled and subjected to a three-year entry ban, apparently due to her work on human rights in the country. Ms. Tonkacheva is a Russian national, who had resided in Belarus for many years and had a daughter with Belarusian nationality by birth. On 30 October 2014, she was notified by authorities that her permanent residence permit would be annulled and that she would be expelled from Belarus on grounds of “protection of public order”. After several appeals and international interventions, the Minsk City Court on 19 February 2015 upheld the original decision, which ordered her expulsion and three-year ban on entry into Belarus. Reportedly, the expulsion and entry-ban were formally imposed for minor traffic violations, which gave rise to serious

³³¹ UN Human Rights Committee, Concluding observations on the fourth periodic report of Azerbaijan (2 November 2016), at paras. 30–31 (n. 84 above).

³³² See, ODIHR statement, “OSCE/ODIHR Director Link welcomes lifting of travel ban for Azerbaijani human rights defenders” (20 April 2016): <http://www.osce.org/odihr/235076>.

concerns about the sanctions being disproportionate to the offences allegedly committed.³³³

313. In **Lithuania**, on 25 August 2015, an ethnic-Russian human rights defender from Latvia was denied entry into Lithuania, and banned from entry for 5 years. The human rights defender, Aleksandrs Kuzmins, is a board member of the Latvian Human Rights Committee of the International Federation of Human Rights Leagues. The NGO defends the human rights of ethnic-Russian minority community members in Latvia, including their language rights, housing rights, citizenship rights, and protection from discrimination. Mr. Kuzmins and his Lithuanian lawyer provided detailed accounts and official documents verifying his ban from entry into Lithuania. In November and December 2015, they corresponded with authorities requesting clarifications on the grounds of his exclusion, but were told they had to translate and certify his passport in order to see the order on which his ban was based. After a further exchange of letters to obtain the decision, as a basis on which to file an administrative appeal, the Lithuanian Ministry of Interior informed Mr. Kuzmins in September 2016 that the ban had been canceled. According to the notice he received, the ban had been lifted at the end of 2015, without his notification or responses to the preceding three letters of his attorney. Based on the information reviewed by ODIHR, the denial of entry and temporary ban from Lithuania appeared to constitute disproportionate restrictions on Mr. Kuzmins' right to freedom of movement.³³⁴
314. On 2 December 2015, the authorities of **Kyrgyzstan** prevented a Human Rights Watch researcher from entering Kyrgyz territory, reportedly claiming she violated the law on external migration without providing official written explanations. The researcher was declared persona non grata, and Human Rights Watch issued a public statement requesting Kyrgyzstan's authorities to review the decision and to allow the return of their country director to Kyrgyzstan. As a US citizen, the researcher had a right to visa-free entrance to Kyrgyzstan, and reportedly claimed she had never violated any migration rules or visa regime in the country.³³⁵

³³³ For additional information on the case, see also: LawTrend, "Expulsion of Elena Tonkacheva: Facts and Legal Analysis" (updated 19 October 2016; available at: <http://www.lawtrend.org/expulsion/expulsion-of-elena-tonkacheva-facts-and-legal-analysis>); and Statement of UN Special Rapporteur on the human rights situation in Belarus, "Elena Tonkacheva's deportation shows 'pervasive harassment of rights defenders in Belarus'" (6 March 2015; available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15650&>).

³³⁴ For additional background on the case, see also: Human Rights Watch, "Lithuania: Latvian Activist Barred from Visiting" (18 September 2015), available at: <https://www.hrw.org/print/281299>.

³³⁵ See, Human Rights Watch, "Kyrgyzstan: Rights Group Representative Banned" (3 December 2015), available at: <https://www.hrw.org/news/2015/12/03/kyrgyzstan-rights-group-representative-banned>.

2.6 Right to private life

315. The right to privacy of human rights defenders is vital for their protection of sources and security of person, as well as their protection from discriminatory smear campaigns or other human rights abuses, which may also undermine their ability to engage in public human rights activities.
316. OSCE participating States have committed to uphold the right to privacy, and to refrain from any unlawful or arbitrary interference with correspondence or with electronic communications, including in their efforts to combat the use of the Internet for terrorism.³³⁶ As with restrictions of other human rights, any interference with the right to privacy or correspondence must be provided by law, necessary to achieve a legitimate aim, and proportionate to that aim.
317. Several OSCE participating States informed ODIHR of their strong constitutional and legal protections of the right to privacy,³³⁷ as well as their application of the European Convention on Human Rights and the standards of European Court case law on the right to privacy as provided by the Convention (**Finland, Moldova, Sweden**). Additionally, **Finland** noted it has criminalized certain intrusive acts, in order to further protect privacy from interference by third parties.
318. **Georgia** identified one case of potentially unlawful interference with the right to privacy of a human rights defender, which was under investigation at the time of reporting. In April 2016, Georgia reported that a journalist had complained of the violation of the secrecy of her private correspondence by telephone, and that the Tbilisi Prosecutor's Office launched an investigation into the complaint.³³⁸
319. Showcasing its strong application of Strasbourg jurisprudence, **Moldova** detailed five cases brought during the reporting period by the human rights NGO "Gender-doc" and/or other human rights defenders, which pertained to the protection of the right to privacy of LGBTI human rights defenders. For instance, in June 2014, the Supreme Court invalidated the decision of a municipal council to declare the municipality "a zone of supporting of the Orthodox Church from Moldova and of inadmissibility of the aggressive propaganda of non-traditional sexual orientation movements". In a separate July 2014 decision, the Supreme Court found a conservative group's publication on its website of a "blacklist" of people affirming the rights of sexual minorities in the Republic of Moldova, interfering with the privacy rights of the complainants, including Gender-doc and six other human rights defenders.

³³⁶ See, e.g., Final Document of the Twelfth Meeting of the OSCE Ministerial Council (Sofia, 7 December 2004), available at: <http://www.osce.org/mc/41813> (Sofia Document 2004); and the Final Document of the Fourteenth Meeting of the OSCE Ministerial Council (Brussels, 4 and 5 December 2006), available at: <http://www.osce.org/mc/25065> (Brussels Document 2006).

³³⁷ Finland, Georgia, Lithuania, Moldova, Slovakia, Sweden, Turkey, Uzbekistan.

³³⁸ The complaint was reportedly lodged under Article 159 ("Violation of the secrecy of private correspondence, telephone conversation or other communication") of the Criminal Code of Georgia.

320. In seven OSCE participating States,³³⁹ human rights defenders reported violations of the right to privacy. The allegedly excessive interference comprised surveillance and wiretapping of human rights defenders in all seven States, including electronic surveillance in at least four (**Tajikistan**, the **United Kingdom**, the **United States**, and **Uzbekistan**).
321. In the **United Kingdom**, the NHRI raised concerns over the government's admission to the UN Human Rights Committee that it had conducted surveillance on Amnesty International, including by intercepting its email correspondence. The NHRI also criticized the government's lack of transparency about the scope of its surveillance, and specifically "whether this surveillance [of Amnesty International] means its contacts – human rights defenders around the world – are at risk." In a good practice, the NHRI noted that the draft Investigatory Powers Bill addresses many key concerns raised by the Human Rights Committee in its concluding observations, including: the allowance of mass surveillance under a general warrant; the lack of safeguards for obtaining and sharing communications with foreign agencies; and the wide powers available for retention and access to communications data, and lack of adequate safeguards, for example restricting such access to investigation of the most serious crimes.³⁴⁰
322. An NGO in **Hungary** identified a recent European Court case, which found the State security services had been wiretapping human rights defenders without judicial authorization (*Szabo and Vissy v. Hungary*), and observed that public statements by the Minister of Interior suggested such practices could be ongoing. In **Kazakhstan**, an NGO reported being subjected to infiltration, wiretapping, as well as surveillance when participating in human rights-related events abroad. An NGO in the **Russian Federation** also reported wiretapping of the mobile phones of its staff members, and being subjected to surveillance prior to conducting peaceful assemblies. In **Tajikistan**, an NGO noted the widespread hacking of emails and social media accounts of journalists and civil society activists, as well as the wiretapping of their phone calls. In **Uzbekistan**, a human rights NGO also reported such commonplace surveillance of its email and other communications that it indicated it was unsafe to share confidential information about specific cases, out of fear for reprisal against individuals identified.
323. In the **United States**, the ACLU provided detailed allegations of law enforcement surveillance at the federal, state, and local levels, especially targeting activists of the "#BlackLivesMatter" (BLM) movement. Based on the

³³⁹ Hungary, Kazakhstan, Russian Federation, Tajikistan, United Kingdom, United States, and Uzbekistan.

³⁴⁰ See, e.g., Amnesty International statement, "UN calls for urgent reforms of UK surveillance laws" (23 July 2015), available at: <https://www.amnesty.org.uk/press-release/un-calls-urgent-reform-uk-surveillance-laws>.

cases identified, the ACLU determined that human rights defenders involved in online or in-person protests calling for police accountability were being put under surveillance in it at least a dozen cities in the United States.³⁴¹ The ACLU also observed that individual protest leaders, lawyers and journalist human rights defenders appeared to have been specifically targeted for surveillance in the **United States**.

324. In November 2015, ODIHR also reported on violations of attorney-client privilege for detainees at the **United States** detention facilities in Guantanamo Bay, Cuba. Those excessive restrictions on the right to privacy³⁴² included “limitations placed on lawyers’ ability to meet frequently with their clients or violations of defendants’ right to privately and confidentially communicate with their counsel.”³⁴³

2.7 Right to access and communicate with international bodies

325. At the heart of human rights defenders’ activities is their access to effective remedies, and protection from reprisals for seeking accountability in relation to human rights violations.
326. As part of their obligation to guarantee the right to effective remedies, OSCE participating States must respect and ensure human rights defenders’ unhindered access to and communication with international bodies, including to bodies considering allegations of human rights abuses by that State. States must protect human rights defenders, their families and associates from any form of reprisals for co-operating, having co-operated or seeking to co-operate with international institutions. All allegations of such reprisals – whether committed by public officials or other actors – must be promptly, thoroughly and independently investigated, with a view to ensuring accountability for such acts.
327. As elaborated above, respect for human rights defenders’ rights to expression, privacy, freedom of movement and other rights are all integral to their full enjoyment of their right to access and communicate with international bodies.
328. Some OSCE participating States (**Greece, Slovakia, Switzerland and Uzbekistan**) reported that they facilitate human rights defenders’ access to and communication with international bodies. **Greece** noted that it regularly involves human rights NGOs in the Universal Periodic Review process. The NHRI of **Slovakia** also indicated that it co-operates regularly, and without restriction, with a range of international bodies, including: UN Treaty Bodies,

³⁴¹ See, George Joseph, “Undercover Police Have Regularly Spied on Black Lives Matter Activist in New York,” *The Intercept* (24 July 2015), available at: <https://theintercept.com/2015/07/24/documents-show-department-homeland-security-monitoring-black-lives-matter-since-ferguson/>.

³⁴² *Guidelines* (n. 4 above), Explanatory Report, para. 256.

³⁴³ See, ODIHR report, *Human Rights Situation of Detainees at Guantanamo* (November 2015), available at: <http://www.osce.org/odihr/198721>.

OHCHR, the Council of Europe (including ECRI and the Office of the Commissioner for Human Rights), as well as various regional networks (e.g. Equinet, ENNHRI) and institutions (e.g. FRA, European Commission). **Switzerland** also reported its regular efforts to facilitate the travel and participation of human rights defenders before the UN human rights machinery situated in Geneva. **Uzbekistan** reported that its Foreign Ministry helps to coordinate meetings of the representatives of international organizations with Uzbek human rights defenders.

329. **ODIHR** has observed cases of reprisals and restrictions against human rights defenders (and in some cases their families), apparently in retaliation for their active participation in the **OSCE Human Dimension Implementation Meeting (HDIM)**. The HDIM is the flagship OSCE human dimension event, which ODIHR organizes annually in Warsaw. During the reporting period, ODIHR received information on such instances of reprisals and other forms of retaliation against human rights defenders in **Azerbaijan, Kyrgyzstan and Tajikistan**.

330. Following her participation in the September 2014 HDIM, Azeri human rights defender Khadija Ismailova faced criminal charges upon her return to **Azerbaijan**, apparently in retaliation for her statements at the HDIM. In October 2014, ODIHR transmitted a letter of concern to authorities about her situation, though they denied any connection between her statements and her prosecution. ODIHR also raised the allegedly retaliatory and politically motivated prosecution of Ms. Ismailova in a 30 October 2014 report to the OSCE Permanent Council, and in a public statement³⁴⁴ on that intervention released the following day. The Government of Azerbaijan responded³⁴⁵ critically to the interventions, denying any connection between the criminal charges faced by Ismailova and her journalistic activities or human rights-related statements at the HDIM. The **OSCE Representative on Freedom of the Media** also publically condemned³⁴⁶ the later arrest of Ms. Ismailova. Ms. Ismailova was released in May 2016, but remained subject to a travel ban in Azerbaijan at time of reporting.³⁴⁷

³⁴⁴ See, ODIHR statement, available at: <http://www.osce.org/odihr/126225>.

³⁴⁵ See, Azerbaijan statement, available at: [http://www.azembassy.at/files/osce/Statement by Azerbaijan in response to ODIHR director on HDIM \(PC 30 October 2014\).pdf](http://www.azembassy.at/files/osce/Statement%20by%20Azerbaijan%20in%20response%20to%20ODIHR%20director%20on%20HDIM%20(PC%2030%20October%202014).pdf).

³⁴⁶ See, RFoM statement, "Arrest of journalist latest case of crackdown of free media in Azerbaijan, says OSCE Representative" (5 December 2014), available at: <http://www.osce.org/fom/130076>.

³⁴⁷ See, ODIHR/RFoM joint statement, "OSCE media freedom representative, human rights chief welcome release of Khadija Ismayilova" (25 May 2016), available at: <http://www.osce.org/fom/242746>. See also, RFoM report, "Regular Report to the Permanent Council for the period from 11 March 2016 to 1 December 2016" (December 2016), available at: <http://www.osce.org/fom/285506>.

331. In an October 2016 closing report³⁴⁸ on the 2016 HDIM, the Director of ODIHR raised before the OSCE Permanent Council several cases of alleged retaliation against human rights defenders from **Kyrgyzstan** and **Tajikistan**. ODIHR interviewed one of the Tajik human rights defenders who reportedly received threats related to their HDIM attendance, including their participation in a side event on 21 September 2016, entitled “Tajikistan’s Human Rights Crisis”. Following that event, participants’ family members and homes were reportedly attacked on 22 and 23 September. Those claims were also reported by international human rights NGOs, which verified the troubling details of the incidents.³⁴⁹
332. Additionally, despite their clear mandates to monitor the human rights situation in **Crimea**, the institutions and independent experts of the **OSCE**, the **United Nations** and the **Council of Europe** have all had their access to the Crimean peninsula either fully or partially restricted since its annexation by the Russian Federation in 2014.³⁵⁰ This has directly impeded the ability of ODIHR and other international bodies to communicate freely with human rights defenders in Crimea, including about their protection concerns.

3. Framework for Implementation of the Guidelines

3.1 National implementation

333. The preceding sections of this report clearly display that protection concerns and needs of human rights defenders differ from State to State. While there are firm international standards, which are collated and elaborated upon in the *Guidelines*, OSCE participating States each face unique challenges that the human rights protection framework empowers them to address as appropriate.
334. With that in mind, the *Guidelines* encourage States to carry out – in consultation with civil society – a baseline review of laws and practices affecting human rights defenders, and to repeal or amend any laws and regulations that disproportionately impede or hinder their work.³⁵¹ The *Guidelines* also

³⁴⁸ See, ODIHR, “Report to the OSCE Permanent Council by ODIHR Director Michael Georg Link on the 20th Human Dimension Implementation Meeting” (Vienna, 13 October 2016), available at: www.osce.org/odihr/281896.

³⁴⁹ See, HRW statement, “Tajikistan: Violent Retaliation Against Activists – OSCE, Governments Should Protest Collective Punishment, Worsening Crackdown” (28 September 2016), available at: <https://www.hrw.org/news/2016/09/28/tajikistan-violent-retaliation-against-activists>; and HRW statement, “Tajikistan: Abuse of Dissidents’ Families – US, EU Should Consider Sanctions” (20 December 2016), available at: <https://www.hrw.org/news/2016/12/20/tajikistan-abuse-dissidents-families>.

³⁵⁰ ODIHR/HCNM, *Report of the Human Rights Assessment Mission on Crimea* (n. 45 above), at paras. 145 and 177.

³⁵¹ As a resource for States aiming to adopt new protections for human rights defenders, see the Model Law for the Recognition and Protection of Human Rights Defenders (n. 15 above), which provides

encourage participating States to strengthen the role of independent NHRIs and their mandates, in accordance with the Paris Principles, and consider granting them functional immunity and the competence to receive individual complaints if they have not yet done so.

335. In their correspondence with ODIHR, NHRIs and human rights defenders have frequently indicated a heightened need for special protections of human rights defenders – including their legal recognition as a protected group – in those States where they are the most at risk. This trend also reflects the broader pattern of human rights defenders reportedly being most at risk in OSCE participating States with the weakest rule-of-law protections. In contrast, NHRIs in States with very strong rule-of-law protections indicated that they received few complaints, and no special measures were necessary to protect defenders.
336. Human rights defenders in **Hungary** and in **Kazakhstan** indicated strong and fruitful co-operation with their NHRIs. In **Hungary**, the Ombudsperson's Office reportedly expressed interest in supporting the non-discrimination-oriented litigation of civil society, which represents a good practice in co-ordination of roles on common goals. In **Kazakhstan**, a human rights NGO also indicated productive co-operation with the Commission on Human Rights under the President of the Republic of Kazakhstan, specifically in the holding of a consultative conference to discuss current issues related to the implementation of a national protection mechanism for human rights defenders. Partners included Protection International and the International Service for Human Rights. While protection challenges remain, this joint initiative represented a step in the right direction.
337. In **Mongolia**, a prominent human rights defender identified an urgent need for official recognition of human rights defenders as such, and supported a public call for the same by the National Human Rights Commission of Mongolia (NHRCM), which noted in a recent report the need for further clarification in this regard: “there is not an independent law that stipulates rights and duties of human rights defenders and regulates their activities, and a concept and terminology of ‘human rights defender’ are not specified in any existing laws.”³⁵² Officially recognizing and protecting the rights of all individuals to defend human rights could help raise awareness of the role of civil society and NGOs, and improve their co-operation with law enforcement agencies and other State institutions to foster an enabling legal environment based on recognition and protection of human rights defenders.³⁵³

draft language for a wide range of measures to recognize and protect human rights defenders and their activities.

³⁵² National Human Rights Commission of Mongolia, *14th Annual Status Report on Human Rights in Mongolia*, at chapter 2 (“Rights of Human Rights Defenders”), available at: <http://mn-nhrc.org/eng/main2/188/>.

³⁵³ Such an official recognition could be aligned with the language of the UN Declaration on Human Rights Defenders (n. 1 above).

338. As a good practice, **Moldova** noted that its Ministry of Internal Affairs co-operated based on bilateral memoranda of understanding with NGOs that protect and promote human rights, including: Soros Foundation in Moldova; Promo-Lex, Women's Law Center; La Strada; NORLAM; and others. The Moldovan NHRI also indicated that it maintains close co-operation with human rights defenders.
339. The NHRI in **Bulgaria** described a growing portfolio of delicate activities, including receipt and consideration of individual complaints (on anti-discrimination, fundamental rights and freedoms, and other topics), as well as the performance of NPM functions since 2012. In light of those responsibilities, the NHRI stressed its need for the government to adopt measures to afford it functional immunity and adequate funding.
340. Potentially imperilling such immunity, the Government of **Poland** noted its adoption in March 2016 of amendments³⁵⁴ to the legal basis of its NHRI, which the Government informed ODIHR were "aimed at clarifying rules of immunity enjoyed by the Commissioner for Human Rights in the context of criminal proceedings against him." Following a request by the Ombudsman himself, ODIHR issued an opinion on the draft amendments in February 2016. In its opinion, ODIHR noted:
- "the existing Polish legal framework fails to provide sufficient safeguards to protect the [Ombudsman] and his or her staff from civil, administrative and criminal liability for words spoken or written, decisions made, or acts performed in good faith in their official capacities ('functional immunity'). Moreover, the Draft Law does not indicate with sufficient clarity the modalities and criteria to be taken into account by the Sejm (or its competent authority) to ensure the fairness, transparency and impartiality of the procedure for lifting the [Ombudsman's] immunity in the context of criminal proceedings".³⁵⁵
341. **Lithuania** informed ODIHR that the Seimas (Parliament) issued a decree encouraging the Seimas Ombudsmen's Office (SOO) to become a national human rights institution in the Republic of Lithuania. Toward that end, the SOO has set a strategic goal to become a NHRI, and hosted consultative forums with parliamentarians, government officials, and members of the civil society, in order to discuss the modalities of such a transition. In 2014, the SOO also began fulfilling a new function as NPM, which was assigned to it following ratification of the Optional Protocol to the Convention against Torture (OPCAT) by the Seimas, thus strengthening the role of the Seimas Ombudsmen within the society. On 30 December 2015, the Seimas Ombudsmen's Office, with a view to being accredited as a NHRI, filed an accreditation application

³⁵⁴ Act of 18 March 2016 amending the Act on the Commissioner for Human Rights (Dz. U. z 2016 r. poz. 677).

³⁵⁵ ODIHR, *Final Opinion on the Draft Act Amending the Act on the Commissioner for Human Rights of Poland* (16 February 2016), Opinion-Nr. NHRI-POL/282/2016 [AIC], at paras. 9 and 37; available in English and Polish at: <http://www.legislationline.org/countries/country/10>.

with the International Coordinating Committee of National Institutions in Geneva.

342. In order to broaden their institutional framework for human rights protection, the governments of **Italy**, **Liechtenstein**, **Sweden** and **Switzerland** also expressed their intentions and on-going efforts to establish NHRIs. **Sweden** reported that its government expressed its intention to deliver a human rights strategy to parliament, including a proposal to establish an independent NHRI to promote and protect human rights in accordance with the Paris Principles. **Liechtenstein** also reported that its government is planning to establish an independent NHRI in according to the Paris Principles, which has been mostly welcomed by stakeholders during an open consultation process. The NHRI will provide advice to authorities and the public on human rights issues; support victims of human rights violations; and report on the national human rights situation. At the time of reporting, the Parliament had debated the draft law establishing an NHRI, as well as an explanatory report, and finished a first reading on 10 June 2016. **Italy** noted that various proposals of draft legislation are still pending before the Parliament in relation to the establishment of a NHRI.
343. In **Switzerland**, the Federal Council (Swiss executive authority) agreed on 22 June 2016 that it will create a NHRI, and tasked the Swiss Federal Administration to prepare a draft Law to do so, which will be shared for consultation with relevant stakeholders and submitted for parliamentary approval in the second half of 2017. The future NHRI will have a robust human rights mandate, and enjoy both full funding and operational independence. In February 2016, **Switzerland** also adopted a new human rights strategy for 2016–2019,³⁵⁶ and reported that human rights defenders and civil society will be closely involved in the implementation of the strategy, with a view toward the creation of a safe and supportive environment for their work.

3.2 Protection of human rights defenders in other OSCE participating States and beyond the OSCE region

344. Several of the human rights defenders interviewed or corresponded with in the research for this report were living in exile in OSCE participating States that had given them safe haven from political persecution in their home countries (**Azerbaijan**, the **Russian Federation**, **Tajikistan** and **Uzbekistan**).
345. In order to streamline the protection of human rights defenders in their foreign policy, the *Guidelines* encourage OSCE participating States to consider setting up mechanisms and drawing up national guidelines to support human rights

³⁵⁶ See, Swiss Federal Department of Foreign Affairs, Human Rights Strategy 2016–2019; press release and strategy available at: <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-60799.html>.

defenders other OSCE participating States, as well as outside the OSCE region. Such national guidelines should include rapid response mechanisms for human rights defenders at imminent risk in other OSCE participating States and beyond, which can be implemented through diplomatic missions. Participating States should also raise any threats, attacks, arbitrary arrests and other serious human rights violations against human rights defenders with the States concerned through other appropriate means – for example, in high-level bilateral or multilateral meetings, or at international forums.

346. As the 57 OSCE participating States include all 28 EU member States, the EU *Guidelines on Human Rights Defenders*³⁵⁷ remain highly relevant to defenders at risk in the 29 OSCE participating States outside of the EU. The EU guidelines provide policy standards for EU member States in their external actions to assist at-risk defenders outside the EU. In cases of defenders at risk within the EU, the ProtectDefenders.eu initiative is also able to refer them to its worldwide organizational partners, in case they are better able to assist such human rights defenders through alternative emergency funding sources.
347. Building upon the strong foundations of the ODIHR *Guidelines on the Protection of Human Rights Defenders* and the EU *Guidelines on Human Rights Defenders*, several OSCE participating States within and outside of the EU have further developed national guidelines for their own diplomatic missions, in order to deepen their commitment and procedures for the protection of human rights defenders.
348. In early December 2016, **Canada** published online its new *Guidelines on Supporting Human Rights Defenders*, which are publicly available in English and French.³⁵⁸ Canada reported that its guidelines are inspired by and in line with similar efforts made by a number of other OSCE participating States, as well as ODIHR. The good practices included in Canada's guidelines are intended to direct its diplomatic efforts in support of human rights defenders in the OSCE region and beyond.
349. Since 2010, the **Czech Republic** reported it has been providing financial support for the temporary relocations of human rights defenders from abroad to the Czech Republic, in the scope of the "Transition Promotion Program" of the Czech Ministry of Foreign Affairs. On average, the Czech Republic reported granting financial support through this Program to two or three human rights defenders per year, while others are assisted by being given priority in visa

³⁵⁷ See EU *Guidelines on Human Rights Defenders*, available at: http://eeas.europa.eu/human_rights/defenders/index_en.htm.

³⁵⁸ See, Canada's *Guidelines on Supporting Human Rights Defenders* (December 2016), available in English (http://international.gc.ca/world-monde/world_issues-enjeux-mondiaux/rights_defendersdefenseurs_droits.aspx?lang=eng) and French (http://international.gc.ca/world-monde/world_issues-enjeux-mondiaux/rights_defendersdefenseurs_droits.aspx?lang=fra).

applications. The Ministry noted that the relocations are implemented (and mostly co-financed) by Czech NGOs, whose role is crucial.

350. The **Czech Republic** has also identified as a thematic priority its support for civil society and human rights defenders in the Czech Ministry of Foreign Affairs “Human Rights and Transition Promotion Policy Concept” (updated in September 2015). In a **good practice**, the Concept envisages special attention will be paid to *women human rights defenders*, and the specific forms of persecution they may face.
351. **Denmark** reported that it has adopted a national Policy to support a safe and enabling environment for human rights defenders abroad, in order to promote both human rights and sustainable development in an accountable, inclusive and transparent manner, that supports poor and marginalized groups. By placing an emphasis on marginalized groups, **Denmark** noted that it aims to support women and youth, among others, to play significant roles as drivers of social change to combat discrimination on prohibited grounds of: gender; age; disability; ethnicity; sexual orientation; and religion, among others. Danish civil society organizations also reportedly play an important role in Danish development co-operation.
352. **Finland** reported that it actively utilizes the ODIHR *Guidelines on the Protection of Human Rights Defenders*. In 2014, its Ministry for Foreign Affairs (MFA) also adopted its Public Guidelines on “Protecting and Supporting Human Rights Defenders”.³⁵⁹ The MFA Public Guidelines complement the EU *Guidelines on Human Right Defenders*, and encourage Ministry and Embassy staff members to actively support and co-operate with human rights defenders. The Public Guidelines include practical examples on co-operation and are meant to be a concrete tool for the Ministry and Embassies. The activities outlined include, *inter alia*, meetings, seminars and other events with human rights defenders, as well as raising the situations of individual defenders with governments, both through public and silent diplomacy. In 2014–2016, **Finland** reported that it raised instances of threats, attacks, arbitrary arrests and other serious human rights violations against human rights defenders in other State/s, both bilaterally and as a part of aligned EU interventions on the situation of human rights defenders with governments.
353. **France** reported that its Ministry of Foreign Affairs recently adopted national guidelines for protection of human rights defenders, which are formatted as an informational pamphlet.
354. **Germany** identified several good practices including: high-level interventions in urgent cases; regular implementation of the EU Guidelines; granting financial

³⁵⁹ See, MFA of Finland, “Public Guidelines of the Foreign Ministry of Finland on the implementation of the European Union Guidelines on Human Rights Defenders” (27 November 2014), available at: <http://formin.finland.fi/public/default.aspx?contentid=323946>.

support, refugee status and/or residence permits to at-risk defenders; and awareness-raising initiatives, such as regional conferences; among others.

355. In January 2015, **Ireland** adopted its foreign policy statement, “Global Island: Ireland’s Foreign Policy for a Changing World”. In the statement, Ireland establishes as a priority area of multilateral engagement that it will “continue to protect and promote human rights through multilateral fora and to support the work of Human Rights Defenders.” To operationalize the statement, Ireland’s embassies and diplomatic missions can offer support to human rights defenders, on a case-by-case basis. **Ireland** also provides pre-posting training on human rights issues to diplomats going abroad, including on means of supporting human rights defenders. **Ireland** has also established an informal visa scheme to facilitate the issuing of short-stay visas to human rights defenders, in order to assist those defenders who wish to spend a short time outside of their country, but wish to return and continue their activities afterwards.
356. In **Italy**, the Foreign Affairs Committee of the House of Representatives in February 2017 adopted a resolution on the protection of human rights defenders, which reportedly incorporated proposals by a network of Italian human rights organizations.³⁶⁰
357. In **Lithuania**, an inter-institutional co-operation mechanism has been implemented since 2011, which ensures the protection of personal and financial information of human rights defenders and activists seeking asylum in Lithuania.
358. In **Spain**, the Office for Human Rights of the Foreign Ministry runs a funding scheme that grants funds to NGOs promoting and protecting human rights, and particularly NGOs working with human rights defenders. Since 1995, the Human Rights Office has also run a temporary-relocation scheme for at-risk human rights defenders, including their families, if needed. Other temporary-relocation schemes have been set up by Spanish regional bodies and NGOs with which the Human Rights Office collaborates on visa issuance. To date, around 250 at-risk human rights defenders and their families have been granted temporary relocation through the different Spanish schemes. **Spain** reported that it has not received any petitions to support at-risk defenders from within the OSCE region.
359. In December 2013, **Switzerland** adopted the *Swiss Guidelines on the Protection of Human Rights Defenders*, a compilation of best practices that enables Swiss diplomatic missions abroad to adopt a unified approach in their actions

³⁶⁰ See, Resolution No. 7-01051, “On the protection of human rights defenders” (1 February 2017), available at: http://www.unponteper.it/wp-content/uploads/2017/02/Risoluzione-n7_01051_Tidei_-_Sulla-tutela-dei-difensori-dei-diritti-umani.pdf. See also, statement of Amnesty International Italy, “The House approved the resolution on Human Rights Defenders” (1 February 2017), available at: <https://www.amnesty.it/approvata-alla-camera-la-risoluzione-sui-difensori-dei-diritti-umani/>.

regarding human rights defenders. Diplomatic representatives are instructed on the dangers and specific situations that human rights defenders face (i.e. vulnerability, exposure, etc.). **Switzerland** also reported that it intervenes with governments that hinder or threaten human rights defenders on account of their work, at both the bilateral and multilateral levels, as well as by supporting projects that aim to protect defenders.

360. In the **United States**, the US Department of State has also issued guidelines on “US Support of Human Rights Defenders”, which it was disseminating to US embassies with a view to their publication on embassy websites in various languages.³⁶¹ Additionally, the Center for Human Rights of the American Bar Association informed the Organization of American States (OAS) that the Manual for Federal Prosecutors of the US Department of Justice provides guidance to judicial operators to prevent the prosecution of human rights defenders for their legitimate activities protected under Constitutional rights.

3.3 International co-operation and human rights mechanisms

361. On 9 December 2016, on the eve of international Human Rights Day and the opening of the OSCE Ministerial Council Summit in Hamburg, ODIHR recalled that it is the responsibility of OSCE participating States to protect the human rights of all in their jurisdiction – including those of human rights defenders, who are often a lightning rod for abuses in turbulent contexts.³⁶²
362. As a regional arrangement under Chapter VIII of the UN Charter, the OSCE offers a valuable forum to strengthen dialogue and robust human security in the OSCE region, including through the protection of human rights. States should utilize the institutions and human rights mechanisms of the OSCE, United Nations, Council of Europe and the Organization of American States, among other systems, and co-operate with them in good faith to respond swiftly to urgent and emerging human rights situations.
363. As the *Guidelines* elaborate, States should utilize these venues and institutions for the protection of human rights defenders, including by leveraging relevant international mechanisms to engage in peer review at the international level, with a view to identifying protection gaps, shortcomings in national law and practices, as well as possible improvements. States should draw on good practices from each other in that respect, and help those with deficiencies to correct course and strengthen the protection of human rights defenders.

³⁶¹ See, report of the OAS Inter-American Commission for Human Rights, *Criminalization of the Work of Human Rights Defenders* (31 December 2015), at para. 268; available at: <http://www.oas.org/en/iachr/reports/pdfs/Criminalization2016.pdf>.

³⁶² See, ODIHR statement, “Protection of human rights defenders is vital to realize OSCE human rights commitments, says OSCE/ODIHR Director Link” (9 December 2016), available at: <http://www.osce.org/node/287861>.

364. Within the OSCE system, **Switzerland** noted that, during its tenure as the **2014 OSCE Chairperson-in-Office**, it hosted the launch of the *Guidelines* in Berne,³⁶³ and partnered with ODIHR in the raising of urgent cases of individual at-risk human rights defenders. **Switzerland** co-operated with the Civic Solidarity Platform to strengthen the inclusion of civil society in the work of the OSCE, and in that regard supported the organization of four regional civil society workshops across the OSCE region, with timely special thematic focuses.
365. Several OSCE participating States³⁶⁴ noted their active involvement in raising the situations of human rights defenders before not only OSCE decision-making bodies, but also the **UN General Assembly** and **UN Human Rights Council**, including through the UPR process³⁶⁵ and resolutions³⁶⁶ on the protection of human rights defenders.
366. The **Czech Republic, Germany, Ireland and Switzerland** noted that they regularly raise concrete cases of human rights violations against human rights defenders in the **Human Rights Council**, through national statements³⁶⁷ under item 4 (human rights situations that require the Council's attention) and item 10 (technical assistance and capacity building). Additionally, **Ireland** reported its raising of the situation of human rights defenders in the **Third Committee** (legal) of the **UN General Assembly**.
367. Several participating States (**Ireland, Spain, Sweden**) also reported their frequent raising of human rights defenders' protection needs through the **European Union**. For instance, **Spain** noted that its Ministry of Foreign Affairs is a member of the EU Temporary Relocation Platform, under which it has used multilateral mechanisms to express its concerns about concerning cases of human rights defenders in the OSCE area. **Sweden** indicated it actively participates in the EU co-ordination before human rights dialogues, as well as when the EU raises instances of threats, attacks, arrests and other serious human rights violations against human rights defenders. Bilaterally they refer to the cases that the EU has expressed concern for, and sometimes specific names are mentioned in these bilateral talks.
368. As an OSCE participating State with several country offices of international organizations in its territory, **Montenegro** reported finding those very useful to

³⁶³ See, "Berne Conclusions" (June 2014), at n. 5 above.

³⁶⁴ Georgia, Germany Ireland, Sweden, Switzerland.

³⁶⁵ For example, Ireland contributed to recommendations to Kyrgyzstan under its most recent UPR.

³⁶⁶ For instance, the Resolution, "Human Rights Defenders in the context of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms"; and Resolution No. 31/32 "Protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights", adopted by the Human Rights Council on 24 March 2016.

³⁶⁷ For example, Ireland raised the situations of human rights defenders in Azerbaijan and three countries outside of the OSCE region.

facilitate co-operation on the protection of human rights defenders, including with the **OSCE**, the **European Commission**, the **Council of Europe** and others.

4. Annexes

4.1 Statistics on submissions of questionnaires

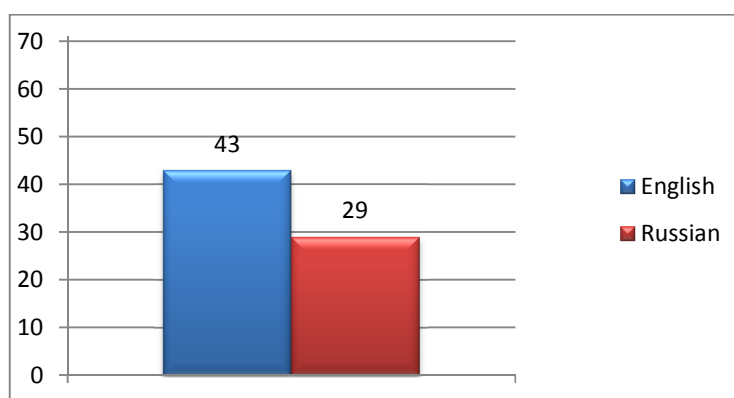
States	Governments	Human Rights Defenders	NHRIs	OSCE Field Operations
Albania	No	3	No	Yes
Andorra	No	0	N/A	N/A
Armenia	No	3	Yes	Yes
Austria	No	0	Yes	N/A
Azerbaijan	No	6	No	N/A
Belarus	No	4	No	N/A
Belgium	No	1	Yes	N/A
Bosnia and Herzegovina	Yes	1	No	No
Bulgaria	Yes	0	Yes	N/A
Canada	Yes	1	No	N/A
Croatia	No	0	No	N/A
Cyprus	No	0	No	N/A
Czech Republic	Yes	0	No	N/A
Denmark	Yes	0	No	N/A
Estonia	No	0	N/A	N/A
Finland	Yes	0	No	N/A
France	Yes	0	No	N/A
former Yugoslav Republic of Macedonia	Yes	1	No	Yes
Georgia	Yes	2	No	N/A
Germany	Yes	0	No	N/A
Greece	Yes	0	No	N/A
Holy See	Yes	0	N/A	N/A
Hungary	No	1	No	N/A
Iceland	No	0	N/A	N/A
Ireland	Yes	0	No	N/A
Italy	Yes	1	N/A	N/A
Kazakhstan	No	7	No	Yes
Kosovo ³⁶⁸	N/A	3	No	Yes
Kyrgyzstan	No	1	No	Yes
Latvia	Yes	1	No	N/A
Liechtenstein	Yes	0	N/A	N/A
Lithuania	Yes	0	No	N/A
Luxembourg	No	0	Yes	N/A
Malta	No	0	N/A	N/A
Moldova	Yes	1	Yes	No
Monaco	No	0	N/A	N/A
Mongolia	No	2	No	N/A
Montenegro	Yes	2	Yes	Yes
Netherlands	No	0	No	N/A
Norway	No	0	No	N/A
Poland	Yes	3	No	N/A
Portugal	No	1	No	N/A
Romania	Yes	0	No	N/A

³⁶⁸ Note: Kosovo is not a participating State of the OSCE. *See* UN Security Council resolution 1244 (10 June 1999), and the International Court of Justice's Advisory Opinion of 22 July 2010 (n. 6 above).

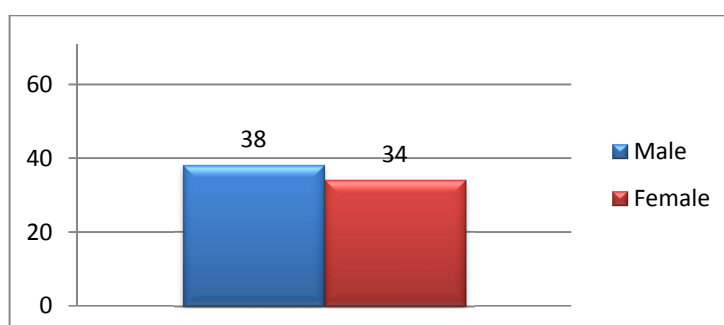
Russian Federation	No	5	No	N/A
San Marino	No	0	N/A	N/A
Serbia	Yes	4	Yes	No
Slovakia	Yes	0	Yes	N/A
Slovenia	No	1	No	N/A
Spain	Yes	0	No	N/A
Sweden	Yes	0	No	N/A
Switzerland	Yes	0	No	N/A
Tajikistan	No	3	No	No
Turkey	Yes	0	Yes	N/A
Turkmenistan	No	0	N/A	Yes
Ukraine	Yes	7	No	Yes (2)
United Kingdom	No	0	Yes	N/A
United States	No	2	N/A	N/A
Uzbekistan	Yes	5	Yes	No
TOTAL	29	72	12	11

Charts on submissions of questionnaires by human rights defenders

Language of questionnaire submissions



Gender of questionnaire respondents³⁶⁹



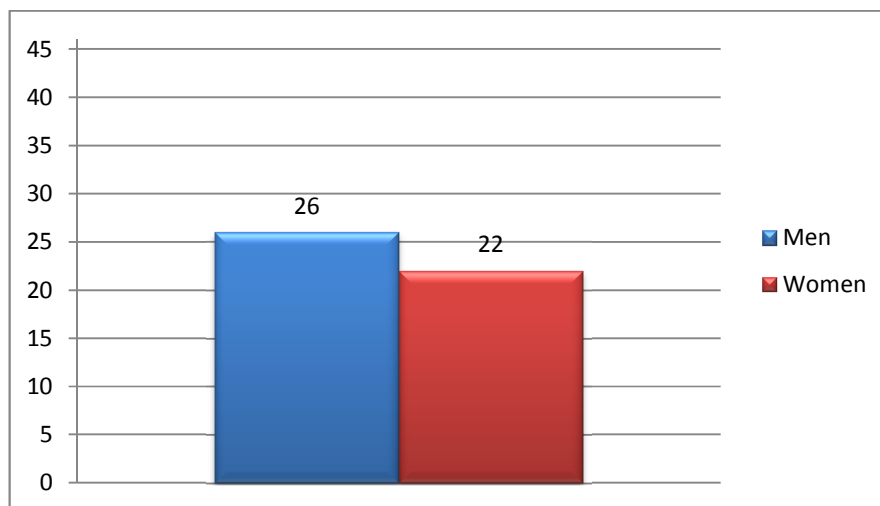
³⁶⁹ The gender figures are based on who submitted the responses, in some cases on behalf of NGOs.

4.2 Statistics on interviews with human rights defenders

Nationality of interviewees

ODIHR conducted in-person interviews with 48 human rights defenders (including 22 women) from 20 participating States and Kosovo³⁷⁰ (1). The interviewees were from the following OSCE participating States: Albania (2); Armenia (4); Azerbaijan (6); Belarus (2); Belgium (1); Bosnia and Herzegovina (1); Croatia (1); Denmark (1); Georgia (3); Kyrgyzstan (3); Latvia (1); Lithuania (1); Montenegro (5); Poland (4); Russian Federation (3); Serbia (2); Slovakia (1); Tajikistan (3); Turkey (1); and Ukraine (2).

Gender of interviewees



³⁷⁰ See UN Security Council resolution 1244 (10 June 1999), and the International Court of Justice's Advisory Opinion of 22 July 2010 (n. 6 above).

4.3 Questionnaires sent to OSCE participating States, NHRIs, human rights defenders, OSCE field operations

4.3.1 Questionnaire sent to OSCE participating States

Note: see the endnotes at the end of the Annexes section for citations of paragraphs in the *Guidelines* that are relevant to the respective questions below.

PHYSICAL INTEGRITY, LIBERTY AND SECURITY AND DIGNITY OF HUMAN RIGHTS DEFENDERS (HRDs)

General question for participating States

- 1) Please describe the overall situation of Human Rights Defenders (HRDs) in your participating State, with regard to their protection and the environment in which they work.
- 2) What good practices of your participating State would you recommend to other participating States, in order to effectively protect HRDs and facilitate their work?
- 3) What challenges has your participating State encountered in the protection of HRDs (including their protection from abuses by non-State actors)? Please identify any solutions adopted to overcome those challenges, or areas in which capacity-building assistance would be useful to address identified protection gaps.
- 4) Please indicate whether your Government would be interested in collaborating with ODIHR to host an awareness-raising or capacity-building event on the *Guidelines on Protection of Human Rights Defenders*, held in co-operation with relevant State authorities and/or civil society actors.ⁱ

A. Protection from threats, attacks and other abuses

- 5) Are there any protection policies, programmes or mechanisms to guarantee or promote the safety and security of HRDs (e.g. the provision of physical protection, temporary relocation and other protection measures and support services as may be required, including any gender-sensitive measures for the protection of HRDs at risk of gender-based discrimination)?ⁱⁱ
- 6) From June 2014 to May 2016, were there any known cases of intimidation, attacks, threats or harassment against HRDs and/or their families, including by non-State actors?ⁱⁱⁱ If yes, please provide details of the cases (disaggregated by gender), as well as State responses.
- 7) Have any crimes committed against HRDs been investigated or prosecuted as bias-motivated crimes, on account of their association with or work to support specific groups (e.g. based on ethnicity, nationality, political opinion, religion, sexual orientation, etc.)?^{iv} If yes, please provide the number of such cases from June 2014 to May 2016, and describe the cases' circumstances.

B. Protection from judicial harassment, criminalization, arbitrary arrest and detention

- 8) Please outline the legal and other safeguards to protect HRDs and their activities from judicial harassment, criminalization, arbitrary arrest and detention, and any measures undertaken (including in consultation with civil society) to ensure their implementation.^v
- 9) From June 2014 to May 2016, were there any known complaints of fair-trial rights violations affecting HRDs, including of unjustified legal and administrative proceedings for acts related to their human rights work, and/or allegations of unlawful detention, torture or other ill-treatment?^{vi} If yes, please specify the dates and details of any such incidents, as well as State responses.

C. Confronting stigmatization and marginalization

- 10) Please outline efforts undertaken by State authorities, between June 2014 to May 2016, to promote a positive portrayal of HRDs, including as a response to negative portrayals or stigmatization of HRDs and their work.^{vii}

A SAFE AND ENABLING ENVIRONMENT CONDUCTIVE TO HUMAN RIGHTS WORK

D. Freedom of opinion and expression and of information

- 11) Please outline the legal and other safeguards to protect journalists from criminal prosecutions in connection to their reporting.^{viii}
- 12) From June 2014 to May 2016, were there any criminal prosecutions or civil cases brought against journalists in connection to their reporting on alleged human rights violations?^{ix} If yes, please provide dates and details of any such cases?

E. Freedom of peaceful assembly

- 13) Please outline the legal and other safeguards to ensure that HRDs can enjoy their freedom of peaceful assembly and monitor and report on human rights during and in the context of public assemblies.^x
- 14) From June 2014 to May 2016, were there any known complaints or allegations of restrictions on assemblies, as well as administrative sanctions, investigations, prosecutions, affecting the ability of HRDs to enjoy their freedom of peaceful assembly? If yes, please indicate the details of any such cases, and identify the legal provisions under which the sanctions came into force.^{xi}

F. Freedom of association and the right to form, join and participate effectively in NGOs

- 15) Please outline the legal and other safeguards to ensure that HRDs can form, join and participate effectively in NGOs.^{xii}

- 16) From June 2014 to May 2016, were there any known cases of administrative sanctions, investigations, prosecutions and/or closures of NGOs carrying out human rights work? If yes, please indicate the details of any such cases, and identify the legal provisions under which the sanctions came into force.^{xiii}

G. The right to participate in public affairs

- 17) What mechanisms and procedures are in place in law, policy and practice to facilitate regular, ongoing, institutionalized and open participation of diverse NGOs and HRDs in public decision-making and/or law-making processes?^{xiv} Kindly provide examples of such practices in the period from June 2014 to May 2016.

H. Freedom of movement and human rights work within and across borders

- 18) Please outline the legal and other safeguards to ensure HRDs' freedom of movement without undue restrictions, including in contested territories or other special circumstances.^{xv}
- 19) From June 2014 to May 2016, have any human rights defenders been subjected to travel bans or other restrictions on their freedom of movement in your participating State, including their freedom to leave or enter the country and/or move within the country?^{xvi} If yes, please specify.
- 20) From June 2014 to May 2016, has your country supported any HRDs from any other OSCE participating States who faced risks in their home countries due to their human rights work?^{xvii} If yes, please indicate the details of any such cases, where possible.

I. Right to private life

- 21) Please outline the legal and other safeguards to ensure that HRDs can enjoy their right to private life, without undue interference.
- 22) From June 2014 to May 2016, were there any known complaints or allegations in your participating State of unlawful or arbitrary interference with the privacy, family life, home or correspondence of HRDs?^{xviii} If yes, please specify the dates and details of any such alleged incidents, as well as State responses.

J. Right to access and communicate with international bodies

- 23) From June 2014 to May 2016, were there any known complaints by HRDs in your participating State of being prevented from co-operating with international bodies, including through restrictions on their meeting with international bodies (domestically or internationally) by State or non-State actors?^{xix} If yes, please indicate the details of any such cases, as well as State responses.

FRAMEWORK FOR IMPLEMENTATION OF THE GUIDELINES

Protection of human rights defenders in other OSCE participating States and third countries

- 24) Please identify any initiatives, mechanisms or national guidelines set up in your country to support HRDs and their work in other OSCE participating States, as well as in other countries outside of the OSCE region.^{xx}
- 25) From June 2014 to May 2016, has your country raised instances of threats, attacks, arbitrary arrests and other serious human rights violations against HRDs in other State/s with the authorities concerned?^{xxi} If yes, please specify.

National implementation

- 26) Please list any measures taken to strengthen NHRIs and their mandates in accordance with the Paris Principles, including by granting them the competence to receive individual complaints and to systematically and impartially monitor and report on the situation of HRDs in the country.^{xxii}
- 27) Have any steps been taken towards establishing or designating inter-institutional co-ordinating bodies, with the participation of HRDs, to develop and implement strategies to enhance the protection of HRDs, and to create and consolidate a safe and enabling environment?^{xxiii} (For instance, by including such strategies in the National Human Rights Strategy and Action Plan?)

International co-operation and human rights mechanisms

- 28) Does your Government co-operate with any local, regional or international organizations or mechanisms on the issue of the protection of HRDs?^{xxiv} Please indicate any such mechanisms, and the ways of co-operation.

4.3.2 Questionnaire sent to NHRIs

1. Please describe the overall situation of Human Rights Defenders (HRDs) in your country, with regard to the environment in which they conduct their work and any challenges or risks they may face. *For example*, specific issues could include, among others:
 - Legislation restricting the formation, funding or activities of NGOs;
 - Attacks and threats against HRDs (including based on gender, or other prohibited grounds of discrimination);
 - Accountability and access to effective remedies;
 - Legal harassment, criminalization, or defamation/“smear campaigns” against HRDs;
 - Restrictions on freedoms of expression, assembly or association;
 - Restrictions on freedom of movement or access (to institutions or territories) to carry out human rights monitoring and reporting;
 - Opportunities for participation in public affairs;
 - Surveillance or interferences in private life;
 - Impediments to access and communicate with international bodies, or any reprisals faced for doing so.
2. From June 2014 to May 2016, has your institution documented or followed up on any alleged cases of human rights abuses, including undue restrictions on the activities of HRDs or instances of attacks, threats of intimidation against HRDs?
 - a. If yes, please provide further details, including the number and nature of those cases.
3. In any cases noted above, were bias-motivated crimes committed against the HRDs on account of their association with or work to support specific groups (e.g. based on gender, ethnicity, nationality, political opinion, religion, sexual orientation, etc.)?
 - a. If yes, please provide examples.
4. Please describe any activities of your institution related to the protection of HRDs and/or promotion of their rights, including activities conducted in partnership with the government and/or civil society organizations. (*For example*: monitoring and reporting; receiving individual complaints; conducting training initiatives; etc.)
5. Has your institution developed any strategy or action plan on the protection of HRDs?
 - a. If yes, please share a copy of the document/s, if possible.
6. Does your institution have a focal point on HRDs?
 - a. If yes, please provide background information on this focal point position, as well as contact information for the current focal point.

4.3.3 Questionnaire sent to human rights defenders

1. Do you give ODIHR permission to attribute the information you provide below to you or your organization by name, or would you prefer to provide this information anonymously?
 - a. If yes, do you also give ODIHR permission to identify you as the source of any official documents you provide, or would you prefer to share them anonymously?
2. Are you submitting responses in your personal capacity, or on behalf of an organization?
 - a. If you are responding for an organization, please provide the full name of the organization (including in English), specify your role at the organization, and provide a URL/address to the website of your organization.
3. Please describe your (or your organization's) activities related to human rights in your State.
4. Please describe the main challenges and/or good State practices that Human Rights Defenders (HRDs) encounter when conducting their human rights-related work in your State.
 - a. What recommendations do you have for authorities in your State on how to overcome any challenges specified above, and on how to improve the protection of HRDs?
5. From June 2014 to May 2016, have you (or your organization) directly experienced or directly documented any human rights abuses, including undue restrictions on the activities of HRDs, or instances of attacks, threats or intimidation against HRDs in your country (including based on gender, or other prohibited grounds of discrimination)?
 - a. If yes, please provide specific examples with relevant details (including date and facts of the case; alleged perpetrators; any official complaints/appeals; State responses; etc.). The examples can be illustrative of a trend, and do not have to include all cases of concern.
 - b. Please also submit any scanned copies (or URLs) of documents or official records relevant to those cases. (*For example:* official complaints; court rulings; arrest warrants; etc.).
6. Do you (or your organization) conduct any activities related to the protection of HRDs in your State? If yes, please describe the activities, and what impact they have had.
(*For example:* legal assistance to HRDs seeking redress or remedies; visiting HRDs in detention; raising individual cases with the government or international bodies on behalf of HRDs; commentary on laws impacting HRDs, etc.)

4.3.4 Questionnaire sent to OSCE field operations

1. Does your OSCE Field Operation have any programmatic activities (recent, ongoing, or planned) related to protection of HRDs and/or promotion of the *Guidelines on the Protection of Human Rights Defenders*?
2. From June 2014 to May 2016, has your Field Operation documented, reported on, or followed up on any alleged cases of human rights abuses, including undue restrictions or instances of attacks, threats or intimidation against HRDs, NGOs, or other civil society actors in the host country/territory?
 - a. If yes, please provide examples with relevant details (including date and facts of the case/s; alleged perpetrators; any official complaints/appeals; State responses; discrimination based on gender or other prohibited grounds; etc.).
3. In any cases noted above, were bias-motivated crimes committed against the HRDs on account of their association with or work to support specific groups (e.g. based on gender, ethnicity, nationality, political opinion, religion, sexual orientation, etc.)?
 - a. If yes, please provide examples.
4. Has your Field Operation identified or analysed any legislation or policies impacting the protection or work of HRDs in the host country/territory?
 - a. If yes, please provide details (including by attaching any existing such legal/policy analyses).
5. Please provide contact details of any HRDs whom you would recommend that ODIHR also contact, whose experience and input you think would be relevant and beneficial to ODIHR's research on the situation of human rights defenders in the OSCE region.

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- i OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders* (Warsaw: OSCE/ODIHR, 2014), page 20, paragraph 96. Available at: <http://www.osce.org/odihr/119633>.
- ii *Ibid*, pp. 4–5, paras. 19–22.
- iii *Ibid*, p. 3, para. 12.
- iv *Ibid*, p. 4, para. 16.
- v *Ibid*, pp. 5–6, paras. 23–30.
- vi *Ibid*, pp. 5–6, paras. 23, 27, 28, 36.
- vii *Ibid*, pp. 7–8, paras. 37–40.
- viii *Ibid*, p. 9, paras. 42–44.
- ix *Ibid*, pp. 10–11, paras. 48, 54.
- x *Ibid*, pp. 11–13, paras. 55–62.
- xi *Ibid*, pp. 11, para. 56.
- xii *Ibid*, pp. 13, paras. 63–64.
- xiii *Ibid*, pp. 14–15, paras. 69–71.
- xiv *Ibid*, pp. 15–16, paras. 74–75.
- xv *Ibid*, p. 16, paras. 76–77.
- xvi *Ibid*, p. 16, paras. 78–79.
- xvii *Ibid*, p. 17, para. 83.
- xviii *Ibid*, pp. 17–18, paras. 85–89.
- xix *Ibid*, pp. 18–19, paras. 90–91.
- xx *Ibid*, p. 20, para. 97.
- xxi *Ibid*, pp. 20–21, para. 99.
- xxii *Ibid*, pp. 19–20, para. 94.
- xxiii *Ibid*, p. 20, para. 95.
- xxiv *Ibid*, p. 21, paras. 101 and 103.