

## OSCE/ODIHR Submission of Information about an OSCE Participating State under Consideration in the Universal Periodic Review Process

**Participating State:** Uzbekistan

**UPR Working Group Session and Date of Review:** 44<sup>th</sup> Session, October-November 2023

### Background

1. Uzbekistan has been a participating State (pS) Organization for Security and Co-operation in Europe (OSCE) since 1991, and has thus undertaken and recently reaffirmed a wide range of political commitments in the “human dimension” of security as outlined in relevant OSCE Documents.<sup>1</sup>
2. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has been mandated by OSCE pSs, including Uzbekistan, to assist them in implementing their human dimension commitments. ODIHR assistance includes election observation and assessment activities as well as monitoring and providing assessments, advice and recommendations relating to implementation of commitments in the fields of human rights, democracy, tolerance and non-discrimination, and the situation of Roma and Sinti.
3. The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in Uzbekistan and its implementation of past recommendations, as well as to formulate new recommendations to enhance the enjoyment of human rights and fundamental freedoms in Uzbekistan.

### Legislation reviewed by ODIHR

4. Upon request by authorities of an OSCE pS or of an OSCE entity, ODIHR reviews draft or enacted legislation of OSCE pSs to analyze conformity with OSCE commitments and international law.<sup>2</sup> In 2017-2022, these relevant legal opinions (on topics other than elections) were issued:

#### *Freedom of Expression*<sup>3</sup>

5. The legal documents reviewed by ODIHR envisaged a scheme whereby governmental bodies monitor the compliance of mass media and the Internet with applicable legislation, which then serves as the basis for suspending or withdrawing licences or restricting Internet access.
6. ODIHR concluded that the contemplated scheme should be rejected in its entirety, due to the serious human rights concerns arising from vague and overbroad scope of the restrictions to freedom of opinion, expression and information and lack of legal certainty, which may lead to arbitrariness and abuse by public authorities. Moreover, a decision

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<sup>1</sup> OSCE/ODIHR, *Compendium of OSCE Human Dimension Commitments: Volume 1, Thematic Compilation (third edition)*, and *Volume 2, Chronological Compilation (third edition)*, 2011; OSCE Astana Commemorative Declaration: *Toward a Security Community*, 3 December 2010.

<sup>2</sup> The legal reviews and opinions, often produced in co-operation with the CoE’s Venice Commission, are available at [www.legislationline.org](http://www.legislationline.org).

<sup>3</sup> OSCE/ODIHR *Comments on Certain Legal Acts Regulating Mass Communications, Information Technologies and the Use of the Internet in Uzbekistan*, 31 October 2019. These Comments should be read in conjunction with the OSCE Representative of Freedom and OSCE/ODIHR joint *Legal Analysis of the Media of the Draft Law on Mass Media of the Republic of Uzbekistan*, November 2021.

imposing restrictive measures, such as the suspension or withdrawals of licences and restrictions to Internet access, should be imposed only by judicial bodies, following court procedures respecting due process guarantees.

*ODIHR Comments on the Law on Countering “Extremism” of Uzbekistan<sup>4</sup>*

7. ODIHR recommended considering whether a specific law on countering so-called “*extremism*” should be retained at all, given the inherent difficulty of providing a legal definition of the term “*extremism*” and the serious human rights concerns arising from vague and overbroad definitions and provisions. The term “*extremism*” in this Law is not always necessarily connected with acts of violence or criminal offences (defined in compliance with international human rights standards). The scope and ambiguity of the definitions create a particular risk that it will be used as a tool for the suppression of legitimate activities. In particular, ODIHR recommended to (i) reconsider whether the Law should be retained or at the very least, substantially revise it to ensure that it exclusively addresses “*violent extremism*”, and more generally is more precisely defined, while safeguarding legitimate activities; (ii) ensure that so-called “*incitement to racial, national, ethnic or religious hatred*” is prohibited only if the expression is intended to incite imminent violence, and is likely to incite such violence; and (iii) Provide in the Law protection or exceptions for statements or dissemination of materials when they are intended as part of a good faith discussion or public debate on a matter of religion, education, scientific research, politics, arts or some other issue of public interest.

*ODIHR Comments on the Law on Combatting Terrorism of Uzbekistan<sup>5</sup>*

8. ODIHR concluded that the Law raises serious concerns with regard to its compatibility with international human rights standards and has the potential to unduly restrict the rights to life, liberty and security of person, privacy, freedoms of expression, association and peaceful assembly, freedom of thought, conscience and religion or belief and equality. An overarching concern is the definitions of “*terrorism*” and related terms, which require amendment to clarify their scope and comply with the principles of legal certainty and foreseeability. Moreover, the counter-terrorism powers conferred to public authorities are far-reaching, yet there is currently no clear legislative framework to clearly specifying the circumstances and conditions when such powers may be used, nor on procedures and safeguards.

Concrete recommendations included:

- Revise the overbroad definition of “*terrorism*” and other related terms in the Law (and in the Criminal Code);
- Introduce external independent control over the reasonableness of the decision to initiate an “*anti-terrorist operation*”, while ensuring that such operation is strictly limited in time and more clearly and strictly circumscribing the personal, material, geographical and temporal scopes of the powers of the authorities involved in combatting terrorism;
- State the key principles that should guide the use of force, including absolute necessity, restraint and proportionality, emphasizing that the use of potentially lethal force is a measure of last resort, to be employed only when strictly necessary and unavoidable in order to protect life or prevent serious injury from an imminent and serious threat, and exclude the use of weapons and ammunition that carries unwarranted consequences;

<sup>4</sup> OSCE/ODIHR Comments on the Law on Countering “Extremism” of the Republic of Uzbekistan, 22 November 2022

<sup>5</sup> OSCE/ODIHR Comments on the Law on Combatting Terrorism of the Republic of Uzbekistan, 20 December 2019

- Specify, in the Law or other legislation that information obtained by unlawful means, including torture or other inhuman or degrading treatment or punishment, are not admissible as evidence in court.

*Joint ODIHR Venice Commission Opinion on the Draft Law of Uzbekistan “on Freedom of Conscience and Religious Organizations”<sup>6</sup>*

9. The Joint Opinion concluded that the Draft Law (now adopted with minor adjustments) maintains major restrictions incompatible with international human rights standards. Particular concerns are: bans on unregistered religious or belief activities and communities, and burdensome registration requirements. Further concerns include various prohibitions or limitations on the exercise of the right to freedom of religion or belief, such as on religious education, authorized places for worship and the production, import and distribution of religious materials. Moreover, it prohibits the ban of missionary activities and “proselytism” that contributes to the so-called “*violation of inter-confessional harmony and religious tolerance in society*”, which remain subject to administrative and criminal sanctions. Also, the Draft Law does not provide for strong guarantees of the autonomy for religious organizations and continues to subject fundamental elements of the freedom to manifest religion or belief to forms or state control, such as the organization of events or the participation in pilgrimages outside the country. Finally, the grounds that may justify the suspension or dissolution of a religious organization are broad, and give too wide a discretion to authorities, without effective remedy.

*ODIHR Urgent Comments on the Draft Decree of the President on Measures to Improve the Anti-Corruption System of Uzbekistan<sup>7</sup>*

10. Anti-corruption agencies require a stable legislative framework and ODIHR thus recommended in its review of the Draft Decree of the President on Measures to Improve the Anti-Corruption System of Uzbekistan to establish the agency through a special law or a constitutional provision. ODIHR noted that the Decree reviewed lacked necessary clarity with respect to powers and procedures, and overall seemed not to meet standards of the UN Convention against Corruption<sup>8</sup> and the Jakarta Principles.<sup>9</sup> The Agency seemed to lack institutional and financial autonomy, as well as a robust mandate, and internal and external accountability.

*ODIHR Urgent Opinion on the Draft Law on the Ombudsperson of Uzbekistan<sup>10</sup>*

11. There are some positive provisions in the Draft Law on the Ombudsperson of Uzbekistan, specifically the explicit reference to the independence of the Ombudsperson. However, the Draft Law should be amended to ensure important aspects pertaining to the National Human Rights Institutions, especially those at the core of the institution’s basic guarantees of independence, as well as to ensure full compliance with the Paris

<sup>6</sup> Venice Commission and OSCE/ODIHR *Joint Opinion on the Draft Law of Uzbekistan “on Freedom of Conscience and Religious Organizations*, 12 October 2020.

<sup>7</sup> OSCE/ODIHR *Urgent Comments on the Draft Decree of the President on Measures to Improve the Anti-Corruption System of Uzbekistan*, 10 July 2020.

<sup>8</sup> [Convention against Corruption \(unodc.org\)](https://www.unodc.org/convention-against-corruption/)

<sup>9</sup> [JAKARTA STATEMENT\\_en.pdf \(unodc.org\)](#)

<sup>10</sup> OSCE/ODIHR *Urgent Opinion on the Draft Law on the Ombudsperson of Uzbekistan*, 11 February 2022

Principles.<sup>11</sup> In particular, provisions for the selection and appointment procedures of the Ombudsperson, Deputy Ombudsperson and Regional Representatives require clarification, as well as provisions on the dismissal process.

*ODIHR Comments on the Draft Law on Rallies, Meetings and Demonstrations of the Republic of Uzbekistan*<sup>12</sup>

12. The review of the Draft Law on Rallies, Meetings and Demonstrations of the Republic of Uzbekistan expressed concern over the very restrictive nature of the Draft Law, which was later withdrawn. As there is currently no specific legislation on Freedom of Peaceful Assembly (FOPA) in Uzbekistan the following main recommendations from the review remain valid:

- Expressively include the right to FOPA in legislation;
- Introduce a simpler legal definition of assemblies in line with international standards and good practices, which would cover spontaneous and simultaneous assemblies as well as counter-demonstrations;
- Introduce a system of notification of assemblies, not authorization, with reasonable notification period and remove the requirements to submit detailed information;
- Avoid blanket and overbroad restrictions on venues and decide suitability on a case by case basis;
- Avoid any rules on times on when assemblies can take place and on the duration of assemblies;
- Ensure that everyone, not only citizens of Uzbekistan who reached age of majority, has the right to FOPA;
- Avoid banning people declared legally incompetent and people registered in psychiatric institutions from organizing assemblies;
- Allow non-registered associations to organize assemblies;
- Avoid provisions on organizers of assemblies to carry out core state duties, such as policing of assemblies;
- Introduce a rule of general rule on risk of imminent violence for dispersing assemblies instead of a long list of situations where this can be conducted; and
- Specify that what applicable legislation applies to appeals of decisions and that timely decisions on appeals must be rendered.

*Opinion on the Law on the High Judicial Council of the Republic of Uzbekistan*

13. In its review of the Law of the High Judicial Council (HJC) of Uzbekistan,<sup>13</sup> ODIHR concluded that certain provisions of the Law on the HJC undermine the independence, transparency and impartiality of the HJC and thus of the judicial institutions as well. The Law provides the President of Uzbekistan, head of the executive branch, with significant and unjustified powers to influence the composition of this body; the President, can directly appoint 8 members and significantly influence the appointments of the remaining 13 members, without or with extremely limited involvement of the judiciary. Other provisions are unclear, such as how the list of candidates proposed by the Head of the High Judicial Council is created or grounds for dismissal based on “*misconduct defaming his/her honesty*”.

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<sup>11</sup> Paris Principles - GANHRI

<sup>12</sup> OSCE/ODIHR Comments on the Draft Law on Rallies, Meetings and Demonstrations of the Republic of Uzbekistan, 2 September 2019.

<sup>13</sup> OSCE/ODIHR Opinion on the Law on the High Judicial Council of the Republic of Uzbekistan, 1 October 2018

## Election-related activities

*Presidential Election, 24 October 2021*

14. The ODIHR EOM final report<sup>14</sup> concluded that the election “*demonstrated that recent reforms, which have gradually introduced welcome improvements, have not yet resulted in a genuinely pluralistic environment. Remaining restrictions on fundamental freedoms and the right to stand continue to run counter to OSCE commitments. While multiple candidates contested the election, there was no meaningful engagement with each other or with voters, and candidates refrained from challenging or criticizing the incumbent. The general lack of distinction between the incumbent’s campaign and official activities blurred the line between state and party. Despite some opening of the media environment, in particular online, the space for citizens to freely and fully express their opinion remains controlled. Election preparations were handled efficiently and professionally. However, while Election Day was peaceful, significant procedural irregularities were observed and important safeguards were often disregarded during voting, counting and tabulation*”.
15. ODIHR offered the following priority recommendations:
- Provide for a genuinely pluralistic environment, the legal framework on the freedom of political and civic association, FOPA and expression should be reviewed, and lawmakers should ensure that any restrictions be clearly prescribed by law and imposed only when necessary, in line with democratic principles. In line with international standards, the reform process should be inclusive, ensure public discussion and be completed well in advance of the next elections;
  - Revise legislative and administrative requirements and procedures for the registration of political parties to respect and encourage pluralism and freedom of association. Registration of political parties should be carried out strictly on the basis of objective and transparent criteria and be subject to judicial remedy;
  - Ensure a clear separation between state and party in practice. An effective sanctioning mechanism against the misuse of administrative resources should be established and implemented;
  - Clearly define defamation and libel in the law. To comply with international standards, criminal provisions for defamation should be repealed in favour of civil remedies designed to restore the reputation harmed. Any fines should be proportionate and should not infringe on freedoms of speech and opinion. Public officials should not have greater protection and statements directed at them should not be subject to stricter sanctions;
  - Review restrictions on candidacy based on residency, language proficiency, disabilities and affiliation to a political party to be in line with international standards and commitments;
  - Strengthen the integrity of the voter registration and of the polling process. Additions to the voter list on Election Day should only be permitted in accordance with clearly defined rules, subject to judicial or administrative control, with effective safeguards against multiple voting;
  - Blocking of websites should not serve as a tool to control content, restrict the flow of information across borders, or as a sanction against critical coverage. Websites should only be blocked, based on objective and transparent criteria defined in the law. Possible limitations should be content-specific, while general bans of whole websites should be avoided. The websites in question and the public should be informed when such blockings are in place and provided with a remedy;

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<sup>14</sup> ODIHR [EOM final report](#), 22 April 2022.

- Amend relevant legislation to allow for citizen election observation by independent non-governmental civil society organizations (CSOs).

### **Tolerance and non-discrimination issues**

16. OSCE pSs are committed to promote tolerance and non-discrimination and specifically to combat hate crime. ODIHR supports states to implement such commitments. In this context, ODIHR produces an annual report on hate crime to highlight the prevalence of hate crimes and good practices that pSs and CSOs have adopted to tackle them. ODIHR also helps pSs design and draft legislation that effectively addresses hate crimes; provides training that builds the capacity of participating States' criminal justice systems and the law-enforcement officials, prosecutors and judges that staff them; raises awareness of hate crimes among governmental officials, civil society and international organizations; and supports the efforts of CSOs to monitor and report hate crimes.
17. In respect of the 2021 Hate Crime Report<sup>15</sup> and ODIHR's key observations,<sup>16</sup> ODIHR observes that Uzbekistan has not reported statistics on hate crimes to ODIHR since 2015. ODIHR recommends re-establishing a National Point of Contact on hate crime as per OSCE commitments.<sup>17</sup> In addition, ODIHR observes that Uzbekistan would benefit from raising the awareness and building the capacity of criminal justice officials in relation to hate crimes.

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<sup>15</sup> [Uzbekistan | HCRW \(osce.org\)](#)

<sup>16</sup> Findings on the information available to ODIHR on hate crimes in a particular participating State in relation to OSCE commitments are presented as Key Observations. There are, in total, 13 Key Observations linked to OSCE pSs' commitments in the area of addressing hate crime. This [methodology](#) has been in place since the 2020 Hate Crime Report.

<sup>17</sup> OSCE participating States have committed to "nominate a national point of contact on hate crimes to periodically report to the ODIHR reliable information and statistics on hate crimes" (MC Decision No. 9/09)