



Working Session 8: Tolerance and Non-Discrimination 2010 OSCE Review Conference

**Warsaw, Poland
October 6, 2010**

We welcome the opportunity provided by this review conference, and the upcoming Summit in Astana, to commend the work of the Office for Democratic Institutions and Human Rights (ODIHR) to respond to hate crimes directed at lesbian, gay, bisexual and transgender (LGBT) communities. As part of that review, it is time for OSCE participating States to take a formal decision at the Ministerial level to ensure that ODIHR retains the mandate and the resources to address hate crimes directed at LGBT individuals as part of the full range of OSCE commitments to combat intolerance and discrimination in the region.

Unfortunately, a review of existing documentation in the annual ODIHR report on Combating Hate Crimes in the OSCE region, as well as reports by the EU Fundamental Rights Agency, the U.S. Federal Bureau of Investigation and past Hate Crime Surveys by Human Rights First, reveals an escalating pattern of LGBT violence. Far greater efforts are still needed to understand and document these crimes across the region. For example, a recent survey by the National Coalition of Anti-Violence Programs in the United States found that half of all LGBT hate murders in 2009 were committed against transgender women, and that 79% of the victims were people of color. We urge all participating States to find ways to work with the ODIHR to document the scope, severity and communal impact of LGBT violence committed within their jurisdiction.

In addition to documenting LGBT violence, we also call on participating States, if they have not already done so, to enact laws that expressly address LGBT hate crimes. Such laws should recognize bias as an aggravating circumstance in the commission of violent crime and should provide enhanced penalties for crimes motivated by animus on the basis of the victim's real or perceived sexual orientation or gender identity.

We are very pleased that the United States has now joined seventeen other OSCE participating States that have enacted some form of LGBT hate crime law. Last October, President Obama signed the *Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act*, which was named after two Americans who were brutally murdered because of their identities. The law expands the previous federal hate crime law in the United States to include crimes motivated by the actual or perceived gender, sexual orientation, gender identity, or disability of the intended victim.

Matthew Shepard, one of the two namesakes of the new U.S. law, was a 21-year-old gay American who was brutally beaten and tied to a fence in Wyoming, where he was left to suffer for 18 hours before

anyone found him. He died five days later. Today, Matthew's murder is recognized as a national tragedy; the fact that similar tragedies have been repeated so often across the entire OSCE region is a shameful reality. We call on all other participating States to review the legal tools at their disposal to ensure they have adequate mechanisms to investigate and prosecute such crimes and to punish the perpetrators of LGBT-related hate crimes with sentences that reflect both the severity of the crimes and their assault on communal tolerance and group identity.

While accurate documentation and effective prosecution of LGBT violence are both absolutely essential, such violence cannot possibly be eliminated without an even broader commitment to a full range of legal reforms to promote equality for all LGBT citizens in the region. As a first step, we call on all participating States in the OSCE region to remove any laws that continue to criminalize homosexual conduct or identity or the public dissemination of scientifically-supported information on homosexuality and sexual health. And in the spirit of the upcoming Astana Summit, we specifically call on Uzbekistan and Turkmenistan to reform or repeal laws that criminalize consensual, homosexual conduct. Such laws represent grave violations of human rights and they are drivers of intolerance and violence against LGBT communities.

Twelve years after Matthew Shepard was killed, and in the spirit of the new hate crime law named in his honor, let us all work together to provide the tools, funding and expertise necessary to replace hate with understanding, compassion and acceptance across the OSCE region. To do this, we call on the Chair-in-Office to include sexual orientation and gender identity explicitly in all relevant Ministerial decisions related to tolerance, non-discrimination or hate crimes, and in the work of all OSCE tolerance related mechanisms.

Indeed, a small minority of countries must not be allowed to hide behind OSCE "consensus" to block the rights of a targeted minority community. Forty-seven Council of Europe states have already committed to a recommendation of the Committee of Ministers to enact LGBT hate crime provisions and ensure "effective, prompt and impartial investigations" of hate crimes committed on the basis of sexual orientation and gender identity. That standard, therefore, already exists as a commitment across nearly the entire OSCE region. It must now, at long last, be given full recognition in relevant Ministerial decisions of the OSCE.