Recommendations for tackling hate speech and hurtful speech

Developed within the "CHAD – Countering Hate Speech and Hurtful Speech against Diversity: Roma, LGBTIQ, Jewish and Migrant Communities" project











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March 2024

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The publication was developed in the framework of the project "CHAD – Countering Hate Speech and Hurtful Speech against Diversity: Roma, LGBTIQ, Jewish and Migrant Communities" (project nr. 101049309), which is co-funded by the Citizens, Equality, Rights and Values Programme (CERV) of the DG Justice, European Commission and coordinated by Phiren Amenca International Network in partnership with Budapest Pride, Haver Informal Educational Foundation and Political Capital.

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Preface

Hate speech has become part of our everyday lives, from our personal interactions to political discourse, both online and offline. Tackling it is both possible and necessary. Over the past two years, we have worked extensively on hate speech as part of a project co-funded by the European Union. The results of our work have led us to produce 42 recommendations for legislators, law enforcement, education stakeholders, the media and civil society. We believe that the implementation of these recommendations can help reduce prejudice and contribute to a more inclusive society.

The members of this project consortium are grateful to the participants at the national conference and the closed-door discussion held in September 2023, who provided crucial support in formulating the proposals set out in this report by sharing their professional knowledge, experience and opinions.

The project "CHAD – Countering Hate Speech and Hurtful Speech against Diversity: Roma, LGBTIQ, Jewish and Migrant Communities" (project number: 101049309) is co-funded by the European Union and aims to develop recommendations to counter hate speech and hurtful speech. The consortium is led by the Phiren Amenca Network, while the development of the recommendations is led by the Political Capital. Supporting members are Budapest Pride and the Haver Informal Education Foundation.

Why do we need to take action against hate speech?

The proliferation and normalisation of hate speech and hurtful speech have been facilitated by the breakdown of social barriers within society. This is largely due to the amplification of emotional reactions on social media, which plays a dominant role in the dissemination of information. Additionally, hate speech which was once deemed extreme, has breached societal boundaries and standards (known as cordon sanitaire) and has increasingly begun to appear in the rhetoric of mainstream political actors and media outlets. This has led to an increase in the legitimacy and acceptance of hateful content (a phenomenon known as mainstreaming).

Social crises can exacerbate hate speech, fears, and prejudices, leading to increased scapegoating and targeting of minority groups. This was observable through the various global and European challenges over the past years, such as the coronavirus pandemic and subsequent economic crisis, the Russian aggression against Ukraine, and the terrorist attacks by Hamas against Israel and the following Israeli military response. The coronavirus pandemic witnessed an increase in prejudicial attitudes against Asians and the elderly, the Russian invasion of Ukraine brought up issues concerning refugees and increased suspicions against Russians and Ukrainians, and the Israeli-Hamas war heightened both antisemitism and Islamophobia. In addition to these crises, several European polities are increasingly shifting towards the radical right, thus normalising certain narratives surrounding LGBTQ+, immigrants and Roma groups.

Hate speech, and hurtful speech more broadly is not only legally defined but can also cause serious harm to individuals, communities and societies as well. Hate speech knowingly utilises words intended to belittle and exclude individuals heightening the fear of rejection for members of vulnerable groups and communities. This often leads individuals to hide and deny their own identities. Similarly, hate speech can also influence the self-perception of minority groups.

The strong display of hate speech against minority groups can easily become the norm, leading to alienation and the reinforcement of prejudice and hate towards that group. Therefore, it is imperative to acknowledge that tackling hate speech is not solely the responsibility of policymakers and victims but rather a collective responsibility of society. As stated by one of our event speakers, combating hate speech is the equivalent of standing up for democracy and defending democratic values.

In light of these considerations, the following recommendations have been developed by the CHAD consortium members: Political Capital, Phiren Amenca, the Haver Foundation and Budapest Pride. The recommendations are based on the findings of the events organised as part of the project "CHAD - Countering Hate Speech and Hurtful Speech against Diversity: Roma, LGBTIQ, Jewish and Migrant Communities".¹

The difficulties in conceptualising and measuring hate speech

There is no societal consensus concerning the definition of hate speech. However, the Council of Europe's CM/Rec(2022)16² recommendation on combating hate speech provides the most commonly accepted definition. On the basis of this conceptualisation, it is necessary to distinguish hate speech from other acts motivated by prejudice, such as hate crimes.

In Hungary, hate speech is defined under Article IX of the Fundamental Law, which distinguishes between freedom of expression and racism. The Fundamental Law stipulates that freedom of expression must not violate human dignity and the dignity of the community. The Constitutional Court of Hungary (AB), in its decision 30/1992. (V. 26.) defined the starting points for this differentiation by using the necessity-proportionality test and the "clear and present danger" test, which was adopted from American legal literature. This decision remains relevant today. Courts and constitutional courts use the necessity

and proportionality test to decide whether the restriction of a fundamental right can be considered constitutional if that restriction occurs to protect another fundamental right. The clear and present danger test is used to examine the impact of the communication and, in certain cases, takes into account the speaker's malicious intent. These tests establish the criteria for differentiating between speech and opinion that is protected by freedom of expression and what can be classified as hate speech, taking into account the outcome of the communication and the intentions behind it.

When observing hate speech from a legal perspective, it is crucial to distinguish between the statements of individuals performing public functions such as political leaders and journalists, and that of ordinary citizens. Only actors in the former category can be expected to uphold tolerance and equal treatment. Ordinary citizens are expected to refrain from inciting hatred and violence and from engaging in unlawful public activities.

The proposals and recommendations in this document apply to both punishable hate speech and hurtful speech that is protected under freedom of speech and expression. However, hurtful speech, although protected, can still be harmful ('lawful but awful').

Conceptual ambiguity makes defining the measure of hate speech difficult. The European Commission against Racism and Intolerance's (ECRI) 2022 report³ on Hungary shows that domestic public discourse is becoming increasingly xenophobic, and political discourse is becoming more polarised and hostile, particularly towards immigrants and members of the LGBTQ+ community. Furthermore, political actors and other public figures continue to spread anti-Roma rhetoric and narratives.

There is a lack of reliable data regarding the extent of hate speech in Hungary. There are statistics regarding four crimes related to hate speech – (1) Incitement Against a Community, (2) Open Denial of Nazi Crimes and Communist Crimes, (3) Blasphemy of National Symbol, and (4) Use of Symbols of Totalitarianism – collected by the Ministry of Interior. However, these statistics do not accurately reflect the severity of the situation. This claim is supported by the various studies and surveys conducted by civil society organisations (CSOs).⁴

¹ The project's webpage: https://phirenamenca.eu/category/projects/chad/. More information about the events: https://politicalcapital.hu/hirek.php?article_read=1&article_id=3282; https://pcblog.atlatszo.hu/2024/02/20/a-gyulolet-dimenzioi-egy-konferencia-tanulsagai/

^{2 &}quot;For the purposes of this recommendation, hate speech is understood as all types of expression that incite, promote, spread or justify violence, hatred or discrimination against a person or group of persons, or that denigrates them, by reason of their real or attributed personal characteristics or status such as "race", colour, language, religion, nationality, national or ethnic origin, age, disability, sex, gender identity and sexual orientation." https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a67955

³ https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/hungary

⁴ For example, Mazsihisz (https://mazsihisz.hu/mazsihisz/letoltheto-dokumentumok/antiszemita-incidensek-beszamolok) and the Action and Protection Foundation (https://tev.hu/havi-jelentesek/) monitor antisemitic hate speech, while the Háttér Society monitors anti-LGBTQ sentiments (https://hatter.hu/kiadvanyaink/speak-out-a-survey-of-online-anti-lgbt-hate-speech-and-hate-crime).

I. Recommendations for the strengthening of democracy and the rule of law

Hate speech does not exist in a vacuum, but rather reflects and is embedded in the political and social context of a country. Effectively combatting hate speech requires improving a country's political and social framework. This requires strengthening the democratic and rule of law framework, as outlined below.

- 1. The State must give priority to combating all forms of prejudice, intolerance, and discrimination in a defined manner. To achieve this, the political and individual autonomy of the institutions, and authorities responsible for monitoring fundamental rights and equality must be restored. Additionally, all state institutions must integrate these values into their work so that institutional representatives can effectively address all forms of intolerance and discrimination.
- 2. Actors who can influence public opinion and who have social legitimacy and credibility (e.g. heads of state institutions, politicians, public figures, religious leaders) should take the lead in rejecting prejudices and stereotypes in public discourse. On the one hand, they should distance themselves from rhetoric and campaigns that exacerbate political polarisation and incite hatred against certain groups, institutions, and individuals. On the other hand, they should oppose hate speech and incitement against minorities. Their statements, actions, and political decisions should exemplify the protection of human rights, equality, and non-discrimination, as outlined in the values of the Fundamental Law.

- 3. The state should provide reliable, long-term support to ensure the basic functioning of civil society that promotes human rights and equality and protects the interests of minority groups. Funding should be distributed in a transparent and accountable manner, ensuring equitable distribution.
- 4. The government, state institutions, municipalities and minority self-governments should cooperate with organisations representing minority groups and civil society on minority issues. They should meaningfully involve these actors in the decision-making process in order to increase public tolerance, which is one of the foundations for combating hate speech.
- 5. The state should initiate targeted educational programs and social campaigns with vulnerable and stigmatised groups in order to raise public awareness and sensitivity. The fight against stereotypes and prejudices should be integrated into institutional education from the earliest possible age.
- **6. Municipalities should actively promote the rights of local minorities.** Municipalities and local communities should continue to communicate with each other in a clear and transparent manner so that these good practices may become more widespread in more areas. Municipalities should provide the necessary infrastructure for events organised by minorities and support them with local funding.

II. Recommendations for legislators and law enforcement

Hate speech in Hungary is regulated by criminal law⁵, civil law⁶ and media law⁷. Legal experts generally find the existing laws and regulations satisfactory, although they do acknowledge some gaps, difficulties and unused opportunities, especially with regard to law enforcement.

- 7. Police, prosecutors, courts and the Ministry of Interior should collect statistics on situations involving hate speech that reflect reality. In order for lawmakers and legal practitioners to be able to provide appropriate social and legal responses to the presence of hate speech, trustworthy and accurate statistics are needed, which first and foremost requires systematic and complete data collection. Data should be collected not only for ongoing cases but also on rejected reports. The Ministry of Interior should extend the public criminal record by allowing cases involving hate speech to be searched. This would make it possible to search for cases that do not fit into the four criminal categories of hate speech mentioned above, but which can be classified as hate speech.
- **8.** The state must support CSOs in their efforts to collect data and monitor hate speech, not only financially but also through legal and institutional means such as access to data, and access to institutions.

⁵ The criminal code punishes hate speech under four scenarios: Incitement Against a Community (Section 332), Open Denial of Nazi Crimes and Communist Crimes (Section 333). Blasphemy of National Symbol (Section 334), Use of Symbols of Totalitarianism (Section 335).

⁶ Civil law and the violation of personal rights is regulated with regards to hate speech under the Civil Code Section 2:54. [Enforcement of personality rights] (5).

⁷ The Act of CLXXXV of 2010 on Media Services and Mass Media containing basic rules pertaining to freedom of press and media content.

Recommendations for lawmakers

- 9. In its strategy to restrict prejudice and hate speech, the state should focus on prevention. This can be achieved through the development and implementation of a comprehensive national strategy overseen by relevant ministries such as the Prime Minister's Office and the Ministry of Interior. The strategy should be developed in cooperation with representatives from affected groups, who should also be able to monitor its implementation. This strategy and the changes specified within would ensure that the law would be a mechanism of last resort utilised against hate speech.
- 10. The possibility of a civil remedy (civil action for violation of the dignity of communities) should be made more accessible by extending the 30-day time limit and by adapting the conditions for the requirement of legal representation.
- 11. The protected groups listed in the Civil Code need to be harmonised with the protected characteristics listed in Act CXXV of 2003 on equal treatment and the promotion of equal opportunities. Currently, the Civil Code only mentions the Hungarian nation, and national, ethnic, racial⁸ and religious communities as protected groups. However, Section 8 of the Act of CXXV of 2003 on equal treatment and the promotion of equal opportunities has a much broader list of groups subject to discrimination.
- 12. The legislature should clarify the elements of *incitement to hatred and violence* listed under Section 332 of the Criminal Code. The jurisprudence in this area remains underdeveloped due to the low number of criminal proceedings in this area, which is a result of the ambiguity of *incitement to violence*. To overcome evidentiary barriers and interpretational ambiguities, the legislature must differentiate between the two elements. If the legislature fails to clarify these elements, the President of the Curia (Hungary's highest judicial authority), its Vice-President, the Heads of the Departments of the Curia, the Deputy Heads of the Departments of the Curia, or the General Prosecutor should initiate a judicial uniformity procedure.

- 13. The legislature should amend the rules on legal mediation to allow mediation to begin during the judicial phase of a case. Current legislation does not allow for the possibility of mediation in court proceedings, despite its potential benefits for both the victim and the defendant as well as for achieving preventative objectives. Mediation procedures offer the parties a chance to resolve the conflict through dialogue. In such cases, victims are less likely to become secondary victims and can resolve their grievances by receiving answers to their questions, thereby reducing self-blame. Research shows that these types of procedures can also reduce prejudice and increase empathy on the part of the perpetrators.
- 14. The government should do everything in its power to regulate hate speech on online platforms in accordance with European Union regulations. The regulations and expectations laid out in the Digital Services Act (DSA) should be observed by the National Media and Infocommunications Authority (NMHH), as an independent authority. Online social media platforms cannot be categorised as traditional media as they do not create content on their own and are considered service providers. The legislature should not apply existing regulations for offline media outlets directly to online sources but should create new regulations.
- 15. The state should compel online social media platforms to make their practices and complaint-handling mechanisms more transparent. All reported and removed content should be accompanied by a publicly available report, and academic researchers should be granted access to detailed data on such instances.

Recommendations for state institutions and authorities

16. Police and prosecutors should take a more conscious, consistent and effective stance against prejudicially motivated crimes. Authorities should initiate legal proceedings against incitement to hatred, and activities associated with unlawful organisations and actions. It is imperative that law enforcement agencies examine indicators of prejudice in potential crimes and classify offences appropriately to avoid under-qualification and prejudicial or victim blaming statements. Existing protocols and instructions, such as The National Chief of Police order no. 30/2019. (VII. 18.) on the tasks of the police in relation to responding to hate crimes (revised Investigative Protocol) and the related list of indicators, and Circular no. NF/1621/2015/3 of the Office of the General Prosecutor Department for Investigation Supervision and Preparation of Prosecution can be of great assistance in this matter. To ensure proper use of the protocols, targeted training should be provided

⁸ Race, as a protected category, appears as a social construction in national and international documents, considering how biologically constructed theories based on different "races" of humans are to be rejected.

⁹ According to literature and experts, this may be because before 2016, jurisprudence interpreted incitement to hatred as incitement to violence. In 2016, this was expanded to include incitement to violence, which was absent from previous legal practice.

to police and prosecution officers. The heads of these organisations should ensure that such training is organised.

- 17. Police and prosecutors should communicate cases involving vulnerable minorities and prejudicial motivation in a clear and objective manner, avoiding stereotyping and victim blaming. This will demonstrate an obvious zero-tolerance approach to such cases and can strengthen the confidence and trust of minorities in authorities.
- 18. State institutions that provide victim support and legal aid should make their services widely known to potential target groups so that people are aware of the situations in which they can seek support from these institutions. The contact information of these victim support and legal aid institutions should be prominently displayed at police stations and other state offices. The 24/7 victim support hotline and online support should be regularly promoted in the media and on online platforms. Legal and victim support institutions should work together with civil society representatives to ensure that as many victims as possible receive help and support. This will enable state institutions to provide more targeted support based on the feedback from CSOs. The exchange of experiences between the two spheres will increase the effectiveness of victim support work.
- 19. Courts should also apply mediation procedures, alternative sanctions and additional rules of behaviour for juvenile offenders in prejudicial cases. Special rules need to be evaluated to ensure that juvenile offenders understand their purpose and that their effects do not produce counterproductive outcomes. In order to increase the use and effectiveness of alternative sanctions, it is important to include this issue in the training of legal practitioners. During the criminal proceedings, the prosecutor has the first possibility to decide to suspend the criminal proceedings for up to six months and to order mediation as a so-called diversion measure. This requires the consent of both parties to the initiation of mediation and, in cases of bias, a specially trained mediator who can address the deep personal and identity issues of the victims and the potential power imbalances between the parties. Additional rules of conduct allow for individualisation, such as rules on writing a diary, visiting an institution, or volunteering, which have an educational and sensitising role.

- 20. The National Media and Infocommunications Authority (NMHH) should register provocative, extremist and racist internet content. This will enable the Media Council to investigate these sites. Regarding online content, the NMHH can only monitor websites that are classified as online press, such as online magazines and news sites. The NMHH does not have the legal competence to oversee content classified outside this category, which is why the Authority must also register it.
- 21. The NMHH should thoroughly investigate cases of incitement to hatred and exclusion, and violations of right to human dignity that are brought before the Media Council. All findings should be communicated to the public in a clear and concise manner.
- **22.** The NMHH should expand its nearly decade-long *Social diversity in news* media monitoring, not only monitoring the presence of diverse groups, but also the hate speech they encounter.
- 23. The Internet Hotline reporting platform operated by the NHMM should be advertised on an ongoing basis to raise awareness. The Internet Hotline platform allows for the reporting of forms of offensive content, including racist or hateful content. Although the Internet Hotline does not have authoritative power, it plays a crucial role in the removal of harmful online content.
- **24.** In the framework of the DSA, authorities should take legal action against hosting providers and platforms as long as they do not remove illegal content themselves.
- 25. Employees working within the justice system and state institutions should receive accredited (additional) training on issues related to prejudicially motivated crimes, minority issues and sensitisation. This requires centrally defined objectives and the agreement of actors within the justice system. Without this, it cannot be expected for investigators to recognise the nature of hate speech, and to assess, investigate, and adjudicate cases at later stages. Lecturers should include members of minority groups and/or representatives of organisations that protect the interests of minority groups.

III. Recommendations for education stakeholders

Education has a significant role in countering hate and offensive speech, as well as addressing prejudices and stereotypes. Sensitisation programs organised by CSOs may face challenges in reaching public education institutions and students due to the legal and political environment.

- 26. The Ministry of Interior (responsible for education in Hungary) should re-evaluate the National Core Curriculum with representatives from minority groups in order to ensure the presence of acceptance and prohibition of discrimination in education. The National Core Curriculum should be free of any stereotypical or prejudicial references to minorities and controversial historical or literary figures should be placed in a critical context. Educational resources should be made available to support discussion of social issues, to educate about controversial figures, and to promote the spirit of equality.
- 27. Teacher training at the university level should include elements that develop the ability of future teachers and educators to deal professionally with socially sensitive topics and issues. Future teachers need to be prepared to handle questions about minorities or concerning hate and hurtful speech. Intercultural teaching methods and skills should be introduced and constantly developed to support this.

28. Primary and secondary schools must be provided with sufficient space and time to discuss social issues. Leaders of public and private educational institutions should encourage events aimed at fostering dialogue on interethnic and religious topics, dismantling prejudice and creating a tolerant society. It may be beneficial to seek the assistance of CSOs and/or minority organisations that have appropriate curricula to help organise these programs. ¹⁰

IV. Recommendations for the media and journalists

A hagyományos médiának továbbra is nagy szerepe van a gyűlölet- és sértő beszéd, illetve – tágabban értelmezve – az előítéletesség és a sztereotípiák elleni fellépésben. Ez azzal együtt is így van, hogy egyre nő azon tartalom-előállítók (pl. közösségimédia-influenszerek) jelentősége, akik nem sorolhatók a médiára vonatkozó jogszabályok hatálya alá, és akik nem vonatkoztatják magukra a sajtóetikai önszabályozási normákat.

- **29.** Editorial bodies should strive for balanced reporting, diversity of opinion and greater inclusion of vulnerable minority groups. The goal of independent media is to amplify the voices and perspectives of underrepresented individuals and groups in society.
- **30.** All editorial bodies and journalists should make public the ethical values according to which they work. The Association of Hungarian Journalists (MÚOSZ) created an ethical code, which is mandatory for its members to follow and may be able to provide support. The objective of the code is to maintain journalistic activities ethically and respectfully and to support rights, and democratic public life within the framework of the rule of law.
- 31. Journalists and editorial bodies should strive for the equitable treatment of minorities and avoid prejudicial and stereotypical wording, and visual depictions. The BBC's foundational values¹¹ include the correct portrayal of minorities as one of the duties of journalists. Editorial boards and media outlets should develop a roadmap with relevant groups and members of the newsroom should participate in training related to minority groups.

¹⁰ For more, visit: National Network of Human Rights Educators (http://ejha-halozat.hu/index.php/category/tudastar/); Foundation for Democratic Youth (https://i-dia.org/szolgaltatasok/); Power of Humanity Foundation (https://www.emberseg.hu/emberi-jogi-neveles/); and the Euroguide Toolkit (https://euroguide-toolkit.eu/wp-content/uploads/2021/06/Hungary.pdf)

¹¹ https://www.bbc.co.uk/diversity/strategy-and-reports/diversity-commissioning-code-of-practice

- **32.** Editorial boards should consciously expand their contact lists to include experts from specific minority groups. This will provide journalists with valuable insights into minority issues and help eliminate stereotypical depictions and prejudices. Training materials provided by international organisations can further support these efforts.¹²
- **33.** Newsrooms should employ more people from minority groups in specialist positions (e.g. news anchors, media managers, reporters), following the example of the BBC. This is also the aim of the Roma Media Programme launched in 2006 and the training provided by the Roma Journalist Centre and the Independent Media Centre.
- **34.** In the interest of expanding legal awareness, newsrooms should increase their coverage of bias-motivated legal cases. This will increase the confidence of victims to report crimes committed against them.
- **35.** Journalist training must be reflective of technological changes and developments, as well as new challenges in society. Media professionals must be prepared to deal with online hate speech and trolls and should be capable of moderation.

V. Recommendations for civil society

Civil society in Hungary, and in particular CSOs representing the interests of minority groups, play an important role in countering prejudice and stereotypical attitudes, especially given the domestic political and legal environment. The following points can help increase the effectiveness of their work.

- **36.** CSOs should continue to share their knowledge and expand their contacts in the interest of intervention and prevention. It is a positive sign that large CSOs across the country are working with smaller, local organisations to reach more people.
- **37.** The various organisations should make every effort to reach out to (potential) victims and offenders, and possibly prevent criminal activity. One of the ways to achieve this is to strengthen the cooperation with smaller, local organisations, minority self-governments or local authorities, institutions, church leaders and opinion leaders. This can be achieved, for example, through local initiatives or the Police Café¹³ method. Organisations should seek to maintain these relationships and provide support to other organisations that wish to develop similar relationships.
- **38.** CSOs should strive for greater involvement of volunteers. It is worth exploring further the possibilities of the School Community Service (IKSZ). Volunteering helps to develop long-term empathy and sensitivity towards different minority groups.

¹² https://fra.europa.eu/en/publication/2008/diversity-toolkit-factual-programmes-public-service-television; https://www.ebu.ch/news/2019/06/new-e-media-toolkit-available-for-members

¹³ The Police Café is an approach to community policing, based on a Belgian model, in which discussions centred around an elaborate methodology, that allows for participants to discuss more than just policing issues. The Police Café promotes the opening up of society, reaches out to communities and target groups, and activates the formal or disconnected relationship between the official and the civil community. It also provides police with useful knowledge about the area for which they are responsible for. https://policecafe.hu/

- **39.** CSOs should monitor and document cases of hate speech or hate crime within their field of vision. This will provide more realistic and reliable statistics and contribute to justice for victims. Where CSOs suspect criminal behaviour, they should assist victims in obtaining the necessary legal and psychological assistance and take the necessary/possible legal action.
- **40.** In order to systematically monitor hate speech in the long term, CSOs need adequate financial and human resources. State, international, CSO and private donors should provide financial support or opportunities so that monitoring does not interrupted when an individual programme comes to an end.
- 41. CSOs should continue to organise online and offline campaigns aimed at building counter-narratives and sharing knowledge to counter the hateful, hostile and enemy-creating narratives of political actors and to empower targeted or vulnerable groups. Organisations should support each other in planning campaigns and sharing existing knowledge so that as many plans as possible can be implemented. Representatives of different vulnerable groups should work together in solidarity. Successful campaigns can be powerful and have the capacity to change minority stereotypes in the short and long term.
- **42.** CSOs should place more emphasis on advocacy work in the hope that their work on human rights and minority rights will become a part of national and international policymaking. Advocacy is underpinned by issues that CSOs bring to public attention and that require a political response. Donors should support this work financially, theoretically and practically.