

Handbook on Monitoring Freedom of Peaceful Assembly

Second Edition



Illustration: @benjaminfelis

Handbook on Monitoring Freedom of Peaceful Assembly

Second Edition



Published by the OSCE Office for Democratic Institutions and Human Rights
(ODIHR)

ul. Miodowa 10

00-251 Warsaw

Poland

www.osce.org/odihr

© OSCE/ODIHR 2020

All rights reserved. The contents of this publication may be freely used and copied for educational and other non-commercial purposes, provided that any such reproduction is accompanied by an acknowledgement of the OSCE/ODIHR as the source.

ISBN 978-3-903128-59-0

Designed by Homework, Warsaw, Poland

This Guidebook includes illustrations produced by Benjamin Felis. To ensure these are inclusive of all readers, ODIHR has provided text-based descriptions of each graphic, throughout.

Cover illustration: A diverse group of people are gathered around a banner “Strengthen Human Rights’. Men and women of various ages and backgrounds are among them, including a wheelchair user and a pregnant woman. Assembly monitors wearing vests, media representatives, a paramedic and police officers are standing to the side of the assembly, looking at the people who are gathered.

Contents

List of abbreviations and acronyms	6
Foreword	7
Introduction	10
I. SETTING UP AN ASSEMBLY MONITORING PROJECT	15
I.1. Monitoring: An overview	15
I.2. Why monitor assemblies?	17
I.3. The “right to monitor”	17
I.4. Monitoring methodology	19
I.4.1. Objective	19
I.4.2. Assembly selection criteria	19
I.4.3. Observation focus	20
I.4.4. Results of monitoring	20
I.4.5. Monitoring project characteristics and necessities	21
I.4.6. Monitoring principles and code of conduct for assembly monitors ..	23
II. ASSESSMENT STANDARDS AND PRINCIPLES	28
II.1. Definition and the scope of the protection	32
II.2. State obligations	36
II.2.1. Non-interference, respect	37
II.2.2. Facilitation, protection	38
II.2.3. Enabling environment	39
II.2.4. Effective redress and accountability mechanisms	40
II.3. Possible limitations on freedom of assembly	41
II.4. Policing of assemblies	47
II.4.1. Key principles	48
II.4.2. Duties and powers of law enforcement agencies	49
II.4.3. (Avoiding) the use of force	51
II.4.4. Accountability	57
II.5. The role of the organizers	63

- III. PREPARING TO MONITOR 66**
 - III.1. Background research 66
 - III.2. Contact with the law enforcement authorities and the organizer 70
 - III.3. Security risk assessment 70
 - III.4. Deployment plan 74
 - III.5. Pre-deployment briefing 79

- IV. OBSERVATION AND DOCUMENTATION 81**
 - IV.1. Arriving at the location of the assembly 81
 - IV.2. Observation indicators 82
 - IV.2.1. General description of the assembly 82
 - IV.3. Leaving the assembly location 97
 - IV.4. The end of the monitoring 99
 - IV.5. Reporting by the monitors 99

- V. ANALYSIS AND USING THE MONITORING FINDINGS 102**
 - V.1. Reporting 102
 - V.2. Advocacy 103
 - V.3. Litigation 106
 - V.4. Capacity building 106
 - V.5. Taking Action Internationally 106

- ANNEXES 111**

ACKNOWLEDGEMENTS

This handbook was drafted by Anita Danka, independent human rights law expert, and former human rights adviser/monitoring and response co-ordinator at ODIHR. The contributions of the following people provided valuable support in the development of this handbook: Kathryn Loops, Viktoriya Vaitovich in research support, Zeke Johnson, Aleksandar Sekulić, Kevin Blowe, Jocelyn Rosnick, Kalaya'an Mendoza, Gözde Arasil, Nino Tsagareishvili, Neil Jarman, Robert Podgorelec, Michael Hamilton, Gary White, Montserrat Pina Martínez and Ena Bavčić, in contributing to the revision process.

List of abbreviations and acronyms

ACHR	American Convention on Human Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CPT	Committee for the Prevention of Torture
CRC	Convention on the Rights of the Child
CRPR	Convention on the Rights of Persons with Disabilities
CSO	Civil Society Organization
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
KIP	Kinetic Impact Projectile
IACHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
LGBTI	Lesbian, gay, bisexual, transgender and intersex
NHRI	National Human Rights Institution
OAS	Organization of American States
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
UAV	Unmanned Aerial Vehicle (drone)
UN OHCHR	United Nations Office of the High Commissioner for Human Rights

Foreword

The right to assemble peacefully is one of the cornerstones of a democratic society and is interrelated with other human rights and fundamental freedoms, such as freedom of expression, freedom of association and freedom from torture and ill-treatment. It is enshrined in OSCE commitments, such as the Copenhagen Document of 1990, and in other applicable international and regional human rights instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

To support OSCE participating States in the implementation of their commitments on freedom of peaceful assembly, ODIHR has been monitoring public assemblies across the OSCE area since 2011. To date, monitoring exercises have been carried out in 31 participating States, and the key findings and recommendations have been published in four thematic reports. These reports highlight emerging trends, good practices and challenges in facilitating and policing public events, with a view to assisting governments in the implementation of their human dimension commitments.

In 2016, ODIHR published the *Human Rights Handbook on Policing Assemblies*, a tool to provide law enforcement officials with key information on upholding human rights standards in the context of policing assemblies and public-order management. Often in co-operation with the Council of Europe, ODIHR has also been active in providing legislative assistance to OSCE participating States in ensuring that public assemblies are regulated and policed in line with international human rights standards. As part of this work, in 2007, ODIHR and the Council of Europe's Commission for Democracy through Law (the Venice Commission) published the *Guidelines on Freedom of Peaceful Assembly*, with a revised edition following in 2010.

In order to support civil society actors and NHRIs in their efforts to contribute to strengthened implementation of human rights through independent monitoring and reporting on the exercise and facilitation of freedom of assembly, ODIHR published the first edition of the *Handbook on Monitoring the Freedom of Peaceful Assembly* in 2011. The handbook, one of the first of its kind, provided a conceptual and methodological framework to guide the independent monitoring of assemblies. Since the publication of the handbook, ODIHR's further experience in assembly monitoring has contributed to the further development of the Office's assembly monitoring methodology.

This second edition of the handbook builds on that additional assembly monitoring experience, incorporating further developments of ODIHR's assembly monitoring methodology, as well good practices identified in the work of other assembly monitoring organizations. It also incorporates key information gathered in the course of ODIHR's training programme for assembly monitors, which has been provided for OSCE staff, representatives of civil society organizations and of national human rights institutions in a number of OSCE participating States.

This second edition of the handbook, like the first, is intended as a practical tool to help monitors collect reliable information through the direct observation of public gatherings, and to assess the findings in relation to international human rights standards. Assemblies taking place in public places allow for the direct observation of the conduct of and interaction among the participants, law enforcement officials, and other public authorities and relevant actors. The handbook places an emphasis on the need to base assembly-monitoring findings – to the extent possible – on first-hand information, collected in adherence with the principles of transparency, accuracy and impartiality.

Independent and impartial monitoring of assemblies is an effective means of bringing to light violations of the right to freedom of peaceful assembly and other associated human rights, of identifying related challenges and good practices, and of supporting national and international action to guaranteeing human rights and fundamental freedoms in this context. Numerous assembly monitoring projects around the OSCE area have shown that assembly monitoring reports can be used to engage in a constructive dialogue with the authorities in the states concerned and to devise targeted programmes of assistance. These projects are an important source of information not only for civil society organizations in carrying out their advocacy work, but also for policymakers at all levels.

Civil society plays an important role in helping participating States to ensure full respect for human rights and fundamental freedoms. ODIHR's hope is that, like the first edition, the handbook will serve as a practical guide for all actors who would like to protect the full enjoyment of the right to freedom of peaceful assembly through professional independent monitoring.

Katarzyna Gardapkhadze
First Deputy Director, ODIHR

Introduction

As one of the foundations of any democratic society, the freedom of peaceful assembly has a firm basis in international human rights law, and has been reaffirmed by OSCE participating States in the 1990 Copenhagen Document, the 1990 Charter of Paris, the 1999 Istanbul Summit Declaration and the 2008 Helsinki Ministerial Declaration, on the occasion of the 60th anniversary of the Universal Declaration of Human Rights.¹

The freedom of peaceful assembly is associated with the right to challenge existing views within societies, to present alternative ideas and opinions, to promote the interests and views of minority groups and marginalized groups within societies, and to provide an opportunity for individuals to express their views and opinions in public, regardless of their power, wealth or status. While this right has to be ensured without discrimination,, international treaties have further reaffirmed the right to freedom of peaceful assembly on the part of specific groups, such as children², women³, persons with disabilities⁴ and migrant workers.⁵

¹ OSCE, "Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE", Copenhagen, 29 June 1990, para 9.2, <<https://www.osce.org/odihr/elections/14304>>; "Charter of Paris for a New Europe", Paris, November 1990, <<https://www.osce.org/files/f/documents/0/6/39516.pdf>>; "Istanbul Document 1999", Istanbul, November 1999, <<https://www.osce.org/files/f/documents/6/5/39569.pdf>>; and "Ministerial Declaration on the occasion of the 60th anniversary of the Universal Declaration of Human Rights", Helsinki, 5 December 2008, <<https://www.osce.org/files/f/documents/a/e/35476.pdf>>.

² United Nations (UN) General Assembly, "Convention on the Rights of the Child" (CRC), 2 September 1990, Article 15, <<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>>.

³ UN General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women", 19 December 1979, (CEDAW), Article 7, <<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>>.

⁴ UN, "Convention on the Rights of Persons with Disabilities" (CRPD), 13 December 2006, Articles 4 and 29, <<https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>>.

⁵ UN General Assembly, "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families", 18 December 1990, Article 26, <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>>.

Public assemblies can be particularly important and prominent at times of political tension or when individuals or groups are making demands for social change. Protests are often used in a variety of campaigns by political groups, including as an aspect of election campaigns. They can also be an important means of calling for change in contexts where more institutional mechanisms for effecting social change are not available.

Participation in public assemblies is a political right, the realization of which can give a public voice to those without access to their legislative bodies, those who lack representation through elections, or those with little or no opportunity to voice their opinions through the media. The right to peaceful assembly can play an instrumental role in building support for change or reforms, or in voicing discontent, and the mobilization of people through public assemblies is often the most direct means of trying to influence the behavior of governments or to reflect local opinion and views as part of the regular political process.

Freedom of peaceful assembly is an individual right that is always expressed in a collective manner. Such collective manifestations of individual views can be perceived as particularly threatening to the authorities in some contexts, irrespective of the fact that the overwhelming majority of assemblies are peaceful. Because assemblies take place in public spaces and are organized by a diverse range of organizations, groups and individuals, a government's approach to assemblies can provide a clear indication of the respect that the state has for human rights more generally.

The exercise of this right is closely interlinked with other important rights and fundamental freedoms. It can contribute to the full enjoyment of freedom of association; to freedom of movement; to freedom of expression; to freedom of thought, conscience, religion or belief; and to the right to participate in the conduct of public affairs. Moreover, it is closely tied to the promotion of economic, social and cultural rights. At the same time, interference with the exercise of the freedom to assemble peacefully can also be associated with violations of the right to life, the right to be free from torture and the right to a fair trial. Therefore, the approach authorities take in the regulation and facilitation of peaceful assemblies can be considered as one litmus test of their overall respect for human rights. The very visibility of assemblies taking place in the public space creates opportunities for monitoring and documenting the level of a state's respect for the right to freedom of peaceful assembly and associated rights.

OSCE participating States have recognized that civil society can perform a vital role in the promotion of human rights, democracy and the rule of law, including in Istanbul

in 1999.⁶ This was reaffirmed in the Astana Commemorative Declaration of 2010, which states that participating States value the important role played by civil society and free media in helping them to ensure “full respect for human rights, fundamental freedoms, democracy, including free and fair elections, and the rule of law”.⁷ Civil society human rights defenders have an important role to play in providing independent, impartial and objective coverage of demonstrations and protests, including by providing a factual record of the conduct of participants and law enforcement officials alike, as a valuable contribution to the effective enjoyment of the right to peaceful assembly.⁸ The results of independent monitoring may be used to inform public debate and serve as a basis for dialogue among state and local authorities, law enforcement officials and civil society, and can contribute to police accountability.

As with all human rights, the primary responsibility to promote and protect freedom of assembly lies with the state, but civil society organizations (CSOs) have a crucial role to play in monitoring the implementation of this freedom. Monitoring public assemblies is a complex operation, and monitors can focus on a variety of aspects, such as the policing of an event, including whether the state is fulfilling its positive obligations to uphold the freedom of assembly; whether parties adhere to any agreement reached as to the conditions for an assembly; the interaction between participants in a demonstration and counter-demonstrators; and the conduct of participants in an assembly and police near a particular location. The findings of such monitoring can highlight patterns of good practice, as well as shortcomings and gaps in law, policy and practice in the policing of assemblies. In addition, the presence of monitors may, in some cases, act as a deterrent to violations of human rights, by helping to ensure that the police and other state authorities act in the most appropriate manner in a public setting, in line with international human rights principles and standards.

⁶ OSCE, “Istanbul Document 1999”, *op. cit.* note 1, Article 27..

⁷ OSCE, “Astana Commemorative Declaration: Towards a Security Community, Astana, 1 December 2010, para. 6, <<https://www.osce.org/mc/74985>>.

⁸ ODIHR and Council of Europe Commission for Democracy through Law (Venice Commission), *Guidelines on Freedom of Peaceful Assembly*, second edition, (Warsaw: ODIHR/Council of Europe Venice Commission, 2010), Principles 5.9 and 5.10, p. 21, <<https://www.osce.org/odihr/73405>>; UN Human Rights Council, “Report of the Special Representative of the Secretary-General on Human rights Defenders”, A/62/225, 13 August 2007, para. 91, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N07/457/26/PDF/N0745726.pdf?OpenElement>>; UN Human Rights Council, “Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai”, A/HRC/20/27, 21 May 2012, para. 48, <https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf>.

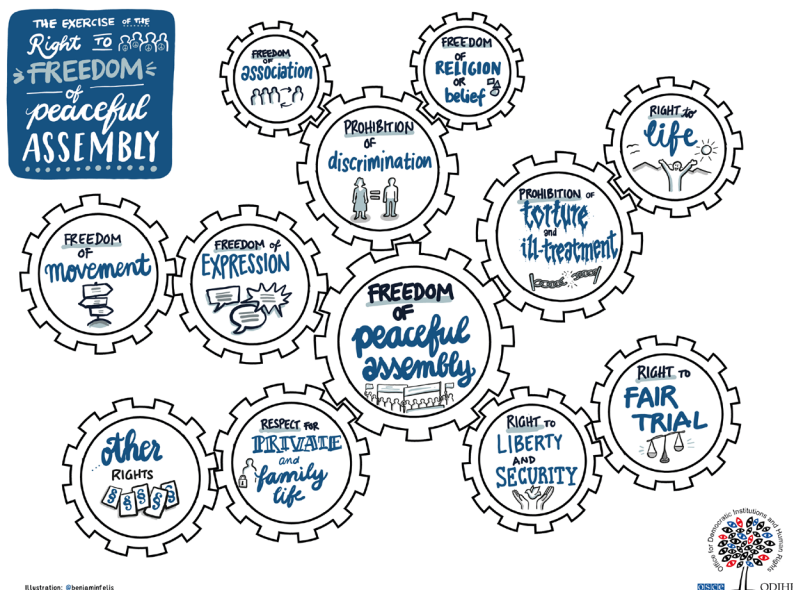


Illustration 1: The exercise of the right to freedom of peaceful assembly: Cogs representing various human rights and freedoms are linked so that they can spin together. The central cog represents freedom of peaceful assembly. Around it are cogs with inscriptions reading: freedom of expression, freedom of movement, prohibition of discrimination, freedom of religion or belief, freedom of association, prohibition of torture and ill-treatment, right to life, right to liberty and security, right to fair trial, respect for private and family life, and other rights.

The second edition of this handbook was produced by ODIHR to provide guidance in independent monitoring of assemblies, based on ODIHR's assembly monitoring methodology and experience, which puts particular emphasis on the importance of gathering first-hand information by observers who are able to witness the conduct of and interaction among participants in assemblies, law enforcement agents and other relevant state and non-state actors. The handbook sets out a methodology for monitoring events and activities that take place in the run-up to and during assemblies, i.e., events that generally take place in public spaces and that are largely accessible to all.

The objective of the handbook is to improve the efficiency, professionalism and impact of organizations engaged in independent monitoring of assemblies, including the OSCE, and to provide guidance on assembly monitoring, with a view to developing and strengthening the relevant skills of assembly monitors. The guidance presented in this revised handbook is a synthesis of the wealth of experience stemming from years of application of the assembly monitoring methodology. While many parts of the 2011 handbook remain relevant, some new aspects of the monitoring

methodology have been integrated to reflect ODIHR's further experience in this area and a deeper understanding of the monitoring function. On this basis, some new sections have been developed for this edition, while other sections of the first edition have been revised or updated.

In an effort to further build the skills and expertise of different actors carrying out assembly monitoring, ODIHR delivers training courses on assembly monitoring to OSCE staff, to the staff of national human rights institutions (NHRIs), and to CSOs. Training has been a vehicle to promote a common and consistent application of the highest methodological standards of independent assembly monitoring. It has also served to test new methods, and to share good practices and lessons learned.

It should be noted that, following an assembly, further actions by the state and its officials might be aimed at restricting the full enjoyment of the right to freedom of assembly and might constitute violations of other human rights. For instance, the response by the state to assemblies might include arbitrary detentions, torture and other ill-treatment, as well as the prosecution of participants in assemblies for acts that only resulted from their exercise of freedom of peaceful assembly. For this reason, to obtain a full and comprehensive picture of the human rights consequences of state response to assemblies, other forms of human rights monitoring might be required, such as detention and trial monitoring and/or the gathering of information through interviews and other sources. These activities are beyond the scope of this handbook, which only discusses the monitoring of events taking place immediately before and during assemblies.

I. SETTING UP AN ASSEMBLY MONITORING PROJECT

I.1. Monitoring: An overview

Human rights monitoring is a central tool in responding to human rights concerns and crises, with the aim to identifying causes of human rights problems, developing possible solutions, promoting accountability and deterring further human rights violations.⁹

The term “monitoring” is used to describe a range of activities, such as actively collecting and verifying information on alleged human rights violations, engaging with state authorities and other stakeholders to diagnose human rights problems to identify possible solutions and prevent their repetition, and evaluating the implementation by the state authorities of recommended measures.

Assembly monitoring is a type of human rights monitoring that involves the observation of assemblies and the collection, verification, analysis and use of information in the context of the exercise of this freedom, in order to improve the protection and promotion of the full enjoyment of the right to freedom of peaceful assembly.

Monitoring the respect for, and protection of, freedom of peaceful assembly involves the intentional and organized presence of monitors at public assemblies to observe,

⁹ UN Office of the High Commissioner for Human Rights (UN OHCHR), *Training Manual on Human Rights Monitoring*, (New York and Geneva: UN OHCHR, 2011), p.5, <<https://www.ohchr.org/Documents/Publications/training7Introen.pdf>>.

document and report both the flow of events and the interaction among participants, counterdemonstrators the police, and other state authorities. Monitors might also need to observe a range of activities that take place both before an assembly (imposition of restrictions or an appeals process) and after an assembly (detention and trial procedures), although this will involve drawing on a specific body of practice related to trial monitoring¹⁰ and detention monitoring.

Independent monitoring of assemblies involves monitors who are independent from all other main actors at the assembly, including state authorities, police, event organizers and participants. They are present at the assembly with the intention of gathering first-hand information on how the right to freedom of peaceful assembly is upheld. Although monitors do not directly involve themselves in assemblies, they can have an impact on practice at public assemblies and on the understanding and respect demonstrated for freedom of peaceful assembly by state authorities, whether by their mere presence¹¹ or by publicizing what they have observed through reports and other activities.¹²

A wide range of actors are involved in the independent monitoring of assemblies in the OSCE area, including CSOs, lawyers and bar associations, academic institutions, NHRIs and other independent state institutions, and various OSCE structures, including ODIHR.¹³

Monitoring might involve a variety of activities, depending on the aims and objectives of the monitoring project. These include observing, recording and documenting assemblies, reporting on the monitoring findings and advocating for the implementation of recommendations.

¹⁰ See, for example: ODIHR, *Trial Monitoring: A Reference Manual for Practitioners*, Revised edition (Warsaw: ODIHR, 2012), <<https://www.osce.org/odihr/94216>>.

¹¹ The National Lawyers Guild, for example, uses legal observers to serve as a deterrent to unconstitutional behavior by law enforcement during an assembly by documenting the activities and behaviour of law enforcement officers that appears to restrict the demonstrators' ability to express their views. For more information, see: <<https://www.nlg.org/legalobservers/>>.

¹² In addition, observation findings of assembly monitoring have been used by some organizations to support litigation. Examples include the Network for Police Monitoring (Netpol), <<https://netpol.wordpress.com/monitoring/legal-observers/how-to-be-a-legal-observer/>>; and the National Lawyers Guild, *op. cit.*, note 11.

¹³ Along with ODIHR, examples include the OSCE Mission in Kosovo, the OSCE Mission to Skopje, the OSCE Mission to Bosnia and Herzegovina, the OSCE Presence in Albania, and the OSCE Special Monitoring Mission to Ukraine.

1.2. Why monitor assemblies?

Independent monitoring of assemblies is able to provide a vital source of independent information on the activities of both assembly participants and law enforcement officials that may be used to inform public debate and serve as the basis for dialogue between state and local authorities, including law enforcement officials, and civil society. Independent assembly monitoring can be used as a diagnostic tool to assist reforms to ensure the free exercise of the freedom of peaceful assembly in line with international human rights standards. It can contribute to police accountability and help prevent human rights violations, contributing to a better enjoyment of the freedom of peaceful assembly. Since the exercise of freedom of peaceful assembly is interrelated with a number of other human rights and fundamental freedoms, the monitoring of assemblies provides information on the overall approach of the authorities in ensuring human rights. Therefore, assembly monitoring may help to provide early warning of a potential conflict or other volatile security and human rights situation.

1.3. The “right to monitor”

There is an evolving international recognition of the right to monitor assemblies. The European Court of Human Rights, for example, has affirmed that the public has a right to be informed about public assemblies taking place, and of how they unfold.¹⁴

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has emphasized that the right to peaceful assembly not only covers the right to hold or participate in an assembly, but also protects the rights of those monitoring peaceful assemblies.¹⁵ The UN Special Rapporteur called, therefore, on states to ensure the protection of those monitoring and reporting on violations and abuses in the context of peaceful assemblies,¹⁶ and to respect and facilitate the right to observe and monitor all aspects of assemblies.¹⁷

¹⁴ European Court of Human Rights, *Najafli v. Azerbaijan*, (2594/07), 2 October 2012, para. 66.

¹⁵ UN Human Rights Council, “Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai”, *op. cit.*, note 8, Summary.

¹⁶ *Ibid.*, para. 94.

¹⁷ Subject to the narrow permissible restrictions outlined in Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR), see UN General Assembly, ICCPR, 23 March 1976, <<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>>; see UN Human Rights Council, “Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on the Proper Management of Assemblies”, 4 February 2016, para. 70, <<https://digitallibrary.un.org/record/831673?ln=en>>.

The Special Representative of the UN Secretary-General on the situation of human rights defenders has called on states to allow human rights defenders to operate freely in the context of assemblies, in order to enable them to perform their monitoring role.¹⁸ The UN Human Rights Council has also recognized the importance of documenting human rights violations and abuses committed in the context of peaceful protests, as well as the role that can be played by NHRIs, civil society, journalists and other media workers, Internet users and human rights defenders in this regard.¹⁹ The ODIHR *Guidelines on the Protection of Human Rights Defenders* affirm that “human rights defenders and their organizations play a crucial watchdog role in any democracy and must, therefore, be permitted to freely observe public assemblies.”²⁰

OSCE commitments require participating States to seek ways to further strengthen modalities for contacts and exchanges of views between NGOs and relevant national authorities and governmental institutions. This includes by facilitating visits to their countries by NGOs from any of the participating States in order to observe human dimension conditions; to welcome NGO activities; to observe compliance with commitments in the field of the human dimension; and to allow NGOs, in view of their important function within the human dimension, to convey their views to their own governments and the governments of all the other participating States during the future work of the OSCE on the human dimension.²¹

The right to monitor public assemblies is part of the more general right to seek and receive information, which is a corollary to the right to freedom of expression and, therefore, protected by international human rights norms.²² The UN Special Rapporteur has also highlighted that everyone—whether a participant, monitor or observer—enjoys the right to record an assembly, which also includes the right to record a law enforcement operation.²³ Confiscation, seizure and/or destruction

¹⁸ UN General Assembly, “Report of the Special Representative of the Secretary-General on the Situation of Human Rights Defenders, Hina Jilani”, A/62/225, 13 August 2007, paras. 91, 101(f)(i), <<https://digital-library.un.org/record/618197?ln=en>>.

¹⁹ UN Human Rights Council, “The Promotion and Protection of Human Rights in the Context of Peaceful Protests”, A/HRC/RES/38/11, 6 July 2018, <<https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session38/Pages/ResDecStat.aspx>>.

²⁰ ODIHR, *Guidelines on the Protection of Human Rights Defenders*, (Warsaw: ODIHR, 2014), para. 62, <<https://www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders>>.

²¹ OSCE, “Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE”, 3 October, 1991, paras. 43.2-43.4, <<https://www.osce.org/odihr/elections/14310>>.

²² UN Human Rights Council, “Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association”, op. cit., note 17, para. 68,

²³ *Ibid*, African Commission on Human and Peoples’ Rights also confirmed that all persons have the right to record an assembly, including the right to record the law enforcement presence and action.

of notes and visual or audio recording equipment without due process should be prohibited and punished.²⁴

I.4. Monitoring methodology

I.4.1. Objective

The overall goal of assembly monitoring determines the main elements of the monitoring methodology, which should be created to consistently support the fulfilment of the monitoring objective or objectives. When embarking on a monitoring project, therefore, it is important to think in advance of how the monitoring, its findings and any recommendations stemming from these will be used nationally and internationally to achieve the monitoring objectives.

ODIHR, for example, monitors assemblies across the OSCE area to assist OSCE participating States in implementing their relevant OSCE commitments. To this end, through its assembly monitoring activities, ODIHR identifies trends, gaps and challenges in meeting these commitments, as well as good practices. It applies selection criteria to observe assemblies and strives to achieve geographical balance and the coverage of a variety of different contexts across the OSCE region. Besides the direct observation of assemblies, information collection is complemented by meetings and legislative analysis.

Other organizations or individuals might have different objectives for their monitoring activities, such as to raise public awareness, to provide early warning, to pressure governments into adopting or implementing international standards, to help victims of human rights violations or to prevent violations from occurring. Determining the geographical and personal (e.g., children, women, ethnic minorities, persons with disabilities) focus of the monitoring is also important when determining the monitoring methodology.

I.4.2. Assembly selection criteria

Peaceful assemblies may take many forms. Assemblies may be stationary, such as demonstrations, pickets, public meetings, flash mobs and sit-ins. They may also be mobile, such as processions, parades, funerals, marches and certain forms of

African Commission on Human and Peoples' Rights, *Guidelines on Policing Assemblies*, (Banjul, the Gambia: African Commission on Human and Peoples Rights), <https://www.achpr.org/legalinstruments/detail?id=65>.

²⁴ *Ibid*, para. 71.

pilgrimages and convoys. Whether stationary or mobile, assemblies enjoy the same protection.

The objective of assembly monitoring is best served by systematically applied assembly selection criteria. Consistency in assembly selection also strengthens the perceived impartiality of the monitoring project. Assembly selection can involve a variety of factors, such as geographical or personal scope, or a thematic focus (e.g., assemblies to support women's rights or environmental protests).

Since ODIHR aims to monitor how the right of freedom of peaceful assembly is promoted and protected in the OSCE region, the Office selects assemblies to observe that might present specific challenges for the authorities and/or the organizers due to their nature, size and/or complexity. This might include assemblies convened by minority groups espousing views or positions that are unpopular with, or are seen as controversial by, mainstream society (for example, LGBTI Pride parades), or where opposing views are expressed in counterdemonstrations. It also includes assemblies where there is a need for state authorities to ensure the right balance between addressing safety and security considerations and respecting the right to freedom of peaceful assembly, (for example, assemblies held in the context of international summits).

1.4.3. Observation focus

ODIHR assembly monitoring focuses on events and activities that take place in public spaces in the run-up to and during assemblies. It should be noted that, following an assembly, further actions by the state and its officials might affect the enjoyment of the right to freedom of assembly or other human rights (for instance, imposing sanctions on the organizers or assembly participants, including their arrest and detention). These events fall beyond the scope of ODIHR's assembly monitoring and analysis. There are organizations that place particular emphasis on this aspect of monitoring the enjoyment of human rights, particularly if their assembly monitoring objective is to assist individual victims of human rights violations.

1.4.4. Results of monitoring

The assembly monitoring findings and recommendations can be used in a number of ways to achieve the monitoring objectives. Section V of the handbook provides further details about using the monitoring findings.

ODIHR monitoring does not result in comprehensive conclusions about the situation of freedom of peaceful assembly in the given state where monitoring takes place but instead, provides for a series of case studies to identify and highlight some of the common trends and patterns related to the enjoyment of freedom of peaceful assembly observed across the OSCE area. In most cases, the human rights monitoring by international bodies involves a process of assessment and the production and dissemination of reports with recommendations based on the findings of the monitoring of a specific event or events. ODIHR uses assembly monitoring as a diagnostic tool to identify shortcomings and good practices from across its monitoring activities, and to recommend concrete action to improve the situation and identify areas where ODIHR could provide assistance upon the request of any participating State.

1.4.5. Monitoring project characteristics and necessities

Monitoring co-ordinator/team leader: Any monitoring project will require coordination and planning, which can best be done through a lead organization or a designated person as the key point of contact. The co-ordinator will be responsible for planning monitoring activities, deciding how many monitors will be required, contacting individual monitors, briefing the monitors, providing any necessary equipment, providing guidance through the course of the assembly being monitored, collecting monitoring reports, and producing a final report, among other things.

Legal knowledge: The monitoring co-ordinators should ensure that they are familiar with the local legal framework, such as constitutional provisions, laws and pertinent court cases relating to the exercise and facilitation of the freedom of peaceful assembly, as well as other relevant legal issues, including police powers. They should also gather background information on previous experiences of how the law has been used or applied, as well as on assembly policing practices, in order to be able to brief members of the monitoring team.

Information related to safety and security: In preparation for an assembly monitoring exercise, information should be collected related to any health and safety risks associated with the monitoring, and about measures to be taken to ensure the safety and security of the monitors. Contracting a security expert or ensuring the monitoring team includes a person solely responsible for the safety and security issues of the monitoring exercise should be considered.

Monitoring pool: A co-ordinating body should be able to draw upon a diverse pool of trained monitors. In most countries, there are likely to be more assemblies in the capital city (close to the institutions of power) than in other towns and cities. It might,

therefore, make sense to have a larger pool of monitors in the capital than in other areas, or to agree to concentrate monitoring in specific locations.

Training: All monitors should be required to take part in an introductory training programme in advance of being deployed, to ensure that they understand the objectives and principles of the project and their role as assembly monitors. This should be the case even for people with previous monitoring experience, as different types of monitoring projects might have different aims and approaches. This handbook has been produced to provide the necessary information to serve as the basis for such a monitor-training programme.

Training programmes should include information about the local legal system, the context in which the assemblies selected to be monitored are taking place, and a review of policing practices. They should also include practical information on specific issues related to the monitoring, such as those regarding the safety and security of the monitors or how to use the monitoring equipment.

Monitoring teams: Monitors should be deployed to work with at least one other person. By working alone, monitors might face increased risks to their personal safety, and this will also limit their capacity to observe activities at an assembly. Wherever possible, inexperienced monitors should be teamed with more experienced monitors, to facilitate peer learning and increase the safety and security of the team. For larger deployments involving monitoring at multiple locations, in addition to lead co-ordinator overseeing the entire monitoring exercise, there might be a benefit in having additional designated team leaders, each responsible for groups of monitors in different locations. It might also be useful in some contexts to have one person who remains on duty at the monitors' office or base, able to serve as a point of contact for the monitors at the assembly and to act speedily in case of an emergency situation.

Identification: Every member of the monitoring team should carry some form of personal identification or accreditation that identifies them as a trained monitor accredited by the monitoring organization. Ideally, the ID should include a photograph. All monitors should be required to carry their identification whenever they are monitoring an assembly, although the local context will inform decisions about how visible the monitors' identification should be.

I.4.6. Monitoring principles and code of conduct for assembly monitors

Monitoring is a tool for strengthening the protection and promotion of human rights. Monitors, therefore, have to work to high ethical and professional standards, to ensure that their findings are accepted as legitimate and can bear scrutiny in order to achieve this aim. There are a number of basic principles of monitoring that assembly monitors should keep in mind and respect at all times, as they are essential to all effective human rights monitoring. Monitoring according to the following principles will have a positive impact on the acceptance and implementation of the recommendations resulting from the analysis of the observation findings.

Respecting the law

Monitors must show respect for the law. They should be familiar with the applicable legal framework, should comply with national laws and regulations at all times, and should obey all lawful instructions from the law enforcement authorities and emergency services.

Objectivity

Monitors must maintain their objectivity throughout their activities, and should ensure that their perceived objectivity is not compromised by their dress or behaviour. Monitors are individuals, with their own rights and responsibilities. At the same time, when monitoring, it is important that they maintain an objective position, in order not to jeopardize the objectives of the monitoring.

Monitors should ensure that their reports are based on what they have seen and heard. They should not report hearsay. When collecting additional information through meetings, attempt should be made to contact all parties involved and to collect a variety of views.

Non-intervention

During the conduct of their observation activities, monitors should not advise anyone involved in an assembly or voice opinions about the event being monitored, or the actions of any party involved. Monitors should not offer any opinions to the media or other third parties on the assembly or events associated with the assembly. Any comments should be limited to general information about the monitoring project and their role as independent monitors.

Transparency and visibility

Assembly monitoring should not be a clandestine activity. The objective and basic methodology of the monitoring project should be open and transparent. This can include placing information about the monitors' work on a website and engaging with the relevant authorities. The monitoring organization could include details on its website and/or through social media about its monitoring objectives and methodology, as well as examples of their identification. The monitoring organization should also consider sending letters to the police, the municipality and other relevant actors, informing them of their assembly monitoring work.

However, the constant display of visible equipment for monitors is not absolutely necessary. Monitors can set themselves apart by their conduct, such as by creating a physical distance from the assembly participants and not engaging in conveying any message related to the assembly. Nevertheless, depending on the monitoring objectives, on safety and security considerations, or on other circumstances, monitors should have some form of personal identification or other visibility items with them at all times, either continuously displayed or shown upon request of the authorities.

Do no harm and be mindful of safety and security

The purpose of any human rights monitoring is to improve the protection of, and respect for, human rights. Therefore, monitors should respect the rights of all parties. Monitors should be mindful of their own safety and security and should work as part of a team. They should not take unnecessary or undue risks, and each monitor's personal safety should override all other considerations. The monitors should ensure the safety, security and confidentiality of their notes, electronic data and other information, especially when these contain sensitive data.

Despite the provisos specified above, monitors should also remember their social responsibilities as individuals, and there might be times when an individual considers it necessary to intervene in a particular situation, e.g., to help someone who is being physically assaulted. The monitoring team should discuss such eventualities as part of its general preparations.

Professionalism

Monitors should behave appropriately and respectfully at all times. They should adhere to the deployment plan and all other instructions provided by the monitoring co-ordinator/team leader and attend all required briefings and debriefings.

The monitors should treat their teammates with respect and not discriminate against them on the basis of gender, race, nationality, disability, and other status, real or perceived. Where there is a disagreement between teammates as to observation findings (as to whether a certain event occurred, or occurred as perceived by different teammates), monitors should ensure not to compel or coerce their teammates to report in any specific way, but to seek additional information to clarify the difference. If no agreement on the disagreement can be reached, the different views should be recorded.



Illustration 2 The Code of Conduct for Assembly Monitors: The illustration includes a few cards that serve to remind monitors of some of the key points of their work. The main objective of independent monitoring is to strengthen human rights. The code of conduct for assembly monitors includes the following: 1. Respect the law, comply with all national laws and regulations; 2. Do not interfere, do not intervene in the assembly process; 3. Do no harm, behave in an appropriate and respectful manner; 4. Stay objective, remain objective in the conduct of your tasks; 5. Record what you see, base all your conclusions on your first hand observations or on clear and convincing facts or evidence; 6. Be visible, identify yourself to any authority if requested; 7. Stay safe, do not take any unnecessary or undue risks; 8. Do not comment, refrain from commenting to the media or other third parties and state only general information on the monitoring project and your role; and 9. Be professional, follow the deployment plan and the instructions of the team leader.

It is a good practice for monitoring projects to adopt and work in accordance with a code of conduct that outlines the core principles and ethical norms (or values) of their work. This code of conduct should serve as an integral part of the assembly monitoring methodology. Each assembly monitor has to understand and abide by the code of conduct in the context of their duties. This will help ensure consistency in the approach monitors take while fulfilling their duties and, therefore, contribute to the achievement of the monitoring objectives.

It is good practice to make the code of conduct public and to raise awareness of it in communication with third parties related to assembly monitoring projects. The following code of conduct is used by ODIHR assembly monitors.

Code of conduct for freedom of assembly monitors

1. The aim of monitoring is to strengthen human rights.
2. Monitors will comply with all national laws and regulations.
3. Monitors will maintain strict objectivity in the conduct of their duties.
4. Monitors will base all findings on their first-hand observations or on clear and convincing facts or evidence.
5. Monitors will undertake their duties in an unobtrusive manner and will not interfere in the assembly process.
6. Monitors will exhibit the highest levels of personal discretion and professional behaviour at all times.
7. Monitors will not take any unnecessary or undue risks. Each monitor's personal safety overrides all other considerations.
8. Monitors will carry identification and will identify themselves to any authority on request.
9. Monitors will not make any comments to the media or other third parties on the assembly or events associated with the assembly. Any comment will be limited to general information about the monitoring project and the role of monitors.
10. Monitors will adhere to the deployment plan and all other instructions provided by the monitoring co-ordinator/team leader and attend all required briefings and debriefings.

II. ASSESSMENT STANDARDS AND PRINCIPLES

The right to peaceful assembly is a fundamental freedom that is essential for public expression of individuals' views and opinions, and is indispensable to the functioning of democratic societies. As mentioned above, OSCE participating States have committed themselves to guaranteeing this right to every individual, without discrimination (Copenhagen 1990, Paris 1990), including as part of their efforts to facilitate more balanced participation of women and men in political and public life.²⁵ It is enshrined in key international and regional human rights treaties, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR),²⁶ the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the optional protocols thereto,²⁷ and the American Convention on Human Rights (ACHR).²⁸

²⁵ OSCE, "Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE", *op. cit.*, note 1; "Charter of Paris for a New Europe", *op. cit.*, note 1; OSCE Ministerial Council, "Decision No. 7/09, Women's Participation in Political and Public Life", Athens, 2 December 2009, <<http://www.osce.org/mc/40710?download=true>>.

²⁶ The ICCPR sets out universally accepted minimum standards in the area of civil and political rights. The obligations undertaken by states ratifying or acceding to the Covenant are meant to be discharged as soon as a state becomes party to the ICCPR. The implementation of the ICCPR by states parties is monitored by a body of independent experts, the UN Human Rights Committee. All states parties are obliged to submit regular reports to the Committee on how the rights are being implemented; UN General Assembly, ICCPR, *op. cit.*, note 17.

²⁷ The European Convention for the Protection of Human rights and Fundamental Freedoms (ECHR) is the most comprehensive and authoritative human rights treaty for the European region. All member states of the Council of Europe are required to ratify the Convention within one year of their accession to the Statute of the Council of Europe. The ECHR sets forth a number of fundamental rights and freedoms, and parties to it undertake to secure those rights and freedoms for everyone within their jurisdiction; Council of Europe, (ECHR), Strasbourg, 1 June 2010, <https://www.echr.coe.int/Documents/Convention_ENG.pdf>.

²⁸ The American Convention on Human Rights was adopted by the nations of the Americas meeting in San José, Costa Rica, in 1969 and came into force on 18 July 1978. The bodies responsible for over-

Everyone under the jurisdiction of a particular state has the right of peaceful assembly and it should be ensured without discrimination.²⁹ The right must be guaranteed for example to foreign nationals,³⁰ such as migrant workers,³¹ asylum seekers and refugees³² as well as to stateless persons. The right of women,³³ children,³⁴ persons with disabilities³⁵ and national minorities³⁶ have also been specifically recognized.

The key international and regional standards guaranteeing the right to freedom of peaceful assembly are included in annexes 1 and 2 to this handbook.

The right to freedom of peaceful assembly is interlinked with several other human rights and fundamental freedoms. In particular, freedom of assembly is often associated with freedom of expression, which is protected under Article 19 of the ICCPR, Article 10 of the ECHR, and Article 13 of the ACHR, and with the right to freedom of thought, conscience, religion or belief, protected by Article 18 of the ICCPR, Article 9 of the ECHR and Article 12 of the ACHR, as the right to assemble necessarily involves the aim of communicating a message or expressing a view or an opinion to another party. The European Court of Human Rights has argued that the state has a positive

seeing compliance with the Convention are the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, both of which are organs of the Organization of American States; Inter-American Commission on Human Rights, "American Convention on Human Rights" (ACHR), 22 November, 1969, <<https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>>.

²⁹ ICCPR, *op. cit.*, note 17, Article 2; ECHR, *op. cit.*, note 28, Article 14 of the ECHR, ACHR, *Ibid.*, Article 1. The right to non-discrimination protects participants against discriminatory practices in the context of assemblies (ICCPR, art. 26).

³⁰ UN OHCHR, "CCPR General comment No. 15: The Position of Aliens under the Covenant, 11 April 1986, paras. 1–2; CCPR/C/KWT/CO/3, para. 42, <<https://www.refworld.org/pdfid/45139acfc.pdf>>.

³¹ UN General Assembly, "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, *op. cit.*, note 5, Article.26.

³² UN Human Rights Committee, "Concluding observations on the second periodic report of Nepal", CCPR/C/NPL/CO/2, 15 April 2014, para. 14, <<https://www.refworld.org/docid/539033714.html>>.

³³ UN General Assembly, CEDAW, *op. cit.*, note 3, Article 7.

³⁴ UN General Assembly, CRC, *op. cit.*, note 2, Article 15; UN Committee on the Rights of the Child, "Thirty-Eighth Session: Consideration of Reports Submitted by States Parties under Article 44 of the Convention", CRC/C/15/Add.252, 31 March 2005, para. 39, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CRC/C/15/Add.252&Lang=En>; UN Committee on the Rights of the Child, "Thirtieth Session: Consideration of Reports Submitted by States Parties under Article 44 of the Convention", CRC/C/15/Add.180, 13 June 2002, para. 34, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CRC/C/15/Add.180&Lang=en>.

³⁵ UN, CRPD, *op. cit.*, note 4, Article 29.

³⁶ Council of Europe, "Framework Convention for the Protection of National Minorities and Explanatory Report", Strasbourg, February 1995, Article 7, <<https://rm.coe.int/16800c10cf>>.

The right to freedom of peaceful assembly is also closely associated with the right to freedom of association which is included within Article 22 of the ICCPR, Article 11 of the ECHR, Article 16 of the ACHR and the right to participate in the conduct of public affairs, prescribed by Article 25 of the ICCPR.³⁹ The right to associate in a political party, a trade union (which includes the right to strike) or in other organizations is often linked to the organization of assemblies, and unnecessary or disproportionate restrictions imposed on the right to associate might also result in restrictions on the right to assemble. Restrictions on the right to associate, through such mechanisms as the requirement to register an association, the refusal to accept or to formalize registration, the enforced disbanding or prohibition of an association or the introduction of onerous financial demands, might all be considered as indirect restrictions on the right to assemble.

The full protection of the right of peaceful assembly depends on the protection of a range of rights. The right to life⁴⁰ and the right not to be subjected to cruel, inhuman or degrading treatment⁴¹ may both be implicated if law enforcement officials use excessive force. Restrictions on people's ability to travel in order to participate in assemblies, including to travel abroad, and to participate in marches and other moving assemblies, may violate their freedom of movement.⁴² Decisions restricting the exercise of the assembly rights fall under the protection of fair trial rights.⁴³

³⁹ See also UN Human Rights Committee, Communication no. 2016/2010, *Sudalenko v. Belarus*, CCPR/C/115/D/2016/2010, para. 8.6, <<https://juris.ohchr.org/Search/Details/2028>>.

⁴⁰ UN Human Rights Committee, Communication no. 1828/2008, *Olmedo v. Paraguay*, CCPR/C/104/D/1828/2008, para. 7.5, <<https://juris.ohchr.org/Search/Details/1443>>. The right to life is protected under the ACHR, *op. cit.*, note 29, Article 4; the "Second Protocol to the American Convention on Human Rights to Abolish the Death Penalty", OAS, 8, June 1990, <<https://www.refworld.org/docid/3de4b4884.html>>; the "Inter-American Convention on the Forced Disappearance of Persons", OAS, 9 June 1994, <<https://www.oas.org/juridico/english/treaties/a-60.html>>; the ECHR", *op. cit.*, note 28, Article 2; Protocol Nos. 6 and 13 to the ECHR; the ICCPR, *op. cit.*, note 1, Article 6; the Second Optional Protocol to the ICCPR "Aiming at the Abolition of the Death Penalty", UN General Assembly, 15 December 1989, Article 9, <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/2ndOPCCPR.aspx>>; the "Convention on the Protection of the Rights of All Migrant Workers and Members of their Families", UN General Assembly, *op. cit.*, note 5; and the CRC, *op. cit.*, note 2, Article 6.

⁴¹ UN Human Rights Committee, *Benítez Gamarra v. Paraguay* (CCPR/C/104/D/1829/2008), para. 7.4 The freedom from torture and ill-treatment is protected under Article 5 of the ACHR, *ibid.*; Article 3 of the ECHR, *ibid.*; and Article 7 and 10 of the ICCPR, *op. cit.*, note 17.

⁴² The freedom of movement is protected under articles 12 and 13 of the ICCPR, *ibid.*; Article 10 of the CRC, *op. cit.*, note 2; Article 18 of the CRPD, *op. cit.*, note 4; Article 5 of the "International Convention on the Elimination of All Forms of Racial Discrimination" (CERD), UN General Assembly, 21 December 1965, <<https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>>; and Article 15 of CEDAW, *op. cit.*, note 3.

⁴³ UN Human Rights Committee, Communication no. 1999/2010, *Evrezov et al. v. Belarus*, CCPR/C/112/D/1999/2010, paras. 3.3 and 8.9, <<https://juris.ohchr.org/Search/Details/1897>>. The right to a fair

The manner in which public assemblies are conducted has changed in recent years. New technologies present opportunities, as well as risks, for the protection of peaceful assemblies. Communication technologies often play an integral role not only in organizing, but also in controlling assemblies. Surveillance technologies can be used to detect threats of violence, but can also have far-reaching implications for the right to privacy.⁴⁴

Considerations such as the inter-relatedness of human rights and the effect of the digital age on the exercise of the freedom of peaceful assembly need to inform any assessment of the legal framework required to give full effect to the right to freedom of peaceful assembly today.

II.1. Definition and the scope of the protection

The right of peaceful assembly protects the non-violent gathering of a number of people in a publicly accessible place with a common expressive purpose.⁴⁵ This definition highlights the fact that the right to assemble assumes that an assembly is for the purpose of conveying a message. That message might be aimed at an individual, a group, an organization or at society in general. The right of peaceful assembly constitutes an individual right that is exercised collectively.⁴⁶ Inherent to the right is, thus, an associative element.

trial is protected under Article 14 (fair trial) and Article 15 (no retroactive penal laws) of the ICCPR, *ibid.*; Article 6 (fair trial), Article 7 (no punishment without law) and Protocol No.7 (rights of accused persons) of the ECHR, *op. cit.*, note 5; Articles 47 to 50 (fair trial rights) of the “European Social Charter”, Council of Europe, 18 October 1961, <<https://www.coe.int/en/web/european-social-charter>>; and Article 8 (fair trial) and Article 9 (freedom from ex-post facto laws) of the ACHR, *op. cit.*, note 29.

⁴⁴ Article 17 of the ICCPR, *ibid.*; See also: Article 16 of the CRC, *op. cit.*, note 2; and Article 22 of the CRPD, *op. cit.*, note 4.

⁴⁵ In *Kivenmaa v. Finland* (CCPR/C/50/D/412/1990), para. 7.6, the UN Human Rights Committee described a public assembly as “the coming together of more than one person for a lawful purpose in a public place that others than those invited also have access to” (See, however, the dissenting opinion in the annex, para. 2.5, which questions the application of this definition to the facts of that case). The Committee has subsequently emphasized the expressive element of the exercise of the right. See: e.g., *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 9.3; and *Poplavny v. Belarus* (CCPR/C/118/D/2139/2012), para. 8.5. On the requirement of a public space, see: *Popova v. Russian Federation* (CCPR/C/122/D/2217/2012), para. 7.3. According to the ODIHR/Council of Europe Venice Commission *Guidelines on Freedom of Peaceful Assembly*, an assembly entails “the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose” (para. 1.2), *op. cit.*, note 8.

⁴⁶ UN Human Rights Committee, “General Comment No. 31 (2004) on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant”, CCPR/C/21/Rev.1/Add.13, 29 March 2004, para. 9, <<https://www.refworld.org/docid/478b26ae2.html>>.

As noted earlier, peaceful assemblies may take many forms. They are protected whether they are stationary, such as demonstrations, pickets, public meetings, flash mobs, sit-ins, or are moving, such as processions, parades, funerals, marches and certain forms of pilgrimages and convoys. Domestic legislation should frame the types of assembly to be protected as broadly as possible.⁴⁷

Gatherings that primarily have a commercial or social entertainment purpose would not generally fall within the core of what is protected under the right to freedom of peaceful assembly, although they may also be otherwise protected under other rights. Assemblies can happen on publicly or privately owned property, provided the property is publicly accessible.

Although an assembly, by definition, requires the presence of more than one person, nonetheless, individual protesters exercising their right to freedom of expression, where their physical presence is an integral part of that expression, should be afforded the same protections as those who gather as part of an assembly.⁴⁸

Assemblies are temporary activities, but there is no clear definition of the concept of “temporary” and how long assemblies might last. Some assemblies, such as flash mobs, might last only a very short time, and most assemblies will not last for more than a few hours. Others might last longer. Erecting and keeping protest camps or other non-permanent constructions can, thus, be included within the idea of an assembly, and such activities may continue for several days⁴⁹ or involve recurrent assemblies over a period of years,⁵⁰ but they are still considered temporary assemblies.

Some assemblies might take place as spontaneous or urgent responses to events, speech, or other activity, and might, thus, create unpredictable situations for the authorities. In one case, the European Court of Human Rights stated that eight hours might be considered a reasonable period of time for the participants in a spontane-

⁴⁷ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, Explanatory Notes, para. 17.

⁴⁸ *Ibid.*, Explanatory Notes, para. 16.

⁴⁹ European Court of Human Rights, *Cisse v. France*, no. 51346/99, 9 April 2002, <[⁵⁰ European Court of Human Rights, *Affaire Çiloğlu et Autres c. Turquie*, no. 73333/01, 6 March 2007, <](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22cisse%20v.%20france%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-60413%22]}>></p></div><div data-bbox=)

ous assembly to make their protest, and that the police decision to disperse the assembly after such a time was not unreasonable.⁵¹

Furthermore, the Court has also acknowledged that public assemblies may cause some level of temporary interference with, or disruption of, routine daily activities.⁵² The Court has stated that “any demonstration in a public place inevitably causes a certain level of disruption to ordinary life, including disruption of traffic, and that it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance”.⁵³ If an assembly is an important element of life in a democratic society, then those assembling have as much right to the use of public spaces as people involved in other activities. Thus, assemblies may temporarily disrupt vehicular and pedestrian traffic and may have a temporary impact on business activities and other urban activities, although, as noted above, assemblies are, by definition, temporary activities and, thus, the scale of any disruption must also be balanced by protecting the rights of others.

On some occasions, assemblies can be conducted in a way to intentionally cause disruption of traffic or violate the law as a means of attempting to draw attention to the message that the organizers or participants are communicating. This is commonly referred to as “civil disobedience.” Often, such protests are peaceful in their nature, and state responses, including arrests and penalties, should be proportionate to the respective offenses.⁵⁴

As noted previously, the right to freedom of peaceful assembly encompasses not just organizing and participating in assemblies but also other activities, including observing, monitoring and recording assemblies.⁵⁵

⁵¹ European Court of Human Rights, *Éva Molnár v. Hungary*, no. 10346/05, 7 October 2008, <[https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22eva%20molnar%20v%20hungary%22\],\[%22itemid%22:\[%22001-88775%22\]}>](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22eva%20molnar%20v%20hungary%22],[%22itemid%22:[%22001-88775%22]}>)>.

⁵² European Court of Human Rights, *Oya Ataman v. Turkey*, no. 74552/01, 5 December 2006, <[https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22Oya%20Ataman%20v.%20Turkey%22\],\[%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],\[%22itemid%22:\[%22001-78330%22\]}>](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22Oya%20Ataman%20v.%20Turkey%22],[%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],[%22itemid%22:[%22001-78330%22]}>)>.

⁵³ European Court of Human Rights, *Sergey Kuznetsov v. Russia*, no. 10877/04, para. 44, 23 October 2008, <[https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22sergey%20kuznetsov%22\],\[%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],\[%22itemid%22:\[%22001-89066%22\]}>](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22sergey%20kuznetsov%22],[%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],[%22itemid%22:[%22001-89066%22]}>)>.

⁵⁴ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8.

⁵⁵ UN Human Rights Council, “Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai”, Summary, *op. cit.*, note 8.

Peaceful Assemblies

Only peaceful assemblies are protected by the right to freedom of assembly. There is no clear dividing line between assemblies that are peaceful and those that are violent, but there is a presumption in favour of considering assemblies as peaceful.⁵⁶

An assembly will be deemed peaceful as long as the participants remain peaceful, even if the organizers have not complied with all legal requirements prior to the assembly.⁵⁷ Breaking the law peacefully during an assembly, as may, for example, occur during civil disobedience or direct action campaigns, is covered by the right to freedom of peaceful assembly.⁵⁸

The question of whether an assembly ceases to be peaceful must be answered with reference to actual or imminent violence originating from the participants. Violence in this context typically entails the use by participants of physical force that is likely to result in injury or serious physical damage to property.⁵⁹

The right to freedom of peaceful assembly is held by each individual participating in an assembly. An individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of a demonstration if the individual in question remains peaceful in their own intentions or behaviour.⁶⁰ The individual rights of peaceful participants are not affected by acts of violence by others. Thus, the state response to disorder and violence must always be proportionate to the actions taken by the protestors.

However, even when participants are not peaceful and, as a result, forfeit their right to peaceful assembly, they retain all the other rights that can be affected by their

⁵⁶ European Court of Human Rights, *Lashmankin and others v. Russia* (applications Nos. 57818/09 and 14 others), judgment of 7 February 2017, paras. 402–403. UN Human Rights Council, “Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai”, *ibid.*, para. 26; ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, Principle 2.1.

⁵⁷ European Court of Human Rights, *Oya Ataman v. Turkey*, *op. cit.*, note 53.

⁵⁸ European Court of Human Rights, *Frumkin v. Russia*, no. 74568/12, para. 97, 5 January 2016, <[https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22frumkin%22\],\[%22itemid%22:\[%22001-159762%22\]}>](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22frumkin%22],[%22itemid%22:[%22001-159762%22]}>).

⁵⁹ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, paras. 26–27.

⁶⁰ European Court of Human Rights, decision on admissibility, *Ziliberberg v. Moldova*, no. 61821/00, 4 May 2004, <[https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22ziliberberg%22\],\[%22itemid%22:\[%22001-68119%22\]}>](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22ziliberberg%22],[%22itemid%22:[%22001-68119%22]}>); also see UN Human Rights Council, “Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai”, *op. cit.*, note 8, p. 8, para. 25.

participation, including but not limited to the rights to due process of law, to bodily integrity, to dignity and to freedom from torture, cruel, inhuman or degrading treatment or punishment.

Propaganda for war and incitement to violence are prohibited in the context of assemblies. Again, isolated incidents will not suffice to taint an entire assembly as violent, but where the incitement or intention of violence is widespread, or if the leaders or organizers of the assembly themselves convey this message, the gathering as such may no longer be protected by the right to freedom of peaceful assembly. However, it is often difficult to establish on the spot whether the high threshold of incitement to violence has been reached, or whether participants' intentions are violent. In such cases, the presumption in favour of viewing assemblies as peaceful means that such a situation should be considered as protected, subject to the normal limitations.

The peaceful intention of the organizers is not undermined by the possibility that an assembly might provoke opposition among some sectors of society. Rather, the importance of public assemblies as means of conveying controversial viewpoints means that assemblies might well cause offence or annoyance among other groups or individuals. The European Court of Human Rights has noted that the state has a responsibility to take "appropriate measures" to protect those who are exercising their right to freedom of peaceful assembly from the aggressive actions of others.⁶¹

II.2. State obligations

States are required to "respect and fully protect" the rights of all individuals to assemble peacefully.⁶² This obligation imposes a range of corresponding duties on the state. The state has the obligation not only to refrain from violating the rights of individuals involved in an assembly, but also to ensure the rights of those who participate in, or are affected by, them and to facilitate an enabling environment for

⁶¹ European Court of Human Rights, *Ouranio Toxo and Others v. Greece*, no. 74989/01, para. 43, 20 October 2005, <<https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22ouranio%20toxos%22%22itemid%22:%5B%22001-70720%22%5D%7D>>

⁶² Article 2(1) of ICCPR, *op. cit.*, note 17. States are obliged to "respect and fully protect" the rights of all individuals to assemble peacefully; "The Rights to Freedom of Peaceful Assembly and of Association", United Nations Human Rights Council, A/HRC/RES/21/16, 11 October 2012, <<https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G12/174/63/PDF/G1217463.pdf?OpenElement>>; and "The Rights to Freedom of Peaceful Assembly and of Association", United Nations Human Rights Council, A/HRC/RES/24/5, 8 October 2013, <<http://www.refworld.org/docid/53bcf29f4.html>>.

the enjoyment of freedom of peaceful assembly.⁶³ It is important to note, that while all branches of government carry the obligation to ensure that various rights related to assemblies are realized, decisions on assemblies are often taken at the local level. It is important to ensure that municipal authorities exercise their power in a human rights complaint manner.

II.2.1. Non-interference, respect

The primary obligation on states as far as the accommodation of peaceful assemblies is concerned is non-interference. State agents must refrain from unwarranted interference with assembly participants. This largely negative duty requires states, for example, not to prohibit, restrict, block or disrupt assemblies without good reason, and not to sanction participants without good cause. Of key importance is allowing the participants to determine the purpose of the assembly and, given the expressive nature of assemblies, enabling participants to conduct the assembly within the “sight and sound” of the target audience.

In the digital age, many of the activities associated with the organization of and participation in assemblies happen online or rely upon digital services. States should refrain from unduly blocking Internet connectivity in relation to demonstrations.⁶⁴ The same applies to technology-specific interference or hindering of connectivity, such as the use of signal jammers. States should ensure that self-regulation by Internet service providers does not unduly affect assemblies and that the activities of those providers does not unduly infringe upon the privacy of assembly participants. Any restriction on the operation of information dissemination systems must conform with the test for restrictions on freedom of expression.⁶⁵

The role of journalists and monitors engaged in observing, documenting and reporting on assemblies is of special importance, and is protected by the right to freedom of peaceful assembly and its related rights.⁶⁶ Journalists and observers may not be prohibited from recording assemblies or from otherwise reporting on

⁶³ UN Human Rights Committee, “Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association”, *op. cit.*, note 17, para. 13.

⁶⁴ UN Human Rights Committee, “Concluding observations on the fifth periodic report of Cameroon”, CCPR/C/CMR/CO/5, 30 November 2017, para. 41, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/CMR/CO/5&Lang=En>.

⁶⁵ Human Rights Committee, “General Comment No. 34 on Article 19: Freedoms of Opinion and Expression”, CCPR/C/GC/34, 12 September 2011, para. 34, <<https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>>.

⁶⁶ UN Human Rights Committee, *Pranevich v. Belarus* (CCPR/C/124/D/2251/2013), para. 6.3; *Zhagiparov v. Kazakhstan* CCPR/C/124/D/2441/2014, paras. 13.2–13.5.

them, including on the actions of law enforcement officials. Their equipment may not be confiscated or damaged. Even if the assembly itself is declared unlawful and is dispersed, that does not terminate the right of monitors to cover it. Human rights defenders, journalists and monitors should not be harassed as a result of their attendance at demonstrations.⁶⁷

II.2.2. Facilitation, protection

States have positive obligations to assist participants, where needed, to achieve their legitimate objectives. In some cases, streets may need to be blocked off, traffic redirected or security provided. Ensuring the right requires positive measures on the part of the state to provide protection to participants against possible abuses by non-state actors, such as interference or violence by individuals or groups, including *agents provocateurs* and counterdemonstrators who aim to disrupt or disperse an assembly.⁶⁸ Particular effort should be made to ensure equal and effective protection of the rights of groups or individuals who have historically experienced discrimination.⁶⁹ This includes also the obligation to protect participants from homophobic, sexual or gender-based violence.⁷⁰

Peaceful counterdemonstrations must be facilitated in their own right, while preventing undue disruption of the assemblies to which they are opposed. States must be proactive in dealing with assemblies and take precautionary measures aimed at preventing violations of the different rights that are at stake. At the same time, the need to take precautionary measures cannot serve as a justification for invasive measures that violate human rights, such as the right to privacy.

⁶⁷ UN Human Rights Committee, “Concluding Observations on the Initial Report of Mauritania”, CCPR/C/MRT/CO/1, 21 November 2013, para. 22, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FMRT%2FCO%2F1&Lang=en>. See also UN General Assembly resolution 66/164, “Promotion 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, 19 December 2011, operative para. 6, <<https://undocs.org/A/RES/66/164>>.

⁶⁸ UN Human Rights Council, “Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai”, *op. cit.*, note 8, p. 10, para. 33. UN Human Rights Committee, *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 9.6. See also European Court of Human Rights, *Plattform “Ärzte für das Leben” v. Austria* (application No. 10126/82), judgment of 21 June 1988, para. 25.

⁶⁹ “Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on the Proper Management of Assemblies”, *op. cit.*, note 17, , para. 16.

⁷⁰ UN Human Rights Committee, “Concluding Observations on the Sixth Periodic Report of Chile”, CCPR/C/CHL/CO/6, 13 August 2014, para. 19, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/CHL/CO/6&Lang=En>.

II.2.3. Enabling environment

It is the primary responsibility of the state to put in place adequate mechanisms and procedures to ensure that the freedom of peaceful assembly can be exercised effectively and enjoyed in practice, and that it is not subject to unduly restrictive or bureaucratic regulation or unduly restrictive policing.⁷¹ This includes enacting and implementing laws regulating the exercise of this right that are fully in line with international human rights standards.

Besides the constitutional protection that should be accorded to the freedom of peaceful assembly, domestic regulations should provide for the specific details and procedures related to the exercise of this freedom. Everything not regulated by law should be presumed to be lawful. When drafting legislation on peaceful assembly, it is important to ensure that grounds for regulation are clear and predictable. To protect the right, it may be necessary to specify precisely the circumstances in which assemblies are subject to particular legal obligations, legitimate grounds for restriction, and the overall content and time frame of such restrictions.⁷² Any restrictions imposed must have a formal basis in primary law, which should be sufficiently precise to enable an individual to assess whether or not his or her conduct would be in breach of the law, and to foresee what the consequences of such a breach would likely be.⁷³

In order to ensure clear and foreseeable procedures for organizing and holding peaceful assemblies, individuals' ability to access relevant information enabling them to exercise their assembly rights is also essential. In this context, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association recommended that states proactively disseminate key information relating to the management of assemblies, such as laws and regulations relating to the management of assemblies, information regarding the responsibilities and procedures of agencies and bodies that manage assemblies, standard operating procedures and policies governing the policing of assemblies, including codes of conduct, the types

⁷¹ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly, op. cit.*, note 8, para. 2.2.

⁷² Michael Hamilton, "Summary of the Human Rights Council Panel Discussion on the Promotion and Protection of Human Rights in the Context of Peaceful Protests", United Nations Human Rights Council, A/HRC/19/40, 19 December 2011, § 28.

⁷³ See, for example, European Court of Human Rights, *The Sunday Times v. United Kingdom* (no. 1), no. 6538/74, 26 April 1979, para. 49, <<https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22sunday%20times%22%22itemid%22:%5B%22001-57584%22%5D%7D%3E%3E>>; *Rekvényi v. Hungary*, no. 25390/94, 20 May 1999, para. 34, <<https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22rekvenyi%22%22itemid%22:%5B%22001-58262%22%5D%7D%3E%3E>>.

of equipment routinely used in policing assemblies, information on the training of law enforcement officers, and information on how to access accountability processes.⁷⁴

Transparent decision-making is central to the process of planning and facilitating assemblies and ensuring that any action taken by law enforcement is proportionate and necessary. The public should be informed about which body is responsible for the regulations on freedom of assembly, and this should be clearly stated in the law.⁷⁵ A clear procedure for interaction between event organizers and the regulatory authorities is also necessary. Such a procedure should set out appropriate time limits by working backwards from the date of a proposed event, and it should allocate sufficient time for each stage in the regulatory process.⁷⁶

II.2.4. Effective redress and accountability mechanisms

The right of peaceful assembly, like other rights, is properly protected only when adequate accountability and redress mechanisms are in place. There must be independent and visible oversight of all bodies involved in fulfilling the obligation to accommodate assemblies, including access to judicial remedies in the case of potential violations of the rights involved.

The regulatory process should establish an opportunity to appeal or otherwise challenge the decision of the regulatory authority in an independent judicial body. Appeals and other challenges ought to be decided in a prompt and timely manner, so that any revisions to the authorities' decision can be implemented without further detriment to the applicant's rights.⁷⁷ In this context, the European Court of Human Rights has determined that the absence of an effective appeals procedure against a decision to forbid an assembly prior to the proposed date of said assembly is a violation of the ECHR.⁷⁸

According to the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, there should be an option for organizers to seek prompt,

⁷⁴ UN Human Rights Committee, "Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association", *op. cit.*, note 17, para. 82.

⁷⁵ ODHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, Explanatory Notes, para. 61.

⁷⁶ *Ibid.*, para. 65.

⁷⁷ *Ibid.*, para. 66.

⁷⁸ European Court of Human Rights, *Bączkowski and Others v. Poland*, *op. cit.*, note 38.

competent, independent and impartial judicial and, where relevant, administrative review of any restrictions imposed.⁷⁹

To address situations where authorities fail to respond promptly to a notification, the law should stipulate that organizers of a public assembly may proceed with their planned activities according to the terms specified in their notification, without restriction.⁸⁰ The regulatory authorities must comply with their legal obligations and should be accountable for any failure – procedural or substantive – to do so whether before, during or after an assembly.⁸¹

II.3. Possible limitations on freedom of assembly

OSCE participating States are committed to guaranteeing the right to freedom of peaceful assembly, ensuring that any restriction that may be placed on this right be prescribed by law and be consistent with international standards.⁸² As the UN Human Rights Committee has observed, restrictions should be guided by the objective of facilitating the right, rather than placing unnecessary or disproportionate limitations on it. Given that there is a presumption in favour of accommodating peaceful assemblies, the state has an obligation to justify any limitations of the right protected by Article 21 of the ICCPR as legitimate.⁸³ Where this onus is not met, Article 21 is violated.⁸⁴

The legitimate grounds for restriction are prescribed by the relevant international and regional human rights instruments, and these should neither be supplemented by additional grounds in domestic legislation nor be loosely interpreted by the authorities. These are national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

⁷⁹ UN Human Rights Committee, “Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association”, *op. cit.*, note 17, para. 35.

⁸⁰ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, Explanatory Notes, para. 120.

⁸¹ *Ibid.*, para. 67.

⁸² OSCE, “Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE”, *op. cit.*, note 1

⁸³ UN Human Rights Committee, *Denis Turchenyak et al. v. Belarus*, Comm. No. 1948/2010, UN doc. CCPR/C/108/D/1948/2010, 10 September 2013, para. 7.4. *Gryb v. Belarus* (CCPR/C/108/D/1316/2004), para. 13.4.

⁸⁴ UN Human Rights Committee, *Chebotareva v. Russian Federation* (CCPR/C/104/D/1866/2009), para. 9.3.

Any restrictions imposed must have a basis in primary law, as must the mandate and powers of the restricting authority (principle of legality).⁸⁵ Any restriction must not only have a basis in domestic law, but the domestic law must be sufficiently precise and accessible to enable the individual to foresee, to a degree that is reasonable under the circumstances, the consequences that a given action may entail,⁸⁶ and may not confer unfettered or sweeping discretion on those charged with its execution.⁸⁷ Furthermore, limitations must be necessary in a democratic society. In order to satisfy this requirement, a restriction must respond to a pressing social need and be considered imperative, in the context of a society based on political pluralism and human rights, as opposed to being merely reasonable or expedient.⁸⁸ In addition, they must be proportionate to the achievement of a legitimate aim. Given that a wide range of interventions might be suitable, the least restrictive among the measures that might achieve the relevant protective purpose should always be given preference.⁸⁹

Any restriction needs to be narrowly tailored to accommodate the relevant and legitimate concerns raised in every case. It follows that general bans on the holding of assemblies (for instance, forbidding any assemblies from being held in central areas or during peak hours) are contrary to the freedom of assembly.⁹⁰ It is not uncommon for the authorities to unnecessarily restrict assemblies close to prominent public locations, such as a parliament building, presidential office or other important public place, due to concern about disruptions to other people or the functions of the state. However, it is almost always possible to facilitate an assembly in a manner that allows the day-to-day affairs of the government and other bodies to take place simultaneously.⁹¹

As stated by the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, “only ‘certain’ restrictions may be applied, which clearly

⁸⁵ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, Explanatory Notes, para. 35.

⁸⁶ European Court of Human Rights, *Ezelin v. France* (1991), no. 11800/85, para. 45, 26 April 1991, <<https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22ezelin%22%22itemid%22:%5B%22001-57675%22%5D%7D>>.

⁸⁷ UN Human Rights Committee, *Nepomnyashchiy v. Russian Federation* (CCPR/C/123/D/2318/2013), para. 7.7; general comment No. 34, para. 25.

⁸⁸ European Court of Human Rights, *Chassagnou and others v. France* (application Nos. 25088/94, 28331/95 and 28443/95), judgment of 29 April 1999, para. 113; General Comment No. 34, *op. cit.*, note 66, para. 34.

⁸⁹ General Comment No. 34, *op. cit.*, note 66, para. 39.

⁹⁰ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, Explanatory Notes, paras. 109-112; European Court of Human Rights, *Ezelin v. France*, *op. cit.*, note 87, para. 53.

⁹¹ European Court of Human Rights, *Sergey Kuznetsov v. Russia*, *op. cit.*, note 54.

means that freedom is to be considered the rule and its restriction the exception”.⁹² Indeed, blanket bans, including bans on the exercise of the right in its entirety, or on any exercise of the right in specific places or at particular times, are intrinsically disproportionate, because they preclude consideration of the specific circumstances of each proposed assembly.⁹³ The UN Special Rapporteur holds as best practice “laws governing freedom of assembly [that] both avoid blanket time and location prohibitions, and provide for the possibility of other less intrusive restrictions”.⁹⁴

The regulatory authorities must not create obstacles to freedom of assembly, unless there are compelling arguments to do so, and the onus rests squarely on the authorities to substantiate any justifications for the imposition of restrictions.⁹⁵

Content related restrictions

Since speech and other forms of expression enjoy human rights protection, restrictions on assemblies should not be based on the content of the message they aim to communicate. According to the UN Human Rights Committee, a rejection of an individual’s right to organize a public assembly addressing a chosen subject is one of the most serious interferences with the freedom of assembly.⁹⁶

Limitations must thus not be used, explicitly or implicitly, to stifle political opposition to a government,⁹⁷ including calls for a change of government, the constitution or the political system, or to prohibit insults to the honour and dignity of officials or state organs.⁹⁸ Limitations should also not pursue other objectives favoured by the authorities. Moreover, restrictions must not be aimed specifically at particular categories of potential participants, for example, on the basis of nationality, race, ethnicity, age, political opinion, sexual orientation or gender identity.⁹⁹

⁹² UN Human Rights Council, “Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association”, Maina Kiai”, *op. cit.*, note 8, para. 16.

⁹³ *Ibid.*, para. 63.

⁹⁴ *Ibid.*, para. 39.

⁹⁵ *Ibid.*, para. 70.

⁹⁶ UN Human Rights Committee, *Alekseev v. Russian Federation*, *op. cit.*, note 69, para. 9.6.

⁹⁷ UN Human Rights Committee, “Concluding Observations on the Fourth Periodic Report of Madagascar”, CCPR/C/MDG/CO/4, 22 August 2017, para. 51, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CCPR/C/MDG/CO/4&Lang=En>.

⁹⁸ UN Human Rights Committee, “Consideration of Reports Submitted by States Parties under Article 40 of the Covenant”, CCPR/C/79/Add.86, 19 November 1997, para. 18, <<https://undocs.org/CCPR/C/79/Add.86>>.

⁹⁹ UN Human Rights Committee, “Concluding Observations on the Fourth Periodic Report of Georgia”, CCPR/C/GEO/CO/4, 19 August 2014, para. 8, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CCPR/C/GEO/CO/4&Lang=En>; UN Human Rights

Based on the ICCPR, only propaganda for war or advocacy for national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence¹⁰⁰ or acts aimed at the destruction of the rights and freedoms enshrined in international human rights law¹⁰¹ should be deemed unlawful. Even where a content-based restriction is justified, authorities should take the least intrusive and restrictive measures to address the issue.¹⁰² The use of speech with prohibited content by participants in an assembly does not, of itself, necessarily justify the dispersal of the event, and law enforcement officials should take measures (such as arrest) only against the particular individuals involved (either during or after the event).¹⁰³

Time, place and manner restrictions

So-called time, place and manner restrictions do not interfere with the message communicated, and involve a wide array of possibilities available to the regulatory authorities.¹⁰⁴ Such limitations, rather than involving a choice between non-intervention and prohibition, are related to necessary changes to the time or place of an event – without preventing access to the target audience – or the manner in which it is conducted.¹⁰⁵ Such restrictions should never be used to undermine the message or the expressive value of an assembly, or to dissuade the exercise of the right to freedom of assembly.¹⁰⁶

Importantly, if there is a proper basis for imposing time or place restrictions on assemblies, suitable alternative times or places should be identified. Any alternative must be such that the message the assembly aims to convey can be effectively communicated to those it is directed at, in other words, within “sight and sound” of the target audience.¹⁰⁷ It is never acceptable to force assembly organizers to relocate or hold their events in remote locations, away from the centres of cities or the target audience. Assemblies are always expressive activities, and to prevent or

Committee, “Concluding Observations on the Sixth Periodic Report of Mongolia”, CCPR/C/MNG/CO/6, 22 August 2017, para. 11, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/MNG/CO/6&Lang=En>.

¹⁰⁰ ICCPR, *op. cit.*, note 17 Article 20.

¹⁰¹ *Ibid.*, Article 5.

¹⁰² UN Human Rights Committee, “Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association”, *op. cit.*, note 17, para. 33.

¹⁰³ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, Explanatory Notes, para. 96.

¹⁰⁴ *Ibid.*, para. 99.

¹⁰⁵ *Ibid.*

¹⁰⁶ UN Human Rights Committee, “Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association”, *op. cit.*, note 17, para. 34.

¹⁰⁷ *Ibid.*, para. 45.

as an appropriate basis for imposing restrictions on freedom of assembly. Reliance on such grounds for restrictions can too easily lead to the regulation of content (see below) and discriminatory treatment.¹¹⁴

While security risks may be a reason for refusing to permit an individual or association to exercise their right to freedom of assembly, such a restriction must be justified by reference to objective evidence to the specific risks posed by the individual or association. It is not enough for the state to refer merely to the security situation in a specific area.¹¹⁵ The state must prove the precise nature of the threat and the specific risks posed.¹¹⁶ The Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR limit reliance on national-security grounds to justify restrictions of freedom of expression and assembly.¹¹⁷

The regulatory authority has a duty to strike a proper balance between the important freedom of peaceful assembly and the competing rights of others in the location affected by an assembly.¹¹⁸ Given the need to respect diversity in a democratic society, a high threshold will need to be overcome before it can be established that a public assembly will unreasonably infringe upon the rights and freedoms of others.¹¹⁹

As described before, assemblies are just as legitimate a use of public space as are commercial activities or the movement of vehicles and pedestrian traffic.¹²⁰ The temporary disruption of vehicular or pedestrian traffic and opposition to an assembly are not, of themselves, sufficient to justify restrictions on assemblies.¹²¹

seriously compromised (e.g., during a hunger strike). See: ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, Explanatory Notes, paras. 76-77.

¹¹⁴ *Ibid.*, para. 79.

¹¹⁵ European Court of Human Rights, *Yeşilgöz v. Turkey*, no. 45454/99, para. 30 (French only), 20 September 2005, <<https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-70164%22%5D%7D>>.

¹¹⁶ UN Human Rights Committee, communication No. 1119/2002, *Lee v. the Republic of Korea*, views adopted on 20 July 2005, para. 7.3.

¹¹⁷ Based on the Siracusa Principles, national security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation, its territorial integrity or political independence and cannot be invoked to prevent merely local or relatively isolated threats to law and order. Moreover, they must be adequate safeguards and effective remedies against abuse. United Nations, Economic and Social Council, "Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights", U.N. Doc. E/CN.4/1985/4, Annex (1985), <<http://www1.umn.edu/humanrts/instrree/siracusaprinciples.html>>.

¹¹⁸ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, Explanatory Notes, para. 8o.

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*, para. 20; UN Human Rights Council, "Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai", *op. cit.*, note 8, para. 41.

¹²¹ *Ibid.*

The right to freedom of peaceful assembly also includes the right to plan, organize, promote and advertise an assembly, including online, in a lawful manner. Any restrictions on such activities should be considered a prior restriction on the exercise of this right.¹²²

II.4. Policing of assemblies

Police hold a legal monopoly on the use of physical force to uphold the law and maintain public order and safety. Therefore, the role of police in facilitating assemblies is of paramount importance, and the policing of assemblies is considered indicative of the relationship between the state and its citizens. Law enforcement agencies should continually work on strategies to build trust with the communities they serve. If people trust the police, they are more willing to co-operate with law enforcement officers, which, in turn, improves the effectiveness of the police. The legitimacy of the police is crucial for building public trust and confidence in their work, and legitimacy can only be achieved by accountable policing. In addition, the demographic make-up of law enforcement agencies should be representative of the whole community,¹²³ and states should promote diversity in law enforcement, so that communities see themselves represented in the police force.¹²⁴

Wherever possible, only law enforcement officials who have been trained in the policing of assemblies should be deployed for that purpose.¹²⁵ As a general rule, the military should not be used to police assemblies.¹²⁶

¹²² UN Human Rights Committee, "Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association", *op. cit.*, note 17, para. 19.

¹²³ *Ibid.*, para. 39.

¹²⁴ *Ibid.*, para. 49(a).

¹²⁵ UN Human Rights Committee, Concluding observations on the second periodic report of Cambodia, CCPR/C/KHM/CO/2, 27 April 2015, para. 12; UN Human Rights Committee, Concluding observations on the second periodic report of Greece, CCPR/C/GRC/CO/2, 3 December 2015, para. 42; UN Human Rights Committee, Concluding observations on the second periodic report of Bulgaria, CCPR/C/BGR/CO/4, 15 November 2018, para. 38.

¹²⁶ UN Human Rights Committee, Concluding observations on the fourth periodic report of Bolivarian Republic of Venezuela, CCPR/C/VEN/CO/4, 14 August 2015, para. 14; African Commission on Human and Peoples' Rights, *Guidelines on Policing Assemblies*, *op. cit.* note 24, para. 3.2., UN Human Rights Committee, "Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association", *op. cit.*, note 66

II.4.1. Key principles

Human rights compliant policing of assemblies is underpinned by four key principles: **information, communication, differentiation** and **facilitation**.¹²⁷

Information

The planning and decision-making of law enforcement agencies in the context of policing assemblies should be information-led. Information refers to all forms of information obtained, recorded or processed by the police, including personal data and intelligence.

Communication

Generally, the overall policing approach should be driven by communication, seeking to prevent conflicts from occurring through dialogue and mediation, as well as to de-escalate and peacefully settle any conflicts that do occur.¹²⁸ Engagement and communication by the police with assembly organizers and participants can help facilitate enjoyment of the freedom of peaceful assembly and the work of the police, as well as reduce the risk of violence during assemblies.

Open dialogue between the authorities (including the authority responsible for receiving notifications and law enforcement officials) and, where identifiable, assembly organizers before, during and after an assembly enables a protective and facilitative approach, while helping to defuse tension and prevent escalation.¹²⁹ Well-informed organizers can play an important role in relaying information to participants about potential risks, security measures and planned or ongoing police action. In a similar vein, good practice in policing assemblies involves the adoption of a policy of “no surprises”, whereby law enforcement officers allow time for people in a crowd to respond as individuals to the situation facing them, including any warnings or directions given to them.¹³⁰

¹²⁷ ODIHR, *Human Rights Handbook on Policing Assemblies*, (Warsaw: ODIHR, 2016), <<https://www.osce.org/odihhr/226981>>.

¹²⁸ UN Human Rights Committee, “Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association”, *op. cit.*, note 17, para. 38.

¹²⁹ Geneva Academy of International Humanitarian Law and Human Rights, “Facilitating Peaceful Protests”, January 2014, <<https://www.geneva-academy.ch/joomlatools-files/docman-files/Facilitating%20Peaceful%20Protests%20.pdf>>, p. 16.

¹³⁰ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, para. 150.

Differentiation

Police should resort to the use of force only in line with the principles of exceptionality, proportionality and necessity.¹³¹ In particular, they should differentiate as much and for as long as possible between those individuals who are engaged in violence and those who wish to assemble peacefully, and not use force against them.

Facilitation

The overall aim of the policing of assemblies should be to protect and facilitate people's right to assemble peacefully, while protecting public order and the safety and security of other people. The other three principles support this ultimate objective.

II.4.2. Duties and powers of law enforcement agencies

There is a positive obligation for the state to protect and facilitate the right to freedom of assembly, rather than impose unnecessary or disproportionate limits on it. This includes a responsibility to provide police resources to protect assemblies and manage traffic, and to respond reasonably to spontaneous, simultaneous and unlawful assemblies.

The fundamental duty of any law enforcement agency involved in policing a peaceful assembly is to accommodate, by enabling and facilitating, the exercise of the fundamental rights of the participants, while also protecting other members of the public, including journalists,¹³² monitors and observers, as well as public and private property, from harm.¹³³

The authorities should try to ensure that if two or more assemblies wish to take place in close proximity, or if one group plans to protest against another assembly, such events should be facilitated where possible. In some countries, the authorities have cited the proposed use of a public space by another event as a reason for banning an assembly. In the case of *Öllinger v. Austria* (2006), however, the European Court of Human Rights emphasized that, wherever possible, the authorities should take

¹³¹ See: UN General Assembly, "Code of Conduct for Law Enforcement Officials", 17 December 1979, <<https://www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx>>; and Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials", September 1990, <<https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>>.

¹³² CCPR/C/AGO/CO/1, para. 21; CCPR/C/GEO/CO/4, para. 12; CCPR/C/KOR/CO/4, para. 52.

¹³³ A/HRC/31/66, para. 41.

measures to ensure that all assemblies can take place, rather than use the notification of simultaneous assemblies as a justification for imposing restrictions.¹³⁴

The authorities should also allow for assemblies to take place without any notification in certain circumstances, such as when people need to respond urgently to a piece of news or an unexpected event, and it is not possible to meet the requirements of the notification period.¹³⁵ Spontaneous assemblies should not be used to avoid the formal legal requirements to notify, but should be regarded as a normal (rather than exceptional) feature of a healthy democracy. As such, the authorities should protect and facilitate spontaneous assemblies, so long as they are peaceful in nature.

The importance of the state protecting the right to peaceful assembly has also been emphasized by the European Court of Human Rights in a number of cases where the authorities have forcibly dispersed peaceful assemblies because they failed to comply with the notification requirements. In the cases of *Oya Ataman v. Turkey* and *Balçık v. Turkey* (both 2007), the European Court stressed that “where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance”, and that the police should refrain from the use of force to disperse participants.¹³⁶ This does not prevent the organizers or participants from being subject to legal proceedings for violating applicable notice requirements.

The police have the primary responsibility to protect the right to freedom of peaceful assembly, and also to ensure that public order is maintained in a reasonable manner during an assembly.¹³⁷ However, while the state should take reasonable and appropriate measures to ensure that an assembly may proceed peacefully, it cannot be expected to provide an absolute guarantee that violence will not occur or that those participating might not face some level of aggression.¹³⁸

The policing of public assemblies is a particular activity that requires skills and abilities different from those for routine policing. In particular, it requires the balancing of competing interests and rights, and it is important, therefore, that police officers are well trained in both human rights and crowd-management principles and practices,

¹³⁴ European Court of Human Rights, *Öllinger v. Austria*, no. 76900/01, 29 June 2006, <[¹³⁵ European Court of Human Rights, *Éva Molnár v. Hungary*, *op. cit.*, note 51.](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22ollinger%22],%22itemid%22:[%22001-76098%22]}></p>
</div>
<div data-bbox=)

¹³⁶ European Court of Human Rights, *Oya Ataman v. Turkey*, *op. cit.*, note 53, and *Balçık and Others v. Turkey*, no. 25/02, 29 November 2007, <[¹³⁷ European Court of Human Rights, *Ouranio Toxo and Others v. Greece*, *op. cit.*, note 62.](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22balcik%20and%20others%22],%22itemid%22:[%22001-83580%22]}>.</p>
</div>
<div data-bbox=)

¹³⁸ European Court of Human Rights, *Plattform “Ärzte für das Leben” v. Austria*, *op. cit.*, note 69.

and that they are appropriately equipped both to provide protection and to maintain order.

It is important to note that many assemblies will cause some degree of disruption to daily routines, but the street and other public spaces are as legitimate sites for assemblies as they are public thoroughfares for vehicles and pedestrians. The police should aim to balance the competing needs of the users of public space, rather than to restrict the actions of participants in public assemblies.¹³⁹

Monitors and the Media

As stated above, assembly monitors have a right to be present at public assemblies and can have a positive role to play in observing compliance with human rights. The authorities have a responsibility to facilitate their presence at such events.

Similarly, the media have a right to attend and report on peaceful assemblies, and law enforcement officials have a responsibility not to prevent or obstruct their work. The OSCE Representative on Freedom of the Media produced a special report on the media and freedom of assembly in 2007.¹⁴⁰

II.4.3. (Avoiding) the use of force

The use of force by law enforcement officials should always be an exception,¹⁴¹ and assemblies should ordinarily be facilitated with no resort to force, which requires a policing approach that, from the outset, actively seeks to avoid situations in which police might have to resort to the use of force.¹⁴² In any event, all use of force must comply with the fundamental principles of legality, necessity, proportionality, precaution and non-discrimination, and those using force must be accountable for each use of force.¹⁴³ Even if the use of force in a particular situation complies with

¹³⁹ European Court of Human Rights, *Oya Ataman v. Turkey*, *op. cit.*, note 53.

¹⁴⁰ OSCE Representative on Freedom of the Media, "Special Report on Handling of the Media during Political Demonstrations: Observations and Recommendations", 18 June 2007, <<https://www.osce.org/fom/25744>>.

¹⁴¹ See: UN General Assembly, "Code of Conduct for Law Enforcement Officials", *op. cit.*, note 132, commentary to Article 3.

¹⁴² Amnesty International, Dutch Section, "Guidelines for the Implementation of the UN Basic Principles for the Use of Force and Firearms by Law Enforcement Officials", Guideline 7a and Section 7.1, <https://policehumanrightsresources.org/content/uploads/2015/01/ainl_guidelines_use_of_force_0.pdf?x96812>.

¹⁴³ UN Human Rights Committee, "General Comment No. 36 on the Right to Life", 3 September 2019, <<https://www.refworld.org/docid/5e5e75e04.html>>; UN, "Basic Principles on the Use of Force

the requirements of necessity and proportionality, but the need to use force could reasonably have been avoided in the first place, a state may be held accountable for a failure to take due precautionary measures, particularly if this then leads to the loss of life.¹⁴⁴

Police organizations have obligations towards their own staff, so they have to exercise an adequate “duty of care” to protect the safety and security of officers in the conduct of their duties and minimize the risk of injuries. Injured officers need to be provided with medical care. The law enforcement officials responsible for policing assemblies should be suitably equipped, including with appropriate less-lethal weapons, and should be provided with adequate personal protective equipment.¹⁴⁵ Protective equipment is designed to minimize the need for the use of force. Whenever law enforcement tactics involve the use of force in the context of policing assemblies, the authorities need to be prepared to provide medical care for people whose health has been affected by, or who have been injured as a result of, the use of force by the police.

In the context of assemblies, the use of force should be preceded by adequate prior warning that permit individual participants to leave peacefully.¹⁴⁶ A variety of responses should enable a differentiated and proportional use of force that is adequate to the threat,¹⁴⁷ and under no circumstances should force be used against peaceful demonstrators who are unable to leave the scene.¹⁴⁸ The European Court of Human Rights has stressed that Article 3 of the ECHR does not allow for a balancing exercise to be performed between the physical integrity of an individual and the aim of maintaining public order.¹⁴⁹

and Firearms by Law Enforcement Officials” *op. cit.*, note 132; UN General Assembly, “Code of Conduct for Law Enforcement Officials” *op. cit.*, note 132.

¹⁴⁴ European Court of Human Rights, *McCann and Others v. United Kingdom*, application No. 18984/91, 27 September 1995.

¹⁴⁵ European Court of Human Rights, *Güleç v. Turkey* (application No. 21593/93), judgment of 27 July 1998, para. 71; UN, “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials”, *op. cit.*, note 132, principle 2.

¹⁴⁶ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, para. 5.5.
¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*, Explanatory Notes, para. 176.

¹⁴⁹ European Court of Human Rights, *İzci v. Turkey*, no. 42606/05, para. 56, 23 July 2013, <

The authority to arrest can play an important protective function in assemblies, by allowing law enforcement officials to remove individuals who are acting violently from an assembly. As underscored by the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, the term “arrest” refers to any deprivation of liberty, and is not limited to formal arrest under domestic law.¹⁶³ In an assembly context, deprivation of liberty could include, for example, a containment of a group of assembly participants. It is critical that the exercise of arrest powers is consistent with international human rights standards, including those relating to the rights to privacy, liberty, and due-process rights.¹⁶⁴ OSCE commitments provide that no one may be deprived of their liberty except on such grounds and in accordance with procedures that are established by law (Moscow 1991).¹⁶⁵ In the context of assemblies, it is important to establish clear protocols for the lawful arrest of participants in assemblies, providing guidance as to when detention is justified.¹⁶⁶ Special considerations should be given in cases where the law enforcement officials are arresting persons with disabilities, children or other groups of individuals who might require special safeguards to ensure respect for their rights. That includes, for example, ensuring that children are only arrested as a measure of the last resort, or providing the necessary reasonable accommodation requirements for persons with disabilities. Law enforcement officers must be trained on the rights and safeguards related to these and other groups, and must ensure that they act in compliance with these principles.

While mass arrests have a high likelihood of being arbitrary and should, therefore, be avoided, there may be occasions involving public assemblies when numerous arrests are deemed necessary in response to the unlawful conduct of those to be arrested. However, large numbers of participants should not be deprived of their liberty simply because law enforcement agencies do not have sufficient resources at their disposal to individualize arrest decisions based on particularized facts.¹⁶⁷ Similarly, intrusive pre-emptive measures should not be used unless a clear and present danger of imminent violence actually exists.¹⁶⁸

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*, para. 44.

¹⁶⁵ OSCE, “Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE”, *op. cit.*, note 22. A similar principle is enshrined in Article 9 of the ICCPR.

¹⁶⁶ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, Explanatory Notes, para. 161.

¹⁶⁷ *Ibid.*

¹⁶⁸ UN HRC, “Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association”, *op. cit.*, note 17, para. 45.

Where an arrest takes place, detention conditions must meet minimum standards. This applies to any location or situation in which an individual has been deprived of their liberty, including jails, holding cells, public spaces and vehicles used to transfer detainees, or any other location where detainees are held.¹⁶⁹ All places of detention must be fully accessible for persons with disabilities and reasonable accommodation must be provided to those requesting it.

Preventive detention of targeted individuals may constitute arbitrary deprivation of liberty and act to frustrate the right of peaceful assembly.¹⁷⁰ Such action should, therefore, be used only in exceptional cases and where the authorities have actual knowledge of the intent of specific individuals to engage in or incite acts of violence during a particular assembly, and where other measures to prevent violence from occurring will clearly be inadequate.¹⁷¹

Dispersing an assembly may risk violating the rights to freedom of expression and to peaceful assembly, as well as the right to bodily integrity. Dispersing an assembly may also escalate tensions between participants and law enforcement. For these reasons, it must be resorted to only when strictly unavoidable.¹⁷² Stemming from the presumption in favour of holding assemblies, non-violent unlawful assemblies should not be terminated for the mere reason of being unlawful. Rather, the principle of proportionality requires that unlawful assemblies – so long as they remain peaceful – should not be dispersed unless required due to additional factors linked to public order and security.¹⁷³ An assembly may be dispersed based on the risk of violence breaking out only if there is an imminent threat of serious violence.¹⁷⁴ A peaceful assembly that causes serious disruption, such as blocking the streets for days, may be dispersed only if the disruption is “serious and sustained”, and even then only the minimum force necessary can be used.¹⁷⁵

¹⁶⁹ *Ibid.*, para. 46.

¹⁷⁰ UN Human Rights Committee, “Concluding Observations on the Third Periodic Report of the Former Yugoslav Republic of Macedonia”, CCPR/C/MKD/CO/3, 17 August 2015, para. 19, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CCPR/C/MKD/CO/3&Lang=En>.

¹⁷¹ European Court of Human Rights, *S., V. and A. v. Denmark* (applications Nos. 35553/12, 36678/12 and 36711/12), judgment of 22 October 2018 (Grand Chamber), paras. 77 and 127.

¹⁷² *Ibid.*, para. 61.

¹⁷³ Amnesty International, Guidelines, *op. cit.*, note 143, Guideline 7(b) and Section 7.2.

¹⁷⁴ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, para. 95.

¹⁷⁵ “Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on the Proper Management of Assemblies”, *op. cit.*, note 17, para. 62; UN, “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials” *op. cit.*, note 132, principle 13; “Report of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns”, *op. cit.*, note 151, para. 75.

As noted above, the enforced dispersal of assemblies should be a measure of last resort when law enforcement officials have taken all reasonable measures to facilitate and protect an assembly from harm, and only if there is an imminent threat of violence.¹⁷⁶ The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials state that, in the dispersal of assemblies that are unlawful but non-violent, law enforcement officials should avoid the use of force or, where that is not practicable, must restrict such force to the minimum extent necessary.¹⁷⁷

If dispersal is deemed necessary, the assembly organizers and participants should be clearly and audibly informed prior to any intervention by law enforcement personnel. Participants must be given reasonable time to disperse voluntarily. Only if participants then fail to disperse may law enforcement officials intervene further. Third parties (such as monitors, journalists and photographers) may also be asked to disperse, but they should not be prevented from observing and recording the policing operation.¹⁷⁸

II.4.4. Accountability

The state is responsible for the actions and omissions by its law enforcement agencies in policing assemblies.

Planning and decision-making

The policing of an assembly should be planned and conducted with the intention of enabling the assembly to take place as planned, and with a view to minimizing the potential for injury to any person.¹⁷⁹ More generic contingency plans should also be elaborated by relevant law enforcement agencies, in particular for the policing of assemblies for which the authorities are not notified in advance and through which public order may be affected.¹⁸⁰ These include spontaneous assemblies and counterdemonstrations.

¹⁷⁶ “Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on the Proper Management of Assemblies”, *op. cit.*, note 17, para. 61

¹⁷⁷ UN, “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials” *op. cit.*, note 132, Principle 13.

¹⁷⁸ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, Explanatory Notes, para. 168.

¹⁷⁹ UN Human Rights Council, “Resolution 38/11: The Promotion and Protection of Human Rights in the Context of Peaceful Protests”, preambular para. 10, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/213/58/PDF/G1821358.pdf?OpenElement>>; “Report of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns”, *op. cit.*, note 151, para. 51.

¹⁸⁰ “Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on the Proper

The decisions concerning law enforcement tactics, including the use of force, should be reported in a transparent manner. Where injury occurs, a report should contain sufficient information to establish whether the use of force was necessary and proportionate, and set out the details of the incident, including the surrounding circumstances, measures taken to avoid the use of force and to de-escalate the situation, the type and manner of force employed, the reasons for the use of force, its effectiveness and the consequences.

Command structure

A clear and transparent police command structure must be established to minimize the risk of violence or the use of force, and to ensure responsibility for unlawful acts or omissions by officers.¹⁸¹ Proper record-keeping related to decisions made by commanding officers at all levels is also required. In addition, there should be a clear system of record-keeping or registration related to the equipment provided to individual officers in an operation, including vehicles, sublethal weapons, firearms and ammunition.¹⁸²

Individual identifiability

To ensure accountability at all levels, uniformed law enforcement personnel should be clearly and individually identifiable at all times while policing assemblies. They must display either their name or identification number on their uniform and/or headgear, and must not remove or cover it or prevent people from reading it during an assembly.¹⁸³

Effective complaints mechanisms

One of the main principles of democratic policing highlights the need for the police to be accountable to citizens. States have an obligation to establish accessible and effective complaints mechanisms that are able to independently, promptly and thoroughly investigate allegations of human rights violations, including those related

Management of Assemblies”, *op. cit.*, note 17, para. 37.

¹⁸¹ UN, “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials” *op. cit.*, note 132, Principles 24–26.

¹⁸² UN HRC, “Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association”, *op. cit.*, note 17, para. 65.

¹⁸³ *Ibid.*, para. 153. See also: *Izci v. Turkey*, *op. cit.*, note 150; and *Ataykaya v. Turkey*, *op. cit.*, note 158, on the lack of identification of police officers involved in use of force. See also: European Court of Human Rights, *Hentschel and Stark v. Germany* (application No. 47274/15), judgment of 9 November 2017, para. 91.

to assembly rights.¹⁸⁴ Deliberate or unintentional but negligent action or inaction is sufficient grounds to find a violation of human rights. Law enforcement agencies and individual officials must be held accountable for their actions and omissions under domestic law.

Effective investigation includes the following factors: an official investigation initiated by the state; independence from those implicated; capability of determining whether an act was justified in the circumstances; a level of promptness and reasonable expedition; and a level of public scrutiny.¹⁸⁵

States also have an obligation to provide those whose rights have been violated in the context of an assembly with an adequate, effective and prompt remedy determined by a competent authority with the power to enforce remedies.¹⁸⁶ The right to a remedy includes the right to equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms.¹⁸⁷

The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association has emphasized that there is a need to ensure clear accountability mechanisms for any violations of human rights that may occur in relation to peaceful protests.¹⁸⁸ Law enforcement officials should be liable for any failure to fulfil their positive obligations to protect and facilitate the right to freedom of peaceful assembly.¹⁸⁹ Law enforcement officials should also be responsible for undue restrictions on the exercise of the freedom of peaceful assembly, and they should be accountable to an independent body.¹⁹⁰ The law should also provide for criminal and

¹⁸⁴ UN Human Rights Council, "Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai", *op. cit.*, note 8, para. 77.

¹⁸⁵ European Court of Human Rights, *Isayeva v. Russia*, application No. 57950/00, 24 February 2005. See also UN Human Rights Council, "Report of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns", *op. cit.*, note 151, para. 80.

¹⁸⁶ See Human Rights Committee, General Comment No. 31, *op. cit.*, note 47, para. 15. See also: UN General Assembly, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law", 16 December 2005, <<https://www.ohchr.org/en/professionalinterest/pages/remedyandrepairation.aspx>>.

¹⁸⁷ UN HRC, "Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association", *op. cit.*, note 17, para. 89.

¹⁸⁸ UN Human Rights Council, "Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai", *op. cit.*, note 8, paras. 7, 54.

¹⁸⁹ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, Explanatory Notes, para. 179.

¹⁹⁰ *Ibid.*, para. 108;

disciplinary sanctions against those who unduly interfere with or violently disperse public assemblies.¹⁹¹

Where a complaint is received regarding the conduct of law enforcement officials or where a person is seriously injured or is deprived of their life as a result of the actions of law enforcement officers, an effective official investigation must be conducted.¹⁹² If the force used is not authorized by law, or if more force is used than is necessary under the circumstances, law enforcement officers should face civil and/or criminal liability, as well as disciplinary action. The relevant law enforcement personnel should be held liable for failing to intervene where such intervention might have prevented other officers from using excessive force.¹⁹³ Liability should extend to commanding officers where they fail to exercise effective command and control. Where superior officers knew, or should have known, that law enforcement officials under their command resorted to the unlawful use of force or firearms, and they did not take all measures in their power to prevent, suppress or report such use, they should also be held responsible.¹⁹⁴ Moreover, the planning of police operations has to be carried out in a way that minimizes the likelihood of the use of force. In this

¹⁹¹ "Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai", *op. cit.*, note 8, para. 78.

¹⁹² See: European Court of Human Rights cases *McCann and Others v. The United Kingdom*, *op. cit.*, note 145, para. 161; *Kaya v. Turkey*, no. 158/1996/777/978, para. 105, 19 February 1998, <[Shanaghan v. the United Kingdom, no. 37715/97, para. 88, 4 May 2001, <\[McKerr v. the United Kingdom, no. 28883/95, para. 111, 4 May 2001, <\]\(https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22shanaghan%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-59452%22\]}>; <i>Hugh Jordan v. the United Kingdom</i>, no. 24746/94, para. 105, 4 May 2001, <; <i>Kelly and Others v. the United Kingdom</i>, no. 30054/96, para. 94, 4 May 2001, <<a href=)

¹⁹³ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, Explanatory Notes, para. 182.

¹⁹⁴ UN, "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials" *op. cit.*, note 132, Principle 24.

respect, the commanding officer is liable for the actions of officers on the front line if violations are the result of inadequate planning.¹⁹⁵

In addition to guaranteeing accountability through judicial processes, states should implement additional levels of non-judicial oversight, including an effective internal investigations process and an independent oversight body.¹⁹⁶ These systems should operate in addition to, and not as an alternative to, criminal, public and private legal remedies for police misconduct.¹⁹⁷ The role of a dedicated civilian oversight body may be complemented by the work of an NHRI or ombudsperson. It is a good practice for an independent oversight mechanism to review and report on any large-scale or contentious policing operation related to public assemblies. A police complaint mechanism should be established where none exists, with a range of potential resolutions at its disposal.¹⁹⁸

Another way in which the police may be held accountable in the policing of public assemblies is through the work of the media and through their ability to report, record, analyse and question police actions and motivations.¹⁹⁹ Independent monitoring of assemblies by civil society or NHRIs is an effective way to ensure full accountability of law enforcement agencies and, therefore, improve their legitimacy.

Photography/Video recording

The right to privacy is guaranteed by international human rights law.²⁰⁰ There is growing international recognition that the exercise of the right to privacy is important for the realization of other human rights, including the right to freedom of expression, and to hold opinions without interference, as well as the rights to freedom of peaceful assembly and association.²⁰¹ Therefore, violations or abuses of the right to privacy might affect the enjoyment of freedom of peaceful assembly. States must

¹⁹⁵ *McCann and Others v. The United Kingdom*, *op. cit.*, note 145.

¹⁹⁶ UN HRC, "Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association", *op. cit.*, note 17, para. 94.

¹⁹⁷ Council of Europe, Commissioner for Human Rights, "Opinion of the Commissioner for Human Rights Concerning Independent and Effective Determination of Complaints against the Police", 12 March 2009, para. 25, <<https://rm.coe.int/opinion-of-the-commissioner-for-human-rights-thomas-hammarberg-concern/16806daa54>>.

¹⁹⁸ *Ibid.*, para. 180.

¹⁹⁹ ODIHR, *Human Rights Handbook on Policing Assemblies*, *op. cit.*, note 128, p. 32.

²⁰⁰ United Nations General Assembly, "Universal Declaration of Human Rights" (UNDHR), Article 12, 10 December 1948, <<https://www.un.org/en/universal-declaration-human-rights/>>; UN General Assembly, ICCPR, *op. cit.*, note 17, Article 17.

²⁰¹ UN Human Rights Council, "Resolution 34/7 on the Right to Privacy in the Digital Age", 23 March 2017, <https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/34/7>.

ensure that any interference with the right to privacy is consistent with the principles of legality, necessity and proportionality. Unlawful or arbitrary surveillance or collection of personal data violate the right to privacy and can interfere with other human rights, including the right to freedom of peaceful assembly.²⁰²

Photography or video/audio recording of participants by law enforcement personnel is generally permissible, as the use of cameras to monitor public space allows law enforcement agencies to identify and respond to imminent threats to public safety and actual or imminent occurrences of criminal activity while facilitating peaceful assemblies. The sustained and focused photographing, filming or recording of an individual or individuals may, however, be perceived to be unduly intrusive, and are likely to have a chilling effect on assembly organizers and participants, and should, therefore, not be carried out routinely.²⁰³ Such a chilling effect may be caused by the deployment of police officers with hand-held or body-worn cameras, or by the use of closed-circuit television (CCTV) cameras during a peaceful event. Recording peaceful assembly participants in a context and manner that intimidates or harasses is an impermissible form of interference with the right to freedom of peaceful assembly.²⁰⁴ The use of camera equipment to record images for the purpose of identification should be confined to those circumstances where criminal offences are occurring or where there is a reasonable suspicion of imminent criminal behaviour.²⁰⁵

Generally, the visible use of photographic equipment at public assemblies should not take place routinely. The collection and processing of personal information, such as through recording devices or CCTV, must comply with protections against arbitrary or unlawful interference with privacy.²⁰⁶ Proportionality issues may arise if the photography/filming are perceived as coercive or intrusive, or where there is no obvious justification for it. Furthermore, while monitoring individuals in a public place for identification purposes does not necessarily give rise to interference with their right to privacy, the recording of such data and the systematic processing or permanent nature of the record kept may involve violations of their privacy.²⁰⁷

Legislation and policies regulating the collection and processing of information relating to assemblies or their organizers and participants must meet legality, necessity

²⁰² *Ibid.*

²⁰³ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, para. 169.

²⁰⁴ UN HRC, "Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association", *op. cit.*, note 17, para. 76.

²⁰⁵ *Ibid.*, para. 169.

²⁰⁶ *Ibid.*, para. 73.

²⁰⁷ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, para. 169.

and proportionality tests.²⁰⁸ The police should have clear and transparent guidelines on their use of video recording that are consistent with international standards on privacy, and that ensure video recording is not used in such a way as to have a chilling effect on participation in assemblies.²⁰⁹

II.5. The role of the organizers

Not all assemblies have an organizer. This is especially the case today, when digital tools are relied on for social mobilization and advocacy. The section below describes the organizer's responsibilities in cases of assemblies with an identifiable organizer, but does not suggest that assemblies without an identifiable organizer or unorganized assemblies should not be facilitated.

At the stage of pre-event planning, especially in the case of large assemblies or assemblies related to controversial issues, it is a good practice for organizers to notify and discuss with law enforcement officials the security and public safety measures that are to be put in place prior to an event. Such discussions can cover, *inter alia*, the deployment of law enforcement personnel, stewarding arrangements and particular concerns relating to policing operations.²¹⁰ The participation of other agencies, such as fire and ambulance services, could also contribute to a discussion of the possible solutions to addressing any problems and risks presented by an assembly, and planned measures should such problems or risks materialize. However, a legal requirement that organizers carry out mandatory risk assessments for all open-air public assemblies would create an unnecessarily bureaucratic and complicated regulatory regime that would unjustifiably deter groups and individuals from exercising their freedom of peaceful assembly.²¹¹ Any such discussion should be entirely voluntary and should never be used as a way to compel an organizer to agree to restrictive conditions.²¹²

²⁰⁸ UN HRC, "Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association", *op. cit.*, note 17, para. 74.

²⁰⁹ UN Human Rights Committee, "Concluding Observations on the Third Periodic Report of Hong Kong, China, Adopted by the Committee at Its 107th Session (11 – 28 March 2013)", CCPR/C/CHN-HKG/CO/3, 29 April 2013, para. 10, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CCPR/C/CHN-HKG/CO/3&Lang=En>; UN Human Rights Committee, "Concluding Observations on the Initial Report of Macao, China, Adopted by the Committee at Its 107th Session (11 – 28 March 2013)", CCPR/C/CHN-MAC/CO/1, 29 April 2013, para. 16, <<https://undocs.org/en/CCPR/C/CHN-MAC/CO/1>>.

²¹⁰ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, para. 5.1.

²¹¹ *Ibid.*, Explanatory Notes, para. 18g.

²¹² *Ibid.*, para. 103.

The notification procedure should at all times be free of charge, so as not to financially deter organizers from exercising their right to freedom of peaceful assembly.²¹³ The costs of providing additional services to facilitate and protect assemblies should be covered by the state. In particular, the costs of providing adequate security and safety (including traffic control, crowd management and medical services) should be fully covered by the public authorities, and no additional charge should be levied for providing adequate policing.²¹⁴ Similarly, the responsibility for routine clean-up after a public assembly should lie with the municipal authorities.²¹⁵

Organizers of non-commercial public assemblies should not be required to obtain public liability insurance for their event,²¹⁶ as any such requirement would have a disproportionate and inhibiting effect on the enjoyment of the freedom of assembly.²¹⁷ Under some circumstances, it may be legitimate to recommend to the organizers of assemblies that they arrange a certain level of stewarding for their gathering. However, the use of stewards appointed by the organizers of an assembly should be encouraged, but never required.²¹⁸ Such a recommendation should in no way detract from the positive obligation of the state to provide adequately resourced policing arrangements and the overall responsibility of law enforcement agencies for maintaining public order.²¹⁹

Organizers should ensure that any assembly takes place in the manner set out in the notification document, and that the assembly complies with any lawful restrictions that might have been imposed. Organizers and stewards have a responsibility to make reasonable efforts to comply with legal requirements and to ensure that their assemblies are peaceful, but they should not be held liable for failure to perform their responsibilities if they do not personally violate existing laws governing all participants in an assembly.²²⁰ This principle also applies in those cases when an

²¹³ UN Human Rights Council, "Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai", *op. cit.*, note 8, para. 57.

²¹⁴ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, para. 5.2. Also see *ibid.*, para. 57.

²¹⁵ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, Explanatory Notes, para. 32. See also: UN Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", *op. cit.*, note 8, para.57.

²¹⁶ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, para. 5.2.

²¹⁷ *Ibid.*, Explanatory Notes, para. 198.

²¹⁸ UN Human Rights Council, "Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai", *op. cit.*, note 8, p. 9.

²¹⁹ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, Explanatory Notes, para. 195.

²²⁰ Organizers should not be liable for the actions of individual participants or stewards; instead, individual liability should arise for participants or stewards if they commit an offence or if they fail to carry out the

assembly degenerates into serious public disorder. In such circumstances, it is the responsibility of the state to limit the damage caused, and under no circumstances should the organizers of a lawful and peaceful assembly be held liable for a disruption caused by others where the organizers did not cause and did not specifically intend the damage or disruption.²²¹

The principle of the individual liability of participants should be upheld, notably due to the presumption of the peacefulness of the assembly. Holding the organizers of an event liable for the conduct of others would be a manifestly disproportionate response, since this would impose responsibility on organizers for acts by other individuals over whom they exercised no personal control (including possible *agents provocateurs*), and which could not have been reasonably foreseen.²²² Holding an organizer responsible for the unlawful behaviour of others would also weaken trust and co-operation between assembly organizers, participants and the authorities, and could discourage potential assembly organizers from exercising their rights.²²³ Similarly, individual participants who have not personally committed any unlawful act during an assembly should not be held liable, even if others become violent.²²⁴

Any liability arising after an assembly, such as for deliberately not respecting legitimate restrictions, and any sanctions imposed on the organizers should be in line with the principle of proportionality.²²⁵ Disproportionate sanctions and penalties imposed on organizers and participants after a demonstration, namely in the form of fines or imprisonment, breach the right to freedom of assembly, and are likely to deter individuals and organizations from exercising this freedom in the future.²²⁶ Moreover, anyone charged with an offence related to an assembly must enjoy fair trial rights,²²⁷ regardless of the liability (administrative or criminal) at issue.

lawful directions of law enforcement officials. *Ibid.*, Explanatory Notes, paras. 112 and 197.

²²¹ *Ibid.*, para. 198.

²²² ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, Explanatory Notes, para. 112.

²²³ UN HRC, "Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association", *op. cit.*, note 17, para. 26.

²²⁴ European Court of Human Rights, *Ezelin v. France*, *op. cit.*, note 87, para. 53; ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, Explanatory Notes, para. 111.

²²⁵ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, Explanatory Notes, para. 109. Also see: European Court of Human Rights, *Ezelin v. France*, *op. cit.*, note 87.

²²⁶ UN Human Rights Council, "Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai", *op. cit.*, note 8, para. 77.

²²⁷ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8, Explanatory Notes, para. 110.

III. PREPARING TO MONITOR

There are a variety of tasks that should be carried out in advance of any assembly monitoring activity, involving the gathering of background information and planning of the monitoring deployment. These activities are usually carried out by the organization or person co-ordinating (hereinafter: co-ordinator) the actual monitoring exercise, and with the involvement of a security expert, as relevant.

There are a number of practical steps that need to be taken in monitoring an assembly. The scale of the preparation and organization will very much depend on the nature of the assembly being monitored, the level of controversy or risk associated with the assembly, the attitudes of the authorities to the assembly, the size of the monitoring team being deployed, and the experience of the monitors involved.

Preparation is key to be able to contextualize the information gained through direct observation of the assembly, as well as to minimize the personal safety and security risks associated with the monitoring activity. Contextualization of the observation findings is essential for the validity of the information documented by the assembly monitoring activity.

III.1. Background research

General information about the assembly: Basic details should be obtained of any assembly planned to be observed in advance. These include:

- the identity of the organizer (if the organizer is identifiable);
- the main purpose of the assembly;
- the planned date, starting and finishing time;
- the venue/route;

- the expected number of participants;
- the legal status of the assembly;
- restrictions that have been imposed; and
- any planned or potential protests against the assembly.

This might involve contacting the organizer and relevant authorities directly, or it might be possible to gather information electronically. In some countries, the municipal authorities display notices about all assemblies in a public building. In others, information on public processions and decisions on any restrictions that have been imposed are available online.

In some countries, meetings to consider notifications about future public assemblies are open to the public, and monitors are free to attend and observe the discussions. Attending such meetings can be a useful opportunity to meet key people involved in the administration of assemblies, the organizers and police officers, and can serve to make those involved aware of the monitoring project.

In recent years, there has been an increasing use of new forms of media and social networking to co-ordinate assemblies and to mobilize people around a cause. The emergence of such social-networking resources as Facebook and Twitter has had a significant impact on social activism and the ability of people to organize or co-ordinate assemblies on short notice. Increasingly, monitoring teams need to be able tap into such networks in order to keep abreast of forthcoming assemblies. Municipal authorities and law enforcement agencies may also use social networks to convey important information about assemblies to the public.

Assemblies without notification and spontaneous assemblies: It is not always necessary to provide prior notification for all assemblies. Many countries also provide for spontaneous assemblies to be held without providing prior notification and, in countries where prohibitions are frequently imposed on public assemblies, organizers might choose not to notify the authorities in advance of their intentions. In such situations, establishing and maintaining contacts with a diverse network of CSOs might be the best way of gathering advance information of plans to assemble.

Previous policing challenges: Collecting information about past policing challenges regarding assemblies organized by the same organizer as the assembly selected to be monitored, or with regard to assemblies focusing on similar issues or taking place at the same location, helps the preparation for the monitoring exercise. In this respect, establishing and maintaining contact with regular organizers of

public assemblies and organizations working on the issue of freedom of peaceful assembly is a good practice.

Legal framework: Having a basic understanding of the applicable domestic legal and regulatory framework within which the freedom of peaceful assembly is exercised and to be facilitated is essential for the success of any assembly monitoring exercise.

Institutional framework: Understanding the role (duties and responsibilities) of various national and local state authorities in the facilitation of the freedom of peaceful assembly is important for the monitoring exercise. Therefore, collection of relevant information is recommended. Some relevant authorities could include the police, Interior Ministry or local self-government bodies/municipalities.

Legal framework indicators

- Definition of an assembly, types of assemblies defined and protected in domestic law
- Right to organize and/participate in an assembly
- Authorization/notification requirements and procedures
- Possible advance limitations/restrictions imposed on assemblies, and available remedies
- Possible restrictions imposed during assemblies
- The role of the organizer
- Rights, duties and responsibilities of the participants
- Regulation related to concealing one's identity in an assembly context
- Regulation and policing of simultaneous assemblies, including counter-demonstrations
- Regulation and policing assemblies that do not comply with legal requirements
- Regulation and policing spontaneous, leaderless assemblies, such as flash-mobs
- Regulation and policing of peaceful blockades or other forms of direct action or civil disobedience
- Lawful use of force, arrest, containment (kettling) and dispersal
- Main roles and responsibilities of law enforcement and regulatory authorities relevant for the realization and facilitation of public assemblies
- Crowd management and de-escalation tactics used by the police in situations of disorder.
- Specific assembly facilitation and crowd management practices used with respect to women, children, persons with disabilities and other groups, requiring additional consideration
- Remedies and accountability for undue restrictions by state authorities
- Engagement and communication by law enforcement officials with assembly organizers and participants
- Access and restrictions for journalists and monitors
- The use of the Internet and social media in the context of the exercise and the facilitation of freedom of peaceful assembly
- Recording at public assemblies
- Surveillance

III.2. Contact with the law enforcement authorities and the organizer

To increase awareness about the monitoring activity, it is good practice to inform key individuals, such as the assembly organizer, and law enforcement authorities about the assembly monitoring objectives and main elements of the monitoring methodology in advance of the assembly monitoring exercise.

Law enforcement authorities: Contacting law enforcement authorities helps in gathering information about how the assemblies selected to be monitored will be policed. Such information could include:

- the security measures put in place to protect the assembly, onlookers, other members of the local community;
- any restrictions imposed on the assembly;
- the number and type of law enforcement units involved in the facilitation of the assembly;
- the police equipment and crowd control tactics planned to be used in situations of disorder or violence; and
- the specific rules on photography/video recording of law enforcement action.

A meeting with law enforcement officers involved in the policing of the assembly to be monitored can provide a good opportunity for the monitoring team to inform them about the objective of the assembly monitoring activity and the monitoring methodology, as well as to receive additional information relevant for the safety and security of the monitors. Over time, monitors might establish a positive working relationship with the authorities, and this might enable them to gain information as early as possible about notifications of assemblies, as well as about the outcomes of any meetings to resolve problems, which might assist in planning the monitoring.

Organizer: Reaching out to the organizer can help build confidence and understanding about the monitoring work. Besides providing an opportunity to gather information about the legal status of the assembly, imposed restrictions and other details, a meeting can serve as a good way to get the organizer's views about the facilitation of the planned assembly by the state authorities, about previous experiences regarding organizing assemblies, and about relevant challenges.

III.3. Security risk assessment

As discussed before, in the context of the monitoring principles and code of conduct, monitors need to be mindful of their own safety and security and should work as part of a team. They should not take unnecessary or undue risks, and each monitor's

personal safety should override all other considerations. Preparing for an assembly monitoring exercise, therefore, involves understanding the threats, identifying the associated security risks based on the probability of the threats being realized, understanding their likely impact, and developing measures to mitigate them. A written risk assessment should be prepared by a security expert, as relevant, and should be circulated to all team members.

Crowd: Assembly monitors should exercise personal security and safety awareness at all times. While the monitored assemblies are likely to start peacefully, there is the potential risk that some might turn violent, and possible clashes with the police or between different groups cannot be excluded at any time. This means that monitors should generally be aware of where they are, who is around them, what is taking place in their proximity, and what actions to take if a situation becomes dangerous. This will include maintaining awareness of any changes in the mood at the assembly, the deployment of police with riot equipment, or police requests for participants to disperse.

Monitors should always be aware of the exit route they might take if they need to leave an assembly in a hurry, the location of other monitors, and the location of the post-event meeting point. In this respect, it is good practice to map out exit routes and agree on meet-up points in advance.

Experienced monitors should be aware that monitors without much previous experience might have a different level of awareness of threats than those with more experience. A rule of thumb is that if one member does not feel safe, then the team should withdraw from the assembly, in order to assess the situation and decide whether to continue or to end the monitoring.

Physical fitness is an important consideration in covering situations that could suddenly turn dangerous, where running may be needed, or in situations where walking long distances is involved.

Collecting data about past incidents (such as those involving assembly participants or counter-demonstrators) and security measures and crowd control tactics used by the police in connection with similar assemblies, can inform the security assessment and support the preparation of the assembly monitors.

Assembly location and route: Ahead of the event, the monitoring team should visit the proposed site and/or walk the route of the assembly to be monitored. This will be useful in allowing the team to familiarize themselves with the direction of the route,

key locations, main physical structures and buildings, and possible problem areas, such as building sites and road works that might have material that can be used as weapons, barricades, etc.

Police tactics and equipment²²⁸: Police can use force for law enforcement purposes. Monitors should be able to identify typical police tactics and equipment used in crowd control settings, know their designed use associated with law enforcement objectives, and be aware of their health and safety impact, as well as practical tips to mitigate them. Law enforcement officers can only use tactical options in line with national regulations and policies. As a rule, law enforcement agencies should not deploy devices or tactics if the same objective can be reached by other means that cause less pain, harm or injury.²²⁹ A variety of options are usually available to the police when using force in the context of policing assemblies, including firearms and less lethal weapons. Although less lethal weapons are designed not to kill, at the same time, virtually any tool can be used in such a way that it could cause death or serious injury. It is important, therefore, for the monitors to exercise utmost caution during their monitoring activities.

There are a number of policing tactics that are more indiscriminate by nature, such as the use of water cannons, chemical irritants or sound cannons, or over which the police do not have complete control, such as police horses and dogs. With the use of such tactics, therefore, there is a greater danger to the health and safety of assembly monitors.

The specific dangers associated with police use of different equipment, and good practices for monitors on occasions when they are used, are covered below.

Chemical irritants: People wearing contact lenses may experience increased eye irritation and damage due to chemicals being trapped under the lenses. Pepper spray can remain on the skin for up to 90 minutes, so monitors should avoid the use of oils, lotions and makeup during this time, as these can trap the chemicals on the skin and prolong the exposure. Monitors suffering from respiratory diseases are also more likely to have an increased reaction to tear gas. Gas masks and goggles are recommended for protection against tear gas, but these items may be banned at certain assemblies. In the event of such chemicals being used, covering their mouths and noses with a (wet) handkerchief or cloth can help protect monitors'

²²⁸ See more on police tactics and equipment under section 4.3.2., "Policing the Assembly".

²²⁹ Amnesty International, Guidelines, *op. cit.*, note 143, p. 137.

respiratory systems, and getting to higher ground is recommended. Monitors should avoid rubbing their eyes or faces, and should wash any exposed skin with soap and water.

Water cannons: It is good practice for monitors to keep a safe distance from water cannons, and avoid getting in their line of fire.

Acoustic Devices: Monitors should avoid standing in the direction the device is aimed, even if many meters away. They should stay as far away and to the side as possible.

Smoke and stun grenades: The potential panic among the people caused by these devices can result in stampeding, which creates a high risk of people being crushed or trampled. Monitors should mitigate this risk by staying close to pre-established exit routes.

Dogs and horses: Improper use of dogs has the potential to cause serious bodily injury, and even death.²³⁰ Therefore, monitors should keep a safe distance from police dogs. Horses can also kick and bite and, when charged into a crowd, can cause potentially lethal injuries. Monitors should always keep a safe distance from mounted police.

Signal jammers: These have been used to make electronic communication at an assembly site difficult or impossible, including the transmitting of live video feeds or posting to social media. It is recommended, therefore, that monitors have an alternative method of communication (e.g., walkie talkies). Establishing pre-selected meeting locations in case the monitoring team members are separated and cannot communicate with each other are also helpful.

Interception technologies: If these are in use, mobile phone service may be interrupted, and phone batteries might drain very quickly. This is another reason it is recommended that monitors have an alternative method of communication (e.g., walkie talkies) and/or extra phone batteries. Pre-selected meeting locations in case the members of the monitoring team are separated are also helpful for this reason. Although the intended purpose of these technologies is to locate people suspected of criminal activity, everyone passing through the area covered by the cellular tower,

²³⁰ UN OHCHR, *Human Rights and Law Enforcement: A Manual on Human Rights Training for Law Enforcement Officials* (New York and Geneva: UN, 1997), pp. 220-221, <<https://www.un.org/ruleoflaw/files/training5en.pdf>>.

including assembly monitors, will have their data, transmitted to the police, without their consent. Therefore, it is recommended that assembly monitors use specially assigned mobile phones during their monitoring activities, and that they factor the possibility of interception into their risk assessment and deployment plan.

As a general rule, monitors should avoid getting between police cordons and assembly participants when monitoring. Police orders to create a physical distance from the cordon should be followed immediately and, the wearing of visibility items (for example, neon vests) is recommended. If contained, monitors should seek to identify themselves to and speak with a high-ranking law enforcement officer present, requesting they be allowed to leave. If the police detain a monitor, they should be asked to call the previously identified police focal point, who should be knowledgeable about the monitoring exercise.

III.4. Deployment plan

Based on the information collected through background research, meetings and the security risk assessment, the monitoring co-ordinator should prepare a deployment plan, composed of a monitoring plan and a security plan.

Monitoring plan

Number of monitors: Once the monitoring project is aware of a forthcoming assembly and its basic notification details, an assessment can be made as to how many monitors should be deployed. There is no ideal number of monitors for an event. For larger, more complex events, any number of monitors can be deployed. In general, monitors should never work alone – instead, they should always work in pairs or in small teams.

Composition of teams: All monitors deployed should be trained in assembly monitoring techniques and possess the necessary skills for safety and security awareness in the context of assemblies. Monitoring often requires long walks or running short distances, so monitors should possess at least average level of fitness. Monitors work as part of a team, and they are responsible to and for other members of the team. They should keep an eye on fellow monitors, and they should not leave the assembly without good reason or without informing other members of the team. All monitors should adhere to the terms of the code of conduct at all times. Pairing more experienced monitors with those with less experience will help facilitate peer learning, as well as help ensure the safety and security of the teams. It is also good practice to create gender diverse monitoring teams.

Once the monitoring project is aware of a forthcoming assembly and its planned location, and an assessment has been made as to how many monitors should be deployed, monitors will need to be contacted to check their availability. This can be facilitated in a number of ways. For example, one monitoring project established a website accessible to all monitors and other interested parties that provides information about forthcoming assemblies, as well as other information about the project. Creating a closed Facebook group might serve a similar purpose, providing the option of limiting access to information on monitoring activities only to monitors who are members of the group.

Positioning of monitors: The positioning of monitors is determined by their assigned observation focal point, and will be contingent on the number of monitors that are available. Monitors should be positioned in a manner that allows them to observe both protesters and police or other authorities, without ending up in a position between them.

In considering where they choose to stand, monitors should also consider safety issues, such as where they position themselves in relation to the police and in relation to potential exit routes from the site. Teams should spread out for optimum coverage. For safety reasons, especially during large assemblies, monitoring pairs should try to position themselves towards the front, sides, and back of the assembly. This will help ensure they can quickly remove themselves from the situation if it turns violent or there are mass arrests or the use of force by law enforcement personnel.

Recording: Monitors should note all key events and activities, including the time and the key actors involved. Monitors should carry their own notebooks, pens, a watch and, if possible, an audio recording device for voice notes. Monitoring teams might also use still or video cameras to record important incidents and activities, while mobile phones with camera functions and voice recording devices can be very useful. If possible, turn on the date/ time stamp on the phone, camera, or other recording device. In general, it is more effective if one team member records the events in voice or written notes, while the other takes photos and/or short videos, instead of having each monitor try to use all methods of recording what is observed. This will reduce the likelihood of the monitors being distracted, thus reducing risks to safety and security.

Communication: The monitoring teams should agree on a means of maintaining contact with each other throughout the event. Some monitoring teams use walkie-talkie radio systems, some use mobile phones, while others rely on sight to keep in touch. The monitoring team should consider different options and choose the

most appropriate method in the context of the assembly being monitored. Monitoring teams should also be aware that the authorities might try to close down mobile phone networks in an attempt to control crowds in certain situations. In other cases, in the presence of very large crowds, the mobile phone network might become overloaded, causing difficulties in mobile phone communication. Monitors should, therefore, give consideration to low-tech means of communication, rather than assuming they can always rely on new technologies. This could include agreeing on meeting points or other procedures to be followed should communication by mobile phone be impossible.

Whether and how monitors can communicate with media and or other third parties in the context of their assembly monitoring duties should be agreed upon in advance. In order to maintain their objectivity, and in line with the principle of non-intervention, monitors should not provide comments about their observation findings or offer personal opinions. They should limit their responses to providing brief information on the purpose of the monitoring exercise and their role as monitors.

Security plan

Security expert/security focal point: The security risk assessment will determine if a security expert needs to be engaged to support the assembly monitoring teams on the ground. Even in cases when the presence of such an expert is not deemed necessary, it is good practice to delegate one experienced assembly monitor to serve as the security focal point for the entire team.

Illustration 4 (overleaf). Preparing to monitor: The illustration includes four cards that graphically outline elements of preparing to monitor an assembly. The first card illustrates background research. Background research covers assembly research (organizer, key message, purpose, date and time, venue/route, program, legal status, any counter-demonstrations); assembly policing challenges (past assembly policing challenges and issues at the location / in the country); legal framework (definition of an assembly; right to assemble peacefully; authorization/notification procedures; restrictions and remedies; role of the organizer; simultaneous, spontaneous assemblies; use of force, arrest, dispersal, other crowd management and de-escalation methods; recording and surveillance; accountability of law enforcement; women in crowd management; access, restrictions for journalists, monitors. The second card illustrates security risk assessment. Security risk assessment covers past incidents and security measures implemented in connection with similar assemblies. The third card illustrates the deployment plan. Deployment plans cover monitoring plans (number of monitors; composition of teams, roles; position of monitors, observation focus; communication; use of monitoring equipment), and security plan (security expert / focal point; visibility of monitors; communication; exit routes; meet-up points). The fourth card illustrates monitoring. Monitoring covers pre-deployment briefing, monitoring itself and debriefing.

PREPARING TO Monitor AN ASSEMBLY

I. Background Research

ASSEMBLY

- ☑ ORGANIZER
- ☑ KEY MESSAGE, PURPOSE
- ☑ DATE TIME, VENUE/ROUTE, PROGRAM
 - legal status
 - counter demonstration

ASSEMBLY POLICING CHALLENGES

- ☑ PAST ASSEMBLY POLICING CHALLENGES & ISSUES AT THE LOCATION/IN THE COUNTRY

LEGAL FRAMEWORK

- ☑ Definition of an assembly
- ☑ Right to assemble peacefully
- ☑ Authorization/notification procedures
- ☑ Restrictions and remedies
- ☑ Role of the organizer
- ☑ Simultaneous, spontaneous assemblies
- ☑ Use of force, arrest, dispersal other crowd management and de-escalation methods
- ☑ Recording and surveillance
- ☑ Accountability of law enforcement
- ☑ women in crowd management
- ☑ Access, restrictions for journalists, monitors

II. SECURITY RISK ASSEMENT

- ☑ Past incidents security measures implemented in connection with similar assemblies
- ☑ Potential risks, problems, trouble spots related to the assembly to be monitored

III. DEPLOYMENT PLAN

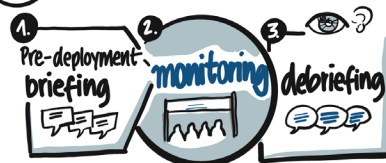
MONITORING PLAN

- * Number of monitors
- * composition of teams, roles
- * Position of monitors, observation focus
- * communication
- * use of monitoring equipment

SECURITY PLAN

- * Security expert/focal point
- * visibility of monitors
- * communication
- * exit routes
- * meet-up points

IV. Monitoring



Visibility: In principle, monitoring should be carried out in a visible and transparent manner. In addition to carrying their monitoring identification, some monitoring teams choose to wear more visible means of identification, such as jackets, team shirts, hats or armbands, which allow them to be easily distinguished from the larger crowd of people.

In some situations, such as if the visibility of monitors would likely pose a safety or security threat to them, it might be necessary to undertake monitoring in a more discreet manner. In such cases, monitors might decide not to identify themselves visibly. Even in such circumstances, they should carry appropriate identification stating that they are monitors, and demonstrate through their behaviour that they are third parties, and not participants in the assembly.

Clothing: Clothing should be also chosen thoughtfully. Monitors should wear comfortable clothes and footwear and always be prepared for a variety of situations, including changes in weather or increases in the amount of time to be spent monitoring. Clothes should be loose-fitting and made of natural fabric, as synthetic materials can catch fire and burn much more quickly. Good shoes, with appropriate support and flexible, non-slip soles, are also essential. Monitors should avoid wearing clothing with political messages or clothing, such as a colourful bandana or a blue windbreaker, which might make them resemble a protester or law enforcement agent. They should also refrain from wearing colors that could be associated with certain groups or causes involved, as this can be seen to be indicative of them taking sides. Wearing of particularly dangling jewelry, such as long earrings, necklaces or chains, can be dangerous in crowd situations.

Exit routes and meet-up points: The security plan should include possible exit routes in the event of deteriorating public order or other potentially dangerous situations, a location to meet if monitors get separated from other members of the monitoring team, and location for meeting up at the end of the event.

New technologies: The monitors should ensure the safety, security and confidentiality of their notes, electronic communications and other information, especially when these contain sensitive data. It is best to use a secured messaging system for all monitors while in the field. However, the use of encrypted messaging and documentation might involve associated risks if they are considered suspicious in some jurisdictions. Such considerations should, therefore, be taken into account in the course of the security assessment.

III.5. Pre-deployment briefing

Members of the monitoring team should arrange to meet in advance of the event. Ideally, this will take place in an office but, in some circumstances, the meeting might have to take place near the location of the assembly. The meeting will be an opportunity for the co-ordinator to provide an overview of plans for the monitoring, to review the risk assessment, to establish teams and delegate responsibilities, and to ensure that all monitors have the necessary equipment.

It is good practice for monitors to carry the following items at all times:

Grab Bag List for Monitors

- A form of personal identification and monitoring badge;
- Visibility items, such as a hat, vest or armband;
- A copy of the code of conduct for monitors, and basic information on the monitoring objectives and methodology;
- Contact phone numbers, including for the monitoring co-ordinator, security focal point and other members of the monitoring team and/or a lawyer;
- A mobile phone, if possible with Internet connection, and coins/cards for public phones, as a back-up to mobile phones;
- A voice recorder, with extra batteries or charger;
- A notepad, pens and a watch;
- A camera, with an extra memory card, and charger or spare batteries;
- A map of the area where the observed assembly is taking place, as well as of its surroundings;
- Water in a plastic bottle;
- A first aid kit;
- Protection against the sun and against the rain;
- Protection against teargas (towel, goggles, bandanas);
- Any necessary personal medication; and
- Snacks.

Monitors should avoid taking

- Anything that might be regarded as a weapon (eg., penknife, glass bottle);
- Anything that can be seen as aggressive or dangerous, such as steel-toe boots, a helmet or a mask; and
- Irreplaceable personal items.



Illustration 5. Grab bag list for monitors: The illustration explains the grab bag list for monitors, depicting a monitor who is wearing a vest and is surrounded by various things that are important to bring to the assembly when monitoring. A full list appears on page 79, above.

IV. OBSERVATION AND DOCUMENTATION

IV.1. Arriving at the location of the assembly

Monitors should aim to arrive at the location in advance of the assembly participants. This will provide an opportunity for monitors to familiarize themselves with the environment and to get in position to observe all elements of the assembly as people gather. The monitoring team should stay at the assembly venue/follow the route until the assembly is over and the participants have dispersed.

The following section outlines some of the key information and aspects associated with public assemblies that might need to be considered, noted and recorded by monitors when they are observing, recording their information and preparing reports. The purpose of recording this information is to enable monitors to reconstruct how the assembly unfolded when writing their report after the event and analyzing the observation findings. Wherever possible, monitors should note the time of any incidents, so that records can be compared and synchronized with notes made by other monitors. Any final report will usually be a composite, based on the views of monitors who will have been positioned in different locations at the assembly.

The following is not an exhaustive list, as other factors might need to be taken into consideration according to the local context, and informed by the background research and meetings. Changes to the context might have implications for a monitor's ability to work according to a pre-agreed plan. Monitors need to observe all activities at, and in the vicinity of, an assembly, as well as changes that take place over the course of an assembly. Monitoring can be monotonous for periods of time, and monitors need to be attentive to changes in the mood of the assembly, which could be a prelude to different forms of action or activities. Monitors will also need

to be aware of changes that occur in the number of people who are present over the course of the assembly, and the nature of their activities.

IV.2. Observation indicators

IV.2.1. General description of the assembly

Time: Note should be made of the date, the time the monitors arrive, the time at which the assembly begins and finishes, the chronology of the main elements of the event, and the time of any police actions.

Weather: It is also worth noting the nature of the weather, as it is relevant to the use of certain law enforcement tactics. For example, the use of water cannons in cold temperatures can cause hypothermia.

Venue/route: Note should be made of the location of the assembly (central or commercial area, residential district, park, etc.) and a description of the general environment at the time of arrival. Photographs or videos can be particularly useful in providing a broad perspective of the assembly point. Attention should also be paid to any prominent buildings, potential danger areas and significant structures (platforms, loudspeakers, stalls, stands, etc.) associated with the assembly. Note should also be made of any distinctive physical elements that would not normally be present at the site of the assembly.

If the assembly moves to a different location, monitors should also note the time of movement and route that is taken. This might include noting significant details on the route and on the presence of groups or individuals along the way. If the assembly moved, was it due to police intervention?

Participants: Monitors should try to note the number of participants in the assembly, although this can be difficult as the numbers grow. As the monitors' experience grows, however, so too will their ability to estimate crowd numbers. Monitors should also attempt to assess any changes in crowd numbers through the duration of the assembly.

Format of the assembly: Assemblies can involve either static gatherings of people in a single public space or the movement of crowds in a procession, or a combination of these. Most assemblies involve people on foot, but they might also involve the use of vehicles, including bicycles. Some assemblies might also take the form of

sit-down protests or involve people moving a short distance to deliberately block roads or impede the movement of others.

IV.2.2. Specific elements of the assembly

Organizer: Monitors should try to confirm that the organizer is present, and should observe their interactions with other parties present, such as the police. Where possible, monitors should also follow relevant social networking feeds that might provide real-time information on activities that might be out of sight, and which might have an impact on the assembly and its route.

Composition of the crowd: Assemblies are rarely composed of a homogeneous group of people. The monitors should pay attention to the composition of the assembly participants. Try to note the age and gender balance of the gathering, as well as the presence of children and young people, especially as this can provide information relevant to assess limitations on women or children's right to freedom of peaceful assembly. Monitors should also note if they observe the presence of persons with disabilities and to whom the deployment of certain policing tactics (such as elderly people, pregnant women) could have a disproportionately negative effect. It is also important to take note of any accessibility challenges (including physical, transport and communication) that people are facing in the context of the assembly.

Stewards: Attention should also be paid to the presence (or absence) of stewards or other individuals who might be helping with the organization of the assembly or with crowd management. Monitors should try to count the number of stewards and should note if they are wearing visible forms of identification. If so, they should describe this identification.

Medical service: Monitors should record the presence and number of doctors and other medical personnel at the assembly, and should try to identify who is providing the medical service. Note should be taken of how they provide care for any sick or injured, and of how their work is being facilitated by law enforcement personnel.

Media: Note should be made of the presence of different media outlets (television crews, radio and print journalists) and whether they are from local, national or international media organizations. Note should be made of how their work was facilitated or impeded, and whether they had access to the assembly venue and could record the actions of law enforcement personnel in an unhindered way.

Monitors: It is useful to note if other monitors were engaged in observing the assembly and how their work was facilitated, including whether they had access to the assembly venue and could record the actions of law enforcement personnel in an unhindered way.

Key messages of the assembly:

- *Visual displays:* These might include different types of flags or banners, posters or placards. Monitors should record any statements or slogans on such displays.
- *Sound and singing:* Note should be taken of any music being played (and whether it is amplified), the presence of people with instruments among the crowd, of any songs or chants being sung, or of any abusive statements/slogans being shouted.
- *Speeches:* Monitors should try to pay attention to speeches to the crowd that might serve to influence people's subsequent behaviour and the mood of the assembly. If the messages conveyed during the assembly could amount to hate speech or incitement to violence, this should be recorded. The monitoring co-ordinator should consider including interpreters in the team in cases where the monitors do not speak language being used during the assembly.

Principle of "sight and sound": The monitors should record if the assembly is facilitated in a way that its message can be seen and heard by the target audience.

Behaviour, mood of the participants: The nature of the event might also affect the atmosphere at the assembly or the mood of the participants. Some events feel calm and friendly, while the mood at others might be tense or hostile. Some crowds are welcoming, while others might be suspicious of the presence of strangers.

Clothing or uniforms, masks or face coverings: Attention should be paid to any distinctive items of clothing being worn, particularly different uniforms, and also to the presence of people wearing masks or using other means to conceal their identities.

Spectators: The presence and location of spectators should also be noted, as well as their interaction with assembly participants and with the police. Spectators might also change their attitudes over the duration of an assembly and display either support for or opposition to the aims and activities of those participating.

Counter-demonstrators: Some assemblies attract counter-demonstrations. If this happens, monitors should also include these in their monitoring activities. This will involve assessing the number of counter-demonstrators, their key messages

and behaviour towards the assembly, the presence of any organizers and stewards, and their physical location in relation to the main assembly, as well as their location in relation to the police. Monitors might also attempt to observe any interactions between counter-demonstrators, assembly participants and the police.

Conflict incidents: Throughout the course of the assembly, monitors should observe any incidents that occur, including forms of verbal abuse from the crowd or from opponents, attempts to disrupt the assembly, and acts of violence or the use of force. In the case of such an incident, the monitor should try to document the individual or group who perpetrated the act, the impact of the action, and any response to the initial action.

IV.2.3. Policing the assembly

A. Police presence before and during various stages of the assembly: The police almost always have a prominent presence at assemblies, and it will be important for monitors to pay close attention to police numbers, gender and diversity composition, and actions throughout the duration of the event. In many countries, there are a variety of police organizations or law enforcement bodies, and it might be difficult to determine which police units or organizations are present if monitors have not yet developed some specific local knowledge. Therefore, it is important to note differences in police uniforms, insignias and badges, as a means of identifying the specific units that are present at any event and the roles they have regarding the policing of the assembly.

It is important to note whether police are wearing protective clothing or riot gear or ordinary uniforms. Similarly, some attempt should be made to identify the presence of plainclothes police officers. It is also worth noting whether individual police officers have some visible form of personal identification. Individual identifiability of police officers at all times, even in full riot gear, is key to the accountability of police, and might give an indication of the culture within the police organization.

Monitors should observe how and where police officers are deployed in relation to the assembly, e.g., the police might be waiting in small groups or might form a line across a road, or they might be corralling the crowd in some way. Individual officers might also be deployed to control traffic or to protect particular buildings in the vicinity. A rise in tension can occur if there is a shift change in the way police officers are deployed, for example, there is a sudden increase of number of police officers or change in units, with some units leaving and other arriving. Monitors should pay attention to these changes and record their observations.

All deployed police officers might not be visible, as police might be held in reserve out of sight of the main assembly, but close enough so that they can be deployed at short notice. It is, therefore, useful for monitors to walk the streets in the vicinity of the assembly to note how many reserve police officers there are and where they are stationed.

Monitors should also note that police officers also have rights, and consideration needs to be given not only to the actions of the police but also to the actions (verbal abuse, acts of violence, provocations) of the people present at the assembly that might impact on the behaviour of police officers. Monitors should be mindful, however, of the fact that if they document misconduct of assembly participants, police might request this to be used as evidence. In order not to infringe upon law enforcement responsibilities, some monitoring organizations have the policy of not documenting participant behavior.²³¹

B. On-spot changes/restrictions to the assembly process: Monitors should note whether the assembly was able to proceed in accordance with the details provided in the legal notification. Sometimes, police impose restrictions on the day of the assembly, which prevents the assembly from taking place on time or at the intended place, or according to the intended route.

C. Police's communication, interactions with organizers, stewards, participants, counter-demonstrators: Monitors should pay attention to the interaction between the police and other actors at the assembly, including their content, frequency and manner. The nature and quality of such interaction might provide a good indication as to whether the assembly will proceed in an amicable or in a confrontational manner. Note should be also taken about how communication was used to facilitate the assembly, such as for giving police orders, providing informing about restrictions on the assembly or de-escalating tensions.

D. Facilitation of traffic: Attention should be paid to the relationship between the assembly and vehicle traffic, e.g., whether roads are closed or vehicles are allowed to continue throughout the assembly or part of the assembly.

E. Use of force: Law enforcement planning should be made in a way to minimize the likelihood of the need to resort to force. Dialogue and facilitation should be the overall policing approach, with a view to solving problems, anticipating possible

²³¹ See, for example, National Lawyers Guild, *Legal Observer Training Manual* (New York: National Lawyers Guild, 2003), <https://www.sds-1960s.org/sds_wuo/nlg/LO_Manual.pdf>.

conflict situations, and finding ways to prevent them from happening or to resolve them immediately in a peaceful manner.²³² The decision to use force, as well as which type and degree of force to be used, has to be made for each individual situation. Force should be used only when strictly necessary and to the extent required for the performance of the duty.²³³ It should be directed at an individual, and not the crowd, unless an order to disperse has been given and participants have been given ample opportunity to obey. Therefore, a broad range of means that would allow for differentiated force must be available.²³⁴ Force has to be used in a way to minimize injury, and in the event of an injury medical assistance must be provided.²³⁵ As a rule, law enforcement agencies should not deploy a device or a tactic if the same objective can be reached by other means that cause less pain, harm or injury.²³⁶ The use of force has to be accountable and based on decision-making tailored to the individual circumstances of each situation.²³⁷

It is particularly important to describe any use of force in as much detail as possible, in order to be able to assess later whether any use of force was necessary and/or proportionate. It is relevant to note the time and location, the type of force used, warnings given and other circumstances of how the force was used, including whether force was used in a targeted manner against an individual(s) or indiscriminately. Documenting the way equipment was used by a law enforcement officer can help determine potential misuse (use in a technically incorrect way) and abuse (unlawful use). It should also be noted whether any injuries occurred as a result of the use of force, and whether medical assistance was available and provided in cases of injuries. Monitors should be mindful of their personal safety at all times and should avoid documenting the use of force at the expense of compromising their own safety.

F. Police equipment and available tactical options:²³⁸ The protective and other special equipment police have on hand at the site of an assembly offer information about how the police assess the threats and risks associated with the event and what tactics they are prepared to use to police the assembly and maintain public order.

²³² Amnesty International, Guidelines, *op. cit.*, note 143, p. 150.

²³³ UN General Assembly, "Code of Conduct for Law Enforcement Officials" *op. cit.*, note 132, Article 3.

²³⁴ Article 2 of the UN Basic Principles on the Use of Force and Firearms.

²³⁵ UN, "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials" *op. cit.*, note 132, Principle 5.

²³⁶ Amnesty International, Guidelines, *op. cit.*, note 143, p. 137.

²³⁷ See also: Section 2.4.3. "(Avoiding) the Use of Force".

²³⁸ See more on this ODIHR and Omega Guide on Law Enforcement Equipment Most Commonly Used in Policing of Assemblies (2020) available at:

Police forces have access to a wide range of equipment that can be used when they are trying to maintain public order. Personal equipment includes items such as helmets, suits and shields. Specialized equipment might include batons, instruments of restraint, projectile electric shock devices (e.g. Taser), firearms, launchers, pepper spray, water cannons, smoke and tear gas grenades, acoustic devices, recording, surveillance and interception equipment, vehicles and helicopters. In addition, in many countries, dogs and horses are often used in public order situations.

Protective equipment: Protective equipment includes shields, helmets, vests and protective body armour. The purpose of such equipment is to protect law enforcement officials and to decrease the need for using force.²³⁹ In this regard, the deployment of protective equipment may often constitute a good practice, and its availability is an important aspect of the principle of precaution. According to the ODIHR *Human Rights Handbook on Policing Assemblies*, “[t]he use of shields is primarily a means of protection, employed to stop projectiles from hitting officers.”²⁴⁰ In addition, shields are used to assist with crowd dispersal, containing disorder, protecting vulnerable persons or significant locations, and arresting those engaged in unlawful behaviour.²⁴¹

Monitors should observe and record the protective equipment on hand, any differences in equipment between officers or units, whether certain equipment was deployed in response to acts of violence or escalating tensions, or if all of the equipment was deployed in advance of the gathering, and whether law enforcement officers use protective equipment in an intimidating way (e.g., by beating shields with batons).

Barriers: The police might use a variety of barriers to limit or control the movement of assemblies, including by preventing access to certain areas, determining the route in which a march will take, separating opposing groups of protesters, or separating the gathering from law enforcement officials. Typically, metal fences are used either standing alone or next to a police cordon. Some countries deploy a fence

²³⁹ UNODC and UN OHCHR, *Resource Book on the Use of Force and Firearms in Law Enforcement*, (New York: UN, 2017), p. 73. The UN “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials” state that law enforcement officials should have access to “self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.” UN, “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials”, *op. cit.*, note 132.

²⁴⁰ ODIHR, *Human Rights Handbook on Policing Assemblies*, *op. cit.*, note 128, p. 76.

²⁴¹ College of Policing, *Authorised Professional Practice, Tactical Options*, first published 23 October 2013, last modified 12 September 2018, available at <https://www.app.college.police.uk/app-content/public-order/planning-and-deployment/tactical-options/#shield-tactics>.

covered by barbed wire, which is used to block roads and areas and to create a distance between policemen and the crowd. Because of the barbed wire, the potential for injury is much higher here than when normal fences are used. Note should be taken of the type of barriers used (including fences, vehicles, barbed or razor wire, lines of officers) and their location, including roads and other public areas that are closed off. It should also be noted if there are police officers next to the barriers.

Containment: The containment of a group of participants by a police cordon in order to prevent them from entering or leaving a certain area should normally be used only to contain the violence of this group and allow peaceful protesters to proceed with the assembly. The containment may not be used for the purpose of preventing people from peacefully participating in an assembly. It may only be used for the shortest time necessary and must be proportionate to the aim. Although it should not be applied indiscriminately, it often affects people present who are not involved in violence, and can last for a long period of time. A crowded situation may create panic, provoking uncontrolled reactions, which could result in damage or injury. Monitors should note if the purpose of the containment is clearly communicated by the police to the people contained, if persons in need of assistance (e.g., persons with disabilities, elderly people in need of a place to rest), those who are not part of the assembly, and participants who are not involved in violence are allowed to leave. Monitors should document the duration of the containment, the weather conditions and whether access to medical care and to sanitation facilities are provided to people in need.

Arrests or detention: Monitors should try to document the circumstances of arrest or detention of any assembly participants, spectators or journalists, if such actions occur. Note should be taken about the conduct of the person being arrested, any information given by the police regarding the reason for the arrest, whether force was used and, if so, how.

Gathering information about the grounds for any arrests or detentions might be difficult at the assembly itself, and it might be necessary to follow up with the authorities or with CSOs after the assembly is over to identify any such actions that have been taken. It will, therefore, be useful to identify in advance the nearest police stations or places of detention where detainees might be taken.

Some monitoring projects choose to monitor trials that are associated with activities at, or related to, assemblies. The monitoring of court cases, however, is a specific activity in its own right, and may reasonably be considered as distinct and separate from the monitoring of peaceful assemblies. Further information on trial monitoring

can be found in the ODIHR publication *Trial Monitoring: A Reference Manual for Practitioners*²⁴² (see Annex 5).

Dispersal: Attention should be paid to any orders given by the police or other authorities, such as for the participants to disperse, whether such orders were audible, and whether the warning regarding the consequence of non-compliance was repeated in line with national legal requirements. In addition, it should be noted whether people had sufficient time to comply with the dispersal order and whether dispersal was possible (e.g., roads were not blocked, and so people were not prevented from leaving the area). Note should be taken of whether force was used in the process of dispersing people.

Firearms: Any use of firearms constitutes potentially lethal force and therefore, represents the highest level of force that can be used by the police. Firearms can be used only in case of an imminent threat to life.²⁴³ They should never be used to disperse an assembly. Monitors should document if law enforcement officials carry firearms and whether they were used in the performance of their duty. They should document whether the police officers identified themselves and gave a clear warning before the use of firearms.

Less-lethal weapons are designed not to kill and, therefore, represent a lower level of force than firearms, loaded with conventional metal jacketed ammunition. At the same time, virtually any tool can cause death or serious injury as a result of the design and functioning, of the way they are used, or of a combination of the two.²⁴⁴ Furthermore, “less-lethal” weapons can only be employed subject to strict requirements of necessity and proportionality, in situations in which other less harmful measures have proven to be, or clearly are, ineffective to address the threat.

It is important, therefore, that the monitors document as much detail as possible about the type or weapons and the way and circumstances these weapons were used in the context of the assembly they observe. The use and misuse of less lethal devices can have a particularly severe impact on certain vulnerable groups of

²⁴² ODIHR, *Trial Monitoring: A Reference Manual for Practitioners* (Warsaw: ODIHR, 2012), <<https://www.osce.org/odihr/94216>>

²⁴³ UN, “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials”, *op. cit.*, note 132, Principle 9.

²⁴⁴ Reported concerns include insufficient regulations on the use of less lethal weapons, insufficient testing and quality control, insufficient training and understanding of their use, lack of medical assistance, and insufficient monitoring and accountability mechanisms.

individuals, such as children, pregnant women, persons with pre-existing medical conditions and the elderly.

Kinetic impact projectiles (KIPs)

KIPs are used to incapacitate an individual. They are similar to conventional rounds of ammunition, with a cartridge case, but when fired they propel a range of different projectiles at the target. Projectiles can be made of wood, rubber, plastic or other materials (e.g., fabric bags weighted with lead shot) and are supposed to be fired at a certain distance. Single and multiple projectiles can be fired, including balls, segments, blocks or cylinders of wood, plastic or rubber. On impact, they are designed to cause blunt trauma (i.e., non-penetrating trauma but can also penetrate). They are fired from a wide range of types of launchers. They should be directly fired at an individual, but sometimes are used in indirect fire mode (also known as “skip fired”), when fired into the ground in front of the target. Projectiles fired into the ground can bounce and hit people indiscriminately, and are therefore banned in some countries.

At long range these projectiles can be very inaccurate. They can be fired with the same velocity as live ammunition and, therefore, at short range they can strike with excessive force. If these hit the head or neck, there is a high risk of serious injury or death, and if they hit the eye, the eye can be lost or seriously damaged. Fired at short range, there is even higher risk that the projectile could penetrate the body, rupture organs, and cause permanent disability or death.

Monitors should record the type of projectiles fired at an assembly, as well as the target. The projectiles must not be fired randomly at the crowd but, instead, must be aimed exclusively at persons who are engaged in violence against persons, and only when other means have failed to stop the violence.²⁴⁵ The projectiles are supposed to be used at a certain distance from the target and to be aimed at the lower part of the body, in order to mitigate the risk of serious injury. Therefore, monitors should also try to document the distance from which the projectiles are fired.

Water cannons

A device, usually mounted on a vehicle or truck, that shoots a high- or low-velocity stream of water. Most devices can target an individual with a jet, or a group with a wider spray or mist. It is used to disperse a crowd or to limit access to an area by keeping crowds at a distance. Even when use is directed at an individual, there is a

²⁴⁵ Amnesty International, Guidelines, *op. cit.*, note 143, p. 148.

high risk of affecting others in close proximity, particularly in a public assembly. The use of water cannons in an assembly context can lead to injury or death, as a result of direct injury from the high pressure water or secondary injuries through falls, objects pushed by the water jet into people or when the use of cannons causes panic in the crowd and a stampede occurs. The water can have tear gas or pepper added as well as other agents or dye and, therefore, can have the same effects as chemical irritants, mentioned below. If used in cold weather, this can cause hypothermia or frostbite. The vehicle itself poses additional risk of injury to people.

The monitors should document whether the water is mixed with marker dye and/or chemical irritants, the targets against whom water cannon was used, if uninjured people were affected, whether the use of the water cannon was preceded by warnings, and whether people had sufficient time and opportunity to withdraw or disperse. It is also important to note whether the water cannon was used in a confined space or in cold weather conditions.

Chemical irritants

Pepper spray (OC) is designed to subdue an individual who is causing a threat. It is an inflammatory agent, causing burning pain and excess drainage from the eyes, mouth and breathing passages.

Tear gas (CS or CN) is used to temporarily incapacitate a crowd and force them to disperse. It is an irritant agent causing pain, and irritation of the nose, mouth and breathing. This agent is usually delivered as a projectile fired from a weapon, as a hand thrown or weapon launched grenade dispersing smoke, or from hand held sprays. The projectiles and grenades themselves can be hazardous, especially if directly fired at people, which carries a risk of serious injury or death. They also generate a lot of heat and can cause burns. If they are fired at close range or in an enclosed place, they can cause serious injury and have in some cases resulted in death. The primary effect is a burning sensation in the eyes and lungs, and on the skin. It can cause respiratory problems and psychological trauma.

The monitors should document the target against whom chemical irritants were used, whether uninjured people were affected, and whether the use was preceded by audible warnings and people had a real opportunity to withdraw or disperse. It is also important to note whether the irritants were used in a confined space or if cartridges with the irritants were fired directly at people.

Acoustic devices

Acoustic devices, also known as sound cannons, are equipment that emit sounds with high-pitched frequency to disperse crowds, are normally stationed on top of a police vehicle, and can look similar to satellite dishes. If used too close for too long, or at too high a volume, they can cause damage to the eardrums, and even hearing loss. They can have a disproportionately negative impact on children and young people, whose hearing characteristics are different.

The monitors should record whether they observe the use of an acoustic device. Relevant information should include whether the use was preceded by an audible dispersal order, the proximity of the device to the crowd, how loud the emitted sound was and how long it lasted, and whether children and young people were in the proximity of the operating acoustic device.

Smoke and stun grenades

Smoke grenades create a cloud of smoke, in order to disorient crowds by obscuring their vision. Stun grenades are used to disorient a crowd by a loud noise/explosion. They are inherently indiscriminate, affecting all in the vicinity. The devices are often thrown into a crowd after a delayed detonation mechanism is activated. They may explode into pieces of shrapnel causing serious or life threatening injuries. They also potentially may start fires. Health risks associated with indoor or closed range use include second degree burns and internal trauma.

The circumstances of the use of smoke or stun grenade should be recorded by the monitors. It is important to record whether people who could be disproportionately negatively affected by the use of smoke or stun grenade (e.g., persons with disabilities, elderly persons, children, pregnant women) were present, whether the grenades were used indoors or outdoors, and at what range. In addition, monitors should note whether injuries occurred as a result of the use of the smoke or stun grenades and, if so, whether medical assistance was provided.

Projectile electric shock weapons (Tasers)

A Taser is used to temporarily incapacitate a person with an electric shock. The shock is often deployed from a gun-like device stocked with a cartridge with a wired dart or barb to reach the targeted person. The shock and dart or barbs can cause pain, burns, puncture wounds or scars. The effects vary depending on the power of the device, the physical condition and underlying health of the person targeted (e.g., a child, a person with a heart condition) and environmental factors (e.g., moisture). The Committee on the Prevention of Torture has recommended that police avoid

using electric shock weapons on “particularly vulnerable persons (e.g., the elderly, pregnant women, young children, persons with a pre-existing heart condition)”, as well as people who are delirious or intoxicated.²⁴⁶

Examples of inappropriate application include sustained or prolonged use, multiple shocks and shocks to inappropriate or sensitive areas of the body, such as the genitals. The use of a Taser can also cause secondary injuries when the targeted person collapses or falls, especially from a height.

Monitors should document the circumstances of the use of the Taser, including against whom the electric shock was deployed, how many times, for how long, and which area of the body was hit by the electric shock.

Batons

Batons are kinetic impact striking devices made of rubber, wood, plastic or metal. They come in varying sizes, can be collapsible, telescopic or side-handled. They can be used defensively by the police officer, or used to strike or threaten an individual or people. Batons are used by law enforcement officials to strike a subject to cause physical pain or to threaten physical pain in order to force them to comply with an order or to deter them from an action. “The use of batons by police in a co-ordinated, disciplined way can move or disperse violent participants in an assembly or protect individual police officers from attack.”²⁴⁷ They should be used on the larger muscle groups on the limbs, but even then striking weapons can cause severe bruising and broken bones. They can also cause concussions, internal bleeding and injury to organs. Multiple strikes, and especially ‘beating’, could amount to excessive force. Batons with spikes or electric shock capability on the tip and or sides are inherently abusive and should never be used.

The monitors should record the type of baton used, whether they were used to intimidate, disperse, arrest individuals, or to protect from attack. Information should be also collected about the target of baton strikes. Were batons used only against those engaged in acts of violence or were they used more generally against the crowd? Were people hit while already restrained or when they were on the ground or not resisting? Were batons used to intimidate people not engaged in violence? Batons should not be used provocatively (e.g., by beating police shields with batons

²⁴⁶ Council of Europe, “20th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 26 October 2010, para. 79, <<https://rm.coe.int/1680696a87>>.

²⁴⁷ ODIHR, *Human Rights Handbook on Policing Assemblies*, *op. cit.*, note 128, p. 76.

to “stir up” the crowd), and the use of force must cease once the legitimate purpose of the baton strike has been met.²⁴⁸ Monitors should note what areas of the body were hit (limbs, head, body parts with vital organs, or areas that can easily damage such as joints, shins, ankles, back neck and the sternum?), and how many times. Unless there is a risk of death or serious injury, baton strikes should never aim at the head or shoulders, or at the genitals, spine and other vulnerable parts of the body, as this could constitute a lethal use of force or cause serious injury.²⁴⁹

Other tactics

Dogs

Police dogs are often used as a deterrent during assemblies, but they are also used to support cordons, escort marches, assist in the dispersal of crowds, or in the arrest or detention of people. The use of dogs can be perceived as intimidating, provocative or offensive, and is also problematic in that they can attack indiscriminately and cause unnecessary and/or disproportionate injuries.²⁵⁰

It is important to record how police dogs were used at an assembly. Were they muzzled and controlled, or unmuzzled and allowed to bark and lunge? Were they used as a deterrent, or to assist with cordons, in escorting marches, in the dispersal of crowds, or in the arrest or detention of people? Were police dogs used to target a specific subject or indiscriminately used against a group of people? How did the crowd react to the deployment of police dogs? The use of dogs can lead to an unnecessary escalation of tension, especially given that, in some cultures, dogs are considered to be unclean.²⁵¹

Horses

Law enforcement officers on horses, or “mounted units”, are deployed at assemblies for monitoring and information gathering, to serve as a deterrent, to disperse a crowd or to create or support a cordon. Horses are used to charge at and disperse groups of people engaged in violence, and mounted officers sometimes also use batons. Horses must never be used to ride over people.²⁵² The use of batons by

²⁴⁸ *Ibid.*, pp. 76-77.

²⁴⁹ *Ibid.*, p. 77.

²⁵⁰ *Ibid.*, p. 72.

²⁵¹ *Ibid.*, pp. 220-221.

²⁵² UNODC and UN OHCHR, *Resource Book on the Use of Force and Firearms in Law Enforcement*, *op. cit.*, note 240, p. 85.

mounted officers carries a risk of dangerous strikes to the head or upper body. Horses are also used to slowly push a group of people in a certain direction. There is a risk of serious bodily injury or death if horses are deployed in inappropriate circumstances, and their mere presence could unnecessarily escalate tensions.²⁵³ If an officer becomes unseated, the horse may react even more unpredictably and cause serious or life threatening injuries to persons. Horses should always be used with supporting officers on the ground so they do not become isolated. Certain groups may be particularly vulnerable when horses are used to disperse a crowd, particularly those with limited mobility, slow reaction times or impaired vision (e.g., the elderly or persons with disabilities, children or pregnant women).

Monitors should record what the horses were used for (e.g., for monitoring, as a deterrent, to form a cordon or in crowd dispersal). It is also important to note how they were used (e.g., walking, trotting or charging). The conduct of the mounted law enforcement officers is also relevant, such as if they used any additional force (e.g., baton strikes). The effect of the use of horses on the crowd (e.g., no effect, increased tension, panic, violence) is important to document, as well as the presence of vulnerable people based on their limited mobility, slow reaction times or impaired sight (e.g., small children, pregnant women, elderly people, persons with physical disabilities).

Recording, surveillance and interruption technologies: There are many types of electronic surveillance and interception technologies used by law enforcement, including body-worn cameras, hand-held video recorders/cameras and unmanned aerial vehicles (drones).

Body-worn cameras are small devices that are attached to a law enforcement officer's uniform (usually the chest). Most models begin recording video and audio when they are activated by the officer, while others are activated by specific triggers, such as when a weapon is drawn, and some record continuously. Body-worn cameras are intended to increase the transparency and accountability of policing, as well as to provide video evidence that can be used in court. Assembly monitors should pay attention to how body-worn cameras are being used by the police.

Hand-held video recorders/cameras are frequently used by law enforcement officers policing public gatherings to gather video evidence, in order to support police investigations and subsequent prosecutions. Assembly monitors should pay atten-

²⁵³ ODIHR, *Human Rights Handbook on Policing Assemblies*, *op. cit.*, note 128, p. 227.

tion to overt and covert filming and/or photographing by law enforcement officers at the assembly, including as to who is being filmed.

Drones, or unmanned aerial vehicles (UAVs), are remotely operated and equipped with cameras to gather video evidence. They allow the user to monitor a wide area, and can potentially aid law enforcement officers in singling out individuals suspected of engaging in unlawful activity, to avoid the use of force indiscriminately against groups of people exercising their right to freedom of peaceful assembly.

Signal jammers are used to generate disruptive signals on the frequencies used by mobile phones, wireless Internet and other communications networks to communicate with antenna towers, thereby preventing them from being used within a certain area. Jammers vary in appearance and size, and can include devices integrated into backpacks, clothing or laptops, devices intended to be installed in a fixed location, devices designed to be used in vehicles, and standalone portable devices. Signal jammers have been used to make electronic communication within an assembly site, including the transmission of live video feeds or posting to social media, difficult or impossible. The use of signal jammers and interception technologies can unduly impact on the ability to organize and conduct assemblies.






Interception technologies are designed to covertly access and, often, to store information communicated over the Internet or on mobile networks. Existing systems for intercepting and monitoring phones can be integrated into vehicles, worn covertly by law enforcement officers, installed in a server-type unit, or operated via a laptop. Capabilities include obtaining the unique identifying numbers of mobile phones, the mass or targeted interception and storage of voice calls and SMS messages, the decryption of encrypted communications, the re-routing of calls, masquerading as the user, and voice recognition. If they are in use, the mobile phone batteries of those in the area, including monitors, might drain very quickly, or there may be interrupted service.

IV.3. Leaving the assembly location

It is important that monitors remain in position until the assembly they are monitoring ends and all the participants have left. Monitors should note whether the assembly disperses in a peaceful manner and at the agreed time, whether the organizers did anything to encourage people to disperse, and whether the authorities enforced the dispersal of participants. In particular, attention should be paid to any orders given by the police or other authorities, such as for the participants to disperse, and whether force was used in the process of dispersing people.

OBSERVATION INDICATORS

GENERAL description of the assembly

-  venue/route
-  size
-  time of start/finish
-  main elements of the assembly process
-  police facilitation

Specific elements of the assembly

- presence and number of organizers/stewards/children/people with special needs/media representatives/assembly monitors/paramedics
- gender/age composition of the assembly participants
- key messages of the assembly and behaviour of assembly participants
- the principle of 'sight and sound'
- use of masks or other face coverings, body armour
- presence of weapons
- presence, number, key messages and behaviour of counter-demonstrators
- presence and behaviour of bystanders
- use of road blockages, barricades, stop and search, other preventive measures by the police
- disturbance or violent incidents in the course of the assembly and reaction to it by organizers, stewards, police, assembly participants, bystanders

POLICING of the assembly

- Police presence before and during various stages of the assembly
Location, units/types, estimated numbers, attire, gender composition, identifiability
- Police equipment and available tactical options
baton, sidearm, tear gas, pepper spray, taser, smoke grenade, KIP, water cannon, dogs, horses, cars, vans, buses, armoured vehicles, recording and surveillance equipment
- On-spot changes/restrictions to the assembly process
- Use of containment/arrests/detention /force/dispersal/recording and surveillance
- Police's facilitation of the work of media representatives/assembly monitors
- Police's communication, interactions with other actors at the assembly
- facilitation of traffic




Illustration: @benjaminfels

Illustration 6. Observation indicators: The illustration presents a page from a notepad divided into three lists of observation indicators. The first list covers general description of the assembly, reminding monitors of the importance to note: venue/route, size, time of start/finish, main elements of the assembly process, and police facilitation. The second list covers specific elements of the assembly, reminding monitors of the importance to note specific things about the assembly organizers, stewards, police, assembly participants, bystanders. The third list covers policing of the assembly, reminding monitors of the importance to note issues related to the police presence before and during various stages of the assembly.

IV.4. The end of the monitoring

It is also important to make appropriate preparations for the end of the monitoring of an assembly. This is to ensure that all monitors are safe and accounted for, and to give each monitor the opportunity to highlight any issues or concerns that might have arisen during their work. Unless safety considerations require otherwise, monitors should not leave the location of the event or the place where they have been deployed to monitor, without informing, and having the agreement of, the monitoring co-ordinator.

The monitoring team should agree on a time and place to meet at the end of the assembly in case it is difficult to reach other on the phone or by other means of communication. All members of the team should be clear about the location and the proposed time of the meeting. It is a good idea to agree on a cafe or similar location to meet, so that people are not waiting for others outside in potentially inclement weather. The location should also be reasonably close to the site of the assembly.

Debriefing: Monitors should carry out a short oral debriefing of events. All monitors should be encouraged to report on what they saw and heard at the assembly and have an opportunity to hear what other monitors experienced. This is also an opportunity to raise any questions and concerns, and to agree on any necessary follow-up to events that occurred at the assembly.

Monitoring social media: It is useful to continue to monitor social networks and other forms of media in the aftermath of an assembly, to gauge people's responses to the event, as well as to keep track of any follow-up activities by state bodies or other organizations.

IV.5. Reporting by the monitors

All monitors should be expected to provide a written report or notes of their experiences at the assembly. These should be composed both from notes made at the time and recollections of incidents and activities, and should be completed by each monitoring team and submitted to the co-ordinator as soon as possible after the monitoring of an assembly has finished. The material included in the report should be based on what each individual monitor has personally heard or seen and, thus, can be verified as accurate. In case of disagreements about monitoring findings between team members, the monitoring report should reflect any such discrepancies. Audio-visual materials gathered at the time should be contextualized with accompanying written notes and incorporated into the monitoring report.

Monitors rely on a mixture of notebooks and paper, audio recording devices and both still and video cameras to record the key participants, events and activities while at public assemblies. However, the information that different monitors gather individually and as teams will need to be organized and analysed so that it can be drawn together into a single, consolidated report. If all monitors submit their observations in the same format, it will be easier for the person who is drafting the final report to analyse the various pieces of information. A sample reporting form is included in Annex 4 of this handbook. The form enables a structured presentation of the information gathered by the monitors on the basis of the observation indicators described above.

The monitoring co-ordinator should review each report as soon as possible, to ensure that the contents of the reports are clear and comprehensible. If reports are not compiled quickly enough, or if they are not reviewed promptly, then inaccuracies might creep in or important details may be forgotten, and the validity of the eyewitness report might be open to question.

A monitoring project can also gather other documents and reports on freedom-of-assembly issues relevant to the context, such as news or media reports, Internet reports and blogs, updates through Facebook, Twitter feeds, YouTube videos and other social media, reports by other local or national NGOs, and official documents that might be useful in providing a broader context for any final report. Monitors should always be aware, however, that other materials might not have been written with the same degree of objectivity and emphasis on first-hand observation as their own reports.

Each monitoring project will need to consider how it might best make the information it has gathered widely accessible. While projects might focus their work on producing a final overview report, they might also make some material publicly available via a website or through presentations at conferences or workshops.

If the purpose of assembly monitoring is to assess the ways in which freedom of assembly is protected and facilitated, and to document, highlight and analyse trends and patterns in bureaucratic, institutional and individual behaviour, reports from individual assemblies might be gathered over a period of time before they are systematically analysed and written up in a comprehensive report. This likely delay in analysis is a further reason for ensuring the prompt documentation of observations and a review of the findings while the memories and experiences are still fresh in the minds of the monitors.

There might, however, be particular situations that could require a rapid response to the observation findings.

1. If there has been a particularly problematic assembly that has resulted in serious breaches of human rights or in acts of violence, it may be appropriate to publish a report of the observations soon after the event, and once the monitors have been able to gather and corroborate sufficient information. In such a situation, it would be especially important to draw upon the observations of all monitors, to present as full a picture as possible of the assembly and the context in which the breaches of human rights or acts of violence occurred.
2. In cases where individuals have been detained or arrested at an assembly, the monitoring findings could be used as a basis for further enquiry into human rights violations that might be experienced by persons in detention and/or on administrative or criminal proceedings initiated against them. It should, however, be borne in mind that detention and trial monitoring are specific activities in their own rights, involving methodologies different from those used for monitoring assemblies. In this regard, the ODIHR and Folke Bernadotte Academy publication *Trial Monitoring: A Reference Manual for Practitioners*²⁵⁴ and ODIHR's *Handbook for Monitoring Administrative Justice*²⁵⁵ (see Annex 5) could provide useful guidance.

²⁵⁴ ODIHR, *Trial Monitoring: A Reference Manual for Practitioners*, *op. cit.*, note 243.

²⁵⁵ ODIHR and Folke Bernadotte Academy, *Handbook for Monitoring Administrative Justice* (Warsaw: ODIHR, 2013), <<https://www.osce.org/office-for-democratic-institutions-and-human-rights/105271>>.

V. ANALYSIS AND USING THE MONITORING FINDINGS

V.1. Reporting

The recording of the observation findings is usually analyzed in the form of a report. The observation findings, whenever possible, are complemented by information gathered at meetings with representatives of the relevant authorities, assembly organizers and participants, CSOs and others who can provide background information on the enjoyment of freedom of peaceful assembly in the respective countries, along with specific information on the monitored events. Secondary sources, including media and CSO reports, are also used. Where relevant, information on, and analysis of, the applicable legal and regulatory framework affecting the enjoyment of freedom of peaceful assembly is also included in the report.

The report should be presented in as clear and objective manner as possible. It should provide a broad overview of the context in which the monitoring took place and should review the manner in which assemblies are facilitated and policed. Reports should include a series of evidence-based recommendations for the relevant authorities. The overview report can serve as a baseline to measure the degree to which freedom of peaceful assembly is respected and protected, and the recommendations can serve as the basis for subsequent engagement with the authorities, local civil society and the wider international community.

The analysis is carried out by comparing the observation findings to the national legal framework regulating the enjoyment and exercise of the freedom of peaceful assembly, to identify the lawfulness of the law enforcement conduct. In addition,

they are measured against relevant international and regional human rights standards and commitments. Any identified restriction or interference in people's full enjoyment of the freedom of peaceful assembly has to be lawful, and has to stand the strict test of necessity-proportionality described in Section II of this handbook.

ODIHR uses the *Guidelines on Freedom of Peaceful Assembly*²⁵⁶ and the *Human Rights Handbook on Policing Assemblies*²⁵⁷ as the main benchmarks for the assessment of compliance with international human rights standards and for examples of generally accepted good practice. In addition, ODIHR's assembly monitoring report also draws on the good practices identified by the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association in their thematic reports, as well as the practical recommendations for the proper management of assemblies made by the Special Rapporteurs on the Rights to Freedom of Peaceful Assembly and of Association and on Extrajudicial, Summary or Arbitrary Executions.²⁵⁸

V.2. Advocacy

A detailed discussion of the various advocacy strategies that exist and their link to human rights monitoring activities is beyond the scope of this handbook, but it is important to underscore the importance of a clear strategy for each monitoring project that determines how the monitoring findings and resulting recommendations will be used.

ODIHR sees the promotion of dialogue between the authorities and civil society on ways to strengthen the protection and promotion of freedom of peaceful assembly at the national and local level as one of the main aims of monitoring freedom of assembly, and monitoring reports are a key mechanism for initiating and developing such dialogue. In this regard, the production of a consolidated monitoring report should not be seen as the conclusion of a project but, rather, as a first step in a process aimed at bringing law and practice closer to international standards and to good practices on freedom of peaceful assembly.

Before a monitoring project is started, a preliminary examination should be conducted of the relevant legislative framework, as well as of the competencies of the various authorities at the national and local levels that have a role in enabling or restricting the enjoyment of freedom of peaceful assembly. This exploration will be

²⁵⁶ ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, *op. cit.*, note 8.

²⁵⁷ ODIHR, *Human Rights Handbook on Policing Assemblies*, *op. cit.*, note 128.

²⁵⁸ UN HRC, "Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association", *op. cit.*, note 17.

complemented by a broader analysis of all relevant stakeholders, of potential allies and opponents among them, and of how to influence these.

While the opportunities to raise issues of human rights abuses differ depending on the country in question, the key bodies relevant to freedom of assembly might include the parliament, the mayor of the relevant municipality, NHRIs, the head of the local and national police, the government ministry responsible for policing, political parties, other local human rights organizations, local branches of international human rights organizations, and OSCE and UN field operations.

Mapping out the stakeholders and identifying potential allies and opponents is a fundamental step in defining a broader strategy for change. This strategy can take different forms, and might involve focusing on one or more specific aspects and/or targets. For example, where inadequate police practice is identified as one of the main obstacles to the enjoyment of freedom of peaceful assembly, improving police practice might become the primary objective of the strategy. Elsewhere, the focus might be on the national legislation regulating assemblies.

Approaches to effecting change might also vary. These might include supporting advocacy at the national level with efforts at the international level. Opportunities might also arise locally, even in the absence of these at the national policy level. A particular municipality, for instance, might be more receptive to change. Efforts could, therefore, concentrate on engaging in a dialogue to improve practice locally, with a view to making a positive example of that municipality. Subsequently, local good practice could be extended to the rest of the country and, potentially, be reflected in policy change at the national level.

All of these considerations are important from the very beginning, at the stage when a monitoring project is being conceptualized. Indeed, they might affect how monitoring will be conducted, potentially including on which particular aspects or geographic areas it will focus. The need to define a strategy as a first step does not imply that this will not be refined and changed during and/or after the monitoring phase. Strategies for change should be seen as living documents, with information from monitoring activities and feedback from advocacy efforts helping in further developing and refining them.

In considering the local context and, in particular, the nature of the relationships between the authorities and human rights defenders, the following considerations can be relevant in defining and developing a strategy.

- In some cases, the authorities might be receptive to dialogue and developing positive relations with civil society. Monitoring findings and recommendations might serve as a basis for constructive discussions and provide a structure for reforms, retraining and ongoing working relationships. In such situations, findings can be used as the basis for developing a programme of activities, with an agreed timetable for change.
- In other cases, the authorities might regard the human rights work of CSOs as a challenge or a threat. The monitoring findings can then be used to publicize the extent of respect for human rights and to highlight any abuses, in an attempt to obtain recognition of the issues from authorities, the public and/or the international community.
- The two approaches above are not necessarily, or entirely, mutually exclusive. The authorities in any particular country should not be regarded as monolithic and, after identifying potential allies and opponents, it is critical to engage in different ways with them.
- As there might be considerable differences in approaches by different state actors, or in different areas or cities, monitors should be cautious about how far they can generalize from a small number of examples, and should ensure that reports discuss specific events or incidents.
- One of the benefits of maintaining a practical monitoring project over a year or more is that monitors might be able to identify patterns of behaviour or abuses of rights that might not be so evident in the monitoring of individual events, where specific circumstances might be cited as a justification for whatever occurred. While monitors might aim to respond critically to individual events, there might be greater value in providing independent evidence of broader trends.
- As discussed in the previous sections, monitoring should be carried out transparently, accurately and impartially. This allows the monitoring team to analyse the actions of the state and its agents, and to compare them with the local legal framework and international human rights standards. Presenting a legal/technical argument on potential failures to comply with international or domestic legal provisions might be the best way to engage in a constructive discussion with policymakers, and to de-politicize freedom of assembly.

The monitoring project team might also decide to make the report more widely available, to highlight either ongoing abuses of human rights or improvements in respect of freedom of assembly, or to highlight ongoing problems with respect to the use of local legislation or the policing of assemblies. This might involve publicizing their work for the general public or specific target audiences, through the local media or international organizations, or by holding public events to disseminate their findings.

V.3. Litigation

Assembly monitoring can be used to document possible law enforcement misconduct or undue limitations of the right to freedom of peaceful assembly or other related human rights. The findings can help establish the facts, and be used as evidence in subsequent legal proceedings and monitors can act as witnesses in court.²⁵⁹ This way, the assembly monitoring work can contribute to improved law enforcement accountability, as well as to supporting people's right to an effective remedy. By using the power of the courts to enforce human rights, human rights defenders can deter further human rights violations.

V.4. Capacity building

As underlined in the first chapter, human rights monitoring aims not only to identify causes of human rights challenges, but also strives to help develop possible solutions. ODIHR's assembly monitoring activities are aimed at identifying gaps and challenges, as well as examples of good practices, in how participating States meet their human dimension commitments on the protection and promotion of freedom of peaceful assembly. Therefore, the recommendations contained in ODIHR assembly monitoring reports are aimed at advancing efforts to better implement these commitments and relevant human rights standards in all OSCE participating States, by creating a practical guide for law enforcement and other authorities on how to facilitate assemblies in a manner that conforms to international human rights law and standards. In addition, ODIHR supports the strengthening of the independence and the effective functioning of NHRIs, by building their capacity in the area of independent monitoring of assemblies.

V.5. Taking Action Internationally

Monitors might choose to disseminate their findings through international bodies, such as the United Nations, the Council of Europe, the OSCE or the European Union. Findings from monitoring activities might be submitted to international human rights bodies, such as the UN Human Rights Committee (e.g., as a shadow report), or processes like the Universal Periodic Review of the UN Human Rights Council.

²⁵⁹ See, for example: ACLU Wisconsin, "Legal Observers", <<http://www.aclu-wi.org/community-education/legal-observers>>; Green & Black Cross, "What is a Legal Observer?", <<https://greenandblackcross.org/guides/what-is-a-legal-observer/>>; and Network for Police Monitoring (Netpol), "What is a Legal Observer?", <<https://netpol.wordpress.com/monitoring/legal-observers/how-to-be-a-legal-observer/>>.

Reports might also be circulated to international human rights organizations, such as Amnesty International, Freedom House or Human Rights Watch. Advocacy activities might be co-ordinated with international human rights NGOs, ensuring that the international component complements work is carried out domestically by the monitoring team and local organization.

Action at the international level should not be an aim in itself, but can be an element in a broader strategy for local change. Interventions, opinions or concluding observations (see below) by authoritative international human rights bodies might, however, help strengthen the argument in favour of change domestically, and can be effective in focusing the attention of state authorities on particular human rights issues. The following paragraphs summarize some of the opportunities for disseminating reports and reporting human rights violations to key international bodies.

The OSCE, including ODIHR: The OSCE has developed a diverse programme of work related to promoting and supporting the freedom of assembly over recent years, both through ODIHR and the various field operations across South-Eastern Europe, Eastern Europe and Central Asia. Issues might be raised locally with staff at the relevant field operation, who might be able to assist in facilitating dialogue or highlighting concerns. The annual Human Dimension Implementation Meeting in Warsaw, where the implementation of OSCE human dimension commitments by participating States is reviewed, has traditionally included a session focusing on freedom of assembly, at which CSOs are given an opportunity to speak. In addition, Human Dimension Implementation Meetings provide opportunities to organize side events to raise issues and publicize problems that have been identified in individual countries in more detail. Such interventions can lead to the establishment of dialogue between CSOs and authorities, which can then continue in-country, with a view to bringing about the necessary change. (More information on ODIHR's work on freedom of assembly, see Annex 3.)

The Human Rights Commissioner of the Council of Europe: The role of the Human Rights Commissioner includes identifying possible shortcomings in law and practice related to human rights, and assisting Council of Europe member states in the implementation of human rights standards. Information may be submitted to the Commissioner on the status of human rights defenders and their work, including reports on threats and violations of their human rights, in the 47 member states of the Council of Europe.²⁶⁰

²⁶⁰ For more information on the Human Rights Commissioner of the Council of Europe, see: <<https://www.coe.int/en/web/commissioner>>.

The European Court of Human Rights: The European Court of Human Rights is an international court with jurisdiction to hear cases of alleged violations of rights protected in the European Convention on Human Rights in Council of Europe member states. Applications can only be submitted after all effective domestic remedies have been exhausted and within six months after the final domestic decision relating to the case has been handed down.²⁶¹ The Court's judgements are binding.

The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association: The Special Rapporteur is an independent expert appointed by the Human Rights Council and is mandated to gather all relevant information, including national practices and experiences, relating to the promotion and protection of the rights to freedom of peaceful assembly and of association, to study trends, developments and challenges in relation to the exercise of these rights, and to make recommendations on ways and means to ensure the promotion and protection of the rights to freedom of peaceful assembly and of association, in all their manifestations.²⁶² The Special Rapporteur can intervene directly with governments on allegations of violations of human rights that come within their mandate, by means of letters, which include urgent appeals and other communications.²⁶³

The UN Human Rights Committee: States Parties to the ICCPR are required to submit periodic reports to the Human Rights Committee on the implementation of the rights enshrined in the Convention, including the right to peaceful assembly. CSOs can use this as an opportunity to present a shadow report to the Committee, providing their findings on compliance or non-compliance with human rights standards. Based on all the information available, the Committee publishes its concluding observations, raising concern where a state fails to meet its obligations under the ICCPR and providing recommendations to address identified shortcomings. Over the years, shadow reports have played a prominent role in highlighting human rights violations, and concluding observations can be used domestically to hold states to account and to encourage them to abide fully by their international obligations. Where states have ratified the First Optional Protocol to the ICCPR, individual cases can be brought before the Human Rights Committee. In a similar manner to cases before the European Court of Human Rights, national remedies must be exhausted

²⁶¹ For further information for applicants to the European Court of Human Rights, see: <<https://echr.coe.int/Pages/home.aspx?p=home>>.

²⁶² For further information on the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, see: <<https://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/SRFreedomAssemblyAssociationIndex.aspx>>.

²⁶³ For further information on the communication procedure, see: <<https://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>>.

before an individual petition is presented alleging a violation of one or more rights protected in the ICCPR.²⁶⁴

United Nations Human Rights Council: Special procedures under the UN Human Rights Council have either thematic mandates, covering a specific right/issue, or mandates focusing on the human rights situation in a specific country. Their mandates usually have a monitoring and reporting component, and their activities include acting on individual cases, often based on information from CSOs and other reliable sources. Special procedures involve either an individual (called a special rapporteur, special representative of the Secretary-General, or independent expert) or a working group, usually composed of five members. In 2010, the Human Rights Council decided to appoint a Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, whose mandate has been renewed every three years since. In addition, the mandates of existing special procedures cover human rights issues that are closely related to the enjoyment of freedom of assembly (for instance, the Special Rapporteur on the Situation of Human Rights Defenders).

In addition to providing information to UN special procedures, civil society actors have the opportunity to be involved in the Universal Periodic Review, a process carried out under the auspices of the Human Rights Council and involving the review of the human rights situation in all UN member countries. CSOs can submit information to be considered during the review, and can present statements at the Human Rights Council sessions when the outcomes of the state reviews are considered.

For a general overview of UN bodies and mechanisms and the opportunities for NGOs to engage with them, see *Working with the United Nations Human Rights Programme: A Handbook for Civil Society*, published by the UN Office of the High Commissioner for Human Rights (UN OHCHR).²⁶⁵

Inter-American Commission on Human Rights (IACHR): The IACHR is one of two bodies in the inter-American system for the promotion and protection of human rights. The Commission has its headquarters in Washington, D.C. The other human rights body is the Inter-American Court of Human Rights, located in San José, Costa Rica. The IACHR is an autonomous organ of the Organization of American States (OAS), and represents all the member states of the OAS.

²⁶⁴ For further information on the Human Rights Committee, see: <<https://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx>>.

²⁶⁵ UN OHCHR, *Working with the United Nations Human Rights Programme: A Handbook for Civil Society* (New York and Geneva: United Nations, 2008), <<http://www.ohchr.org/EN/AboutUs/CivilSociety/Pages/Handbook.aspx>>.

Petitions to the IACHR alleging violations of the rights enshrined in the ACHR may be filed by states, CSOs or individuals. Unlike most court filings, petitions are confidential documents and are not made public. Petitions must meet three requirements: Domestic remedies must have already been tried and failed (exhaustion); petitions must be filed within six months of the last action taken in a domestic system (timeliness); and petitions cannot be considered if their subject matter is pending settlement in another procedure before an international governmental organization (duplication of procedure).

On examining a petition, the Commission can carry out an investigation, request additional information from states, and receive oral or written statements from the parties concerned. It can then produce a report with its conclusions and recommendations and, in certain cases, refer a case to the Inter-American Court of Human Rights, which, on finding a violation, can decide that the measure or situation that constituted a breach be remedied and that compensation be paid. Only States Parties and the Commission can submit cases to the Inter-American Court of Human Rights.

The IACHR also has a mandate to promote respect for human rights in the region, including through the preparation of studies and reports. As part of its work, the Commission can carry out on-site visits to countries to engage in more in-depth analysis of the general situation and/or to investigate a specific situation.²⁶⁶

²⁶⁶ For further information on the Inter-American Commission on Human Rights, see: <<https://www.oas.org/en/iachr/>>

ANNEX 1:**KEY OSCE COMMITMENTS ON FREEDOM OF PEACEFUL ASSEMBLY****Vienna 1989 – Concluding Document of the Third Follow-up Meeting (Questions Relating to Security in Europe: Principles)**

[...] In order to ensure the freedom of the individual to profess and practice religion or belief, the participating States will, *inter alia*,

[...]

(16.4) - respect the right of these religious communities to

- establish and maintain freely accessible places of worship or assembly

[...]

Sofia 1989 – Report of the Sofia Meeting on the Protection of the Environment (Preamble)

The participating States reaffirm their respect for the right of individuals, groups and organizations concerned with environmental issues to express freely their views, to associate with others, to peacefully assemble, as well as to obtain, publish and distribute information on these issues, without legal and administrative impediments inconsistent with the CSCE provisions. [...]

Copenhagen 1990 – Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE

[...] The participating States reaffirm that:

(9.2) [E]veryone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards.

Paris 1990 – Charter of Paris for a New Europe (A New Era of Democracy, Peace and Unity)

We affirm that, without discrimination, every individual has the right to [...] freedom of association and peaceful assembly [...]

Istanbul 1999 – Istanbul Document 1999

26. [...] We pledge to ensure fair competition among candidates as well as parties, including through their access to the media and respect for the right of assembly.

Helsinki 2008 – Ministerial Declaration on the Occasion of the 60th Anniversary of the Universal Declaration of Human Rights

[...] We reiterate that everyone has the right to freedom of thought, conscience, religion or belief; freedom of opinion and expression, freedom of peaceful assembly and association. The exercise of these rights may be subject to only such limitations as are provided by law and consistent with our obligations under international law and with our international commitments. [...]

ANNEX 2:**KEY INTERNATIONAL AND REGIONAL STANDARDS
ON FREEDOM OF PEACEFUL ASSEMBLY****MAIN INTERNATIONAL TREATIES AND DECLARATIONS:****Universal Declaration of Human Rights, Article 20 (1)**

Everyone has the right to freedom of peaceful assembly and association.

International Covenant on Civil and Political Rights, Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Convention on the Rights of the Child, Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

**International Convention on the Elimination of All Forms of Racial
Discrimination, Article 5**

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (...)

- (ix) The right to freedom of peaceful assembly and association

Convention on the Elimination of All Forms of Discrimination against Women, Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country.

Convention on the Rights of Persons with Disabilities, Article 29 – Participation in political and public life

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

- (a) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 26

1. States Parties recognize the right of migrant workers and members of their families:
 - (a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;

United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) To meet or assemble peacefully;

United Nations Code of Conduct for Law Enforcement Officials

Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*Principle 4*

Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

Principle 5

Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

Principle 9

Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

Principle 12

As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law

enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

Principle 13

In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

Principle 14

In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

MAIN REGIONAL TREATIES AND DECLARATIONS

European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 11

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Charter of Fundamental Rights of the European Union, Article 12

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels (...)

Framework Convention for the Protection of National Minorities, Article 7

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly....

American Declaration of the Rights and Duties of Man, Article 21

Every person has the right to assemble peaceably with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature.

American Convention on Human Rights, Article 15

The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedoms of others.

ANNEX 3:**ODIHR TOOLBOX IN THE AREA OF FREEDOM OF PEACEFUL ASSEMBLY**

ODIHR has developed a range of tools and expert networks to support OSCE participating States in implementing their commitments related to the freedom of peaceful assembly. The following is an overview of the ODIHR toolbox to aid the work of state authorities, legislators and civil society in the OSCE participating States.

ODIHR TOOLBOX IN THE AREA OF FREEDOM OF PEACEFUL ASSEMBLY

TOOL	DESCRIPTION
Legislative review	<p>ODIHR provides legal reviews of respective draft and existing legislation in OSCE participating States, upon request. Reviews are usually published in co-operation with the Council of Europe's Venice Commission, and supported by input from the ODIHR Panel of Experts on Freedom of Peaceful Assembly, which was officially established in 2006. These legal reviews often entail follow-up discussions with relevant national stakeholders. All opinions are available at: http://www.legislationline.org/topics/topic/15.</p>
Guidelines on Freedom of Peaceful Assembly	<p>The ODIHR-Venice Commission <i>Guidelines on Freedom of Peaceful Assembly</i>, 2nd edition (2010), http://www.osce.org/odihhr/73405. The guidelines are informed by the relevant jurisprudence, particularly the case law of the European Court of Human Rights and of national constitutional courts. The guidelines also provide for examples of good practice where states have demonstrated viable solutions while regulating freedom-of-assembly issues. They are also a useful tool for legislatures in reviewing existing or draft legislation pertaining to freedom of assembly, and also provide tools for national and local authorities, as well as law enforcement agencies that are tasked with regulating this freedom. They have been referred to by the courts and also used as an advocacy tool by CSOs and a resource tool for monitoring and training activities.</p>

Assembly monitoring

In line with its mandate to support participating States in the implementation of their commitments on freedom of peaceful assembly, ODIHR has been monitoring public assemblies across the OSCE space since 2011. The reports of the first four monitoring cycles, covering assembly monitoring exercises in 30 OSCE participating States were published, respectively, on the following dates:

9 November 2012:

<<http://www.osce.org/odihr/97055>>;

17 December 2014:

<<http://www.osce.org/odihr/132281?download=true>>;

16 December 2016:

<<https://www.osce.org/odihr/289721?download=true>>;

18 September 2019:

<<https://www.osce.org/odihr/430793>>.

Capacity-building in independent monitoring of assemblies

Recognizing the need to build the capacity of CSOs and human rights defenders to independently monitor and report on the policing of assemblies, ODIHR published the *Handbook on Monitoring Freedom of Peaceful Assembly* in 2011, <<http://www.osce.org/odihr/82979?download=true>>, and has conducted several training courses on independent assembly monitoring techniques for OSCE staff and civil society.

Capacity-building for law enforcement actors on human rights-compliant policing of assemblies

ODIHR, in collaboration with the OSCE's Strategic Police Matters Unit, has published a *Human Rights Handbook on Policing Assemblies*. The handbook is a tool for law enforcement officials and commanders, providing key information on upholding human rights standards in the context of assemblies and public-order management. It can be accessed at: <<http://www.osce.org/odihr/226981?download=true>>.

ODIHR has also developed a training curriculum on the basis of the handbook for police commanders on how to facilitate assemblies in a human rights-compliant way.

ANNEX 4:**ASSEMBLY MONITORING REPORTING FORM**

Monitored assembly:
Monitoring Team:
Date, time and place of the observations:

I. PRE-MEETINGS (if applicable)
--

II. MONITORING OBSERVATIONS
<p>Chronology of events: (overall description of the assembly, such as time of start, finish, main elements of the route, and police actions)</p>
<p>Size of the assembly:</p>
<p>Specific elements of the assembly: (presence of organizers, stewards, children, vehicles, people with disabilities, gender composition, age composition, key messages of the assembly, banners/visual displays, slogans/shouting/singing/speeches, media access and presence, monitors access and presence, weapons, aggressive actions, attitude of police/spectators, road blockages, barricades, presence of counter-demonstrators, etc.)</p>
<p>Stewarding and disruption: (e.g., any aggressive action and reaction to it by the organizers, stewards, police, assembly participants)</p>

Sight and sound principle:

(whether the assembly can be seen and heard by the target audience)

Police presence before and during various stages of the assembly.

(units/types, estimated numbers, attire, equipment and tactical options, location/position, identifiability)

Police preventive action:

On-spot changes/restrictions to the venue/route of the assembly and reactions:

Kettling/Containment:

Arrests and detention: (number and time of arrests, and how the arrests took place; any injuries):

Dispersal: (when/how/why did the police attempt to disperse the assembly)

Occurrences of use of force: (type, location, time, warnings, other circumstances)

Other police measures:

Police facilitation of the media, monitors:

Communication, interactions between police and organizers, stewards, participants, monitors, media representatives, counter-demonstrators:

Police action after the assembly:

Facilitation of traffic/reopening of roads:

III. MEDIA REPORTS

(please provide a line of description and link to news pieces about the assembly, relevant videos, social media albums, etc.)

IV. FOLLOW-UP QUESTIONS

(issues, questions for further clarification)

ANNEX 5:**TOOLS ON MONITORING FREEDOM OF PEACEFUL ASSEMBLY**

Office of the UN High Commissioner for Human Rights, *Training Manual on Human Rights Monitoring* (New York and Geneva: United Nations, 2001), <<https://www.ohchr.org/Documents/Publications/training7Introen.pdf>>.

OSCE

ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly. Second Edition* (Warsaw: ODIHR, 2010), <<https://www.osce.org/odihr/73405>>.

ODIHR, *Trial Monitoring: A Reference Manual for Practitioners. Revised Edition* (Warsaw: ODIHR, 2012), <<https://www.osce.org/odihr/94216>>.

ODIHR, *Legal Digest of International Fair Trial Rights* (Warsaw: ODIHR, 2012), <<https://www.osce.org/odihr/94214>>.

ODIHR and Folke Bernadotte Academy, *Handbook for Monitoring Administrative Justice* (Warsaw: ODIHR, 2013), <<https://www.osce.org/office-for-democratic-institutions-and-human-rights/105271>>.

ODIHR, *Guidelines on the Protection of Human Rights Defenders* (Warsaw: ODIHR, 2014), <<https://www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders>>.

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

ODIHR, *Human Rights Handbook on Policing Assemblies* (Warsaw: ODIHR, 2016), <<https://www.osce.org/odihr/226981>>.

