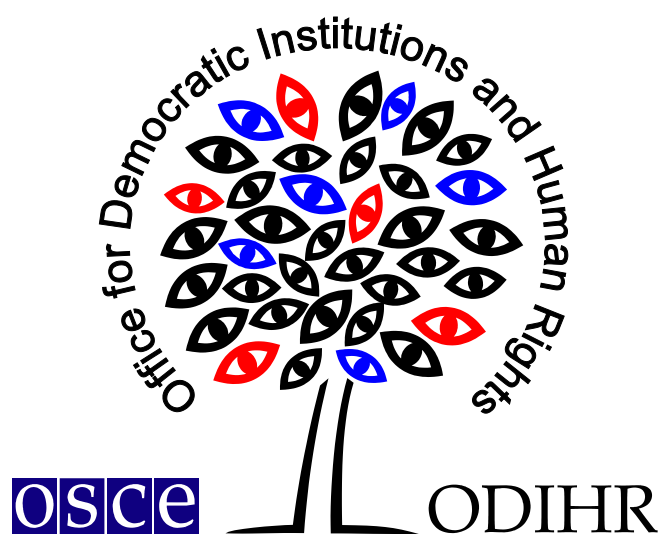


**OSCE**  
**Office for Democratic Institutions and Human Rights**

**Report**  
**Monitoring of Freedom of Peaceful Assembly in Selected OSCE**  
**Participating States**  
**(September 2019 – November 2021)**



**Warsaw**  
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## LIST OF ABBREVIATIONS AND ACRONYMS

ACHPR	African Commission on Human and Peoples' Rights
CCTV	Closed-circuit television
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
NGO	Non-Governmental Organization
HRC	United Nations Human Rights Council
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
IACHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
NATO	North Atlantic Treaty Organization
NHRI	National Human Rights Institution
ODIHR	Office for Democratic Institutions and Human Rights
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
UK	United Kingdom
UN	United Nations

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## EXECUTIVE SUMMARY

1. This report presents the main findings of the monitoring of public assemblies undertaken by the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) in selected OSCE participating States between September 2019 and November 2021. During this period, ODIHR directly observed assemblies and related activities in line with its mandate to support participating States in the implementation of their commitments on freedom of peaceful assembly. The monitoring exercises focused on specific events on the basis of established criteria. The main goal of the monitoring and ensuing analysis was to identify 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.
2. ODIHR is the main OSCE institution concerned with the human dimension of security, and it is tasked with assisting in monitoring the implementation of human dimension commitments (Helsinki 1992). ODIHR's monitoring mandate is based on a number of OSCE commitments (Helsinki 1992, Budapest 1994, Oslo 1998, Maastricht 2003). Moreover, ODIHR serves as a point of contact for information provided by participating States (Rome 1993). Participating States have expressed their determination to co-operate within the OSCE and with its institutions and representatives in a spirit of solidarity and partnership in a continuing review of implementation (Istanbul 1999).
3. OSCE participating States are committed to guaranteeing freedom of peaceful assembly to every individual without discrimination (Copenhagen 1990, Paris 1990). This freedom is, moreover, enshrined in a number of international human rights treaties. The main international standards used in the analysis stem from the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), as well as the case law of the European Court of Human Rights (ECtHR). The report uses the *Guidelines on Freedom of Peaceful Assembly*,<sup>1</sup> jointly published by ODIHR and the Council of Europe's European Commission for Democracy through Law (Venice Commission), as its main benchmark and reference point for assessing compliance with international human rights standards.
4. The fifth monitoring cycle was marked by the outbreak of the COVID-19 pandemic, which significantly affected the right to freedom of peaceful assembly in all OSCE participating States, including those monitored during this reporting period. Many countries across the OSCE region adopted measures to limit the spread of the virus that negatively impacted individuals' right to peacefully assemble. Those include blanket bans on public gatherings as well as states of emergency or equivalent regimes, the exclusion by law or regulation of certain groups of individuals, such as older people and pregnant women, from participating in assemblies, preventing people from travelling to demonstrations outside of their place of residence, and

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<sup>1</sup> *Guidelines on Freedom of Peaceful Assembly* (Warsaw and Strasbourg: ODIHR and Venice Commission, 2010, 2nd ed.), <<http://www.osce.org/odihhr/73405>> (hereinafter, the "*Guidelines*").

limiting the time of day when public assemblies could take place. In addition, holding assemblies contrary to COVID-19 restrictions led to harsh consequences in various States, with authorities using disproportionate force to disperse assemblies, handing out heavy fines, and charging individuals participating in assemblies for infraction or felony. In some States, the COVID-19 pandemic has also been used as a way to further restrict the right to freedom of peaceful assembly through the adoption or reinforcement of strict legal frameworks to that effect.<sup>2</sup> In September 2022, ODIHR published the report “The impact of the COVID-19 Pandemic on the Right to Freedom of Peaceful Assembly”,<sup>3</sup> reflecting on these challenges during the past two years but also some of the positive practices observed in some of the OSCE participating States.

5. Within the fifth monitoring cycle, assemblies were monitored between 27 September 2019 and 13 November 2021 in the following participating States: Denmark, United Kingdom (England and Scotland), the Netherlands, Bosnia and Herzegovina, Finland, and Portugal. In some participating States, multiple events were observed that took place on the same day or over a period of two weeks. The observation of one assembly generally also involved the monitoring of any counterdemonstrations or parallel assemblies that might have taken place. A table of all events monitored as part of this exercise is included in Annex 4 to this report.
6. ODIHR monitored 27 public assemblies, selected on the basis of ODIHR’s selection criteria (outlined below) in order to preserve the integrity of the sample. The monitoring sample included events that, due to their nature, size or complexity, posed particular difficulties for the authorities and the organizers. These difficulties were related to, *inter alia*, the expression of views or positions that challenge prevailing opinions, the presence of counterdemonstrations and the potential of a resulting conflict between opposing groups, and the need to ensure a proper balance between respect for the freedom of peaceful assembly and public order or national security.
7. The monitoring of the above-mentioned assemblies involved the gathering of first-hand information by observers who were able to witness the conduct of, and interaction among, assembly participants, law-enforcement agents and other relevant state and non-state actors (e.g., representatives of local municipal authorities, journalists, assembly monitors, etc.). The observation findings were, whenever possible, complemented by information gathered at meetings with representatives of the relevant authorities, assembly organizers and participants, civil society organizations and others who could provide background information on the enjoyment of freedom of peaceful assembly in the respective countries and specific information on the monitored events. Secondary sources, including media and NGO reports, were also used.

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<sup>2</sup> OHCHR, IACHR, RFOE, ACHPR, and OSCE/ODIHR, “Joint Declaration on the Right to Freedom of Peaceful Assembly and Democratic Governance” (hereinafter, “Joint Declaration”); OSCE, “OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic” (17 July 2020); UN Special Rapporteur on the rights to freedoms of peaceful assembly and of association, “States responses to COVID-19 threat should not halt freedoms of assembly and association” (14 April 2020).

<sup>3</sup> ODIHR report “The impact of the COVID-19 Pandemic on the Right to Freedom of Peaceful Assembly” available at: <<https://www.osce.org/odihr/525000>>.

Where relevant, information on, and analysis of, the applicable legal and regulatory framework affecting the enjoyment of freedom of peaceful assembly has been included in this report.

8. In all the participating States where ODIHR monitored assemblies, the right to assemble peacefully is recognized in the constitution and/or other specific domestic legislation. In some of the participating States, however, the legal framework restricts the enjoyment of the right to citizens and adults only, and limits it for persons with certain types of disabilities in contravention of international human rights law. Efforts should be made to bring such legislation into full compliance with international human rights standards and OSCE commitments.
9. Most participating States where ODIHR monitored assemblies within this cycle maintain a notification requirement rather than an authorization system for assemblies. In some participating States, however, the notification requirement is reportedly interpreted or applied as *de facto* authorization. Most participating States visited in this cycle do not provide for spontaneous assemblies in their legislation, and some even prohibit unannounced or unauthorized assemblies and sanction their organizers. Many states require that the organizer disclose a significant amount of information in the notification or request for a permit, which often goes well beyond the information strictly needed for the facilitation of the assembly. States are primarily responsible for putting into place mechanisms and procedures to ensure that this freedom is enjoyed in practice and is not subject to unduly restrictive or bureaucratic regulation but can be exercised in simple and foreseeable procedures.
10. In some participating States that ODIHR visited as part of this cycle, assemblies are prohibited at certain public locations or at certain times of the day, effectively giving rise to blanket prohibitions. Since blanket bans on assemblies are likely to be disproportionate in that they fail to take into account the individual circumstances of the assemblies involved, they should be avoided, and other, less intrusive and more individualized restrictions should be applied if needed. In some participating States where ODIHR monitored assemblies within this cycle, the authorities imposed restrictions on assemblies. Some events were directly or indirectly affected by time, place and manner restrictions or, more generally, by restrictions on access to particular areas based on security considerations. Restrictions imposed in different participating States that limited the ability of protesters to be within sight and sound of their intended audience varied in their scope and range. Generally, restrictions on assemblies should only be imposed where there are compelling arguments to do so based on grounds that are in line with OSCE commitments and international human rights standards. Authorities must choose the least restrictive of the available options; they should do so only as far as the chosen option is proportionate to the legitimate objective.
11. ODIHR observed a few simultaneous assemblies and public events, including demonstrations and related counterdemonstrations. It is generally good practice to facilitate, as much as possible, the holding of simultaneous assemblies. When accommodating simultaneous assemblies, emphasis should be placed on practical solutions that can be found through dialogue and negotiation with all parties. Although counterdemonstrations may give rise to public safety

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and security considerations, the authorities should generally try to facilitate the holding of an assembly and related counterdemonstrations within sight and sound of one another.

12. In some participating States, legislation expressly provides for prompt decision-making by the respective authorities and for opportunities to challenge decisions in an independent court. Practices have also been reported, however, whereby organizers' access to an effective remedy is hampered by delayed decision-making or late communication of decisions by the responsible authorities. In some participating States, there are no legal avenues to challenge restrictions or conditions imposed before assemblies. The organizer of an assembly should not be forced to accept restrictions without having an opportunity to challenge them, including before a court.
13. In the majority of the participating States where ODIHR monitored assemblies in this cycle, specific legal provisions exist that describe the duties and responsibilities of organizers in relation to the holding of an assembly and ensuring public order. For example, legislation in some participating States imposes on organizers an obligation to deploy stewards during gatherings to ensure the maintenance of public order. However, organizers should only deploy stewards on a voluntary basis to support the facilitation of assemblies by the police and should in no way detract from the responsibilities of the police to ensure public order or the positive obligation of the state to protect the safety and security of assembly participants and other individuals present.
14. A failure to comply with relevant legal requirements on notification and authorization of assemblies and on organizing and holding assemblies may result in civil, administrative or criminal liability for the organizers, depending on the jurisdiction. In such situations, the competent authorities may impose fines on the organizers or, in some cases, prison sentences. In some jurisdictions, legislation places administrative or criminal liability directly on the organizer for the unlawful conduct of others, in contravention of international standards. Any sanctions or fines imposed after an assembly should strictly adhere to the principles of proportionality and individual responsibility for one's own intentional conduct. The risk of a heavy and disproportionate fine or other penalty may, in itself, have a chilling effect and inhibit the enjoyment of freedom of peaceful assembly. Organizers or assembly stewards should not be held liable for the failure to perform their responsibilities unless they intentionally and directly violate existing laws governing all participants in an assembly.
15. In most of the locations where ODIHR monitored assemblies, police representatives communicated or attempted to communicate with organizers of assemblies prior to the events. In many cases, communication was considered to be adequate by both police and assembly organizers; however in some cases, where the assembly organizers were children, they found the communication process with law enforcement officials intimidating. At the same time, during some assemblies ODIHR monitors observed limited communication between the police and the assembly organizers and participants, whereas better communication could have contributed to the de-escalation of tensions. In general, in some of the participating States where observations were carried out, police forces placed communication with the organizers and participants at the centre of their approach. It was widely recognized that good communication



facilitated the work of the police and the enjoyment of the freedom of peaceful assembly by participants at public events.

16. At most assemblies observed by ODIHR, limited or no interventions were witnessed, including arrests, detentions or the use of force. This was generally also the case during assemblies that presented specific challenges in relation to the maintenance of public order and the protection of participants. In some individual situations observed by ODIHR, however, the use of force by police officers, including containment of assembly participants, especially minors, appeared overly restrictive, excessive and not in line with the proportionality principle, in contravention of international standards. Efforts should be made to ensure that the use of force by law-enforcement officials during assemblies strictly adheres to the principles of necessity and proportionality.
17. In a large number of the assemblies observed by ODIHR, law-enforcement personnel photographed and captured video recordings of assemblies and/or the participants throughout the entire duration of the assembly or in a variety of contexts. While transmitting video images and recordings of assemblies seems to be a widespread practice in the majority of the participating States where ODIHR observed assemblies, participants at the assemblies observed did not seem to be informed about the purpose and specific details of the recording—whether only general images were transmitted from the assembly or recordings were being made—about the purpose of those recordings and about the procedures and policies for the retention and processing of the data captured. This practice has implications for other human rights, such as the right to privacy, and can have a significant chilling effect on assembly participants.
18. In some participating States where ODIHR observed assemblies separate police oversight mechanisms exist to oversee the actions of the police in the context of policing assemblies. In addition, in some participating States, ombudsperson institutions function as independent oversight mechanisms over the police and therefore contribute to the fostering and monitoring of the implementation of the right to freedom of peaceful assembly.
19. The recommendations contained in this report 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.
20. During monitoring deployments, ODIHR observers were not restricted in their ability to observe assemblies or to gather information. In the vast majority of cases, both before and after assemblies, ODIHR was able to secure the meetings it had requested with the local authorities. Co-operation and the exchange of information between ODIHR and state authorities were usually good or very good, often thanks to the efforts and facilitation of contact persons assigned to ODIHR's monitoring exercises. ODIHR would like to express its gratitude to these individuals and to the various other state officials ODIHR observers met in the context of the monitoring exercises.

## INTRODUCTION

### *ODIHR's work on the freedom of peaceful assembly and background to the report*

21. Freedom of peaceful assembly is a fundamental freedom that is recognized as a core principle of democracy. The ability to assemble and act collectively is vital to democratic, economic and social development and to fostering an engaged citizenry.<sup>4</sup> Assemblies are a fundamental tool of democratic engagement; facilitating participation in peaceful assemblies helps ensure that all people in a society have the opportunity to express opinions that they hold in common with others. Peaceful assemblies therefore can make a positive contribution to the development, strengthening and effectiveness of democratic systems and to democratic processes.<sup>5</sup> When duly protected and facilitated, freedom of peaceful assembly offers a viable opportunity for minority and marginalized groups to express their views publicly. This, in turn, serves an important purpose by allowing a greater degree of political participation for groups, such as young people, that may otherwise face limitations in their participation in formal democratic institutions. Therefore, this fundamental freedom is also a tool for protecting minorities and furthering pluralism.
22. Assemblies have historically played an important social and political role in the development of more just and accountable societies<sup>6</sup> by allowing the population to express its will or grievances, influence public policy or hold governments accountable.<sup>7</sup> The freedom of peaceful assembly allows individuals not only to engage with the state or other powers in society. It also enables the direct expression, promotion and protection of values or opinions, thereby fostering dialogue among different stakeholders or groups.
23. Assemblies are an instrument through which other social, economic, political, civil and cultural rights can be expressed. The exercise of this fundamental freedom is closely linked with other important rights and liberties. It can play a critical role in the full enjoyment of freedom of association; freedom of movement; freedom of expression; freedom of thought, conscience, religion or belief; and the right to participate in the conduct of public affairs. Moreover, it is closely tied to the promotion of economic, social and cultural rights. In addition, participants in assemblies have a number of other protected rights that can be engaged by the exercise of this freedom, such as the right to bodily integrity; the right to be free from cruel, inhuman or degrading treatment or punishment; and the rights to life, dignity, privacy and an effective remedy for all human rights violations.<sup>8</sup> Therefore, the proper facilitation of assemblies requires that the entire broad range of rights involved be respected, protected and fulfilled.

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<sup>4</sup> “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”, United Nations Human Rights Council, A/HRC/31/66, 4 February 2016, para. 5, <[http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66\\_E.docx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx)>.

<sup>5</sup> “The promotion and protection of human rights in the context of peaceful protests”, United Nations Human Rights Council Resolution 38/11, 16 July 2018.

<sup>6</sup> *Ibid.*

<sup>7</sup> “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”, A/HRC/31/66, *op. cit.*, note 4, para. 6.

<sup>8</sup> *Ibid.*, para. 8.

24. Thus, in the Helsinki Final Act (1975) OSCE participating States committed to “promote and encourage the effective exercise of civil, political [...] and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development”. Furthermore, in the Vienna 1989 Document, States agreed to “prohibit torture and other cruel, inhuman or degrading treatment or punishment and take effective legislative, administrative, judicial and other measures to prevent and punish such practices”.<sup>9</sup>
25. OSCE participating States have committed themselves to guaranteeing freedom of peaceful assembly to every individual without discrimination (Copenhagen 1990, Paris 1990).<sup>10</sup> States are required to “respect and fully protect” the rights of all individuals to assemble peacefully,<sup>11</sup> and freedom of peaceful assembly is protected by a number of international human rights standards, including Article 21 of the ICCPR and Article 11 of the ECHR.<sup>12</sup>
26. Like any other human right, the freedom of peaceful assembly is a legitimate subject for international law and international scrutiny.<sup>13</sup> ODIHR, often in co-operation with the Council of Europe, has been active in assisting participating States in promoting full respect for the freedom of peaceful assembly. As part of this work, ODIHR and the Council of Europe’s Venice Commission jointly developed *Guidelines on Freedom of Peaceful Assembly*,<sup>14</sup> which are aimed at clarifying the obligations that states have in relation to the freedom of peaceful assembly and at providing examples of good practice in meeting such obligations.
27. In addition, ODIHR, in collaboration with the OSCE’s Strategic Police Matters Unit, has published a *Human Rights Handbook on Policing Assemblies*<sup>15</sup> to serve as a tool for law-enforcement officials and commanders with key information on upholding human rights standards in the context of assemblies and public-order management. ODIHR has also developed a training curriculum based on the internationally recognized good practices

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<sup>9</sup> See also the 1990 OSCE Copenhagen Document, CSCE Budapest Document 1994 Towards a Genuine Partnership in a New Era, Moscow 1991 Meeting of the Conference on the Human Dimension of the CSCE, Helsinki 2008 Ministerial Declaration on the Occasion of the 60<sup>th</sup> Anniversary of the Universal Declaration of Human Rights, Ljubljana 2005 Thirteenth Meeting of the Ministerial Council.

<sup>10</sup> Please see the compilation of relevant OSCE commitments in Annex 5. In this context, participating States set out to facilitate more balanced participation of women and men in political and public life. See 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>>.

<sup>11</sup> “The rights to freedom of peaceful assembly and of association”, United Nations Human Rights Council, A/HRC/RES/21/16, 11 October 2012, <<http://www.refworld.org/docid/50ae29fb17.html>>; 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>>.

<sup>12</sup> For a full list, please see the compilation of relevant international and regional standards in Annex 6. This report relies heavily on the jurisprudence of the ECtHR, given its applicability to all of the participating States under consideration, except for Canada. In addition, the jurisprudence of the Human Rights Committee is also recalled, the standards of which are also applicable in Canada.

<sup>13</sup> Charter of the United Nations, Preamble, Article 1 and Article 55(c).

<sup>14</sup> *Guidelines*, *op. cit.*, note 1.

<sup>15</sup> *Human Rights Handbook on Policing Assemblies* (Warsaw: ODIHR, 2016), <<http://www.osce.org/odihr/226981?download=true>>.

promoted in the *Handbook* and has conducted training sessions on human rights-compliant policing of assemblies in a number of OSCE participating States.<sup>16</sup>

28. Moreover, ODIHR has provided assistance to civil society actors to build their capacity to systematically monitor public assemblies. The reports that have been produced by NGOs as part of these exercises have been used to engage in a dialogue with the local authorities, to identify examples of good practice to be promoted and to address gaps and challenges in the regulation and policing of assemblies.<sup>17</sup> Building on this work, ODIHR produced the second edition of its *Handbook on Monitoring Freedom of Peaceful Assembly*, which sets out a methodology for the observation of public assemblies with a view to assessing compliance with human rights principles.<sup>18</sup> Together with the Omega Research Foundation, ODIHR also developed a *Guide on Law Enforcement Equipment Most Commonly Used in the Policing of Assemblies* which shares some of the technical knowledge monitors need to accurately and independently document the presence and manner of the use of law-enforcement equipment during public assemblies.<sup>19</sup>
29. In order to support 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. The results of the first four monitoring cycles were published in thematic reports on 9 November 2012,<sup>20</sup> 17 December 2014<sup>21</sup>, 16 December 2016<sup>22</sup>, and 18 September 2019.<sup>23</sup> The fifth monitoring cycle, conducted between 27 September 2019 and 12 November 2021, covered six participating States. It focused on specific events that, due to their nature, size or complexity, or because of the fact that more assemblies were running in parallel, entailed particular challenges for the authorities and the organizers. Monitoring was carried out by ODIHR observers in line with the Office's mandate and ODIHR's established assembly-monitoring methodology, and the key findings of the monitoring are included in this thematic report. As in the case of the previous monitoring cycles, the main goal of the monitoring exercises was to identify gaps and challenges, as well as examples of good practice, in how participating States meet their obligations regarding the promotion and protection of freedom of peaceful assembly. In the context of the monitoring exercise, ODIHR gathered much more information than can be presented in a thematic report of this scope, but the Office hopes that it can engage or continue working with the 33 participating States that have so far facilitated

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<sup>16</sup> Such capacity-building activities were carried out in Armenia, Bosnia and Herzegovina, Georgia, Kyrgyzstan, Poland and Ukraine.

<sup>17</sup> Such activities were carried out in Armenia, Georgia, Kazakhstan, Moldova and Serbia and are ongoing in Ukraine.

<sup>18</sup> *Handbook on Monitoring Freedom of Peaceful Assembly: Second Edition* (OSCE/ODIHR, 2020), <<https://www.osce.org/odihr/monitoring-peaceful-assembly>>.

<sup>19</sup> *Guide on Law Enforcement Equipment Most Commonly Used in the Policing of Assemblies* (OSCE/ODIHR, 2021).

<sup>20</sup> "Report on the Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States, May 2011–June 2012", OSCE/ODIHR, 9 November 2012, <<http://www.osce.org/odihr/97055>>.

<sup>21</sup> "Report on the Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States, May 2013–July 2014", OSCE/ODIHR, 17 December 2014, <<http://www.osce.org/odihr/132281?download=true>>.

<sup>22</sup> "Report on the Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States, April 2015–July 2016", OSCE/ODIHR, 16 December 2016, <<https://www.osce.org/odihr/289721?download=true>>.

<sup>23</sup> "Report on the Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States, May 2017–June 2018", OSCE/ODIHR, 18 September 2019 <<https://www.osce.org/odihr/430793>>.

and hosted ODIHR assembly-monitoring missions, capitalizing also on country-specific findings (good practices and gaps) that go beyond the scope of these thematic reports. ODIHR is ready to work with all participating States, upon request, in addressing identified shortcomings and to provide a forum for the exchange of experiences and good practices in facilitating peaceful assemblies across the OSCE space.

#### *ODIHR's mandate*

30. ODIHR is the principal OSCE institution that deals with the human dimension, one of the three dimensions of the OSCE's comprehensive approach to security. ODIHR is mandated, among other tasks, to assist in the monitoring of the implementation of OSCE human dimension commitments. Its monitoring mandate is based on a number of OSCE commitments.<sup>24</sup> Notably, the 2003 Maastricht Document reaffirms the participating States' commitment to make "[f]ull use [...] of ODIHR's monitoring capacity, and [to promote] operational co-operation with other monitoring bodies in such areas as data collection, information sharing and joint analysis [...] in order to have the fullest picture of developments".
31. ODIHR serves as a point of contact for information provided by participating States in accordance with OSCE commitments (Rome 1993), and participating States have expressed their determination to co-operate within the OSCE and with its institutions and representatives in a spirit of solidarity and partnership in a continuing review of implementation (Istanbul 1999).
32. The ultimate goal of ODIHR's assembly-monitoring activities is to advise and assist in meeting relevant OSCE human dimension commitments in all OSCE participating States, not just those where ODIHR has monitored assemblies. ODIHR thus stands ready to offer additional support to participating States, *inter alia*, in the form of opinions on laws and draft laws, the exchange of good practices and targeted training courses to promote and enhance the enjoyment of freedom of peaceful assembly in the OSCE area.<sup>25</sup>

#### *Methodology*

33. As part of the fifth assembly-monitoring cycle, a total of six participating States—Denmark, the United Kingdom (England and Scotland), the Netherlands, Bosnia and Herzegovina, Finland, and Portugal—invited ODIHR to conduct assembly monitoring exercises. Assemblies, selected by ODIHR, were monitored between 25 September 2019 and 13 November 2021. In addition to the particular assemblies chosen for monitoring, any related counterdemonstrations and parallel assemblies were, as a general rule, also observed.
34. Monitoring focused on assemblies that could present specific challenges for the authorities and/or the organizers due to their nature, size and/or complexity. In its choice of participating

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<sup>24</sup> For a compilation of these commitments, please see Annex 4 to this report.

<sup>25</sup> An overview of the tools developed by ODIHR to aid the work of governments and civil society in the area of freedom of peaceful assembly can be found in Annex 7.

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States and events to be monitored, ODIHR also attempted to ensure geographical balance and the coverage of a variety of different contexts across the OSCE area.

35. These challenges for authorities included, *inter alia*, assemblies convened by minority groups espousing views or positions that are unpopular with, or are seen as controversial by, mainstream society and require additional policing measures to facilitate them. They also included the potential of ensuing conflicts between opposing groups, as well as the need to ensure a proper balance between public order considerations and protecting the rights of others, on the one hand, and respect for freedom of peaceful assembly, on the other. Large scale events, such as the 2019 London summit of NATO and the 26<sup>th</sup> UN Climate Change Conference (COP26) in Glasgow, raised yet another set of challenges on how to facilitate right to freedom of peaceful assembly in the context of tight security measures and ensure that the core principle of sight and sound is respected. In the context of the COVID-19 pandemic, most OSCE participating States, including those visited by ODIHR as part of this cycle, developed new regulations restricting the right to freedom of peaceful assembly. These often rapidly changing rules added an additional layer of uncertainty as well as posing difficulties for police in keeping track of and enforcing them.
36. The COVID-19 pandemic led to a host of unprecedented difficulties for ODIHR to exercise its mandate to monitor the right to freedom of peaceful assembly in the OSCE region. As emphasized in the report *OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic*, “Independent assembly monitoring activities are mostly exercised by civil society, NHRIs and international human rights bodies, missions, or institutions, including ODIHR. Across the OSCE region, all major actors in this regard have faced difficulties and limitations to their monitoring activities during the COVID-19 crisis, except for assemblies that were happening online”.<sup>26</sup> In many cases, COVID-19-related travel restrictions, including quarantine measures and travel bans, prevented monitors from observing assemblies in other countries and made it difficult for ODIHR to plan monitoring visits to OSCE participating States. During this fifth monitoring cycle, many of ODIHR’s planned monitoring activities had to be cancelled owing to COVID-19 restrictions. When and where they did proceed, meetings with assembly organizers and other relevant interlocutors could often not be organized in person and took place online instead.
37. Given that monitoring focused only on one or more related events in each participating State, and that events included differed significantly in size and complexity, monitoring findings cannot draw comprehensive or general conclusions on the situation of freedom of peaceful assembly in the participating States covered in this report. Rather, the report looks at these assemblies as 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.

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<sup>26</sup> OSCE, “OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic” (17 July 2020).

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38. Due to space constraints, the thematic sections select illustrative examples based on events in some of the participating States included in the monitoring rather than providing an exhaustive overview of issues that arose in relation to each particular topic and in all participating States covered in the report. Moreover, whenever reference is made in the report to a practice in a participating State or at a specific event, this does not represent an assessment about the overall quality of assembly policing in the respective country, nor does it mean that the presented (positive or negative) practices are necessarily representative of the overall practice in that country.
  39. The monitoring of assemblies involved the gathering of first-hand information by ODIHR observers who witnessed the conduct of, and interaction among, participants at assemblies, law-enforcement agents and other relevant state and non-state actors (e.g., representatives of local self-government bodies, journalists, assembly monitors, etc.). Monitoring teams always included ODIHR staff trained in ODIHR's assembly-monitoring methodology and subject to a code of conduct. Seventeen women and 11 men from 19 OSCE participating States participated as monitors.
  40. The observation focused on events and activities that took 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 this analysis, and no attempt was made to gather systematic information about them.
  41. Although independent assembly monitoring places particular emphasis on the gathering of first-hand information, the monitors' observations were, whenever possible, complemented by information gathered at meetings with representatives of the relevant authorities, assembly organizers, civil society organizations, National Human Rights Institutions (NHRIs), lawyers and others who could provide background information on freedom of peaceful assembly and specific information on the monitored events.
  42. Where relevant, information on the applicable legal and regulatory framework affecting the enjoyment of freedom of peaceful assembly has been included in this report.<sup>27</sup> However, the report does not attempt to provide a comprehensive analysis of the degree to which the relevant laws comply with international human rights standards and OSCE commitments. For such a comprehensive analysis, OSCE participating States are encouraged to request a legal review from ODIHR.<sup>28</sup>

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<sup>27</sup> Owing to the fact that an official English translation of the legal framework was available for analysis in only a handful of cases, there might be discrepancies resulting from the translation.

<sup>28</sup> For more information on ODIHR's legislative assistance activities, please visit <<http://www.osce.org/odihr/108503>>.

43. ODIHR monitoring teams generally attempted to communicate and/or hold meetings with the main groups involved in organizing assemblies. Such communication took place both before and after assemblies.
44. ODIHR wishes to thank the authorities of the participating States where monitoring took place for their openness and co-operation, for their assistance in organizing, and their willingness to take part in, meetings for the purpose of gathering information. Information gathering was also greatly facilitated through responses to detailed questions and the provision of relevant documents by participating States. ODIHR is equally grateful to the many organizations and individuals who shared information about their experiences as organizers of, or participants in, assemblies or, more broadly, about the enjoyment of freedom of peaceful assembly in their respective countries. The monitoring exercise could not have been carried out successfully without the capable support of research consultants, security experts and interpreters.

### *Report structure*

45. The report is organized thematically based on standards concerning freedom of peaceful assembly. The *Guidelines on Freedom of Peaceful Assembly* and ODIHR's *Human Rights Handbook on Policing Assemblies* constitute the main benchmark for the assessment of compliance with international human rights standards and examples of good practice.<sup>29</sup> In addition, the relevant decisions of the United Nations Human Rights Committee (hereinafter, "UN HRC"), including the standards set out in its General Comment 37 on the right to freedom of peaceful assembly are referenced.<sup>30</sup> The report also draws on the good practices identified by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association (hereinafter, the "UN Special Rapporteur") in thematic reports, as well as the practical recommendations for the proper management of assemblies made by both the UN Special Rapporteurs on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions.<sup>31</sup> Finally, while not binding for all OSCE participating States, the jurisprudence of the European Court of Human Rights (ECtHR) provides an illustrative account of the way freedom of peaceful assembly standards are applied in practice and will therefore be referred to throughout the report.
46. The various sections and subsections of this report begin with a preliminary discussion of international standards and generally accepted good practices, and are followed by a description of findings from the monitoring exercise that illustrate some of the key issues involved. Each

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<sup>29</sup> The UN Special Rapporteur has stated that he considers these guidelines to be the most advanced set of good practices available. See "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", United Nations Human Rights Council, A/HRC/20/27, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf).

<sup>30</sup> General Comment 37 on Article 21 ICCPR (Right of peaceful assembly), CCPR/C/GC/37, 17 September 2020 (hereinafter, "General Comment 37"), <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-37-article-21-right-peaceful>.

<sup>31</sup> "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", A/HRC/31/66, *op. cit.*, note 4.



subsection ends with conclusions and recommendations that could be relevant to all OSCE participating States. This structure is meant to facilitate an assessment of domestic law and practice, as documented and observed by ODIHR, against OSCE commitments, relevant international human rights standards and the identification of practices that may contribute to the effective facilitation of assemblies while maintaining peace and order and protecting human rights.

## SECTION I: THE RIGHT TO ASSEMBLE PEACEFULLY: MAIN DEFINITIONS AND SCOPE OF PROTECTION

### *The right to assemble peacefully: main definitions and scope of legal protection—international standards and good practice*

47. The freedom of peaceful assembly is expressly recognized in OSCE human dimension commitments and is enshrined in key international and regional human rights treaties. This right is guaranteed to everyone without discrimination.<sup>32</sup> States have 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 the enjoyment of freedom of peaceful assembly.<sup>33</sup> It is the primary responsibility of the state to put in place adequate mechanisms and procedures to ensure that this freedom is enjoyed in practice and is not subject to unduly restrictive or bureaucratic regulation or unduly restrictive policing.<sup>34</sup> This includes enacting and implementing laws regulating the exercise of this right that are fully in line with international human rights standards. Moreover, ensuring this right requires positive measures on the part of the state to prevent interference with the exercise of freedom of peaceful assembly by individuals or groups, including *agents provocateurs* and counterdemonstrators, that aim to disrupt or disperse an assembly.<sup>35</sup>
48. Article 15 of the UN Convention on the Rights of the Child (CRC) protects the right of children to assemble peacefully.<sup>36</sup> The CRC also guarantees the right of children capable of forming their own views to express those views freely in all matters affecting them,<sup>37</sup> the right to freedom of expression<sup>38</sup> and the right to access to appropriate information.<sup>39</sup> These rights reflect children’s right to participation, which is one of the guiding principles of the CRC. In addition, as stated by the UN Special Rapporteur, “peaceful assemblies are an important tool for allowing the voices of otherwise excluded groups to be heard”.<sup>40</sup> The UN Convention on the Rights of Persons with Disabilities (CRPD) prescribes that states shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.<sup>41</sup> In addition, the CRPD obliges states to ensure the right of persons with disabilities to participate in political

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<sup>32</sup> Article 2 of the ICCPR, Human Rights Council Resolutions 15/21, 21/16, 24/5; Joint Declaration, para. 1(a); General Comment 37, para. 8; *Guidelines on Freedom of Peaceful Assembly* (Warsaw and Strasbourg: ODIHR and Venice Commission, 2020, 3<sup>rd</sup> ed.), <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017rev-e)> (hereinafter, the “*Venice Guidelines*”).

<sup>33</sup> “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”, A/HRC/31/66, *op. cit.*, note 4, para. 13; General Comment 37, para. 24.

<sup>34</sup> *Guidelines, op. cit.*, note 1, para. 2.2; *Venice Guidelines, op. cit.*, note 32, para. 76; General Comment 37, para. 24

<sup>35</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 29, p. 10, para. 33; General Comment 37, para. 24; Joint Declaration, preamble.

<sup>36</sup> UN Convention on the Rights of the Child, 2 September 1990, Article 15, <<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>>.

<sup>37</sup> *Ibid.*, Article 12(1).

<sup>38</sup> *Ibid.*, Article 13.

<sup>39</sup> *Ibid.*, Article 17.

<sup>40</sup> “Report of the Special Rapporteur on the rights to freedom of assembly and of association, Maina Kiai”, United Nations Human Rights Council, A/HRC/26/29, 14 April 2014, para. 25.

<sup>41</sup> UN Convention on the Rights of Persons with Disabilities, Article 12.

and public life on an equal basis with others without discrimination, including by creating an enabling environment and necessary support mechanisms.<sup>42</sup>

49. International human rights law requires that non-nationals “receive the benefit of the right of peaceful assembly”.<sup>43</sup> It is therefore important that the law not limit the exercise of freedom of peaceful assembly to citizens only but that it also afford this right to stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists.<sup>44</sup>
50. A range of different assemblies are protected by the right to freedom of peaceful assembly, including static assemblies (such as public meetings, mass actions, flash mobs,<sup>45</sup> demonstrations, sit-ins<sup>46</sup> and pickets) and moving assemblies (such as parades, processions, funerals and certain forms of pilgrimages and convoys).<sup>47</sup> National constitutions and relevant legislation should frame the types of assembly to be protected as broadly as possible by all state bodies.<sup>48</sup> Moreover, 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. As noted by the UN HRC, those activities are of particular importance for the full enjoyment of the right of peaceful assembly (for more information, see the part on monitoring and recording assemblies in Section IV).<sup>49</sup>
51. The freedom to organize and participate in public assemblies must be guaranteed to individuals, groups, unregistered associations, legal entities and corporate bodies<sup>50</sup>; to members of ethnic, national, sexual, linguistic and religious minorities<sup>51</sup>; to nationals and non-nationals (including stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists)<sup>52</sup>; to children, women and men<sup>53</sup>; to law enforcement; to persons with disabilities; and to people without full legal capacity, including people with mental disabilities.<sup>54</sup> The UN HRC has called on states to make particular efforts to ensure the equal and effective facilitation and protection of the right of peaceful assembly of members of groups that are or have been subjected to discrimination, or that may face particular challenges in participating in assemblies,<sup>55</sup> and take

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<sup>42</sup> *Ibid.*, Article 29.

<sup>43</sup> “General Comment No. 15: The Position of Aliens under the Covenant”, United Nations Human Rights Committee, 11 April 1986.

<sup>44</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 55.

<sup>45</sup> ECtHR, *Obote v. Russia*, Application no. 58954/09, judgment of 19 November 2019, para. 35.

<sup>46</sup> ECtHR, *Hakim Aydin v. Turkey*, Application no. 4048/09, judgment of 26 May 2020, para. 50.

<sup>47</sup> *Venice Guidelines, op. cit.*, note 32, para. 44; General Comment 37, para. 6. This was accepted by the European Commission in *Christians Against Racism and Fascism (CARAF) v United Kingdom*, Application No 8440/78 (1980) and subsequent decisions which states that “the freedom of peaceful assembly covers not only static meetings, but also public processions”.

<sup>48</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 17; *Venice Guidelines, op. cit.*, note 32, para. 76

<sup>49</sup> General Comment 37, para. 30.

<sup>50</sup> *Venice Guidelines, op. cit.*, note 32, para. 17.

<sup>51</sup> *Ibid.*, para. 108.

<sup>52</sup> *Ibid.*, para. 109; General Comment 37, para. 5.

<sup>53</sup> *Ibid.*, para. 105 and 107.

<sup>54</sup> *Ibid.*, para. 106; principle 2.5, p. 16; *Venice Guidelines, op. cit.*, note 32, para. 24.

<sup>55</sup> General Comment 37, para. 25.

appropriate measures for the safety and protection of women and children in the context of their exercise of the right to assemble peacefully.<sup>56</sup>

52. An assembly requires the intentional and temporary presence of at least two people for a common expressive purpose.<sup>57</sup> Nonetheless, individual protesters exercising their right to freedom of expression, where their physical presence is an integral part of that expression, should also be afforded, at a minimum, the same protections as those who gather as part of an assembly.<sup>58</sup>
53. Only peaceful gatherings are protected by the right to freedom of assembly.<sup>59</sup> As held by the ECtHR, the right to peaceful assembly is a notion “which does not cover gatherings where the organizers and participants have violent intentions” and applies “to all gatherings except those where the organizers and participants have such intentions, incite violence or otherwise reject the foundations of a democratic society”.<sup>60</sup> In this context, the UN HRC noted that “The question of whether or not an assembly is peaceful must be answered with reference to violence that originates from the participants. Violence against participants in a peaceful assembly by the authorities, or by agents provocateurs acting on their behalf, does not render the assembly non-peaceful. The same applies to violence by members of the public aimed at the assembly, or by participants in counterdemonstrations”.<sup>61</sup>
54. Participants must refrain from using violence.<sup>62</sup> According to the UN HRC, violence “typically entails the use by participants of physical force against others that is likely to result in injury or death, or serious damage to property. Mere pushing and shoving or disruption of vehicular or pedestrian movement or daily activities do not amount to “violence”.<sup>63</sup> The right to freedom of peaceful assembly is held by each individual participating in an assembly, and the use of violence by a small number of participants in an assembly does not automatically turn an otherwise peaceful assembly into a non-peaceful assembly.
55. “Peaceful” implies the absence of widespread and serious violence that cannot be isolated from the assembly.<sup>64</sup> Even intentionally disruptive conduct may be protected by the right to freedom of peaceful assembly, including conduct that may annoy or give offence to individuals or groups opposed to the ideas or claims that the assembly is seeking to promote, as well as conduct that temporarily hinders, impedes or obstructs the activities of third parties, for example by

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<sup>56</sup> “The promotion and protection of human rights in the context of peaceful protests”, *op. cit.*, note 5, paras. 6–7.

<sup>57</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 1.2; *Venice Guidelines, op. cit.*, note 32, para. 18; General Comment 37, para. 4.

<sup>58</sup> *Ibid.*, Explanatory Notes, para. 16; *Venice Guidelines, op. cit.*, note 32, para. 14; General Comment 37, para. 13

<sup>59</sup> *Venice Guidelines, op. cit.*, note 32, para. 46.

<sup>60</sup> ECtHR, *Navalnyy v. Russia*, Application no. 32058/13, judgment of 15 May 2014, para. 98; ECtHR, *Ter-Petrosyan v. Armenia*, Application no. 36469/08, judgment of 25 April 2019, para. 53.

<sup>61</sup> General Comment 37, para. 18.

<sup>62</sup> The Strasbourg Court has differentiated between a disturbance and violence. In *Taranenko v. Russia* (2014), it opined that pushing past a guard is not considered violence. See para. 93.

<sup>63</sup> General Comment 37, para. 15.

<sup>64</sup> Joint Declaration, *op. cit.*, note 2, para. 1(d).

temporarily blocking traffic.<sup>65</sup> Collective civil disobedience or direct action campaigns can be covered by the right to freedom of peaceful assembly provided that they are non-violent.<sup>66</sup> The ECtHR noted that, even where protesters engage in “physical conduct purposely obstructing traffic and the ordinary course of life in order to seriously disrupt the activities carried out by others”, this conduct is not of “such a nature and degree as to remove their participation in the demonstration from the scope of protection of the right to freedom of peaceful assembly under Article 11 of the Convention”.<sup>67</sup> It also held that occupation of public buildings is to be regarded as peaceful conduct, despite its unlawfulness and the disruption it may cause.<sup>68</sup> Similarly, “where demonstrators do not engage in acts of violence, 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”.<sup>69</sup> Tolerance has been held to imply, among other things, that assemblies should not be dispersed merely because formalities such as a notification requirement were not complied with,<sup>70</sup> that, where dispersal is in principle justified, public authorities should nevertheless act with patience and ordinarily allow demonstrators an opportunity to make their point.<sup>71</sup>

56. The UN Special Rapporteur and the OSCE/ODIHR Panel of Experts on the Freedom of Peaceful Assembly (hereinafter, the “ODIHR Panel of Experts”) consider as a good practice, and thus call upon states to establish in their law (either in their constitution or laws governing peaceful assemblies), a clear and explicit presumption in favor of holding assemblies, according to which the peaceful intentions of individuals and groups wishing to assemble should be presumed.<sup>72</sup> This should be the case unless there is convincing evidence that the organizers and/or a significant number of participants intend to use, advocate or incite imminent violence.<sup>73</sup> According to the UN HRC, “there is not always a clear dividing line between assemblies that are peaceful and those that are not, but there is a presumption in favor of considering assemblies peaceful”.<sup>74</sup> This presumption also means that unclear legal provisions

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<sup>65</sup> *Venice Guidelines, op. cit.*, note 32, para. 19.

<sup>66</sup> General Comment 37, para. 16.

<sup>67</sup> ECtHR, *Kudrevičius and Others v. Lithuania*, Application no. 37553/05, judgment of 15 October 2015 [GC], paras. 97–98: the Court observed that such conduct “is not at the core of that freedom as protected by Article 11 of the [ECHR]”, but the Court ultimately concluded that the participants in this conduct were “entitled to invoke the guarantees of Article 11” (para 99)

<sup>68</sup> ECtHR, *Tuskia and Others v. Georgia*, Application no. 14237/07, judgment of 11 October 2018, para. 74.

<sup>69</sup> ECtHR, *Kudrevičius and Others v. Lithuania*, Application no. 37553/05, judgment of 15 October 2015, para. 150.

<sup>70</sup> See UN Human Rights Council, “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, UN Doc. A/HRC/23/39, 24 April 2013, para. 29 (“Should the organizers fail to notify the authorities, the assembly should not be dissolved automatically [...] and the organizers should not be subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment”); *Kudrevičius and Others v. Lithuania, op. cit.*, note 67, para. 150 (“An unlawful situation, such as the staging of a demonstration without prior authorisation, does not necessarily justify an interference with a person’s right to freedom of assembly”); General Comment 37, para. 16; *Venice Guidelines, op. cit.*, note 32, para. 21.

<sup>71</sup> See, for example, *Oya Ataman v. Turkey*, ECtHR, Judgment of 5 December 2006, paras. 41–42.

<sup>72</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 29, para. 26; *Guidelines, op. cit.*, note 1, Principle 2.1; Joint Declaration, para. 1(d); *Venice Guidelines, op. cit.*, note 32, para. 19

<sup>73</sup> *Venice Guidelines, op. cit.*, note 32, para. 86.

<sup>74</sup> General Comment 37, para. 17.

should be clarified; in the absence of clarity, however, such provisions should be interpreted in favor of those wishing to exercise their right to freedom of peaceful assembly.<sup>75</sup>

57. 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, predictable, accessible to the public, consistent with one another, and compatible with international human rights standards.<sup>76</sup> 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.<sup>77</sup> Any restrictions imposed must have a formal basis in primary law, which should be sufficiently precise and accessible 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.<sup>78</sup>

*The right to assemble peacefully: main definitions and scope of legal protection in selected participating States*

58. The constitutions of all the participating States where ODIHR monitored assemblies during this cycle—Denmark,<sup>79</sup> United Kingdom (England and Scotland),<sup>80</sup> the Netherlands,<sup>81</sup> Bosnia and Herzegovina,<sup>82,83</sup> Finland,<sup>84</sup> and Portugal,<sup>85</sup>—guarantee the right of peaceful assembly.

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<sup>75</sup> “Summary of the Human Rights Council high-level panel discussion to commemorate the twentieth anniversary of the adoption of the Vienna Declaration and Programme of Action”, United Nations Human Rights Council, A/HRC/23/29, 1 May 2013, paras. 49 and 50, <[http://www.ohchr.org/Documents/HRBodies/SP/AMeetings/20thsession/SummaryHLPaneldiscussionVDPA\\_item5.pdf](http://www.ohchr.org/Documents/HRBodies/SP/AMeetings/20thsession/SummaryHLPaneldiscussionVDPA_item5.pdf)>.

<sup>76</sup> *Venice Guidelines*, *op. cit.*, note 32, para. 96, 98 and 23; General Comment 37, para. 28.

<sup>77</sup> 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.

<sup>78</sup> See, for example, *The Sunday Times v. United Kingdom* (No. 1), 26 April 1979, para. 49; *Rekvenyi v. Hungary*, No. 25390/94, para. 34; *Venice Guidelines*, *op. cit.*, note 32, paras. 23 and 98; ECtHR, *Vyerentsov v. Ukraine*, Application no. 20372/11, judgment of 11 April 2013, para. 52.

<sup>79</sup> See Article 79 of the Danish Constitutional Act: “Citizens shall without previous permission be entitled to assemble unarmed (...)”.

<sup>80</sup> See Article 11(1) of the UK Human Rights Act: “Everyone has the right to freedom of peaceful assembly and to freedom of association with others (...)”.

<sup>81</sup> See Article 9(1) of the Constitution of the Kingdom of the Netherlands: “The right of assembly and demonstration shall be recognised without prejudice to the responsibility of everyone under this law”.

<sup>82</sup> See Article II(3) of the Constitution of Bosnia and Herzegovina: “All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include: (...) Freedom of peaceful assembly and freedom of association with others. (...)”. See also Chapter II(A), Article 2(1) of the Constitution of the Federation of Bosnia and Herzegovina: “All persons within the territory of the Federation shall enjoy the rights (...) to freedom of assembly (...)”.

<sup>83</sup> The report includes references and analysis only of the Sarajevo Canton of Bosnia and Herzegovina.

<sup>84</sup> See Section 13 of the Constitution of Finland: “Everyone has the right to arrange meetings and demonstrations without a permit, as well as the right to participate in them”.

<sup>85</sup> See Article 45(1) of the Constitution of Portugal: “Citizens shall possess the right to meet peacefully and without arms, even in places that are open to the public, without the need for any authorisation. (2) The right of every citizen to demonstrate shall be recognized”.

59. Some states also outline the existence of this right in domestic legislation. The Netherlands, the Sarajevo Canton of Bosnia and Herzegovina, Finland, and Portugal have adopted specific domestic laws outlining the rules and responsibilities associated with freedom of peaceful assembly.<sup>86</sup> In Portugal, however, Decree Law no. 406/74 governing the right to assemble adopted in 1974 does not always reflect what is implemented in practice, as confirmed by local authorities interviewed by ODIHR.<sup>87</sup> Meanwhile, Denmark, England, and Scotland do not maintain specific comprehensive national legislation on freedom of peaceful assembly. Thus, relevant provisions are contained in various laws and differ according to local regulations and by-laws.
60. Besides Denmark and Portugal, all participating States where ODIHR monitored assemblies during this cycle have constitutions that specifically guarantee *everyone* the right of peaceful assembly. The constitutions of Finland and Bosnia and Herzegovina and the UK Human Rights Act guarantee this right to everyone<sup>88</sup>. The constitution of the Netherlands only provides that “the right of assembly and demonstration shall be recognized, without prejudice to the responsibility of everyone under the law”.<sup>89</sup> In Denmark and Portugal, the wording of the constitutions limit the right of peaceful assembly to “citizens”,<sup>90</sup> although in practice, according to the Copenhagen municipality, this right is also afforded to residents and/ or inhabitants in Denmark.<sup>91</sup>
61. Some participating States where ODIHR monitored assemblies in this cycle specify in their legislation who can organize assemblies. In Finland, for instance, “a person, community or association with full legal capacity may organize a general assembly”, “a person without full legal capacity who has turned 15 years may organize a general assembly unless it is obvious that they cannot be responsible for the legal duties that befall an organizer” and “another person without full legal capacity may organize a general assembly with a person with full legal capacity”.<sup>92</sup> In the Sarajevo Canton of Bosnia and Herzegovina, while assemblies are generally subject to a notification requirement, “foreign physical and legal persons” can only organize assemblies “after submission of application and issuing of a permit by an authorized police body”.<sup>93</sup> In addition, assemblies “may not be convened by, or have as a speaker, a person to whom a security measure or prohibition of public appearance has been imposed by a final court decision”.<sup>94</sup> In the Netherlands, the Amsterdam municipality indicated that minors can be

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<sup>86</sup> The Netherlands 1998 Public Assemblies Act; the Act on Public Assembly of the Sarajevo Canton; the Finnish Assembly Act, and Portugal Decree Law no. 406/74.

<sup>87</sup> Meeting with the Lisbon City Council, 17 September 2021,

<sup>88</sup> Article 13, Constitution of Finland; Article 11(1), UK Human Rights Act; Article II(3), Constitution of Bosnia and Herzegovina.

<sup>89</sup> Article 9, Constitution of the Netherlands.

<sup>90</sup> Article 79, Danish Constitutional Act; Article 45, Constitution of Portugal.

<sup>91</sup> Interview with representatives of the Copenhagen Municipality, 26 September 2019.

<sup>92</sup> Section 5, Finnish Assembly Act.

<sup>93</sup> Article 18, Act on Public Assembly of the Sarajevo Canton.

<sup>94</sup> *Ibid.*, para. 5(4).

assembly organizers.<sup>95</sup> In Denmark, ODIHR was informed that parents had to book events on children's behalf as they do not have the legal capacity to make a contract.<sup>96</sup> According to interlocutors from the Copenhagen police, in case a child notifies about an assembly, the police would first inquire about their age. If, for example, the child is under 10, they would most likely ask to speak to a parent, while if the child is above 15, the police would take note of the planned assembly.<sup>97</sup> For children in between, the police would use 'common sense' and decide whether parental involvement was necessary. ODIHR was also informed by representatives of the Danish authorities that assemblies reported by minors are processed according to normal procedures, and that an assessment is made as to whether contact with the minor's legal guardian is deemed necessary or not.<sup>98</sup>

62. Besides Denmark, the Netherlands, and Portugal, all participating States where ODIHR monitored assemblies define what constitutes an assembly in their legislation, albeit in different ways. Notably, England, Scotland and the Sarajevo Canton of Bosnia and Herzegovina make a distinction between moving and static assemblies. In these countries, static assemblies are referred to as "public assembly"<sup>99</sup> or "public gatherings"<sup>100</sup> while moving assemblies are referred to as "public processions".<sup>101</sup>
63. Some of the participating States where ODIHR monitored assemblies do not acknowledge in their legislation that assemblies may occur without an identifiable organizer. In England and Scotland, however, there is no requirement to notify the authorities about static assemblies, which means that leaderless static assemblies are recognized.<sup>102</sup> Furthermore, in the Sarajevo Canton of Bosnia and Herzegovina, the law recognizes "unorganized, spontaneous gatherings" held in "special, sudden and relevant to the community situations" within the definition of peaceful assembly, therefore allowing for the possibility to hold leaderless assemblies.<sup>103</sup> Spontaneous, leaderless assemblies can, however, only be held at the locations foreseen for that purpose by the local authorities.<sup>104</sup>
64. Non-violent disruption or civil disobedience is not covered by the relevant regulations on freedom of assembly in the visited countries. The UK Supreme Court, however, has recognized "intentional action by protesters to disrupt by obstructing others" as protected by the right to freedom of peaceful assembly, but several factors need to be taken into account to determine

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<sup>95</sup> Interview with representatives of the Amsterdam municipality, 15 March 2022.

<sup>96</sup> Interview with representatives of the Copenhagen municipality, 26 September 2019. For more on notification procedures, see Section II.

<sup>97</sup> Interview with representatives of the Copenhagen police, 25 September 2019.

<sup>98</sup> Written exchange between the Danish authorities and ODIHR, 14 June 2023.

<sup>99</sup> Section 16(1), Public Order Act 1986.

<sup>100</sup> Article 2, Act on Public Assembly of the Sarajevo Canton.

<sup>101</sup> Section 16(3), Public Order Act 1986; Article 4, Act on Public Assembly of the Sarajevo Canton; Section 62(12), Civil Government (Scotland) Act 1982.

<sup>102</sup> See more in Chapter on Notification and Authorization, p.24.

<sup>103</sup> Article 8(2), Act on Public Assembly of the Sarajevo Canton.

<sup>104</sup> Article 14, Act on Public Assembly of the Sarajevo Canton.



the proportionality of the disruption.<sup>105</sup> These include the location and duration of the protest, the extent of the interference caused by the protest to the rights of others, prior notification to and cooperation with the police by the protesters, and the extent to which the continuation of the protest would breach domestic law.<sup>106</sup> After the reporting period, the UK introduced amendments to the Public Order Act which allow the police to take action during protests which can result in serious public disorder, serious damage to property, or serious disruption to the life of the community, including where it can result in “significant delay to a time sensitive product” or “prolonged disruption of access to any essential goods or any essential service” such as transport facilities, education institutions or health services.<sup>107</sup> It is worth noting that, while applicable to England, these recent amendments do not extend to Scotland.

65. The majority of the participating States where assemblies were monitored, namely the Netherlands, Finland, and Portugal, do not regulate prompt or spontaneous assemblies. In England and Scotland, as mentioned, notification to hold static assemblies is not required, which means that spontaneous static assemblies are recognized and permitted.<sup>108</sup> As for moving assemblies, in England, they should be notified “unless it is not reasonably practicable to give advance notice of the procession”, making spontaneous assemblies legally permitted on a case by case basis.<sup>109</sup> This exception does not apply in Scotland where prior notice is required for all public processions, although this requirement can be waived by local authorities.<sup>110</sup> In Bosnia and Herzegovina, as a good practice, the Act on Public Assembly of the Sarajevo Canton recognizes “unorganized, spontaneous gatherings” held in “special, sudden and relevant to the community situations” within the definition of peaceful assembly.<sup>111</sup> Spontaneous, leaderless assemblies can, however, only be held at the locations foreseen for that purpose by the local authorities.<sup>112</sup> In Portugal, ODIHR was informed by representatives of the Public Security Police in Lisbon that, while unannounced assemblies are against the law, the police would facilitate them, but is under an obligation to send the organizers to court, or if the organizers are unknown, to notify the court that the assembly took place illegally.<sup>113</sup>

#### *Conclusions and recommendations on the main definitions and the scope of the legal protection*

66. The right to freedom of peaceful assembly is to be guaranteed to everyone without discrimination. This means that participating States may not limit the guarantee to only its citizens, but this right must also be provided to non-nationals (including stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists).<sup>114</sup> All participating States

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<sup>105</sup> Director of Public Prosecutions (Respondent) v Ziegler and others (Appellants), para. 70.

<sup>106</sup> Director of Public Prosecutions (Respondent) v Ziegler and others (Appellants), paras. 71-78.

<sup>107</sup> Sections 12 and 14, Public Order Act 1986. These amendments were introduced in 2022, after ODIHR’s monitoring visit to England in 2019; however ODIHR considers necessary to include them in the report, given their importance with respect to the right to freedom of peaceful assembly.

<sup>108</sup> See more in Chapter on Notification and Authorization Requirements, p.27.

<sup>109</sup> Section 11(1), Public Order Act 1986.

<sup>110</sup> Section 62, Civic Government (Scotland) Act 1982.

<sup>111</sup> Article 8(2), Act on Public Assembly of the Sarajevo Canton.

<sup>112</sup> Article 14, Act on Public Assembly of the Sarajevo Canton.

<sup>113</sup> Interview with representatives of the Portugal Public Security Police, 17 September 2021.

<sup>114</sup> See Article 2 of the ICCPR; *Guidelines, op. cit.*, note 1, Principle 2.5, p. 16.

where ODIHR monitored assemblies recognize the right to peaceful assembly in their constitutions. In particular, the constitutions in Finland, the United Kingdom, and Bosnia and Herzegovina represent good practice in that they explicitly guarantee this right to everyone rather than referring to only citizens or other exclusions. The restriction in law on the part of some states of the right of people without citizenship, such as in Denmark or Portugal, or the right of children or people without full legal capacity, such as Finland, is not in line with international norms.

67. Participating States need to be conscious of the fact that using restrictive language in their national legal framework regulating freedom of peaceful assembly, such as the inclusion of provisions restricting the right to organize assemblies to citizens only in Portugal and Denmark, even if not applied in practice, can impact future practice or help legitimize restrictive or repressive practices in other jurisdictions. Efforts should be made to bring such legislation into full compliance with OSCE commitments and other applicable international human rights standards. Efforts should also be made to update outdated legislation regulating freedom of peaceful assembly that does not reflect what is implemented in practice, such as Decree-Law no. 406/74 in Portugal.
68. In Bosnia and Herzegovina, the fact that the main conditions regarding the freedom of peaceful assembly are regulated in laws that differ from canton to canton can lead to uncertainties for organizers and participants regarding the steps they must complete, the rules they need to abide by, and the consequences for failing to do so, thereby potentially hindering the exercise of freedom of peaceful assembly. The same applies in the Netherlands where conditions to hold assemblies are regulated in local by-laws that can differ from town to town. In addition, the mayor of each town has the power to issue emergency decrees affecting the exercise of freedom of peaceful assembly. The lack of consistent and foreseeable regulation regarding the exercise of the right to freedom of assembly in national law can indirectly hinder the full enjoyment of the freedom of peaceful assembly.
69. The ability to respond peacefully and immediately to some occurrence, incident, other assembly or speech is an essential element of freedom of assembly. The majority of the participating States monitored in the fifth cycle do not explicitly authorize spontaneous assemblies and since notification/authorization schemes are in place, it is unclear to what extent spontaneous assemblies are tolerated. Even in participating States that do not interfere with spontaneous assemblies, failing to explicitly authorize spontaneous assemblies when such schemes are in place provides public authorities with complete discretion to decide when to allow or prohibit such assemblies. In this context, the possibility in the Sarajevo Canton of Bosnia and Herzegovina (Sarajevo Canton) to hold “unorganized, spontaneous gatherings” held in “special, sudden and relevant to the community situations” is a positive good practice. Similarly, the possibility to hold static assemblies in England and Scotland without notification allows for spontaneous static assemblies. In addition, the fact that notification requirements for processions can be waived by a relevant authority in Scotland and are only necessary unless “reasonably practicable” in England also allows for spontaneous moving assemblies on a case by case basis.

70. Sit-ins, collective civil disobedience or direct action campaigns can be covered by the right to freedom of peaceful assembly provided that they are non-violent. States should show some degree of tolerance towards these types of peaceful gatherings, despite their disruptive nature and allow the protesters to make their point. The UK should take these principles into account when implementing the recently adopted amendments to the Public Order Act, a law granting more powers to the police with respect to protests which can result in serious public disorder, serious damage to property, or serious disruption to the life of the community.

Recommendations for participating States:

- to guarantee in law a presumption in favor of holding peaceful assemblies in clear and explicit terms;
- to ensure that the freedom of peaceful assembly is guaranteed in legislation to everyone under the jurisdiction of participating States, including children, persons with disabilities and non-citizens;
- to recognize and expressly provide in law for spontaneous assemblies where timely notification is not possible or practicable (such as in cases where an assembly responds to an event that could not reasonably have been anticipated); such assemblies should be exempt from the requirement for prior notification;
- to ensure that clear and foreseeable procedures are promulgated to enable individuals to assess whether their conduct would breach the law and the consequences of doing so, to indicate clearly, among other things, the definition of various types of assemblies and the corresponding legal requirements, the body with authority and responsibility for receiving and responding to notifications or authorizations, the criteria for imposing conditions and restrictions and the consequences for failing to hold an assembly in compliance with the law;

## SECTION II: PRIOR RESTRICTIONS ON FREEDOM OF PEACEFUL ASSEMBLY AND PROCEDURAL ISSUES

### NOTIFICATION AND AUTHORIZATION REQUIREMENTS

#### *Notification and/or authorization requirements for assemblies: international standards and good practice*

71. Freedom of peaceful assembly is an individual right that is exercised collectively. It includes both the protection of the individual against arbitrary restrictions of his or her rights by public authorities and the positive obligations of the state to secure the effective enjoyment of those rights.<sup>115</sup>
72. The UN HRC held that a properly framed requirement to give prior notice of an assembly can be compatible with the ICCPR.<sup>116</sup> However, the purpose of a notification system is to enable the competent authorities to make necessary arrangements to facilitate freedom of assembly and to protect public order, public safety and the rights and freedoms of others.<sup>117</sup> Notification should therefore not be expected for assemblies which, due to their nature, location or limited size or duration, do not require prior official planning and preparation by state authorities or where their impact on the public and the rights of others is expected to be minimal.<sup>118</sup>
73. As a notification requirement constitutes, *de facto*, an interference with the right to freedom of peaceful assembly, it should be subject to a proportionality assessment.<sup>119</sup> Any provisions concerning advance notification should require that the organizers submit a notice of intent to hold an assembly but not a request for permission.<sup>120</sup> A permit requirement is generally more prone to abuse than a notification requirement, and it could devalue the fundamental freedom of assembly and the corresponding principle that everything not regulated by law should be presumed to be lawful.<sup>121</sup> Where permit systems are in place, they must in practice function as a system of notification with a strong legal presumption that permits will be granted promptly.<sup>122</sup> In addition, permit systems must be clearly prescribed in law,<sup>123</sup> the criteria for the

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<sup>115</sup> ECtHR, *Vyerentsov v. Ukraine*, Application no. 20372/11, judgment of 11 April 2013, para. 158.

<sup>116</sup> “Final views concerning Communication No. 2311/2013 by Bakhyzhan Toregozhina”, Human Rights Committee, CCPR/C/126/D/2311/2013, 25 July 2019, para. 8.5.

<sup>117</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 113; “Report on the Situation of Human Rights Defenders in the Americas”, Inter-American Commission on Human Rights, OEA/Ser.L/V/II.124, para. 57; *Venice Guidelines, op. cit.*, note 32, paras. 25 and 113; Joint Declaration, para. 2(b).; ECtHR, *Vyerentsov v. Ukraine*, Application no. 20372/11, judgment of 11 April 2013, para. 147; General Comment 37, para. 70.

<sup>118</sup> *Venice Guidelines, op. cit.*, note 32, para. 114; General Comment 37, para. 72.

<sup>119</sup> *Ibid.*, para. 28; *Venice Guidelines, op. cit.*, note 32, para. 25

<sup>120</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 118; Joint Declaration, para. 2(b)

<sup>121</sup> *Ibid.*; Joint Declaration, para. 2(b).

<sup>122</sup> General Comment 37, para. 73.

<sup>123</sup> *Ibid.*, para. 72.

issuance of a permit, should be confined to considerations of time, place and manner, and should not provide a basis for content-based regulation.<sup>124</sup>

74. The notification process itself should not be overly bureaucratic, as this discourages those who might wish to hold an assembly and therefore undermines the freedom of peaceful assembly.<sup>125</sup> According to the UN Special Rapporteur, a notification should be deemed to have been completed when a notice providing sufficient information for the authority to reasonably determine the date, time and location of an assembly and, when relevant, the contact details of the organizer or his/her representative have been received.<sup>126</sup> Furthermore, the period for the filing of a notice prior to an assembly should not be unnecessarily lengthy but should still allow adequate time prior to the notified date of the assembly for the relevant state authorities to plan and prepare for the event, for the regulatory body to provide a (prompt) official response to the initial notification. It should also allow for the completion of an expeditious appeal to a tribunal or court should the legality of any restrictions imposed be challenged.<sup>127</sup> Court decisions should be issued in a timely manner, so that the appeal or challenge can be resolved before the assembly is planned to take place.<sup>128</sup> When a certain time limit for notification is established by law, it should only be indicative<sup>129</sup> and should not result in the automatic prohibition or dispersal of an assembly or the arrest of participants or organizers when not met.<sup>130</sup>
75. The receiving authority should promptly issue a receipt explicitly confirming that the organizers of an assembly are in compliance with applicable notice requirements, and the notice should be communicated as soon as possible to all state organs involved in the regulatory process, including the relevant law-enforcement agencies.<sup>131</sup> Should the organizers not hear from the authority prior to the time designated for holding their assembly, it should be assumed that the assembly can go ahead.<sup>132</sup>
76. The organizers should send a single notification to a designated primary authority and should not be required to notify multiple authorities (e.g., law-enforcement agencies and/or one or several municipal authorities, as is sometimes done in the case of Pride parades).<sup>133</sup> In this regard, organizers should be able to notify the designated primary authority in a clear and simple way transparent way,<sup>134</sup> for instance by filling out a clear and concise form that is available in the main local language(s) spoken in the country, accessible to persons with various types of

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<sup>124</sup> *Ibid.*, para. 119.

<sup>125</sup> General Comment 37, para. 70.

<sup>126</sup> “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”, A/HRC/31/66, *op. cit.*, note 4, para. 28(e).

<sup>127</sup> *Ibid.*, para. 116; General Comment 37, para. 72; *Venice Guidelines, op. cit.*, note 32, para. 120.

<sup>128</sup> *Venice Guidelines, op. cit.*, note 32, para. 27.

<sup>129</sup> *Ibid.*

<sup>130</sup> *Venice Guidelines, op. cit.*, note 32, para. 112; Joint Declaration, para. 2(b); General Comment 37, para. 71.

<sup>131</sup> *Ibid.*, para. 117; *Venice Guidelines, op. cit.*, note 32, para. 121.

<sup>132</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/26/29, *op. cit.*, note 40, para. 58; *Venice Guidelines, op. cit.*, note 32, para. 121.

<sup>133</sup> *Ibid.*, para. 52; *Venice Guidelines, op. cit.*, note 32, para. 118.

<sup>134</sup> *Venice Guidelines, op. cit.*, note 32, paras. 118, 119, and 120.

disabilities, and possible via a variety of means but preferably online to avoid uncertainties and possible postal delays.<sup>135</sup> The notification procedure should be easily accessible, fair, transparent, and free of charge.<sup>136</sup>

77. It is generally inappropriate to impose a requirement (formally or informally) on organizers to negotiate the time, place, manner or other aspects of an assembly with the authorities. Such a requirement would be tantamount to restricting the planned assembly and would need to pass the strict test of necessity and proportionality.<sup>137</sup> Alternative places should be provided that are as close as possible to the initially proposed place.<sup>138</sup>
78. Where there has been a failure to properly notify, organizers should not be subject to criminal or administrative sanctions resulting in disproportionate fines or imprisonment.<sup>139</sup> Spontaneous assemblies with no identifiable organizer or where prior notice is otherwise impracticable should be exempt from notification requirements.<sup>140</sup>

*Notification and authorization requirements for assemblies in selected participating States*

79. Most participating States where ODIHR monitored assemblies maintain a notification requirement rather than an authorization system for assemblies. In England and Scotland, although encouraged, there is no requirement of notification or authorization for static assemblies.<sup>141</sup> In Finland, according to the police, even if no notice is submitted, an assembly will not be prevented or prohibited unless it endangers public order or safety.<sup>142</sup>
80. It is worth mentioning that, in England, an authorization requirement and specific restrictions apply on assemblies taking place in certain areas of London, namely Parliament Square and

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<sup>135</sup> *Venice Guidelines, op. cit.*, note 32, para. 118.

<sup>136</sup> “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”, A/HRC/31/66, *op. cit.*, note 4, para. 22. Also, “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, *op. cit.*, note 40, para. 57; *Venice Guidelines, op. cit.*, note 32, para. 25; General Comment 37, para. 70.

<sup>137</sup> Second Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”. A/HRC/23/3, para. 56.

<sup>138</sup> *Venice Guidelines, op. cit.*, note 32, para. 82.

<sup>139</sup> “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”, A/HRC/31/66, *op. cit.*, note 4, para. 29; General Comment 37, para. 71.

<sup>140</sup> ECtHR, *Bukta v. Hungary*, Application No. 25691/04, 17 July 2007; *Venice Guidelines, op. cit.*, note 32, paras. 25 and 114.

<sup>141</sup> In Glasgow, the City Council encourages the notification of static assemblies on the basis that they may provide advice and practical assistance (<https://www.glasgow.gov.uk/index.aspx?articleid=17577>). Similarly, in London, the Metropolitan Police Services encourage organizers to notify planned static assemblies so they provide information such as other events, processions and counter-demonstrations planned for the same area on the same day ([https://www.met.police.uk/tua/tell-us-about/ea/af/events-processions/static-event-public-place/?lid=&cid=&rid=&stepid=1&\\_\\_cf\\_chl\\_captcha\\_tk\\_\\_=ucO7AV1k9pnhR\\_5zvtanoNcTrMRnDJjVW8rRg100QXA-1640093718-0-gaNycGzNCJE](https://www.met.police.uk/tua/tell-us-about/ea/af/events-processions/static-event-public-place/?lid=&cid=&rid=&stepid=1&__cf_chl_captcha_tk__=ucO7AV1k9pnhR_5zvtanoNcTrMRnDJjVW8rRg100QXA-1640093718-0-gaNycGzNCJE))).

<sup>142</sup> See website of the Finnish Police: <<https://poliisi.fi/en/public-meetings-and-demonstrations>>.

Trafalgar Square.<sup>143</sup> In the Sarajevo Canton of Bosnia and Herzegovina, if an assembly is to be held on public roads and would require the traffic to be interrupted or disturbed, organizers must first request the permission of the Ministry of Traffic of the Sarajevo Canton which has up to 30 days to issue a decision.<sup>144</sup> ODIHR was informed that, in practice, this authorization requirement applies to all moving assemblies, even if taking place on sidewalks.<sup>145</sup>

81. Notification/authorization requirements in the monitored participating States range from 24 hours to 28 days in advance of an assembly. In Denmark, organizers must notify about a planned outdoor demonstration no later than 24 hours before it begins.<sup>146</sup> In England, unless unreasonable practicable, notice for public processions must be delivered not less than 6 days before the date when it is intended to be held,<sup>147</sup> while the Civic Government (Scotland) Act 1982 requires notice to arrive not later than 28 days before the procession is to be held in Scotland, unless this requirement is waived by local authorities.<sup>148</sup> In the Netherlands, the timeframe varies depending on the municipality where the assembly takes place. In Amsterdam, where ODIHR monitored an assembly organized in protest against COVID-19-related restrictions, organizers were required to notify the municipality of an assembly at least 24 hours in advance.<sup>149</sup> Finland also requires notification to be given at least 24 hours before the start of the assembly, but notifications submitted later than that are deemed valid if the organization of the assembly does not cause disproportionate harm to the public order.<sup>150</sup> In the Sarajevo Canton of Bosnia and Herzegovina, notice needs to be submitted to the police administration of the Ministry of Interior of the Sarajevo Canton at the latest five days before the scheduled beginning of the assembly.<sup>151</sup> The notice can also be submitted 48 hours before the beginning of the peaceful assembly in case of “registration failure”.<sup>152</sup> Finally, in Portugal, notice should be given to the governor of the district or the mayor of the municipality at least two working days in advance.<sup>153</sup>
82. The information to be provided along with the notification varies in the participating States where ODIHR monitored assemblies. In Denmark, for instance, the notification of an assembly must include its purpose, meeting time and place, the route it will take, and the expected number

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<sup>143</sup> Section 5(1)(j) of the Parliament Square Garden Byelaws 2012 and Section 5(1)(o) of the Trafalgar Square Byelaws, 2012, enacted under sections 383 – 384, Greater London Authority Act 1999. Similar byelaws may be made by District Councils in other parts of England and Wales (under section 235 *Local Government Act 1972*).

<sup>144</sup> Article 78, Law on Traffic Regulations of Sarajevo; Article 11(4), Sarajevo Canton Act on Public Assemblies; Article 208(1), Law on Administrative Procedure of Bosnia and Herzegovina.

<sup>145</sup> Interview with representatives of the OSCE Mission in Bosnia and Herzegovina, 28 October 2022.

<sup>146</sup> Minister of Justice of Denmark, Order on police protection of public order and protection of individuals and public safety, etc., as well as police access to take temporary measures. 20 June 2005. Available at: <<https://www.retsinformation.dk/Forms/r0710.aspx?id=2113>>.

<sup>147</sup> Section 11, Public Order Act 1986.

<sup>148</sup> Section 62, Civic Government (Scotland) Act 1982.

<sup>149</sup> See website of the Amsterdam municipality: <<https://www.amsterdam.nl/veelgevraagd/?caseid=%7BAE247892-D644-434E-B76B-BB83E3B6A495%7D>>.

<sup>150</sup> Section 7, Finnish Assembly Act.

<sup>151</sup> Article 10(2), Law on Gatherings of the Sarajevo Canton.

<sup>152</sup> Article 10(4), Law on Gatherings of the Sarajevo Canton.

<sup>153</sup> Article 2, Portugal Decree Law no. 406/74.

of participants.<sup>154</sup> In England, the notice must specify the intended date and start time of the procession, its proposed route, and the name and address of the person(s) proposing to organize it.<sup>155</sup>

83. In the Sarajevo Canton of Bosnia and Herzegovina, the law requires the notification to include a) the programme and goals of the peaceful assembly; b) information on the place, date, and time of the peaceful assembly; c) information about the organizer(s); d) the personal data of the leader of the peaceful assembly; e) the list of stewards with their personal data; f) information on the measures taken by the organizer to maintain order and peace; g) an estimate of the number of participants; and h) other information of interest for the safe and undisturbed maintenance of a peaceful assembly.<sup>156</sup> In addition, the notification for moving assemblies should contain details on the itinerary of the assembly and the means of movement of the assembly participants (whether by foot, by car, or in a combined way).<sup>157</sup> ODIHR was informed that, in some instances, the itinerary that organizers must submit needs to be very detailed, which is burdensome and discouraging for organizers.<sup>158</sup>
84. In Glasgow, the form on the City Council website requires organizers to provide a myriad of information, including the postal address of the organizer, the itinerary and time of the procession, the number of participants and stewards, and the personal data of the “chief steward”.<sup>159</sup> Some of the organizers that ODIHR met with in the context of the COP26-related assemblies found the process of notifying assemblies at the Glasgow City Council burdensome, especially so for organizers under 18. Notably, ODIHR was informed that most meetings with the Glasgow City Council had to take place during school hours, making it hard for school-aged organizers to participate.<sup>160</sup>
85. Failure to notify the authorities may result in the prohibition of an assembly, fines or imprisonment. In Denmark, a failure to notify an assembly can lead to a fine, the amount of which is not specified by law.<sup>161</sup> In addition, a failure to notify may result in imposing a criminal liability for organizers if they are registered as legal entities.<sup>162</sup> In practice, the police informed ODIHR that they do not recall any cases in the last several years when participants were fined for failure to notify about an assembly.<sup>163</sup> In England, a failure to properly notify a procession

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<sup>154</sup> Minister of Justice of Denmark, Order on police protection of public order and protection of individuals and public safety, etc., as well as police access to take temporary measures. 20 June 2005. Available at: <<https://www.retsinformation.dk/Forms/r0710.aspx?id=2113>>.

<sup>155</sup> Section 11(3), Public Order Act 1986.

<sup>156</sup> Article 11(1), Law on Gatherings of the Sarajevo Canton.

<sup>157</sup> Article 11(3), Law on Gatherings of the Sarajevo Canton.

<sup>158</sup> Interview with assembly organizers, 21 October 2021.

<sup>159</sup> See Glasgow City Council Public Processions Proposal: <<https://www.glasgow.gov.uk/forms/processionproposal/Proposal.aspx>>.

<sup>160</sup> Interview with organizers, 21 October 2021.

<sup>161</sup> Article 18, Minister of Justice of Denmark, Order on police protection of public order and protection of individuals and public safety, etc., as well as police access to take temporary measures. 20 June 2005. Available at: <<https://www.retsinformation.dk/Forms/r0710.aspx?id=2113>>.

<sup>162</sup> *Ibid.*

<sup>163</sup> Follow up email from Police of Denmark, 08 November 2019.



can lead the organizers to be imposed a fine not exceeding £1,000 (EUR 1,160).<sup>164</sup> In the Netherlands, mayors may prohibit an assembly if the required notification or details were not provided on time.<sup>165</sup>

86. In addition, holding or participating in an assembly that has not been notified or for which a prohibition has been issued can lead to imprisonment not exceeding two months or a fine of not more than EUR 4,100.<sup>166</sup> In the Sarajevo Canton of Bosnia and Herzegovina police officers are obliged to stop or ban an assembly when it is not timely and properly notified in cases where notification is mandatory, and a failure to notify an assembly can lead to a fine of BAM 3,000 to BAM 9,000 (EUR 1,500 to EUR 4,500).<sup>167</sup> In Finland, according to the Assembly Act, anyone who intentionally or through gross negligence fails to submit a notification and causes significant danger to public order and safety will be sentenced to a fine, unless a more severe punishment is provided for elsewhere in the law.<sup>168</sup> In Portugal, a failure to comply with the requirements set out in the law on assemblies amounts to a crime of so-called “qualified disobedience” which can amount to imprisonment of up to 2 years or a fine of up to 240 days.<sup>169</sup> Finally, in Scotland, the local authority may, after consulting the chief constable, prohibit or impose conditions on the holding of a procession for which prior notice was not given.<sup>170</sup>
87. Whereas in most participating States monitored in the course of the fifth monitoring cycle the notification is provided on a specific form, ODIHR was informed by interlocutors from the Lisbon City Council that in Lisbon, an e-mail communication is sufficient, and no form is required. After receiving a notification, the City Council then forwards it to the Public Security Police (PSP) and the Ministry of Interior.<sup>171</sup> Representatives of the PSP informed ODIHR that, when receiving an assembly notification, the usual procedure is for the PSP to contact organizers to get more information on the assembly location and to provide any relevant information that would allow the PSP to assess how to ensure freedom of movement during the planned assembly.<sup>172</sup>
88. In some of the participating States where ODIHR monitored assemblies, the forms provided to notify about an assembly effectively prevent some groups of people from organizing assemblies. In Denmark, ODIHR was informed by interlocutors from the Copenhagen municipality and the Copenhagen police that the website to notify assemblies was not accessible for persons with disabilities. Interlocutors added that while it is also possible to notify an

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<sup>164</sup> Sections 11(7) and 11(10), Public Order Act 1986.

<sup>165</sup> Articles 5, the Netherlands Public Assemblies Act.

<sup>166</sup> Article 11(1), the Netherlands Public Assemblies Act.

<sup>167</sup> Articles 23(e) and 35, Act on Public Assembly of the Sarajevo Canton.

<sup>168</sup> Section 26, Finnish Assembly Act.

<sup>169</sup> Article 15(3), Portugal Decree Law no. 406/74; Article 348(2), Portugal Penal Code. According to Article 47 of the Penal Code, each day corresponds to a fine ranging from EUR 1 to EUR 498.80, which the tribunal fixes based on the economic and financial conditions of the convict and his “personal duties”.

<sup>170</sup> Section 63(1), Civic Government (Scotland) Act 1982.

<sup>171</sup> Interview with representatives of the Lisbon City Council, 17 September 2021; Interview with representatives of the Public Security Police, 17 September 2021.

<sup>172</sup> Interview with representatives of the Public Security Police, 17 September 2021.

assembly via phone call, in writing, or in person, there are no policies put in place on how to communicate with persons with various types of disabilities.<sup>173</sup> In Amsterdam, the notification form requires organizers to provide a Dutch phone number and a Dutch postal address, effectively hindering the rights of homeless people and potentially some other groups, such as refugees, to organize assemblies. However, interlocutors from the Amsterdam municipality informed ODIHR that a notification would not be discarded if the postal address was missing, and that a phone number was only required for the municipality to contact organizers and set up meetings.<sup>174</sup>

*Conclusions and recommendations on notification and authorization requirements for assemblies*

89. It is positive that notification, rather than authorization, systems are used in the overwhelming majority of participating States where ODIHR monitored assemblies monitored in the fifth cycle, as notification systems are preferable and less prone to abuse. In that respect, the authorization requirement in place in the Sarajevo Canton and certain areas of London is considered a bad practice. The ECtHR has repeatedly noted that the purpose of notification requirements must be to allow the authorities to take reasonable and appropriate measures to guarantee the smooth conduct of any assembly, meeting or other gathering, and that, while the authorities may use notification requirements to ensure protection of the rights of others or to prevent disorder or crime,<sup>175</sup> they should not “represent a hidden obstacle to the freedom of peaceful assembly protected by the [ECHR]”.<sup>176</sup>
90. Notification requirements are permitted under international human rights law as authorities might need prior notice to prepare and make the necessary arrangements to ensure the maintenance, protection and promotion of assembly rights. However, the minimum timeframe of 28 days for submitting a notification for a public procession in Scotland, even though it can be waived by local authorities, is lengthy.<sup>177</sup> Lengthy notification periods will inevitably have the effect of significantly reducing people’s ability to respond with reasonable promptness to events. The advance notification period should therefore be as short as possible because timely access to the target audience is often of great importance where public advocacy is concerned.<sup>178</sup>

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<sup>173</sup> Interview with representatives of the Copenhagen Police, 25 September 2019; Interview with representatives of the Copenhagen municipality, 26 September 2019.

<sup>174</sup> Interview with representatives of the Amsterdam municipality, 15 March 2022.

<sup>175</sup> See *Sergey Kuznetsov v. Russia* (2009), para. 42; *Bukta and Others v. Hungary* (2007), para. 35; *Oya Ataman v. Turkey* (2007), para. 39; *Rassemblement Jurassien Unité v. Switzerland*, N.8191/78, Commission decision of 10 October 1979, DR 17, p. 119; and *Plattform “Ärzte für das Leben” v. Austria*, 21 June 1988, paras. 32 and 34.

<sup>176</sup> *Éva Molnár v. Hungary* (2009), para. 37.

<sup>177</sup> The UN Special Rapporteur on Freedom of Peaceful Assembly and Association raised similar concerns, noting that “[a] 28-day notification is inordinately long considering that processions in Scotland do not raise overly complex questions for resolution. A waiver of this notice period can be granted only in exceptional circumstances and therefore does not ease this requirement. See “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/23/39, *op. cit.*, note 70, para. 77.

<sup>178</sup> In support of the respective provisions, UK authorities refer to the rationale of forward planning for all involved in marches and parades, and the opportunity for more dialogue and negotiation between organisers, local authorities, and police.

91. Requesting a long list of detailed information at the time of notification or authorization procedures, such as in Amsterdam, the Sarajevo Canton, and Glasgow puts an undue burden on organizers, especially if the organizers are children. Particularly, the requirement to submit information on the measures taken by the organizers to maintain order during the assembly, which is stipulated by the law of the Sarajevo Canton of Bosnia and Herzegovina<sup>179</sup> and included in the online notification form of the Amsterdam municipality, may place a disproportionate burden on the exercise of the freedom of peaceful assembly. Maintenance of public order and providing adequate safety and security must be the primary responsibility of public authorities and not the duty of the organizers. The duty of the state to protect the safety and security of all groups and individuals in their exercise of freedom of peaceful assembly should be clearly defined in law and reinforced by the explicit commitment of the relevant institutions and authorities to fulfil this duty, which should not be based on a specific request from the organizers.<sup>180</sup>
92. The requirement to submit a list of stewards with their personal data to the authorities in the Sarajevo Canton of Bosnia and Herzegovina and to provide the City Council with the personal data of the chief steward in Glasgow is burdensome. The UN Special Rapporteur considers it “unduly bureaucratic” to request identification details from anyone involved in an assembly besides the organizer, such as stewards.<sup>181</sup>
93. According to the UN Special Rapporteur, a notification should be deemed to have been completed when a notice providing sufficient information for the authority to reasonably determine the date, time and location of an assembly and, when relevant, the contact details of the organizer or his/her representative have been received.<sup>182</sup> Overly bureaucratic notification processes discourage those wishing to hold assemblies, thereby undermining freedom of assembly.
94. Failure to meet the specified notification period should not result in disproportionate fines or the automatic prohibition of an assembly. It is problematic that the failure to notify authorities of an assembly on time may result in its prohibition in the Netherlands and Scotland, and in its ban or dispersal in the Sarajevo Canton. The amount of fines that can be imposed on organizers in the Sarajevo Canton for a failure to notify an assembly is also concerning, as are Portugal’s and the Netherland’s provisions that may result in imprisonment or a significant fine when holding or participating in an assembly that has not been notified or for which a prohibition has been issued. Such a practice places a considerable barrier on the exercise of freedom of assembly and raises concerns regarding proportionality.

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<sup>179</sup> Article 11, Law on Gatherings of the Sarajevo Canton.

<sup>180</sup> See more on this section: The role of the organizers, p.55.

<sup>181</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/23/39, *op. cit.*, note 70, para. 54.

<sup>182</sup> “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”, A/HRC/31/66, *op. cit.*, note 4, para. 28(e).

### Recommendations for participating States:

- to ensure that authorization/notification requirements are only imposed when necessary to facilitate the freedom of peaceful assembly or necessary to protect national security or public safety, public order, public health or morals or the rights and freedoms of others and only to the minimum extent necessary;
- to ensure that the notification process is prompt, not unduly bureaucratic, widely accessible, free of charge and that the lack of notification or infringements of the notification process does not result in automatic prohibition or dispersal of an otherwise peaceful assembly or in imprisonment or heavy fines;
- to ensure that the notification process is accessible to persons with various types of disabilities, non-citizens and children, including by developing accessible means of communication and ensuring adequate training of local authorities and relevant law-enforcement agencies;
- to ensure that the advance notification period is as short as possible, while still allowing the authorities sufficient time to prepare for an assembly and that the notification requirements are not unduly burdensome (the requested information should merely contain the date, time and location of the assembly and, where relevant, the name, address and contact details of the organizer);
- to ensure that the absence of an official response to a notification may not prevent an assembly from being held.

### RESTRICTIONS IMPOSED BEFORE ASSEMBLIES

95. The right to freedom of peaceful assembly is not an absolute right. International and regional human rights instruments allow states to impose certain narrowly construed limitations.<sup>183</sup> This chapter examines the grounds for the imposition of restrictions on public assemblies. Restrictions applied following an assembly, such as the imposition of sanctions, are discussed in the chapter on the duties and responsibilities of the organizers.<sup>184</sup>

#### *Prior restrictions on assemblies: international standards and good practice*

96. 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 (Copenhagen 1990). As the UN HRC has stated, restrictions should be guided by the objective of facilitating the right rather than placing

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<sup>183</sup> See for instance Article 21, International Covenant on Civil and Political Rights and Article 11, European Convention on Human Rights.

<sup>184</sup> For the ECtHR, the term “restrictions” within the meaning of Article 11(2) of the ECHR must be interpreted as including measures taken following a meeting. *Ezelin v. France* (1991), para. 39.

unnecessary or disproportionate limitations on it.<sup>185</sup> The state has an obligation to justify any limitations of the right protected by Article 21 of the ICCPR.<sup>186</sup>

97. According to Article 21 of the ICCPR, restrictions on freedom of peaceful assembly must be 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.<sup>187</sup> Any restrictions imposed must have a basis in primary law, as must the mandate and powers of the restricting authority (principle of legality).<sup>188</sup> Furthermore, they must be proportionate to the achievement of a legitimate aim. Given that a wide range of interventions might be suitable, the least restrictive means of achieving a legitimate purpose should always be given preference.<sup>189</sup> 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.<sup>190</sup>
98. 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.<sup>191</sup> As stated by the UN Special Rapporteur, “only ‘certain’ restrictions may be applied, which clearly means that freedom is to be considered the rule and its restriction the exception”.<sup>192</sup> Prohibiting an assembly should therefore be a measure of last resort and authorities should first seek to apply the least intrusive measures.<sup>193</sup> 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, turning the right to freedom of peaceful assembly into a privilege.<sup>194</sup>
99. 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

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<sup>185</sup> General Comment 37, para. 36.

<sup>186</sup> 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; Human Rights Committee, “Final views concerning Communication No. 2269/2013 by Vitaly Lopasov”, Human Rights Committee, CCPR/C/126/D/2269/2013, 25 July 2019, para. 8.7.

<sup>187</sup> Article 21, International Covenant on Civil and Political Rights; General Comment 37, para. 41.

<sup>188</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 35; General Comment 37, para. 39.

<sup>189</sup> *Ibid.*, para. 39; General Comment 37, para. 37.

<sup>190</sup> ECtHR, *Ezlin v. France*, Application no. 11800/85, judgment of 26 April 1991, para. 45; General Comment 37, para. 39.

<sup>191</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, paras. 109–112; ECtHR, *Ezlin v. France* (1991), para. 53; General Comment 37, para. 55; *Venice Guidelines, op. cit.*, note 32, para. 133.

<sup>192</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 29, para. 16.

<sup>193</sup> *Venice Guidelines, op. cit.*, note 32, para. 132; General Comment 37, para. 37.

<sup>194</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/23/39, *op. cit.*, note 70, para. 63; General Comment 37, para. 38; *Venice Guidelines, op. cit.*, note 32, paras. 132 and 133.

domestic legislation nor be loosely interpreted by the authorities.<sup>195</sup> 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.<sup>196</sup> Mere suspicions, fears or presumptions are not sufficient to warrant the imposition of prior restrictions on assemblies, as held by the ECtHR: “the mere probability of tension and heated exchange between opposing groups during a demonstration is not enough to justify the prohibition of an assembly”.<sup>197</sup>

100. 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.<sup>198</sup> As noted by the UN HRC, “a contrary approach defeats the very purpose of peaceful assemblies as potential tool of political and social participation that allows people to advance ideas and establish the extent of the support that they enjoy”.<sup>199</sup>
101. Based on the ICCPR, only propaganda for war or advocacy for national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence<sup>200</sup> or acts aimed at the destruction of the rights and freedoms enshrined in international human rights law<sup>201</sup> 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.<sup>202</sup> 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).<sup>203</sup> As noted by the ECtHR, “Any measures interfering with freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities – do a disservice to democracy and often endanger it”.<sup>204</sup>
102. While state authorities can only impose content-based restrictions in very limited cases, they enjoy a certain discretion to impose restrictions related to the time and place of a planned assembly or the manner it is to be conducted. Such “time, place and manner restrictions” should, however, never be used to prevent access to the assembly target audience, undermine the message or the expressive value of an assembly, or dissuade the exercise of the right to freedom

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<sup>195</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 69; *Venice Guidelines, op. cit.*, note 32, para. 130.

<sup>196</sup> *Ibid.*, para. 70; General Comment 37, para. 36

<sup>197</sup> *Venice Guidelines, op. cit.*, note 32, para. 134.

<sup>198</sup> General Comment 37, para. 48; *Venice Guidelines, op. cit.*, note 32, para. 30.

<sup>199</sup> General Comment 37, para. 48.

<sup>200</sup> Article 20, ICCPR; General Comment 37, para. 50; Joint Declaration, para. 2(h).

<sup>201</sup> *Ibid.*, Article 5.

<sup>202</sup> “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”, A/HRC/31/66, *op. cit.*, note 4, para. 33; General Comment 37, para 37.

<sup>203</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 96; General Comment 37, para. 50; Joint Declaration, para. 2(h).

<sup>204</sup> ECtHR, *Kudrevičius and Others v. Lithuania*, Application no. 37553/05, judgment of 15 October 2015, para. 145.

of assembly. The onus remains on the authorities to justify such restrictions on a case by case basis.<sup>205</sup>

103. The ECtHR confirmed that the right to freedom of assembly includes the right to choose the time, place and modalities of the assembly.<sup>206</sup> 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 that 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<sup>207</sup> and must provide participants with sufficient time to manifest their views and pursue their purposes effectively.<sup>208</sup> Moreover, the organizer of an assembly should not be compelled or coerced to accept whatever alternative(s) the authorities propose. To require otherwise would undermine the very essence of the right to freedom of peaceful assembly.<sup>209</sup>
104. Freedom to choose the manner of an assembly is an important aspect of the right, as its form is often an integral part of its message, particularly in the case of symbolic protest. A ban on a particular form of assembly therefore needs to meet the relevant necessity and proportionality test.<sup>210</sup> As noted by the UN HRC: “As far as restrictions on the manner of peaceful assemblies are concerned, participants should be left to determine whether they want to use equipment such as posters, megaphones, musical instruments or other technical means, such as projection equipment, to convey their message.”<sup>211</sup>
105. Restrictions on assemblies based on public-order grounds should be based on objective evidence of necessity and should not be imposed where there is only a hypothetical or an unsubstantiated risk of public disorder or the mere presence of a hostile audience.<sup>212</sup> As noted by the UN HRC, “States parties should not rely on a vague definition of “public order” to justify overbroad restrictions on the right to freedom of peaceful assembly.”<sup>213</sup> Prior restrictions imposed on the basis of the mere possibility of minor incidents of violence are likely to be disproportionate. Any isolated outbreak of violence during an event should be dealt with by way of subsequent arrest and prosecution rather than prior restraint<sup>214</sup> and are not sufficient grounds to prohibit or restrict the assembly.<sup>215</sup> Evidence of disorder at an organizer’s previous

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<sup>205</sup> “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”, A/HRC/31/66, *op. cit.*, note 4, para. 34; General Comment 37, para. 53.

<sup>206</sup> *Sáska v. Hungary* (2012).

<sup>207</sup> *Ibid.*, para. 45; General Comment 37, paras.22, 53 and 55; Joint Declaration, para. 3(a).

<sup>208</sup> General Comment 37, para. 54; *Venice Guidelines, op. cit.*, note 32, para. 146.

<sup>209</sup> *Ibid.*, para. 103.

<sup>210</sup> In *Women on Waves and Others v. Portugal*, the ECtHR rejected the government’s argument that the applicant NGO could just as well carry out its advocacy for reproductive rights on land as on its vessel, which had been denied entry to territorial waters; *Venice Guidelines, op. cit.*, note 32, para. 148.

<sup>211</sup> General Comment 37, para. 58.

<sup>212</sup> *Ibid.*, para. 71; *Venice Guidelines, op. cit.*, note 32, para. 139.

<sup>213</sup> General Comment 37, para. 44.

<sup>214</sup> *Ibid.*

<sup>215</sup> General Comment 37, para. 27.

assembly should not, in and of itself, be grounds to automatically prevent an organizer from organizing a subsequent assembly.<sup>216</sup>

106. In exceptional cases, restrictions on assemblies may be justified on public-health grounds, for example where the outbreak of an infectious disease makes gatherings more likely to spread a virus, or where the health of participants in an assembly, or of others, becomes, or risks becoming, seriously compromised due to the sanitary condition of an assembly.<sup>217</sup> However, public health emergency, such as the COVID-19 pandemic, must not be used as a pretext to infringe and impose undue restrictions on the right of individuals to peaceful assemble. Even in emergency situations, imposing blanket bans on assemblies is likely to constitute an unnecessary and disproportionate infringement to the right to freedom of peaceful assembly.<sup>218</sup>
107. While the interests of national security 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.<sup>219</sup> The state must prove the precise nature of the threat and the specific risks posed.<sup>220</sup> In fact, as noted by the UN HRC, an unspecified risk or violence or the mere possibility that the authorities might not be able to prevent or neutralize the violence is not enough. A State must prove, based on a concrete risk assessment, that it would not be able to contain the violence and must consider less intrusive means, such as changing the time or location of the assembly, before prohibiting an assembly.<sup>221</sup>
108. The regulatory authority has a duty to strike a proper balance between the freedom of peaceful assembly and the competing rights of others in the location affected by an assembly.<sup>222</sup> Given the need to respect diversity in a democratic society and the fact that assemblies are a legitimate use of public and others spaces and may entail a certain level of disruption to ordinary life<sup>223</sup> 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.<sup>224</sup>

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<sup>216</sup> See Supreme Court of the United States, *Kunz v. New York*, 340 U.S. 290, 294, 15 January 1951: “The court below has mistakenly derived support for its conclusion from the evidence produced at the trial that appellant’s religious meetings had, in the past, caused some disorder. There are appropriate public remedies to protect the peace and order of the community if appellant’s speeches should result in disorder or violence.”

<sup>217</sup> General Comment 37, para. 45; *Venice Guidelines*, *op. cit.*, note 32, para. 141.

<sup>218</sup> Joint Declaration, para. 1(f).

<sup>219</sup> *Yesilgoz v. Turkey* (2005), para. 30 (French only).

<sup>220</sup> Human Rights Committee, communication No. 1119/2002, *Lee v. the Republic of Korea*, views adopted on 20 July 2005, para. 7.3.

<sup>221</sup> General Comment 37, para. 52.

<sup>222</sup> *Guidelines*, *op. cit.*, note 1, Explanatory Notes, para. 80.

<sup>223</sup> General Comment 37, para. 47 ; *Venice Guidelines*, *op. cit.*, note 32, para. 143.

<sup>224</sup> *Ibid.*



109. Assemblies are just as legitimate a use of public space as are commercial activities or the movement of vehicles and pedestrian traffic.<sup>225</sup> The temporary disruption of vehicular or pedestrian traffic, commercial activities, and opposition to an assembly are not, of themselves, sufficient to justify restrictions on assemblies.<sup>226</sup> The ECtHR 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 [ECHR] is not to be deprived of all substance”.<sup>227</sup>
110. The right to freedom of peaceful assembly also includes the right to plan, organize, promote and advertise an assembly in a lawful manner, which should be facilitated and protected accordingly.<sup>228</sup> Any restrictions on such activities should be considered a prior restriction on the exercise of this right.<sup>229</sup>

#### *Prior restrictions on assemblies in selected participating States*

111. In some of the participating States where ODIHR monitored assemblies, the authorities imposed restrictions on assemblies. The first section below discusses bans and content-based restrictions, while the subsequent section includes some examples of time, place and manner restrictions and blanket bans.<sup>230</sup>

##### *i. Bans on assemblies, content-based and other prior restrictions*

112. Besides Finland, where there is no law outlining the circumstances under which authorities can restrict assemblies, legislation in all the participating States where ODIHR monitored assemblies outlines when authorities may place restrictions on assemblies. The Danish Constitution and the Danish Act on the Activities of the Police allow for the prohibition of open-air assemblies when, on the basis of a specific assessment, it is feared they may constitute a danger to the public peace.<sup>231</sup> In the Netherlands, in response to a notification, a mayor may impose conditions, restrictions or may forbid a demonstration. Restrictions can only be used for the protection of health, in the interest of traffic, and to combat or prevent disorder.<sup>232</sup>

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<sup>225</sup> *Ibid.*, para. 20; “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 29, para. 41; General Comment 37, para. 47.

<sup>226</sup> *Ibid.*; Joint Declaration, para. 3(a)

<sup>227</sup> ECtHR, *Kudrevičius and Others v. Lithuania*, Application no. 37553/05, judgment of 15 October 2015, para. 150; ECtHR, *Navalnyy v. Russia*, Application no. 32058/13, judgment of 15 May 2014, para. 63.

<sup>228</sup> *Venice Guidelines*, *op. cit.*, note 32, para. 54.

<sup>229</sup> “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”, A/HRC/31/66, *op. cit.*, note 4, para. 19.

<sup>230</sup> Provisions on restrictions on assemblies in the participating States covered in this report are complex and would merit a separate, exhaustive discussion. In the interest of being concise, this and the following sections will provide only some references to them, focusing mainly on restrictions reported in the participating States during the monitoring period (or that were directly relevant to the observed events).

<sup>231</sup> Article 79, Danish Constitution; Section 7(4), Danish Act on the Activities of the Police.

<sup>232</sup> Articles 2 and 5, the Netherlands Public Assembly Act; Article 9(2) of the Constitution.

According to Portugal's assembly law, only assemblies whose object and purpose are contrary to the law, morals, rights of natural or legal persons, or public order and tranquility may be prevented.<sup>233</sup> The law also prohibits assemblies that offend the honor and consideration to sovereign bodies and the Armed Forces.<sup>234</sup>

113. In Bosnia and Herzegovina's Sarajevo Canton, the Act on Public Assembly lists the instances where a peaceful assembly may be prohibited by state authorities.<sup>235</sup> This includes assemblies that are not timely or properly notified to the authorities, assemblies inciting armed conflict or the use of violence, and assemblies that may endanger the safety of people or property. If an assembly is banned, organizers are obliged to inform the public about the ban and remove public announcements and advertisements about the assembly.<sup>236</sup>
114. In England and Scotland, according to the Human Rights Act, restrictions can only be imposed 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. However, the Act specifies that this does not prevent armed forces, the police, or the administration of the State from imposing lawful restrictions.<sup>237</sup> In both Scotland and England, a senior police officer may impose "conditions as appear to him necessary" on the place, duration, or number of participants of static assemblies and public processions to prevent serious public disorder, serious damage to property, serious disruption to the life of the community, or if the purpose of the assembly organizer is the intentional intimidation of others.<sup>238</sup> The UN Special Rapporteur raised concerns about the threshold for imposing such conditions, which he found to be too low and to not reflect the test of necessity and proportionality under Article 21 of the ICCPR.<sup>239</sup> In addition, in Scotland, local authorities, following consultation with the chief constable, can also prohibit or restrict public processions.<sup>240</sup> Apart from consideration of public safety, public order, damage to property, disruption to the life of the community, and previous breaches of the law by the same organizer and/or some of the participants, the local authority is also required to consider "the extent to

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<sup>233</sup> Articles 3(2) and 1(1), Portugal Decree Law no. 406/74.

<sup>234</sup> Article 1(2), Portugal Decree Law no. 406/74.

<sup>235</sup> According to Article 16 of the Act on Public Assembly of the Sarajevo Canton, a peaceful assembly may be prohibited by the competent police authority if a) it is aimed at violently endangering the constitutional order; b) it is aimed at committing criminal offenses or inciting to commit criminal offenses; c) it is not timely and properly reported, when registration is mandatory; d) it is registered in areas where, in accordance with the law, it cannot be held; e) the objectives are aimed at inciting armed conflict or the use of violence, violations of guaranteed human rights and freedoms, national, racial, religious, or other hatred; f) there is a real danger that the peaceful assembly would endanger the safety of people and property or that there would be a real danger of violence or disturbance of public order and peace on a larger scale; g) at the request of the competent authority, the organizer does not take the ordered additional measures in a timely manner; h) it is necessary for the purpose of preventing endangerment of human health, at the request of the state administration body responsible for health affairs; and i) it is organized by an organization, namely an association of citizens whose work is prohibited by a decision of the competent court

<sup>236</sup> Article 17(5), Act on Public Assembly of the Sarajevo Canton.

<sup>237</sup> Article 11(2), UK Human Rights Act.

<sup>238</sup> Sections 12(1) and 14(1), Public Order Act 1896.

<sup>239</sup> "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", Human Rights Council, A/HRC/23/39/Add.1, 17 June 2013, para. 12, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/148/02/PDF/G1314802.pdf?OpenElement>>.

<sup>240</sup> Section 63, Civic Government (Scotland) Act 1982.

which the containment of risks arising from the procession would (...) place an excessive burden on the police”.<sup>241</sup>

115. In England, under the Public Order Act 1986, the chief officer of police (or in London, the Commissioner of Police) can apply to the council of the district (or in London, the Secretary of State) to prohibit a public procession in a specified district (or part of a district) for up to 3 months if he reasonably believes that holding a procession in that area would result in “serious disorder”.<sup>242</sup>

116. Among the assembly laws of the States where ODIHR monitored assemblies in the fifth cycle, only the Dutch Public Assemblies Act contains a specific provision prohibiting content-based restrictions. Section 5 provides that “a condition, restriction or prohibition cannot relate to the content of what is professed, or the thoughts or feelings to be expressed”.<sup>243</sup> Some participating States provide for content-based restrictions in their legislation, banning hate speech and incitement to violence. In the Sarajevo Canton of Bosnia and Herzegovina, freedom of speech and addressing the public during an assembly is “restricted by the ban on any agitation and incitement to armed conflict or use of violence, national, racial, religious or other hatred”.<sup>244</sup>

117. Some other States prescribe content-based restrictions which are not compatible with international human rights standards. In England, for instance, the Public Order Act 1986 provides that anyone is guilty of an offence whenever he or she uses threatening or abusive words or behavior, or disorderly behavior, or displays any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress.<sup>245</sup> The UN Special Rapporteur has raised concerns that direct actions by peaceful protesters could be seen as falling within this definition, which would curtail the right to freedom of peaceful assembly.<sup>246</sup>

118. It is noteworthy that ODIHR monitors did not observe any bans on assemblies based on their content during their monitoring visits to the selected participating States.

*ii. Time, place and manner restrictions on assemblies, including blanket prohibitions in selected participating States*

119. Several participating States prohibit assemblies from taking place near certain buildings or sites. In the Netherlands, those who organize or take part in a gathering or a demonstration in the vicinity of a building in use by the International Court of Justice, a diplomatic or a consular mission must refrain from activities that could jeopardize the functioning of such institutions.

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<sup>241</sup> *Ibid.*

<sup>242</sup> Section 13, Public Order Act 1986.

<sup>243</sup> Section 5(3), the Netherlands Public Assemblies Act.

<sup>244</sup> Article 5(2), Act on Public Assembly of the Sarajevo Canton.

<sup>245</sup> Article 5, Public Order Act 1986.

<sup>246</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, Human Rights Council, A/HRC/23/39/Add.1, 17 June 2013, para. 16, ><https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/148/02/PDF/G1314802.pdf?OpenElement>>.

In order to prevent such activities, the mayor of the municipality in question can provide instructions that those taking part in the gathering or demonstration have to comply with. If such instructions are ignored, the mayor may dissolve the demonstration or gathering.<sup>247</sup>

120. In England, specific restrictions exist for assemblies held in certain areas of London, namely Parliament Square and Trafalgar Square.<sup>248</sup> In addition, under the Police Reform and Social Responsibility Act 2011, a constable or authorized officer can direct individuals to cease, or refrain from starting, some activities defined as “prohibited” in the controlled area of Parliament Square, such as erecting tents, operating amplified noise equipment, and using sleeping equipment to sleep overnight in that area.<sup>249</sup> These activities are not treated as prohibited if done for police, fire and rescue authority or ambulance purposes; if done by or on behalf of a relevant authority; or, in the case of amplified noise equipment, if an authorization has been granted to operate it.<sup>250</sup>
121. In Bosnia and Herzegovina’s Sarajevo Canton, peaceful assemblies cannot be held a) near hospitals if it obstructs access to ambulance and disturbs the peace of patients; b) near kindergartens, primary and secondary schools when children and students are inside; c) in national parks and protected nature parks, unless the assembly is about the protection of nature and the human environment, as well as to mark significant historical dates; d) near cultural monuments if the assembly would cause destruction or damage to protected valuables; e) on motorways, main and regional roads, and on railroads if it endangers the smooth flow of traffic; and f) in any other places where, given the time, the number of participants, and the nature of the assembly, it could cause serious disruption to the movement and work of a large number of citizens.<sup>251</sup>
122. In Portugal, a mayor may, for security reasons, block assemblies that are planned to take place less than 100 meters from headquarters of the organs of sovereign power, military or militarized facilities, prisons, diplomatic or consular premises, and the headquarters of political parties.<sup>252</sup> During a meeting with the Public Security Police (PSP), ODIHR was informed that if organizers want to hold an assembly within 100 meters of these buildings, the PSP would liaise with the organizers and try to find a compromise by offering alternatives.<sup>253</sup>
123. The disruption of traffic can be a reason for restricting assemblies in some participating States. In the Sarajevo Canton of Bosnia and Herzegovina, as mentioned above, assemblies cannot be held on motorways, main and regional roads and on railroads if this would endanger the smooth flow of traffic.<sup>254</sup> In Portugal, in cases where it is essential in order to ensure the smooth flow

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<sup>247</sup> Article 9, the Netherlands Public Assemblies Act.

<sup>248</sup> Section (I)(j), Parliament Square Garden Bylaws (2012) and Section 5(1)(o), Trafalgar Square Bylaws (2012).

<sup>249</sup> Section 143, Police Reform and Social Responsibility Act 2011.

<sup>250</sup> *Ibid.*

<sup>251</sup> Article 15, Act on Public Assembly of the Sarajevo Canton.

<sup>252</sup> Article 13, Portugal Decree Law no. 406/74.

<sup>253</sup> Interview with representatives of the Public Security Police, 17 September 2021.

<sup>254</sup> Article 15(e), Act on Public Assembly of the Sarajevo Canton.

of people or traffic, the relevant authorities may change initially planned routes or limit the movement of marches or parades during a demonstration.<sup>255</sup> Similarly, in Denmark, the police can order an assembly to be held in a different place than intended, or lay down other conditions for the holding of the assembly when there is “reasonable fear of risk of considerable disturbance of the public order, including considerable disturbance of traffic, or peril to individual or public security”.<sup>256</sup> In Finland, the police can, after negotiating with the assembly contact person, indicate that an assembly should be held in a different location if holding it in the planned location “significantly disturbs bystanders or traffic”, or order to change the route of a procession “should the flow of traffic so require”, provided that the changed route does not impact the purpose of the procession.<sup>257</sup> Finally, in the Netherlands, authorities can restrict the right to freedom of peaceful assembly “for the protection of health, in the interest of traffic, and to combat and prevent disorders”<sup>258</sup> As will be discussed below, under international human rights law, assemblies cannot be restricted or prohibited solely to avoid traffic disturbances.

124. Another common restriction relates to the prohibition of assemblies at certain times. In Portugal, processions and parades may only take place on Sundays and holidays, on Saturdays after noon and on other days after 19:30.<sup>259</sup> In addition, they cannot be extended beyond 00:30.<sup>260</sup> During a meeting with the Public Security Police (PSP), ODIHR was informed that, in practice, people demonstrate outside these time limits, but that the PSP is then under a duty to notify the court as this is considered to be against the law. However, in most cases, the court rules that no crimes were committed.<sup>261</sup>
125. In England, the Greater London Authority provides that assemblies held on Trafalgar Square should not last for longer than three hours and only during daylight hours, cannot be held on weekends and bank holidays, that only one public meeting is allowed per day, and that Trafalgar Square and Parliament Square Gardens cannot be booked for the same organization on the same day.<sup>262</sup> In Glasgow, the Policy and Code of Conduct on Public Processions provides that processions can only take place between 7:30am and 9.00pm.<sup>263</sup>
126. In Turku, Finland, where the assemblies related to the anniversary of the 2017 Turku attack took place in August 2021, the police negotiated a change in the assembly route of both the “Flower Flow” protest and the “Turku without Nazis” counterprotest. The Southwestern Finland Police Department explained to ODIHR that this measure was taken in order to

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<sup>255</sup> Article 6, Portugal Decree Law no. 406/74.

<sup>256</sup> Section 7(3), Danish Act on the Activities of the Police.

<sup>257</sup> Sections 10(2) and 10(3), Finnish Assembly Act.

<sup>258</sup> Section II Article 2, the Netherlands Public Assemblies Act.

<sup>259</sup> Article 4, Portugal Decree Law no. 406/74.

<sup>260</sup> Article 11, Portugal Decree Law no. 406/74.

<sup>261</sup> Interview with representatives of the Public Security Police, 17 September 2021.

<sup>262</sup> See Greater London Authority Application form for public meetings, demonstrations and rallies in Trafalgar Square: <[https://www.london.gov.uk/sites/default/files/public\\_meetings\\_demonstrations\\_rallies\\_application\\_form\\_-\\_trafalgar\\_square.pdf](https://www.london.gov.uk/sites/default/files/public_meetings_demonstrations_rallies_application_form_-_trafalgar_square.pdf)>.

<sup>263</sup> “Policy and Code of Conduct on Public Processions”, Glasgow City Council, October 2014, page 15, <<https://www.glasgow.gov.uk/CHttpHandler.ashx?id=2808&p=0>>.

minimize a potential risk of clashes between the two assemblies<sup>264</sup>, and that the organizers of the “Turku without Nazis” were also offered to change the time of their assembly so it would not coincide with the time of the other assembly.<sup>265</sup> The organizers of the “Turku without Nazis” march informed ODIHR that they were asked to change their route since the police did not want their counter protest to take place on the same side of the river as the main assembly. In addition, while they were originally planning to end their counterdemonstration near a Cathedral, and that the people working at the Cathedral expressed no objections to this during their consultations with “Turku without Nazis” assembly organizers, the police prohibited it on the grounds that it would cause possible disturbance to the religious community.<sup>266</sup>

127. Restrictions may also relate to the manner in which an assembly is to be carried out. In Portugal, assemblies cannot be carried out “in abusive occupation of public or private buildings”.<sup>267</sup> In the Sarajevo Canton of Bosnia and Herzegovina, participants of a peaceful assembly are not allowed to wear uniforms, parts of uniform, clothes and other markings that “call upon or incite armed conflicts or the use of violence, national, racial, religious and other hatred”.<sup>268</sup> In England and Scotland, the Public Order Act 1936 prohibits “the wearing of uniforms in connection with political objects and the maintenance by private persons of associations of military or similar character”.<sup>269</sup>
128. Many of the participating States prohibit face coverings in the context of assemblies. In Finland, individuals who wear a disguise preventing their recognition during assemblies and who “clearly” intend to employ violence against a person or cause damage to property can be fined or imprisoned for up to three months for “illegal wearing of a disguise”.<sup>270</sup> In Denmark, anyone who during assemblies entirely or partially covers their face with a hood, a mask, paint or something similar which is likely to prevent identification or who carries objects considered to be intended for covering up the face can be fined or imprisoned for up to six months. This does, however, not apply to coverings used as protection against the weather, or which serve “other creditable purposes”.<sup>271</sup> ODIHR was informed by representatives of the Copenhagen Police that if an individual is covering their face during an assembly, the police would ask them to remove their face coverage unless they have a reasonable reason to wear it. The Copenhagen police added that they would also enforce the ban on face coverings if violence breaks out during an assembly. The police would use ‘common sense’ and first make a reasonable assessment on the spot to identify any “unruly” element in the crowd.<sup>272</sup>

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<sup>264</sup> Interview with representatives of the Southwestern Finland Police Department, 19 August 2021.

<sup>265</sup> Written exchange between the Finnish authorities and ODIHR, 9 May 2023.

<sup>266</sup> Interview with assembly organizers, 21 August 2021; see more on this section: Facilitating simultaneous assemblies, including counterdemonstrations.

<sup>267</sup> Article 12, Portugal Decree Law no. 406/74.

<sup>268</sup> Article 19(9), Act on Public Assembly of the Sarajevo Canton.

<sup>269</sup> Public Order Act 1936.

<sup>270</sup> Chapter 17 Section 13a, Finland Criminal Code.

<sup>271</sup> Section 134 b, Danish Criminal Code.

<sup>272</sup> Interview with representatives of the Copenhagen Police, 25 September 2019.

129. In England and Scotland, under the Criminal Justice and Public Order Act 1994, a constable in uniform can require individuals to remove “any item which the constable reasonably believes that person wearing wholly or mainly for the purpose of concealing his identity” and to seize “any item which the constable reasonably believes any person intends to wear wholly or mainly for that purpose”. A failure to comply can lead to a fine, imprisonment for up to one month, or both.<sup>273</sup>

*Conclusions and recommendations on prior restrictions on assemblies*

130. Portugal’s Decree Law 406/74, which prohibits assemblies that offend the honor and consideration due to sovereign bodies and the Armed Forces,<sup>274</sup> provides the authorities with broad discretion to restrict assemblies based on the content of the assembly’s message. Such content-based restrictions is not in line with international human rights standards. Moreover, the provision is not sufficiently precise to enable an individual to assess whether or not his or her conduct would constitute an offence and therefore breach the law. The lack of foreseeability of a breach of law and the likely consequences of that breach is contrary to international standards.

131. The ban on assemblies near government buildings in several participating States and those at certain times raise concerns over blanket prohibitions. The prohibitions to hold assemblies at certain times or days in place in Portugal and England (Parliament Square and Trafalgar Square) are disproportionate in that they fail to take into account the individual circumstances of the assemblies involved. Other less intrusive measures should be used instead. Limiting processions and parades to Sundays and holidays, on Saturdays after noon and on other days after 19:30 in Portugal is for instance overly restrictive. Furthermore, according to the UN Special Rapporteur, restricting access to a public place by not allowing assemblies to be held in the close vicinity of iconic buildings, such as presidential palaces, parliaments or memorials, should also meet the strict test of necessity and proportionality.<sup>275</sup> The free choice of venue is understood to form an important part of the freedom of the organizer to autonomously decide on the nature of an event, especially when the location itself is in some form the object of the protest.

132. The language of the Public Assemblies Act in the Netherlands requiring assemblies near the International Court of Justice or a diplomatic or consular mission to refrain from conduct that may affect how the organization functions<sup>276</sup> is unnecessarily broad. It gives the Dutch authorities overly wide discretion in determining the type of conduct that affects the “organization’s daily activities”. This broad provision is disproportionate, especially so since diplomatic and consular missions often attract assemblies for various causes.

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<sup>273</sup> Section 60AA, Criminal Justice and Public Order Act 1994.

<sup>274</sup> Article 1(2), Portugal Decree Law 406/74.

<sup>275</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/23/39, *op. cit.*, note 70, para. 66.

<sup>276</sup> Article 9(1), the Netherlands Public Assemblies Act.

133. Avoiding traffic disturbances is not among the legitimate aims that would justify restrictions on freedom of peaceful assembly. No assembly should be restricted or prohibited based solely on traffic considerations. Situations such as those restricting assemblies “in the interest of traffic” in the Netherlands or that could “endanger the smooth flow of traffic” in the Sarajevo Canton of Bosnia and Herzegovina and Portugal (see para. 104), suggest that undisturbed traffic is more important than the facilitation of people’s freedom of peaceful assembly. However, according to international human rights standards, an assembly should not be restricted, let alone prohibited, based solely on traffic considerations even if there is a risk of a serious disturbance of traffic.
134. The concealment of an individual’s identity by wearing a mask or other method should not be prohibited where no demonstrable evidence of imminent violence is present.<sup>277</sup> An individual should not be required to remove a mask unless their mask is worn for the purpose of evading identification so as to avoid liability for violent conduct and/or for unduly interfering with the enjoyment of the freedom of peaceful of other participants. Face coverings may be worn for a range of legitimate purposes, including for expressive or religious purposes, health protection or to conceal one’s identity for fear of retaliation. Prohibiting the wearing of face coverings in the context of assemblies without any evidence of illegal activity or imminent threat to violence, as is the case in Denmark, England, and Scotland, is not in line with internationally accepted good practice. Such bans can be used to target particular groups and improperly curtail the right to freedom of peaceful assembly.<sup>278</sup> Such groups could include women wearing a niqab, individuals wearing face masks for health reasons or people belonging to vulnerable communities. It is of note that, in Denmark, the prohibition of face coverings under the Criminal Code<sup>279</sup> is not applicable if they serve a “legitimate purpose”.<sup>280</sup> However, the preparatory work to the law suggests that this only encompasses masking for religious purposes if it occurs in connection with a specific religious act or the like, for instance in a religious building or in connection with a wedding or funeral ritual, but not outside such specific religious acts. Interestingly, following the COVID-19 pandemic, participants were compelled to wear face masks in public in many participating States to limit the spread of the virus; and the desire to protect against virus infections has resulted in a broader habit of wearing them in crowds.

#### Recommendations for participating States:

- to ensure that any restrictions on assemblies have a basis in primary law and strictly adhere to the principle of proportionality, ensuring in particular that restrictions are narrowly tailored to meet the specific and legitimate aims pursued by the authorities and are necessary in a democratic society;

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<sup>277</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 98.

<sup>278</sup> “Report of the Special Rapporteur on the rights to freedom of assembly and of association, Maina Kiai”, A/HRC/26/29, *op. cit.*, note 40, para. 32.

<sup>279</sup> Article 134(b), Sub-sections 1 and 2, Criminal Code of Denmark.

<sup>280</sup> Article 134(b), Sub-section 3, Criminal Code of Denmark.



- to ensure that assembly participants are able to convey their message within sight and sound of their intended audience and that limitations in that regard based on security or other considerations are only imposed on an exceptional basis and in a proportionate manner;
- to ensure that, where security or other considerations may result in time, place and manner restrictions on assemblies, these are necessary under the circumstances, and, whenever possible, discussed with the organizers of assemblies prior to an event so that suitable alternatives consistent with the sight-and-sound principle can be identified.

## FACILITATING SIMULTANEOUS ASSEMBLIES, INCLUDING COUNTERDEMONSTRATIONS

### *Facilitating simultaneous assemblies: international standards and good practice*

135. Where notification or an authorization request is provided for two or more unrelated assemblies at the same place and time, each should be facilitated as best as possible.<sup>281</sup> A prohibition against conducting public events in the same place and at the same time as another public event where they can both be reasonably accommodated would constitute a disproportionate response.<sup>282</sup>
136. In the case of counterdemonstrations, emphasis should be placed on the state's duty to protect and facilitate each event where counterdemonstrations are organized or occur. States must provide adequate policing resources to accommodate and facilitate such related simultaneous assemblies in a content-neutral way and, to the extent possible, by allowing them to take place within sight and sound of one another.<sup>283</sup> Importantly, the right to counter-demonstrate does not extend to inhibiting the right of others to demonstrate.<sup>284</sup> When the intention of the organizers of a counterdemonstration is specifically to prevent another assembly from taking place or to interfere with it, the counterdemonstration will not enjoy protection normally afforded by the right to freedom of peaceful assembly and might therefore be legitimately restricted or prohibited.<sup>285</sup> In fact, as reiterated in the Venice Guidelines, counterdemonstrations organized with the sole, main or additional purpose of physically disrupting or preventing another assembly are not permissible.<sup>286</sup>
137. If the events cannot be accommodated simultaneously (due, for example, to a lack of space), the parties should be encouraged to engage in dialogue to find a mutually satisfactory resolution. Where such a resolution cannot be found, the authorities may seek to resolve the issue by adopting a fair method of allocating the events to particular locations, so long as this does not discriminate between different groups and that alternative locations remain within

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<sup>281</sup> *Guidelines, op. cit.*, note 1, para. 4.3; *Venice Guidelines, op. cit.*, note 32, paras. 22 and 78.

<sup>282</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 122; *Venice Guidelines, op. cit.*, note 32, paras. 22 and 78.

<sup>283</sup> *Ibid.*, para. 4.4; *Venice Guidelines, op. cit.*, note 32, paras. 22 and 77; General Comment 37, para. 26.

<sup>284</sup> *Ibid.*

<sup>285</sup> *Ibid.*, para. 124.

<sup>286</sup> *Venice Guidelines, op. cit.*, note 32, para. 144.

sight and sound of the target audiences.<sup>287</sup> This may be done, for example, on a first-come-first-served basis, although abuse of such a rule (where notification for an assembly is deliberately submitted early to block access to other events) should not be allowed.<sup>288</sup> Where, for some reason, this approach leads to an unfair result, the authorities may even draw a name from a hat or flip a coin to determine which assembly should be facilitated in the location indicated in the notification.<sup>289</sup>

*Facilitating simultaneous assemblies: procedural issues in selected participating States*

138. The law in Scotland and England does not explicitly address simultaneous assemblies or counterdemonstrations, thus leaving the handling of such demonstrations to police discretion. Other participating States generally apply a first-come-first-served principle in dealing with notifications of simultaneous assemblies.
139. In the Sarajevo Canton of Bosnia and Herzegovina, for instance, interlocutors from the Sarajevo Cantonal Ministry of Internal Affairs informed ODIHR that when two assemblies wish to use the same location at the same time, they make a decision on a first-come first-served basis.<sup>290</sup> Similarly, in Finland, Section 10(1) of the Assembly Act states that if several assemblies are announced in the same location, and their simultaneous organization is not possible, priority is given to the organizer who first submitted his or her notification. The police can then negotiate with the organizer of the other assembly to hold it at a different time or in another suitable location.<sup>291</sup>
140. In Denmark, representatives from the Copenhagen Police informed ODIHR that when assemblies with opposing views take place, the police tries to ensure that they can take place within “sight and sound” of each other, and that police officers would stand between them if they were to turn violent.<sup>292</sup> However, representatives of the Copenhagen municipality informed ODIHR that, as a rule, only one assembly is allowed in a public place at any one time, the only exception being around election day when a lot of events are usually organized at the same time. If two assemblies are planned to take place in the same public area, the decision would be made on a first-come-first-served basis.<sup>293</sup>
141. ODIHR monitored simultaneous assemblies in two participating States, observing different strategies for managing such occurrences. In Turku, Finland, in order to minimize the potential risk of clashes between the “Flower Flow” protest and “Turku without Nazis” counterdemonstration, the police requested the organizers of the “Turku without Nazis” assembly to change the location of their assembly so they would not be on the same side of the river as the main assembly. This prevented any close interaction between participants of the “Flower Flow” and “Turku without Nazis” assemblies.

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<sup>287</sup> *Venice Guidelines, op. cit.*, note 32, para. 78.

<sup>288</sup> *Venice Guidelines, op. cit.*, note 32, paras. 22 and 78.

<sup>289</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 122.

<sup>290</sup> Interview with representatives of the Sarajevo Cantonal Ministry of Internal Affairs, 13 August 2021.

<sup>291</sup> Section 10(1), Finland Assembly Act.

<sup>292</sup> Interview with representatives of the Copenhagen Police, 25 September 2019.

<sup>293</sup> Interview with representatives of the Copenhagen municipality, 26 September 2019.

142. In the Sarajevo Canton of Bosnia and Herzegovina, ODIHR observed the Sarajevo Pride March and the “Protest of Pride and Honour” counterdemonstration. The Pride march was organized in a manner that prevented interaction with participants of the counterdemonstration. When counterdemonstrators, who were all peaceful, reached the intersection of the main street where the Pride assembly was marching, the police formed a cordon of more than 30 officers in riot gear together with a number of police vehicles to block the street connecting the two assemblies. According to ODIHR’s observations, this further disabled sight and sound principle between the assemblies and made it impossible for Pride participants to see or hear the counterdemonstrators.

*Conclusions and recommendations on procedural and related issues and the facilitation of simultaneous assemblies*

143. In light of OSCE commitments and international human rights standards, it is generally good practice to facilitate, as much as possible, the holding of simultaneous assemblies. This should be reflected in procedures followed during the pre-assembly notification phase. Where laws or regulations deal explicitly with the issue of simultaneous assemblies, they should not include an automatic prohibition on holding events at the same place and time. In this respect, the reported impossibility to hold two assemblies at the same time and location in Denmark places a considerable barrier on the exercise of freedom of assembly.

144. In other contexts, and in situations where simultaneous assemblies are not specifically regulated, the police and other local authorities can play an important role in facilitating or regulating simultaneous assemblies. Counterdemonstrations may give rise to public safety and security considerations. However, the authorities should generally seek to facilitate the holding of a peaceful assembly and related, peaceful counterdemonstrations within sight and sound of one another. In this regard, the efforts of the police to prevent any interaction between the Pride march and the “Protest of Pride and Honour” in the Sarajevo Canton might have limited the right of people to counter-demonstrate within sight and sound of their target audience. Similarly, the fact that the police instructed organizers of the “Turku without Nazis” assembly to either change the time of their assembly or choose another assembly route so as not to be on the same side of the river as the main assembly may have been disproportionate. This cautious approach of the authorities in Finland and Bosnia and Herzegovina may have been justified in light of potential security risks. However, people have a right to assemble as counterdemonstrators to express their disagreement with the views expressed at another public assembly.<sup>294</sup> On such occasions, the coincidence in time and venue of the two assemblies is essential for the message to be conveyed by the second assembly.<sup>295</sup> The ultimate goal for similar events in the future should be to accommodate peaceful assemblies and counterdemonstrations within sight and sound of each other in those cases where the latter are not intended to prevent the other assembly from taking place.

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<sup>294</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 123.

<sup>295</sup> *Ibid.*

### Recommendations for participating States:

- to ensure that provisions regulating assemblies and other public events taking place simultaneously and in the same or adjacent locations are based on the presumption that, whenever possible, all assemblies should be accommodated; in particular, to ensure that there are no provisions prohibiting public events from taking place at the same time and at the same place when they can be reasonably accommodated;
- in relation to assemblies and corresponding counterdemonstrations, to ensure that no automatic restrictions are in place preventing them from taking place within sight and sound of each other; any restrictions imposed on assemblies should be narrowly tailored and should only be based on legitimate grounds based on objective evidence under international human rights law;
- to ensure that, when two public events cannot be accommodated in the same location, the organizers are encouraged to engage in a dialogue with each other to find a mutually satisfactory solution;
- to ensure that, in the pre-assembly phase, organizers of assemblies are not compelled, coerced, or otherwise subjected to pressure either to accept whatever alternative(s) the authorities propose or to negotiate with the authorities about key aspects, particularly the time or place, of a planned assembly.

## DECISION-MAKING AND REVIEW

### *Decision-making and review: international standards and good practice*

145. Transparent decision-making is central to the process of facilitating assemblies and ensuring that any action taken by law enforcement is proportionate and necessary.<sup>296</sup> Authorities must ensure that any decision-making process, and the results of those processes, are publicly accessible, clear, human rights-compliant, and open to legal challenge.<sup>297</sup> In addition, the public should be informed about which body is responsible for taking decisions about the regulation of freedom of assembly, and this should be clearly stated in the law.<sup>298</sup> A clear procedure for interaction between event organizers and the regulatory authorities is also necessary.<sup>299</sup> 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.<sup>300</sup> As noted by the ECtHR, automatic and inflexible application of time limits for the notification of public assemblies and a long time lapse from the end of the notification time limit and the

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<sup>296</sup> 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”, A/HRC/31/66, para. 37; General Comment 37, para. 28.

<sup>297</sup> Joint Declaration, para. 2(d).

<sup>298</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 61; General Comment 37, para. 28.

<sup>299</sup> *Venice Guidelines, op. cit.*, note 32, para. 118.

<sup>300</sup> *Ibid.*, para. 65.

planned date of the assembly may lead to an unnecessary interference with freedom of assembly.<sup>301</sup>

146. In addition, the regulatory process should establish clear and effective avenues to seek prompt, competent, independent and impartial judicial and, where relevant, administrative review of regulatory authorities' decisions, including restrictions imposed, in an impartial and independent court.<sup>302</sup> Accordingly, regulatory authorities' decisions must be communicated early enough to allow time to access the courts or other mechanisms to challenge them. Appeals and other challenges ought to be decided in a prompt and timely manner so that it can be resolved before the assembly is planned to take place, without further detriment to the applicant's rights.<sup>303</sup> In this context, the ECtHR 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.<sup>304</sup>
147. 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.<sup>305</sup> The regulatory authorities must comply with their legal obligations and should be accountable for any failure—procedural or substantive—to do so regardless of whether this omission takes place before, during or after an assembly.<sup>306</sup>

#### *Decision-making and review in selected participating States*

148. Decision-making power with respect to assemblies is either allocated to the police or to the municipal authority, or to both authorities, each holding a particular role. The municipal authority decides on assembly-related issues in the Netherlands,<sup>307</sup> whereas in Portugal, it is the regulatory authority (in Lisbon – the municipality).<sup>308</sup> In Denmark, the Sarajevo Canton of Bosnia and Herzegovina and Finland, the police determines most matters related to assemblies. In England and Scotland both municipal authority and police have separate roles.
149. In some participating States where ODIHR monitored assemblies in this cycle, there is a requirement that the responsible authority notify the organizers about a ban or restrictions promptly after they submit their notification. Moreover, a prompt review of decisions before independent courts is also guaranteed.
150. The Public Assemblies Act of the Netherlands requires responsible Dutch authorities to inform the organizers “as soon as possible” about any conditions, restrictions, or prohibitions imposed

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<sup>301</sup> ECtHR, *Lashmankin v. Russia*, Application no. 57818/09, judgment of 7 February 2017, para. 456.

<sup>302</sup> *Venice Guidelines*, *op. cit.*, note 32, paras. 27/125, General Comment 37, paras. 29 and 72; Joint Declaration 6(b).

<sup>303</sup> *Ibid.*, para. 66; *Venice Guidelines*, *op. cit.*, note 32, paras. 125 and 126; General Comment 37, para. 69.

<sup>304</sup> *Bączkowski and Others v. Poland* (2007).

<sup>305</sup> *Guidelines*, *op. cit.*, note 1, Explanatory Notes, para. 120; *Venice Guidelines*, *op. cit.*, note 32, para. 123.

<sup>306</sup> *Ibid.*, para. 67; *Venice Guidelines*, *op. cit.*, note 32, para. 39; Joint Declaration, para. 6(a).

<sup>307</sup> Article 5, the Netherlands Public Assemblies Act.

<sup>308</sup> Article 3(2), Portugal Decree Law no. 406/74.

in response to an assembly notification.<sup>309</sup> In addition, any conditions, restrictions or prohibitions that a mayor imposes on a planned assembly must be provided in writing. When specific agreements with the organizer have been made, these are also sent to them. The Public Assemblies Act in the Netherlands, however, does not contain an exact timeframe within which the relevant mayor has to issue a decision following the notification and does not regulate how a ban, condition, restriction or instruction imposed on an assembly by a mayor could be challenged.

151. In Finland, the right to appeal assembly-related decisions of the police is provided for in the Administrative Judicial Procedure Act.<sup>310</sup> Under the latter law, organizers have the right to have any police decision deemed unlawful reviewed by the relevant regional administrative court.<sup>311</sup> The appeal must be filed in writing within 30 days of receipt of the decision.<sup>312</sup>
152. In Scotland, local authorities are required to inform organizers about any decision to restrict or prohibit a procession as well as the reasons behind the decision at least two days before the procession is supposed to take place.<sup>313</sup> Such decisions can be appealed within 14 days upon receipt of the decision to prohibit or restrict the procession.<sup>314</sup> In England there is no set timeframe under which the police must notify organizers of the placing of conditions on a public procession or assembly or if the procession is prohibited.
153. In Bosnia and Herzegovina, the law in the Sarajevo Canton requires police authorities to inform organizers about the prohibition of an assembly no later than 48 hours before the start of the assembly. This is unless the planned assembly was exceptionally notified 48 hours in advance, in which case the authorities have up to 24 hours before the start of the assembly to inform about a prohibition.<sup>315</sup> Organizers can appeal a decision to ban an assembly to the police no later than 24 hours after receiving the decision. The police is obliged to immediately forward the appeal to the Sarajevo Canton Minister of Interior who has up until 24 hours before the start of the assembly to decide on appeal and issue a formal decision. An appeal to this second instance decision can then be initiated in front of “the competent courts” in an administrative dispute.<sup>316</sup>
154. In Portugal, regulatory authorities (in Lisbon – the municipality) must deliver a decision to prohibit an assembly to the organizers in writing within 24 hours of receiving the assembly notification.<sup>317</sup> The organizers may request judicial reviews against alleged illegal interference

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<sup>309</sup> Article 5(4), the Netherlands Public Assemblies Act.

<sup>310</sup> Section 28, Finnish Assembly Act.

<sup>311</sup> Sections 7-8, Finland Administrative Judicial Procedure Act.

<sup>312</sup> Section 13, Finland Administrative Judicial Procedure Act.

<sup>313</sup> Section 63(3), Civic Government (Scotland) Act 1982.

<sup>314</sup> Section 64, Civic Government (Scotland) Act 1982.

<sup>315</sup> Article 16(2), Act on Public Assembly of the Sarajevo Canton.

<sup>316</sup> Article 17, Act on Public Assembly of the Sarajevo Canton.

<sup>317</sup> Article 3(2), Portugal Decree Law no. 406/74.

by the public administration in the exercise of freedom of peaceful assembly. The appeal has to be filed within 15 days of the decision that is alleged to constitute the interference.<sup>318</sup>

### *Conclusions and recommendations on decision-making and review*

155. The requirement that the responsible authority notify the organizers about a ban within an established time limit after they submit their notification, such as the one in place in Portugal, is a positive practice. By informing organizers about bans shortly after a notification is received and well before the start of an assembly, organizers are more likely to be able to seek remedies for undue bans or make alternative plans for their assemblies, thereby facilitating the realization of the right to freedom of peaceful assembly. Informing organizers of a ban only shortly before the start of an assembly, as in the case in the Sarajevo Canton and Scotland, may deprive organizers of an opportunity to challenge undue restrictions on assemblies in the form of bans. Failure to prescribe a set timeline in legislation for informing organizers about restrictions on an assembly or a ban, as is the case in England, equally constitutes bad practice.
156. Providing for prompt independent judicial review in legislation, as in the case in the Sarajevo Canton, Portugal, and Scotland, is a positive practice. As the *Guidelines* state, the right to an effective remedy entails the right to appeal the substance of any restrictions or prohibitions on an assembly. Appeals should take place in a prompt and timely manner so that any revisions of, and the final ruling on, the decision made by the authorities are given prior to the date for the assembly provided in the notification.<sup>319</sup>
157. The lack of legal avenues to challenge prior restrictions or conditions imposed on assemblies in some participating States is not in line with international human rights standards. The organizer of an assembly should not be compelled or coerced to accept restrictions, and they should have an effective opportunity to challenge them. Therefore, regulations should provide for processes that enable prompt and effective review of any restrictions imposed on assemblies.
158. The lack of a timeframe within which notified authorities have to respond to a notification so that, for instance, they would have time to articulate objections or, as an alternative, would choose to initiate negotiations about the route of an assembly with its organizers, such as is the case in the Netherlands for example, is problematic. The lack of clear formulation of timeframe provides too much discretion to the authorities, while leaving the organizers without any clear deadlines within which to expect the authorities to reply.

### Recommendations for participating States:

- to ensure that the decision-making with regard to assemblies is conducted in a transparent manner;
- to ensure timely notification of any restriction to the assembly organizers with detailed reasoning

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<sup>318</sup> Article 14, Portugal Decree Law no. 406/74.

<sup>319</sup> *Guidelines, op. cit.*, note 1, para. 137.

behind each restriction;

- to ensure that time limits set for each stage in the process enable organizers to respond to and/or challenge proposed restrictions;
- to ensure recourse to a prompt and effective remedy through administrative and judicial review, including an expedited appeal procedure so that assembly organizers are not compelled to accept, and are able to challenge, the substance of any restriction before the date of the assembly.

## THE ROLE OF THE ORGANIZERS

159. As previously noted, 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. In fact, assemblies should be facilitated by the law enforcement whether or not they have a formal or named organizer.<sup>320</sup>

### *The role of the organizers: international standards and good practice*

160. 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, if they so wish, to 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. Discussions might also focus upon contingency plans for specific locations or landmarks (e.g., monuments, transport facilities or hazardous sites), or upon particular concerns of the police or the organizers.<sup>321</sup> (see Section III for assembly policing). The participation of other agencies, such as fire and ambulance services, could also contribute to a discussion about possible solutions to address problems and risks presented by an assembly and planned measures should such problems or risks materialize. Any such discussion should be voluntary and should never be used as a way to compel an organizer to agree to restrictive conditions.<sup>322</sup> If the organizers are children, the authorities should take that into consideration and develop appropriate communication strategies. In addition, any 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.<sup>323</sup>

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<sup>320</sup> *Venice Guidelines, op. cit.*, note 32, para. 170.

<sup>321</sup> *Guidelines, op. cit.*, note 1, para. 5.1; *Venice Guidelines, op. cit.*, note 32, para. 167

<sup>322</sup> *Guidelines, op. cit.*, note 1, para. 103; General Comment 37, para. 75; *Venice Guidelines, op. cit.*, note 32, para. 167.

<sup>323</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 189.



161. 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.<sup>324</sup> 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.<sup>325</sup> Similarly, the responsibility for routine clean-up after a public assembly should lie with the municipal authorities.<sup>326</sup> Organizers should not be held responsible for the provision of such services, nor should they be required to contribute to the cost of their provision.<sup>327</sup>
162. Organizers of non-commercial public assemblies should not be required to obtain public-liability insurance for their event,<sup>328</sup> as such requirement would have a disproportionate and inhibiting effect on the enjoyment of the freedom of peaceful assembly.<sup>329</sup> 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, as recognized by the UN HRC, the use of stewards appointed by the organizers of an assembly should be encouraged but never required.<sup>330</sup> Such a recommendation should in no way detract from the positive obligation of the state to provide adequately resourced policing arrangements and from the overall responsibility of law-enforcement agencies for maintaining public order.<sup>331</sup> Stewards should therefore not be regarded as a substitute for an adequate presence of law enforcement personnel.<sup>332</sup>
163. While organizers and stewards have a responsibility to make reasonable efforts to comply with legal requirements and to ensure that their assemblies are peaceful, states retain primary responsibility for the protection of public safety and security, and organizers and stewards 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.<sup>333</sup> This principle also applies in those cases when an 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

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<sup>324</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/23/39, *op. cit.*, note 70, para. 57; General Comment 37, para. 70

<sup>325</sup> *Guidelines, op. cit.*, note 1, para. 5.2. Also see “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/23/39, *op. cit.*, note 70, para. 57; *Venice Guidelines, op. cit.*, note 32, paras. 89 and 155; General Comment 37, para. 64.

<sup>326</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 32. Also see “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/23/39, *op. cit.*, note 70, para. 57.

<sup>327</sup> *Venice Guidelines, op. cit.*, note 32, para. 89.

<sup>328</sup> *Guidelines, op. cit.*, note 1, para. 5.2; *Venice Guidelines, op. cit.*, note 32, para. 155

<sup>329</sup> *Ibid.*, Explanatory Notes, para. 198; *Venice Guidelines, op. cit.*, note 32, para. 155.

<sup>330</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 29, p. 9; General Comment 37, para. 65; *Venice Guidelines, op. cit.*, note 32, para. 157.

<sup>331</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 195; *Venice Guidelines, op. cit.*, note 32, paras. 156 and 157.

<sup>332</sup> *Venice Guidelines, op. cit.*, note 32, para. 156.

<sup>333</sup> 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 lawful directions of law-enforcement officials. See *Guidelines, op. cit.*, note 1, Explanatory Notes, paras. 112 and 197; *Venice Guidelines, op. cit.*, note 32, para. 37; 138; 224.

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.<sup>334</sup>

164. The principle of the individual liability of participants should be upheld.<sup>335</sup> 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*) or that could not have been reasonably foreseen.<sup>336</sup> Holding an organizer responsible for the unlawful behavior of others would also weaken trust and co-operation between assembly organizers, participants and the authorities, and discourage potential assembly organizers from exercising their rights.<sup>337</sup> Similarly, individual participants who have not personally committed any unlawful act during an assembly should not be held liable even if others become violent.<sup>338</sup> In that regard, the ECtHR has stressed that organizers could not be held responsible for the acts of others if they did not participate either explicitly (actively and directly) or implicitly (for instance, by failing to intervene to stop the unacceptable behavior) in such acts.<sup>339</sup>
165. 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 principles of proportionality and non-discrimination.<sup>340</sup> Disproportionate sanctions and penalties imposed on organizers and participants after a demonstration, namely in the form of disproportionate fines or imprisonment, breaches the right to freedom of assembly and is likely to deter individuals and organizations from exercising this freedom in the future.<sup>341</sup> Moreover, anyone charged with an offence related to an assembly must enjoy fair trial rights.<sup>342</sup>

#### *The role of the organizers in selected participating States*

166. In some of the participating States where ODIHR monitored assemblies, specific legal provisions or rules exist describing the duties and responsibilities of organizers in relation to the holding of an assembly and ensuring public order.

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<sup>334</sup> *Guidelines, op. cit., note 1, Explanatory Notes*, para. 198; *Venice Guidelines, op. cit., note 32, para. 37; 224.*

<sup>335</sup> *Venice Guidelines, op. cit., note 32, para. 224; Joint Declaration*, para. 2(e).

<sup>336</sup> *Guidelines, op. cit., note 1, Explanatory Notes*, para. 112.

<sup>337</sup> “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”, A/HRC/31/66, *op. cit.*, note 4, para. 26.

<sup>338</sup> ECtHR, *Ezelin v. France* (1991), para. 53; *Guidelines, op. cit., note 1, Explanatory Notes*, para. 111.

<sup>339</sup> ECtHR, *Kemal Cetin v Turkey* (2020), para 47; also see *Venice Guidelines, op. cit., note 32, para. 224* and General Comment 37, para. 65.

<sup>340</sup> *Guidelines, op. cit., note 1, Explanatory Notes*, para. 109. Also see ECtHR, *Ezelin v. France* (1991); *Venice Guidelines, op. cit., note 32, para. 222; General Comment 37, para. 67.*

<sup>341</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/23/39, *op. cit., note 70, para. 77; Venice Guidelines, op. cit., note 32, para. 222*

<sup>342</sup> *Guidelines, op. cit., note 1, Explanatory Notes*, para. 110; *Venice Guidelines, op. cit., note 32, paras. 38/231.*

167. Assembly organizers in the Sarajevo Canton of Bosnia and Herzegovina have multiple obligations outlined under specific legal provisions. They need to ensure order and peace during peaceful assemblies, take all necessary measures to ensure that participants are not armed or causing damage, ensure there is a sufficient number of stewards to maintain peace and order, take adequate measures in relation to medical and fire protection, and enable the undisturbed passage of police vehicles, ambulances, firefighters' vehicles, and public transport vehicles.<sup>343</sup> Article 19(4) of the Law on Public Gatherings of the Sarajevo Canton also states that organizers can “entrust the maintaining of peace and order” to private security companies.<sup>344</sup> ODIHR was informed that this expensive endeavor was in practice imposed on organizers for assemblies which are considered by authorities as “high risk”, putting a great financial burden on organizers.<sup>345</sup> Assembly organizers are also under a duty to designate an assembly leader to supervise the assembly and direct the work of stewards. The assembly organizer also needs to take all necessary measures to ensure peace and order and to halt the peaceful assembly in case of the emergence of any real threat to security and safety of the persons and property (unless these circumstances cease to exist during the assembly).<sup>346</sup> A failure to fulfil these duties can lead to a fine ranging from BAM 3,000 to BAM 9,000 (EUR 1,500 to EUR 4,500).<sup>347</sup> Organizers in the Sarajevo Canton are also held responsible for any damage caused by assembly participants.<sup>348</sup> In addition, the organizer of an assembly can face additional fees for failure to inform participants about the end of assembly and for not requesting them to disperse.<sup>349</sup>
168. In England, the London Metropolitan Police Guidance to Organisers of Public Events requires organizers to maintain public safety, including avoiding damage to property, fear or alarm to the public, or disruption to the local community. It states that “ensuring public safety at a public event is not the first responsibility of the police. Police are responsible for maintaining the peace, preventing breaches of the law, and taking action against law breakers”.<sup>350</sup>
169. Assembly organizers in Finland must take care of maintaining order and security, and must obey the law during the assembly.<sup>351</sup> Organizers must also interrupt an assembly or order to disperse it if its continuation “would cause immediate danger to the safety of people, property or the environment”.<sup>352</sup> When assembly equipment such as posters, loudspeakers and temporary constructions are used, organizers also need to ensure they do not cause danger or unreasonable harm to participants, bystanders or the environment, and need to make sure that assembly

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<sup>343</sup> Article 19, Act on Public Assembly of the Sarajevo Canton.

<sup>344</sup> Article 19, Act on Public Assembly of the Sarajevo Canton.

<sup>345</sup> Interview with representatives of the OSCE Mission to Bosnia and Herzegovina, 28 October 2022.

<sup>346</sup> Article 20, Act on Public Assembly of the Sarajevo Canton.

<sup>347</sup> Article 35, Act on Public Assembly of the Sarajevo Canton.

<sup>348</sup> Article 6, Act on Public Assembly of the Sarajevo Canton.

<sup>349</sup> Article 23, Act on Public Assembly of the Sarajevo Canton.

<sup>350</sup> “Guidance To Organisers Of Public Events”, London Metropolitan Police, <<https://www.met.police.uk/SysSiteAssets/media/downloads/central/advice/events-and-processions/met/guidance-to-organisers-of-public-events.pdf>>.

<sup>351</sup> Section 17, Finnish Assembly Act.

<sup>352</sup> Section 21(1), Finnish Assembly Act.

equipment and constructions are removed without undue delay after the assembly, unless otherwise agreed with the owner or guardian of the assembly location.<sup>353</sup>

170. In Glasgow (Scotland), the Policy and Code of Conduct on Public Processions of the Glasgow City Council states that organizers of a procession must cooperate with the Council and the Police from time of submission of the notification form until the procession disperses, identify themselves to the police commander at the commencement of the procession, and ensure that all participants have been informed of any conditions imposed on the procession, such as change to the timing and route.<sup>354</sup> In addition, organizers are under various duties regarding the procession route, such as ensuring that the procession follows the main road rather than those in residential developments and that routes are free of obstructions.<sup>355</sup> The Policy and Code of Conduct also requires organizers to ensure that anyone under the influence of alcohol or drugs is not allowed to participate, and to ensure a ratio of one steward or marshal to every ten participants, and that all stewards have been trained, briefed, cooperate with the police, carry proof of status, wear suitable clothing, conduct themselves in a proper manner, ensure that participants comply with directions, and are aware of the stewarding plan for the procession. Organizers must also accept that they are specifically responsible for the behavior of all participants, assist the police in managing the procession, ensure compliance with the Policy and Code of Conduct and police instructions, and ensure that the behavior of participants cannot be perceived as deliberately aggressive.<sup>356</sup>
171. In the Netherlands, according to the website of the Amsterdam municipality, organizers are responsible for the “peaceful, orderly and safe operation” of the assembly and must do “everything possible to achieve this”.<sup>357</sup>
172. In some participating States where ODIHR monitored assemblies, organizers are also required to pay for various event-related costs such as clean-up. In Glasgow, under the Policy and Code of Conduct on Public Processions of the Glasgow City Council, while not charged for the organization of the procession itself, organizers are liable for other event-related costs such as safety barriers, the cost of putting in place traffic management arrangements, toilet provision, bins, and clean-up services.<sup>358</sup> However, in practice, none of the organizers that ODIHR met during its monitoring visit to Glasgow in November 2021 were actually requested to provide security arrangements or pay for the traffic management arrangements and clean-up services.
173. In Denmark, the Copenhagen municipality informed ODIHR that organizers do not need to pay

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<sup>353</sup> Articles 11 and 24, Finnish Assembly Act.

<sup>354</sup> “Policy and Code of Conduct on Public Processions”, Glasgow City Council, October 2014, p.15 <<https://www.glasgow.gov.uk/CHttpHandler.ashx?id=2808&p=0>>.

<sup>355</sup> *Ibid*, p. 17.

<sup>356</sup> *Ibid*, pp. 20-21.

<sup>357</sup> See Amsterdam municipality website: <https://www.amsterdam.nl/veelgevraagd/?caseid=%7BAE247892-D644-434E-B76B-BB83E3B6A495%7D>.

<sup>358</sup> “Policy and Code of Conduct on Public Processions”, Glasgow City Council, October 2014, p.21 <<https://www.glasgow.gov.uk/CHttpHandler.ashx?id=2808&p=0>>.

any fees or ensure clean-up after public assemblies.<sup>359</sup> However, the event that ODIHR observed in Denmark was held on a privately owned property, and the organizers were therefore requested to pay some fees to the land owner for the clean-up.<sup>360</sup> In England, the London Metropolitan Police Service indicated that they did not ask organizers of the “No to NATO – No to Trump” assembly to pay for anything, including cleaning.<sup>361</sup>

174. In Glasgow in November 2021, organizers of one assembly who were children noted that they were asked to provide one steward (who should be over 18 years old) per 10 people for an event which gathered approximately 8,000 participants. The organizers informed the authorities that they would not be able to do that and the authorities “did not create any problem out of that.”<sup>362</sup> In Sarajevo in August 2021, the police required organizers to ensure a minimum of 30 stewards during the assembly and to get a written confirmation from fire-fighters and ambulances regarding their presence during the assembly. The organizers noted that unlike during the first Pride parade, which took place in 2019, they were not requested to pay for concrete blocks and other security arrangements, including those provided by private security companies.<sup>363</sup>
175. Several participating States monitored within this cycle specify penalties for those who fail to comply with the competent authority’s prohibition of an assembly. In the Netherlands, those who hold or participate in an assembly for which a prohibition has been issued may be punished with up to two months’ imprisonment or a fine ranging from EUR 410 to EUR 4,100.<sup>364</sup> In Finland, anyone who, intentionally or through gross negligence, organizes an assembly that has been prohibited by the police can be fined for “assembly violation”, unless “a more severe punishment is provided for elsewhere in the law”.<sup>365</sup> In England and Scotland, holding a public procession for which a prohibition was issued is an offence punishable by up to three months’ imprisonment or a fine not exceeding £2,500 (EUR 2,800) or both.<sup>366</sup> In the Sarajevo Canton, an organizer who holds an assembly contrary to a decision to ban the assembly or who fails to inform the public about a ban on an assembly can be sanctioned with a fine ranging from BAM 3,000 to BAM 9,000 (EUR 1,500 to EUR 4,500).<sup>367</sup>
176. The legislation of the Sarajevo Canton contains provisions that entail sanctions for association with certain organizations. Assemblies cannot be organized by political organizations or associations of citizens whose work is prohibited, and organizing an assembly on behalf of such organizations or associations can lead to a fine ranging from BAM 1,000 to BAM 1,500 (EUR 500 to EUR 750).<sup>368</sup>

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<sup>359</sup> Interview with representatives of the Copenhagen municipality, 26 September 2019.

<sup>360</sup> Interview with organizers, 26 September 2019; Written exchange between the Danish authorities and ODIHR, 13 June 2023.

<sup>361</sup> Interview with representatives of the Metropolitan Police Service, 2 December 2019.

<sup>362</sup> Interview with assembly organizers, 12 August 2021.

<sup>363</sup> Interview with assembly organizers, 12 August 2021.

<sup>364</sup> Article 11(1), the Netherlands Public Assemblies Act.

<sup>365</sup> Section 26, Finnish Assembly Act.

<sup>366</sup> Section 13, Public Order Act 1986; Section 65, Civic Government (Scotland) Act 1982.

<sup>367</sup> Article 35, Act on Public Assembly of the Sarajevo Canton.

<sup>368</sup> Articles 5(3) and 35(4), Act on Public Assembly of the Sarajevo Canton.

177. Obstructing traffic may also result in sanctions in the United Kingdom. In England, any individual who, without lawful authority or excuse, in any way “willfully obstructs the free passage along the highway” is guilty of an offence and is liable for a fine.<sup>369</sup> In Scotland, any person who, without lawful authority or reasonable excuse, “places or deposits anything in a road so as to obstruct the passage of, or to endanger, road users” is guilty of an offence and liable for a fine of £500 (EUR 580).<sup>370</sup>

*Conclusions and recommendations on the duties and responsibilities of organizers*

178. As highlighted by the UN Special Rapporteur, assembly organizers cannot be held responsible for ensuring the maintenance of public order and providing adequate safety and security. These issues are the primary responsibility of public authorities. The duty of the state to protect the safety and security of all groups and individuals in their exercise of freedom of peaceful assembly should be clearly defined in law and reinforced by the explicit commitment of the relevant institutions and authorities to fulfil this duty. Therefore, legislation placing the duty on the organizer to ensure peace and order at an assembly, such as in the Sarajevo Canton, Finland, and the Netherlands, creates an undue burden on organizers and may have unintended legal consequences by placing the responsibility for the wrongdoing of participants on organizers even if the latter have no control over such actions. In that context, the Policy and Code of Conduct on Public Processions of the Glasgow City Council which states that organizers are specifically responsible for the behavior of all participants is bad practice.

179. The *Guidelines* define an organizer or organizers as the person or persons “with primary responsibility for [an] assembly. It is possible to define the organizer as the person in whose name prior notification is submitted.”<sup>371</sup> However, not every assembly has an organizer. In the case of spontaneous assemblies, for example, it is also possible for an assembly not to have an identifiable organizer.<sup>372</sup> It is unclear how the provisions on duties and responsibilities of organizers would apply in these cases in the participating States monitored by ODIHR.

180. It is concerning that, in some of the participating States where ODIHR monitored assemblies, such as the Netherlands, the Sarajevo Canton in Bosnia and Herzegovina, and Portugal, the organizers of unannounced assemblies can be subjected to harsh sanctions regardless of the peacefulness of the assembly or the lack of a disturbance of public order (see paras. 66-67). This practice does not take into account the individual circumstances of each assembly or the presumption in favor of holding assemblies and can be used to unduly limit the exercise of the right to freedom of peaceful assembly. As stated by the UN Special Rapporteur, organizers should not automatically face fines or imprisonment for failing to notify authorities.<sup>373</sup> No

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<sup>369</sup> Section 137, UK Highways Act 1980.

<sup>370</sup> Section 129(2), Roads (Scotland) Act 1984.

<sup>371</sup> *Guidelines*, *op. cit.*, note 1, para. 185.

<sup>372</sup> *Ibid.*, para. 127.

<sup>373</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/23/39, *op. cit.*, note 70, para. 51.

person should be held criminally or administratively liable for the mere act of organizing or participating in a peaceful protest.<sup>374</sup> Subjecting organizers and participants to sanctions may have a considerable dissuasive effect on individuals who would like to exercise their fundamental freedoms.

181. Organizers of assemblies may be held liable for their failure to act in accordance with the law. However, any sanctions or fines imposed after an assembly should strictly adhere to the principle of proportionality. The risk of a heavy and disproportionate fine or other penalty may, in itself, inhibit the enjoyment of freedom of peaceful assembly. For example, the possible fines imposed in England and Scotland or the Sarajevo Canton of Bosnia and Herzegovina on organizers who fail to comply with their assigned duties appear to be excessive and can have a chilling effect on organizers. In the absence of criminal activity punishable by other laws, a violation of the notification/authorization requirement should be addressed by fines proportional to the offence committed.<sup>375</sup> Importantly, the amount of fines imposed on assembly organizers should also be in line with the proportionality principle.
  
182. Especially for large or complex assemblies, it is a good practice to ensure adequate stewarding of public events, as well as good communication between organizers, stewards, law-enforcement officials and other relevant state bodies. Assembly stewards can indeed play an important role in facilitating an assembly and ensuring compliance with any lawfully imposed restrictions.<sup>376</sup> However, neither organizers nor stewards are law-enforcement officials and should not be treated as such by laws applicable to assemblies. Therefore, imposing duties and powers on organizers or stewards such as checking participants for weapons and conveying them to state authorities in case any are found – such as is the case in Portugal and the Sarajevo Canton<sup>377</sup> – are not in line with human rights standards. Moreover, while the voluntary use of stewards is widespread, the law should not require their use, nor should it specify the number of stewards to be deployed. It is also important to highlight that any requirement to provide stewarding during assemblies in no way detracts from the positive obligation of the state to protect the safety and security of assembly participants and other individuals present.<sup>378</sup> Therefore, the obligations for organizers to ensure a sufficient number of stewards during assemblies in the Sarajevo Canton of Bosnia and Herzegovina and to ensure a ratio of one steward to every ten assembly participants in Glasgow are not in line with human rights standards.<sup>379</sup>

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<sup>374</sup> “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”, A/HRC/31/66, *op. cit.*, note 4, para. 26.

<sup>375</sup> “Joint Opinion on the Public Assembly Act of the Republic of Serbia”, OSCE/ODIHR and Venice Commission, 18 October 2010, para. 42.

<sup>376</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 195.

<sup>377</sup> Article 8, Portugal Decree Law no. 406/74; Article 21, Act on Public Assembly of the Sarajevo Canton.

<sup>378</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 195.

<sup>379</sup> Article 19, Act on Public Assembly of the Sarajevo Canton.

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Recommendations for participating States:

- to ensure that the official duty to maintain public order during assemblies, including by protecting participants, is clearly defined in the law and is understood by law-enforcement officials and policymakers at all levels as a central responsibility of the state;
- to ensure that assembly organizers are not held responsible for the maintenance of public order and that their role is limited to making reasonable efforts to meet legal requirements for assemblies, including ensuring the peacefulness of their assemblies and that lawful instructions by law-enforcement officials are obeyed;
- to ensure that assembly organizers and participants are not held liable for the unlawful conduct of other people;
- to ensure that the role of assembly stewards, in law and in practice, is clearly defined as the role of facilitators who assist organizers in managing events on a voluntary basis and that they are not tasked with government functions that directly pertain to the maintenance of public order during assemblies;
- to ensure that insurance requirements, fees to cover the costs of clean-up after assemblies or costs of other public services (such as policing and medical services) are not imposed on the organizers of assemblies;
- to ensure that any sanctions applied against organizers who fail to comply with legal requirements for assemblies are proportionate. Where there is no genuine criminal activity punishable by other laws, a violation of these requirements should be addressed by fines of a proportionate amount, allowing for the imposition of minor sanctions where the transgression is of a minor nature;
- to ensure that laws related to public assemblies do not contain vague and broadly defined offences or misdemeanors that confer excessive discretion upon law-enforcement officials or that enable the imposition of excessive and disproportionate sanctions on protesters.



## SECTION III: POLICING ASSEMBLIES

### ENGAGEMENT AND COMMUNICATION BY THE POLICE WITH ASSEMBLY ORGANIZERS AND PARTICIPANTS

#### *Engagement and communication by the police with assembly organizers and participants: international standards and good practice*

183. Generally, the overall policing approach to assemblies 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.<sup>380</sup> Engagement and communication by the police with assembly organizers and participants can help facilitate the enjoyment of the freedom of peaceful assembly and the work of the police, as well as reduce the risk of violence during assemblies.
184. If both parties agree to it, 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.<sup>381</sup> Well-informed organizers can play an important role in relaying information to participants about potential risks, security measures and planned or ongoing police action.
185. 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.<sup>382</sup> Prior warnings are necessary before force is used, but the “no surprises” approach should extend to all aspects of policing of assemblies, including in particular the planning stage. Engagement between the police and assembly organizers are recognized good practice. Informing assembly organizers of planned police action and, to the extent possible, coordinating preparations with them during the pre-assembly phase can help ensure the effective policing of public assemblies.<sup>383</sup> Assembly participants who are aware of expected police action may adapt and respond to it and thereby avoid confrontation or potential risks. To promote good communication, there should be a point of contact within the law-enforcement agency with whom protesters can communicate before or during an assembly. This point of contact should not conduct other policing activities that could potentially impact the rights of the organizers or

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<sup>380</sup> “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”, A/HRC/31/66, *op. cit.*, note 4, para. 38; Joint Declaration, para. 4(d); *Venice Guidelines, op. cit.*, note 32, para. 169.

<sup>381</sup> Geneva Academy of International Humanitarian Law and Human Rights, “Facilitating Peaceful Protests”, January 2014, <[http://www.geneva-academy.ch/docs/publications/briefing5\\_web\\_singles8.pdf](http://www.geneva-academy.ch/docs/publications/briefing5_web_singles8.pdf)>, p. 16; General Comment 37, para. 75; *Venice Guidelines, op. cit.*, note 32, para. 88.

<sup>382</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 150; *Venice Guidelines, op. cit.*, note 32, para. 169.

<sup>383</sup> *Venice Guidelines, op. cit.*, note 32, para. 168.

protesters and fuel mistrust, such as intelligence gathering.<sup>384</sup> It is also a good practice to have a similar point of contact among the organizers, especially during an assembly. Direct contacts and dialogue should be the preferred way to address differences in views or disputes both before and during an assembly. Such dialogue might help to avoid the escalation of a conflict, the need to impose restrictions or recourse to the use of force.<sup>385</sup> Similarly, if a stand-off or dispute arises during the course of an assembly, negotiations or mediated dialogue should be the preferred means of trying to reach an acceptable resolution. Such interventions can play a significant role in averting the occurrence of violence.<sup>386</sup> To be consistent with the policy of “no surprises”, it is a good practice for law-enforcement agencies to communicate with the general public by providing information about assemblies that are going to take place, the rights of demonstrators and counterdemonstrators and the overall policing approach, also including traffic and safety issues, among others.<sup>387</sup>

186. The UN Special Rapporteur also considers pre-event planning, including risk assessment, by law-enforcement officials, together with organizers of peaceful assemblies and, if possible, local authorities, to be a good practice that may contribute to the success of an assembly. However, the participation of organizers in such planning should never be made compulsory.<sup>388</sup> Communication and dialogue with assembly organizers and participants must be voluntary and unwillingness or refusal to engage in such dialogue should not have negative repercussions for the organizers or their assembly.<sup>389</sup> In addition, it must not formally or informally impose on organizers an obligation to negotiate the time, place or manner of an assembly with the authorities. Such requirements would be tantamount to restricting a planned assembly.<sup>390</sup> Fundamentally, law-enforcement authorities should always be forthcoming and should genuinely seek to co-operate with organizers, bearing in mind their duty to facilitate and protect peaceful assemblies.<sup>391</sup>
187. A post-event debriefing of law-enforcement officials (particularly after non-routine events) should be standard practice. Such a debriefing might usefully address a number of specific issues, including human rights issues, health and safety considerations, media safety, community impact considerations, operational planning and risk assessment, communications, command issues and decision-making, tactics, resources and equipment and future training needs.<sup>392</sup> It is good practice to invite assembly organizers to participate in these debriefing sessions held by law-enforcement officials after an assembly.<sup>393</sup>

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<sup>384</sup> *Guidelines, op. cit.*, note 1, para. 149; *Venice Guidelines, op. cit.*, note 32, para. 168.

<sup>385</sup> *Guidelines, op. cit.*, note 1, para. 5.4; *Venice Guidelines, op. cit.*, note 32, para. 176.

<sup>386</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 157; *Venice Guidelines, op. cit.*, note 32, para. 176.

<sup>387</sup> Amnesty International Dutch Section, “Policing Assemblies”, Short Paper Series No. 1, pp. 15–16; *Venice Guidelines, op. cit.*, note 32, para. 168.

<sup>388</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/23/39, *op. cit.*, note 70, para. 68; General Comment 37, para. 75.

<sup>389</sup> *Venice Guidelines, op. cit.*, note 32, para. 124.

<sup>390</sup> *Ibid.*, para. 56; *Venice Guidelines, op. cit.*, note 32, para. 124.

<sup>391</sup> *Ibid.*, para. 71; *Venice Guidelines, op. cit.*, note 32, para. 124.

<sup>392</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 170; *Venice Guidelines, op. cit.*, note 32, para. 162.

<sup>393</sup> *Venice Guidelines, op. cit.*, note 32, para. 162.

188. Authorities should maintain dialogue with organizers and others affected by public events where challenges occurred so as to prevent problems that arose in one event from having a negative impact on future assemblies and in order to prevent the loss of trust and confidence in the work of the law-enforcement authorities. A proper lessons-learned process with proposed improvement measures for the future, as well as dialogue with organizers and assembly participants affected by police measures, should be put in place. The prosecution of individuals responsible for unlawful acts (e.g., police officers who have resorted to excessive use of force) is only one of the necessary responses to an event that has gone wrong<sup>394</sup> (for more information, see the section on liability and accountability of law-enforcement personnel).
189. Effective communication depends on a relationship of trust. 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 them, which will in turn improve the effectiveness of the police. The legitimacy of the police is crucial for building the public's 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,<sup>395</sup> and states should promote diversity in law enforcement so that communities see themselves represented in the police force.<sup>396</sup>
190. Law-enforcement officials must be trained in soft skills such as effective communication, negotiation and mediation, including with children, allowing them to avoid the escalation of violence and minimize conflict.<sup>397</sup> In fact, overly rigid enforcement of regulations and orders and zero-tolerance approaches by law enforcement officials are likely to heighten tensions and might contribute to public disorder and violence.<sup>398</sup> It should also not be forgotten that communication is not limited to verbal communication. Therefore, law-enforcement officials must be aware of, and trained to realize the possible impact of, any indirect communication that may be perceived by organizers and participants as intimidation, including, for example, the presence or use of certain equipment and the body language of officials.<sup>399</sup>
191. Law-enforcement officials also communicate with their appearance. In line with the UN Basic Principles on the Use of Force and Firearms, police officers should be equipped with self-defense equipment in order to decrease the need to use weapons of any kind.<sup>400</sup> With better

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<sup>394</sup> Geneva Academy, "Facilitating Peaceful Protests", *op. cit.*, note 374.

<sup>395</sup> "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", A/HRC/31/66, *op. cit.*, note 4, para. 39.

<sup>396</sup> *Ibid.*, para. 49(a).

<sup>397</sup> See Principle 20 of the Basic Principles; *Guidelines*, *op. cit.*, note 1, para. 147; Joint Declaration, para. 4(d).

<sup>398</sup> Joint Declaration, para. 4(d).

<sup>399</sup> "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", A/HRC/31/66, *op. cit.*, note 4, para. 38.

<sup>400</sup> Principle 2 of the UN Basic Principles on the Use of Force and Firearms; *Venice Guidelines*, *op. cit.*, note 32, para. 184.

protection, individual law-enforcement officials should have less need to resort to use of force as a means of self-defense, and this can help to avoid a vicious circle of escalation.<sup>401</sup> However, a careful balance has to be achieved between the possible risks of insufficient protection and an unnecessarily confrontational appearance, the latter of which can be threatening and intimidating and can therefore have a strong influence on the way an assembly develops.

*Engagement and communication by the police with assembly organizers and participants in selected participating States*

*i. Pre-event communication*

192. In most of the locations where ODIHR monitored assemblies, police representatives communicated or attempted to communicate with assembly organizers prior to the events. In Scotland, months ahead of COP26, Police Scotland established an Independent Advisory Group (IAG) which included members of civil society, Glasgow City Council, national human rights institutions and other oversight bodies, as well as academics.<sup>402</sup> The main role of the IAG was to: (i) advise on planning and implementation of Police Scotland's operation for COP26 in line with human rights principles and the values of Police Scotland; (ii) develop voluntary and respectful relationships with communities and groups attending events; (iii) develop the most effective approach to strategic communications, including tone and style, in order that peaceful assembly and protest activity feel welcome and that policing decisions are explained to the greatest extent possible. The IAG met throughout the COP26 to discuss the policing of assemblies, including on several occasions when force was used towards the protesters.
193. Ahead of COP26, Police Scotland created an accessible website page with information on the events, security restrictions, explanation on expected policing tactics and equipment.<sup>403</sup> The information included explanation about how to organize a protest and contact details and explanation about police liaison officers (PLOs). The website was created in accessible formats for persons with various types of disabilities, providing also information in an easy-to-read format. While the overall initiative can be assessed as a very positive and welcome practice, some organizers expressed concern over the way the Police Scotland engaged with media and the public about protest activity, especially potentially disruptive protests, prior the events. It involved displays of trainings where police officers in protective clothing or riot gear removing and arresting violent protesters from various locations and public announcements that certain disruptive behavior would not be tolerated. Some organizers considered such communication as a negative and damaging portrayal of protesters who are expected to engage in unlawful and violent behavior, rather than exercise their right to freedom of peaceful assembly. It also prepared the public for violent protesters and created an expectation of heavy-handed policing.<sup>404</sup>

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<sup>401</sup> Amnesty International Dutch Section, "Policing Assemblies", *op. cit.*, note 380, p. 17.

<sup>402</sup> Terms of reference of the Op Urram (COP26) Independent Advisory Group.

<sup>403</sup> See Protests during COP26 - Police Scotland.

<sup>404</sup> Interview with organizers, 22 October 2021.

194. In addition, ODIHR was informed that police liaison officers (PLOs) in Scotland engage with assembly organizers prior to the events by sharing information and asking them for updated information on their plans. Representatives of PLOs from Police Scotland informed ODIHR that engaging directly with organizers rather than relying on what they can find on open source social media allowed them to more accurately provide the right level and right balance of policing.<sup>405</sup> Most assembly organizers referred positively to police engagement prior to the assemblies, noting that police officers were available and forthcoming; however some, especially children organizers, found it at times intimidating.<sup>406</sup> According to one of the organizers, one of the venues which was supposed to host an event withdrew because of the many questions that the Police Scotland was asking.<sup>407</sup>
195. In Finland, the organizers of the counterdemonstration “Turku against Nazis” notified the police about their assembly by e-mail and then received a call to set up a meeting with police representatives.<sup>408</sup> During the meeting, the organizers had a chance to meet with a specifically designated police negotiator, and the police provided recommendations to the organizers such as to have one security officer per 100 participants and to organize a training for security officers.<sup>409</sup>
196. In Portugal, representatives of the Public Security Police informed ODIHR that following receipt of an assembly notification, the usual procedure is to contact organizers to get more information on the assembly location as well as any other relevant information allowing the police to assess how to ensure freedom of movement during the planned assembly. The police added that, if needed, it can ask the organizers for an in-person meeting.<sup>410</sup> For instance, when the police believes that the proposed location or time of an assembly is problematic, it contacts the organizer to find a compromise.<sup>411</sup> In the context of the World Wide Rally for Freedom that took place on 18 September 2021, the notification was submitted to the police on 1 September, and the police held a meeting with the organizers on the morning of 17 September. The organizers were also in contact with a police analyst from the beginning of September.<sup>412</sup>
197. In Denmark, pre-event communication and cooperation with the police was assessed as extremely positive by the assembly organizers.<sup>413</sup> Organizers highlighted that they never experienced any issues with the police and that the police was always very helpful.<sup>414</sup> Frustration was expressed, however, because of the bureaucratic process to arrange required

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<sup>405</sup> Interview with representatives of the Police Liaison Officers of Police Scotland, 22 October 2021.

<sup>406</sup> Interview with organizers, 21 October 2021.

<sup>407</sup> Interview with organizers, 22 October 2021.

<sup>408</sup> Meeting with assembly organizers, 21 August 2022.

<sup>409</sup> *Ibid.*

<sup>410</sup> Interview with representatives of the Public Security Police, 17 September 2021.

<sup>411</sup> *Ibid.*

<sup>412</sup> *Ibid.*

<sup>413</sup> Meetings with the assembly organizers, 26-27 September 2019.

<sup>414</sup> *Ibid.*

permits with the municipality, especially for assemblies taking place on privately owned property.<sup>415</sup>

*ii. Interactions during an assembly*

198. During assemblies, communication between participants and police authorities could be observed in a number of locations. ODIHR monitors observed law-enforcement agents engaging directly with organizers during assemblies in order to facilitate events or accommodate a march.
199. In some of the participating States where ODIHR observed assemblies, specialized police units exist to facilitate communication between organizers, assembly participants and the police. In some states, such as England, Scotland, and Finland, police liaison officers (or police negotiators), identifiable through special clothing, support the facilitation of assemblies.
200. In Glasgow, ODIHR observed 18 assemblies held in the context of COP26 that ranged from several hundred to tens of thousands of participants. At the peak of the COP26 events, nearly 10,000 police officers were involved in their facilitation.<sup>416</sup> In addition, a total of 99 trained PLOs dressed in blue vests were deployed to help facilitate the assemblies and ensure “open and transparent” communication between the police and the assembly participants.<sup>417</sup> During the COP26-related assemblies monitored by ODIHR, PLOs were visible at all assemblies; however, despite their sufficient representation, the PLOs were passive in a number of assemblies, having limited engagement with the participants. This observation included two assemblies in the course of which some of the participants were contained (see the Section on the use of force).
201. In England, PLOs wearing blue vests were present throughout the two assemblies monitored by ODIHR. According to representatives of the Metropolitan Police Service interviewed by ODIHR, PLOs are tasked to liaise with organizers to establish what they want to achieve and where they want to go and assist with the facilitation of assemblies such as helping participants to cross roads.<sup>418</sup> ODIHR monitors observed frequent communication of PLOs with organizers and participants during the “No to NATO – NO to Trump” assemblies in London and Watford, including during moments of the assembly which held the potential of tensions. In London, during the “No to NATO – NO to Trump” assembly held on 3 December 2019, the march of approximately 2,000 participants was stopped for about 45 minutes. During the standstill, some of the participants became agitated. The PLOs engaged with the participants in various locations and in front of the march the bronze commander discussed the situation with the organizer. In addition, in front of the assembly a mounted police officer made regular announcements, apologizing for the delay and informing that the march would soon proceed.

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<sup>415</sup> Meeting with assembly organizers, 26 September 2019.

<sup>416</sup> Interview with representatives of Police Scotland, 21 August 2021.

<sup>417</sup> <<https://twitter.com/policescotland/status/1452651716378349572?lang=en>>; Interview with representatives of the Police Liaison Officers of Police Scotland, 22 October 2021.

<sup>418</sup> Interview with representatives of the Metropolitan Police Service, 2 December 2019.

202. In Finland, trained police negotiators wearing yellow vests were deployed during the “188-Kukkavirta” assembly and “Turku without Nazis” counterdemonstration.<sup>419</sup> While ODIHR monitors observed some engagement between the police negotiators and the assembly organizers, the engagement with the participants was very limited.
203. ODIHR did not observe any police presence during the assembly it monitored in Denmark which gathered around 3,000 participants, many of whom were children. Prior to the organization of the event, the organizers were in touch with the police who did not consider that their presence at the event would be necessary. The organizers deployed some stewards eventually and the event greatly benefited from the “no surprises” policing approach built on regular communication and good relationships between the police and the organizers.

*Conclusions and recommendations on engagement and communication by the police with assembly organizers and participants*

204. Law-enforcement agencies and officials should take all reasonable steps to communicate with assembly organizers and/or participants regarding policing operations and any safety or security measures.<sup>420</sup> For most assemblies observed by ODIHR, communication between participants, organizers and the police took place both before and during assemblies. It is positive that, in many cases, communication was considered to be adequate by both the police and assembly organizers. Both the organizers and the police authorities described their co-operation and communication as effective in Portugal and Denmark, for example.
205. Good communication facilitated the work of the police and the enjoyment of the freedom of peaceful assembly by participants in public events. Communication before and during assemblies can be particularly significant where an assembly involves specific risks for participants or, more generally, for public order. In this context, it is important to acknowledge that real security risks are involved in the policing of some assemblies and that there may be a need to retain a certain degree of confidentiality in relation to planned police tactics. Nevertheless, in general, openness and communication between the police and protesters, including communication at the planning stage, can reduce the risk of incidents and can facilitate the work of the police.
206. Whereas liaison, co-ordination or negotiations between assembly organizers and the relevant authorities may facilitate a proportionate response by the state in ways that best accommodate competing interests, the potential for compulsory or intimidating negotiation processes before assemblies might negatively impact the enjoyment of the right to freedom of peaceful assembly especially if the organizers are children. Pre-event communication with organizers should not be used as a pretext to exert pressure on the organizers to accept limitations that they may disagree with.

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<sup>419</sup> Interview with representatives of the Police, 19 August 2021.

<sup>420</sup> See European Court of Human Rights, *Frumkin v. Russia*, application No. 74568/12, 5 January 2016, paras. 127–128.

207. Holding routine post-event reporting sessions and debriefings, such as was the case in Scotland during COP26, is a positive practice. However, ODIHR observed the lack of inclusion of the organizers or independent assembly-monitoring organizations in such debriefings, which should be reconsidered.
208. In order to adapt and improve future policing of assemblies, post-event evaluation of the facilitation of assemblies is crucial, especially if problems have occurred. It is a good practice to maintain dialogue with the organizers after an assembly to nurture a relationship of trust and confidence.<sup>421</sup> Good policing is policing by consent, and people are more likely to co-operate when they trust the police.
209. Whereas calling for peaceful conduct at public events is a legitimate law-enforcement tactic, authorities should also aim to dispel rumors and avoid the negative portrayal of demonstrations and any communication that can instill unnecessary fear in the general public and thus increase the likelihood of unnecessary police interventions. The presumption in favor of holding assemblies entails that the peacefulness of an assembly should be presumed.

Recommendations for participating States:

- to create conditions for effective communication between assembly organizers, participants and law-enforcement bodies before and during assemblies in order to better protect and facilitate the exercise of rights, create mutual trust and understanding, avoid unnecessary confrontation, reduce tension, prevent violence or stop any disruptive or unlawful incidents quickly, should such incidents occur;
- to ensure that the law-enforcement authorities appoint easily accessible liaison officers or other appropriate intermediaries whom organizers can contact before, during and after an assembly, and that such appointments do not absolve other law-enforcement officials directly engaged in the facilitation of assemblies from the need to communicate effectively, as appropriate;
- to ensure that liaison officers or other relevant law-enforcement authorities are trained in communication with children and persons with various types of disabilities, and adopt adequate and appropriate communication strategies;
- to ensure that law-enforcement authorities proactively seek a dialogue with assembly organizers while those exercising their right to assemble are not compelled to negotiate with the authorities, and that, generally, their participation in any such process is entirely optional and voluntary;
- to adopt a “no surprises” approach in policing assemblies by disclosing as much planning

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<sup>421</sup> Amnesty International Dutch Section, “Policing Assemblies”, *op. cit.*, note 380, p. 25.



information as possible to the organizers beforehand and by withholding information only if there is a clear and justifiable need to do so. If possible, this approach should also extend to dialogue and communication with all involved groups, including potentially violent groups, at the pre-assembly stage;

- to ensure that law-enforcement officials liaise with assembly stewards, where organizers choose to use them for the facilitation of an assembly;
- to hold post-event debriefings for law-enforcement officials and, where relevant, other state authorities (particularly after non-routine events), with the involvement of willing assembly organizers as a standard practice;
- to promote diversity in law enforcement, including better representation of women and minority groups, including both for positions entailing operational work, such as policing assemblies, and for command positions.

## USE OF FORCE, DETENTION, CONTAINMENT AND DISPERSAL

*The use of force, firearms, detention and containment, as well as dispersals of assemblies:  
international standards and good practice*

210. The use of force by law-enforcement officials should always be an exception,<sup>422</sup> and assemblies should ordinarily be facilitated with no resort to force, which requires a policing approach that actively seeks to avoid situations in which police might have to resort to the use of force from the outset and to de-escalate situations that might result in violence.<sup>423</sup> In fulfilling their duties, police officers may only use force in line with the principles of legality, necessity, and proportionality.<sup>424</sup> Even if the use of force in a particular situation complies with these principles, but the need to use force could reasonably have been avoided in the first place through proper planning, a state may be held accountable for a failure to take due precautionary measures in particular if this then leads to the loss of life.<sup>425</sup>
211. OSCE commitments enshrine the fundamental right to life (Helsinki 2008) and require participating States to prohibit torture and other cruel, inhuman or degrading treatment or punishment and to take effective legislative, administrative, judicial and other measures to prevent and punish such practices (Vienna 1989, Copenhagen 1990). The prohibition of torture

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<sup>422</sup> See the commentary to Article 3 of the Code of Conduct for Law Enforcement Officials.

<sup>423</sup> Amnesty International, Dutch Section, “Guidelines for the Implementation of the UN Basic Principles for the Use of Force and Firearms by Law Enforcement Officials” (hereinafter “Amnesty International Use of Force Guidelines”), Guideline 7a and Section 7.1; General Comment 37, para. 78.

<sup>424</sup> See, for example, Article 3 of the UN Code of Conduct for Law Enforcement Officials, General Assembly Resolution 34/169, 17 December 1979, <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>>. Also see *Ivan Vasilev v. Bulgaria* (2007); General Comment 37, para. 78.

<sup>425</sup> European Court of Human Rights, *McCann and Others v. United Kingdom*, application No. 18984/91, 27 September 1995.

and other forms of ill treatment is also enshrined in a number of international human rights treaties, including the ICCPR (Article 7), the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Articles 2 and 16)<sup>426</sup> and, for member states of the Council of Europe the ECHR (Article 3).

212. States should, as far as possible, exhaust non-violent means and give prior warning before resorting to the use of force or firearms,<sup>427</sup> which may be employed only if other means remain ineffective or without any promise of achieving the intended result.<sup>428</sup> Firearms are not a tactical tool for the policing of assemblies; in particular, they should never be used for the purpose of dispersing an assembly.<sup>429</sup> According to the UN HRC, “any use of firearms by law enforcement officials in the context of assemblies must be limited to targeted individuals in circumstances in which it is strictly necessary to confront an imminent threat of death or serious injury”.<sup>430</sup> Deadly force should only be used when strictly unavoidable and when less extreme measures are insufficient to achieve the intended objective of protecting life.<sup>431</sup>
213. Standards relating to the use of force by law-enforcement officers, which include the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, have specific implications with respect to the policing of assemblies. It is worth noting that the unnecessary, inappropriate, excessive or unlawful use of force by law-enforcement authorities does not only violate human rights, it is also counterproductive, notably in undermining police–community relationships and causing widespread tension and unrest.<sup>432</sup> Police should resort to the use of force only in line with the principles of necessity and proportionality.<sup>433</sup> 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.<sup>434</sup>
214. In the context of assemblies, the use of force should be preceded by adequate prior warnings that give individual participants sufficient time to leave the area peacefully.<sup>435</sup> A variety of

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<sup>426</sup> All participating States covered in this report are parties to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>427</sup> UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 4; General Comment 37, para. 78.

<sup>428</sup> *Ibid.* On the use of force by the police, also see *Guidebook on Democratic Policing* (Vienna: OSCE, 2008), paras. 54 and *ff.* According to the ECtHR, recourse to physical force that has not been made strictly necessary by a person’s own conduct is in principle an infringement of the right set forth in Article 3 of the Convention. *Izci v. Turkey* (2013), para. 55.

<sup>429</sup> “Amnesty International Use of Force Guidelines”, *op. cit.*, note 416, Guideline 7(k), Sections 7(i) and 7.4.3; General Comment 37, para. 88; *Venice Guidelines*, *op. cit.*, note 32, para. 186.

<sup>430</sup> General Comment 37, para. 88.

<sup>431</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Articles 12–14; *Venice Guidelines*, *op. cit.*, note 32, para. 186.

<sup>432</sup> *Guidelines*, *op. cit.*, note 1, Explanatory Notes, para. 171.

<sup>433</sup> See UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

<sup>434</sup> *Venice Guidelines*, *op. cit.*, note 32, para. 87.

<sup>435</sup> *Guidelines*, *op. cit.*, note 1, para. 5.5; General Comment 37, para. 78; *Venice Guidelines*, *op. cit.*, note 32, para. 181.

responses should enable a differentiated and proportional use of force<sup>436</sup> that is adequate to the threat, and under no circumstances should force be used against peaceful demonstrators who are unable to leave the scene.<sup>437</sup> The ECtHR has stressed that Article 3 of the ECHR, which relates to the prohibition of torture, does not allow for the physical integrity of an individual to be balanced against the maintenance of public order when deciding whether to use force.<sup>438</sup>

215. As described in OSCE/ODIHR *Guide on Law Enforcement Equipment Most Commonly Used in the Policing of Assemblies*<sup>439</sup>, containment, also called “kettling” or “corralling”, refers to the police tactic of enclosing a group of people in a specific area, preventing them from leaving and preventing others from joining the group. Such strategies of crowd control must only be used on an exceptional basis as they tend to be indiscriminate in that they do not distinguish between participants and non-participants or between peaceful and non-peaceful participants.<sup>440</sup> Using containment can have a chilling effect on people seeking to exercise their right to peaceful assembly<sup>441</sup>, and may also result in a violation of their rights to liberty, freedom of movement, and freedom from arbitrary detention.<sup>442</sup> The UN Special Rapporteur has noted that containment (kettling) is “inherently detrimental to the exercise of the right to freedom of peaceful assembly, due to its indiscriminate and disproportionate nature”<sup>443</sup>, opposing this practice in general.<sup>444</sup>
216. Containment also raises various health concerns when no food, water, toilet facilities, or shelter is provided to those contained, and can also be particularly detrimental to vulnerable groups, such as elderly people, children, pregnant women, and persons with disabilities.<sup>445</sup> Preventing people contained from accessing toilets for an extended period of time is also likely to amount

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<sup>436</sup> *Ibid.*

<sup>437</sup> *Ibid.*, Explanatory Notes, para. 176.

<sup>438</sup> *Izci v. Turkey* (2013), para. 56.

<sup>439</sup> OSCE/ODIHR, *Guide on Law Enforcement Equipment Most Commonly Used in the Policing of Assemblies* (July 2021).

<sup>440</sup> *Guidelines, op. cit.*, note 1, para. 160; OSCE/ODIHR, *Guide on Law Enforcement Equipment Most Commonly Used in the Policing of Assemblies* (July 2021); *Venice Guidelines, op. cit.*, note 32, para. 217.

<sup>441</sup> OSCE/ODIHR, *Guide on Law Enforcement Equipment Most Commonly Used in the Policing of Assemblies* (July 2021).

<sup>442</sup> In *Austin and Others v. The United Kingdom* (2012), the ECtHR held that police kettling of a crowd (and a number of bystanders) did not constitute a deprivation of liberty under Article 5 of the ECHR. Nonetheless, it noted that kettling was only permissible where violence was taking place or was reasonably thought to be imminent, and where other less intrusive means had been reasonably assessed as being ineffective. In a subsequent UK case, *Mengeshu v. Commissioner of the Police of the Metropolis* (2013), the UK High Court held that kettling is not permitted as a means of obtaining the identification of those contained. Similar practices have also been reported in France, for example. See *Austin and Others v. The United Kingdom* (App. Nos. 39692/09, 40713/09 and 41008/09, judgment of 15 March 2012), EWHC 1695 (Admin) at para. 12.; “Does France respect the right of freedom of peaceful assembly for all citizens in Paris in 2011?”, ECtHR News, 6 October 2001, <<https://echrnews.wordpress.com/tag/discrimination/>>; *Venice Guidelines, op. cit.*, note 32, para. 217; General Comment 37, para. 84.

<sup>443</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/23/39, *op. cit.*, note 70, para. 37.

<sup>444</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 29, para. 37.

<sup>445</sup> OSCE/ODIHR, *Guide on Law Enforcement Equipment Most Commonly Used in the Policing of Assemblies* (July 2021); *Venice Guidelines, op. cit.*, note 32, para. 217.

to degrading treatment.<sup>446</sup> In this context, the UNODC/OHCHR *Resource Book on the Use of Force and Firearms in Law Enforcement* stress that “[c]ontainment is a problematic tactic from a human rights perspective, especially when used for long periods of time, preventing those contained from access to water or sanitary facilities and may amount to deprivation of liberty or, under certain circumstances, inhuman or degrading treatment.”<sup>447</sup>

217. Containment should only be used in exceptional circumstances to prevent the escalation or continuation of violence and as a means to enable the peaceful assembly to continue.<sup>448</sup> Where containment is used, there should be protocols put into place to allow vulnerable people, such as pregnant women, children, older people and those suffering from illness or injury, as well as those inadvertently caught up in the containment area to exit to a safe place.<sup>449</sup> In addition, as noted in the UNODC/OHCHR *Resource Book*, people being contained should be informed of the decision to use containment against them, as well as the reason and purpose behind the decision, and continuous communication for the duration of the containment between law enforcement authorities and participants is recommended.<sup>450</sup> Containment should also be used for the minimum amount of time necessary, must be reviewed at regular intervals, and should only be used as a last resort to prevent serious damage or injury when there is no other less restrictive police tactic short of dispersing the assembly that would resolve the issue.<sup>451</sup> In this respect, the UN HRC stressed that “Necessary law enforcement measures targeted against specific individuals are often preferable to containment”.<sup>452</sup> Finally, containment should not be used to gather intelligence on assembly participants, and people contained should not be requested to disclose personal information before being permitted to leave the contained area.<sup>453</sup>
218. The authority to arrest can play an important protective function in assemblies by allowing law-enforcement officials to remove from an assembly individuals who are acting violently. 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).<sup>454</sup> 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.<sup>455</sup>
219. Mass arrests have a high likelihood of being arbitrary and contrary to the presumption of innocence and should therefore be avoided.<sup>456</sup> When numerous arrests are deemed necessary in response to unlawful conduct, large numbers of participants should not be deprived of their

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<sup>446</sup> OSCE/ODIHR, *Guide on Law Enforcement Equipment Most Commonly Used in the Policing of Assemblies* (July 2021).

<sup>447</sup> *Ibid.*; UNODC/OHCHR *Resource Book*.

<sup>448</sup> *Human Rights Handbook on Policing Assemblies, op. cit.*, note 15.

<sup>449</sup> *Ibid.*

<sup>450</sup> UNODC/OHCHR *Resource Book; Venice Guidelines, op. cit.*, note 32, para. 217.

<sup>451</sup> *Human Rights Handbook on Policing Assemblies, op. cit.*, note 15; *Venice Guidelines, op. cit.*, note 32, para. 217; General Comment 37, para. 84.

<sup>452</sup> General Comment 37, para. 84.

<sup>453</sup> *Venice Guidelines, op. cit.*, note 32, para. 217.

<sup>454</sup> A similar principle is enshrined in Article 9 of the ICCPR.

<sup>455</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 161.

<sup>456</sup> *Venice Guidelines, op. cit.*, note 32, para. 218.

liberty simply because law-enforcement agencies do not have sufficient resources at their disposal to individualize arrest decisions based on particularized facts.<sup>457</sup> Adequate resourcing is part of States' positive obligation to protect the right to freedom of peaceful assembly, as well as the right not to be arbitrarily deprived of freedom.<sup>458</sup>

220. Similarly, intrusive pre-emptive measures should not be used unless a clear and present danger of imminent violence actually exists.<sup>459</sup> The UN HRC noted that preventative detention of targeted individuals to keep them from participating in assemblies may constitute arbitrary deprivation of liberty which is incompatible with the right to freedom of peaceful assembly.<sup>460</sup> 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 his or her liberty, including jails, holding cells, public spaces and vehicles used to transfer detainees, and any other location where detainees are held.<sup>461</sup>
221. Dispersing an assembly may violate 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 and lead to violence between participants and law enforcement.<sup>462</sup> For these reasons, it must be resorted to only when strictly unavoidable.<sup>463</sup> Stemming from the presumption in favor 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 this is required due to additional factors linked to public order and security.<sup>464</sup> Even then, the authorities should follow a graduated response and should aim to exhaust non-forceful means of intervention before adopting more forceful methods.
222. 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.<sup>465</sup> 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.<sup>466</sup> In addition, the UN HRC noted that such use of force should be directed against a specific individual or group engaged in or threatening violence, and should not be

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<sup>457</sup> *Ibid.*, para. 218.

<sup>458</sup> *Ibid.*, para. 218.

<sup>459</sup> “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”, A/HRC/31/66, *op. cit.*, note 4, para. 45.

<sup>460</sup> *Venice Guidelines, op. cit.*, note 32, para. 82.

<sup>461</sup> *Ibid.*, para. 46.

<sup>462</sup> *Venice Guidelines, op. cit.*, note 32, para. 176.

<sup>463</sup> *Ibid.*, para. 61.

<sup>464</sup> “Amnesty International Use of Force Guidelines”, *op. cit.*, note 416, Guideline 7(b) and Section 7.2.

<sup>465</sup> *Ibid.*, para. 165; Joint Declaration, para. 4(e); *Venice Guidelines, op. cit.*, note 32, para. 179.

<sup>466</sup> Principle 13, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; also see Joint Declaration, para. 4(e).

used against individuals or groups who are passively resisting when it is likely to cause more than negligible injury.<sup>467</sup>

223. If dispersal is deemed strictly necessary, the assembly organizer and participants should be clearly and audibly informed prior to any intervention by law-enforcement personnel and must be given reasonable time to disperse voluntarily.<sup>468</sup> 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 where they are interfering with the ability of the police to maintain order, but they should not be prevented from observing and recording the policing operation from a location that allows them to do so, while neither obstructing nor interfering with the dispersal.<sup>469</sup>
224. Police organizations have obligations towards their own staff and 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. Whenever law-enforcement tactics involve the use of force in the context of policing assemblies, the state needs 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 force used by the police.

*Use of force, detention and containment, as well as dispersals in selected participating States*

225. In most participating States where ODIHR observed assemblies, legislation lays down the general principles of police intervention. In Denmark, for instance, the police can intervene against individuals that cause risk of significant disturbance of the public order or endanger individual or public security at a public assembly. To do so, the police may issue orders, strip-search and examine the clothes or other objects of the person, or deprive individuals of objects. If this proves to not be enough to avert the danger, the police can detain the individual, provided that the detention is as brief and considerable as possible, and, if possible, does not last for more than 12 hours.<sup>470</sup>
226. Generally, the participating States where ODIHR monitored assemblies specify that the use of force has to be necessary and proportionate. In Denmark, the use of force must be “indispensable and adequate” and can only take place “with means and to an extent in reasonable proportion to the interest that they aim to protect”. In addition, force must be employed as carefully as the circumstances allow, and in a way that limits the injuries to a minimum.<sup>471</sup> In the Netherlands, force can be used by the police in the course of their “lawful

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<sup>467</sup> General Comment 37, para. 86.

<sup>468</sup> Joint Declaration, para. 4(e); *Venice Guidelines, op. cit.*, note 32, para. 180.

<sup>469</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 168; *Venice Guidelines, op. cit.*, note 32, para. 180.

<sup>470</sup> Sections 8 and 9 of the Danish Act on the Activities of the Police.

<sup>471</sup> Article 16 of the Danish Act on the Activities of the Police and Section 2 of the Danish Order on the use of force by the Police.

execution of duties if the aim pursued justifies doing so” and “if the intended objective cannot be reached in other ways”.<sup>472</sup>

227. In Sarajevo Canton of Bosnia and Herzegovina, the police can use force only “when necessary and exclusively to the extent necessary to achieve a lawful aim”. Lawful aims are defined as the protection of “human lives, property, repulse of attacks, overcoming resistance, prevention of escape, and preservation of public safety”.<sup>473</sup> In Portugal, the Law on Public Security Police provides that police officers cannot use force “beyond what is strictly necessary”.<sup>474</sup> In addition, the Police Code of Ethics authorizes law enforcement to only resort to the use of force when “it is deemed legitimate, strictly necessary, appropriate and proportionate to the objectives pursued”.<sup>475</sup>
228. In various participating States where ODIHR observed assemblies, the situations in which the police can use force are also set out in law. In Denmark, for instance, the police can use force for the purpose of preventing and averting risk of disturbance of the public peace and order, as well as peril to individual or public security, as well as on a set of other occasions.<sup>476</sup> The Constitution also states that in case of riots where the police is not attacked, force can be used only after the crowd has been called up to disperse in the name of the King and the Law three times.<sup>477</sup> In Sarajevo Canton of Bosnia and Herzegovina, the police can use force to prevent criminal offences, misdemeanors, maintain public order, and undertake other tasks within the competence of the police body.<sup>478</sup> The law also states that physical forces cannot be used against “children, the elderly, visually impaired persons, including persons who are obviously ill, or women who are obviously pregnant, unless such persons directly endanger the life of a police officer, their own life, or the lives of others”.<sup>479</sup> Another example is Scotland where the law sets out that the police can use reasonable force in two instances: to effect an arrest or to take a person who is in police custody to any place.<sup>480</sup>
229. Moreover, in accordance with human rights standards, several participating States require warnings before using force. In Denmark, according to the Constitution, in case of riots where the police is not attacked, force can only be used after “the crowd in the name of the King and the Law has three times been called upon to disperse, and such warning has been unheeded”.<sup>481</sup> In the Netherlands, the law specifies that use of force “shall, if possible, be preceded by a warning”.<sup>482</sup> In Finland, a warning must be made before using force if it is “possible and

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<sup>472</sup> Article 7 of the 2012 Police Act of the Netherlands.

<sup>473</sup> Article 27 of the Law of Police Officers of the Sarajevo Canton.

<sup>474</sup> Article 12 of the Law on Public Security Police.

<sup>475</sup> Article 8(2) of the Police Code of Ethics of Portugal.

<sup>476</sup> Section 15(1), Danish Act on the Activities of the Police.

<sup>477</sup> Article 80, Constitution of Denmark.

<sup>478</sup> Article 10, Law of Police Officers of the Sarajevo Canton.

<sup>479</sup> Article 28(1) of the Law of Police Officers of the Sarajevo Canton.

<sup>480</sup> Section 45 of the Criminal Justice (Scotland) Act 2016.

<sup>481</sup> Article 80 of the Danish Constitution.

<sup>482</sup> Article 7 of the Police Act of the Netherlands.

appropriate” and must be given in a comprehensible and adequate manner.<sup>483</sup> Finally, in Sarajevo Canton of Bosnia and Herzegovina, police officers must issue a warning before using any means of force, unless this could endanger the safety of a police officer or other person, or would be “manifestly inappropriate or inappropriate in the circumstances”.<sup>484</sup>

230. Some participating States where ODIHR monitored assemblies also regulate the use of containment during assemblies. According to case law in the UK, the police can lawfully contain assembly participants if they find it necessary to prevent disorder or protect public safety.<sup>485</sup> However, containment is only lawful to prevent *imminent* breaches of the peace, if used as a method of last resort, and if necessary and proportionate.<sup>486</sup> Accordingly, in England, the Public Order Guidance of the College of Policing states that containment “is only permitted where a breach of the peace is taking place or is reasonably thought to be imminent” and “is a tactic of final resort” which should be “the least intrusive and most effective means to protect the public from violence”.<sup>487</sup> The Guidance also states, *inter alia*, that containment should last only as long as necessary, that the purpose and reason for imposing the containment should be clear at all times to those contained, that those contained should be given regular updates about the containment including timescales, that the police should release non-violent protesters as soon as it is safe to do so, and that the police should seek to limit the discomfort of those contained and cater to basic needs such as water and toilets.<sup>488</sup>
231. In Scotland, containment is defined as a permitted policing tactic used to maintain public safety and minimize disruption during protests where a breach of the peace is taking place or “reasonably thought to be imminent”. Police Scotland states that containment is only used by highly trained officers, when necessary, and that during a containment, liaison officers are tasked to identify and remove individuals with vulnerabilities or not involved in the protest.<sup>489</sup>
232. In Denmark, ODIHR was informed that the police could resort to containment against “participants who present a danger of significant disturbance of public order or danger to the safety of individuals or the public” under Section 8 of the Police Act.<sup>490</sup>
233. Most states regulate the grounds for dispersal in their legislation on assemblies, and the legislation in several states also specifies the methods of dispersal. As discussed above, a prior ban or lack of notification may constitute a ground for a dispersal, but legislation of the participating States where ODIHR monitored assemblies also provide other grounds.

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<sup>483</sup> Chapter 2, Article 18 of the Finnish Police Act.

<sup>484</sup> Article 27 of the Law of Police Officers of the Sarajevo Canton.

<sup>485</sup> Austin (FC) (Appellant) & another v Commissioner of Police of the Metropolis (Respondent).

<sup>486</sup> Susannah Mengesha (Claimant) v. Commissioner of Police of the Metropolis (Defendant).

<sup>487</sup> <https://www.college.police.uk/app/public-order/tactical-options>

<sup>488</sup> <https://www.college.police.uk/app/public-order/tactical-options>

<sup>489</sup> <https://www.scotland.police.uk/what-s-happening/events/cop26-home/frequently-asked-questions/>

<sup>490</sup> Interview with representatives of the Copenhagen Police, 25 September 2019.



234. In Denmark, the police can dissolve an assembly if it endangers the public peace.<sup>491</sup> Failing to comply with a dispersal order can lead to a fine or to imprisonment of up to three months.<sup>492</sup> If participants do not comply with the dispersal order, the police can consider the assembly to be a “riot”.<sup>493</sup> In case of riots, the police may order dispersal after requesting three times in vain, in the name of the King and the Law that the participants must disperse.<sup>494</sup> Failing to comply with such order can lead to a fine or to imprisonment of up to three years.<sup>495</sup> The police is allowed to use force to disperse riots, in accordance with the use of force principles set out in law (see para. 207).<sup>496</sup> In addition, if the police is attacked, a riot may be dispersed without prior warning.<sup>497</sup> Representatives of the Copenhagen Police informed ODIHR that an attack is understood as any “physical aggressive acts” against the police.<sup>498</sup>
235. As previously mentioned, in the Netherlands, an assembly can be dispersed by the mayor if it was not held with proper notification or if it was prohibited. In addition, mayors can order dispersal if a condition, restriction or instruction has been infringed, or to protect health, the interest of traffic, or to combat or prevent disorder.<sup>499</sup> The mayor can also disperse assemblies that are open to the public but that do not take place in public places if “the protection of health or the combating or prevention of disorder so requires”. To do so, the mayor must access the place where the assembly takes place to order its dispersal. To gain access, the mayor can be assisted by “the strong arm” [*commonly used to refer to the government bodies authorized to use force*].<sup>500</sup> The law does not provide details on the methods for dispersal should the participants refuse to voluntarily disperse.
236. The law on assemblies of the Sarajevo Canton of Bosnia and Herzegovina also lists the situations where the police is allowed to stop or ban a peaceful assembly. These include instances where an assembly was not timely and properly notified, where an assembly was banned, or where an assembly is taking place in a different location than the one notified to the authorities.<sup>501</sup> The police need to communicate the dispersal decision to the assembly leader, and the leader is then under a duty to inform the participants of the assembly that the assembly stopped and ask them to disperse peacefully. A failure to comply with dispersal orders allows the police officer to take “necessary and inevitable measures to disperse the participants of the peaceful assembly”<sup>502</sup> and can lead the assembly leader to be fined for an offence in the amount of BAM 750 to BAM 1,500 (EUR 380 to EUR 750).<sup>503</sup>

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<sup>491</sup> Section 7 of the Danish Act on the Activities of the Police.

<sup>492</sup> §134 of the Danish Criminal Code.

<sup>493</sup> Section 7(5) of the Danish Act on the Activities of the Police.

<sup>494</sup> Section 9(5) of the Danish Act on the Activities of the Police.

<sup>495</sup> §133 of the Danish Criminal Code.

<sup>496</sup> Article 16 of the Danish Act on the Activities of the Police and Section 2 of the Danish Order on the use of force by the Police.

<sup>497</sup> Section 9(5) of the Danish Act on the Activities of the Police.

<sup>498</sup> Interview with representatives of the Copenhagen Police, 25 September 2019.

<sup>499</sup> Article 7 and 8 of the Public Assemblies Act.

<sup>500</sup> Article 8 of the Public Assemblies Act.

<sup>501</sup> Article 23 of the Law on Public Gathering of the Sarajevo Canton.

<sup>502</sup> Article 24 of the Law on Public Gathering of the Sarajevo Canton.

<sup>503</sup> Article 36 of the Law on Public Gathering of the Sarajevo Canton.

237. In Finland, the police can disperse an assembly if it endangers public order and safety or obstructs traffic or against individuals likely to commit an offence against life, health, liberty, domestic peace or property.<sup>504</sup> In addition, a senior police officer can interrupt or order to disperse any assembly, which would cause immediate danger to the safety of people, property or the environment, unless other measures have proven sufficient and when the organization of the assembly is otherwise deemed unlawful.<sup>505</sup> If a dispersal order is not complied with, the police is allowed to use force to disperse the crowd and has the right to arrest an individual who does not comply with a dispersal order provided that he is released no later than 12 hours after his arrest.<sup>506</sup> The law specifies that those actions should be limited to the participants whose conduct led to the decision to disperse the assembly.<sup>507</sup>
238. Portuguese authorities are limited to dispersing assemblies when an assembly does not fulfil its purpose as a result of acts contrary to the law or morals or acts that “seriously and effectively disrupt public order and tranquility, the free exercise of individual rights”. Moreover, unannounced assemblies can also be dispersed.<sup>508</sup> The relevant authorities are also required to submit a report stating the grounds for dispersal and to provide a copy of the report to organizers.<sup>509</sup> The law remains however silent on the methods for dispersal in case the participants refuse to disperse voluntarily without delay.
239. The use of force, including arrests and containment by law-enforcement officials were observed by ODIHR monitors in England and Scotland. ODIHR did not observe any dispersals of assemblies during this monitoring cycle.
240. In England, during the NATO summit-related protest ‘No to Trump – No to NATO’, attended by approximately 2,000 people in London on 3 December 2019, an argument broke out between a protester and counter-protester which then turned into a fist fight. The police surrounded both protesters, created a line between them and removed the person who attacked the protester from the location of the protest. The assembly continued undisturbed after the incident. The event was facilitated by PLOs who engaged with participants, including some of whom were agitated, once the march was stopped for approximately 45 minutes at one of the crossing points, defusing possible tensions (see the section on Engagement and communication by the police with assembly organizers and participants).
241. In Scotland during COP26, ODIHR observed police using containment on two occasions. On 3 November 2021, around 300 peaceful participants gathered during the ‘Greenwash March’ to protest against global climate change. Around 40 police officers in regular uniforms and liaison police officers were present at the gathering point. Approximately an hour into the assembly, the

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<sup>504</sup> Chapter 2, Article 9 of the Finnish Police Act.

<sup>505</sup> Section 21 of the Finnish Assembly Act.

<sup>506</sup> Chapter 2, Article 9 of the Finnish Police Act.

<sup>507</sup> *Ibid.*

<sup>508</sup> Article 5(1) of Decree Law 406/74.

<sup>509</sup> Article 5(2) of Decree Law 406/74.

participants formed a line for marching with seven police officers walking in front of the assembly and two liaison officers standing nearby. Once the assembly crossed the first street, the police notified the stewards that the procession was illegal. A tighter police line was formed on the second street which the assembly participants were not allowed to cross. After approximately 30 minutes of the standstill, the march turned around and walked the opposite direction. The assembly then split into two smaller assemblies. The police escorted both of them and conducted arrests of several people who threw a green substance on some public buildings and police officers. For the next hour both assemblies moved around the center of Glasgow and tried to merge back into one assembly. The police then contained a group of approximately 200 participants, including ODIHR monitors, for over 4 hours. At the start of the containment, nobody was allowed to leave, with the exception of a few bystanders. The liaison officers were present during the containment but did not actively engage with the participants or provide information on the reasons or length of the containment. While it was evident that some communication was ongoing between the police and some participants, no audible communication was initiated by the police, resulting in many participants confused and approaching the police line in search for information. The information offered by the police was often contradictory, depending on the police officer approached. During the entire time of containment, no access to food or water was provided and assembly participants were not provided with portable toilets or allowed to leave the containment to go to the toilet. The contained assembly participants remained peaceful, chanting and drumming from time to time. The assembly was escorted to the venue of COP26 by tight police lines from front, sides and back, and shortly upon arrival the participants were allowed to leave in small groups. ODIHR was informed that the decision on containment was taken by the police, as intelligence suggested that some protesters were planning unlawful criminal acts towards various financial institutions.<sup>510</sup>

242. A smaller number of assembly participants were contained during another assembly which occurred during the Global Day of Action on 6 November in Glasgow, attended by approximately 50,000 participants. The assembly was organized by various groups. Police officers in mainly regular uniforms and liaison officers were present and facilitated the assembly. At the start of the march, a group of up to 50 participants, among whom many appeared to be under 18 years old, dressed up in black with flags, gathered to join the main assembly march. Before the march started, they were surrounded by a police line, escorting them in front and both sides of the assembly. A couple of hours into the march, a scuffle between the police and the group broke out, lasting for a few minutes. The police surrounded the group and moved a large part of the group away from the assembly route on the side street. The group was then contained for less than an hour. During the containment, the participants received food and snacks from the supporters and engaged with legal aid monitors. The actions of the police triggered strong support from the main assembly, requesting the police to release the group and allow them to join the main assembly. The police created police lines to separate the main assembly from the contained group of protesters. After a while the main march proceeded and the contained participants were slowly released. The police appeared to be collecting information about the identities of the contained persons before their release. A smaller

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<sup>510</sup> Interview with a representative of Police Scotland, 16 December 2021.

group was then escorted by the police to the main assembly end point, and the group dispersed shortly after their arrival.

*Conclusions and recommendations on the use of force, detention, containment and dispersals*

243. Legislation in most of the participating States where ODIHR monitored assemblies provides that warnings must be issued before force is used. Additionally, all participating States require that force be used only where it is necessary and proportionate, which is in line with international norms.
244. In some participating States, assemblies may be dispersed in a broad range of situations, and these are not limited to the most exceptional circumstances. Generally, the termination of assemblies should be facilitated by the authorities. In principle, the reasons for dispersal must be limited to a threat to public safety or danger of imminent violence and must not take place unless law-enforcement officials have taken all reasonable and less invasive measures possible to facilitate and protect an assembly from harm. For example, the laws in the Netherlands, the Sarajevo Canton of Bosnia and Herzegovina, and Portugal<sup>511</sup> according to which an assembly without proper notification can be dispersed, is not sufficiently limited to cases of threats to public safety or imminent violence. Participating States should consider, however, that unannounced assemblies, in line with internationally accepted good practice, should be allowed to continue without dispersal if they remain peaceful.
245. Any response should be proportionate to the anticipated threat. Legislation should provide for a clear demarcation between violent and non-violent demonstrators and those individuals who commit unlawful acts. An entire assembly should not be terminated based on the acts of one person or a group of people. The authorities should take appropriate action to remove such people rather than terminating or dispersing an assembly or declaring it to be unlawful. Based on the *Guidelines*, a decision on dispersal should therefore not be taken when a small group of assembly participants act in a violent manner. In such instances, action should be taken only against those individuals.
246. In some of the participating States where ODIHR monitored assemblies, legislation does not specify the methods for dispersal, including Portugal and the Netherlands. The lack of legislation/guidance is likely problematic for police officers reacting to small- or large-scale disruptions/violence during assemblies.
247. Law-enforcement officials must take all reasonable and less invasive measures possible to facilitate and protect an assembly from harm, i.e., unless there is an imminent threat of violence.<sup>512</sup>

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<sup>511</sup> Article 23 of the Law on Public Gathering of the Sarajevo Canton; Article 5(1) of the Decree Law 406/74 of Portugal; Article 7(a) of the Law on Public Demonstrations of the Netherlands.

<sup>512</sup> “Note on the Draft Law Amending the Law on Assemblies of Poland”, OSCE/ODIHR, 21 May 2012, para. 34, <<http://www.osce.org/odihr/90855?download=true>>.

248. Ensuring that police practice in detaining and using force against participants or others present at assemblies meets human rights standards is of central importance. In this regard, it is positive that in most assemblies monitored by ODIHR, limited or no interventions were observed involving detentions or the use of force. This was generally also the case during assemblies that presented specific challenges in relation to the maintenance of public order and the protection of participants.
249. However, the circumstances in which containment was used in Glasgow on two occasions during COP26 raises concerns as to the necessity and proportionality of these actions. Containment as a crowd control tactic is indiscriminate, as it does not distinguish between peaceful and violent participants. During the use of containment at both assemblies, ODIHR did not observe any attempts to separate and release non-violent participants or efforts to identify potentially vulnerable participants, such as children, persons with disabilities or pregnant women. Additionally, the lack of communication between the police and participants was striking, especially on the reasons and duration of containment. Lack of provision of food, water and access to toilets during the containment on 3 November raises additional concerns regarding the compliance with human rights principles, as do the attempts to gather information about the contained participants' identities during the 6 November assembly.
250. All the above considerations are broadly related to the issue of over-policing of assemblies and the employment of police tactics that carry a risk of escalating, rather than de-escalating, tension. In a number of assemblies that remained peaceful, ODIHR observed the deployment of a very significant number of police officers in riot gear and the open display of handcuffs and batons. The over-policing was particularly noticeable during assemblies in the Sarajevo Canton of Bosnia and Herzegovina where ODIHR also observed unnecessary display of riot gear, which might have had an intimidating effect on peaceful protesters. Over-policing was also observed on a few occasions in Scotland, whereas displays of handcuffs and batons were also evident in Portugal and Finland. On a positive note, ODIHR did not witness any unnecessary displays of equipment or riot gear during assemblies it monitored in Scotland. With the exception of a few assemblies, the presence of police officers was proportionate and support units were stationed away from the sight of gathering points and routes of the assemblies.
251. ODIHR recognizes the importance of adequate police preparedness for dealing with potential unrest during assemblies. However, given the potential effect on public perceptions and community confidence, and as a way of de-escalating tension, a good practice in some situations may be to deploy police officers (in riot gear, if necessary) who are ready to intervene in locations that are close to an assembly, but who are not immediately visible to assembly participants. Similarly, the assemblies in the Sarajevo Canton were facilitated with a significant police presence in riot gear compared to the number of peaceful protesters in those locations.

#### Recommendations for participating States:

- to ensure that rules on the use of force, including the circumstances in which force can be used,

by law-enforcement officials policing assemblies are established in line with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, made publicly accessible and adhered to in practice;

- to ensure that assembly policing tactics and training emphasize the prevention of the use of force and de-escalation based on communication, negotiation and dialogue;
- to ensure that crowd-control strategies, relying on containment (kettling) are only employed when necessary to prevent serious damage or injury and when no alternative police tactics can be employed that would be less restrictive of the rights to liberty and the freedom of movement;
- to develop and make public comprehensive guidelines on the dispersal of assemblies in accordance with international human rights law and principles detailing 1) the circumstances that warrant dispersal; 2) all steps required to be taken before a decision to disperse (including de-escalation measures); 3) the individual or individuals who may issue a dispersal order; and 4) the preference for voluntary dispersal before resorting to any use of force;
- to ensure that participants in assemblies are only arrested when there are legitimate grounds for the deprivation of liberty and without resorting to excessive use of force during the arrests;
- to provide training for law-enforcement officials on facilitating the enjoyment of the right to freedom of peaceful assembly with a strong emphasis on human rights-compliant planning and preparation, crowd management measures and de-escalation techniques consistent with OSCE commitments and human rights standards, and to consider enlisting ODIHR's support in this regard<sup>513</sup>;
- to ensure that law-enforcement officials are adequately trained, resourced and equipped (including with less-lethal technologies) so as to best enable differentiated and proportionate use of force in the context of policing assemblies;
- to ensure that the planning and decision-making concerning the facilitation of assemblies takes into consideration the particular needs and vulnerabilities of children participating in assemblies.

## PHOTOGRAPHY AND VIDEO RECORDING BY LAW-ENFORCEMENT PERSONNEL

*Photographing and video recording of assemblies by law-enforcement personnel: international standards and good practice*

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<sup>513</sup> For an overview of ODIHR's activities in the field of freedom of peaceful assembly, including capacity-building, see Annex 6.

252. The right to privacy is guaranteed by international human rights law.<sup>514</sup> The OSCE participating States have reconfirmed the right to protection of private and family life, domicile, correspondence and electronic communications (Moscow 1999, Copenhagen 1990). 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.<sup>515</sup> The unlawful or arbitrary surveillance or collection of personal data violates the right to privacy and can interfere with other human rights, including the right to freedom of peaceful assembly.<sup>516</sup> States must ensure that any interference with the right to privacy is consistent with the principles of legality, necessity and proportionality.
253. 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 and to facilitate peaceful assemblies. It can also have a positive role in securing accountability.<sup>517</sup> However, the sustained and focused photographing, filming or recording of an individual or individuals may be perceived to be unduly intrusive and is likely to have a chilling effect on assembly organizers and participants, and should therefore not be carried out routinely.<sup>518</sup> Such a chilling effect may be caused by the deployment of police officers with hand-held or body-worn cameras or 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.<sup>519</sup> As stressed by the UN HRC, information gathering, including through surveillance and interception of communications, should never be used to intimidate, harass, or otherwise deter individuals from exercise their right to freedom of peaceful assembly.<sup>520</sup>
254. Generally, the visible use of photographic equipment at public assemblies should not take place routinely. The collection and processing of sensitive information, such as through recording devices or CCTV, must comply with protections against arbitrary or unlawful interference with privacy.<sup>521</sup> 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

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<sup>514</sup> Article 12 of the Universal Declaration of Human Rights; Article 17 of the International Covenant on Civil and Political Rights.

<sup>515</sup> Human Rights Council Resolution 34/7 on the right to privacy in the digital age, 23 March 2017.

<sup>516</sup> *Ibid.*

<sup>517</sup> General Comment 37, para. 94.

<sup>518</sup> *Guidelines, op. cit.*, note 1, para. 169; General Comment 37, paras. 10 and 94; *Venice Guidelines, op. cit.*, note 32, para. 172.

<sup>519</sup> “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”, A/HRC/31/66, *op. cit.*, note 4, para. 76.

<sup>520</sup> General Comment 37, para. 61; Joint Declaration, para. 2(g).

<sup>521</sup> *Ibid.*, para. 73; General Comment 37, para. 61.

rise to interference with their right to privacy, the recording of such data and the systematic processing or permanent nature of the recording may involve violations of their privacy.<sup>522</sup>

255. Legislation and policies regulating the collection and processing of information relating to assemblies or their organizers and participants must meet legality, necessity and proportionality tests.<sup>523</sup> Law-enforcement agencies should develop and publish a policy relating to their use of overt filming and/or photography at public assemblies, including a description of the (lawful and legitimate) purposes for and the circumstances in which such activities may take place, and procedures and policies for the retention and processing of resulting data.<sup>524</sup> As noted by the UN HRC, “authorities should have clear and publicly available guidelines to ensure that [the use of recording devices] is consistent with international standards on privacy and does not have a chilling effect on participation in assemblies”.<sup>525</sup> 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 behavior.<sup>526</sup>

*Photography and video recording of assemblies by law-enforcement personnel in selected participating States*

256. In the Sarajevo Canton of Bosnia and Herzegovina, the police are allowed to make audio and video recording of individuals or groups of individuals in order to prevent criminal offences or to preserve public order and security. The law also states that the devices used for audio and video recording in public places must be placed in a manner which makes them easily noticeable for the public.<sup>527</sup>

257. In Portugal, Decree Law 2/2023 regulates the use of video cameras (bodycams) by police officers.<sup>528</sup> The law also sets out circumstances in which cameras can be activated (referring to circumstances when it is mandatory, when allowed and when prohibited)<sup>529</sup> and requires the provision of a clear verbal announcement before recording image or sound, whenever circumstances allow it.<sup>530</sup> According to representatives of the Public Security Police, these bodycams can be used by police officers but must be validated by the government (the procedure requires different layers of validation). The National Data Protection Commission (CNPd) reports on their use.<sup>531</sup>

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<sup>522</sup> *Guidelines, op. cit.*, note 1, para. 169; *Venice Guidelines, op. cit.*, note 32, para. 172.

<sup>523</sup> “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”, A/HRC/31/66, *op. cit.*, note 4, para. 74.

<sup>524</sup> *Guidelines, op. cit.*, note 1, para. 169; *Venice Guidelines, op. cit.*, note 32, para. 172.

<sup>525</sup> General Comment 37, para. 94.

<sup>526</sup> *Ibid.*, para. 169; *Venice Guidelines, op. cit.*, note 32, para. 172.

<sup>527</sup> Article 26 of the Law on Public officers of Bosnia and Herzegovina.

<sup>528</sup> Portugal Decree Law 2/2023 of 2 January 2023 : <https://files.dre.pt/1s/2023/01/00100/0002500031.pdf>.

<sup>529</sup> Article 7 of Portugal Decree Law 2/2023 of 2 January 2023.

<sup>530</sup> Article 9 of Portugal Decree Law 2/2023 of 2 January 2023.

<sup>531</sup> Interview with a representative of Portugal Police, 17 September 2021.



258. In England almost all officers have body-worn cameras. Each commander has to keep a log of recording practices. The silver commander<sup>532</sup> has to sign a document on recording during assemblies which is added to each assembly file. When the body-worn cameras are activated, they are visibly flashing with a red light, signaling the recording. The officer has to push the recording button to activate the recording mode, and the information is then stored for 28 days after which it is automatically deleted.<sup>533</sup> According to the Mayor's Office for Policing and Crime (MOPAC), the use of body-worn cameras has led to a decline in complaints and has helped police to submit better evidence for the courts. The representative of the MOPAC also noted that England is using facial recognition systems.<sup>534</sup> According to the information provided to ODIHR, MOPAC rarely receives complaints about the use of body-worn cameras, contrary to the use of facial recognition systems. Several oversight bodies exist to monitor the use of recording by the police in England. That includes UK Information Commissioner,<sup>535</sup> Surveillance Camera Commissioner (part of Biometrics and Surveillance Camera Commissioner as of February 2022)<sup>536</sup> and Investigatory Powers Commissioner's Office, formerly the Office of Surveillance Commissioners whose role is to check if the recorded materials are deleted after 28 days. In addition, the London Assembly<sup>537</sup>, a body elected to hold the mayor publicly and democratically accountable, invites the mayor to a debriefing in the aftermath of large protests, therefore providing an additional accountability layer.
259. Finally, in Scotland in 2020 the office of Scottish Biometrics Commissioner was established the general function of which is to "support and promote the adoption of lawful, effective, and ethical practices in relation to the acquisition, retention, use and destruction of biometric data for criminal justice and police purposes by Police Scotland, the Scottish Police Authority, and the Police Investigations and Review Commissioner."<sup>538</sup>
260. ODIHR observed video recording of public assemblies by law enforcement officials in England, Scotland and Finland. In Finland, some police officers appeared to take photos of the assembly with their private phones on a number of occasions. In England, ODIHR observed police officers activating body-worn cameras during interaction with participants of assemblies, while separating demonstrators and counter-demonstrators and when carrying out arrests.
261. In Scotland Evidence Gathering Teams were recording assemblies and participants with hand-held cameras during almost all assemblies that ODIHR observed. According to the police, the

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<sup>532</sup> Silver commander refers to one of the three distinct levels of command: gold, silver and bronze. Senior command (gold commander) is seen as 'strategic' (providing overall direction); middle command (silver commander) as 'operational' (aiming to gain the specific policing objectives in the context of the overall strategic plan) and junior command (bronze commander) as 'tactical' (where the actual output of in terms of police actions is achieved). *Human Rights Handbook on Policing Assemblies* (Warsaw: ODIHR, 2016), <http://www.osce.org/odihr/226981?download=true>, page 42

<sup>533</sup> Interview with a representative of Metropolitan Police, 2 December 2021.

<sup>534</sup> Interview with a representative of Mayor's Office for Policing Crime, 5 December 2021.

<sup>535</sup> See more at: <https://ico.org.uk/about-the-ico/who-we-are/information-commissioner/>.

<sup>536</sup> See more at: < <https://www.gov.uk/government/organisations/surveillance-camera-commissioner>>.

<sup>537</sup> See more at: < <https://www.london.gov.uk/who-we-are/what-london-assembly-does/about-london-assembly>>.

<sup>538</sup> See more at: < <https://www.biometricscommissioner.scot/about-us/what-we-do/>>.

material from evidence gathering teams is only used for crime investigation or to support post-event enquiry for example if escalating tactics were used to demonstrate that this was justified. In addition, the police during COP26 relied on CCTV cameras (all visible to the public) which provided information to the local authority control room and the police control room. No covert cameras or facial recognition systems were used, according to the information provided to ODIHR.<sup>539</sup>

*Conclusions and recommendations on photographing and video recording of assemblies by law-enforcement personnel*

262. In a considerable portion of the assemblies observed by ODIHR, law-enforcement personnel photographed and captured video recordings of assemblies and/or participants during the entire duration of the assembly or in a variety of contexts. Whereas transmitting video images and recordings of assemblies seems to be a widespread practice in the majority of the participating States where ODIHR observed assemblies, the legitimate purpose and specific conditions of use, including privacy and data protection guarantees, are not codified in many domestic laws regulating the exercise of freedom of peaceful assembly. In this respect, Portugal's Decree Law 2/2023 on the use of bodycams by police officers is a positive practice.
263. Participants at the assemblies observed by ODIHR did not appear to be informed about the details of any recording that may have taken place, namely whether only general images were taken or whether recordings were made where participants were identifiable, about the purpose of those recordings or about the procedures and policies for the retention and processing of the data captured. For example, at times ODIHR observers were concerned about the length and frequency of recordings observed at the assemblies, carried out by the evidence gathering teams without any notification given to the participants. In addition to the possible implications of these policies and practices on other human rights, such as the right to privacy, overly intrusive filming and photography at public assemblies by law-enforcement personnel, especially if coupled with the above-mentioned information gap and the already-described strict provisions banning the use of masks or other clothing or equipment that can prevent the identification of individuals at assemblies, can have a chilling effect on assembly participants.
264. Oversight mechanisms on the recording and use of data are crucial to ensure that there is no abuse in collecting and maintaining the information, in line with international human rights standards on respect for private and family life. In that sense, the various data protection and oversight mechanisms put in place in England and Scotland are a positive practice.

Recommendations for participating States

- to legally regulate the permissible purpose and basic conditions for overt filming and photography at public assemblies, as well as the related human rights guarantees;
- to develop and publish a detailed policy relating to the use of overt filming/photography at public

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<sup>539</sup> Interview with a representative of Police Scotland, 21 October 2021.

assemblies, including a description of the purposes of such activities and the circumstances in which they may take place, as well as procedures and policies for the retention and processing of the resulting data, and to limit retention to the purpose of the recording and to ensure the deletion of data once it is no longer relevant for the purpose for which it was originally captured;

- to ensure that law-enforcement authorities always inform the public when they are, or may be, recording photographic and video materials during an assembly and about the collection, use and retention of data. This information must be provided in a simple, clear, intelligible and easily accessible and understandable language, with special care taken in cases that may involve children and adolescents;
- to guarantee that clear and human-rights compliant regulations on the use of facial recognition technologies (the purpose and conditions of the use and retention of related data) are developed in a manner that respects internationally recognized human rights and ensure that digital or biometric identity programs are designed, implemented and operated after appropriate technical, regulatory, legal and ethical safeguards are in place and in full compliance with the obligations of states under international human rights law;
- to put in place mechanisms whereby individuals can ascertain whether, and if so what, information has been stored, and to provide individuals with access to an effective process for making complaints or seeking redress relating to the collection, retention and use of their personal information. Special measures should be put in place to ensure the protection and well-being of children and adolescents, recognizing their vulnerability and particular susceptibility to the consequences of the processing of information concerning them.

## ACCOUNTABILITY OF LAW-ENFORCEMENT PERSONNEL

### *Accountability for violations in the context of policing assemblies: international standards and good practice*

265. One of the main principles of democratic policing highlights the need for the police to be accountable to citizens.<sup>540</sup> States should consistently promote a culture of accountability for law enforcement officials and 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 to assembly rights.<sup>541</sup> Effective investigation includes the following factors: an official investigation initiated by the state; independence of law enforcement from those allegedly 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.<sup>542</sup> States also have an obligation to provide those whose rights have been

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<sup>540</sup> Joint Declaration, para. 6(d): “State authorities must comply with their legal obligations and must be held accountable for any failures to do so”.

<sup>541</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 29, para. 77; General Comment 37, para. 89.

<sup>542</sup> European Court of Human Rights, *Isayeva v. Russia*, application No. 57950/00, 24 February 2005. Also see “Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns”, 1 April 2014, A/HRC/26/36, para. 80.

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.<sup>543</sup> The right to a remedy includes the right to equal and effective access to justice; adequate, effective and prompt reparation for harm suffered, including through restitution, compensation, satisfaction and guarantees of non-repetition<sup>544</sup>; and access to relevant information concerning violations and reparation mechanisms.<sup>545</sup> Legal aid should be provided to individuals whose rights have been violated and who cannot afford legal representation.<sup>546</sup>

266. The UN Special Rapporteur 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.<sup>547</sup> 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, regardless of whether this omission takes place before, during or after an assembly.<sup>548</sup> 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.<sup>549</sup> The law should also provide for criminal and disciplinary sanctions against those who unduly interfere with or violently disperse public assemblies.<sup>550</sup>
267. Where a complaint is received regarding the conduct of law-enforcement officials or where a person is seriously injured or is deprived of his or her life as a result of the actions of law-enforcement officers, an effective official investigation must be conducted in a prompt, impartial and independent manner.<sup>551</sup> As specified in the Venice Commission and OSCE/ODIHR *Guidelines on Freedom of Peaceful Assembly* (3<sup>rd</sup> edition), “The core purpose of any investigation should be to protect the right to life and physical integrity, and in those cases involving state agents or entities, to ensure their accountability for deaths or physical injuries occurring under their responsibility”.<sup>552</sup> 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.<sup>553</sup> The relevant law-

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<sup>543</sup> See Human Rights Committee, general comment No. 31, para. 15. Also see the 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.

<sup>544</sup> Joint Declaration, para. 6(g).

<sup>545</sup> “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”, A/HRC/31/66, *op. cit.*, note 4, para. 89.

<sup>546</sup> Joint Declaration, para. 6(c).

<sup>547</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/23/39, *op. cit.*, note 70, paras. 7, 54.

<sup>548</sup> *Guidelines, op. cit.* note 1, Explanatory Notes, para. 179; *Venice Guidelines, op. cit.*, note 32, para. 232.

<sup>549</sup> *Ibid.*, para. 108; General Comment 37, para. 69.

<sup>550</sup> “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 29, para. 78; *Venice Guidelines, op. cit.*, note 32, para. 233.

<sup>551</sup> See *McCann and Others v. The United Kingdom* (1995), para. 161; *Kaya v. Turkey* (1998), para. 105; *Kelly and Others v. The United Kingdom* (2001), para. 94; *Shanaghan v. The United Kingdom* (2001), para. 88; *Jordan v. The United Kingdom* (2001), para. 105; *McKerr v. The United Kingdom* (2001), para. 111; *McShane v. The United Kingdom* (2002), para. 94; *Venice Guidelines, op. cit.*, note 32, para. 234; Joint Declaration, para. 6(d).

<sup>552</sup> *Venice Guidelines, op. cit.*, note 32, para. 237.

<sup>553</sup> *Ibid.*

enforcement personnel should also be held liable for failing to intervene where such intervention might have prevented other officers from using excessive force.<sup>554</sup> 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.<sup>555</sup> Moreover, the planning of police operations must be carried out in a way that minimizes the likelihood of the use of force. In this respect, the commanding officer is liable for the actions of officers on the front line if violations are the result of inadequate planning.<sup>556</sup>

268. 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 to review and report on any large scale or contentious policing operation relating to public assemblies.<sup>557</sup> These systems should operate in addition to, and not as an alternative to, criminal, public and private legal remedies for police misconduct.<sup>558</sup> The role of a dedicated civilian law enforcement oversight body may be complemented by the work of a national human rights institution or ombudsman.<sup>559</sup> 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 complaints mechanism should be established where none exists, with a range of potential resolutions at its disposal.<sup>560</sup>
269. Another way in which the police may be held accountable in the policing of public assemblies is through monitoring and reporting, including by the media, and the ability of observers to analyze and scrutinize police actions.<sup>561</sup> Independent monitoring of assemblies by individuals, local NGOs, human rights defenders, NHRIs, international human rights organizations, or intergovernmental organizations<sup>562</sup> is an effective way to ensure full accountability of law enforcement agencies and therefore improve their legitimacy (for more information on the media, see Section IV).
270. To ensure accountability at all levels, law-enforcement personnel should be clearly and individually identifiable at all times while policing assemblies.<sup>563</sup> They must display either their name or identification number on their uniform and/or headgear and must not remove or cover

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<sup>554</sup> *Guidelines, op. cit.* note 1, Explanatory Notes, para. 182.

<sup>555</sup> Principle 24 of the Basic Principles.

<sup>556</sup> *McCann and Others v. The United Kingdom*.

<sup>557</sup> “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”, A/HRC/31/66, *op. cit.*, note 4, para. 94; *Venice Guidelines, op. cit.*, note 32, para. 233.

<sup>558</sup> 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.

<sup>559</sup> Reference to NHRI in General Comment 37, para. 29.

<sup>560</sup> *Ibid.*, para. 180.

<sup>561</sup> *Human Rights Handbook on Policing Assemblies, op. cit.*, note 15, p. 32.

<sup>562</sup> *Venice Guidelines, op. cit.*, note 32, para. 109.

<sup>563</sup> General Comment 37, para. 89.

it or prevent people from reading it during an assembly.<sup>564</sup> Where law enforcement personnel present during an assembly are not identifiable in this manner, they should identify themselves by name and badge number when asked.<sup>565</sup>

271. A clear and transparent police command structure as well as defined operational responsibilities 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.<sup>566</sup> 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, less-lethal weapons, firearms and ammunition.<sup>567</sup>
272. There should be clear protocols to ensure that any use of force by law enforcement officials is recorded in promptly in a transparent report.<sup>568</sup> As noted by the UN HRC, “where injury or damage occurs, the report should contain sufficient information to establish whether the use of force was necessary and proportionate by setting out the details of the incident, including the reasons for the use of force, its effectiveness and the consequences of it”.<sup>569</sup>

*Accountability for violations in the context of policing assemblies in selected participating States*

273. In the Netherlands, all police officers in uniform must identify themselves by means of the identity documents when requested. Plain-clothed police officers must also do so, unless “special circumstances prevent this” (the law does not specify what these circumstances might be).<sup>570</sup> In the Sarajevo Canton of Bosnia and Herzegovina, police officers that are not in uniform are under a duty to identify themselves by showing an official police card or police badge before beginning to exercise police authority. Identification may be delayed in case identification would “endanger the security of a police officer or other person, or jeopardize the achievement of a legitimate aim justifying the exercise of police authority”. When applying police powers, police officers in uniform must show their official police card and inform of their name and surname when requested.<sup>571</sup>
274. In Finland, the police must ensure that police officers can be identified if necessary. If requested, police officers are obliged to indicate that they are police officers and present their

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<sup>564</sup> *Ibid.*, para. 153. Also see *Izci v. Turkey* (2013) and *Ataykaya v. Turkey* (2014) on the lack of identification of police officers involved in use of force; Joint Declaration, para. 4(c)

<sup>565</sup> *Venice Guidelines, op. cit.*, note 32, para. 159.

<sup>566</sup> Principles 24–26 of the Basic Principles; General Comment 37, para. 77; *Venice Guidelines, op. cit.*, note 32, para. 164.

<sup>567</sup> “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”, A/HRC/31/66, *op. cit.*, note 4, para. 65.

<sup>568</sup> General Comment 37, para. 77 and 91.

<sup>569</sup> General Comment 37, para. 91.

<sup>570</sup> Article 2 of the Official instruction for the police, the Royal Marechaussee and other investigating officers.

<sup>571</sup> Article 7 of the Law of Police Officers of the Sarajevo Canton.

badge if possible without jeopardizing the performance of the police measure.<sup>572</sup> In addition, when performing official duties, police officers must wear uniforms.<sup>573</sup> In Portugal, the Public Security Police is defined as a *uniformed* and armed security force with a public service nature and endowed with administrative autonomy. ODIHR was informed by representatives of Portugal's Public Security Police that police officers are identifiable at all times, either by name or by identification number, including when wearing riot gear.<sup>574</sup>

275. In Denmark, the duty to be identifiable at all times is prescribed by internal police rules on uniforms. During ODIHR's visit, the interlocutors informed that police have numbers in the format of a sticker and sometimes in a rush, they forget to put it on or it falls off. As a result, there have been discussions about changing uniforms to avoid these situations. As part of these discussions, it was agreed that there should be no permissible exceptions for police officers not to have identification numbers, including based on the argument of personal safety.<sup>575</sup> Finally, in Scotland, plain-clothed officers must show their identification as soon as reasonably practicable when conducting arrests, while police in uniforms must do so as soon as reasonably practicable when requested.<sup>576</sup>
276. ODIHR observed no individual identification numbers on police officers at the assemblies monitored in the Sarajevo Canton of Bosnia and Herzegovina and the Netherlands, although police vehicles in the Netherlands were all identifiable by numbers. In Portugal, all the observed police officers had their name visible on their uniforms, and police cars could be identified by their license plates. In England, observed police officers were identifiable by numbers on their shoulders with the exception of some occasions where identification numbers were partly concealed by radio equipment. In Finland, monitoring teams could observe the insignia of police officers, and dialogue officers were wearing high-visibility vests with the inscription "POLIISI NEUVOTTELIJA" ("police negotiator"). In Scotland almost all police officers had individual identification numbers visible with the exception of command level officers, for example, bronze commanders<sup>577</sup>.
277. Some visited participating States prescribe in their national legislation individual liability on the part of police officers for excessive use of force or any other misconduct. In the Sarajevo Canton, for instance, police officers who used force must prepare and submit a written report on the use of force no later than 24 hours from the end of their shift. The head of the police authority must then assess the legality of the use of force of the police officer within 15 days of receipt of the written report. If they determine that the use of force was illegal, the head of the

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<sup>572</sup> Chapter 1, Article 8 of the Finnish Police Act.

<sup>573</sup> Chapter 1, Article 10 of the Finnish Police Act.

<sup>574</sup> Interview with representatives of the Public Security Police, 17 September 2021.

<sup>575</sup> Interview with representatives of Copenhagen police, 25 September 2019.

<sup>576</sup> Section 2 of the Criminal Justice (Scotland) Act 2016.

<sup>577</sup> Bronze commander refers to one of the three distinct levels of command: gold, silver and bronze. Senior command (gold commander) is seen as 'strategic' (providing overall direction); middle command (silver commander) as 'operational' (aiming to gain the specific policing objectives in the context of the overall strategic plan) and junior command (bronze commander) as 'tactical' (where the actual output of in terms of police actions is achieved). *Human Rights Handbook on Policing Assemblies*, *op. cit. note 15*, page 42.

police authority must “immediately take appropriate measures to determine the responsibility of the police officer”.<sup>578</sup> In England, police officers are individually accountable and responsible for their use of force and must be able to justify their actions in law.<sup>579</sup>

278. Positively, in many of the participating States where ODIHR monitored assemblies, independent external oversight mechanisms have been established to oversee the actions of the police in the context of policing assemblies. In Denmark, the Danish Independent Police Complaints Authority (DIPCA) was set up in 2012 to handle investigations of criminal cases against police officers and decide on complaints regarding police misconduct, including use of force. The DIPCA is independent from the police and prosecutors and is headed by the Police Complaints Council, whose members are appointed by the Ministry of Justice. Individuals can make complaints to the DIPCA if they believe that a police officer has acted in an illegal or improper way. If the DIPCA considers that the police officer has committed a crime, the case is forwarded the national prosecutor to bring charges.<sup>580</sup>
279. In Scotland, complaints against the police must first be made internally with the police agency itself, and if the complainant is not satisfied with the outcome of the case, they can apply to the Police Investigations and Review Commissioner (PIRC) to have their case reviewed.<sup>581</sup> The PIRC is an independent institution appointed by Scottish Ministers and tasked to provide independent oversight. It investigates incidents involving the police, and reviews the way the police handle complaints from the public. Upon review of a complaint, the PIRC can issue recommendations to the police to change their policies and procedures or demand to have the complaint reconsidered. If that is the case, the complaint needs to be re-investigated by a police member who was not previously involved in the case, under the potential supervision of the PIRC depending on the seriousness of the case and considering the public interest.<sup>582</sup>
280. In England, the Independent Office for Police Conduct (IOPC) oversees the police complaints system. It “investigates the most serious matters, including deaths following police contact, and sets the standards by which the police should handle complaints”.<sup>583</sup> The Office is independent of the police and government.
281. In Portugal and in the Sarajevo Canton of Bosnia and Herzegovina, there is no external oversight mechanism overseeing the actions of the police. In Bosnia and Herzegovina, police activities are overseen by the Directorate for the Coordination of Police Bodies that work under the Ministry of Internal Affairs and have the mission to “serve the police and other relevant

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<sup>578</sup> Law of Police Officers of the Sarajevo Canton, Article 32.

<sup>579</sup> <[.](https://www.college.police.uk/app/public-order/core-principles-and-legislation/police-use-force#:~:text=Any%20use%20of%20force%20must,should%20be%20the%20last%20resort;>;<a href=)

<sup>580</sup> Interview with representatives of the Danish Independent Complaints Authority, 26 September 2019.

<sup>581</sup> <[.](https://www.amnesty.nl/content/uploads/2017/01/ainl_police_oversight.pdf?x44402)

<sup>582</sup> <[.](https://www.amnesty.nl/content/uploads/2017/01/ainl_police_oversight.pdf?x444)

<sup>583</sup> See more at <



bodies in Bosnia and Herzegovina in the efficient execution of their responsibilities”.<sup>584</sup> In Portugal, in addition to the oversight exercised by police internal services, the Inspectorate General of Home Affairs, working directly under the Ministry of Home Affairs, provides external control of police actions to ensure that the police respect human rights in their activities.<sup>585</sup>

282. In some OSCE participating States where ODIHR monitored assemblies, NHRIs are active in the area of freedom of peaceful assembly and constitute an independent oversight mechanism. They can respond to individual complaints and can also act *ex officio* in this area. This is for instance the case in the Netherlands where the national Ombudsperson, an independent public authority, receives complaints from citizens regarding actions by the state, including the police. Citizens can only lodge complaints with the Ombudsperson if the relevant authority has failed to settle the issue internally. Upon receipt of a complaint, or on its own initiative, the Ombudsperson has the power to start investigations and issue non-binding decisions.<sup>586</sup>
283. In Bosnia and Herzegovina, the National Human Rights Ombudsperson oversees the investigation of individual complaints of human rights violations committed by law enforcement officials. If the Ombudsperson finds a violation, it can issue recommendations to authorities and provide assistance to the complainant regarding legal remedies.<sup>587</sup> In Portugal, the Ombudsperson can receive individual complaints and investigate police actions, including unlawful use of force.<sup>588</sup>
284. In Finland, the Parliamentary Ombudsperson provides external oversight of police actions, including use of force in demonstrations.<sup>589</sup> ODIHR was informed that the Parliamentary Ombudsperson of Finland has the power to prosecute by ordering the Prosecutor to bring a case to the Court. In addition, the Ombudsperson can issue opinions on how the police should have acted in a given case, make legislative proposals when he or she deems that the law should be changed, and make recommendations on the compensation to be awarded to a complainant.<sup>590</sup>
285. In Scotland, the Commissioner for Children and Young People (CYPCS), which ODIHR met in the context of the COP26, is mandated to promote and safeguard the rights of children and young people in Scotland and is active in the promotion of the right to freedom of peaceful assembly for children. The CYPCS for example published a guide “Under 18? Your Human Rights at Protests” that outlines the rights of children and young people under 18 when

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<sup>584</sup> <http://www.dkpt.ba/onama/default.aspx?id=58&pageIndex=1&langTag=en-US#:~:text=The%20mission%20of%20the%20Directorate,partners%20in%20Bosnia%20and%20Herzegovina.>

<sup>585</sup> <https://www.igai.pt/en/AboutUs/PresentationIGAI/Pages/default.aspx>.

<sup>586</sup> <https://www.nationaleombudsman.nl/vraag-en-antwoord/who-is-the-national-ombudsman-of-the-netherlands>; <https://www.policinglaw.info/country/the-netherlands>.

<sup>587</sup> <https://ombudsmen.gov.ba/Default.aspx?id=10&lang=EN>

<sup>588</sup> <https://www.provedor-jus.pt/quem-somos/a-provedora/mandato>.

<sup>589</sup> <https://www.oikeusasiamies.fi/en-GB/>; Meeting with the Parliamentary Ombudsman of Finland, 5 May 2022.

<sup>590</sup> Meeting with a representative of the Parliamentary Ombudsman of Finland, 5 May 2022.

protesting in Scotland.<sup>591</sup> ODIHR was informed that during the COVID-19 pandemic, the CYPCS worked together with the police regarding the impact of the pandemic on children's right to protest, and with local authorities regarding their obligations during the pandemic.<sup>592</sup>

286. In order to ensure accountability, the organizers of some assemblies engaged with legal observers to facilitate any potential complaints regarding police abuse by assembly participants and to provide legal advice in case of need. Legal observers from the Network for Police Monitoring (NetPol)<sup>593</sup> accompanied the march on 3 December 2019 in London and legal observers from NetPol and the Scottish Community & Activist Legal Project (SCALP)<sup>594</sup> observed assemblies in the context of the COP 26 Conference in Glasgow.

#### *Conclusions and recommendations on accountability for violations in the context of policing assemblies*

287. The work of the various ombudsperson institutions as independent oversight mechanisms is commendable, as NHRIs that comply with the Principles related to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles) can play a vital role in fostering and monitoring the implementation of the right to freedom of peaceful assembly. In this context, having an independent oversight body with full investigative powers to respond to complaints, such as in Finland, is a positive practice.

288. The practice whereby police officers facilitating assemblies were not clearly and individually identifiable at the outset, such as was observed by ODIHR in the Sarajevo Canton of Bosnia and Herzegovina and the Netherlands, is not in compliance with internationally accepted good practice.

289. The presence of independent media and assembly monitors might also contribute to better oversight. Therefore, their work should be proactively facilitated to enable them to freely document, record and share information on the policing of assemblies (see Section IV for more details).

#### Recommendations for participating States:

- to ensure that prompt, impartial and effective investigations are undertaken by accessible and independent effective accountability mechanisms that are able to independently, promptly and thoroughly to investigate allegations of human rights violations or abuses by law-enforcement officials in the context of policing assemblies, including in the absence of an express complaint, whenever there are reasonable grounds to believe that such an abuse or rights violation has taken place;

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<sup>591</sup> "Under 18? Your Human Rights at Protests", Scotland Commissioner for Children and Young People, <<https://cypcs.org.uk/wpcypcs/wp-content/uploads/2021/10/Your-Human-Rights-at-Protests.pdf>>.

<sup>592</sup> Meeting with representatives of the Commissioner for Children and Young People, 1 November 2021.

<sup>593</sup> <<https://netpol.org/>>.

<sup>594</sup> <<https://www.scottishactivistlegalproject.co.uk>>.

- to promptly, impartially and effectively investigate any allegations of abuse or violation of protesters' rights by law-enforcement officials, and, in the absence of an express complaint, whenever there are reasonable grounds to believe that such an abuse or rights violation has taken place, to ensure that such investigations are capable of identifying and bringing to justice those responsible, with penalties commensurate with the gravity of the violation;
- to ensure that those who violate the rights of individuals to freedom of peaceful assembly are held fully accountable; to this end, to ensure that law-enforcement officers are easily and clearly identifiable at all times while policing assemblies (including when wearing protective or other special gear);
- to facilitate the work of independent NHRIs and their ability to receive complaints and investigate allegations of human rights violations and abuses in the context of assemblies and to monitor the implementation of the right to freedom of peaceful assembly;
- to enhance monitoring and peer review of the policing of assemblies by law-enforcement personnel and to explore possibilities for international co-operation and the exchange of good practices in this regard.

## SECTION IV: MONITORING AND REPORTING ON FREEDOM OF PEACEFUL ASSEMBLY: ACCESS AND RESTRICTIONS

### *Access and restrictions for media and independent monitors: international standards and good practice*

290. OSCE participating States have committed to ensuring that everyone can enjoy the freedom of expression and to respecting the right of everyone, individually or in association with others, to freely seek, receive and impart views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information (Copenhagen 1990). The freedom of expression, including the right to information, is protected in numerous international human rights instruments, such as the ICCPR (Article 19) and, in the Council of Europe region the ECHR (Article 10).
291. Human rights defenders and journalists have an important role to play in providing independent, impartial and objective coverage of demonstrations and protests, including a factual record of the conduct of participants and law-enforcement officials alike.<sup>595</sup> As such, they should not be prohibited from, or unduly limited in, exercising these functions and must not face reprisals, harassment, or intimidation.<sup>596</sup> The monitoring of public assemblies provides a vital source of independent information on the activities of both 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, law-enforcement officials and civil society.<sup>597</sup> In this regard, for the Council of Europe region, the ECtHR has affirmed that the public has a right to be informed about public assemblies taking place and how they unfold.<sup>598</sup>
292. 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.<sup>599</sup> The freedom to monitor public assemblies should be guaranteed not only to all media representatives, including so-called citizen journalists,<sup>600</sup> but also to other members of civil society, such as human rights activists.<sup>601</sup>
293. As a good practice, independent monitoring is often carried out by intergovernmental organizations, NHRIs or NGOs.<sup>602</sup> Such individuals and groups should, therefore, be permitted

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<sup>595</sup> *Guidelines, op. cit.*, note 1, Principles 5.9 and 5.10; “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai”, A/HRC/20/27, *op. cit.*, note 29, para. 48.

<sup>596</sup> General Comment 37, para. 30; Joint Declaration, para. 2(f).

<sup>597</sup> *Guidelines, op. cit.*, note 1, para. 5.9; *Venice Guidelines, op. cit.*, note 32, para. 204.

<sup>598</sup> *Najafli v. Azerbaijan* (2594/07), European Court of Human Rights First Section (2012), para. 66.

<sup>599</sup> “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”, A/HRC/31/66, *op. cit.*, note 4, para. 68; *Venice Guidelines, op. cit.*, note 32, para. 204.

<sup>600</sup> Citizen journalism is intended here as the activity of citizens who do not work for the mainstream media but who collect, report, analyse and disseminate news and information.

<sup>601</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 199; *Venice Guidelines, op. cit.*, note 32, paras. 195 and 209.

<sup>602</sup> General Comment 37, para. 30; *Venice Guidelines, op. cit.*, note 32, para. 209.

to operate freely in the context of monitoring freedom of assembly.<sup>603</sup> ODIHR's *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".<sup>604</sup>

294. As the UN Special Rapporteur has emphasized, the right to peaceful assembly not only covers the right to hold or participate in an assembly, but it also protects the rights of those monitoring peaceful assemblies.<sup>605</sup> He has, therefore, called on states to ensure the protection of those monitoring and reporting on violations and abuses in the context of peaceful assemblies<sup>606</sup> and to respect and facilitate the right to observe and monitor all aspects of an assembly.<sup>607</sup> Similarly, the UN HRC has called for the protection of journalists, monitors and observers, as well as media professionals regardless of whether they represent foreign or national media.<sup>608</sup> 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.<sup>609</sup> The UN HRC 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.<sup>610</sup>
295. In addition, 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; to facilitate visits to their countries by NGOs from any of the participating States in order to observe human dimension conditions; to welcome NGO activities; and 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 (Moscow 1991).

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<sup>603</sup> *Ibid.*, para. 201.

<sup>604</sup> *Guidelines on the Protection of Human Rights Defenders* (Warsaw: OSCE/ODIHR, 2014), <[www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders](http://www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders)>, para. 62; Also in General Comment 37, para. 30.

<sup>605</sup> "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", A/HRC/20/27, *op. cit.*, note 29, Summary; *Venice Guidelines, op. cit.*, note 32, para. 207; General Comment 37, para. 74.

<sup>606</sup> *Ibid.*, para. 94.

<sup>607</sup> Subject to the narrow permissible restrictions outlined in Article 19(3) of the ICCPR. See "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", A/HRC/31/66, *op. cit.*, note 4, para. 70. Moreover, the African Commission on Human and Peoples' Rights has stated that the right to monitor the observance of human rights in a given society includes the right to engage in active observation of an assembly and to collect, verify and use information related to the assembly; Joint Declaration, para. 2(f); General Comment 37, para. 74.

<sup>608</sup> General Comment 37, paras. 74 and 197.

<sup>609</sup> "Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani", United Nations General Assembly, A/62/225, 13 August 2007, paras. 91, 101(f)(i).

<sup>610</sup> "The promotion and protection of human rights in the context of peaceful protests", resolution adopted by the United Nations Human Rights Council, A/HRC/RES/38/11, 6 July 2018.

296. The role of the media is to impart information and ideas on matters of public interest, information that the public also has a right to receive.<sup>611</sup> The media also have a very important role to play in providing independent coverage of public assemblies.<sup>612</sup> Media reports and footage provide a key element of public accountability for both event organizers and law-enforcement officials, including by providing information on the state authorities handling of assemblies.<sup>613</sup> As such, representatives of the media must be given full access by the authorities to all forms of public assembly and to the policing operations mounted to facilitate them.<sup>614</sup>
297. The right of journalists to have access to public assemblies and to cover them without hindrance is closely connected with both the freedom of peaceful assembly and the freedom of speech. The UN HRC has acknowledged that journalists' participation in a public event organized by a third party is protected by the freedom of expression.<sup>615</sup> Media have the right to collect information of public significance, but they also broadcast the messages of assembly participants for the benefit of the public at large.
298. Engaging with the media is also an important means for the police to communicate with the wider public and can serve as a means of sharing information about the ways police intend to ensure that an assembly takes place peacefully.<sup>616</sup> Accordingly, the police should maintain open lines of communication with the media before, during, and after the assembly.<sup>617</sup>
299. 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.<sup>618</sup> Media recording, including audio and video recording, provides an important element of public element-sharing, contribute to critical discussion of public affairs and aids in uncovering abuses of state authorities.<sup>619</sup> Confiscation, seizure and/or destruction of notes and visual or audio recording equipment without due process should be prohibited and punished.<sup>620</sup>

#### *Access and restrictions for media and independent monitors in selected participating States*

300. In most of the participating States included in this monitoring cycle, there is no long-established practice of independent assembly monitoring. The Network for Police Monitoring (NetPol) is often present at and observes assemblies and other public events in England and Scotland based

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<sup>611</sup> *Guidelines, op. cit.*, note 1, Explanatory Notes, para. 206; *Venice Guidelines, op. cit.*, note 32, para. 191.

<sup>612</sup> *Ibid.*, para. 207; *Venice Guidelines, op. cit.*, note 32, para. 191.

<sup>613</sup> *Venice Guidelines, op. cit.*, note 32, para. 192, see ECtHR case of Pentikainen v Finland (2015), para. 89.

<sup>614</sup> *Ibid.*, para. 208; *Venice Guidelines, op. cit.*, note 32, para. 194; Joint Declaration, para. 2(f); General Comment 37, para. 74.

<sup>615</sup> *Pranevich v. Belarus*, 2251/07, para. 6.3,

<sup>616</sup> *Human Rights Handbook on Policing Assemblies, op. cit.*, note 15, p. 33.

<sup>617</sup> *Venice Guidelines, op. cit.*, note 32, para. 199.

<sup>618</sup> *Venice Guidelines, op. cit.*, note 32, paras. 193 and 211.

<sup>619</sup> *Venice Guidelines, op. cit.*, note 32, paras. 193 and 194.

<sup>620</sup> "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", A/HRC/31/66, *op. cit.*, note 4, para. 71; *Venice Guidelines, op. cit.*, note 32, para. 211.

on its established methodology. NetPol’s monitoring focuses on the actions of the police and local authorities.<sup>621</sup> In Scotland, the Scottish Community and Activist Legal Project (SCALP) is a volunteer run collective that attends protest to challenge police abuse, support people in case of arrest, and provide legal information to activists.<sup>622</sup> In the context of the COP26 in Glasgow, NetPol and SCALP worked together to provide independent legal scrutiny of police’s actions during the protests.<sup>623</sup> In Scotland, the right of the media to cover police work is prescribed in the Police Scotland Authorized Professional Practice. According to it, members of the media have a right to report from the scene of many incidents that the police deal with. Their movement should not be restricted provided that they do not interfere with the police operation, or jeopardize their own safety or that of others.<sup>624</sup>

301. COP26 was closely monitored by SCALP volunteers, who established a Legal Back Office during the conference, providing legal aid in police stations, as well as directly observing assemblies. ODIHR witnessed the presence of SCALP monitors almost at all assemblies it observed. The assessment report was published by NETPOL and the non-governmental organization Article 11 in December 2021, outlining some of the challenges that the monitors reported to have endured during their monitoring work.<sup>625</sup> According to the report, Police Scotland conducted surveillance on Legal Observers, threatened and intimidated them and unlawfully demanded personal details from the monitors. The report also refers to a consistent pattern of “male officers speaking to female Legal Observers in derisory or mocking ways.”<sup>626</sup> Finally, the report notes restrictions, which the observers were facing during their activity, detailing how on a number of occasions police officers intentionally blocked their view and forced them to move back from the incidents they were observing. NETPOL also raised these concerns with the ODIHR assembly monitoring team after completion of the monitoring mission.
302. Most of the assemblies ODIHR observed, such as those in Bosnia and Herzegovina, England, and COP26 in Scotland, were extensively covered by the media and citizen journalists. In contrast, in Finland and Portugal, ODIHR monitors did not observe the visible presence of regular media outlets. During most of its assembly-monitoring exercises, ODIHR did not directly observe any restrictions imposed by government authorities on the professional activities of journalists.
303. During their monitoring deployments, ODIHR observers generally did not experience restrictions on their ability to observe assemblies or to gather information. ODIHR acknowledges that the United Kingdom, Portugal and the Netherlands have facilitated its assembly-monitoring work twice in the past ten years, and ODIHR received a spontaneous

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<sup>621</sup> Interview with representatives of NetPol, 20 October 2021.

<sup>622</sup> <<https://www.scottishactivistlegalproject.co.uk/homepage>>.

<sup>623</sup> Interview with representatives of NetPol, 20 October 2021.

<sup>624</sup> See Police Scotland Authorized Professional Practice, p.70.

<sup>625</sup> Respect or Repression: An Independent report on Operation Urram (Respect), the policing of the COP26 Climate Conference in Scotland, available at: New report raises human rights concerns about the policing of COP26 in Glasgow | Article 11 Trust, 16 December 2021.

<sup>626</sup> *Ibid.*, p.44.

invitation from the UK authorities to conduct an assembly-monitoring exercise in the context of the 26<sup>th</sup> UN Global Climate Change Conference in November 2021 in Scotland.

304. In the vast majority of cases, ODIHR was able, both before and after assemblies, to secure the meetings it had requested with state officials in the participating States where monitoring was conducted. Co-operation and the exchange of information were usually good or very good. An exceptionally high degree of openness and co-operation was noted in meetings with the authorities in Denmark, Finland and Portugal.

*Conclusions and recommendations on access and restrictions for media and independent monitors*

305. In line with their OSCE commitments, Denmark, the United Kingdom (England and Scotland), Portugal, Bosnia and Herzegovina, Finland, and the Netherlands facilitated ODIHR's assembly-monitoring exercises by providing access to official interlocutors, as well as by supplying additional information when requested. ODIHR considers the proactive invitation by UK authorities to carry out an assembly-monitoring exercise in Glasgow in the context of the COP26 an important acknowledgement of its monitoring work, beneficial to the inviting State to improve compliance with international standards and OSCE commitments in the area of freedom of peaceful assembly.
306. Allowing unhindered access to journalists and monitors during assemblies and enabling them to document and report on the interaction between assembly participants, police forces and others is an important corollary of OSCE commitments and other human rights standards on freedom of peaceful assembly, freedom of expression and freedom of the media. It is positive that ODIHR did not, in the course of its monitoring, observe any significant impediments to the work of journalists in the vast majority of participating States where monitoring took place. As highlighted by the UN Special Rapporteur, human rights defenders, journalists and monitors should be allowed—and indeed encouraged—to operate freely in the context of freedom of assembly, so as to provide an impartial and objective account, including a factual record, of the conduct of demonstrators and law enforcement.<sup>627</sup> Monitoring of assemblies by journalists or members of civil society, such as human rights defenders, should be respected, facilitated and protected.
307. The reports about SCALP volunteers facing challenges and harassment from law enforcement during their monitoring activities are concerning and should be closely examined by the UK authorities. The work of independent assembly monitors should be protected and facilitated by the law enforcement and other relevant authorities and their contribution and important role in the realization of the right to freedom of peaceful assembly should be recognized.

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<sup>627</sup> "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai", A/HRC/20/27, *op. cit.*, note 29, para. 48.



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### Recommendations for participating States:

- to recognize and raise awareness about the important contribution of independent monitoring to the full enjoyment of the freedom of peaceful assembly;
- to actively facilitate the independent monitoring of, and reporting on, the facilitation of assemblies and protection of the freedom of peaceful assembly by international and local observers, including by:
  - refraining from imposing unnecessary or disproportionate restrictions on assembly-monitoring activities;
  - ensuring that any restrictions that may be imposed on monitored assemblies do not limit the ability of international or local monitors to carry out their activities without impediments and to observe all aspects of an assembly, such as during curfews, dispersals or arrests;
  - ensuring that assembly monitors are able to photograph or otherwise record actions and activities at public assemblies, including law-enforcement operations or individual law-enforcement officials, and that such video or audio recordings may not be confiscated, seized and/or destroyed without due process and may be used as evidence in relevant disciplinary, administrative or criminal proceedings;
  - demonstrating willingness on the part of the state authorities to engage with monitors before, during and after an assembly, where such engagement is sought, and to give due consideration to the findings and recommendations resulting from their assessment of the facilitation of assemblies so as to inform institutional learning and, more broadly, in the drafting of legislation and policies affecting the enjoyment of freedom of peaceful assembly;
  - facilitating information gathering by NHRIs or other relevant independent oversight or monitoring bodies or and civil society organizations working in the area of freedom of assembly about any anticipated assembly;
- to ensure that both traditional and citizen journalists are able to provide coverage of public assemblies, including the actions of law-enforcement personnel, without official hindrance;
- to facilitate ODIHR's independent assembly monitoring, including by:
  - issuing a standing invitation to ODIHR to carry out independent assembly monitoring in participating States and to observe assemblies on the basis of ODIHR's established methodology, without prejudice to ODIHR's responsibility ability to select those the events to be monitored;
  - engaging with ODIHR with a view to giving due consideration to its ODIHR's assembly-monitoring findings and to implementing its recommendations, including by engaging with ODIHR and by taking advantage of ODIHR's tools and assistance in the area of freedom of peaceful assembly;
  - supporting ODIHR in building the capacity of civil society organizations, NHRIs and OSCE field operations regarding the independent monitoring of public assemblies based on ODIHR's established observation methodology and in raising awareness among state bodies and authorities about how to effectively facilitate the work of independent assembly monitors.

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## **ANNEX 1: CONSOLIDATED RECOMMENDATIONS FOR OSCE PARTICIPATING STATES<sup>628</sup>**

### *On the main definitions and scope of the legal protection*

- to guarantee in law a presumption in favor of holding peaceful assemblies in clear and explicit terms;
- to ensure that the freedom of peaceful assembly is guaranteed in legislation to everyone under the jurisdiction of participating States, including children, persons with disabilities and non-citizens;
- to recognize and expressly provide in law for spontaneous assemblies where timely notification is not possible or practicable (such as in cases where an assembly responds to an event that could not reasonably have been anticipated); such assemblies should be exempt from the requirement for prior notification;
- to ensure that clear and foreseeable procedures are promulgated to enable individuals to assess whether their conduct would breach the law and the consequences of doing so, to indicate clearly, among other things, the definition of various types of assemblies and the corresponding legal requirements, the body with authority and responsibility for receiving and responding to notifications or authorizations, the criteria for imposing conditions and restrictions and the consequences for failing to hold an assembly in compliance with the law;

### *On notification and authorization requirements for assemblies*

- to ensure that authorization/notification requirements are only imposed when necessary to facilitate the freedom of peaceful assembly or necessary to protect national security or public safety, public order, public health or morals or the rights and freedoms of others and only to the minimum extent necessary;
- to ensure that the notification process is prompt, not unduly bureaucratic, widely accessible, free of charge and that the lack of notification or infringements of the notification process does not result in automatic prohibition or dispersal of an otherwise peaceful assembly or in imprisonment or heavy fines;
- to ensure that the notification process is accessible to persons with various types of disabilities, non-citizens and children, including by developing accessible means of communication and ensuring adequate training of local authorities and relevant law-enforcement agencies;
- to ensure that the advance notification period is as short as possible, while still allowing the

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<sup>628</sup> These recommendations were developed for the benefit of all OSCE participating States, including those that ODIHR did not visit as part of this monitoring cycle. The challenges that most OSCE participating States face in ensuring the right to freedom of peaceful assembly are similar to those observed by ODIHR in this cycle, which these recommendations seek to address.

authorities sufficient time to prepare for an assembly and that the notification requirements are not unduly burdensome (the requested information should merely contain the date, time and location of the assembly and, where relevant, the name, address and contact details of the organizer);

- to ensure that the absence of an official response to a notification may not prevent an assembly from being held.

*On prior restrictions on assemblies*

- to ensure that any restrictions on assemblies have a basis in primary law and strictly adhere to the principle of proportionality, ensuring in particular that restrictions are narrowly tailored to meet the specific and legitimate aims pursued by the authorities and are necessary in a democratic society;
- to ensure that assembly participants are able to convey their message within sight and sound of their intended audience and that limitations in that regard based on security or other considerations are only imposed on an exceptional basis and in a proportionate manner;
- to ensure that, where security or other considerations may result in time, place and manner restrictions on assemblies, these are necessary under the circumstances, and, whenever possible, discussed with the organizers of assemblies prior to an event so that suitable alternatives consistent with the sight-and-sound principle can be identified.

*On simultaneous assemblies, including counter demonstrations*

- to ensure that provisions regulating assemblies and other public events taking place simultaneously and in the same or adjacent locations are based on the presumption that, whenever possible, all assemblies should be accommodated; in particular, to ensure that there are no provisions prohibiting public events from taking place at the same time and at the same place when they can be reasonably accommodated;
- in relation to assemblies and corresponding counterdemonstrations, to ensure that no automatic restrictions are in place preventing them from taking place within sight and sound of each other; any restrictions imposed on assemblies should be narrowly tailored and should only be based on legitimate grounds based on objective evidence under international human rights law;
- to ensure that, when two public events cannot be accommodated in the same location, the organizers are encouraged to engage in a dialogue with each other to find a mutually satisfactory solution;
- to ensure that, in the pre-assembly phase, organizers of assemblies are not compelled, coerced, or otherwise subjected to pressure either to accept whatever alternative(s) the authorities propose or to negotiate with the authorities about key aspects, particularly the time or place, of a planned assembly.

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*On decision-making and review*

- to ensure that the decision-making with regard to assemblies is conducted in a transparent manner;
- to ensure timely notification of any restriction to the assembly organizers with detailed reasoning behind each restriction;
- to ensure that time limits set for each stage in the process enable organizers to respond to and/or challenge proposed restrictions;
- to ensure recourse to a prompt and effective remedy through administrative and judicial review, including an expedited appeal procedure so that assembly organizers are not compelled to accept, and are able to challenge the substance of any restriction before the date of the assembly.

*On the role of the organizer*

- to ensure that the official duty to maintain public order during assemblies, including by protecting participants, is clearly defined in the law and is understood by law-enforcement officials and policymakers at all levels as a central responsibility of the state;
- to ensure that assembly organizers are not held responsible for the maintenance of public order and that their role is limited to making reasonable efforts to meet legal requirements for assemblies, including ensuring the peacefulness of their assemblies and that lawful instructions by law-enforcement officials are obeyed;
- to ensure that assembly organizers and participants are not held liable for the unlawful conduct of other people;
- to ensure that the role of assembly stewards, in law and in practice, is clearly defined as the role of facilitators who assist organizers in managing events on a voluntary basis and that they are not tasked with government functions that directly pertain to the maintenance of public order during assemblies;
- to ensure that insurance requirements, fees to cover the costs of clean-up after assemblies or costs of other public services (such as policing and medical services) are not imposed on the organizers of assemblies;
- to ensure that any sanctions applied against organizers who fail to comply with legal requirements for assemblies are proportionate. Where there is no genuine criminal activity punishable by other laws, a violation of these requirements should be addressed by fines of a proportionate amount, allowing for the imposition of minor sanctions where the transgression is of a minor nature;
- to ensure that laws related to public assemblies do not contain vague and broadly defined offences or misdemeanors that confer excessive discretion upon law-enforcement officials or that enable

the imposition of excessive and disproportionate sanctions on protesters.

*On engagement and communication by the police with assembly organizers and participants*

- to create conditions for effective communication between assembly organizers, participants and law-enforcement bodies before and during assemblies in order to better protect and facilitate the exercise of rights, create mutual trust and understanding, avoid unnecessary confrontation, reduce tension, prevent violence or stop any disruptive or unlawful incidents quickly, should such incidents occur;
- to ensure that the law-enforcement authorities appoint easily accessible liaison officers or other appropriate intermediaries whom organizers can contact before, during and after an assembly, and that such appointments do not absolve other law-enforcement officials directly engaged in the facilitation of assemblies from the need to communicate effectively, as appropriate;
- to ensure that liaison officers or other relevant law-enforcement authorities are trained in communication with children and persons with various types of disabilities, and adopt adequate and appropriate communication strategies;
- to ensure that law-enforcement authorities proactively seek a dialogue with assembly organizers while those exercising their right to assemble are not compelled to negotiate with the authorities, and that, generally, their participation in any such process is entirely optional and voluntary;
- to adopt a “no surprises” approach in policing assemblies by disclosing as much planning information as possible to the organizers beforehand and by withholding information only if there is a clear and justifiable need to do so. If possible, this approach should also extend to dialogue and communication with all involved groups, including potentially violent groups at the pre-assembly stage;
- to ensure that law-enforcement officials liaise with assembly stewards, where organizers choose to use them for the facilitation of an assembly;
- to hold post-event debriefings for law-enforcement officials and, where relevant, other state authorities (particularly after non-routine events), with the involvement of willing assembly organizers as a standard practice;
- to promote diversity in law enforcement, including better representation of women and minority groups, including for both positions entailing operational work, such as policing assemblies, and as well as for command positions.

*On the use of force, detention and containment, as well as dispersals of assemblies*

- to ensure that rules on the use of force, including the circumstances in which force can be used,

by law-enforcement officials policing assemblies are established in line with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, made publicly accessible and adhered to in practice;

- to ensure that assembly policing tactics and training emphasize the prevention of the use of force and de-escalation based on communication, negotiation and dialogue;
- to ensure that crowd-control strategies, relying on containment ('kettling') are only employed when necessary to prevent serious damage or injury and when no alternative police tactics can be employed that would be less restrictive of the rights to liberty and the freedom of movement;
- to develop and make public comprehensive guidelines on the dispersal of assemblies in accordance with international human rights law and principles detailing 1) the circumstances that warrant dispersal; 2) all steps required to be taken before a decision to disperse (including de-escalation measures); 3) the individual or individuals who may issue a dispersal order; and 4) the preference for voluntary dispersal before resorting to any use of force;
- to ensure that participants in assemblies are only arrested when there are legitimate grounds for the deprivation of liberty and without resorting to excessive use of force during the arrests;
- to provide training for law-enforcement officials on facilitating the enjoyment of the right to freedom of peaceful assembly with a strong emphasis on human rights-compliant planning and preparation, crowd management measures and de-escalation techniques consistent with OSCE commitments and human rights standards, and to consider enlisting ODIHR's support in this regard;<sup>629</sup>
- to ensure that law-enforcement officials are adequately trained, resourced and equipped (including with less-lethal technologies) so as to best enable differentiated and proportionate use of force in the context of policing assemblies;
- to ensure that the planning and decision-making concerning the facilitation of assemblies takes into consideration the particular needs and vulnerabilities of children participating in assemblies.

*On photographing and video recording of assemblies by law-enforcement personnel*

- to legally regulate the permissible purpose and basic conditions for overt filming and photography at public assemblies, as well as the related human rights guarantees;
- to develop and publish a detailed policy relating to the use of overt filming/photography at public assemblies, including a description of the purposes of such activities and the circumstances in

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<sup>629</sup> For an overview of ODIHR's activities in the field of freedom of peaceful assembly, including capacity-building, see Annex 6.

which they may take place, as well as procedures and policies for the retention and processing of the resulting data, and to limit retention to the purpose of the recording and to ensure the deletion of data once it is no longer relevant for the purpose for which it was originally captured;

- to ensure that law-enforcement authorities always inform the public when they are, or may be, recording photographic and video materials during an assembly and about the collection, use and retention of data. This information must be provided in a simple, clear, intelligible and easily accessible and understandable language, with special care taken in cases that may involve children and adolescents;
- to guarantee that clear and human-rights compliant regulations on the use of facial recognition technologies (the purpose and conditions of the use and retention of related data) are developed in a manner that respects internationally recognized human rights and ensure that digital or biometric identity programs are designed, implemented and operated after appropriate technical, regulatory, legal and ethical safeguards are in place and in full compliance with the obligations of states under international human rights law ;
- to put in place mechanisms whereby individuals can ascertain whether, and if so what, information has been stored, and to provide individuals with access to an effective process for making complaints or seeking redress relating to the collection, retention and use of their personal information. Special measures should be put in place to ensure protection and well-being of children and adolescents, recognizing their vulnerability and particular susceptibility to the consequences of the processing of information concerning them.

*On the accountability of law-enforcement personnel*

- to establish ensure that prompt, impartial and effective investigations are undertaken by accessible and independent effective accountability mechanisms that are able to independently, promptly and thoroughly to investigate allegations of human rights violations or abuses by law-enforcement officials in the context of policing assemblies, including in the absence of an express complaint, whenever there are reasonable grounds to believe that such an abuse or rights violation has taken place;
- to promptly, impartially and effectively investigate any allegations of abuse or violation of protesters' rights by law-enforcement officials, and, in the absence of an express complaint, whenever there are reasonable grounds to believe that such an abuse or rights violation has taken place, to ensure that such investigations are must be capable of identifying and bringing to justice those responsible, with penalties commensurate with the gravity of the violation;
- to ensure that those who violate the rights of individuals to freedom of peaceful assembly are held fully accountable; to this end, to ensure that law-enforcement officers are easily and clearly identifiable at all times while policing assemblies (including when wearing protective or other special gear);
- to facilitate the work of independent NHRIs and their ability to receive complaints and investigate allegations of human rights violations and abuses in the context of assemblies and to monitor the

implementation of the right to freedom of peaceful assembly;

- to enhance monitoring and peer review of the policing of assemblies by law-enforcement personnel and to explore possibilities for international co-operation and the exchange of good practices in this regard.

*On access and restrictions for media and independent monitors*

- to recognize and raise awareness about the important contribution of independent monitoring to the full enjoyment of the freedom of peaceful assembly;
- to actively facilitate the independent monitoring of, and reporting on, the facilitation of assemblies and protection of the freedom of peaceful assembly by international and local observers, including by:
  - refraining from imposing unnecessary or disproportionate restrictions on assembly-monitoring activities
  - ensuring that any restrictions that may be imposed on monitored assemblies do not limit the ability of international or local monitors to carry out their activities without impediments and to observe all aspects of an assembly, such as during curfews, dispersals or arrests;
  - ensuring that assembly monitors are able to photograph or otherwise record actions and activities at public assemblies, including law-enforcement operations or individual law-enforcement officials, and that such video or audio recordings may not be confiscated, seized and/or destroyed without due process and may be used as evidence in relevant disciplinary, administrative or criminal proceedings;
  - demonstrating willingness on the part of the state authorities to engage with monitors before, during and after an assembly, where such engagement is sought, and to give due consideration to the findings and recommendations resulting from their assessment of the facilitation of assemblies so as to inform institutional learning and, more broadly, in the drafting of legislation and policies affecting the enjoyment of freedom of peaceful assembly;
  - facilitating information gathering by NHRIs, other relevant independent oversight or monitoring bodies, and/or civil society organizations working in the area of freedom of assembly about any anticipated assembly;
- to ensure that both traditional and citizen journalists are able to provide coverage of public assemblies, including the actions of law-enforcement personnel, without official hindrance;
- to facilitate ODIHR's independent assembly monitoring, including by:
  - issuing a standing invitation to ODIHR to carry out independent assembly monitoring in participating States and to observe assemblies on the basis of ODIHR's established methodology, without prejudice to ODIHR's responsibility ability to select those the events to be monitored;
  - engaging with ODIHR with a view to giving due consideration to its ODIHR's assembly-monitoring findings and to implementing its recommendations, including by engaging with



ODIHR and by taking advantage of ODIHR's tools and assistance in the area of freedom of peaceful assembly;

- supporting ODIHR in building the capacity of civil society organizations, NHRIs and OSCE field operations regarding the independent monitoring of public assemblies based on ODIHR's established observation methodology and in raising awareness among state bodies and authorities about how to effectively facilitate the work of independent assembly monitors.

**ANNEX 2: ASSEMBLIES MONITORED BY ODIHR BETWEEN 27 SEPTEMBER 2019 AND 12 NOVEMBER 2021**

<b>No.</b>	<b>Date</b>	<b>Participating State</b>	<b>City</b>	<b>Type of event</b>	<b>Short description</b>
1	27.09.2019	Denmark	Copenhagen	Climate protest	A static assembly with about 3,000 participants
2	03.12.2019	United Kingdom	London	Protest against NATO and President Donald Trump	A march with about 2,000 participants
3	04.12.2019	United Kingdom	London	Protest against NATO and President Donald Trump	A static assembly with about 25 participants
4	15.05.2021	The Netherlands	Amsterdam	Protest against COVID-19 restrictions	A march with about 2,500 participants
5	14.08.2021	Bosnia and Herzegovina	Sarajevo	Pride March	A march with about 500 participants
6	14.08.2021	Bosnia and Herzegovina	Sarajevo	Counterdemonstration against Pride March 'Protest of Pride and Honor'	A march with about 90 participants
7	22.08.2021	Finland	Turku	188-Kukkavirta (Flower Flow)	A march with about 140 participants
8	22.08.2021	Finland	Turku	Counterdemonstration against 188-Kukkavirta (Flower Flow) 'Turku without Nazis'	A march with about 250 participants

<b>No.</b>	<b>Date</b>	<b>Participating State</b>	<b>City</b>	<b>Type of event</b>	<b>Short description</b>
9	18.09.2021	Portugal	Lisbon	Protest against COVID-19 restrictions 'World Wide Rally for Freedom'	A march with about 350 participants
10	31.10.2021	United Kingdom	Glasgow	Shine a light	A march with about 450 participants
11	01.11.2021	United Kingdom	Glasgow	Red rebels	A march with about 450 participants
12	01.11.2021	United Kingdom	Glasgow	Beggars Banquet	A march with about 60 participants
13	01.11.2021	United Kingdom	Glasgow	Snap Rally Govan Park	Unannounced static assembly that turned into a march with about 200 participants and was facilitated by the police
14	02.11.2021	United Kingdom	Glasgow	Trillion Dollar Bash	A static assembly and a march with about 200 participants
15	03.11.2021	United Kingdom	Glasgow	Greenwash March	A static assembly turned into a march, which was declared unlawful by the police, with about 350 (no notification submitted to authorities)
16	04.11.2021	United Kingdom	Glasgow	Climate and Militarism March	A static assembly with about 50 participants
17	04.11.2021	United Kingdom	Glasgow	Peace March	A march with about 180 participants
18	05.11.2021	United Kingdom	Glasgow	Fridays for Future	A march with about 9,000 participants
19	06.11.2021	United Kingdom	Glasgow	Global Day of Action for Climate Justice	A march with about 40,000 – 50,000 participants
20	07.11.2021	United Kingdom	Glasgow	North Drillers	A static assembly and a march with about 250 participants
21	07.11.2021	United Kingdom	Glasgow	Loss and Damage	A static assembly with about 100 participants
22	08.11.2021	United Kingdom	Glasgow	Die in at secret location	A static assembly and a march with about 100 participants

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<b>No.</b>	<b>Date</b>	<b>Participating State</b>	<b>City</b>	<b>Type of event</b>	<b>Short description</b>
23	09.11.2021	United Kingdom	Glasgow	Extinction Rebellion Northern Ireland	A static assembly with about 40 participants
24	10.11.2021	United Kingdom	Glasgow	Public transport assembly	A static assembly with about 70 participants
25	10.11.2021	United Kingdom	Glasgow	Axe the drax	A static assembly with about 80 participants
26	11.11.2021	United Kingdom	Glasgow	Climate Justice is Migrant Justice: March on the Home Office	A march with about 250 participants
27	12.11.2021	United Kingdom	Glasgow	Get Tae Fuck	A static assembly with about 200 participants

**ANNEX 3: TABLE OF THE PARTICIPATING STATES WHERE ODIHR  
MONITORED ASSEMBLIES IN THE FIFTH MONITORING CYCLE**

<b>State</b>	<b>Place(s)</b>	<b>Month and Year</b>	<b>Number of Monitored Assemblies</b>
Denmark	Copenhagen	September 2019	1
United Kingdom (England)	London	December 2019	2
The Netherlands	Amsterdam	May 2021	1
Bosnia and Herzegovina	Sarajevo	August 2021	2
Finland	Turku	August 2021	2
Portugal	Lisbon	September 2021	1
United Kingdom (Scotland)	Glasgow	October-November 2021	18
		<b>September 2019 - November 2021</b>	<b>27</b>

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## ANNEX 4: KEY OSCE COMMITMENTS RELEVANT TO ODIHR'S MONITORING MANDATE

### Prague 1992 (Document on Further Development of CSCE Institutions and Structures: III. Human Dimension)

6. The Ministers agreed that monitoring and promoting progress in the human dimension remains a key function of the CSCE.

[...]

9. In order to extend practical co-operation among participating States in the human dimension, the Ministers decided to give additional functions to the Office for Free Elections which will henceforth be called the Office for Democratic Institutions and Human Rights.

10. Under the general guidance of the CSO, the Office should, *inter alia*:

[...]

- serve as an institutional framework for sharing and exchanging information on available technical assistance, expertise, and national and international programmes aimed at assisting the new democracies in their institution-building;
- facilitate contacts between those offering such resources and those wishing to make use of them;

[...]

- establish contacts with non-governmental organizations active in the field of democratic institution-building, with a view to enabling interested participating States to make use of their extensive resources and expertise;

### Helsinki 1992

#### VI The Human Dimension

[...] (2) The participating States express their strong determination to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote the principles of democracy and, in this regard, to build, strengthen and protect democratic institutions, as well as to promote tolerance throughout society. To these ends, they will broaden the operational framework of the CSCE, including by further enhancing the ODIHR, so that

information, ideas, and concerns can be exchanged in a more concrete and meaningful way, including as an early warning of tension and potential conflict. In doing so, they will focus their attention on topics in the Human Dimension of particular importance. They will therefore keep the strengthening of the Human Dimension under constant consideration, especially in a time of change.

[...]

ODIHR will, as the main institution of the Human Dimension:

(5a) assist the monitoring of implementation of commitments in the Human Dimension by:

72. serving as a venue for bilateral meetings under paragraph 2 and as a channel for information under paragraph 3 of the Human Dimension Mechanism as set out in the Vienna Concluding Document;
73. receiving any comments from States visited by CSCE missions of relevance to the Human Dimension other than those under the Human Dimension Mechanism; it will transmit the report of those missions as well as eventual comments to all participating States with a view to discussion at the next implementation meeting or review conference;
74. participating in or undertaking missions when instructed by the Council or the CSO;

[...]

(5c) assist other activities in the field of the Human Dimension, including the building of democratic institutions by:

[...]

communicating, as appropriate, with relevant international and non-governmental organizations;

## **Stockholm 1992**

### *Decisions*

(2) The Ministers welcomed the strengthened role of the Office for Democratic Institutions and Human Rights and the appointment of the High Commissioner on National Minorities as especially useful steps towards integrating the human dimension more fully into the political consultations and concerted action of the participating States [...]

Compliance with CSCE commitments is of fundamental importance. Monitoring of compliance provides governments of participating States with crucial information on which

they can formulate policy [...] .”

### **Rome 1993**

#### 4. Office for Democratic Institutions and Human Rights

[...] Inter alia, the ODIHR will enhance its activities under its mandate in the following areas:

[...]

- receiving information provided by NGOs having relevant experience in the human dimension field;
- serving as a point of contact for information provided by participating States in accordance with CSCE commitments;
- disseminating general information on the human dimension, and international humanitarian law.

### **Budapest 1994**

[The ODIHR] will provide supporting material for the annual review of implementation and, where necessary, clarify or supplement information received.

[...]

The participating States recognize the need for enhanced co-operation through the ODIHR [...] for the exchange of information, including reports, and for further developing of future-oriented activities, such as outlined in the present document.

#### *Role of the ODIHR*

8. The ODIHR, as the main institution of the human dimension, in consultation with the Chairman-in-Office, will, acting in an advisory capacity, participate in discussions of the Senior Council and the Permanent Council, by reporting at regular intervals on its activities and providing information on implementation issues. It will provide supporting material for the annual review of implementation and, where necessary, clarify or supplement information received. Acting in close consultation with the Chairman-in-Office, the Director of the ODIHR may propose further action.

### **Oslo 1998**

The OSCE and its institutions and instruments should further develop practical programs to foster democratic institutions, human rights and the rule of law in the OSCE area. The ability to react in a flexible and quick manner to emerging needs should be increased and the participating States should be encouraged to forward their requests for assistance to the relevant



OSCE institutions and instruments. In particular the ODIHR should develop further its short-term advisory missions (“democratization teams”).

### **Istanbul 1999**

We individually confirm our willingness to comply fully with our commitments. We also have a joint responsibility to uphold OSCE principles. We are therefore determined to co-operate within the OSCE and with its institutions and representatives [...] . We will co-operate in a spirit of solidarity and partnership in a continuing review of implementation.

### **Bucharest 2001**

22. ODIHR: Will provide continued advice to participating States, at their request, on strengthening domestic legal frameworks and institutions that uphold the rule of law, such as law enforcement agencies, the judiciary and the prosecuting authorities, bar associations and defence attorneys.

### **Maastricht 2003**

#### **I. OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century**

[...]

41. Full use will be made of ODIHR’s monitoring capacity, and operational co-operation with other monitoring bodies in such areas as data collection, information sharing and joint analysis will be promoted in order to have the fullest picture of developments. This will enable the OSCE to efficiently target work towards areas of highest priority.

#### *VI. Follow-up and co-ordinating mechanisms*

Besides monitoring the implementation of the OSCE commitments by participating States through existing OSCE mechanisms, including the annual Human Dimension Implementation Meeting, Review Conferences and relevant human dimension events, The Permanent Council [...]

9. Tasks the ODIHR with the further development of its clearing-house function for the exchange of information, contacts, materials and good practices and with the enhancement of its project activities.

### **Helsinki 2008**

We recognize the valuable contribution of the OSCE in promoting and protecting the rights

enshrined in the Universal Declaration. We recognize, in particular, the work of the Office for Democratic Institutions and Human Rights (ODIHR) in assisting the participating States, in accordance with its mandate, in implementing human dimension commitments.

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## **ANNEX 5: KEY OSCE COMMITMENTS ON FREEDOM OF PEACEFUL ASSEMBLY**

### **Vienna 1989 (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 (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.

### **OSCE Copenhagen Document 1990**

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 (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 (Summit Declaration)**

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**

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.

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## **ANNEX 6: 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 7: ODIHR TOOLBOX IN THE AREA OF FREEDOM OF PEACEFUL ASSEMBLY

ODIHR has developed a range of tools and expert networks to support 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 OSCE participating States.

<b>ODIHR TOOLBOX IN THE AREA OF FREEDOM OF PEACEFUL ASSEMBLY</b>	
<b>TOOL</b>	<b>DESCRIPTION</b>
<b>Legislative review</b>	Upon request, ODIHR provides legal reviews of respective draft and existing legislation in OSCE participating States. 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 <a href="http://www.legislationline.org/topics/topic/15">http://www.legislationline.org/topics/topic/15</a> .
<b>Guidelines on Freedom of Peaceful Assembly</b>	<i>Guidelines on Freedom of Peaceful Assembly</i> (Warsaw and Strasbourg: ODIHR and Venice Commission, 2010, 2nd edition), < <a href="http://www.osce.org/odihr/73405">http://www.osce.org/odihr/73405</a> >. <i>The Guidelines</i> are informed by the relevant jurisprudence, particularly the case law of the European Court of Human Rights and of national constitutional courts. <i>The Guidelines</i> also provide examples of good practice where states have demonstrated viable solutions while regulating freedom-of-assembly issues: they are also a useful tool for legislatures to review existing or draft legislation pertaining to freedom of assembly; they 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 non-governmental organizations and a resource tool for monitoring and training activities.
<b>Assembly monitoring</b>	In line with its mandate to support participating States in the implementation of their commitments on freedom of peaceful assembly, ODIHR has been monitoring

	<p>public assemblies across the OSCE space since 2011. The reports of the previous four monitoring cycles covering assembly-monitoring exercises in 30 OSCE participating States were published in November 2012 (<a href="http://www.osce.org/odihr/97055">http://www.osce.org/odihr/97055</a>), December 2014 (<a href="http://www.osce.org/odihr/132281?download=true">http://www.osce.org/odihr/132281?download=true</a>), December 2016 (<a href="https://www.osce.org/odihr/289721?download=true">https://www.osce.org/odihr/289721?download=true</a>) and September 2019 (<a href="https://www.osce.org/odihr/430793">https://www.osce.org/odihr/430793</a>).</p>
<p><b>Capacity-building in independent monitoring of assemblies</b></p>	<p>Recognizing the need to build the capacity of non-governmental organizations and human rights defenders to independently monitor and report on the policing of assemblies, ODIHR published a revised <i>Handbook on Monitoring Freedom of Peaceful Assembly</i> in 2020 (<a href="https://www.osce.org/odihr/monitoring-peaceful-assembly">https://www.osce.org/odihr/monitoring-peaceful-assembly</a>) and a <i>Guide on Law Enforcement Equipment Commonly Used in the Policing of Assemblies</i> developed jointly with the Omega Research Foundation in 2021 (<a href="https://www.osce.org/odihr/491551">https://www.osce.org/odihr/491551</a>). In addition, ODIHR has conducted several training courses on independent assembly-monitoring techniques for OSCE staff and civil society.</p>
<p><b>Capacity-building for law-enforcement actors on human rights-compliant policing of assemblies</b></p>	<p>ODIHR, in collaboration with the OSCE’s Strategic Police Matters Unit, has published a <i>Human Rights Handbook on Policing Assemblies</i>. The handbook is a tool for law-enforcement officials and commanders with key information on upholding human rights standards in the context of assemblies and public-order management. It can be accessed at <a href="http://www.osce.org/odihr/226981?download=true">http://www.osce.org/odihr/226981?download=true</a>. 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.</p>