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The Contribution of ODIHR's Assembly Monitoring to Freedom of Peaceful Assembly in the OSCE Region

Introduction

Human rights monitoring is the “*active collection, verification and immediate use of information to address human rights problems*”.¹ It involves an evaluation process in which the information collected is checked against relevant international human rights standards, and this assessment is normally published in a report. The purpose of human rights monitoring is to improve the protection of, and respect for, human rights.² Assessing the impact of any human rights monitoring work is a very complex endeavour, as any improvement in the enjoyment of human rights is difficult to measure. Establishing a causal link between a positive change and a concrete recommendation from a human rights assessment is a daunting task. Perhaps it is even more challenging when the monitoring organization is an international body, located far away from where the recommendations are to be implemented and there is no systematic effort to measure change. Nevertheless, it is worth attempting to measure the impact of independent human rights monitoring to understand the role it plays in the full enjoyment of human rights and fundamental freedoms. This contribution explores the positive impact of the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) as a result of its assembly monitoring activities. It showcases some concrete examples of when the ODIHR assembly monitoring recommendations were used to protect and promote the freedom of peaceful assembly in the OSCE region. It argues that independent monitoring contributes to the accountability of the actors who have the duty to facilitate the exercise of human rights and fundamental freedoms and therefore play an important role in their full enjoyment. Based on the positive role independent human rights monitoring such as that carried out by ODIHR plays in the full enjoyment of human rights, this work should be enabled and actively facilitated by the OSCE participating States.

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- 1 Office of the High Commissioner for Human Rights, Professional Training Series No. 7, Training Manual on Human Rights Monitoring, United Nations, New York and Geneva 2001, p. 9, at: <https://www.ohchr.org/Documents/Publications/training7Introen.pdf> (emphasis in the original).
- 2 Cf. *ibid.*, p. 3

Overview of ODIHR's Human Rights Monitoring Activities

OSCE participating States “categorically and irrevocably” declared that the “commitments undertaken in the field of the human dimension of the CSCE [today: OSCE] are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned”.³ Therefore, OSCE participating States are not in a position to invoke the non-intervention principle to avoid discussions about human rights issues within their countries. Such dialogue typically takes place at OSCE human dimension events.

ODIHR, as the chief human rights institution of the OSCE, is mandated to provide assistance to OSCE participating States in the implementation of their human dimension commitments. Human rights monitoring is one of the key areas of ODIHR's work. Monitoring is used as a means of assistance and is an important diagnostic tool, which enables more targeted and needs-based support to be provided to the OSCE participating States. Through its independent monitoring, ODIHR collects, analyses, and disseminates information on the implementation of OSCE commitments relating to human rights and fundamental freedoms in the OSCE region. By monitoring the implementation of human dimension commitments and assessing compliance, ODIHR not only identifies gaps, but also recommends solutions to particular – often entrenched – human rights issues. It also conducts targeted thematic monitoring activities with regard to, for example, the right to fair trial, application of the death penalty, freedom of peaceful assembly or the situation of human rights defenders. The outputs of human rights monitoring include country assessment visits and reports, thematic monitoring reports, and the collection of trends, challenges, and good practices. The results of monitoring also help shape other ODIHR technical assistance and capacity-building activities.

In the past, ODIHR conducted large-scale, country-specific monitoring activities responding to crisis situations, as well as smaller-scale, thematic monitoring activities. The objective of country-specific situation monitoring was to document the general human rights situation, identify concerns and offer solutions in the form of targeted recommendations. Such monitoring took place, for example, in Ukraine in 2014⁴ and in Georgia in 2008.⁵ ODIHR has

3 Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991, in: Arie Bloed (ed.), *The Conference on Security and Co-operation in Europe, Analysis and Basic Documents, 1972-1993*, Dordrecht 1993, pp. 605-629, here: p. 606; also available at: <https://www.osce.org/odihr/elections/14310>.

4 In response to an invitation issued by the government of Ukraine to ODIHR and the OSCE High Commissioner on National Minorities (HCNM), a Human Rights Assessment Mission (HRAM) was deployed to Ukraine in March-April 2014. The results of the assessment were published in a report on 12 May 2014. OSCE HCNM/OSCE ODIHR, *Human Rights Assessment Mission in Ukraine, Human Rights and Minority Rights Situation*, ODIHR HRAM: 6 March – 1 April 2014, HCNM HRAM: 8 March – 17 April, The Hague/Warsaw, 12 May 2014, available at: <http://www.osce.org/odihr/118454>.

5 In Georgia in 2008, ODIHR assessed the human rights and minorities situation in the war-affected areas. The Joint Declaration of the Council of Europe (CoE) and the OSCE High-

also conducted country-specific human rights assessments at the request of participating States to identify challenges to the implementation of OSCE commitments and offer assistance.⁶

In its thematic monitoring function, ODIHR aims to map the realization of specific human rights, and to identify gaps and good practices. ODIHR is best known for its election observation, which is carried out in the OSCE participating States to assess the extent to which elections respect fundamental freedoms and are characterized by equality, universality, political pluralism, confidence, transparency, and accountability using a long-term, comprehensive, consistent, and systematic election observation methodology.

Trial monitoring is widely regarded as a powerful tool to support the process of judicial reform in line with domestic and international guarantees of a fair trial.⁷ ODIHR has developed a methodology to carry out trial on the basis of rigorous principles.⁸ ODIHR conducted trial monitoring projects in Azerbaijan in 2003-2004⁹, and in Uzbekistan¹⁰, Kazakhstan¹¹, and Kyrgyzstan¹² in 2005-2006. ODIHR also monitored trials in the aftermath of the 1-2 March

Level “2+2” Meeting of 15 September 2008 called for, in particular, the CoE Commissioner for Human Rights, the OSCE/ODIHR, the OSCE HCNM as well as other relevant CoE and OSCE institutions and structures to continue to assess the overall human rights situation in the war-affected areas, including South Ossetia and Abkhazia. This was followed up by a letter from the OSCE Chairman-in-Office in which he requested that ODIHR assess the human rights and minorities situation in the war-affected areas in Georgia, in close cooperation with the HCNM and the CoE Commissioner for Human Rights, and provide a report with the assessment and recommendations to the OSCE Chairmanship.

6 Such assessments took place in Moldova and Mongolia.

7 The OSCE participating States have undertaken a number of significant commitments to comply with international standards and principles in the administration of criminal justice (Vienna 1989, Copenhagen 1990, Paris 1990, Moscow 1991). Foremost among these is the commitment to ensure the right to a fair and public hearing within a reasonable time before an independent and impartial tribunal. States also undertook a commitment to accept the presence of observers at proceedings before courts as a confidence-building measure, as provided for in national legislation and international law, cf. Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990, para. 12, in: Bloed (ed.), cited above (Note 3), pp. 439-465, here: p. 448; also available at: <https://www.osce.org/de/odihr/elections/14304>.

8 Based on the experiences of twelve OSCE field operations and of ODIHR, ODIHR collected field-tested methodologies and techniques to enhance the capacities and effectiveness of trial-monitoring programmes. This work resulted in the 2012 publication of: *Trial Monitoring: A Reference Manual for Practitioners*, at: <https://www.osce.org/odihr/94216>. The *Legal Digest of International Fair Trial Rights* aims at building the capacity of legal practitioners to conduct professional trial monitoring by providing them with a comprehensive description of fair trial rights coupled with practical checklists based on the experience of OSCE trial monitoring operations. For more information, see: <https://www.osce.org/odihr/94214>.

9 OSCE/ODIHR, OSCE Office in Baku, Report from the Trial Monitoring Project in Azerbaijan 2003-2004, available at: <https://www.osce.org/odihr/14120>.

10 OSCE/ODIHR, Report from the OSCE/ODIHR Trial Monitoring in Uzbekistan – September/October 2005, Warsaw, 21 April 2006, at: <https://www.osce.org/odihr/18840>.

11 OSCE/ODIHR, OSCE Centre in Astana, Report: Results of Trial Monitoring in the Republic of Kazakhstan, 2005-2006, available at: <https://www.osce.org/astana/24153>.

12 OSCE/ODIHR, OSCE Centre in Bishkek, Results of Trial Monitoring in the Kyrgyz Republic, 2005-2006, available at: <https://www.osce.org/odihr/29615>.

2008 post-election violence in Yerevan¹³ and monitored the trials of individuals who were criminally charged in the aftermath of the events in central Minsk following the elections on 19 December 2010 in Belarus.¹⁴ In 2014, ODIHR monitored the trials of persons who held high political office in the former government in Georgia.¹⁵

ODIHR monitors the implementation of the OSCE Action Plan on Improving the Situation of Roma and Sinti in the OSCE Area, adopted at the Maastricht Ministerial Council in 2003.¹⁶ In this context, ODIHR issued a *Report on the Implementation of the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area* in 2008, 2013, and 2018. Moreover, it carried out field assessment visits to Romania in 2007, Italy in 2008, Hungary in 2009 and 2015, the Czech Republic in 2012, and Ukraine in 2014.

In order to support participating States in the implementation of their commitments on freedom of assembly, ODIHR has been monitoring public assemblies since 2011. The monitoring results are collected in thematic reports, which highlight emerging trends, good practices, and challenges in facilitating public gatherings throughout the OSCE area, and have been published in November 2012¹⁷, December 2014¹⁸, December 2016¹⁹, and September 2019²⁰ respectively.

ODIHR also monitors developments relevant to the use of the death penalty in the OSCE region and reports on the issue through its annual publication

13 OSCE/ODIHR, Final Report, Trial Monitoring Project in Armenia (April 2008 – July 2009), Warsaw, 8 March 2010, available at: <https://www.osce.org/odihr/41695>.

14 OSCE/ODIHR, Report, Trial Monitoring in Belarus (March – July 2011), Warsaw, 10 November 2011, available at: <https://www.osce.org/odihr/84873>.

15 OSCE/ODIHR, Trial Monitoring Report Georgia, Warsaw, 9 December 2014, at: <https://www.osce.org/odihr/130676>.

16 The Action Plan mandates the ODIHR Contact Point on Roma and Sinti Issues (CPRSI) to “assume a proactive role in analysing measures undertaken by participating States, as well as in particular situations and incidents relating to Roma and Sinti people. Towards this end CPRSI will establish and develop direct contacts with participating States and will offer advice and opinions to them.” Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area, Chapter IX, para. 129, Annex to Decision No. 3/03, Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area, MC.DEC/3/03, pp. 62-77, here: p. 76, in: OSCE, Eleventh Meeting of the Ministerial Council, 1 and 2 December 2003, MC.DOC/1/03, Maastricht, 2 December 2003, pp. 61-77.

17 OSCE/ODIHR, Report, Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States (May 2011 – June 2012), Warsaw, 9 November 2012, available at: <https://www.osce.org/odihr/97055>.

18 OSCE/ODIHR, Report, Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States (May 2013 – July 2014), Warsaw, 17 December 2014, available at: <https://www.osce.org/odihr/132281>.

19 OSCE/ODIHR, Report, Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States (April 2015 – July 2016), Warsaw, 16 December 2016, available at: <https://www.osce.org/odihr/289721>.

20 OSCE/ODIHR, Report, Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States (May 2017–June 2018), Warsaw, 19 September 2019, available at: <https://www.osce.org/odihr/430793>.

– *Background Paper on the Status of the Death Penalty in the OSCE Area* –, which has been issued ever since 1999.²¹

OSCE participating States have made a number of commitments to combating hate crime, and ODIHR supports states in their implementation of those commitments. For example, ODIHR produces an annual report on hate crime – *Incidents and Responses* – to highlight the prevalence of hate crimes and good practices that participating States and civil society have adopted to tackle them.²²

Comparison of ODIHR's Human Rights Monitoring with UN and CoE Systems

In most cases, the work of treaty monitoring bodies and special procedures within the United Nations (UN) and Council of Europe (CoE) bodies is limited to a process of assessing the legal framework and practices, and producing and disseminating reports based on their findings. On the other hand, the aim of ODIHR monitoring is not only to assess the compliance and identify shortcomings, but also to recommend action to improve the situation and identify areas where ODIHR could provide assistance. Well-documented monitoring reports can be used to engage in a constructive dialogue with the authorities in the states concerned and to devise targeted programmes of assistance. They are an important source of information, not only for human rights NGOs carrying out their advocacy work, but also for policy makers at all levels, who can use the data collected to identify existing gaps in law, policy, and practice, as well as to provide examples of good practice.

The assessment framework for ODIHR monitoring includes international and regional human rights standards, and OSCE human dimension commitments. The OSCE human dimension commitments are underpinned either by the directly corresponding human rights provisions of UN or CoE origin, or by supplementing the thematic reporting of these organizations. However, they

21 At the 1990 Copenhagen Meeting, participating States agreed to “exchange information within the framework of the Conference on the Human Dimension on the question of the abolition of the death penalty and keep that question under consideration”. Copenhagen Document 1990, cited above (Note 7) para 17.7.

22 Monitoring is based on the mandate given by the Ministerial Council decision on hate crime in Brussels in 2006, which focused on ODIHR's role in combating hate crime and encouraged the Office, within the scope of its resources, “to continue to serve as a collection point for information and statistics on hate crimes and relevant legislation provided by participating States and to make this information publicly available through its Tolerance and Non-Discrimination Information System and its report on Challenges and Responses to Hate-Motivated Incidents in the OSCE Region”; “to strengthen [...] its early warning function to identify, report and raise awareness on hate-motivated incidents and trends and to provide recommendations and assistance to participating States, upon their request, in areas where more adequate responses are needed”. Decision No. 13/06, Combating Intolerance and Discrimination and Promoting Mutual Respect and Understanding, MC.DEC/13/06 of 5 December 2006, in: OSCE, Fourteenth Meeting of the Ministerial Council, 4 and 5 December 2006, Brussels, 5 December 2006, pp. 40-43, here: p. 43.

include not only the protection and promotion of human rights and fundamental freedoms, but also the promotion of rule of law and (parliamentary) democracy, including democratic elections and governance, and international humanitarian law.²³ In addition, the OSCE's commitments are much more concrete in their wording and therefore easier to implement. The OSCE's human dimension *acquis* also has the advantage of being with immediate effect with no lengthy ratification procedure, and no possibility of filing reservations. Moreover, the interpretation of these standards in the assessment is based on best practices, guidance documents, and jurisprudence from other jurisdictions. The internationally recognized good practices are used as a benchmark for the assessment of practice documented by the ODIHR monitors, and monitoring places a particular emphasis on identifying and promoting good or promising practices in implementing human rights obligations and complying with OSCE commitments.

The existing OSCE human dimension monitoring system does not provide for a general monitoring instrument that would cover all participating States and all human dimension commitments at regular intervals.²⁴ Monitoring within the OSCE concentrates on particular issues, rather than giving a systemic overview of the whole human dimension. There are a handful of thematic areas where ODIHR has concrete tasks to monitor the relevant developments regularly or on an ad hoc basis. Most of ODIHR's monitoring work is not carried out at regular intervals, but is largely dependent on the needs and commitments of the participating States to engage with ODIHR. At the same time, monitoring options available within the OSCE might allow a faster and more timely reaction to emerging trends and challenges compared to other human rights monitoring systems.

Much of ODIHR monitoring relies on first-hand information gathering through direct observation. This is because ODIHR places emphasis on the need to base its monitoring – as far as possible – on first-hand information collected in adherence with the principles of transparency, accuracy, and impartiality. In addition, the presence of observers may, in some cases, have a deterrent effect by helping to ensure that the authorities act in the most appropriate manner, in line with international human rights principles and standards, and can therefore have an immediate effect on compliance. Field presences can contribute to ODIHR's monitoring of the implementation of human dimension commitments in certain parts of the OSCE area.

The actual monitoring modalities used are based on an agreement between ODIHR and the participating State where the monitoring is conducted. The most common output of monitoring consists in the issuance of a report

23 Cf. Arie Bloed, Monitoring the Human Dimension of the OSCE, in: Gudmundur Alfredsson/Jonas Grimheden/Bertrand G. Ramcharan/Alfred Zayas (eds.), *International Human Rights Monitoring Mechanisms: Essays in Honour of Jakob Th. Möller*, 2nd rev. ed., Leiden 2009, pp. 549-559, here: p. 550.

24 Cf. Jens Narten, *Options for a General OSCE Human Dimension Monitoring Instrument*, CORE Policy Paper, Hamburg 2006, p. 9.

including: *first*, a description of the main findings, *second*, an analysis of the issues of concern, *third*, the identification of good practices, and *fourth*, the provision of specific recommendations. Reports are usually public and they result from a consultation process in which national authorities are given the opportunity to comment and rebut findings and conclusions contained in the draft, while final editorial authority rests with the Office.

The political nature of the processes within the OSCE means that the Organization lacks monitoring instruments of a legal or quasi-legal nature. It does not have judicial tools or complaints procedures similar to those available in other systems.²⁵ Monitoring tools at the OSCE's disposal do not include the right to take sanctions against any wrongdoers, as the Organization basically only has the right to raise concerns in a political way without the possibility to undertake action against the will of any of its participating States.²⁶

The legally non-binding nature of nature of OSCE commitments may on the one hand mean there are few incentives for the participating States to comply with them. However, their politically-binding nature makes States more likely to apply them so as to avoid punishment for incomplete implementations. Moreover, one should also consider that even in systems with legally binding standards, member states often do not comply with reporting obligations and fail to (fully) implement the recommendations of the treaty monitoring bodies or court judgments.

ODIHR has developed a range of tools and assistance programmes that could be used to address the shortcomings identified by its monitoring. However, the UN and the CoE human rights monitoring systems have limited this assistance to follow-up mechanisms on the ground.

ODIHR Monitoring of the Freedom of Peaceful Assembly

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association confirmed that the right to peaceful assembly not only covers the right to hold or participate in an assembly, but also protects the rights of those monitoring peaceful assemblies. It called on states to ensure the protection of those monitoring and reporting on violations and abuses in the context of peaceful assemblies and to respect and facilitate the right to observe and monitor all aspects of an assembly.²⁷ The right to monitor public assemblies is

25 Cf. Bloed, cited above (Note 23), pp. 551-552.

26 Cf. *ibid.*, p. 553.

27 Cf. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, United Nations, General Assembly, Human Rights Council, A/HRC/20/27, 21 May 2012, Summary, p. 1, and, more detailed, para. 94; 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, General Assembly, Human Rights Council, A/HRC/31/66, 4 February 2016, para. 70.

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.²⁸ The Special Representative of the UN Secretary-General on the situation of human rights defenders called on states to allow human rights defenders to operate freely in the context of freedom of assembly in order to enable them to perform their monitoring role.²⁹ The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has 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. Confiscation, seizure, and/or destruction of notes and visual or audio recording equipment without due process should be prohibited and punished.³⁰

Human rights defenders 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, which is a valuable contribution to the effective enjoyment of the right to peaceful assembly.³¹

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.³² Freedom of expression, including the right to information, is protected in numerous international human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR, Article 19) and the European Convention on Human Rights (ECHR, Article 10).

28 Cf. 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, cited above (Note 27), para. 68.

29 Cf. Report of the Special Representative of the Secretary-General on human rights defenders, United Nations, General Assembly, A/62/225, 13 August 2007, paras. 91, 101(f)(i). The African Commission on Human and Peoples' Rights confirmed 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. All persons have the right to seek and receive information and to freedom of expression, and enjoy the right to observe and independently monitor public assemblies without fear of reprisal. This includes civil society organisations, human rights defenders, monitors, journalists and other media workers." African Commission on Human and Peoples Rights, Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, para. 8.6.

30 Cf. 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, cited above (Note 27), para. 71.

31 OSCE ODIHR/CoE Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2nd ed., Warsaw 2010, p. 21, Principles 5.9 and 5.10; Report of the Special Representative of the Secretary-General on human rights defenders, cited above (Note 29), para. 91; Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, cited above (Note 27), para. 48.

32 Cf. Copenhagen Document 1990, cited above (Note 7), para. 10.1.

In the Moscow Document of 1991, it is confirmed that OSCE commitments require participating States to seek ways to further strengthen modalities for contacts and exchange of views between NGOs and relevant national authorities and governmental institutions; to facilitate visits to their countries by NGOs from within any of the participating States in order to observe human dimension conditions; to welcome NGO activities, and to, *inter alia*, observe compliance with OSCE 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.³³

ODIHR is the only inter-governmental body in Europe that engages in direct observation of public gatherings as part of its human rights monitoring.³⁴ Assemblies that, due to their nature, size, duration, or complexity – constituted a specific challenge for the authorities and/or the organizers were selected to be monitored by the Office. ODIHR has also looked at assemblies convened by minority groups espousing views that are unpopular with, or perceived as controversial by mainstream society. Assemblies such as high-level summits and governmental meetings in the OSCE area are, in many cases, accompanied by large and complex demonstrations, often lasting several days, with the participation of local protesters as well as demonstrators from third countries. Policing such assemblies presents a number of challenges, stemming from security considerations arising from the presence of numerous high-ranking officials, the potential presence of violent protesters (in otherwise largely peaceful demonstrations), and the sheer complexity and size of the protests. In these cases, ODIHR has been interested in how authorities strike the balance between safety and security considerations and the respect for freedom of peaceful assembly.

The assembly monitoring methodology is unique, in the sense that information gathering is dominated by first-hand information from direct observation, complemented by desk research and information from secondary sources. Monitoring is carried out by trained observers using a standard methodology involving the observation of public gatherings and, in particular, the conduct of and interaction between the participants, law enforcement agents, other public authorities, and other relevant actors, such as representatives of the media or counter-demonstrators.

Data gathered during monitoring is complemented by information obtained in interviews before and after the events, also with a view to obtaining details of any administrative, judicial, or other decisions affecting the full enjoyment of freedom of peaceful assembly. Research includes interviews *inter*

33 Cf. Moscow Document 1991, cited above (Note 3), para. Meeting of the Conference on the Human Dimension of the CSCE (1991), paras 43.1, 43.2, 43.3, 43.4.

34 Cf. Monitoring Freedom of Peaceful Assembly, 29 April 2019, at: <https://www.osce.org/odihr/418400>.

alia with representatives of municipal and law enforcement authorities as well as with the organizers of the events and other relevant organizations. Background information is obtained through desk research, media monitoring, and ongoing contact with interlocutors.

The Results of ODIHR's Assembly Monitoring

To date ODIHR, has conducted 35 assembly monitoring exercises in 31 OSCE participating States. All but one OSCE participating State approached by ODIHR facilitated the Office's assembly monitoring work. Over the years, ODIHR's assembly monitoring has gained a higher profile, which has led to new opportunities, such as an invitation by the Hamburg authorities to observe assemblies related to the G20 Summit in Hamburg in July 2017, a year after ODIHR assessed the facilitation of the assemblies related to the G7 Summit at Schloss Elmau, Germany.

Four thematic reports have been published, including general recommendations on how to advance the implementation of human dimension commitments in the area of freedom of peaceful assembly in the OSCE region. The recommendations have been used by several actors. In the 2013 "flags dispute" in Northern Ireland, the police drew heavily upon the guidance offered by ODIHR's first assembly monitoring report, which was published just one month before the dispute erupted and which was provided to the Assistant Chief Constable responsible for Operational Support by his Human Rights Legal Adviser.³⁵ Recently, ODIHR's assembly monitoring recommendations were also cited by the Northern Ireland Parades Commission Determination.

In the Netherlands, the evaluation of the Law on Public Assemblies of the Netherlands cites extensively from the ODIHR Guidelines on Freedom of Peaceful Assembly and deals with the specific criticisms of ODIHR's second assembly monitoring report. The assembly monitoring exercise to the Netherlands in the second assembly monitoring cycle also led to a co-operation with the Amsterdam municipality, which requested that ODIHR provide input to the Dutch Police Book on Assemblies, published in 2019 and shared with each mayor of the country.

In Germany, an assembly monitoring organization translated the recommendations of ODIHR's third assembly monitoring report³⁶ and used them in their relevant advocacy work. For example, when they were preparing to observe the demonstration accompanying the summit of the G20 finance ministers in Baden-Baden, they quoted ODIHR's recommendations on access and restrictions for assembly monitors in their letter to the police informing them

35 Cf. Speaking Note for Paul Welsh, First Secretary Political, UK Delegation to OSCE on EU Side Event on the Freedom of Peaceful Assembly.

36 Cf. Demobeobachtung-Südwest, OSZE-Empfehlungen [Demo observation South-west, OSCE recommendations], at: <http://demobeobachtung-suedwest.de/osze-empfehlungen/>.

of their presence. Some assembly monitoring organizations, for example Leipzig and Göttingen, discussed the recommendations and adopted them as the basis for their work.

ODIHR assembly monitoring findings and recommendations have been used by NGOs in tools and standard setting documents, such as Amnesty International's publication on "Police and Human Rights Defenders".³⁷

The Office has been advocating for the recognition of the contribution of independent monitoring to the full enjoyment of peaceful assembly. In the context of the consultation process regarding the drafting of the General Comment to Article 21 of the ICCPR, civil society organizations reiterated ODIHR's recommendations on the facilitation of independent monitoring of assemblies.³⁸ In addition, in 2017 the Austrian OSCE Chairmanship decided to initiate a Ministerial Council decision on the facilitation of independent monitoring of assemblies in the OSCE area.

The recognition of the legitimacy of assembly monitoring as an assistance tool and ODIHR's assembly monitoring methodology is underpinned by the high number of training requests from NGOs, Ombuds Institutions and OSCE structures to ODIHR.³⁹

Conclusions

Good policing is effective, fair and accountable, for which human rights compliance is a prerequisite. Ian Tomlinson, a 47-year-old newspaper vendor collapsed and died in the City of London after being struck and pushed by a police officer during the 2009 G20 Summit protests. A citizen journalist's video of the incident helped to create accountability for the police officer, whose unnecessary use of force caused Tomlinson's death.

Human rights defenders 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, which is a valuable contribution to the effective enjoyment of the right to peaceful assembly.⁴⁰ Independent monitoring of the exercise of

37 Cf. Amnesty International Dutch Section, Police and Human Rights Defenders, Police and Human Rights Programme, Short paper series No. 4, Amsterdam, July 2018, at: https://www.amnesty.nl/content/uploads/2018/07/AMN_18_38_police-and-human-right-defenders_FINAL_web0307.pdf?x28615.

38 Cf. International Observers Network/Youth Human Rights Movement/Human Rights House Foundation, Written Contribution to the Half-Day General Discussion on Article 21 of the Covenant, para. 7.5, at: <https://www.ohchr.org/Documents/HRBodies/CCPR/GC37/InternationalObserversNetwork.pdf>.

39 ODIHR has conducted assembly monitoring capacity building activities for civil society in Armenia, Belarus, Georgia, Kazakhstan, Moldova, Serbia, Russia, Ukraine, and the United States. ODIHR has also trained over 100 staff members from the OSCE Mission in Kosovo.

40 Cf. The OSCE ODIHR/CoE Venice Commission, cited above (Note 31), p. 21, Principles 5.9 and 5.10; Report of the Special Representative of the Secretary-General on human rights

freedom of peaceful assembly can contribute to police accountability. By making law enforcement more accountable, their work becomes more legitimate. This will increase the public's trust and confidence in them, which in turn will lead to more efficiency.

The authorities should recognize and raise awareness about the important contribution independent monitoring can make to the full enjoyment of the freedom of peaceful assembly. They should actively enable the independent monitoring of and reporting on the facilitation and protection of assemblies by international and local monitors. This should include facilitating the gathering of information on all anticipated assemblies by National Human Rights Institutions (NHRIs) or other relevant independent oversight or monitoring bodies, or civil society organizations working in the area of freedom of assembly. They should also refrain from imposing unnecessary or disproportionate restrictions on assembly monitoring activities, and ensure that any restrictions that may be imposed on monitored assemblies, such as during curfews, dispersals, or arrests, do not limit the ability of international or local monitors to carry out their activities unimpeded and to observe all aspects of an assembly.

It should be ensured that assembly monitors, participants, media, or observers are able to photograph or otherwise record actions and activities at public assemblies, and that such visual or audio recordings cannot be confiscated, seized, and/or destroyed without due process. State authorities should demonstrate willingness to engage with monitors before, during and after the assembly when such engagement is sought. They should give due consideration to monitors' findings and recommendations resulting from their assessment of the facilitation of assemblies, so as to inform institutional learning and, more broadly, the drafting of legislation and policies affecting the enjoyment of freedom of peaceful assembly.

Uniquely among other inter-governmental actors, the OSCE provides for the monitoring of public assemblies through direct observation by one of its independent institutions, ODIHR. It therefore effectively facilitates ensuring greater transparency in the implementation of commitments, identifying challenges and good practices in the protection and promotion of the freedom to assemble peacefully in the OSCE space.

Authorities should facilitate ODIHR's independent assembly monitoring, including by issuing a standing invitation to ODIHR to carry out independent assembly monitoring in participating States in order to observe assemblies on the basis of ODIHR's established methodology, without prejudice to ODIHR's responsibility to select events to be monitored. OSCE participating States where ODIHR has conducted assembly monitoring exercises should engage with ODIHR with a view to giving due consideration to its assembly monitoring findings and to implementing its recommendations, including by taking

defenders, a.a.O. (Ann. 29), para. 91; Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, cited above (Note 27), para. 48.

advantage of ODIHR tools and assistance regarding the freedom of peaceful assembly.