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GUIDELINES

ON FREEDOM OF PEACEFUL ASSEMBLY

(3rd EDITION)

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Introduction

The Importance of the Right to Freedom of Peaceful Assembly

1. The right to freedom of peaceful assembly protects the many ways in which people gather together in public and in private. It has been recognised as one of the foundations of a democratic, tolerant and pluralist society in which individuals and groups with different backgrounds and beliefs can interact peacefully with one another.[1] The right to freedom of peaceful assembly can thus help give voice to minority opinions and bring visibility to marginalized or underrepresented groups.

2. Effective protection of the right to freedom of peaceful assembly can also help foster a culture of open democracy, enable non-violent participation in public affairs,[2] and invigorate dialogue on issues of public interest. Public assemblies can help ensure the accountability of corporate entities, public bodies and government officials and thus promote good governance in accordance with the rule of law. Assemblies often also have symbolic importance for different sections of society in commemorating particular events or marking significant anniversaries.

3. The right to freedom of peaceful assembly complements and intersects with other civil and political rights. The right to freedom of expression is of particular relevance given the expressive nature of the assemblies that impact public opinion (whereupon these two rights are engaged simultaneously).[3] Freedom of assembly also interrelates with the right to freedom of association,[4] the right to participate in public affairs,[5] and the right to vote.[6] In addition, it is one of a cluster of rights that underpins a broader 'right to protest'.[7] Furthermore, the right to freedom of assembly may overlap with the right to manifest one's religion or belief in community with others.[8] Recognizing the interrelation and interdependence of these different rights is vital to ensuring that the right to freedom of peaceful assembly is afforded practical and effective protection.[9]

Freedom of assembly and the right to freedom of expression

4. Freedom of expression includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers.[10] Given the expressive nature of many assemblies and the role that they play in protecting opinion, the European Court of Human Rights (ECtHR) has recognised in its case law that freedom of peaceful assembly and freedom of expression are often, in practice,

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[1] See, for example, *Djavit An v. Turkey*, Application No 20652/92, 20 February 2003, para. 56.

[2] "Report on factors that impede equal political participation and steps to overcome those challenges", UN Doc. A/HRC/27/29, Office of the United Nations High Commissioner for Human Rights, (OHCHR), 30 June 2014, para. 22.

[3] Article 19 (2) and (3) of the International Covenant on Civil and Political Rights (ICCPR), 16 December 1966; Article 10, European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 4 November 1950 (as amended by Protocols 11 and 14).

[4] Article 22, ICCPR and Article 11, ECHR.

[5] Article 25(a), ICCPR.

[6] Article 25(b), ICCPR and Article 3 of Protocol 1, ECHR.

[7] *Eva Molnár v. Hungary*, Application No 10346/05, 7 October 2008, para. 42: 'The Court also emphasises that one of the aims of freedom of assembly is to secure a forum for public debate and the open expression of protest.'

[8] See, *Barankevich/Russia,* Application No 10519/03, 26 July 2007.

[9] Other rights that may be affected before, during or after peaceful assemblies include the right to establish and maintain contacts within the territory of a state (see Article 17 of the Council of Europe Framework Convention on National Minorities, which draws upon paras 32(4) and 32(6) of the 1990 OSCE Copenhagen Document); freedom of movement (see, Article 12(1) ICCPR and Article 2(1) of Protocol No. 4, ECHR and UN Human Rights Committee, General Comment No. 27: Article 12 (Freedom of Movement), CCPR/C/21/Rev.1/Add.9, 2 November 1999; the right to cross international borders (see, Article 12(2) UDHR and Article 2(2) of Protocol No. 4, ECHR); freedom of religion or belief (see, Article 18, ICCPR and Article 9, ECHR); and the rights to liberty (see, Article 9 ICCPR and Article 5 ECHR); and to be free from ill-treatment and torture (see, Article 7 ICCPR and Article 3 ECHR).

[10] Article 10(1) ECHR and Article 19(2) ICCPR.

closely associated.[11] Thus, certain restrictions or bans on assemblies may automatically also affect the right of individuals or groups to express their opinion on a given matter, and in numerous cases, the ECtHR has evaluated the right to freedom of peaceful assembly in light of the right to freedom of expression of the assembly organisers and participants.

Freedom of assembly and the right to freedom of association

5. There is a close and symbiotic link between freedom of peaceful assembly and freedom of association.[12] Freedom of assembly is essential for the normal activities of many associations (such as trade unions), and an enabling environment for associations facilitates the exercise of freedom of peaceful assembly. Furthermore, what may begin as a mobilization or gathering of like-minded individuals might evolve into an association over time. As such, the associational value of an assembly can be just as important as its communicative or expressive purpose.

6. Restrictions on freedom of association can adversely impact on the freedom to peacefully assemble. Problematic examples include requiring formal registration or payment of high registration fees before an association may lawfully assemble, prohibiting public expression and other peaceful activities of unregistered groups, prescribing the scope of an association's mandate,[13] or disbanding or prohibiting an association without convincing evidence that it has unlawful goals.[14] The right to freedom of peaceful assembly should never be made conditional upon prior registration as an association or as any other type of legal entity.[15] Furthermore, the fact that an association has been refused registration should not of itself justify restrictions on the holding of peaceful assemblies by members of that association.[16]

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[11] See, for example, *Ezelin v. France,* Application No 11800/85, 26 April 1991, paras. 37 and 51. See also *Whitney v. California,* U.S. Supreme Court 274 U.S. 357, 375 (1927): ("[F]reedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; …without free speech and assembly discussion would be futile; […] with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; […] the greatest menace to freedom is an inert people; […] public discussion is a political duty […]." (Brandeis, J. concurring.)). With respect to the ICCPR, see UN Human Rights Committee General Comment 34: Article 19: freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, para. 4.

[12] Article 22, ICCPR, and Article 11, ECHR. See also Dragan Golubovic, "Freedom of association in the case law of the European Court of Human Rights", 17(7-8) *International Journal of Human Rights* Vol. 17, No 7-8, 2013, pp. 758-771; Ashutosh Bhagwat, "Associational Speech", *Yale Law Journal* Vol. 120, No.5, 2011, pp.978-1277.

[13] For example, UN Human Rights Committee, *Zvozskov v. Belarus* (Communication no. 1039/2001, 10 November 2006).

[14] For a general discussion of the freedom of association more generally, see OSCE/ODIHR & Venice Commission, *Joint Guidelines on Freedom of Association*, Warsaw/Strasbourg 2015, available at <http://www.osce.org/odihr/132371?download=true>

[15] See, for example, OSCE/ODIHR, "The Guidelines for Review of Legislation Pertaining to Religion or Belief", prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in consultation with the European Commission for Democracy through Law (Venice Commission), (Warsaw: ODIHR, 2004), pp. 16-17, point 1. See also See also OSCE/ODIHR & Venice Commission, "Guidelines on the Legal Personality of Religious or Belief Communities", (Warsaw/Venice: ODIHR, 2014). See further, *Kimlya and Others v. Russia,* Application Nos 76836/01 and 32782/03, 1 October 2009. See also Article 6 of the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (UN GA Res.36/55 of 25 November 1981); and "Freedom of Religion or Belief: Laws Affecting the Structuring of Religious Communities", prepared under the auspices of the OSCE/ODIHR for the benefit of participants in the 1999 OSCE Review Conference. Under U.S. law, a voluntary unincorporated association has a right to sue to enforce its rights without regard to formal regulatory requirements such as registration with the government: Fed.R.Civ.Proc. 17(b)(3)(A). See, for example*, iMatter Utah v. Njord*, 980 F.Supp.2d 1356 (D. Utah 2013) (an unincorporated expressive association cannot be compelled to purchase insurance and sign an indemnification agreement as a prerequisite for holding a public assembly).

[16] *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, Application nos. 29221/95 and 29225/95 2 October 2001, para. 92: "while past findings of national courts which have screened an association are undoubtedly relevant in the consideration of the dangers that its gatherings may pose, an automatic reliance on the very fact that an organization has been considered anti-constitutional – and refused registration – cannot suffice to justify under Article 11(2) of the Convention a practice of systematic bans on the holding of peaceful assemblies"; see also *Kunz v. New York*, 340 U.S. 290, 294 (1951); *Healy v. James*, 408 U.S. 169, 186 (1972): "G]uilt by association alone, without (establishing) that an individual's association poses the threat feared by the

Freedom of assembly, the right to vote and the right to participation

7. Article 25 of the International Covenant on Civil and Political Rights (ICCPR) guarantees to citizens of a given state the right and opportunity to take part in the conduct of public affairs (relating to the exercise of political power)[17] on an equal basis and without unreasonable restrictions. The right to participate in public life may be exercised by citizens directly (through voting and standing for public office), through dialogue with their chosen representatives, and through the ability to organize themselves. The right to peaceful assembly thus supplements other conventional methods of participation (such as party politics or periodic elections)[18] and provides an essential means for individuals or groups to express their opinion on matters of public interest and to participate in public life.[19]

8. Restrictions that impact on the holding of free elections,[20] such as the detention of political activists or the exclusion of particular individuals from electoral lists, can also indirectly curtail the right to freedom of assembly. Such measures have the potential to deter participation in open political debate and to discourage other supporters of the targeted groups (and the public at large) from attending demonstrations.[21] Similarly, the curtailment of assemblies solely because they form part of an electoral campaign, or because they take place during an election period, undermines pluralism and the proper functioning of democracy.[22] In summary, the right to freedom of peaceful assembly is an essential condition for the effective exercise of the right to vote.[23]

Freedom of assembly and protest

9. The inter-relationship between freedom of assembly and other civil and political rights is especially important in relation to protest activities. Assemblies are not always acts of protest, and individuals and groups may protest without assembling. Examples of such protests include letter-writing campaigns, strike actions, organizing and signing petitions, registering a 'protest vote', and displaying flags and other types of symbol.[24]

10. While the 'right to protest' is not *expressly* recognized in either regional or international human rights treaties, the right to peaceful protest is generally protected under international human rights law through a combination of the inter-related rights discussed above.[25] The ECtHR has also emphasized that the right to freedom of expression includes

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Government,' is an impermissible basis upon which to deny First Amendment rights." quoting *United States v. Robel*, 389 U.S 258, 265 (1967)).

[17] UN Human Rights Committee, General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, CCPR/C/21/Rev.1/Add.7, 12 July 1996, para. 5.

[18] As Professor Eric Barendt has argued, 'put most radically', the right of assembly is valuable for active citizens who 'are unwilling to participate in conventional party politics' – it serves precisely to challenge 'the exclusivity of conventional modes of civic activity'. Eric Barendt, "Freedom of Assembly" in Jack Beatson and Yvonne Cripps, *Freedom of Expression and Freedom of Information:Essays in Honour of Sir David Williams* (Oxford: Oxford University Press, 2000), p.168.

[19] See UN Human Rights Committee General Comment No. 25, *op. cit.,* note 17, para. 8.

[20] Under Article 25, ICCPR and Article 3, Protocol 1, ECHR.

[21] The detention of well-known political figures can further amplify this chilling effect. See, for example, *Navalnyy and Yashin v. Russia*, Application no. 76204/11, 4 December 2014, para. 74.

[22] See, for example, *Tsonev Anguelov v. Bulgaria*, Application No 45963/99, 13 April 2006, paras. 48-52..

[23] UN Human Rights Committee General Comment 25: "Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected", *op. cit.,* note 17, para 12.

[24] See *Ezelin v. France* (1991) *op. cit.,* note 11, para. 52; and *Barraco v. France,* Application No 31684/05, 5 March 2009 (in French only), para. 42.

[25] See, Report of the UN High Commissioner for Human Rights, A/HRC/25/32: "Seminar on Effective Measures and Best Practices to Ensure the Promotion and Protection of Human Rights in the Context of Peaceful Protests", OHCHR, 2 December 2013; Michael O'Flaherty, "Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests: a background paper", available at <http://www.ohchr.org/Documents/Issues/FAssociation/Seminar2013/BackgroundPaperSeminar.doc>; See also, Wilton Park, Conference Report: 'Peaceful protest: a cornerstone of democracy. How to address the challenges?' (26-28 January 2012, WP1154); Article 19, *The Right to Protest: Principles on the protection of human rights in protests* (December 2016), available at: <https://www.article19.org/resources/the-right-to-protest-principles-on-

the choice of the form in which ideas are conveyed, particularly in the case of symbolic protest activities.[26]

Civil disobedience

11. There are times when the manner in which an assembly is conducted intentionally violates the law in a fashion that organizers and/or participants believe will amplify or otherwise assist in the communication of their message.[27] This is commonly referred to as "civil disobedience". Those who engage in civil disobedience often strive to do so in a peaceful manner, and commonly accept the duly prescribed legal penalty.[28] State responses, including arrests and penalties, should be proportional to the respective offenses.[29]

The Focus of these Guidelines

12. The focus of these Guidelines is narrower than the scope of the right to freedom of peaceful assembly. These Guidelines are primarily focused on 'assemblies' that are an intentional gathering of a number of individuals in a publicly accessible space for a common expressive purpose.[30] The Guidelines apply primarily to assemblies held in 'public spaces' – sites that are open to the public and which, independently of possible private ownership, are generally accessible to everyone (see further, para. 61 and footnote 80 - German Federal Constitutional Court, Judgment of 22 February 2011 (Frankfurt Airport Decision), 1 BvR 699/06).

13. An assembly, by definition, requires the presence of a number of persons, though not every common act of expression involving two or more persons may be recognised as an assembly.[31]

14. The Guidelines are not therefore intended to cover all forms of assembly that may attract some level of protection under international human rights law. While many of the Guidelines' core principles regarding State obligations, prior restrictions and facilitative policing will be equally applicable to these other forms of assembly, the Guidelines (and the section on 'Procedural Matters' in particular) do not directly address:

- Forms of individual protest that do not involve the gathering of a group of persons.[32] An individual protester should not, for example, be required to notify the authorities beforehand.[33] Nonetheless, an individual protester exercising his or her right to freedom

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the-protection-of-human-rights-in-protests/ >. See also, Inter-American Commission on Human Rights, Special Rapporteur for Freedom of Expression, '*Protest and Human Rights*' (Thematic report of the IACHR Special Rapporteur for Freedom of Expression, Edison Lanza, forthcoming 2018).

[26] *Women on Waves v. Portugal*, Application No 31276/05, 3 February 2009 (only in French), para. 39. Note, however, that not every interference with symbolic protest activity will be regarded as disproportionate. See, for example, *Sinkova v. Ukraine*, Application No 39496/11, 27 February 2018, paras. 107-113.

[27] Such as protesters chaining themselves to machinery to prevent it from being used.

[28] See for example, Peter Quint, *Civil Disobedience and the German Courts: The Pershing Missile Protests in Comparative Perspective* (Oxford: Routledge-Cavendish, 2008) pp.13-14, describing the 1982 Tent Village Protests at Grossengstingen.

[29] See, for example Hoffman LJ in *R v. Jones* [2006] UKHL 16, para. 89: '… civil disobedience on conscientious grounds has a long and honourable history in this country. People who break the law to affirm their belief in the injustice of a law or government action are sometimes vindicated by history. The suffragettes are an example which comes immediately to mind. It is the mark of a civilised community that it can accommodate protests and demonstrations of this kind. But there are conventions which are generally accepted by the law-breakers on one side and the law-enforcers on the other. The protesters behave with a sense of proportion and do not cause excessive damage or inconvenience. And they vouch the sincerity of their beliefs by accepting the penalties imposed by the law. The police and prosecutors, on the other hand, behave with restraint and the magistrates impose sentences which take the conscientious motives of the protesters into account.'

[30] *Primov v. Russia*, Application No. 17391/06, 12 June 2014, para. 135: 'public events related to political life in the country or at the local level must enjoy strong protection …'

[31] *Tatár and Fáber v. Hungary*, Application nos. 26005/08 and 26160/08, 12 June 2012, para. 29.

[32] See, *E./Switzerland*, Application No. 10279/83, distribution, by a judge, of leaflets with political content is examined under Article 10 ECHR (Freedom of expression). Issue not examined separately under 11 ECHR

[33] *Tatár and Fáber v. Hungary* (2012), *op. cit.,* note 31.

of expression, where physical presence is an integral part of that expression, should be afforded protections equivalent to the protections afforded to persons who gather together as part of an assembly;

- Gatherings held primarily for purposes other than expressing emotions, ideas or opinions on matters of public interest or concern (e.g. gatherings held purely for entertainment purposes and/or to make profit, such as for-profit sporting events or for-profit concerts);[34]
- Essentially private meetings that have no public audience;[35]
- Groupings where the act of gathering is incidental to their primary purpose (such as a queue at a bus stop)

15. These guidelines also take in account the role of internet including both the opportunities and challenges it presents for assembly organizers, participants and law enforcement personnel. Furthermore, the scale of the presence at assemblies of violent persons or groups aiming at disrupting them, as well as continued occupation of public or private premises, have posed specific problems for the authorities.

Section A: Overview and Guiding Principles

16. The third edition of the OSCE/ODIHR and Venice Commission *Guidelines on Freedom of Peaceful Assembly* is structured around ten key headings which cover the full range of issues impacting on the right to peacefully assemble. This overview section aims to summarize the key guiding principles that are subsequently explored in much greater detail in the full text of the Guidelines.

The Right to Freedom of Peaceful Assembly

17. **Freedom of peaceful assembly** is a fundamental human right that can be enjoyed and exercised by individuals and groups, legal entities and corporate bodies, and unregistered or registered associations, including trade unions, political parties, religious groups etc. Assemblies may serve many purposes, including enabling public participation and critical engagement by civil society, and the expression of diverse, minority and unpopular opinions. As such, the protection of the right to peacefully assemble is crucial to creating a tolerant and pluralistic society. Indeed, rather than representing a threat to the State, the protection and facilitation of assemblies is 'an essential part of a human rights informed approach to counter-terrorism.'[36]

18. **Defining assembly.** For the purposes of the Guidelines, an 'assembly' means the intentional gathering of a number of individuals in a publicly accessible place for a common expressive purpose. This includes planned and organised assemblies, unplanned and spontaneous assemblies, static and moving assemblies.

19. **Defining peaceful.** The term 'peaceful' includes conduct that may annoy or give offence to individuals or groups opposed to the ideas or claims that the assembly is seeking

[34] The European Court of Human Rights has however acknowledged that Art 11 covers assemblies 'of an essentially social character': *Friend and Others v. UK*, Application Nos 16072/06 and 27809/08, 24 November 2009 (admissibility), para. 50; *Huseynov v. Azerbaijan*, Application No 59135/09, 7 May 2015, para. 91. See further, Helen Fenwick and Michael Hamilton, "Freedom of Protest and Assembly", Chapter 9 in *Fenwick on Civil Liberties and Human Rights* (5th edition) (Oxford: Routledge, 2017), pp 576-577 (fn. 172) and p. 601 (fn. 339, citing David Mead, *The New Law of Peaceful Protest: Rights and Regulation in the Human Rights Act Era*, (Oxford: Hart 2010), p. 137).

[35] For example, regular friendly get-togethers, or meeting up for a drink. Such private meetings have a shared expressive purpose (since all attendees wish to communicate with one another) and might take place in either public or private place.

[36] Report of the Special Rapporteur of the Human Rights Council on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, A/72/43280, 27 September 2017

to promote. It also includes conduct that temporarily hinders, impedes or obstructs the activities of third parties, for example by temporarily blocking traffic. As such, an assembly can be entirely 'peaceful' even if it is 'unlawful' under domestic law. The peaceful intentions of organizers and participants in an assembly should be presumed, unless there is convincing evidence of intent to use or incite violence.

Assemblies and New Technologies

20. **Assemblies online.** Internet-based technologies play an increasing role in the exercise of the right to freedom of peaceful assembly. The Internet can be used for forms of online activism related to assemblies, and such activities may warrant protection. The Internet and social media may also legitimately serve as a means of facilitating assemblies.

Core State Obligations

21. **Presumption in favour of (peaceful) assemblies.** Freedom of peaceful assembly is recognised as a fundamental right in a democratic society and should be enjoyed, as far as possible, without regulation.[37] The presumption in favour of (peaceful) assemblies includes an obligation of tolerance and restraint towards peaceful assemblies in situations where legal or administrative procedures and formalities have not been followed.

22. **Positive obligation to facilitate and protect.** States have a positive duty to facilitate and protect the exercise of the right to freedom of peaceful assembly. This duty should be reflected in the legislative framework and relevant law enforcement regulations and practices. It includes a duty to facilitate assemblies at the organiser's preferred location and within 'sight and sound' of the intended audience. The duty to protect also involves the protection of assembly organizers and participants from third party individuals or groups who seek to undermine their right to freedom of peaceful assembly. Three specific types of assembly are especially noteworthy:

- **Counter demonstrations.** Individuals have a right to assemble as counter-demonstrators to express their disagreement with the views expressed at a public assembly. The coincidence in time and venue of the two assemblies is likely to be an essential part of the message to be conveyed by the second assembly. Counter-demonstrations should be facilitated so that they occur within 'sight and sound' of their target in so far as this does not physically interfere with the other assembly and does not give rise to a risk of imminent violence that cannot be mitigated or prevented.[38]

- **Simultaneous assemblies.** Where prior notification is submitted for two or more assemblies at the same place and time, simultaneous events should be facilitated where possible. Simply prohibiting an assembly in the same place and at the same time as an already notified or planned public assembly in cases where both can reasonably be accommodated is likely to amount to a disproportionate and possibly discriminatory response. As such, a 'first come, first served' rule must not be implemented in a way that enables some assembly organisers to 'block-book' particular locations to the exclusion of other groups.

[37] However, the measures taken by the authorities and interfering with the right to freedom of assembly should always have a legal basis under domestic law and the law should be accessible to the persons concerned and formulated with sufficient precision (*Vyerentsov v. Ukraine*, Application no. 20372/11, para. 52.)

[38] In the case of *Christians against racism and fascism/United Kingdom* (Application no. 8440/78, 16 July 1980) the Commission held that a general ban on demonstrations can only be justified is there is a real danger of their resulting in disorder which cannot be prevented by other less stringent measures.

- **Spontaneous and non-notified assemblies.** The emergence of new technologies has greatly enhanced the possibility of spontaneous assemblies, and these should be regarded as an expected (rather than exceptional) feature of a healthy democracy. All reasonable and appropriate measures should be taken to ensure that spontaneous and non-notified assemblies are facilitated and protected in the same way as assemblies that are planned in advance.

23. **Legality**. Legal provisions covering freedom of peaceful assembly must be sufficiently clear to enable an individual to assess whether their actions might breach the law, and to know the likely consequences of any such breach.[39] Well-drafted legislation that is compatible with international human rights standards is vital to defining and limiting the powers and discretion of public authorities and law enforcement officials.

24. **Equality and non-discrimination**. The general principle that human rights shall be enjoyed without discrimination lies at the core of the interpretation of human rights standards. Discrimination based on grounds such as sex, "race", colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, sexual orientation, gender, gender identity, health conditions, immigration or residency status, or any other status should be prohibited.[40]

Notification, Good Administration and Legal Remedies

25. **Notification as a restriction.** A prior notice requirement is a *de facto* interference with the right to freedom of assembly, and any such requirement should therefore be prescribed by law, necessary and proportionate. It is not necessary under international human rights law for domestic legislation to require advance notification of an assembly, but prior notice can enable the State to better ensure the peaceful nature of an assembly and to put in place arrangements to facilitate the event, or to protect public order, public safety and the rights and freedoms of others.[41] A notification regime should never be turned into a *de facto* authorization procedure.[42] The procedure for providing advance notification to the public authorities should not be onerous or overly bureaucratic. Furthermore, the domestic legal framework should ensure that spontaneous assemblies can lawfully be held, and laws regulating freedom of assembly should explicitly exempt such assemblies from prior notification requirements

26. **Good Administration.** The relevant state authorities should ensure that the general public has easy and practical access to reliable information relating to assemblies, to relevant laws and regulations, and to the procedures and modus operandi of the authorities in relation to facilitating and policing assemblies. Any decision to restrict or prohibit an assembly should be based on legislation that reflects applicable standards and clearly describes the decision-making procedures. State authorities should also keep records to ensure transparency in their decision-making processes.

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[39] *Vyerentsov v. Ukraine*, Application no. 20372/11, para. 52.
[40] *Genderdoc-M. v. Moldova,* Application no. 9106/06, paras. 48-55.
[41] *Skiba v. Poland*, Application no. 10659/03, 7 July 2009 (dec.).
[42] However, the subjection of assemblies to an authorisation procedure does not normally encroach upon the essence of the right. Such a procedure is in-keeping with the requirements of Article 11 § 1 ECHR, if only in order that the authorities may be in a position to ensure the peaceful nature of a meeting (*Rassemblement jurassien v. Switzerland*, Application no. 8191/78, 10 October 1978, DR 17, p. 119; *Christian Ziliberberg/Moldova* (admissibility decision), Application no. 61821/00, 4 May 2004.

27. **Legal remedies and accountability of the decision-making authority.** Those seeking to exercise the right to freedom of peaceful assembly should have recourse to a prompt and effective remedy against decisions allegedly disproportionately, arbitrarily or illegally restricting or prohibiting assemblies. 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.

Restrictions on an Assembly

28. **Limited grounds for restriction.** Any restrictions imposed on assemblies must have a formal basis in law and be based on one or more of the legitimate grounds prescribed by relevant international and regional human rights instruments: national security, public safety, public order, the protection of public health or morals, and the protection of the rights and freedoms of others. These grounds should not be supplemented by additional grounds in domestic legislation and should be narrowly interpreted by the authorities.

29. **Necessity and proportionality.** Any restrictions on the right to freedom of peaceful assembly, whether set out in law or applied in practice, must be both necessary in a democratic society to achieve a legitimate aim, and proportionate to such aim. The least intrusive means of achieving a legitimate aim should always be given preference. The principle of proportionality requires, for example, that authorities do not routinely impose restrictions which would fundamentally alter the character of an event, such as relocating assemblies to less central areas of a city. Banning or prohibiting an assembly should always be a measure of last resort and should only be considered when a less restrictive response would not achieve the.

30. Illegitimacy of content-based restrictions. Any restrictions on assemblies should not be based on the content of the message(s) that they seek to communicate within the limits set by Article 10§2 ECHR. Restrictions must not be justified simply on the basis of the authorities' own disagreement with the merits of a particular protest – and so both criticism of government policies or ideas contesting the established order by non-violent means are deserving of protection. States are also obligated to protect citizens against content-based restrictions imposed by third party actors which may include Internet Service Providers (ISPs).[43]

Policing Assemblies

31. **A human rights-based approach.** Law enforcement agencies should adopt a human rights-based approach to all aspects of the planning, preparation and policing of assemblies. This means they take into consideration their duty to facilitate and protect the right to freedom of peaceful assembly. A human rights-based approach to policing assemblies should be based on four key principles which underpin all aspects of police planning, preparation, implementation and debriefing associated with facilitating assemblies. These are (1) knowledge of the groups involved; (2) a commitment to facilitating assemblies; (3) recognition of the value and importance of voluntary communication at all stages of the assembly process; and (4) acknowledgment of the diversity of participants in assemblies and the need to differentiate between them in active policing.

32. **Use of Force.** Law enforcement agencies should not use force at assemblies unless strictly unavoidable. Force should only be applied to the minimum extent necessary, following to the principles of restraint, proportionality, and minimization of damage and the preservation of life. Firearms as potentially lethal weapons are not appropriate tactical tools for policing or dispersing assemblies and should be avoided.

[43] As the ECtHR stated in *Ozgur Gundem v. Turkey* (Application No. 23144/93, 16 Mars 2000, para. 43): Genuine, effective exercise of the freedom of expression does not depend merely on the State's duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals.

33. **Accountability of law enforcement personnel.** In the event that force is used at an assembly, it should trigger an automatic and prompt review process. Where injuries or deaths result from the use of force by law enforcement personnel, an independent, open, prompt and effective investigation must be undertaken. Law enforcement personnel should also be held liable for failing to intervene where such intervention may have prevented other officers from using excessive force.

Roles and rights of third parties at assemblies

34. **Journalists, Monitors and Medical Practitioners.** A range of third party actors, including journalists, human rights defenders and medical personnel, have a right to be present at an assembly to observe or monitor proceedings, to report on what takes place and potentially to provide assistance to other participants and actors in case of injury or violence. State authorities and law enforcement personnel should be aware of the work of these different actors and of the need to facilitate such work as part of the wider process of protecting the right to peaceful assembly.

Arrest and Detention of Assembly Participants

35. **Mass arrests or detentions.** Law enforcement should as far as possible avoid the use of containment (a tactic often referred to as “kettling” or “corralling”) or mass arrests of participants at an assembly. Such indiscriminate measures may amount to an arbitrary deprivation of liberty under international human rights law. Clear and accessible protocols for the stop, search and arrest or detention of assembly participants must be established.

Penalties Imposed After an Assembly

36. **Proportionality of penalties.** Penalties imposed for conduct occurring in the context of an assembly must be necessary and proportionate, since unnecessary, or disproportionately harsh sanctions for behaviour during assemblies could inhibit the holding of such events and have a chilling effect that may prevent participants from attending. Such sanctions may constitute an indirect violation of the freedom of peaceful assembly. Offences such as the failure to provide advance notice of an assembly or the failure to comply with route, time and place restrictions imposed on an assembly should not be punishable with prison sentences, or heavy fines.

37. **Liability of organizers and stewards.** Organizers and stewards should not be held liable where property damage or disorder, or violent acts are caused by assembly participants or onlookers acting independently. Liability will only exist where organizers or stewards have personally and intentionally incited, caused or participated in actual damage or disorder.

38. **Fair trial.** Any organizers or participants who have criminal or administrative charges levelled against them, should provide basic fair trial rights as set out in relevant international instruments, including access to a fair and public hearing within a reasonable time before an independent and impartial tribunal established by law.

Accountability of State Authorities

39. **Public accountability and liability of the regulatory authority.** Public authorities must comply with their legal obligations and should be accountable for any failure to do so, regardless of whether this omission takes place before, during or after an assembly. Individual liability should be gauged according to the relevant principles of administrative or criminal law.

40. **Independent investigations.** Any abuse of powers and violations of the law by state officials, including instances of use of disproportionate force or unlawful dispersal of assemblies, should lead to prompt and independent investigations. This applies equally to acts of violence, threats of violence, or incitement to hatred against participants in an assembly by other participants, counter-demonstrators, law enforcement officials or third persons. Those responsible should be sanctioned in an appropriate manner and victims should be informed about possible remedies.

Section B: Guiding Principles: Interpretive Notes

The Right to Freedom of Peaceful Assembly

Defining Assembly

41. For the purposes of these Guidelines, an 'assembly' means the intentional gathering of a number of individuals in a publicly accessible place for a common expressive purpose.[44] While this definition captures the core protective scope of the right to freedom of peaceful assembly, it is not an exhaustive definition. Other types of 'assembly' are also protected by international human rights law (see further, 'The Focus of These Guidelines' at paras. 12-15 above). Moreover, defining an event as an 'assembly' does not, for that reason alone, justify State regulation (including prior notification). Assemblies must only be regulated to the extent that there is a pressing social need to do so within the permissible limits established in Article 11(2) ECHR and Article 21 ICCPR (see further paras. 94 *et seq*.).

42. These Guidelines are concerned primarily with the protection of gatherings held to express an emotion, idea or opinion relating to matters of public interest or concern, including those that address political, cultural or social issues and those that seek to send a message to the public or relevant decision-makers.

43. The right to freedom of peaceful assembly can be enjoyed and exercised by individuals and groups (informal or *ad hoc*), legal entities and corporate bodies, and unregistered or registered associations, including trade unions, political parties and religious groups.[45]

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[44] See Manfred Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary (2nd edition) (Kehl: N.P Engel, 2005) p.373: 'The term "assembly" is not defined but rather presumed in the Covenant. Therefore, it must be interpreted in conformity with the customary, generally accepted meaning in national legal systems, taking into account the object and purpose of this traditional right. It is beyond doubt that not every assembly of individuals requires special protection. Rather, only *intentional*, temporary gatherings of several persons for a specific purpose are afforded the protection of freedom of assembly.' See Human Rights Committee Views (on the merits) *Kivenmaa v. Finland* (412/1990) 31 March 1994, CCPR/C/50/D/412/1990 para.7.6, where the Committee stated that "public assembly is understood to be the coming together of more than one person for a lawful purpose in a public place that others than those invited also have access to." See also Human Rights Committee Views (on the merits) *Levinov v. Belarus* (1867/09) 19 July 2012, CCPR/C/105/D/1867/2009, 1936, 1975, 1977-1981, 2010/2010, where the Committee declared inadmissible the author's claim under Article 21 ICCPR because he 'intended to conduct the … pickets on his own' (para 9.7) and the Committee instead considered his claim under Article 19 ICCPR.

[45] Freedom of peaceful assembly is capable of being exercised not only by individual participants but also by those organising it. In relation to associations and legal entities, see *Hyde Park and Others v. Moldova (Nos. 5 and 6)*, Application Nos 6991/08 and 15084/08, 14 September 2010, para. 32: '… 'the Court considers it well-established in its case-law that associations can be victims of an interference with the right to freedom of peaceful assembly.' Regarding trade unions, see *Özbent and others v. Turkey,* Applications Nos 56395/08 and 58241/08, 9 June 2015 (only in French), paras. 48-50. See also OSCE/ODIHR and Venice Commission, "Guidelines on Freedom of Association" (Warsaw: ODIHR 2014) para. 19; OSCE/ODIHR and Venice Commission, "Guidelines on Political Party Regulation" (Warsaw: ODIHR, 2011) para. 11.

44. A wide range of different events fall within the scope of freedom of peaceful assembly – planned and organised assemblies, unplanned and spontaneous assemblies (paragraph 79 below),[46] static assemblies (such as public meetings, 'flash mobs',[47] sit-ins[48] and pickets)[49] and moving assemblies (including parades, processions, and convoys).[50] The right to freedom of peaceful assembly also extends to repeat assemblies (paragraph 80) below), simultaneous assemblies (paragraph 78 below) and counter-demonstrations (paragraph 77 below), although 'the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate.'[51]

45. **Freedom of peaceful assembly online and offline.**[52] The Internet and social media can be used to discuss, plan and publicize offline assemblies. Access to the Internet and social media has become an important aspect of an assembly for organizers, participants, monitors and human rights defenders. This is clearly an area where the rights to freedom of expression and freedom of peaceful assembly intersect, and some forms of online interaction may serve functions that are equivalent to those of physical assemblies. Online

[46] *Bukta and Others v. Hungary*, Application No 25691/04, 17 July 2007, para 36; *Eva Molnár v. Hungary* (2008), *op. cit.,* note 7, para. 38. The Court stated that: 'the right to hold spontaneous demonstrations may override the obligation to give prior notification to public assemblies only in special circumstances, namely if an immediate response to a current event is warranted in the form of a demonstration. In particular, such derogation from the general rule may be justified if a delay would have rendered that response obsolete.' *See also NAACP v. City of Richmond*, 743 F.2d 1346, 1355-1358 (9th Cir. 1984) (which invalidates an advance notice requirement that precludes spontaneous assemblies).

[47] A flash mob occurs when a group of people assemble at a location for a short time, perform some form of action, and then disperse. While these events are planned and organised, generally they do not involve any formal organisation or group. They may be planned using information and communication technologies, social media and social networks (including text messaging and Twitter). Their *raison d'être* demands an element of surprise that may be defeated by the requirement of prior notification.

[48] *G v. The Federal Republic of Germany*, Application No 13079/87, Decision of 6 March 1989; *L.F. v. Austria*, Application No 15225/89, Decision of 30 November 1992 ('a demonstration by means of repeated sit-ins blocking a public road fell within the ambit of Article 11 para. 1'). See also *Annenkov and Others v. Russia*, Application No 31475/10, 25 July 2017, para. 123.

[49] Notably, however, the European Court of Human Rights has noted that, although it falls within the protective scope of Article 11(1), 'physical conduct purposely obstructing traffic and the ordinary course of life in order to seriously disrupt the activities carried out by others is not at the core of that freedom as protected by Article 11 of the Convention'. See *Kudrevičius and Others v. Lithuania* Application no. 37553/05, 15 October 2015, para. 97; *Annenkov and Others v. Russia* (2017) *op. cit.,* note 48, para. 127. See (generally) the decisions of the German Constitutional Court in relation to roadblocks in front of military installations: BVerfGE 73, 206, BVerfGE 92, 1 and BVerfGE 104, 92; Peter Quint*, op. cit.,* note 28, and text accompanying below. See also, *DeJonge v. Oregon*, 299 U.S. 353 (1937) (public assemblies are a form of protected communication) and *Thornhill v. Alabama*, 310 U.S. 88 (1940) (picketing is a protected forum of assembly).

[50] In *Christians Against Racism and Fascism (CARAF) v. United Kingdom*, Application No 8440/78, decision of 16 July 1980, para. 4, the European Commission accepted 'that the freedom of peaceful assembly covers not only static meetings, but also public processions.' This understanding has been relied upon in a number of subsequent cases including *Lashmankin and 14 Others v. Russia*, Applications No 57818/09, para. 402. See also David Mead, *The Right to Peaceful Protest under the European Convention on Human Rights – A Content Study of Strasbourg Case Law,* 4 EHRLR (2007) 345-384; *Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston*, 515 U.S. 557, 568-569 (1995) (parades and marches are protected forms of expressive association). The terms used in domestic legislation to differentiate between types of assembly must be defined with sufficient clarity – see, for example, *Chumak v. Ukraine*, Application no. 44529/09, 6 March 2018, para. 47.

[51] See *Plattform "Ärzte für das Leben" v. Austria*, Application No 10126/82, 21 June 1988, para.32. See also *Grider v. Abramson*, 994 F. Supp. 840, 848 (W.D. Ky. 1998) aff'd, 180 F.3d 739 (6th Cir. 1999) (according to which there is no constitutional right to talk over or shout down speakers at a demonstration). See also *Collin v. Smith*, 447 F. Supp. 676, 690 (N.D. Ill.) aff'd, 578 F.2d 1197 (7th Cir. 1978) ("Even where the audience is so offended by the ideas being expressed that it becomes disorderly and attempts to silence the speaker, it is the duty of the police to attempt to protect the speaker, not to silence his speech if it does not consist of unprotected epithets.").

[52] Recommendation CM/Rec (2014) 6 of the Committee of Ministers to member States on a Guide to human rights for Internet users: everyone has "the right to peacefully assemble and associate with others using the internet." Also, Human Rights Council, Resolution 21/16, (October 2012), UN Doc. A/HRC/RES/21/16, and Resolution 24/5 (October 2013), UN Doc. A/HRC/RES/25/5, both entitled *The rights to freedom of peaceful assembly and of association.* See also the 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, of 4 February 2016, para. 10: "Although an assembly has generally been understood as a physical gathering of people, it has been recognized that human rights protections, including for freedom of assembly, may apply to analogous interactions taking place online."

activism related to assemblies may thus warrant protection.[53] In this evolving sphere, the possibility that assemblies may occur wholly online cannot therefore be excluded.[54]

Defining 'peacefulness'

46. Only peaceful assemblies fall within the scope of Article 11(1) ECHR and Article 21 ICCPR. The European Court of Human Rights has stated that the concept of a peaceful assembly does not cover gatherings where the organisers and participants have violent intentions or incite violence.[55] The peaceful intentions of organizers and participants in an assembly are to be presumed, unless there is convincing evidence that they themselves intend to use or incite imminent violence.[56]

47. The term 'peaceful' should be interpreted to include conduct that may annoy or give offence to individuals or groups opposed to the ideas or claims that the assembly is seeking to promote.[57] This may even include, for example, assemblies advocating for changes to a

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[53] Recommendation CM/Rec (2014) 6 of the Committee of Ministers to member States on a Guide to human rights for Internet users: everyone has 'the right to peacefully assemble and associate with others using the internet.' Recommendation CM/Rec (2016) 5 of the Committee of Ministers to member States on Internet freedom (13 April 2016), para. 3.3: 'Individuals are free to use Internet platforms, such as social media and other ICTs in order to organise themselves for purposes of peaceful assembly.'

[54] The European Court of Human Rights has recognized that the right to assemble 'should not be interpreted restrictively'. See among others, *Chumak v Ukraine*, Application No 44529/09, judgment of 6 March 2018, para 36. See also Article 7 of The Charter of Human Rights and Principles for the Internet (available at: http://internetrightsandprinciples.org/site/):'Everyone has the right to form, join, meet or visit the website or network of an assembly, group or association for any reason. Access to assemblies and associations using ICTs must not be blocked or filtered.' Furthermore, the UN Human Rights Council, in two successive resolutions in 2012 and 2013, emphasized the obligation of States 'to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline.' UN Human Rights Council, Resolution 21/16 on the rights to freedom of peaceful assembly and of association, 11 October 2012, A/HRC/RES/21/16, para 1; UN Human Rights Council, Resolution 24/5 on the rights to freedom of peaceful assembly and of association, 8 October 2013, A/HRC/RES/24/5, para. 2. In 2014, the Human Rights Council's Resolution on 'the promotion, protection and enjoyment of human rights on the internet' further noted that: 'the same rights that people have offline must also be protected online.' UN Human Rights Council, Resolution 26/13 on the promotion, protection and enjoyment of human rights on the internet, 14 July 2014, A/HRC/RES/26/13, para 1. The UN Special Rapporteurs on freedom of assembly and of association, and on extrajudicial, summary or arbitrary executions, stated in a joint report in 2016 that 'it has been recognized that human rights protections, including for freedom of assembly, may apply to analogous interactions taking place online.' Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 4 February 2016, A/HRC/31/66, para 10.

[55] See, for example*, Lashmankin and Others v. Russia* (2017), *op. cit.,* note 50, para 402. Earlier statements by the Court to similar effect can be found in *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), *op. cit.,* note 16, para. 77; *Fáber v. Hungary*, Application No 40721/08, 24 July 2012, para. 37; *Cisse v. France* Application No 51346/99, 9 April 2002, para 37: "In practice, the only type of events that do not qualify as "peaceful assemblies" were those in which the organisers and participants intended to use violence."

[56] See, for example, *Saghatelyan v. Armenia,* Application No 23086/08, 20 September 2018, paras. 230-233; *Karpyuk and others v. Ukraine*, Applications Nos 30582/04 and 32152/04, 6 October 2015, paras. 198-207, 224 and 234. See Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (Funding of associations and holding of peaceful assemblies), A/HRC/23/39, 24 April 2013, para. 50. See also Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai (Best practices that promote and protect the rights to freedom of peaceful assembly and of association), A/HRC/20/27, 21 May 2012, para. 25.

[57] *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, *op. cit.,* note 16, para. 86; *Plattform "Ärzte für das Leben" v. Austria* (1988), *op. cit.,* note 51, at para. 32. Similarly, the European Court of Human Rights has often stated that, subject to Article 10(2), freedom of expression '…is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society"', *Handyside v. The United Kingdom* (*The United Kingdom*, Application no. 5493/72, 7 December 1976, para. 49. See also, *Bayev and Others v. Russia*, Application Nos 67667/09, 44092/12 and 56717/12, 20 June 2017, para. 70: "The Court reiterates that it would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority". See also *Terminiello v. City of Chicago*, 337 U.S. 1, 4-5 (1949): "[A] function of free speech under our system of government is to invite

country's territorial boundaries[58] or to fundamental constitutional provisions[59] so long as this is done in a non-violent manner.

48. An assembly can be 'peaceful' even if it is 'unlawful' under domestic law.60 In this regard, it is especially important to emphasize that the concept of 'peaceful' may include conduct that temporarily hinders, impedes or obstructs the activities of third parties, for example by temporarily blocking traffic.[61]

49. The burden of proving the violent intentions of the organisers of a demonstration lies with the authorities. When seeking to assess and prove the intentions of an assembly organiser, non-peaceful intentions cannot be inferred merely from the occurrence of violence at past events with the same organizer and/or a significant number of the same participants. An organizer must also be given an opportunity to challenge any adverse inferences drawn from such evidence – for example, by showing that they have taken bona fide measures to avoid violence. Nevertheless, the authorities should be allowed a margin of appreciation when assessing these issues.

50. The use of violence by a small number of participants in an assembly (including the use of language inciting hatred, violence or discrimination) does not automatically turn an otherwise peaceful assembly into a non-peaceful assembly. Moreover, 'the possibility of extremists with violent intentions who are not members of the organising group joining a demonstration cannot as such take away [the right to freedom of peaceful assembly]' from those who remain peaceful.[62] Instead, international standards provide that even if there is a real risk of an assembly resulting in disorder as a result of developments outside the control of those organising it, this by itself does not remove it from the scope of Article 11(1) ECHR.[63] Furthermore, as stated by the European Court of Human Rights, 'an individual does not cease to enjoy the right to freedom of peaceful assembly as a result of sporadic

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dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea."

[58] See, for example, *Socialist Party and Others v. Turkey*, 20/1997/804/1007, 25 May 1998, para 47; *Manole and Others v. Moldova*, Application No 13936/02, 17 September 2009, para 95; *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), *op. cit.,* note 16, paras. 97-103: "the fact that a group of persons calls for autonomy or even requests secession of part of the country's territory – thus demanding fundamental constitutional and territorial changes – cannot automatically justify a prohibition of its assemblies. Demanding territorial changes in speeches and demonstrations does not automatically amount to a threat to the country's territorial integrity and national security. […] In the Court's opinion, there is no indication that the applicant association's meetings were likely to become a platform for the propagation of violence and rejection of democracy with a potentially damaging impact that warranted their prohibition. Any isolated incident could adequately be dealt with through the prosecution of those responsible."

[59] *Women on Waves v. Portugal* (2009), *op. cit.,* note 26, paras. 28-29 and 41-42, concerning also the organizations of protests to promote a change of the legislation criminalizing abortion, where the Court concluded that there had been a violation of Article 10 of the ECHR, while also referring to Article 11 of the ECHR.

[60] For example, *Taranenko v. Russia,* Application No 19554/05, 15 May 2014, paras. 91-93: 'the protesters' conduct, although involving a certain degree of disturbance and causing some damage, did not amount to violence (drawing parallels with *Steel and Others v. the United Kingdom*, Application no. 24838/94, judgment of 23 September 1998 and *Barraco v. France* (2009), *op. cit.,* note 24).

[61] The European Court of Human Rights has often reiterated that a demonstration in a public place "may cause a certain level of disruption to ordinary life"; see for example *Nurettin Aldemir and Others v. Turkey*, (Application Nos 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, 18 December 2007, para. 43; *Körtvélyessy v. Hungary* Application No 7871/10, 5 April 2016), para. 28. See also the judgment of the German Federal Constitutional Court, BVerfGE 69, 315(360) at Fn.3, regarding roadblocks in front of military installations: "Their sit-down blockades do not fall outside the scope of this basic right just because they are accused of coercion using force." See further Peter Quint, *op. cit.,* note 28. See also *Annenkov and Others v. Russia* (2017)*, op. cit.,* note 48, paras 124-126, where the Court emphasized that any conduct alleged to be violent must be of a certain nature or degree before it will suffice to remove an assembly from the scope of protection of Article 11.

[62] *Christians against Racism and Fascism v. the United Kingdom* (1980), *op. cit.,* note 38, pp.148-149; *Ezelin v. France* (1991), *op. cit.,* note 11, para. 41.

[63] *Schwabe and M.G. v. Germany,* Application Nos 8080/08 and 8577/08, 1 December 2011, para. 103; *Taranenko v. Russia* (2014), *op. cit.,* note 60, para. 66.

violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour.'[64] Isolated incidents of sporadic violence, even if committed by participants in the course of a demonstration, are by themselves insufficient to justify extensive restrictions on or even dissolutions of assemblies and their peaceful participants.'[65] The response to violence calls instead for a measured and graduated response which fully respects the doctrine of proportionality (see paras. 47 and 156 below).

51. **Conduct that constitutes or causes 'violence'**. The spectrum of conduct that either constitutes 'violence', or is regarded as capable of causing 'violence', should be narrowly construed, limited in principle to using, or overtly inciting others to use, physical force that inflicts or is intended to inflict injury or serious property damage where such injury or damage is likely to occur.[66] The fact that certain content or messages may provoke strong reactions by non-participants does not make an assembly 'non-peaceful'.

Participation in assemblies

52. **Participation in assemblies should always be voluntary.** Participation in an assembly should never be forced (directly or indirectly), but should always be voluntary.[67] Nonetheless, the practice of encouraged participation in assemblies (for example, where organizers provide free transport to an event to would-be participants) should not be subject to legal regulation unless the provision of such incentives would contravene laws imposing proportionate limits on campaign financing.[68]

53. The right to freedom of peaceful assembly does not confer on an individual the right to take part in *any* assembly that he or she may wish. While many (perhaps even most) assemblies will be open to all, there may be occasions when the decision by an assembly organiser to exclude those wishing to participate is justified.

Planning and organisation of assemblies

54. **Freedom to plan, prepare and publicize an assembly.** The planning and publicizing of an assembly are integral parts of the exercise of the rights to freedom of speech and assembly and should be facilitated and protected accordingly. .

55. Given the presumption in favour of (peaceful) assemblies (see paragraphs 21 and 76), organizers also have the right to publicize the holding of an assembly ahead of time,

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[64] See *Ziliberberg v. Moldova*, Application No 61821/00, 4 May 2004, (admissibility). See also *Ezelin v. France* (1991), *op. cit.,* note 11, para 53: "the freedom to take part in a peaceful assembly - in this instance a demonstration that had not been prohibited - is of such importance that it cannot be restricted in any way, even for an avocat, so long as the person concerned does not himself commit any reprehensible act on such an occasion."

[65] *Ziliberberg v. Moldova* (2004), *op. cit.,* note 42, p.10, citing *Ezelin v. France* (1991), *op. cit.,* note 11, para. 34. See also *Annenkov and Others v. Russia* (2017), *op. cit.,* note 48, paras. 98, and 124-6), and *Collins v. Jordan*, 110 F.3d 1363, 1371-1373 (9th Cir. 1996) (police must differentiate between lawful and unlawful conduct rather than banning the entire protest).

[66] See *Brandenburg v. Ohio*, 395 US 444 (1969) which holds that government cannot punish inflammatory speech unless that speech is directed to inciting, and is likely to incite, imminent lawless action.

[67] See for example, the 2014 Law on Assemblies, Meetings, Demonstrations and Street Processions of Tajikistan, Article 5 (Principles of holding a mass event): "The mass event is based on the following principles: - legality; - respect for and observance of human and citizen rights and freedoms; - transparency in decision-making; voluntary participation in a mass event."

[68] Such practices which seek to artificially inflate the appearance of support for a particular group or cause (and are sometimes referred to as 'astroturfing') may undermine the authenticity of an assembly and the credibility of its message.

both on and offline.[69] Because of their importance in people's everyday lives,[70] the Internet and social media can be (and often are) used to discuss, prepare, organize and publicize assemblies.[71]

56. Those organizing an assembly cannot be compelled to include individuals or groups whose message would interfere with the desired message of the event.[72] Assembly organizers may thus exclude those whose message departs from, or whose presence as participant would change, the message that the organizer wishes to be communicated.

57. **Freedom to choose the organizational structure** (or lack thereof). Organizers, co-ordinators, leaders or sponsors of an assembly should be free to choose the organizational structure (or lack thereof) of the assembly and should not legally be required to adopt a specific structure, e.g. an organizing committee with specifically designated roles.[73] The relevant authorities should instead recognize and seek to accommodate the preferred organizational form – or lack of organizational form – of those wishing to assemble.

58. **Freedom to choose the type and manner of an assembly.** According to established case law of the European Court of Human Rights, the right to freedom of assembly includes the right to choose the modalities of an assembly.[74] The organizers of an assembly should be able to decide upon, without undue state interference, the modalities that will help them maximize the reach of the event.[75]

59. **Freedom to choose the date and time of an assembly.** The right to freedom of assembly in principle also includes the right to choose the date and time of the assembly. The timing of an assembly may be essential for the message that the participants wish to convey – for example, to protest against a concurrent event or to commemorate a historical event.[76] The right to choose the date and time of an assembly may also be crucial in terms of ensuring that the assembly reaches its target audience, and in enabling the widest possible participation (including participation by individuals from other cities or regions).

60. **Freedom to determine the duration of an assembly.** Generally, assembly organizers have the right to determine the duration of an assembly so that they have sufficient time and opportunity to interact with one another and to manifest their views.[77] The duration of an assembly may itself also be part of its message – for example, where an assembly seeks to coincide precisely with other contemporaneous events. In cases involving assemblies of particularly long duration, any limitations will only be permissible following an

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[69] UN Human Rights Committee Views (on the merits): *Tulzhenkova v. Belarus* (1226/03) 26 October 2011, CCPR/C/103/D/1838/2008, para. 9.3. The Committee stated its view that the circulation of publicity for an upcoming assembly cannot legitimately be penalized in the absence of a "specific indication of what dangers would have been created by the early distribution of the information."

[70] *Kalda v. Estonia* Application No 17429/10, 19 January 2016, para. 52, where the Court explicitly recognized the importance of the Internet for the enjoyment of a range of human rights. See also *Jankovskis v. Lithuania* Application No 21575/08, 17 January 2017), para.62.

[71] Recommendation CM/Rec(2016)5 of the Committee of Ministers to member States on Internet freedom (13 April 2016) para. 3.3: "Individuals are free to use Internet platforms, such as social media and other ICTs in order to organise themselves for purposes of peaceful assembly."

[72] See, for example, *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557 (1995) (sponsors of an expressive parade cannot be compelled to include groups whose message would interfere with or change the overall message of the parade).

[73] See, in this context, OSCE/ODIHR Opinion on the Act [of Tunisia] on the Regulation of Public Meetings, Marches, Rallies, Demonstrations and Assemblies, Opinion-Nr.: FOA-TUN/218/2012, 21 December 2012, para. 70.

[74] *Sáska v. Hungary*, Application No 58050/08, judgment of 27 November 2012), para. 21.

[75] *Women on Waves v. Portugal* (2009), *op. cit.,* note 26, para. 38.

[76] *Zelini Balkani v. Bulgaria*, Application No 63778/00, 12 April 2007, para. 40.

[77] *Patyi v. Hungary,* Application No 5529/05, 7 October 2008; *Éva Molnár v. Hungary* (2008), *op. cit.,* note 7, para. 42, and *Barraco v. France* (2009), *op. cit.,* note 24. In finding a violation of Article 11 ECHR in the case of *Balcik and Others v. Turkey*, Application No 25/02, 29 November 2007, the Court noted at para. 51 that since the rally at issue in the case began at about noon and ended with the group's arrest within half an hour at 12.30 p.m., it was "particularly struck by the authorities' impatience in seeking to end the demonstration."

individual assessment of the case at hand, bearing in mind the level of interference, and the extent to which the assembly organizers and participants have had the opportunity to interact with one another and to communicate their message[78] (see also section on restrictions on an Assembly under paras. 28-30).

The location of assemblies

61. **Freedom to choose the location or route of an assembly.** People also have the right in principle to choose the location or route of an assembly in publicly accessible places. The location or route may include, but need not be limited to, public parks, squares, streets, roads, avenues, sidewalks, pavement, footpaths, and open areas near public buildings and facilities.[79] Buildings and structures that are physically suitable for assemblies (meaning capable of accommodating the anticipated number of participants) and that are ordinarily open to the public – such as publicly owned auditoriums, stadiums or open areas in public buildings – may also be regarded as legitimate locations for assemblies, and their use will similarly be protected by the rights to freedom of peaceful assembly and expression.[80]

62. **Assemblies as a legitimate use of public space.** Given the importance of freedom of assembly in a democratic society, assemblies should be regarded as an equally legitimate use of public space as other, more routine uses of such space, such as commercial activity or pedestrian and vehicular traffic.[81] In this context, both the European Court of Human

[78] In *Cissé v. France*, Application no. 51346/99, 9 April 2002, the ECtHR held that the symbolic and testimonial value of the applicant's (…) presence had been tolerated sufficiently long enough in the instant case for the interference not to appear, after such a lengthy period, unreasonable, para. 52.

[79] This definition is based on language found in the US judgments of *International Society of Krishna Consciousness v. Lee*, 505 U.S. 672, 695 (1992) (Kennedy, J. concurring) and *Grayned v. Rockford*, 408 U.S. 104, 116 (1972) (dictum). It is not the definition adopted by the U.S. Supreme Court which has defined 'public forum' quite restrictively by looking at the history of the site. Thus, in the view of the Supreme Court a public forum is a site that has 'immemorially been held in trust for the use of the public and, time out of mind, . . . been used for purposes of assembly, communication of thoughts between citizens, and discussion public questions*'; International Society of Krishna Consciousness v. Lee*, at 679. See also para. 66 below regarding assemblies in online public spaces (and the case of *Knight First Amendment Institute at Columbia University and Others v. Donald J. Trump and others*, 17 Civ. 5205). See also German Federal Constitutional Court, Judgment of 22 February 2011 (Frankfurt Airport Decision), 1 BvR 699/06, para. 70: "A public forum is characterised by the fact that it can be used to pursue a variety of different activities and concerns leading to the development of a varied and open communications network. Public forums must be distinguished from locations which due to external circumstances are only available to the general public for specific purposes and which are designed accordingly. If in actual fact a place serves only or mainly one purpose, individuals may not request that they be allowed to conduct assemblies there pursuant to Article 8.1 [Basic Law] - except where they have private rights of use in respect of such place. This is different, however, in places where the combination of shops, service providers, restaurants and recreational areas provide an opportunity for strolling and thus result in the creation of a place for people to spend time and meet. If space is made available in this way for the coexistence of different uses, including communicative uses, and becomes a public forum, it is not possible according to Article 8.1 [Basic Law] to exclude from it political debate in the form of collective expressions of opinion through assemblies." See also German Federal Constitutional Court, Order of 18 July 2015, (Beer Can Flashmob for Freedom decision), 1 BvQ 25/15, in which the Court held, concerning a planned flash-mob on a privately owned square, that in the instant case the *de facto* prohibition of conducting assemblies constituted a serious infringement of the applicant's rights. The Court noted that the location of the assembly was particularly meaningful given the aim of the planned assembly, which was to protest against the increasing limitation of individual freedoms and the privatization of national security. Compared to this, the interference with the rights of the property owner was considered to be relatively minor, as the assembly would be limited to 15 minutes and static.

[80] *Szel v. Hungary* Application No 44357/13, 16 September 2014; *Sergey Kuznetsov v. Russia* (Application No 10877/04, 23 October 2008, *Acik v. Turkey* Application No 31451/03, 13 January 2009; *Cisse v. France* (2002), *op. cit.,* note 55; *Barankevich v. Russia* Application No 10519/03, 26 July 2007, para. 25: "The right to freedom of assembly covers both private meetings and meetings in public thoroughfares …" See also the discussion of 'quasi-public space' in the report by the UK Joint Committee on Human Rights, Demonstrating Respect for Rights: A Human Rights Approach to Policing Protest (Volume 1) (London: HMSO, HL Paper 47-I; HC 320-I, 23 March 2009), pp.16-17; 'Public and Private Space'. See further *Southeastern Promotions v. Conrad*, 420 U.S. 546 (1974) (stating that a municipality cannot selectively exclude an organization from the use of a public auditorium based on its objections to the message communicated).

[81] **"**In a democratic society urban space is not only a field of movement, but also a space for participation"; Spanish Constitutional Court, judgment STC 193/2011 of 12 December 2011 [English translation]. Cf. EU Court

Rights and the Inter-American Commission on Human Rights' Special Rapporteur for Freedom of Expression have stressed the need to facilitate, rather than hinder, assemblies in the public space.[82]

63. **Protection for assemblies on private property.** The right to freedom of peaceful assembly protects private meetings as well as those held in publicly accessible places.[83]

64. **No right of entry onto private property.** Notwithstanding the freedom to choose the location or route of an assembly, the right of peaceful assembly does not bestow an automatic right of entry to private property (or even to all publicly owned property not ordinarily accessible to the public, such as government offices or ministries).[84] At the same time, the ability of individuals and groups to exercise the right to freedom of assembly must remain practical and effective. Where sweeping restrictions on access to publicly owned property exist alongside restrictions on access to privately-owned property may have the effect of making this right wholly theoretical and illusory and must be avoided.[85]

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of Justice, *Eugen Schmidberger, Internationale Transporte und Planzuge v. Republik Osterreich* (C-112/00, judgment of 12 June 2003). In *Patyi and Others v. Hungary,* Application No 35127/08, 17 January 2008) paras. 42-43, the Court rejected the Hungarian government's arguments relating to potential disruption to traffic and public transport. Similarly, in *Körtvélyessy v. Hungary* Application No 7871/10, 4 April 2016, para. 29, the Court concluded "that the authorities, when issuing the prohibition on the demonstration and relying on traffic considerations alone, failed to strike a fair balance between the rights of those wishing to exercise their freedom of assembly and those others whose freedom of movement may have been frustrated temporarily, if at all." See also, *Hague v. CIO*, 307 U.S. 496, 515 (1939). For further argument against the prioritization of vehicular traffic over freedom of assembly, see Nicholas Blomley, "Civil Rights Meets Civil engineering: Urban Public Space and Traffic Logic" *Canadian Journal of Law and Society* Vol.22 No.2 2007 55-72. See also, Inter-American Commission on Human Rights, "Report of the Office of the Special Rapporteur for Freedom of Expression", 2008, para 70: "Naturally, strikes, road blockages, the occupation of public space, and even the disturbances that might occur during social protests can cause annoyances or even harm that it is necessary to prevent and repair. Nevertheless, disproportionate restrictions to protest, in particular in cases of groups that have no other way to express themselves publicly, seriously jeopardize the right to freedom of expression. The Office of the Special Rapporteur is therefore concerned about the existence of criminal provisions that make criminal offenses out of the mere participation in a protest, road blockages (at any time and of any kind) or acts of disorder that in reality, in and of themselves, do not adversely affect legally protected interests such as the life or liberty of individuals."

[82] In this context, see also the Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his mission to the Republic of Korea, A/HRC/32/36/Add.2, 15 June 2016, para. 28, stating that: 'The reasons that police rely on to ban or find assemblies unlawful, such as obstruction of traffic, disturbance of daily lives of citizens, high noise levels, and later notification of a simultaneous assembly, do not meet the criteria set out in article 21 of the ICCPR to justify limitations on assemblies. […] The wide discretion and powers to restrict assemblies have allegedly led to situations whereby for example, press conferences […] were deemed 'unlawful assemblies' because participants shouted slogans." See Permanent Court of Arbitration, *The Arctic Sunrise Arbitration (Netherlands v. Russia)*, Award on the Merits of 14 August 2015, paras. 227-228, confirming that "Protest at sea is an internationally lawful use of the sea related to the freedom of navigation", provided, among others, that such protest is peaceful.

[83] *Annenkov and Others v. Russia* (2017), *op. cit.,* note 48, para. 122. See also *Djavit An v. Turkey* (2003) *op. cit.,* note 1, para. 56 and *Rassemblement Jurassien Unité Jurassienne v. Switzerland* Application No 8191/78, Commission Decision of 10 October 1979, p. 119. See also, Max Planck Institute for Comparative Public and International Law, "Comparative Study on National Legislation on Freedom of Peaceful Assembly" (endorsed by the Venice Commission on 19 June 2014), CDL-AD(2014)024, paras. 489-492, which describes the range of different regimes that apply to assemblies in public and private spaces.

[84] *Appleby and Others v. United Kingdom*, Application No 44306/98, 6 May 2003, para. 47; *Taranenko v. Russia* (2014), *op. cit.,* note 60, para. 78. In the UK, privately owned places have been held to fall within the statutory definition of '*public* place': in a case concerning the power to issue dispersal orders against groups engaging in anti-social behaviour, Judge May remarked that the definition of 'public place' in s 36(b) of the Anti-social Behaviour Act, 2003 would "it seems, include cinemas, restaurants, coffee bars and public houses" (*R (W and PW) v. Commissioner of Police for the Metropolis and Another* [2006] EWCA Civ 458). Conversely, places within publicly-owned buildings – such as town halls and local council meeting rooms – are neither fully nor permanently open to the public, but yet the public are granted limited access at particular times or for particular purposes (see, *Laporte v. Commissioner of the Police of the Metropolis* [2014] EWHC 3574 (QB)).

[85] See, for example, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN General Assembly (Comparative study of enabling environments for associations and businesses, Doc. A/70/266, 4 August 2015, paras. 102-104: "The Special Rapporteur reiterates the legitimacy of expressive assemblies held by civil society organizations vis-à-vis corporate events, interests or property. A proper balancing of competing interests should be informed by objective criteria in accordance with international law." In *Knight First Amendment Institute at Columbia University and Others v. Donald J. Trump and others*, 17 Civ. 5205, the Court (paras. 48-9) noted how the nature of space (as private or public) often changes: "… the

Finland, Assembly Act 22.4.1999/530, section 9
Public meeting places

A public meeting may be arranged outdoors in a public square, open area, street, and in another similar public place that is suitable for meetings, without the permission of the owner or holder. The owner or holder may restrict the use of such a place for meeting purposes, if it is to be anticipated that the arrangement of the meeting will cause unreasonable inconvenience to the owner or holder or unreasonable damage to the environment.

Assemblies and new technologies

65. **Importance of the Internet to the right to assemble.** Internet-based technologies play an increasingly instrumental part in the exercise of the right to freedom of peaceful assembly and it is hard to imagine an assembly that does not involve some form of reliance on the Internet.[86] In many areas, the Internet is accessible, cheap, fast, borderless and has reduced the cost of communicating with others.[87] However, the so-called 'digital divide' continues to exist and States are under increasing obligations to reduce it, given the importance of the Internet to everyday life[88] and to political participation in particular. The Internet can also carry a protest message, and even help to 'create' a protest message through access to information, including by enabling access to other jurisdictions and support from abroad.

66. **Acknowledgement of online rights.** The European Convention on Human rights applies both offline and online.[89] The role of the Internet and social media in the mobilisation

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entire concept of a designated public forum rests on the premise that the nature of a (previously closed) space has been changed. See also *Cornelius*, 473 U.S. at 802. To take two examples, if a facility initially developed by the government as a military base – plainly not a public forum under *Greer*, 424 U.S. at 838 – is subsequently decommissioned and repurposed into a public park, … the present use of the facility as a park would bear much more heavily on the forum analysis than its historical origins as a military installation. Similarly, if a privately constructed airport were subsequently taken over by a public agency, forum analysis would focus on its current use as a public airport rather than its prior use as a private one. Cf. *ISKCON*, 505 U.S. at 681 ('The practices of privately held transportation centers do not bear on the government's regulatory authority over a publicly owned airport.')." Available at: <https://knightcolumbia.org/sites/default/files/content/Cases/Wikimedia/2018.05.23%20Order%20on%20motions%20for%20summary%20judgment.pdf>.

[86] W L Youmans, J C York, "Social Media and the Activist Toolkit: User Agreements, Corporate Interests and the Information Infrastructure of Modern Social Movements", *Journal of Communication* Vol. 62, 2012, p 315. In *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017), the US Supreme Court analogized the internet to the "essential venues for public gatherings."

[87] Jonathon Zittrain, "Ubiquitous human computing", *Philosophical Transactions of the Royal Society A* Vol. 366 No.188, 2008 pp. 3813-3821.

[88] *Kalda v. Estonia* (2016), *op. cit.,* note 70, para 52: "The Court cannot overlook the fact that in a number of Council of Europe and other international instruments the public-service value of the Internet and its importance for the enjoyment of a range of human rights has been recognised. Internet access has increasingly been understood as a right, and calls have been made to develop effective policies to attain universal access to the Internet and to overcome the "digital divide"…The Court considers that these developments reflect the important role the Internet plays in people's everyday lives."

[89] Recommendation CM/Rec(2016)5 of the Committee of Ministers to member States on Internet freedom (3 April 2016) para. 3 of the Annex reads (Internet freedom indicators): "3. The right to freedom of peaceful assembly and association; 3.1. Individuals are free to use Internet platforms, such as social media and other ICTs in order to associate with each other and to establish associations, to determine the objectives of such associations, to form trade unions, and to carry out activities within the limits provided for by laws that comply with international standards. 3.2. Associations are free to use the Internet in order to exercise their right to freedom of expression and to participate in matters of political and public debate. 3.3. Individuals are free to use Internet platforms, such as social media and other ICTs in order to organise themselves for purposes of peaceful assembly. 3.4. State measures applied in the context of the exercise of the right to peaceful assembly which amount to a blocking or restriction of Internet platforms, such as social media and other ICTs, comply with Article 11 of the Convention. 3.5. Any restriction on the exercise of the right to freedom of peaceful assembly and right to freedom of association with regard to the Internet is in compliance with Article 11 of the Convention, namely it: is prescribed by a law, which is accessible, clear, unambiguous and sufficiently precise to enable individuals to regulate their conduct; pursues a legitimate aim as exhaustively enumerated in Article 11 of the Convention; is necessary in a

of assemblies is increasingly pivotal to the exercise of the right. As noted throughout these Guidelines, assemblies organised partly or wholly online carry with them different practical considerations than offline assemblies. This includes, but is not limited to, considerations of notification (see paras. 112 *et seq*. below), use of public space, and privacy rights.

Recommendation of the Committee of Ministers to member States on a Guide to human rights for Internet users of 16 April, 2014[90] advises Internet users on their rights in the following manner:

"*Assembly, association and participation*

You have the right to peacefully assemble and associate with others using the Internet. In practice, this means:

You have the freedom to choose any website, application or other service in order to form, join, mobilise and participate in social groups and assemblies whether or not they are formally recognised by public authorities. You should also be able to use the Internet to exercise your right to form and join trade unions;

You have the right to protest peacefully online. However, you should be aware that, if your online protest leads to blockages, the disruption of services and/or damage to the property of others, you may face legal consequences;

You have the freedom to use available online tools to participate in local, national and global public policy debates, legislative initiatives and public scrutiny of decision-making processes, including the right to sign petitions and to participate in policy making relating to how the Internet is governed"

67. **Responsibility to facilitate Internet access.** Increasing access to the Internet is one of the ways in which States can partially discharge their duty to facilitate assemblies, and increasingly such access is becoming a right.[91] Council of Europe and United Nations documents have been calling for "applying a human-rights based approach in providing and expanding Internet access"[92] and highlighting the fundamental nature of Internet access as a conduit for the exercise of human rights and freedoms, in particular the right to freedom of opinion and expression[93] – calling on State parties to "take all necessary steps to foster the independence of these new media and to ensure access of individuals thereto."[94] Some UN consultative documents also mention (but do not define) the idea and nature of this new "human rights space"[95] in the context of assemblies. States should therefore work to extend Internet access, which in practice involves working to remove barriers to access such as high costs, burdensome administrative requirements and the need for residence permits. States should also work towards ensuring free Internet in public places and internet accessibility in geographically remote places. Moreover, States should be particularly cautious in restricting Internet access in any way when it is being utilized for the purposes of facilitating an assembly or holding one online. In this evolving sphere, it cannot be excluded that any interference with the freedom of expression and freedom of assembly online, for instance through blocking, filtering, slowing down or shutting down Internet services may amount to a disproportionate interference with the exercise of these rights. The UN Human Rights Committee has considered that any restriction on the operation of information

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democratic society and proportionate to the legitimate aim pursued. There is a pressing social need for the restriction. There is a fair balance between the exercise of the right to freedom of assembly and freedom of association and the interests of the society as a whole. If a less intrusive measure achieves the same goal, it is applied. The restriction is narrowly construed and applied, and does not encroach on the essence of the right to freedom of assembly and association."

[90] CM/Rec(2014)6

[91] As already stated by the European Court of Human Rights, albeit in the limited circumstances of the case of *Kalda v. Estonia* (2016), *op. cit.,* note 70 and *Janskovsis v. Lithuania* (2017), *op. cit.*

[92] UN General Assembly resolution of 27 June 2016 on the Promotion, protection and enjoyment of human rights on the Internet", A/HRC/32/L.20, para. 5.

[93] Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/HRC/17/27, 16 May 2011, in particular, paras. 67, 78, 79 and 85.

[94] UN Human Rights Committee, General Comment No. 34, *op. cit.,* note 11, para. 15.

[95] M O'Flaherty, "Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests: a background paper", 2014, p. 9, section 3.7: "[…] these modern technologies have changed traditional notions of the "human rights space" – in this regard it has been suggested that the right to peaceful assembly also applies to online protests." Available at: <https://www.ohchr.org/documents/issues/fassociation/seminar2013/backgroundpaperseminar.doc>.

dissemination systems is not legitimate unless it conforms with the test for restrictions on freedom of expression under international law.[96]

68. **Online as a space for assembly.** The Internet and social media have greatly facilitated the exercise of fundamental rights including that of the right to freedom of peaceful assembly through buttressing the right to freedom of expression, which is inextricably linked with freedom of peaceful assembly (see para. 4). In line with these Guidelines legislation should take into account that an essential part of the exercise of the right to freedom of assembly is the right to choose the location (see paras. 61 *et seq*.) and form in which ideas are conveyed and so (see para. 10), in this evolving sphere, this may include the Internet and social media outlets, even where such platforms are privately owned but are considered a space which is available for public use (see para. 83).[97] Legislation and State policies should therefore ensure that the internet can be used to prepare and organize assemblies and especially to use social media as a medium to mobilize and organise assemblies which later take place on the real street.

69. **Responsibility of Internet Service Providers.** While States have the ultimate obligation to protect human rights, the obligations to respect, protect and fulfil, extend also to third parties, including Internet Service Providers (ISPs) which, while privately owned companies, host the publicly available space for expression and assembly. In co-operation with the ISPs, States should ensure that self-regulation does not lead to censorship of content that would ordinarily be permissible and acceptable in a democratic society. This also applies to assemblies expressing views that may 'offend, shock or disturb' the State or any sector of the population[98] for as long as they do not incite violence.[99] At the same time, ISPs must not interfere with the message sought to be conveyed by the expression and/or assembly, through catch-all algorithms or unwarranted removal of content. On the other hand, ISPs may also be held accountable when they do not react to or remove content or expression or an online assembly which amounts to an incitement to violence or hate speech.[100] ISPs should also respect and protect the privacy of users, and should not be compelled by the State to divulge information thereon without a court order (see further para 73 below).

70. **Access to the Internet and social media**. Access to the Internet and social media should not be blocked before or during assemblies. Since the planning and organization of an assembly is likewise covered by the right to freedom of peaceful assembly, websites and other electronic tools used to advertise and inform about an assembly shall not be restricted or blocked; any attempts to do so would usually constitute a violation of this right. In its case law, the European Court of Human Rights has recognized the public-service value of the

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[96] UN Human Rights Committee, General Comment No. 34, *op. cit.,* note 11, para. 34.

[97] In *Knight First Amendment Institute at Columbia University and Others v. Donald J. Trump and others*, 17 Civ. 5205, the Court concluded (at pp.61-2) that the @realDonaldTrump Twitter account, was an interactive space and a 'designated public forum'. "The is generally accessible to the public at large without regard to political affiliation or any other limiting criteria." In reaching this conclusion, the court emphasized the 'interactivity of Twitter' and the compatibility of this forum with expressive activity. Noting relevant 'public forum' jurisprudence (see also note 79 above), the Court looked at ownership and control by the government (emphasizing governmental control, rather than complete governmental ownership), noting also that 'a space can be "a forum more in a metaphysical than in a spatial or geographic sense," *Rosenberger v. Rector & Visitors of the Univ. of Va*., 515 U.S. 819, 830 (1995), and may "lack[] a physical situs," *Cornelius*, 473 U.S. at 801, in which case traditional conceptions of "ownership" may fit less well.' Available at: <https://knightcolumbia.org/sites/default/files/content/Cases/Wikimedia/2018.05.23%20Order%20on%20motions%20for%20summary%20judgment.pdf> See also *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017) in which the US Supreme Court analogized the internet to the "essential venues for public gatherings."

[98] *Handyside v. the United Kingdom* (1976), *op. cit.,* note 57, para. 49.

[99] See *Delfi AS v. Estonia* Application No 64569/09, 16 June 2015; *Smajić v. Bosnia and Herzegovina*, Application No 48657/16, January 2018.

[100] *Ibid.*

Internet and its importance for the enjoyment of a range of human rights.[101] Internet access itself has increasingly been understood as a right, and support has grown for effective policies to attain universal access to the Internet and to overcome the "digital divide".[102] Moreover, participants, or prospective participants have the right to receive information on upcoming or ongoing assemblies.[103] Thus, states must ensure that the dissemination of information to publicize forthcoming assemblies, including on-line, is not impeded in any way[104], for instance by blocking social media. As the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has noted, cutting off users from Internet access, regardless of the justification provided, is disproportionate and a violation of Article 19, paragraph 3, of the International Covenant on Civil and Political Rights.[105]

71. **Limits on State surveillance of assembly-related activities on the Internet.[106]** While the benefits of amplifying the message of assemblies through technology are numerous, the same technology can also be used against protesters who use it to co-ordinate their efforts. Traditional assemblies, allow participants if they so desire, a certain level of anonymity or at least a smaller likelihood of being 'singled out' or identified – even the wearing of masks, for expressive purposes, is considered legitimate under international law (see para 153). However, the use of new technologies does not always offer the same due to the availability of surveillance and tracking tools by the State or third parties. States should therefore refrain from using surveillance tools to track (or less still, persecute) persons taking part in assemblies and protest actions. Such technologies include police video recordings[107] and facial recognition tools, surveillance of the Internet portals and social media sites used by activists and identification of a person's whereabouts through location tracking (to establish attendance at a demonstration or rally). Such tools should only be employed where such interference can be justified based on strictly proven and proportional grounds of national security or public order and should be subject to judicial review.

72. Any security measures taken by the State, for instance, anti-terrorism measures (see para 151) which would include either surveillance or the restrictions of Internet access, should be temporary in nature narrowly defined and meet a clearly set out legitimate purpose and prescribed by law and not used to target dissent and critical speech[108].

73. **Rights to privacy online.** Furthermore, in the absence of a court order supported by objective evidence, it should be unlawful to compel ISPs to share with the authorities information exchanged between persons who are taking part in an assembly. Legislation should only allow retention of data for a limited period or when it is absolutely necessary to ensure investigation of a serious crime. Where intermediaries become aware of restricted content indicating occurrence of a serious crime, they should report this to a law-enforcement authority without undue delay. (See CM/Rec(2018)2 on the roles and

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[101] *Kalda v. Estonia* (2016), *op. cit.,* note 70, para. 52 and *Jankovskis v. Lithuania* (2017), *op. cit.,* note 70, para.62.
[102] *Ibid*.
[103] Article 19, ICCPR; Article 10, ECHR.
[104] See, for example, UN Human Rights Committee Views (on the Merits), *Schumilin v. Belarus* (1784/2008) 5 September 2012, U.N. Doc. CCPR/C/105/D/1784/2008.
[105] Report of the UN Special Rapporteur (2011), A/HRC/17/27 *op. cit.,* note 93, para. 78.
[106] *Big Brother Watch and Others v. UK* (Application nos. 58170/13, 62322/14 and 24960/15), judgment of 13 September 2018.
[107] An example of arrests based on police filming of protesters can be seen in the case of the Kurdish protests in Turkey in 2008 (where amongst others, minors were filmed throwing rocks at police and arrested). See *Gülcü v. Turkey,* Application No 17526/10, 19 January 2016, para. 6: "According to a report prepared by four police officers on 21 July 2008 following the examination of video footage of the demonstration recorded by the police…"
[108] See OSCE, "Freedom of expression on the Internet: A study of legal provisions and practices related to freedom of expression, the free flow of information and media pluralism on the Internet in OSCE participating States", 2010.

responsibilities of internet intermediaries).Safeguards should exist to ensure that public authorities access and use such data only when necessary.

Core State Obligations

74. Scope of Obligations. States bound by human rights instruments and politically binding OSCE commitments[109] that confer protection on the right to freedom of peaceful assembly have a general legal obligation to ensure the protection of the rights contained therein for all individuals under their jurisdiction.[110] As emphasized by the UN Human Rights Committee's General Comment 31, these obligations extend to all branches of government – legislative, executive and judicial – 'and other public or governmental authorities, at whatever level – national, regional or local',[111] including (for States Parties with a federal structure) 'all parts of federal states without any limitations or exceptions'.[112]

75. General obligation to facilitate and protect freedom of peaceful assembly. States have a positive duty to facilitate and protect the exercise of the right to freedom of peaceful assembly.[113] This duty should be reflected in the legislative framework and relevant law enforcement regulations and practices. The duty to protect also involves the protection of assembly organizers and participants from third party individuals or groups who seek to undermine their right to freedom of peaceful assembly (see further para. 81 below).[114]

76. **The presumption in favour of (peaceful) assemblies.** Freedom of peaceful assembly is recognised as a fundamental right in a democratic society and should be enjoyed, as far as possible, without regulation.[115] This protective principle should be reflected

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[109] See for example, OSCE, Istanbul Document 1999, para. 7: "(…) All OSCE commitments, without exception, apply equally to each participating State (…) We regard these commitments as our common achievement and therefore consider them to be matters of immediate and legitimate concern to all participating States."

[110] See, for example, Article 2 ICCPR (Obligation to respect Human Rights), Article 40 ICCPR (State reports) and the first Optional Protocol to the ICCPR (Individual communications). See similarly, Article 1 ECHR (Obligation to respect Human Rights) in conjunction with Article 46 ECHR (Binding force and execution of judgments). In *Vyerentsov v. Ukraine*, Application No 20372/11, 11 April 2013, paras. 93-95, the Court explained the application of Article 46 in relation to problems of a structural nature (here, a legislative lacuna concerning freedom of assembly).

[111] UN Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 4.

[112] *Ibid.*

[113] See *Oya Ataman* Application No 74552/01, 5 December 2006), para. 35; *Gün and Others v. Turkey*, Application No 8029/07, 18 June 2013 (only in French), para. 69. Also see *Glasson v. City of Louisville*, 518 F.2d 899, 906 (6th Cir. 1975) (the state has a responsibility to protect and not interfere with the expression of ideas even when the ideas are provocative). Note that in the U.S., the failure of state officials to protect and not interfere with freedom of expression or other fundamental rights does not necessarily create a claim enforceable in court; see *DeShaney v. Winnebago Cty. Dept. of Social Services*, 489 U.S. 189 (1989). See also UN Human Rights Committee, General Comment No. 31, *op. cit.,* note 111, para. 6 in relation to the ICCPR: "The legal obligation under article 2, paragraph 1, is both negative and positive in nature." See also the Report of the UN Special Rapporteur (2013), A/HRC/23/39, *op. cit.,* note 56, paras. 2 and 3; and (in relation to the US), Glenn Abernathy, *The Right of Assembly and Association* (Columbia: University of South Carolina Press: 1961), p. 49: "The constitutional guarantee of freedom of assembly means more than merely the absence of improper restrictive measures; it means also the positive protection by responsible officials against hostile groups who would interfere."

[114] See *Promo Lex and Others v. Moldova*, Application No 42757/09, 24 February 2015, paras. 22-28, where the Court found that the state had been in violation of its positive obligations under Article 11 of the ECHR due to its failure to protect assembly organizers and participants from violent attack and to effectively investigate the circumstances of the incident. Also *Identoba and Others v. Georgia*, Application No 73235/12, 12 May 2015, paras. 93-100.

[115] *Countryside Alliance and Others v. United Kingdom* Applications Nos 16072/06 and 27809/08, 24 November 2009, para. 50. New York Times v. United States 403 US 413 (1971): "Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity." See also, Report of the UN Special Rapporteur (2012), A/HRC/20/27, *op. cit.,* note 56, para. 16, which states that, "[the] freedom [of peaceful assembly] is to be considered the rule and its restriction the exception." This principle is reaffirmed in the Report of the Special Rapporteur A/HRC/23/39 (2013), *op. cit.,* note 56, para. 47.

in national constitutions and in relevant legislation and should be interpreted broadly by all state bodies.[116] As a consequence, the relevant public authorities should remove all unnecessary legal and practical obstacles to the right to freedom of peaceful assembly. In particular, the organization and conduct of assemblies should not be subject to burdensome bureaucratic requirements (see, in particular, paras; 112 *et seq.).* Moreover, the presumption in favour of (peaceful) assemblies also includes an obligation of tolerance and restraint towards peaceful assemblies in situations where relevant procedures and formalities have not been followed (see further, paras 112 and 114).[117]

77. **Facilitation of counter-demonstrations**. Individuals have a right to assemble as counter-demonstrators to express their disagreement with the views expressed at a public assembly.[118] In such cases, the coincidence in time and venue of the two assemblies is likely to be an essential part of the message to be conveyed by the second assembly. Counter-demonstrations should be facilitated so that they occur within 'sight and sound' of their target in so far as this does not physically interfere with the other assembly and does not carry the risk of imminent violence (see further para 177) that cannot be mitigated or prevented.[119]

78. **Facilitation of simultaneous assemblies.** Where prior notification is submitted for two or more assemblies at the same place and time, simultaneous events should be facilitated where possible.[120] If this is not practical (for example, due to lack of space), the organisers should be encouraged to explore alternative options that might yield a mutually satisfactory resolution. Where such a resolution cannot be found, the authorities should still seek to accommodate the different assemblies – ensuring, insofar as possible, that any alternative locations remain within sight and sound of the target audiences. Attempts by assembly organisers to 'block-book' particular locations, especially for significant dates or anniversaries, may constitute an abuse of rights since they aim to exclude other assemblies from using that location at that time.[121] As such, a 'first come, first served' rule must not be implemented in a way that enables some assembly organisers to 'block-book' particular locations. Simply prohibiting an assembly in the same place and at the same time as an already notified or planned public assembly in cases where both can reasonably be accommodated is likely to amount to a disproportionate and possibly discriminatory response.

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[116] *Taranenko v. Russia* (2014) *op. cit.,* note 60, para. 65; *Rassemblement Jurassien & Unité Jurassien v. Switzerland* Application No 8191/78, Commission decision of 10 October 1979, pp. 93 and 119.

[117] See for example, *Navalny v. Russia* (2014) *op. cit.,* note 21: "While rules governing public assemblies, such as the system of prior notification, are essential for the smooth conduct of public events since they allow the authorities to minimise the disruption to traffic and take other safety measures, their enforcement cannot become an end in itself."

[118] See *Öllinger v. Austria*, Application No 76900/01, 29 June 2006, paras. 43-51. This case provides guidance as to the factors potentially relevant to assessing the proportionality of any restrictions on counter-demonstrations. These include whether the coincidence of time and venue is an essential part of the message of the counter-demonstration, whether the counter-protest concerned the expression of opinion on an issue of public interest, the size of the counter-demonstration, whether the counter-demonstrators have peaceful intentions, and the proposed manner of the protest (use of banners, chanting etc). *Olivieri v. Ward*, 801 F.2d 602,606-608(2d Cir. 1986) and O'Neill & Vasvari 23 *Hastings Const. L.Q.* at 100. Also see *Bay Area Peace Navy v. United States*, 914 F.2d 1224 (9th Cir. 1990) (overturning the decision on a buffer zone that prevented the message of protestors from being observed) cited in note 290.

[119] See *Bay Area Peace Navy v. United States*, 914 F.2d 1224 (9th Cir. 1990), where a restriction preventing protestors from entering a government designated buffer zone was declared null and void because it denied protestors access to their audience.

[120] See, for example, *Hyde Park v. Moldova* (*No.2)*, Application No 45094/06, 31 March 2009, para.26: "There was no suggestion that the park in which the assembly was to take place was too small to accommodate all the various events planned there. Moreover, there was never any suggestion that the organisers intended to disrupt public order or to seek a confrontation with the authorities or other groups meeting in the park on the day in question. Rather their intention was to hold a peaceful rally in support of freedom of speech. Therefore, the Court can only conclude that the Municipality's refusal to authorise the demonstration did not respond to a pressing social need." See O'Neill & Vasvari, "Counter-Demonstration As Protected Speech: Finding the Right to Confrontation in Existing First Amendment Law", *Hastings Constitutional Law Quarterly* Vol. 23, 1995, p88

[121] See further, Article 5(1) ICCPR and Article 17 ECHR (the 'abuse of rights' clauses).

79. **Facilitation of spontaneous and other non-notified assemblies.** Assemblies may take place without any advance planning in direct response to some occurrence, incident, other assembly, or widely disseminated statement of public interest and a perceived need for an immediate reaction.[122] The emergence of new technologies has greatly enhanced the possibilities of such occurrences. The need to protect spontaneous assemblies as an expected (rather than exceptional) feature of a healthy democracy has been recognized in numerous domestic laws and court decisions,[123] and should be facilitated and protected in the same way as assemblies that are planned in advance. The domestic legal framework should ensure that spontaneous assemblies can lawfully be held and laws regulating freedom of assembly should explicitly exempt such assemblies from prior notification requirements, for example where timely notification has not been feasible or would have rendered such an event moot.[124]

80. **Facilitation of repeat assemblies.** The State should respect the right to repeatedly hold assemblies in the same place. While repeat assemblies should not receive favourable treatment vis-à-vis other assemblies announced for the same time and place, they should not be limited solely because of their frequency, unless their frequency or cumulative impact disproportionately interferes with the rights of others. The announcement or presence of a repeat assembly should not automatically preclude the holding of simultaneous assemblies or counter-demonstrations at the indicated time and place, if both can be accommodated.

81. **Duty to protect and facilitate controversial but peaceful assemblies:** State authorities must protect the organizers and participants of peaceful assemblies that espouse views that are controversial or unpopular, and which may generate hostile opposition, and shall protect peaceful assemblies from any person or group that intentionally seeks to limit or destroy the rights of others to assemble. In cases where assemblies annoy or give offence to persons opposing the message, the obligations of the state go beyond a mere duty not to

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[122] See note 46 above, citing *Bukta and Others v. Hungary* (2007), *op. cit.*, para 36; *Eva Molnár v. Hungary* (2008), *op. cit.,* note 7, para. 38; *NAACP v. City of Richmond*, 743 F.2d 1346, 1355-1358 (9th Cir. 1984). See also *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1045 (9th Cir. 2006) (where the court approved a two day advance notice requirement because it contained an exception for spontaneous events described as, "…events which are occasioned by news or affairs coming into public knowledge less than forty-eight hours prior to such event [that] may be conducted on the lawn of City Hall without the organizers first having to obtain a Community Event Permit." See also the judgment of the Hungarian Constitutional Court, *Decision 75/2008, (V.29) AB*, which established that the right of assembly recognized in Article 62 para.(1) of the Hungarian Constitution covers both the holding of peaceful spontaneous events (where the assembly can only be held shortly after the causing event) and assemblies held without prior organisation. The Court stated that "it is unconstitutional to prohibit merely on the basis of late notification the holding of peaceful assemblies that cannot be notified three days prior to the date of the planned assembly due to the causing event." See also the *Brokdorf* decision of Federal Constitutional Court of Germany, BVerfGE 69, 315 (353, 354).

[123] For example, the second sentence of Article 44(2) Armenian Constitution: 'In cases stipulated by law, outdoor assemblies shall be conducted on the basis of prior notification given within a reasonable period. No notification shall be required for spontaneous assemblies.' See also, Human Rights Committee, Communication No. 2217/2012, *Popova v The Russian Federation*, Views adopted on 6 April 2018, para 7.5 (references omitted): '… while a system of prior notices may be important for the smooth conduct of public demonstrations, their enforcement cannot become an end in itself. Any interference with the right to peaceful assembly must still be justified by the State party in the light of the second sentence of article 21. This is particularly true for spontaneous demonstrations, which cannot by their very nature be subject to a lengthy system of submitting a prior notice.' UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report to the UN Human Rights Council (Best practices that promote and protect the rights to freedom of peaceful assembly and of association),* UN Doc. A/HRC/20/27, 21 May 2012, para. 29, available at <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf>. Polish Constitutional Tribunal, Judgment of 10 July 2008 No. P 15/08 (105/6/A/2008).

[124] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/20/27, 21 May 2012, para. 91 recommends that, "[s]pontaneous assemblies should be recognized in law, and exempted from prior notification." See also, *Bukta and others v. Hungary,* application no. 25691/04, 17 july 2007, where the ECtHR considered that in special circumstances when an immediate response, in the form of a demonstration, to a political event might be justified, a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly, para. 36.

interfere – rather, there may be a need for active police measures to protect assembly organizers and participants from attacks by third parties.[125] Potential disorder arising from hostility directed against those participating in a peaceful assembly must not be used to justify disproportionate restrictions on the assembly.[126] However, an assembly may be prohibited as a last resort measure when the risk of violent counter-demonstrations may not otherwise be prevented or mitigated (see para. 133). The principle of proportionality must always be respected.[127] The State has the duty to ensure that counter-demonstrators do not constitute an undue and serious interference with the main event's ability to convey its message (see also above paragraph 4).[128]

82. **Duty to facilitate assemblies at the organiser's preferred location and within 'sight and sound' of the intended audience.** Assemblies should be able to effectively communicate their message and must therefore be facilitated within 'sight and sound' of their target audience[129] unless compelling reasons (that conform with the permissible justifications for imposing limitations under Article 21 ICCPR or Article 11(2) ECHR) necessitate a change of venue. In those cases, alternative sites should be provided that are as close as possible to the initially proposed site.

83. **Duty to facilitate access to public spaces and privately-owned equivalents.** State authorities shall facilitate access to suitable public space,[130] and should provide adequate security and safety measures, including traffic and crowd management[131] and first-

[125] See *Promo Lex and Others v. Moldova* (2015), *op. cit.,* note 114, paras. 22-23.

[126] See, for example, *Christian Democratic People's Party v. Moldova (No. 2)* (2010), Application no. 28793/02, 14 February 2006, para. 27. Finding a violation of Article 11 ECHR, the Court stated that, "the applicant party's slogans, even if accompanied by the burning of flags and pictures, was a form of expressing an opinion in respect of an issue of major public interest, namely the presence of Russian troops on the territory of Moldova." *See also Feiner v. New York*, 340 U.S. 315 (1951) (while a breach of peace conviction of a speaker at a public forum was upheld given that the individual had refused to cease speechmaking, which was found to create a clear and present danger that a hostile audience would attack him, the public meeting itself was considered lawful).

[127] ECtHR, *Ollinger v. Austria* (Application no. 76900/01, 26 June 2006). See also Rabbae, A.B.S. and N.A v the Netherlands, Views adopted 14 July 2016, CCPR/C/117/D/2124/2011, Paragraph 10.4, in which the Committee emphasized that Article 20(2) should be crafted narrowly in order to ensure that other equally fundamental Covenant rights, including freedom of expression are not infringed. See also Committee on the Elimination of Racial Discrimination (CERD) 'General Recommendation No 35: Combating racist hate speech' (26 September 2013) UN Doc CERD/C/GC/35, Paragraph 20. The CERD has recognized that, 'measures to monitor and combat racist speech should not be used as a pretext to curtail expression of protest at injustice, social discontent or opposition.'

[128] See *Christian Democratic People's Party v. Moldova (No. 2)* (2010), *op. cit.,* no 126, para.28. Here the Court held that it "was the task of the police to stand between the two groups and to ensure public order … Therefore, this reason [the risk of clashes between protesters and members of the governing party] for refusing authorisation could not be considered relevant and sufficient within the meaning of Article 11 of the Convention." See also *Olivieri v. Ward*, 801 F.2d 602,606-608 (2d Cir. 1986) cited in footnote 118 ; also see *Grider v. Abramson*, 994 F. Supp. 840, 845 (W.D. Ky. 1998) aff'd 180 F.3d 739 (6th Cir. 1999) cited in note 51.

[129] See UN Human Rights Committee Views (on the merits), *Turchenyak v. Belarus*, (1948/2010), 10 September 2013, CCPR/C/108/D/1948/2010, para. 7.4; *Lashmankin and Others v. Russia* (2017), *op. cit.,* note 50, para. 405. See also, for example, Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at para. 29.3 (English translation): "The state has the duty not only to ensure that a meeting, picket or a procession takes place, but also to see to it that freedom of speech and assembly is effective, namely – that the organized activity shall reach the target audience." See also *Students Against Apartheid Coalition v. O'Neil*, 660 F.Supp. 333 (W.D. Va. 1987) (the court decision voids a restriction on the construction of a temporary protest structure on public space because there was no adequate alternative channel of access to the protestors' intended audience).

[130] UN Human Rights Council, Resolution on the Promotion and Protection of Human Rights in the Context of Peaceful Protests, A/HRC/RES/22/10, 9 April 2013, recommendation at para. 4; see also *Oliveri v. Ward*, 801 F.2d 602 (2d Cir. 1986) (approval of a requirement that officials designate space to accommodate counterdemonstrators during a gay rights parade).

[131] In *Güleç v. Turkey*, Application No 21593/93, 27 July 1998, the Court emphasized the importance of law enforcement personnel being appropriately resourced: "gendarmes used a very powerful weapon because they did not have truncheons, riot shields, water cannon, rubber bullets or tear gas. The lack of such equipment is all the more incomprehensible and unacceptable because the province […] is in a region in which a state of emergency has been declared." See further, "Policing Assemblies", Amnesty International, December 2013, Chapter 6. https://www.amnesty.nl/content/uploads/2017/01/policing_assemblies_26022015_light.pdf?x56589;

aid services.[132] Similar facilitation duties may arise in cases of privately-owned spaces where these places are the physical and functional equivalents of public places.[133] Thus, where the owner of such a space capable of accommodating an assembly does not give permission for an assembly and where the bar on access to property has the effect of preventing any effective exercise of freedom of expression or assembly, or where it destroys the essence of such rights, the state may have a positive obligation to ensure access to such a privately-owned place for the purposes of holding an assembly.[134] This is particularly the case where public spaces suitable for assemblies, e.g. streets or squares, have been privatized, and where any prohibitions against assemblies would significantly reduce access to spaces otherwise suitable for peaceful assemblies.[135] The same may apply to spaces open to the public (such as in privately-owned shopping centres), many of which fulfil a function similar to that of more traditional public spaces such as streets and squares. Prohibiting assemblies at such locations could seriously inhibit the rights to freedom of speech and assembly by precluding access to an intended audience.136 Generally, in cases where people are prevented from holding assemblies in privately owned places, the rights of the property owner must be balanced against the competing right to freedom of peaceful assembly. The latter should prevail where there is no adequate alternative public space that would allow an assembly to take place in sight and sound of its intended audience and if the owner's right to enjoyment of his or her private property will not be significantly disrupted. In this context, state authorities should ensure that facilitating the assembly does not impose out-of-pocket costs on the private property owner.[137] On the other hand, the State should take care neither to regulate nor interfere with private assemblies that take place inside buildings.

84. **Duty to take special measures to adequately facilitate assemblies associated with individuals or groups most at risk.** The State should take positive measures to

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see also *Forsyth County, Ga. V. Nationalist Movement*, 505 U.S. 123 (1992) (charges for police services based on costs for maintaining public peace violate right to freedom of assembly).

[132] See, for example, *Balçık and Others v. Turkey* (2007), *op. cit.,* note 77, para. 49. Here, the Court suggests that State provision of such preventive measures is one of the purposes of prior notification.

[133] See *Annenkov and Others v. Russia* (2017), op cit. note 48, para. 122.

[134] *Appleby and Others v. United Kingdom*, Application no. 44306/98, 6 May 2003, paras. 47 and 52.

[135] See *Marsh v. Alabama*, 326 U.S. 501 (1946), where the Supreme Court stated that "[w]hether a corporation or a municipality owns or possesses the town, the public in either case has an identical interest in the functioning of the community in such manner that the channels of communication remain free".

[136] Thus, in the case of *Appleby and Others v. the United Kingdom* (2003), *op. cit.,* note 84, para.39, a case concerning freedom of expression in a privately owned shopping centre, the Court stated that the effective exercise of freedom of expression, "may require positive measures of protection, even in the sphere of relations between individuals", citing *Özgür Gündem v. Turkey*, Application No 23144/93, 16 March 2000, paras. 42-46, and *Fuentes Bobo v. Spain*, Application No 39293/98, 29 February 2000 (only in French), at para.38. It is noteworthy that the applicants in *Appleby* cited relevant case law of Canada (para.31) and the United States (paras. 25-30, and 46). The Court considered (a) the diversity of situations obtaining in contracting States; (b) the choices which must be made in terms of priorities and resources (noting that the positive obligations 'should not impose an impossible or disproportionate burden on the authorities'); and (c) the rights of the owner of the shopping centre under Article 1 of Protocol 1. In *Cisse v. France* (2002), *op. cit.,* note 55, the applicable domestic laws stated that, "[a]ssemblies for the purposes of worship in premises belonging to or placed at the disposal of a religious association shall be open to the public. They shall be exempted from [certain requirements], but shall remain under the supervision of the authorities in the interests of public order."

[137] See *Marsh v. Alabama*, 326 U.S. 501 (1946); See also the case of the *First Unitarian Church of Salt Lake City v. Salt Lake City Corp.*, 308 F.3d 1114 (10th Cir 2002), the court found that free speech rights also remained on a portion of the city main street that had been closed to all traffic including speech activities after the City had transferred its ownership to the Church of Latter Day Saints and where the City had retained an easement that explicitly excluded speech activities. The owner of private property has much greater discretion to choose whether to permit a speaker to use his or her property than the government has in relation to publicly owned property. Compelling the owner to make his or her property available for an assembly may, for example, breach their rights to private and family life (Article 8 ECHR), or to peaceful enjoyment of their possessions (Article 1 of Protocol 1, ECHR). See, for example, Don Mitchell, *The Right to the City: Social Justice and the Fight for Public Space* (New York: The Guilford Press, 2003); Margaret Kohn, *Brave New Neighbourhoods: The Privatization of Public Space* (New York: Routledge, 2004); Kevin Gray, and Susan Gray, "Civil Rights, Civil Wrongs and Quasi-Public Space", EHRLR 46 [1999]; "Ben Fitzpatrick and Nick Taylor, Trespassers Might be Prosecuted: The European Convention and Restrictions on the Right to Assemble", EHRLR 292 [1998]; Jacob Rowbottom, "Property and Participation: A Right of Access for Expressive Activities", 2 EHRLR 186-202 [2005].

facilitate assemblies associated with individuals and groups that have historically faced discrimination, or are otherwise marginalized or at risk.[138] In doing so, the State should address specific needs and challenges confronting those persons or groups before, during and after assemblies.[139] This includes integrating a gender and diversity perspective into States' efforts to create a safe and enabling environment for the exercise of the right to freedom of peaceful assembly;[140] special protection measures developed in consultation with persons at risk, such as early warning systems to trigger the launch of protective measures;[141] and public statements in advance of assemblies to advocate, without ambiguity, a tolerant, conciliatory stance.[142]

85. **Duty to investigate threats of violence.** Where the police are aware of any third-party threats against assembly participants, including those made through social media or the Internet, before, during or after an assembly,[143] they have a duty to investigate and, if needed, take special protection measures, to ensure that organizers and participants may freely exercise their rights without fear.[144]

86. **Duty to presume the peacefulness of an assembly** All assemblies shall be presumed to be peaceful in the absence of convincing evidence that the organizers and/or a significant number of participants intend to use, advocate or incite imminent violence (see above para 19).[145]

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[138] Including LGBTI+ individuals and groups; young people; women; persons with disabilities; members of minority groups; indigenous peoples; internally displaced persons; and non-nationals, including refugees, asylum seekers and migrant workers. See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/26/29, 14 April 2014, para. 74 (e). See also for example, UN Human Rights Council, Resolution on the Promotion and Protection of Human Rights in the Context of Peaceful Protests, A/HRC/RES/22/10, 9 April 2013, para. 6; see also OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders* (ODIHR: Warsaw, 2014), para. 16. See further the UN Special Rapporteur on Human Rights Defenders, "Commentary to the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms", July 2011, available at: https://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf pp. 18-22; See in particular, the Joint report of the Special Rapporteurs (2016), A/HRC/31/66, *op. cit.,* note 52, para. 16: "[p]articular effort should be made to ensure equal and effective protection of the rights of groups or individuals who have historically experienced discrimination. This includes women, children and young people, persons with disabilities, non-nationals (including asylum seekers and refugees), members of ethnic and religious minorities, displaced persons, persons with albinism, indigenous peoples and individuals who have been discriminated against on the basis of their sexual orientation or gender identity (A/HRC/26/29). This duty may require that authorities take additional measures to protect and facilitate the exercise of the right to freedom of assembly by such groups."

[139] See also Report of the Special Rapporteur (2014) A/HRC/26/29, *op. cit.,* note 138, para. 73 (c). See also UN Human Rights Committee, General Comment No. 25 (1996), CCPR/C/21/Rev.1/Add.7. op cit note 17, para. 12.

[140] See UN General Assembly, Resolution 68/181, December 2013, para. 5, regarding specifically systemic and structural discrimination and violence faced by women human rights defenders of all ages; see also the "Commentary to the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms", *op. cit.,* note 138, pp. 6-7 and 18-21; and OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders* (ODIHR: Warsaw, 2014), para. 44.

[141] See for example, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, A/HRC/13/22, 30 December 2009, paras. 111-114.

[142] See for example, *Identoba and Others v. Georgia* (2015), *op. cit.,* note 114, para. 99.

[143] See for example, UN General Assembly, Resolution on the Protection of Women Human Rights Defenders, UN Doc. A/RES/68/181, 18 December 2013.

[144] Report of the UN Special Rapporteur (2014) A/HRC/26/29, *op. cit.,* note 138. See, in this context, *Promo Lex and Others v. Moldova* (2015) *op. cit.,* note 114, paras. 22-23.

[145] See *Maleeha Ahmad et al. v. City of St Louis*, Missouri (Case No. 4:17 CV 2455 CDP), where, in a preliminary injunction, the court ordered the defendant City of St. Louis to not enforce any rule, policy, or practice that would allow law enforcement officials to, among others, declare an assembly unlawful, "unless the persons are acting in concert to pose an imminent threat to use force or violence or to violate a criminal law with force or violence". See also *Christian Democratic People's Party v. Moldova (No.2)* (2010), *op. cit.,* note 126, para. 23: "The burden of proving the violent intentions of the organisers of a demonstration lies with the authorities."

87. **Duty to distinguish between peaceful and non-peaceful participants.** Law enforcement officials must differentiate between peaceful and non-peaceful participants since only those who themselves take part in violence forfeit the legal guarantee of their right to assemble.[146] State intervention should target individual wrongdoers, rather than all participants more generally (see para 19 above), and also the discussion of 'kettling' at paragraph 217 below), unless that is impossible due to the massive nature of the violence committed.

88. **Duty to de-escalate tensions.** If a dispute arises during the course of an assembly, communication between the organizer and the competent state authorities may be an appropriate means by which to reach an acceptable resolution. A number of countries have units within police forces specifically set up to deal with de-escalation through dialogue.[147] At the same time, such dialogue will only be possible if both parties – law enforcement and organizers/participants – agree to it. If organizers or participants are unwilling to engage, then this should be accepted and should not, of itself, impact detrimentally on the performance of the State's human rights obligations in relation to the assembly. Where voluntary dialogue is not possible, the relevant law enforcement bodies must still ensure that their actions are aimed at deescalating tensions. Public statements by State authorities and law enforcement in advance of demonstrations should clearly advocate for a tolerant, conciliatory stance and warn potential law-breakers about possible sanctions.[148]

89. **No financial charges should be levied on assembly organisers.** Given the State's duty to facilitate assemblies, and its general public order mandate, the State authorities may not levy charges on assembly organizers for providing relevant services, including adequate and appropriate policing, medical services or health and safety provision, such as street cleansing. Nor may it make facilitation of an assembly contingent on the payment of any such charges. Imposing such charges on assembly organisers may constitute a disproportionate prior restraint and may dissuade people from holding assemblies.

Chicago Code - Streets, Public Ways, Parks, Airports and Harbors - Use of Public Ways and Places – Requirements and Restrictions – Parade, paragraph 10-8-330
[…] Once the last unit has started on the parade route, the department of streets and sanitation will begin cleaning the street, and the police department will reopen the street to traffic as street cleaning is completed. Once the last parade unit has completed the parade route, all parade participants must disperse from the street so that it may be safely cleaned and reopened to traffic. […]

Article 10, Law on Public Assemblies, Republic of Moldova (2008)
(4). Public authorities shall take the necessary measures for providing any services requested by the organiser that are normally provided by the subordinated bodies and by the publicly administered enterprises.

Article 20, Law on Public Assemblies, Republic of Moldova (2008)
(3). Local public authorities cannot request fees for providing any services for the holding of assemblies that are normally provided by the subordinated bodies and by the publicly administered enterprises.

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[146] See further 'Penalties Imposed After an Assembly' (paras 221 *et seq.* below). See also *Solomou and Others v. Turkey* (Application no. 36832/97, 24 June 2008). Here, the Court found a violation of Article 2 in relation to the shooting of an unarmed demonstrator. The Turkish government argued that the use of force by the Turkish-Cypriot police was justified under Article 2(2) ECHR. In rejecting this argument, however, the Court regarded it to be of critical importance that, despite the fact that some demonstrators were armed with iron bars, Mr. Solomou himself was not armed and behaved in a peaceful manner.

[147] For example the 'Peace Unit' in Amsterdam (The Netherlands), Anti-conflict-teams in Germany, and Dialogue police in Sweden (cf. "Policing Assemblies", Amnesty International, December 2013, p. 11, available at: https://www.amnesty.nl/content/uploads/2017/01/policing_assemblies_26022015_light.pdf?x56589)

[148] ECtHR, *Identoba and Others v. Georgia* (Application no. 73235/12, judgment of 12 May 2015), para. 99.

Article 18, Law on Rallies, Meetings, Demonstrations, Marches and Picketing, Russian Federation (2004, as amended in 2016)
[T]he maintenance of public order, regulation of road traffic, sanitary and medical service with the objective of ensuring the holding of the public event shall be carried out on a free basis [by the authorities].

The legal framework and the principle of legality

90. **Compliance with international and regional standards.** The international and regional standards concerning respect for, facilitation and protection of the right to freedom of peaceful assembly derive mainly from two legal instruments: the International Covenant on Civil and Political Rights (ICCPR)[149] and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),[150] and their optional protocols and protocols, respectively. The American Convention on Human Rights is also of particular relevance to member countries of the Organization of American States.[151] Other relevant treaties include the UN Convention on the Rights of the Child[152] and the Charter of Fundamental Rights of the European Union.[153] The key provisions in relation to the right to freedom of peaceful assembly are reproduced in the Annex to these Guidelines.

91. The significance of these treaties and documents derives, in part, from the jurisprudence developed by their respective monitoring bodies – the European Court of Human Rights, the UN Human Rights Committee[154] and the Inter-American Commission on Human Rights. This body of case law is integral to the interpretation of these standards and should be fully shared and understood by those charged with implementing domestic laws on freedom of assembly.

92. **Derogations from international human rights obligations must be exceptional, temporary, and both geographically and materially limited.** In times of war or public emergency threatening the life of the nation, States may take exceptional measures derogating from their obligation to guarantee freedom of peaceful assembly (see Article 4 ICCPR and Article 15 ECHR). They may however do so only where this is strictly required by the exigencies of the situation, and if such measures are consistent with their other obligations under international law.[155] In particular, the crisis or emergency must be actual or imminent, and one 'which affects the whole population and constitutes a threat to the

[149] Freedom of assembly is set out in Article 21 of the International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 (hereafter: ICCPR), which reflects universally accepted minimum standards in the area of civil and political rights. The obligations undertaken by states ratifying or acceding to the Covenant are meant to be discharged as soon as a state becomes party to the ICCPR. The implementation of the ICCPR by its States Parties is monitored by a body of independent experts – the UN Human Rights Committee. All States Parties are obliged to submit regular reports to the Committee on how the rights are being implemented. See, further, Annex .

[150] Freedom of assembly is regulated in Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950 (hereafter: ECHR). The ECHR is the most comprehensive and authoritative human rights treaty for the European region. All Member States of the Council of Europe are required to ratify the Convention within one year of their accession to the Statute of the Council of Europe. The ECHR sets forth a number of fundamental rights and freedoms, and parties to it undertake to secure these rights and freedoms to everyone within their jurisdiction. Individual and interstate petitions are dealt with by the European Court of Human Rights in Strasbourg. At the request of the Committee of Ministers of the Council of Europe, the Court may also give advisory opinions concerning the interpretation of the ECHR and the protocols thereto. See Annex.

[151] Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969

[152] UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, Article 15.

[153] European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02, Article 12.

[154] See Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (3rd edition) (New York: OUP, 2013) pp. 645-665; Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (2nd edition) (Kehl: N.P. Engel, 2005) pp. 481-494.

[155] See also paragraph 25 of the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE.

organised life of the community of which the State is composed',[156] meaning, essentially, that the fundamental capacity of a state to function effectively must be compromised.[157] States seeking to derogate from their human rights commitments must officially proclaim a state of emergency[158] in compliance with relevant constitutional and other legal provisions governing the exercise of emergency powers.[159] Any derogations must strictly limited temporally, geographically and materially.[160] In situations that do not meet the high threshold for derogations, the possibility of imposing proportionate and content-neutral time, place and manner restrictions on public assemblies specifically tailored to the particular situation at hand should be sufficient.[161] Generally, emergency powers must be tailored to an immediate and urgent crisis and shall not be used as a means to limit legitimate dissent, protest, expression and the work of civil society.[162]

93. **Providing constitutional and broad legal protection in domestic law.** Given its importance, freedom of peaceful assembly shall be accorded protection at the constitutional level. Constitutions should, at a minimum, contain a positive statement of both the rights of individuals and the obligations of the State to safeguard such rights. Constitutional provisions, by their very nature, cannot however provide for specific details or procedures.

Spain, Constitution of 29 December 1978, art. 21
The right to peaceful, unarmed assembly is recognized. The exercise of this right does not require prior authorization.
In the cases of meetings in places of public transit and of manifestations prior notification shall be given to the authorities, which can only forbid them when there are reasons based on disturbances of public order with danger for persons or property.
Sweden, Instrument of Government (1974:152) **chapter 2, art. 1**
Everyone shall, in their relations with public institutions, be guaranteed to […] (3) freedom of assembly: freedom to organize and to attend assemblies for disseminating information, expressing an opinion or for other similar purpose, or for the purpose of presenting artistic work; (4) freedom to demonstrate: freedom to organize or attend demonstrations in a public place […].
Finland, Constitution, 731/1999, section 13
Everyone has the right to arrange meetings and demonstrations without a permit, as well as the right to participate in them. […] More detailed provisions on the exercise of the freedom of assembly and the freedom of association are laid down by an Act.

94. **Broad protection and minimal regulation**. In a democratic society, some types of assemblies, due to their size or lack of interference with other rights, do not warrant any form

[156] *Lawless v. Ireland* (No. 3), Application No 332/57, 1 July 1961, para. 28. See also, UN Human Rights No. 29, Article 4: Derogations during a State of Emergency, CCPR/C/21/Rev.1/Add.11, 31 August 2001, especially para. 3. The Siracusa Principles, Annex, UN Doc E/CN.4/1984/4 (1984) at paras. 40-41, emphasize that neither '[e]conomic difficulties per se' nor '[i]nternal conflict and unrest that do not constitute a grave and imminent threat to life of the nation' can justify derogations under Article 4. See also, the Questiaux Principles: Nicole Questiaux, Study of the implications for human rights of recent developments concerning situations known as states of siege or emergency, UN doc. E/CN.4/Sub.2/1982/15, 27 July 1982.
[157] UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report on the human rights challenge of states of emergency in the context of countering terrorism, A/HRC/37/52, of 27 February 2018, paras. 7 and 12.
[158] UN Human Rights Committee, General Comment No. 29, *op. cit.,* note 156, para. 2; notified to other State parties through the intermediary of the UN Secretary General (Article 4(3) ICCPR), the Secretary General of the Council of Europe (Article 15(3) ECHR) and the OSCE (Paragraph 28.10, Moscow Meeting of the Conference on the Human Dimension, 1991). The human rights and fundamental freedoms to be restricted must be explicitly mentioned.
[159] UN Human Rights Committee General Comment No. 29, para. 2
[160] UN Human Rights Committee General Comment No. 29, para. 4
[161] UN Human Rights Committee, General Comment No. 29, para. 5: "the possibility of restricting certain Covenant rights under the terms of, for instance, freedom of movement (art. 12) or freedom of assembly (art. 21) is generally sufficient during such situations [of emergency] and no derogation from the provisions in question would be justified by the exigencies of the situation."
[162] See, Report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, A/HRC/37/52, 27 February 2018, para. 49.

of official regulation.[163] Any domestic legislation should confer broadly framed protection on freedom of peaceful assembly, and narrowly confine itself to addressing those types of assemblies for which some degree of regulation is required. While there is no requirement that participating States enact a specific law on freedom of assembly, the provisions of such a law can serve as a guide for sound decision-making by the relevant state authority by establishing clear standards that limit opportunities for arbitrary decisions. The purpose of such legislation should be to facilitate and ensure the protection of the right to freedom of assembly, rather than to inhibit the enjoyment of this right.[164] The obligations to protect and facilitate assemblies (see above, para. 22) should therefore be expressly stated in any relevant domestic laws pertaining to freedom of peaceful assembly or relevant police powers.[165] It is also vital that any specific law should avoid the creation of an excessively regulatory or bureaucratic system. Well-drafted legislation can help prevent the over-regulation of freedom of peaceful assembly. The drafters should ensure that legal provisions regulating freedom of peaceful assembly do not disproportionately impact on certain persons or groups.[166]

95. **Laws governing the conduct of elections.** Assemblies taking place immediately before, during or after an election period should not be regulated by special legislation. Rather, the general law on assemblies should be sufficient to cover assemblies associated with election campaigns, an integral part of which is the organisation of public events (see also '*Freedom of assembly, the right to vote and the right to participation*' in Section A above).[167] Moreover, elections should never be seen as a pretext for unduly restricting the right to freedom of peaceful assembly. [168] All peaceful assemblies, including those critical of ruling party/parties should be entitled to equal treatment.[169] Bans on assemblies immediately prior to election must be used as a last resort, always complying with the principles of necessity and proportionality. The threshold for imposing such restrictions should be higher than usual, due to the importance of debate prior to elections: the criteria of "necessity in a democratic society" and "proportionality" should be interpreted more narrowly during election time.

Requirements of the legal framework

96. **Specificity and precision**. Legislatures should ensure that statutory provisions covering freedom of peaceful assembly – often contained in a range of different laws – are

[163] See *Cox v. City of Charleston*, 416 F.3d 281, 284-287 (4th Cir. 2005) (where a law requiring a permit which lacked an exception for small gatherings was found to violate the right to freedom of expression).

[164]Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai: Mission to Kazakhstan, UN Doc. A/HRC/29/25/Add.2, 16 June 2015 para. 60.

[165] OSCE/ODIHR, Opinion on the Draft Police Law of Serbia, Opinion-Nr.: GEN-SRB/275/2015 [AlC], (7 October 2015), in which the OSCE/ODIHR recommended that in light of the fact that a relevant provision did not mention the State's positive duty to take reasonable and appropriate measures to enable peaceful assemblies, "this positive duty be expressly stated in any relevant domestic legislation pertaining to freedom of assembly and police powers"; cf. also para. 94 of the OSCE/ODIHR Opinion on the Draft Law of Ukraine on Police and Police Activities, (Warsaw, 1 December 2014), Opinion-Nr.: GEN-UKR/260/2014 [AlC].

[166] Report of the UN Special Rapporteur, (2014), UN Doc. A/HRC/26/29, *op. cit.,* note 138, paras. 29-40.

[167] See, for example, OSCE-ODIHR & Venice Commission, Opinion on the Amendments to the Law of the Kyrgyz Republic on the Right of Citizens to Assemble Peaceably, without Weapons, to Freely Hold Rallies and Demonstrations, Opinion-Nr/: FOA – KYR/111/2008, (Strasbourg/Warsaw, 27 June 2008); See also OSCE Election Observation Mission, Kyrgyz Republic, Presidential Election, 23 July 2009: Statement of Preliminary Findings and Conclusions, p. 3. See also, UN Human Rights Committee, Concluding Observations of the Human Rights Committee: Republic of Moldova CCPR/C/MDA/CO/2, 4 November 2009, para. 8(d) noting that against the backdrop of violence at post-election demonstrations in April 2009, '[t]he State party should: (d) Ensure respect for the right to freedom of assembly in accordance with article 21 of the Covenant, including through the enforcement of the 2008 Law on Assemblies and put in place safeguards, such as appropriate training, to ensure that such violation of human rights by its law enforcement officers do not occur again'. See further UN Human Rights Committee, Concluding Observations of the Human Rights Committee: Azerbaijan, 13 August 2009, CCPR/C/AZE/CO/3, paras. 16-17.

[168] Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/68/299, 7 August 2013, para. 25.

[169] *Ibid.*

clear, accessible to the public and consistent with one another, even where there is no specific law on freedom of peaceful assembly.[170] The more specific the legislation, the more precise its language should be. Constitutional provisions, for example, because of their general nature, will be less precise than primary legislation.[171] In contrast, legislative provisions that confer discretionary powers on the relevant state authorities should be narrowly framed and reflect the requirements of legitimacy, necessity and proportionality listed in Article 11(2) ECHR and Article 21 ICCPR. Clear guidelines or criteria should also be established to govern the exercise of such powers and limit the potential for arbitrary interpretation.[172]

97. **Clarity regarding the mandate and procedures of decision-makers**. The mandate, duties and powers of the authority responsible for making decisions in relation to the holding of assemblies should be clearly stated in law.[173] The ability to refer to a clear mandate can help officials deal with the intense public pressure that often arises in relation to contentious assemblies. Furthermore, laws relating to freedom of peaceful assembly should outline clear procedures governing the obligations of both assembly organizers and the relevant authorities (both before and during assemblies, and including appropriate timeframes for notification, the imposition of any restrictions and opportunities to appeal such restrictions through administrative and judicial review).[174]

98. **Foreseeability.** As the European Court of Human Rights has stated, the requirement that any restrictions on assemblies be 'prescribed by law' not only requires that the restriction should have an explicit basis in domestic law, but also refers to the quality of the law in question. The relevant legislation should be 'accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.'[175] While the foreseeability requirement does not mean that a single

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[170] See, Part 1 (Measures to Ensure Public Access to Laws, Policies and Information Necessary to Safeguard Protest Rights) of the Principles and Guidelines on Protest and the Right to Information: Information that the Police, Prosecuting and Other Decision-Making Authorities should generate, and make available to the Public, concerning the Management of Protests, Open Society Justice Initiative (OSJI) and the Committee on the Administration of Justice (CAJ), 2018. Principle 1 provides that 'Public authorities should make proactively available information that individuals and watchdogs need in order to be able to: (a) exercise democratic oversight of the policing of protest and promote accountability; (b) safeguard rights to freedom of assembly and expression; and (c) be aware of conduct that could result in penalties.' See also, *Vyerentsov v. Ukraine* (2013), *op. cit.,* note 37, para. 53, where the lack of clarity in the legal situation in relation to the procedure to be followed for the notification of assemblies meant that the Code of Administrative Offences was an insufficient legal basis for the imposition of penalties (paras. 60-67) and the Court found that the legal situation in relation to freedom of peaceful assembly needed be clarified through the adoption of legislation (paras. 94-95). See also *Chumak v. Ukraine*, (2018), *op. cit.,* note 50, para 43. See also *Poulos v. New Hampshire*, 345 U.S. 395, 404-409 (1953) (stating that a properly drafted ordinance can effectively balance the exercise of the right to freedom of speech and the interest in the maintenance of public order) and *Coates v. City of Cincinnati*, 402 U.S. 611 (1971).

[171] See, *mutatis mutandis, Rekvényi v. Hungary*, Application No 25390/94, 20 May 1999, para 34.

[172] See, for example, *Gillan and Quinton v. the United Kingdom*, Application No. 4158/05, 12 January 2010. *Gooding v. Wilson*, 405 U.S. 518, 522 (1972), ("[A] statute must be carefully drawn or be authoritatively construed to punish only unprotected speech and not be susceptible of application to protected expression. 'Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity", quoting *NAACP v. Button*, 371 U.S. 415 at 433 (1963)). Also see *Cox v. Louisiana*, 379 U.S. 536, 551-552 (1964) (applying the specificity requirement to regulation of a public assembly).

[173] See, for example, *Hyde Park v. Moldova* (*No.1)*, Application No 33482/06, 31 March 2009, para. 31: 'It is true that new reasons for rejecting Hyde Park's application to hold an assembly were given by the courts during the subsequent judicial proceedings. However, sections 11 and 12 of the Assemblies Act give exclusive authority to the local authorities to authorise or not assemblies.' Similarly, *Hyde Park v. Moldova (No.2)* (2009) *op. cit.,* note 120, para. 27; *Hyde Park v. Moldova (No.3)*, Application No 45095/06, 31 March 2009, para. 27.

[174] See generally, *Vyerentsov v. Ukraine,* (2013), *op. cit.,* note 37. See also, *Gillan and Quinton v. United Kingdom* (2010), *op. cit.,* note 172, paras. 76-77.

[175] See, for example, *Vyerentsov v. Ukraine* (2013), *op. cit.,* note 37, paras. 52 and 54, and the sources cited therein. See also *Mkrtchyan v. Armenia*, Application No 6562/03, 11 January 2007, paras. 39-43. In *Mkrtchyan*, the Court ruled that it was not sufficiently clear whether the laws of the former Soviet Union continued to apply in Armenia, and that Armenia could therefore not rely on a Soviet Law which had approved, *inter alia*, the Decree on 'Rules for Organising and Holding of Assemblies, Rallies, Street Processions and Demonstrations in the

consolidated law on freedom of peaceful assembly need be enacted, it does at least require consistency between the various laws that might be invoked to regulate freedom of peaceful assembly. Any law which regulates freedom of peaceful assembly should not contradict provisions contained in other legislation in order to help ensure the overall consistency and transparency of the legislative framework.

99. **A consultative approach to drafting.** In order to ensure that the needs and perspectives of all persons or groups are taken into consideration, it is important that the processes of drafting and amending legislation and related regulations actively involve a wide array of stakeholders (see right to participation paras. 7 and 8).[176] Those involved in the drafting of legislation should always consult with those responsible for or affected by its implementation as well as other interested individuals and groups (including local human rights organizations). Such consultations should be an integral part of the legislative drafting process, and need to be open, transparent, meaningful and inclusive. In particular, sufficient and appropriate outreach activities should ensure the involvement of interested parties from various groups (particularly those facing particular challenges in the exercise of their rights to freedom of peaceful assembly) representing different and opposing views (including those that may be critical of the proposals made). The authorities responsible for organizing consultations should respond to proposals made by stakeholders, in particular where these proposals are not incorporated into the relevant draft law or policy (in this case, the authorities should explain why).[177]

100. **Periodic review.** To ensure that legislation and other normative standards relating to freedom of peaceful assembly are up-to-date and continue to adequately address current needs, the regulatory framework in this area should be periodically reviewed. It might therefore be desirable to place a statutory duty upon the relevant state authority to keep the law under review in light of evolving practice, and to make recommendations for reform if necessary. Such reviews should take account of evaluations of existing law and practice undertaken by independent monitoring initiatives. Such reviews can, in turn, help inform States' periodic reports to relevant regional human rights organizations, Treaty Bodies and the Universal Periodic Review (UPR).

Protection based on equality and non-discrimination

101. **Equality and non-discrimination.** Freedom of peaceful assembly shall be enjoyed equally by all individuals. The general principle that human rights shall be enjoyed without discrimination lies at the core of the interpretation of human rights standards. Article 26 of the ICCPR and both Article 14 and Protocol 12 of the ECHR require that States secure the enjoyment of the human rights recognized in these treaties to all individuals within their jurisdiction without discrimination[178] This principle 'ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position'.[179]

102. **Protected characteristics.** Discrimination against organizers and/or participants in an assembly – whether grounded in law or in practice – and based on grounds such as sex,

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USSR' of 28 July 1988, in order to impose a fine for organizing an 'unlawful procession'. See also U.S case of *Connolly v. General Construction Company*, 269 U.S. 385, 46 S.Ct. 126 (1926), where the court found that "[a] criminal statute cannot rest upon an uncertain foundation. The crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue." In this context, see also *Coates v. Cincinnati*, 402 U.S. 611 (1971).

[176] Report of the UN Special Rapporteur (2014), A/HRC/26/29, *op. cit.,* note 138, paras. 29, 36 and 73(b).

[177] See for example, OSCE/ODIHR, Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes, (ODIHR: Warsaw/Vienna, 2015).

[178] See further UN Human Rights Committee, CCPR General Comment 18: Non-Discrimination, 10 November 1989. See also the case of *Police Dep't of City of Chicago v. Mosley*, 408 U.S. 92, 98 (1972) and *Niemotko v. State of Md*., 340 U.S. 268 (1951) (voiding the denial of a permit for a religious gathering in a park because it was discriminatory).

[179] See, *Identoba and Others v. Georgia* (2015), *op. cit.,* note 114, para. 93.

"race", colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, sexual orientation, gender, gender identity, health conditions, immigration or residency status, or any other status should be prohibited. The protection against discrimination also extends to cases where individuals are targeted not because of their identity, but because they actively lobby for the rights of those most at risk of discrimination, and/or because of the message being conveyed during an assembly.[180] In tackling stereotypes and challenging patterns of inequality, it is important to recognize that discrimination is often suffered on more than one ground at the same time.[181]

103. **Justification for difference in treatment.** The competent state authorities may not impose more onerous pre-conditions or restrictions on some assemblies than on others, where the respective assemblies are similar in nature and the organizers/participants are in similar situations.[182] Any difference in treatment is only permissible where the individuals concerned are in significantly different situations or where the differentiation is justified by a compelling public interest. [183]

104. **Duty to investigate criminal acts with a bias motive.** If the relevant public authorities fail to prevent or take appropriate steps in response to criminal acts with a bias motive committed by private individuals during an assembly (e.g. assault or other violent acts), this may also constitute a violation of the victims' right to be free from discrimination.[184] Furthermore, law enforcement authorities have an obligation to investigate whether discrimination was a contributing factor to any criminal conduct, including physical attacks against organizers or participants that occurred before, during and immediately after an assembly.[185]

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[180] See for example, Report of the UN Special Rapporteur (2014), UN Doc. A/HRC/26/29, *op. cit.,* note 138, para. 11. See also the "Commentary to the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms", *op. cit.,* note 138, p. 33.

[181] See further, Timo Makkonen, "Multiple, Compound and Intersectional Discrimination: Bringing the Experience of the Most Marginalised to the Fore", (Institute for Human Rights, Åbo Akademi University, 2002). Available at: https://www.abo.fi/wp-content/uploads/2018/03/2002-Makkonen-Multiple-compound-and-intersectional-discrimination.pdf. Also, Nira Yuval-Davis, "Intersectionality, Citizenship and Contemporary Politics of Belonging", *Critical Review of International Social and Political Philosophy* Vol. 10, 2007, p. 561.

[182] This argument was successfully raised by the applicants in the case of *Bączkowski and Others v. Poland,* Application No 1543/06, 3 May 2007. The applicants stated that they had been treated in a discriminatory manner firstly because organisers of other public events in Warsaw in 2005 had not been required to submit a 'traffic organisation plan', and also because they had been refused permission to organise the March for Equality and related assemblies due to the homosexual orientation of the organisers.

[183] *Thlimmenos v. Greece*, Application No 34369/97, 6 April 2000), para. 44. See also *Burson v. Freeman*, 504 U.S. 191 (1992) (upholding a restriction against electioneering within 100 feet of a polling place on election day); See also *Perry Educators Association v. Perry Local Educators Association*, 460 U.S. 37 (1983).

[184] See *Identoba and Others v. Georgia* (2015), *op. cit.,* note 114, paras. 93-100; *Opuz v. Turkey*, Application No 33401/02, 9 June, 2009, paras.184-191 (here, in relation to domestic violence). Many cases of discrimination have arisen specifically in relation to assemblies organised by Lesbian, Gay, Bisexual and Transgender (LGBT+) groups. See further *Bączkowski and Others v. Poland* , Application No 1543/06, 3 May 2007, where the Court found a violation of Article 14 in conjunction with Article 11 ECHR. See also, Council of Europe, Parliamentary Assembly, Recommendation 211 (2007) on Freedom of Assembly and Expression for Lesbians, Gays, Bisexuals and Transgendered Persons, 26 March 2007, and the related "Explanatory Report: Freedom of Assembly and Expression for Lesbian, Gay, Bisexual and Transgendered Persons", Congress of Local and Regional Authorities, Council of Europe, 26-28 March 2007. Furthermore, see UN General Assembly, "Human rights defenders: Note by the Secretary-General (report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani", in accordance with General Assembly resolution 60/161), UN Doc. A/61/312, 5 September 2006, at para.71; Human Rights Council, "Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani", UN Doc. A/HRC/4/37, 24 January 2007, para. 96; Human Rights Council, "Report of the Special Representative of the Secretary-General on the Situation of Human Rights Defenders, Hina Jilani, Addendum: Summary of cases transmitted to Governments and replies received", U.N. Doc. A/HRC/4/37/Add.1, 27 March 2007, at para.454.

[185] *Nachova and Others v. Bulgaria [GC]*, Application Nos 43577/98 and 43579/98, 6 July 2005, para. 161. Some U.S. statutes define offenses as "hate crimes" with enhanced criminal penalties if discriminatory intent is an element of the offense. See *Wisconsin v. Mitchell*, 508 U.S. 476 (1993).

105. **Women.** Women human rights defenders and those advocating for gender- and sexuality-related rights often face additional threats or violence when participating in public gatherings. This is because they are sometimes seen as challenging accepted socio-cultural norms and traditional assumptions about the role and status of women in society.[186] Moreover, possible violence or threat against women participating in assemblies may take a sexual or gender-specific form, ranging from verbal abuse, sexual harassment to sexual assault and rape.[187] States should therefore take special protection measures to prevent and respond to sexual harassment, threats and violence by state and non-state actors before, during and after assemblies.[188] States should demonstrate a zero-tolerance approach to violence against women connected with an assembly by properly investigating all violations, prosecuting perpetrators and ensuring effective remedies for victims.[189]

106. **Sexual orientation and gender identity.** Legislation and measures prohibiting assemblies and other forms of public expression simply because they support or raise awareness of the rights of LGBTI people constitutes discriminatory restrictions and should be repealed (see further para 142 below).[190] Moreover, the possibility of counter-demonstrations, which frequently occur during LGBTI demonstrations or marches, in no way justifies excessive bans or restrictions on such assemblies (see para 22 above).

Persons with disabilities. The UN Convention on the Rights of Persons with Disabilities emphasizes the need to "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities".[191] Policies should accommodate the specific needs of disabled persons, and support their capacity to exercise their rights to freedom of peaceful assembly, insofar as this may reasonably be expected and does not impose a disproportionate burden on state authorities. [192] For example, persons with disabilities should have easy access to public offices where a notification of assembly may be lodged (where applicable) and to assembly sites themselves. [193]

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[186] UN High Commissioner for Human Rights, "Report on Discrimination and Violence against Individuals based on their Sexual Orientation and Gender Identity", A/HRC/29/23, 4 May 2015, para. 63, which states that "[w]omen defenders and those advocating for gender- and sexuality-related rights are often at particular risk because they are seen as challenging traditional assumptions about the role and status of women in society". See also the "Commentary to the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms", *op. cit.,* note 138, pp. 6 and 85.

[187] See the "Commentary to the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms", *op. cit.,* note 138, pp. 19-20.

[188] See for example, OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders* (ODIHR: Warsaw, 2014), para. 60.

[189] Special Representative of the Secretary General on the situation of human rights defenders, "Report to General Assembly on 'The right to protest in the context of freedom of assembly", A/62/225, 13 August 2007, para.101(a) (i). See also the African Commission for Human Rights, *Egyptian Initiative for Personal Rights and INTERIGHTS v. Egypt* (Communication 323/06, decision taken during the 10th Extra-Ordinary Session of the Commission on 12 to 16 December 2011), para. 163, where the Commission concluded that gender-specific human rights violations (including violation of Articles 2 and 3 of the African Charter on Human and People Rights on non-discrimination and equality/equal protection before the law) had been committed on the side of the State and (state-controlled) third parties, which the State had failed to effectively investigate and prosecute.

[190] See,*Bayev and Others v. Russia*, (2017) *op. cit.,* note 57, para. 66. The Court has also held that the chilling effect of a legislative provision or policy may in itself constitute an interference with freedom of expression, see *Smith and Grady v. the United Kingdom*, Application Nos 33985/96 and 33986/96, 27 September 1999, para.127. See too, Office of the United Nations High Commissioner for Human Rights, "Report on Discrimination and Violence against Individuals Based on their Sexual Orientation and Gender Identity", A/HRC/29/23, 4 May 2015, paras. 48 and 79 (b). See also Venice Commission, "Opinion on the Issue of the Prohibition of so-called "Propaganda of homosexuality" in the light of Recent Legislation in some Council of Europe Member States", adopted by the Venice Commission at its 95th Plenary Session (14-15 June 2013); and Report of the UN Special Rapporteur (2014), UN Doc. A/HRC/26/29, *op. cit.,* note 138, paras. 27-28 and 30-31.

[193] Report of the UN Special Rapporteur (2014), A/HRC/26/29, *op. cit.,* note 138, paras. 34 and 40.

107. **Children.** Article 15 of the UN Convention on the Rights of the Child requires State parties to recognize the rights of children to organise and participate in peaceful assemblies.[194] Thus, relevant legislation should reflect the State's duty to facilitate the exercise of the right to freedom of peaceful assembly for children as well. Moreover, when implementing such legislation, state authorities should take steps to create a conducive environment that allows children and young people to exercise this right in practice.[195] Any blanket ban preventing individuals below a certain age from participating in peaceful public assemblies would be contrary to this principle.[196] While certain restrictions may be placed on the exercise of the right of assembly by children, in view of the responsibilities on organisers or due to relevant safety concerns,[197] any such restrictions must follow the requirements set out in international human rights instruments.[198] In particular, when adopting any limits to the organization of or participation in a peaceful assembly by children, full account needs to be taken of the best interests of the individual child and of his/her evolving capacity.[199] Public officials should be adequately trained and instructed accordingly.[200] In addition, the right to freedom of assembly also includes the right to choose *not* to participate in assemblies. It is particularly important in this regard that children are protected from coerced participation in assemblies.

108. **National, Ethnic, Religious or Linguistic Minorities.** The freedom to organise and participate in public assemblies applies to all sections of a population, including to minority and indigenous groups. Article 7 of the Council of Europe Framework Convention on National Minorities (1995) states that countries shall ensure respect for the right of every person belonging to a national minority to, among others, freedom of peaceful assembly. Assemblies aiming to achieve the recognition of a minority group in a country or demanding autonomy or even secession of part of a country's territory and/or fundamental constitutional changes do not automatically amount to a threat to the country's territorial integrity and national security, unless they actually incite violence in the pursuit of these aims.[201] The duty

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[194] Article 15, UN Convention on the Rights of the Child; *see* also Venice Commission, "Report on the Protection of Children's Rights: International Standards and Domestic Constitutions", adopted by the Venice Commission at its 98th Plenary Session (Venice, 21-22 March 2014), 2014CDL-AD(2014)005, para. 145: "notwithstanding the status and rights granted to the family, children shall be addressed as rights-holders and not merely as actors who need protection"; see also *Tinker v. Des Moines Indep. Cmty. Sch. Dist*., 393 U.S. 503 (1969) (noting that school children have the right to freedom of speech).

[195] Special Representative of the Secretary General on the situation of human rights defenders, Report to General Assembly on 'The right to protest in the context of freedom of assembly', A/62/225, 13 August 2007, para.101(b). See also *Christian Democratic People's Party v. Moldova* (2006), *op. cit.,* note 126, para. 74.

[196] Report of the UN Special Rapporteur (2014), A/HRC/26/29, *op. cit.,* note 138, para. 24.

[197] *Ibid*. See also OSCE/ODIHR and Venice Commission, Joint Opinion on the Order of Organizing and Conducting Peaceful Events of Ukraine, CDL-AD(2009)052, 14 December 2009, para. 29.

[198] The CRC Committee has, for instance, expressed concern about legislation that sets the minimum age for forming an organizational committee for outdoor meetings at 19 years (CRC/C/TUR/CO/2-3, 20 July 2012, paras. 38-39), as well as about the failure to reflect the principle of the best interests of the child as a primary consideration in all legislative and policy matters including in the area of peaceful assembly (CRC/C/GBR/CO/4, 20 October 2008, para. 26). See also Report of the UN Special Rapporteur (2014), A/HRC/26/29, *op. cit.,* note 138, paras. 23-24.

[199] See Article 3 para. 1 of the UN CRC which states that, "[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." See also Article 5 of the UN CRC which states that, "States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention."

[200] Special Representative of the Secretary-General on human rights defenders, Report on the right to protest in the context of freedom of assembly, A/62/225, 13 August 2007, para. 101 (a) (ii). See also *Castle and Others v. Commissioner of Police for the Metropolis* [2011] EWHC 2317 (Admin), paras. 51 and 73 with respect to the special duty to bear in mind the need to safeguard and promote the welfare of children (although in the present case the court found that the respective police officer was not in breach of his duties in that respect, or in any of this other public law duties).

[201] See also *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), *op. cit.,* note 16, paras. 97-103; and *Singartiyski and Others v. Bulgaria,* Application No 48284/07, 18 October 2011, paras. 46-47.

to facilitate the exercise of the rights to freedom of peaceful assembly of national, ethnic, religious or linguistic minorities may however require certain additional measures, such as multilingual documents in areas with large percentages of persons not fluent in the primary language of the local jurisdiction.[202]

109. **Non-nationals**. International human rights law does not link the guarantee of the right to freedom of assembly to citizenship. It is therefore essential that relevant legislation provides freedom of peaceful assembly not only to citizens, but that it also foresees the same right for stateless persons, refugees, foreign nationals, asylum seekers, and migrants.[203]

110. **Law enforcement and state officials.** Legislation should not limit the freedom of peaceful assembly of law enforcement personnel (including the police and military) or State officials unless the reasons for restrictions are directly connected with their service duties. In such cases, restrictions should be imposed only insofar as this is deemed necessary for them to properly fulfil their professional duties.[204] The ECHR permits 'lawful restrictions on the exercise of the rights to freedom of assembly and association by members of the armed forces, of the police, or of the administration of the State.'[205] Any such restrictions must be designed to ensure that the responsibilities of those in the services concerned are properly discharged and that any need for the public to have confidence in their neutrality is maintained.[206] Such neutrality should, however, not be interpreted so as to unnecessarily restrict the freedom to hold and express opinions.

Spain, Organic Law on the Rights and Duties of Members of the Armed Forces, 9/2011, Article 13

The military may exercise the right to assembly as set out in the Organic Law […] regulating the right to assembly but may not organize or actively participate in assemblies or demonstrations of a political or syndicate character. […]

Assemblies held in military units need to be previously and expressly authorized by their head, who may prohibit them based on his/her assessment of how best to safeguard discipline and the needs of the service.

Notification, Good Administration and legal Remedies

111. **Overview.** This section addresses the main procedural issues that commonly arise in relation to the facilitation of freedom of assembly, including in particular the notification process. While there is no universal blueprint for the design of these procedures – and the

[202] Report of the UN Special Rapporteur (2014), A/HRC/26/29, *op. cit.,* note 138, paras. 18 and 34. See also UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, A/RES/47/135, 18 December 1992, Articles 1 and 4.

[203] See *Cisse v. France*, Application 51346/99, 9 April 2002.

[204] See, *mutatis mutandis*, *Matelly v. France*, Application No 10609/10, 2 October 2014.

[205] Article 11(2), ECHR. See, for example, *Demir and Baykara v. Turkey*, Application No 34503/97, 12 November 2008, para. 109: "The Convention makes no distinction between the functions of a Contracting State as holder of public power and its responsibilities as employer. Article 11 is no exception to that rule. On the contrary, paragraph 2 *in fine* of this provision clearly indicates that the State is bound to respect freedom of assembly and association, subject to the possible imposition of "lawful restrictions" in the case of members of its armed forces, police or administration … Article 11 is accordingly binding upon the "State as employer", whether the latter's relations with its employees are governed by public or private law ..." See also *Enerji Yapi-Yol Sen v. Turkey*, Application No 68959/01, 21 April 2009 (in French only). See also, Recommendation CM/Rec (2010) 4 of the Committee of Ministers and explanatory memorandum on "Human Rights and Members of the Armed Forces", paras. 53-57. OSCE/ODIHR and Geneva Centre for the Democratic Control of Armed Forces (DCAF), *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel* (ODIHR, Warsaw, 2008), pages 22-23 and Chapter 8; OSCE, *Guidebook on Democratic Policing*, May 2008, paras. 9 and 12.

[206] See *Ahmed and Others v. United Kingdom*, Application No 22954/93, 2 September 1998; *Rekvényi v. Hungary,* Application No 25390/94, 20 May 1999. *City of San Diego, Cal. v. Roe*, 543 U.S. 77 (2004) (stating that a police officer's rights to freedom of speech do not extend to activities inconsistent with his ability to discharge his duties effectively); *Pickering v. Bd. of Ed. of Twp. High Sch. Dist. 205*, 391 U.S. 563 (1968) (finding that a school district cannot discharge a teacher for writing a letter to a newspaper editor addressing issues of common knowledge and public concern).

particular procedures relating to the holding of assemblies will vary by country, as will the level of detail provided in laws or by-laws – human rights standards imply the need for procedural safeguards in relevant legislation and operating procedures.

Notification procedures

112. **Notification as restriction.** A prior notice requirement is a *de facto* interference with the right to freedom of assembly, and any such requirement should therefore be prescribed by law, necessary and proportionate.[207] Moreover, 'regulations of this nature should not represent a hidden obstacle to freedom of peaceful assembly as protected by the Convention.'[208] Furthermore, the enforcement of rules on prior notification may not become an end in itself; in other words, the failure to notify should not render the assembly unlawful and must not by itself lead to restrictions on participants or dissolution of a peaceful assembly.[209]

113. **International standards do not *require* the advance notification of assemblies**. It is not necessary under international human rights law for domestic legislation to require advance notification of an assembly. Thus, certain countries do not require advance notification for any type of assembly,[210] and others require notification only for certain types of assembly. There may, however, be legitimate reasons for requiring advance notification of certain types of assembly, depending on their size, nature and location. Prior notice can enable the State to better ensure the peaceful nature of an assembly[211] and to put in place arrangements to facilitate the event, or to protect public order, public safety and the rights and freedoms of others. In consequence, a notification requirement will often be compatible with the permissible limitations laid down in Article 11 ECHR and Article 21, ICCPR.[212]

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[207] The European Court of Human Rights has previously considered that "notification, and even authorisation procedures, for a public event do not normally encroach upon the essence of the right under Article 11 of the Convention *as long as the purpose of the procedure is to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of any assembly*" (emphasis added) and that it is important that associations and other organizers of demonstrations comply with the rules of the democratic game of which they are the actors, in accordance with the regulations in force, including those concerning the notification of assemblies (*Skiba v. Poland*, *op. cit*.). See, amongst other authorities, *Lashmankin and Others v. Russia*, (2017), *op. cit.,* note 50, para. 147. See also the Human Rights Committee's Concluding Comments on Morocco [1999] UN doc. CCPR/C/79/Add.113, para. 24: "The Committee is concerned at the breadth of the requirement of notification for assemblies and that the requirement of a receipt of notification of an assembly is often abused, resulting in de facto limits of the right of assembly, ensured in article 21 of the Covenant. The requirement of notification should be restricted to outdoor assemblies and procedures adopted to ensure the issue of a receipt in all cases."

[208] *Oya Ataman v. Turkey*, (2006), *op. cit.,* note 113, para. 38.

[209], *Novikova and Others v. Russia,* Application Nos 25501/07, 57569/11, 80153/12, 5790/13 and 35015/13, 26 April 2016, para. 163.

[210] For example in Ireland. At the same time, organisers in Ireland may of their own accord notify the appropriate local police station prior to conducting an assembly. See further Article 40 of the Irish Constitution (Bunreacht na hÉireann); Article 24 of the Constitution (Amendment No. 17) Act, 1931 (power to proclaim public meetings); section 28 of the Offences Against the State Act, 1939; and section 21 of the Criminal Justice (Public Order) Act, 1994 which empowers senior officers of the Garda Síochána to regulate access to a place where an event, likely to attract a large assembly of persons, is taking, or is about to take place. See, in relation to the United States, Nathan W. Kellum, "Permit Schemes: Under Current Jurisprudence, what Permits are Permitted?", *Drake Law Review*, Vol. 56, No.2, 2008, p. 381.

[211] *Rassemblement Jurassien Unité Jurassienne v. Switzerland* (1979), *op. cit.,* note 42, p. 119. U.S. courts have approved a permit requirement which does not include assessment of the content of the assembly's message and which presumes a right of access to public forums. See *Cox v. State of New Hampshire*, 312 U.S. 569, 573-575 (1941) (stating that any permit requirement must be limited to considerations of time, place, and manner restrictions unrelated to content). C. Edwin Baker proposed a system of voluntary (rather than mandatory) notification whereby those who do provide advance notification might obtain additional benefits by doing so. See, "Mandatory Parade Permits", chapter 7 in C. Edwin Baker, *Human Liberty and Freedom of Speech* (Oxford: Oxford University Press, 1993), pp.138-160. See also Tabatha Abu El-Haj. "All Assemble: Order and Disorder in Law, Politics, and Culture" *University of Pennsylvania Journal of Constitutional Law* Vol. 16, 2014, p. 949.

[212] See U.N. Human Rights Committee, *Kivenmaa v. Finland* (Communication no. 412/1990, 31 March 1994), para 9.2. The European Court of Human Rights has held that since States have a right to require notification, 'they must be able to apply [proportionate] sanctions to those who participate in demonstrations that do not

114. **Exceptions to the notification requirement**. In cases where domestic legislation imposes a notification requirement, the respective law should also take into account assemblies which, due to their nature or size, do not interfere significantly with the rights of others (and which, for that reason, require only minimal advance preparation by the relevant State authorities). These types of assemblies should be exempt from any prior notification requirement (so long as the definition of the exempted category is content-neutral and the exemption does not give rise to discriminatory treatment). A number of countries have expressly excluded a notification requirement for certain assemblies, including those involving a small number of persons, as they are not likely to cause significant disruption.[213] Furthermore, individual demonstrators should not be required to provide advance notification to the authorities of their intention to demonstrate.[214] Spontaneous assemblies should, by their very nature, also be exempted from any notification requirements. Where a lone demonstrator is unexpectedly joined by another or others, and the size of the assembly increases, then the event should be treated like a spontaneous assembly.

Finland, Assembly Act 22.4.1999/530, section 14
Notification of a public event
[…] no notification need be made on a public event which, owing to the low number of participants, the nature of the event or the place of the event, does not require measures for the maintenance of order or security nor for the prevention of inconvenience to the bystanders or damage to the environment, nor special traffic arrangements.
Article 3, Law on Public Assemblies, Republic of Moldova (2008):
Definitions
'Assemblies with a small number of participants' – public assemblies that gather less than 50 persons.
Article 12(5), Law on Public Assemblies, Republic of Moldova (2008):
Exceptions from notification
It is not obligatory to notify local public authorities in the case of assemblies with a small number of participants.
District of Columbia, First Amendment Assemblies Act 2004, section 105:
[…](d) A person or group who wishes to conduct a First Amendment assembly on a District street, sidewalk, or other public way, or in a District park, is not required to give notice or apply for approval of an assembly plan before conducting the assembly where: 1) The assembly will take place on public sidewalks and crosswalks and will not prevent other pedestrians from using the sidewalks and crosswalks; 2) The person or group reasonably anticipates that fewer than 50 persons will participate in the assembly, and the assembly will not occur on a District street; or 3) The assembly is for the purpose of an immediate and spontaneous expression of views in response to a public event. […].

Notification rather than authorization.

115. Legal provisions concerning assemblies may require the organiser to submit an advance notice of intent to hold an assembly (see, in this context, the above section on the

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comply with the requirement'. See, *Ziliberberg v. Moldova*, Application No 61821/00, admissibility decision of 4 May 2004. Similarly, in *Rai and Evans v. United Kingdom*, Application nos. 26258/07 and 26255/07, admissibility decision of 17 November 2009, the imposition of a low-level fine for failure to comply with a lawful authorization requirement covering assemblies in a limited, security-sensitive area, was held to be proportionate and so did not constitute a violation of Article 11 ECHR.

[213] The United Kingdom does not impose a prior notification requirement for static assemblies (s.11 of the *Public Order Act* 1986 requires advance notification only for certain public processions), while Armenia does not require notification for assemblies with fewer than 100 participants (Article 9, Law on Freedom of Assembly, Republic of Armenia, adopted 14 April 2011). See, further, Neil Jarman and Michael Hamilton, "Protecting Peaceful Protest: The OSCE/ODIHR and Freedom of Peaceful Assembly", *Journal of Human Rights Practice* Vol. 1 No.2, 2009, pp. 208-235 at p.218; and Chicago Park District Code Chapter 7 C.3.8 (1) (stating that no permit or notice is required for an assembly of less than 50 persons); See also *Cox v. City of Charleston*, 416 F.3d 281, 284-287 (4th Cir. 2005).

[214] See, for example, Nathan Kellum, *op. cit.,* note 210, p.425, concluding that "authoritative precedent supports the view that permit schemes should be limited in scope" and '["[i]ndividuals and small group gatherings should never be subjected to such tedious requirements." See *Am.-Arab Anti-Discrimination Comm. v. City of Dearborn*, 418 F.3d 600, 608 (6th Cir. 2005), where the court stated that "permit schemes and advance notice requirements that potentially apply to small groups are nearly always overly broad and lack narrow tailoring."

freedom to plan and organize assemblies, Paragraphs 54 *et seq*.).[215] Systems of prior authorisation have never been declared by the ECtHR as being incompatible with the Convention. The Human Rights Committee, on the other hand, has declared its preference for the notification system, rather than the authorisation system. In a number of jurisdictions, authorisation or permit procedures have been declared unconstitutional.[216] In any case, a notification regime, which is preferable for being less intrusive into the right to freedom of peaceful assembly in view of the proportionality principle, should not be turned into a *de facto* authorisation procedure.[217] Nonetheless, a permit requirement based on a legal presumption that a permit for use of a public place will be issued (unless the relevant state authorities can provide evidence to justify a denial) can serve the same purpose as advance notification.[218] The criteria for restricting an assembly should be confined to considerations of time, place, and manner, and should not provide a basis for content-based regulation. Above all, state authorities shall not deny the right to assemble because they disagree with the merits of holding an event for the organiser's stated purpose.[219]

116. **Notification should not be required for assemblies in buildings.** National regulatory frameworks should not require prior notification or permission for assemblies that are held in public buildings unless such assemblies require any form of state action to facilitate the event or to protect public order or the rights of others.[220]

117. **Notification should not be required for online mobilization of assemblies.** National regulatory frameworks should not require notification or permission for online mobilization or (see further para 67 regarding Internet shutdowns that seek to restrict or prevent Internet access before, during or after assemblies).

118. **Notification processes should be clear, fair, transparent and easy to follow.** Regulatory requirements, including procedures to inform authorities about an assembly should be clear and simple to follow for everyone, and it should be sufficient for organizers to notify one single authority (not multiple authorities). Public authorities should ensure that notification remains possible via a variety of means including online, by mail, email or hand delivery. The notification procedures should be easily accessible to everyone, including in other languages or in Braille.[221] The process should be fair and transparent, so that all persons wishing to organize an assembly may do so on an equal basis (see section on

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[216] The Constitutional Court of Georgia annulled part of a relevant law (Article 8, para.5) which allowed a body of local government to *reject* a notification (thus effectively creating a system of prior license rather than prior notification) – see *Georgian Young Lawyers' Association Zaal Tkeshelashvili, Lela Gurashvili and Others v. Parliament of Georgia* (5 November 2002) N2/2/180-183. The European Court of Human Rights has held that whether an authorization or notification procedure is applied, the purpose of the procedure should be "to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of any assembly, meeting or other gathering'"; see *Sergey Kuznetsov* (2008), *op. cit.,* note 80, para. 42.

[219] The Constitutional Court of Georgia annulled part of a relevant law (Article 8, para.5) which allowed a body of local government to *reject* a notification (thus effectively creating a system of prior license rather than prior notification) – see *Georgian Young Lawyers' Association Zaal Tkeshelashvili, Lela Gurashvili and Others v. Parliament of Georgia* (5 November 2002) N2/2/180-183. The European Court of Human Rights has held that whether an authorization or notification procedure is applied, the purpose of the procedure should be "to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of any assembly, meeting or other gathering'"; see *Sergey Kuznetsov* (2008), *op. cit.,* note 80, para. 42.

[219] *Hyde Park v. Moldova (No.3)* (2009), *op. cit.,* note 173, para. 26; *Edwards v. S. Carolina*, 372 U.S. 229, 236-237 (1963).

[220] *Krupko and Others v Russia*, Application No26587/07, 26 June 2014, paras 55-57 the Court stated that where assemblies witin a building should not be expected to provide advance notification.

[221] This should also include disabled persons, see Report of the UN Special Rapporteur (2014), A/HRC/26/29, *op. cit.,* note 138, para. 34. See also World-wide Web Consortium's guidelines on web content accessibility for persons with disabilities, available at <http://www.w3.org/WAI/intro/wcag>.

equality and non-discrimination, paras. 101 *et seq*.), and are aware of the different steps that they need to take to ensure that their event may take place.

119. **Notification processes should not be unduly burdensome.** The procedure for providing advance notification to the public authorities should not be onerous or overly bureaucratic and the information required should be minimal (i.e., date, time, duration, location/itinerary, brief sentence indicating the purpose of the assembly, and name, address and contact details of the organizer).[222] Excessively burdensome and unnecessary additional requirements may discourage potential organizers or participants and could thus undermine freedom of peaceful assembly. The obligation to produce formal identity documents, for example, would be unduly bureaucratic and burdensome, and not necessary. A notification procedure may also be considered unduly bureaucratic if relevant laws and regulations require that the notification document lists more than one organizer by name, the submission of identification details of others involved in the event, or the exact or predicted number of participants (which will not always be possible to specify).[223] Since any requirement to notify the authorities constitutes an interference with the right to freedom of peaceful assembly, the process must always be scrutinized in terms of its proportionality (see also paras 25 *et seq* and 29 above).

120. **The need for an expeditious notification process.** Since the timing of an assembly may be of vital importance[224], the required period of notice before an assembly should not be unnecessarily lengthy (normally no more than a few days). It should, however, be long enough to provide the relevant State authorities with adequate time to plan and prepare for the event,[225] for the competent public authority to give a (prompt) official response to the initial notification, and for prompt administrative and judicial recourse, should the legality of any restrictions imposed be challenged. While laws may legitimately specify a minimum period of advance notification prior to an assembly, any maximum notification period should not preclude the advance planning of large scale assemblies.[226] Undue attempts to use the notification procedure to 'block book' particular locations – for instance on significant dates or anniversaries – should not be allowed (see 'Facilitation of simultaneous assemblies', para 78 above).

121. **Documenting and sharing the notification with relevant agencies.** The official who receives the notice should promptly issue a receipt explicitly confirming that notice has been received. The receipt should be issued regardless of whether the official believes that it contains all information required by law. The official may, though, note in the receipt that certain information required by law is lacking so that the organizers may take action to provide this information. Once notification has been submitted, a request to provide further information relating to the same assembly should not be treated as a requirement to re-notify

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[222] See Report of the UN Special Rapporteur (2013), UN Doc. A/HRC/23/39, *op. cit.,* note 56, paras. 52-53.

[223] OSCE/ODIHR Opinion on the Act [of Tunisia] on the Regulation of Public Meetings, Marches, Rallies, Demonstrations and Assemblies, Opinion-Nr.: FOA-TUN/218/2012, 21 December 2012, §35 and CDL-AD(2010)033, Joint Opinion on the Law on Peaceful Assemblies of Ukraine by the Venice Commission and OSCE/ODIHR, §30.

[224] *Helsinki Committee v. Armenia*, Application No 59109/08, 31 March 2015, para. 34: "[s]uch is the nature of democratic debate that the timing of public meetings held in order to voice certain opinions may be crucial for the political and social weight of such meetings. If a public assembly is organised after a given social issue loses its relevance or importance in a current social or political debate, the impact of the meeting may be seriously diminished. Freedom of assembly – if prevented from being exercised at a propitious time – can well be rendered meaningless".

[225] See *Sergey Kuznetsov v. Russia*, (2008), *op. cit.,* note 80, para. 43, where a late notification did not prevent the authorities from adequately preparing for the assembly. See also *Sullivan v. City of Augusta*, 511 F.3d 16, 38-40 (1st Cir. 2007) (a 30 day advance notice or application requirement violates the right to freedom of speech and assembly).

[226] See *Primov and Others v. Russia* (2014), *op. cit.,* note 30, paras. 77 and 126, where the Court found that the relevant law requiring notification to be lodged no earlier than 15 days and no later than ten days before a planned event provided a very short time-slot for notification, which was "clearly insufficient" in the case at hand, as the letter with the notification had taken longer than the five-day notice period to even reach the competent authority. See also *Lashmankin and Others v. Russia* (2017), *op. cit.,* note 50, paras. 320, 348, 456 and 447.

the authorities. Furthermore, the mere fact that no receipt has been issued by the authorities should not affect the validity of the notification or render the assembly unlawful – otherwise, the receipting process (which should be solely for the purpose of documenting submission) would change notification into a *de facto* authorization procedure. The notice should also be promptly communicated by the receiving authority to all State organs involved in the regulatory process, including relevant law enforcement agencies.

Article 2, Assembly Act, Portugal
Persons or entities wishing to hold assemblies, rallies, demonstrations or parades in public places or open to the public shall notify, in writing, at least two days in advance, the District's Civil Governor or the Mayor of the Town Hall, depending on whether the assembly will take place at in the district capital or not. […] The entity which receives the notification shall provide a notice of receipt.
Kyrgyzstan, The Law of the Kyrgyz Republic on Peaceful Assemblies, Article 11
Peaceful Assembly Notification
(4) Persons notifying about a peaceful assembly shall have the right to demand, and public authorities and local self-government shall have the responsibility to provide on the same day, a written confirmation that the notification has been received.
(5) A written receipt confirmation sent by local self-government or local state administration shall include information about the name of the body of local self-government or local state administration, the name, family name and patronymic of an official having received the notification, date and time of receipt.

122. **The need for a timely response by the public authority.** Legislation should establish a timeframe within which authorities must specify any restrictions that they may seek to impose on the time, place and manner of an assembly, following the filing of notice of an assembly. Relevant procedural rules should also ensure that the organisers are informed of such restrictions reasonably far in advance of the planned event.[227] This requirement is, in part, intended to enable the conclusion of any administrative or judicial challenge of the restrictions prior to the date of the planned event (see further para 125 *et seq* on 'legal remedies').[228]

123. **Failure to notify assembly organizers or representatives of restrictions.** In the event of a failure on the part of the authorities to inform organizers about restrictions to an assembly, the organisers should be able to proceed with their activities according to the terms set out in the notice. This also applies to cases where the authorities did not inform organizers or representatives about such restrictions within the timeframe established by law.

Bulgaria, Draft Law on Meetings, Rallies and Manifestations, 2009, article 20
Consideration of the notification
The competent authority shall consider the notification within 48 hours of receiving it, in the order in which notifications have been received.
[…]
(3) Should the competent authority fail to issue a decision prohibiting holding of the public event within the time limit under paragraph 1, the organizers shall have the right to conduct the public event at the time and under the terms and conditions set forth in the notification.

124. **Voluntary participation of organizers in pre-event planning with relevant authorities.** Dialogue and other forms of co-operation between organizers of an assembly and the relevant state authorities may be useful to ensure the smooth conduct of the

[227] *Lashmankin and Others v. Russia* (2017), *op. cit.,* note 50, para. 457, where the Court found that the delay in sending the response to the organizer prevented him from holding a public event because he had not received the authorities' decision in time. The authorities had thus failed in their obligation to keep the organizer informed of the progress of his notification in a timely fashion, and in such a way as to guarantee a right to freedom of assembly "which was practical and effective, not theoretical or illusory".
[228] *Bączkowski and Others v. Poland* (2007), *op. cit.,* note 182, para. 83.

assembly. At the same time, involvement in prior negotiations on the part of the organizers should be entirely voluntary, and an unwillingness or refusal to engage in dialogue with the authorities should not have negative repercussions for the organizers or their assembly in relation either to the processing of the notification or the performance of the State's positive obligations to facilitate and protect a peaceful assembly.

Legal remedies

125. **Right to an effective remedy.** Those seeking to exercise the right to freedom of peaceful assembly should have recourse to a prompt and effective remedy against decisions disproportionately, arbitrarily or illegally restricting or prohibiting assemblies.[229] Where assemblies are prevented or unreasonably restricted due to potentially unlawful inaction or negligence of the administrative authorities, the organizers or representatives of the assembly should be able to initiate direct legal action in courts or tribunals. The relevant court decisions should be issued prior to the planned events. The right to a remedy includes being able to access independent and impartial administrative and judicial appeals mechanisms. The availability of effective administrative review can reduce the burden on courts and help build a more constructive relationship between the authorities, the organizers, and the public in general. In both administrative and court proceedings, the burden of proof should be on the relevant state authority to prove that the restrictions imposed are justified.[230] Courts or tribunals should have the authority to review all circumstances of the case, and to annul or, where applicable, correct any error or omission made at the administrative or first instance review stage.[231] Legal aid should be available to those who do not have the funds to pay for legal representation themselves.

126. **Timeliness of court decisions.** 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.[232] In case of insufficient time, courts or tribunals should have the authority to issue interim orders or rulings pending final resolution of the case. A heavy case-load cannot serve as a justification for delays in judicial proceedings.[233] This requirement for an expeditious appeal mechanism should be provided for in law.[234]

Bulgaria, Law on Gatherings, Meetings and Manifestations, SG 10/2 February 1990, amend. SG 11/29 January 1998, article 12, paragraphs 3-5):
3) The prohibition is imposed by way of a written act, stating the motives, within 24 hours following the notification.
(4) The organizer of the gathering, meeting or manifestation is entitled to file an appeal against the prohibition under the preceding paragraph with the Executive Board of the Municipal People's Council, and the latter renders its decision within a term of 24 hours.
(5) In those cases where the body under the preceding paragraph fails to render its decision within the specified term, the gathering, meeting or manifestation can be held.

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[229] See for example, UN Human Rights Council, Resolution on the Promotion and Protection of Human Rights in the Context of Peaceful Protests, A/HRC/RES/22/10, 9 April 2013, para. 15.
[230] See, for example, *Makhmudov v. Russia*, Application No 25082/04, 26 July 2007, para. 68.
[231] See, instead of others, *Lashmankin and Others v. Russia* (2017), *op. cit.,* note 50, para. 343.
[232] Concluding observations of the Human Rights Committee, Poland, CCPR/C/POL/CO/6, 27 October 2010, para. 23 (on the 2010 Assemblies Act): "the length of the appeals procedure against a prohibition to hold an assembly may jeopardize the enjoyment of the right of peaceful assembly." In light of this, the Committee recommended that Poland, "should introduce legislative amendments to the Assemblies Act in order to ensure that appeals against a ban to hold a peaceful assembly are not unnecessarily protracted and are dealt with before the planned date." See also, *Baczkowski and Others v. Poland* (2007), *op. cit.,* note 182, paras. 68-78, affirming that the organisers of a public event were entitled to judicial remedy before the date of the planned event. See also Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), paras. 24.4. See further *Nat'l Socialist Party of Am. v. Village of Skokie*, 432 U.S. 43 (1977) (requiring an expeditious review of a court decision upholding a permit denial).
[233] *Lashmankin and Others v. Russia* (2017), *op. cit.,* note 50, para. 350.
[234] *Ibid.* See also *Bączkowski v. Poland* (2007), *op. cit.,* note 182, paras. 81-84.

Article 14(2) Law on Assemblage and Manifestations, Republic of Georgia (1997, as amended in 2015)
The decision of an executive body of local self-government regarding the prohibition of holding an assembly or demonstration may be appealed in court, which shall make a final decision within two working days.

Kyrgyzstan, The Law of the Kyrgyz Republic on Peaceful Assemblies, article 14
Prohibition or Restriction of Assemblies
(3) An application for prohibiting or restricting an assembly shall be considered by court within 24 hours from the time of its submittal.
(4) The burden of proof for the grounds to prohibit or restrict an assembly in the court shall be with the applicant, who filed a lawsuit.
(5) Any doubts in the grounds to prohibit or restrict an assembly shall be in favour of the implementation of the right to peaceful assembly.
(6) A court decision of first instance prohibiting or restricting an assembly may be appealed in a higher court within 24 hours after passing judgment. Appeals against court decisions prohibiting or restricting an assembly shall be considered by higher courts within 24 hours after their submittal. Decisions of higher courts shall enter into force on the date they are made.
(7) Court prohibition or restriction decisions shall be notified to assembly organizers and participants by local self-government and the interior bodies verbally and in writing within 24 hours after the decision is made.

127. **Access to evidence.** In the event of judicial proceedings, the parties and the court or tribunal should have full access to the evidence on which the relevant state authority based its initial decision (including, but not limited to, relevant police reports, risk assessments or other concerns or objections raised). Only then can the proportionality of the restrictions imposed be fully assessed. If such access is refused by the authorities, the parties should be able to obtain an expeditious judicial review of the decision to withhold the evidence. Officials should not be able to rely on undisclosed evidence as a basis for imposing a restriction.

Restrictions Imposed Prior To or During an Assembly

128. **Prior Restrictions.** As a rule, peaceful assemblies should be facilitated without restriction. In some circumstances, however, it may be necessary for restrictions to be imposed. Restrictions are only permissible if they follow the requirements set out in international human rights instruments, namely the restrictions have a formal basis in law, follow a legitimate aim, and are necessary and proportionate.

129. **Any restrictions must have a formal basis in law.** Any restrictions imposed on assemblies must have a formal basis in law, as must the mandate and powers of the restricting authority.[235] The same applies to sanctions imposed after an assembly. Legislation itself must be sufficiently precise to enable an individual to assess whether or not his or her conduct would be in breach of the law, and also to foresee the likely consequences of any such breach (see paras. 96 *et seq.* above, 'Requirements of the Legal Framework'). Clear definitions in domestic legislation are vital to ensuring that the law remains easy to understand and apply, and that a regulation does not encroach upon activities that do not need to be regulated. Definitions, therefore, should neither be too elaborate nor too broad.[236]

[235] See *Hyde Park v. Moldova No.2* (2009), *op. cit.,* para. 27, note 120. In this case, it was emphasized that the reasons for restrictions must be provided by the legally mandated authority. The Court noted that the reasons cited by the Municipality for restricting a demonstration were not compatible with the relevant Assemblies Act, and it was not sufficient that compatible reasons were later given by the Court since the Courts were not the legally mandated authority to regulate public assemblies and could not legally exercise this duty either in their own name or on behalf of the local authorities.
[236] The terms used in domestic legislation to differentiate between types of assembly must be defined with sufficient clarity – see, for example, *Chumak v. Ukraine* (2018), *op. cit.,* note 50, para. 47.

130. **Legitimacy of restrictions.** Restrictions of the right to freedom of peaceful assembly should be based on one or more of the legitimate grounds prescribed by relevant international and regional human rights instruments. Notably, Article 21 ICCPR and Article 11 ECHR specify the following grounds: national security, public safety, 'public order (*ordre public*)' (ICCPR) / 'the prevention of disorder or crime' (ECHR), the protection of public health or morals, and the protection of the rights and freedoms of others. These grounds should not be supplemented by additional grounds in domestic legislation,[237] and should be narrowly interpreted by the authorities.[238]

131. Restrictions should be necessary and proportionate to achieving a legitimate aim. Restrictions to the right to freedom of peaceful assembly, whether set out in law or applied in practice, must be both necessary to achieve a legitimate aim, and proportionate to such aim.[239] Necessity denotes a 'pressing social need' for the restriction in question; this means that a restriction must be considered imperative, rather than merely 'reasonable' or 'expedient'.[240] The means used should be proportional to the aim pursued, which also means that where a wide range of interventions may be suitable, preference should always be given to the least restrictive or invasive means.[241] The relevant state authorities should review and debate a range of restrictions, rather than viewing the choice as simply between non-intervention or prohibition. The reasons provided by the authorities for any restriction(s) should be relevant and sufficient,[242] convincing and compelling,[243] and based on a comprehensive assessment of the relevant facts.[244] Moreover, the interference should go no further than is justified by a legitimate aim.[245] The principle of proportionality requires that there be an objective and detailed evaluation of the circumstances affecting the holding of an assembly. Thus, the State must demonstrate that any restrictions promote a substantial interest that would not be achieved, or would be achieved less effectively, without the restriction. The principle of proportionality also requires that authorities should generally

[237] See Article 17 of the ECHR stating that "[n]othing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at [the] limitation [of the rights and freedoms set forth in the Convention] to a greater extent than is provided for in the Convention". Also, state authorities should not supplement the permissible legitimate aims set out in international instruments, particularly with arguments based on their own view of the merits of a particular protest, see *Hyde Park v. Moldova (No.3)* (2009), *op. cit.,* note 173, para 26.

[238] This point has been emphasized by the Council of Europe's Committee of Ministers. See Recommendation CM/Rec(2010)5 of the Committee of Ministers to member States on measures to combat discrimination on grounds of sexual orientation or gender identity (31 March 2010), para. 16.

[239] See, for example, *Rassemblement Jurassien Unité Jurassienne v. Switzerland* (1979), *op. cit.,* note 42.

[240] See e.g. *mutatis mutandis*, *Chassagnou v. France,* Application nos. 25088/94, 28331/95 and 28443/95), 29 April 1999, para. 112: "[t]he term "necessary" does not have the flexibility of such expressions as "useful" or "desirable". Cf. also OSCE/ODIHR & Venice Commission, *Guidelines on the Legal Personality of Religious or Belief Communities*, (Warsaw/Venice 2014), para. 9: "The concept of a "pressing social need" is to be narrowly interpreted, which means that limitations should not just be useful or desirable, but must be necessary."

[241] As such, for example, the dispersal of assemblies must only be used as a measure of last resort (see further paragraphs 165-168, and 173). See *Ward v. Rock Against Racism*, 491 U.S. 781, 796 (1989).

[242] See, for example, *Makhmudov v. Russia* (2007), *op. cit.,* note 230, para. 65.

[243] *Ibid.*, para. 64.

[244] *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), *op. cit.,* note 16, para. 87. See also, *United Communist Party of Turkey and Others v. Turkey*, Application No 19323/92, 30 January 1998, para. 47. For the U.S. standard, see *U.S. v. Alvarez*, U.S., 132 S.Ct. 2537, 2549-2551 (2012) and *Police Dep't of City of Chicago v. Mosley*, 408 U.S. 92 (1972) (where the court invalidated an ordinance banning picketing near a school on the ground that the ordinance contained only a ban on labor picketing which was considered discriminatory).

[245] Hoffman, D. and Rowe, J. *Human Rights in the UK: An Introduction to the Human Rights Act 1998* (2nd edition) (Harlow: Pearson, 2006), p.106. Importantly, the only purposes or aims that may be legitimately pursued by the authorities in restricting freedom of assembly are provided for by Article 21 of the International Covenant on Civil and Political Rights (ICCPR) and Article 11(2) of the ECHR. Thus, the only objectives that may justify the restriction of the right to peaceably assemble are the interests of national security or public safety, the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others. See also *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) stating that content neutral regulations of public assemblies must be narrowly tailored to serve a significant government interest.

not impose restrictions which would fundamentally alter the character of an event (such as relocating assemblies to less central areas of a city). [246]

132. **Prohibition as a last resort.** Prohibiting an assembly should be a measure of last resort and should only be considered when a less restrictive response would not achieve the purpose pursued by the authorities in safeguarding other relevant rights and freedoms and public order. Any ban or prohibition of an assembly should be decided upon only on a case by case basis, with the legitimacy, necessity and proportionality test to be carried out for each individual assembly. In order to justify a prohibition, the State must provide evidence that it has first attempted to facilitate an assembly, or to impose less onerous restrictions. For example, where the State argues that it has inadequate resources to protect peaceful assembly, prohibition may represent a failure of the State to meet its positive obligations.[247]

133. **No Blanket Bans.** Blanket legal restrictions – for example, banning all assemblies during certain times, or from particular locations or public places which are suitable for holding assemblies –as a rule constitute excessive and restrictions violating the right to freedom of assembly. Such restrictions imposing bans on the time or location of assemblies as a rule and then allowing exceptions to this rule invert the relationship between freedom and restrictions by turning the right to freedom of peaceful assembly into a privilege.[248] Blanket bans for that reason may fail the proportionality test because they fail to differentiate between different ways of exercising the right to freedom of assembly and preclude any consideration of the specific circumstances of each case.[249] Blanket bans may interfere significantly with the ability to hold assemblies within sight and sound of the intended audience.

134. **The burden of proof for restrictions.** Mere suspicions, fears or presumptions are not sufficient to warrant the imposition of prior restrictions on assemblies; the European Court of Human Rights has held that "[t]he mere probability of tension and heated exchange between opposing groups during a demonstration is not enough to justify the prohibition of

[246] See, for example, Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at paras. 29.1 and 32 (English translation): "(29.1)…The extensive prohibitions in the very centre of the city essentially restricts the right of the persons to hold meetings, processions and pickets … (32) … *If protesting is envisaged to take place in the centre, then it is not possible to make the procession move through the outskirts so that it does not disrupt the movement of traffic*…" (emphasis added)); See also the case of *Million Youth March, Inc. v. Safir*, 18 F.Supp.2d 334, 347-348 (S.D.N.Y. 1998), where the court invalidated a restriction requiring a procession to use another venue because the restriction would prevent communication with the intended audience.

[247] See, for example, *Barankevich v. Russia*, (2007), *op. cit.,* note 8, para. 33: "there is no indication that an evaluation of the resources necessary for neutralising the threat was part of the domestic authorities' decision-making process. Instead of considering measures which could have allowed the applicant's religious assembly to proceed peacefully, the authorities imposed a ban on it. They resorted to the most radical measure, denying the applicant the possibility of exercising his rights to freedom of religion and assembly."

[248] Joint Report of the UN Special Rapporteur (2016), A/HRC/31/66, *op. cit.,* note 52, para. 21.

[249] See Report of the UN Special Rapporteur (2013), A/HRC/23/39, *op. cit.,* note 56, para. 63: "…blanket bans, are intrinsically disproportionate and discriminatory measures as they impact on all citizens willing to exercise their right to freedom of peacefully assembly". See also Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at para.29.3 (English translation): "The state may not prohibit holding meetings, processions and pickets at foreign missions; only these activities shall not be too noisy and aggressive. However, even in these cases … this issue shall be solved on the level of *application* of legal norms" (emphasis added). While the Court noted (at para.28.1) that s.22(2) Vienna Convention on International Diplomatic Relations (1961) requires host states "to undertake all the adequate measures to protect premises of the mission from any kind of breaking in or incurring losses and to avert any disturbance of peace of the mission or violation of its respect", it concluded (at para.28.3) that there "is no norm which assigns the state with the duty of fully isolating foreign diplomatic and consular missions from potential processions, meetings or pickets." See also, David Mead, *op. cit.,* note 34, at pp.101-2. See *Carey v. Brown*, 447 U.S. 455, 465 (1980) (invalidates a statute that had "apparent over inclusiveness and under inclusiveness" and was not a narrowly tailored solution to accomplish the government's stated aim of protecting privacy interests).

an assembly".[250] The Court has further held that "[t]he burden of proving the violent intentions of the organisers of a demonstration lies with the authorities".[251]

135. **Explanation of the reasons for restrictions.** Any restrictions placed on an assembly should be promptly communicated in writing to the leaders or organizers of the event, in a decision taken by the competent public authority. This decision should contain a brief explanation of the reason for each restriction (which must correspond to the permissible grounds in the applicable legislation and be consistent with human rights law). Such decisions should in principle be made and communicated to the organizers well in advance of the proposed event to allow them to appeal or otherwise challenge the decision before an independent tribunal or court prior to the date of the event (see also para. 122).

Grounds for Restricting Freedom of Peaceful Assembly

136. **The permissible grounds for restriction should be interpreted narrowly.** Given the importance of freedom of assembly, it is important that any restrictions adhere to what is permissible under international human rights law. Thus, restrictions should not go beyond what is set out in the ECHR and the ICCPR and other relevant treaties. Moreover, the existing grounds set out in these instruments should be interpreted narrowly, to ensure maximum protection for freedom of peaceful assembly.

137. **National security.** Restrictions on the right to freedom of assembly based on national security should be imposed only to protect the existence of the nation or its territorial integrity or political independence against violence, or the tangible threat of force.[252] Thus, national security cannot be invoked to justify limitations to prevent merely local or relatively isolated threats to law and order. In addition, national security should not be used as a pretext for imposing vague or arbitrary limitations and should only be invoked in combination with adequate safeguards and effective remedies against abuse. Conversely, the systematic violation of human rights, including the right to freedom of peaceful assembly, undermines true national security and may jeopardize international peace and security. A State responsible for such violations cannot invoke national security as a justification for suppressing political dissent or opposition of any kind or for perpetrating repressive practices against its population.[253]

138. **Public safety.** Public safety concerns may arise when the presence or conduct of assembly participants creates a significant and imminent danger of physical injury for other participants, public authorities, or passers-by or of damage to property. Examples include cases where moving vehicles form part of an assembly and may pose dangers for

[250] See *Alekseyev v. Russia*, Application Nos 4916/07, 25924/08 and 14599/09, 21 October 2010, para. 77; cf. also the *Brokdorf* decision of Federal Constitutional Court of Germany, BVerfGE 69, 315 (353, 354); Cf. *Virginia v. Black*, 538 U.S. 343 (2003).

[251] *Christian Democratic People's Party v. Moldova (No. 2)* (2010), *op. cit.,* note 126, para. 23.

[252] See for example, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), *op. cit.,* note 16, para. 97, in which the Court held that "the fact that a group of persons calls for autonomy or even requests secession of part of the country's territory – thus demanding fundamental constitutional and territorial changes – cannot automatically justify a prohibition of its assemblies. Demanding territorial changes in speeches and demonstrations does not automatically amount to a threat to the country's territorial integrity and national security. […] In a democratic society based on the rule of law, political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means."

[253] United Nations, Economic and Social Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4, Annex (1985). See also the link between human rights and security made in OSCE commitments, for example, the Charter of Paris (1990) (preamble), noting that "[h]uman rights and fundamental freedoms are the birthright of all human beings, are inalienable and are guaranteed by law. Their protection and promotion is the first responsibility of government. Respect for them is an essential safeguard against an overmighty State. Their observance and full exercise are the foundation of freedom, justice and peace."

individuals at an assembly, where pyrotechnics are used during assemblies, or where they pass by or are held close to potentially hazardous and secure facilities.[254] In such instances, extra precautionary measures should generally be preferred over more extensive restrictions on the assembly itself. While organisers and stewards may provide assistance, states retain primary responsibility for the protection of public safety and security, have a positive obligation to provide adequately resourced policing arrangements and intervene when necessary. This duty should not be assigned or delegated to the organisers or stewards of an assembly. Generally, public authorities should also ensure proper access to nearby emergency health care facilities during assemblies (both for people involved in an assembly and for the general public).

Chicago Code - Streets, Public Ways, Parks, Airports and Harbors - Use of Public Ways and Places – Requirements and Restrictions – Public Assembly, paragraph 10-8-334, d
In order to protect the health and safety of the public, if at any time during the occurrence of the public assembly, the public assembly is substantially interfering with pedestrian traffic, safe ingress to or egress from buildings, or access by emergency responders, in the area contiguous to the activity, members of the police department are authorized to establish a pedestrian pathway on the sidewalk for the purpose of pedestrian traffic, ingress to or egress from surrounding buildings, and access for emergency responders; provided that the pedestrian pathway shall be reasonable in size and allow use of the remaining sidewalk by the participants in the public assembly. After that portion of the sidewalk has been established as a pedestrian pathway and communicated to the participants, the participants shall not obstruct pedestrian traffic, ingress to or egress from the surrounding buildings, or access by emergency responders, in the pedestrian pathway.

139. **Protection of public order/*ordre public*.** The term 'public order/*ordre public'* is rather vague and has been interpreted in a variety of ways, but is generally understood to be wider than that of 'prevention of disorder or crime'.[255] However, there is broad consensus that a hypothetical risk of public disorder, or the presence of a hostile audience are not, by themselves, legitimate grounds for prohibiting a peaceful assembly.[256] Public order grounds should be understood to involve an interest in preventing imminent violent conduct or other

[254] OSCE/ODIHR & Venice Commission, Joint Opinion on the Law on Mass Events of the Republic of Belarus, 20 March 2012, para. 933: "The only legitimate restriction on the place of an assembly may be near hazardous facilities that pose a threat to life or safety but only in cases where they are generally not accessible to the public."

[255] For a comparison of the English and French texts of the ECHR (and the terms 'prevention of disorder', 'protection of public order', 'la défense de l'ordre' and ''ordre public'), see *Perinçek v. Switzerland*, Application No 27510/08, 15 October 2015, paras. 146-151. In the *Brokdorf* decision of the German Federal Constitutional Court (1985) (1 BvR 233, 341/81), for example, 'public order' was understood as including the totality of unwritten rules, obedience to which is regarded, as an indispensable prerequisite for an orderly communal human existence within a defined area according to social and ethical opinions prevailing at the time. See also *Kunz v. People of State of New York*, 340 U.S. 290 (1951).

[256] See *Alekseyev v. Russia* (2010), *op. cit.,* note 250, para. 77, where the Court reiterated that "if every probability of tension and heated exchange between opposing groups during a demonstration were to warrant its prohibition, society would be faced with being deprived of the opportunity of hearing differing views on any question which offends the sensitivity of the majority opinion (see also *Stankov and the United Macedonian Organisation Ilinden*, *op. cit.,* note 16). See further UN Human Rights Committee Views (on the Merits) *Nikolai Alekseev v. Russian Federation* (1873/2009), 2 December 2013, U.N. Doc. CCPR/C/109/D/1873/2009, para. 9.6: "[...] an unspecified and general risk of a violent counterdemonstration or the mere possibility that the authorities would be unable to prevent or neutralize such violence is not sufficient to ban a demonstration. The State party has not provided the Committee with any information in the present case to support the claim that a "negative reaction" to the author's proposed picket by members of the public would involve violence or that the police would be unable to prevent such violence if they properly performed their duty"; Cf. also *Makhmudov v. Russia* (2007), *op. cit.,* note 230. See also case of Fáber v Hungary, Application No 40721/08, judgment of 24 July 2012, Paragraph 44 (in relation to the legitimate aims of maintaining public order and protecting the rights of others), where the Court stated: 'In the exercise of the State's margin of appreciation, past violence at similar events and the impact of a counter-demonstration on the targeted demonstration are relevant considerations for the authorities, in so far as the danger of violent confrontation between the two groups – a general problem of public order – is concerned (see *Öllinger*, cited above, § 47). Experience with past disorders is less relevant where the situation, as in the present case, allows the authorities to take preventive measures, such as police presence keeping the two assemblies apart and offering a sufficient degree of protection, even if there was a history of violence at similar events necessitating police intervention.

conduct creating serious infringements of public order.[257] On the other hand, the mere fact that the content or manner in which an assembly is conducted may annoy, offend, shock or disturb others, or that such assembly may cause some temporary disruptions of daily life, or affect the aesthetic appearance of a public space, does not by itself amount to a disruption of public order. For that reason, prior restrictions imposed due to the possibility of minor, isolated or sporadic incidents of violence are likely to be disproportionate.[258] For instance, it may be that the date and time chosen interfere with other public and private manifestations to such an extent that public order considerations may justify restrictions.

140. **Prevention of Crime**.[259] The European Court of Human Rights has noted that the ECHR "obliges State authorities to take reasonable steps within the scope of their powers to prevent criminal offences of which they had or ought to have had knowledge." At the same time, the Court has found that this "does not permit a state to protect individuals from criminal acts of a person by measures which are in breach of that person's Convention rights".[260] Preventive restrictions of individual rights are thus only possible in exceptional cases where there is a clear and present danger that a crime will be committed. States should always seek to ensure that any preventive intervention that negatively impacts on an individual's right to freedom of peaceful assembly is based on objective evidence that without such intervention, the individual will commit a 'concrete and specific'[261] offence of significance (constituting, for example, actual violence or serious criminal damage). Preventive interventions should thus not be based exclusively on such factors as membership of an organisation, previous activities that the individual may have been involved in, or mere general suspicion that someone may commit an offence, nor should they involve 'bad faith or deception on the part of the authorities'[262]. Rather, they should only be carried out to deal with criminal activity that is likely to disrupt assemblies.[263] Furthermore, states must not criminalize the exercise of the right to peaceful assembly (or certain forms thereof), and criminal provisions may not serve as a pretext to restrict or prohibit an assembly with a view to preventing such crimes. This also applies to administrative regulations, e.g. where assemblies were not duly notified.

141. **Protection of health**. Restrictions may be justified on occasion where the health of participants in an assembly, or of others, becomes, or risks becoming, seriously compromised.[264] Thus, in the European Court of Human Rights' case of Cisse v. France (2002), the intervention of the authorities was justified on health grounds given that the protesters had reached a critical stage during a hunger strike, and were confined in unsanitary conditions. However, such reasoning should not be relied upon by the authorities to pre-emptively break up an entire assembly, even where a hunger strike forms part of the protest strategy. Public health may at times be invoked to limit assemblies only where there is no alternative less restrictive means of safeguarding it. In the rare instances in which general public health concerns (including, e.g., smog or air pollution or a contagious disease) may be an appropriate basis for restricting one or more public assemblies, those restrictions should not be imposed unless other similar aggregations of individuals are also restricted, such as crowds in a shopping area, at a concert, or a sports event. In particular, there should be no blanket bans on assemblies at health facilities such as hospitals, as the question of whether health is endangered by such gatherings must be assessed by

[257] *Gün and Others v. Turkey*, (2013), *op. cit.,* note 113, paras. 49-50.
[258] *United Macedonian Organisation Ilinden and Ivanov v. Bulgaria (No. 2)*, Application No 37586/04, 8 October 2011*),* para. 134.
[259] While Article 11(2) ECHR speaks of 'the prevention of disorder or crime', Article 21 ICCPR does not specifically mention the prevention of crime as a legitimate aim.
[260] *Schwabe and M.G. v. Germany* (2011), *op. cit.,* note 63, para. 85.
[261] *Shimovolos v. Russi*a, Application No 30194/09, 21 June 2011, para. 55.
[262] *Hakobyan and Others v. Armenia*, Application No 34320/04, 10 April 2012, para. 122; *Saghatelyan v. Armenia,* Application No 23086/08 20 September 2018, paras. 242-243.
[263] *R (on the application of Laporte) v. Chief Constable of Gloucester Constabulary* (2006) UKHL 55, para. 15.
[264] Manfred Nowak's commentary on the ICCPR cites assemblies near or passing 'natural-protection or water-conservation grounds' (in relation to public health) as a particular example. See Nowak, *op. cit.,* note 44, p. 493.

reference to facts of the individual cases, not in abstracto.[265] Generally, assemblies should be organized and policed in such a manner that they do not block access to hospitals and similar institutions, including especially emergency access.

142. **Protection of morals.** On the face of Article 21, ICCPR and Article 11(2) ECHR the protection of morals may be invoked by States as a ground for imposing restrictions on the right to freedom of peaceful assembly. In practice, however, the protection of morals should rarely, if ever, be regarded as an appropriate basis for imposing restrictions on freedom of peaceful assembly.[266] As the UN Human Rights Committee has noted, 'the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations [...] for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition […] Any such limitations must be understood in the light of universality of human rights and the principle of non-discrimination.'[267] Any restrictions based on a narrow or exclusive conception of morality will thus be incompatible with relevant standards governing non-discrimination (at paragraphs 101 et *seq.* above) and content-based regulation (see paragraph 30).[268] Moreover, States may not legitimately invoke morality as a ground for restriction in cases which concern facets of an individual's existence and identity (in particular, because these constitute the very essence of the right to freedom of expression).[269]

143. **Protection of the rights and freedoms of others.** Assemblies potentially impact on the rights and freedoms of those who live, work, shop, trade and carry on business in the same locality. However, balancing the right to assemble and the rights of others should always aim at ensuring that assemblies may proceed, unless they impose unnecessary and disproportionate burdens on others.[270] Rights that may be claimed by non-participants

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[265] See for example, *Yilmaz Yildiz and others v. Turkey*, Application No 4524/06, 14 October 2014, para. 43.

[266] For criticism of a legislative provision relating to morality, see <http://www.bahrainrights.org/node/208> and <http://hrw.org/english/docs/2006/06/08/bahrai13529.htm>. Manfred Nowak's commentary on the ICCPR cites assemblies near or passing 'holy locations or cemeteries' (in relation to morality) as a particular example. See Nowak, op. cit., note 44, p. 493.

[267] UN Human Rights Committee, General comment No. 34, *op. cit.,* note 11, para. 32. See also *Norris v. Ireland*, Application No 10581/83, 26 October 1988, paras. 44-46. It is noteworthy that 'public morals' as a legitimate ground for limiting freedom of assembly is not synonymous with the moral views of the holders of political power: see Judgment of the Polish Constitutional Tribunal, 18th January 2006, K 21/05, *Requirement to Obtain Permission for an Assembly on a Public Road* (English translation), available at <http://trybunal.gov.pl/fileadmin/content/omowienia/K_21_05_GB.pdf>. But see also *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, (1952) (holding that a statute authorizing denial of permits to show films that are "sacrilegious" violates the right to freedom of speech). Also see *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002) (which overturned a decision to include a ban on computer-created sexually graphic pictures of fictional children which would have been punishable if actual children had been used in their production).

[268] See, for example, Hungarian Constitutional Court, Decision no. 21/1996 (V.17.) [ABH 1997] 74 at 84. See also *Reno v, American Civil Liberties Union*, 521 U.S. 844 (1997) (which invalidates a statute criminalizing the use of the internet to communicate "indecent" and "patently offensive" communication because the statute is overly broad). See also *Cantwell v. State of Connecticut*, 310 U.S. 296, (1940).

[269] The European Court of Human Rights has emphasized that it will, "scrutinise the legitimate aim advanced by the Government in connection with their claim that the matter constitutes a sensitive moral or ethical issue. It will examine whether it is open to the Government to rely on the grounds of morals in a case which concerns facets of the applicants' existence and identity, and the very essence of the right to freedom of expression." See, *Bayev and Others v. Russia*, (2017), *op. cit.,* note 57, para 66. Furthermore (*Bayev*, at para. 70): "It is true that popular sentiment may play an important role in the Court's assessment when it comes to the justification on the grounds of morals. However, there is an important difference between giving way to popular support in favour of extending the scope of the Convention guarantees and a situation where that support is relied on in order to narrow the scope of the substantive protection. The Court reiterates that it would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority."

[270] In the American case of *Schneider v. State of New Jersey*, 308 U.S. 147 (1939), it was held that there was a right to distribute leaflets even though the leafleting caused litter. In *Collin v. Chicago Park District*, 460 F.2d 746 (7th Cir. 1972), it was held that there was a right to assemble in open areas that the park officials had designated as picnic areas. In *Eugen Schmidberger, Internationale Transporte und Planzuge v. Republik Osterreich* (C-112/00, judgment of 12 June 2003), the Court of Justice of the European Union (hereinafter CJEU) held that allowing a demonstration which blocked the Brenner Motorway between Germany and Italy for almost 30 hours

affected by an assembly include, among others:[271] the right to privacy (protected by Article 17 of the ICCPR and Article 8 of the ECHR),[272] the right to peaceful enjoyment of one's possessions and property (protected by Article 1 of Protocol 1 to the ECHR),[273] the right to liberty and security of person (Article 9 of the ICCPR and Article 5 of the ECHR),[274] and the right to freedom of movement (Article 12 of the ICCPR and Article 2 of Protocol 4 to the ECHR). Some degree of disruption with respect to these rights must be tolerated if the essence of the right to peacefully assemble is not to be deprived of any meaning. Furthermore, as also noted at paragraphs 48 and 62, neither temporary disruption of vehicular or pedestrian traffic, nor opposition to an assembly, are of themselves legitimate reasons to impose restrictions on an assembly. Where a State restricts an assembly for the purpose of protecting the rights and freedoms of others, the relevant public authority should explain in detail:

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was *not* a disproportionate restriction on the free movement of goods under Article 28 EC Treaty. This was for three reasons: (1) the disruption was a relatively short duration and on an isolated occasion; (2) measures had been taken to limit the disruption caused; (3) excessive restrictions on the demonstration could have deprived the demonstrators of their rights to expression and assembly, and indeed possibly caused greater disruption. In the case of *Shell Netherlands v Greenpeace*, the Amsterdam District permitted protests to be held on privately owned property (garage forecourts) even where these disrupted the commercial activity of the garages (by blocking access to the petrol pumps). The Court noted that "[a] company such as Shell, which performs or wishes to perform activities that are controversial in society, and to which many people object, can and must expect that action will be taken to try to persuade it to change its views." While the Court did impose a number of stringent conditions on such protests, Shell's proprietary interests were not viewed as an automatic bar on protest activity. See, *Case number: 525686/KG ZA 12-1250*. The judgment (in Dutch) is available at: <http://uitspraken.rechtspraak.nl/#ljn/BX9310>. For a summary (in English) see, 'Dutch court rejects Shell protest ban' (5 October 2012), available at: <http://www.bbc.co.uk/news/world-europe-19853007>.

[271] Rights that may be claimed may also extend beyond those enumerated in the ICCPR or ECHR. However, insofar as other non-Convention rights are concerned, only 'indisputable imperatives' can justify the imposition of restrictions on public assemblies. See, for example, *Chassagnou v. France* (1999), *op. cit.,* note 240, para.113: "It is a different matter where restrictions are imposed on a right or freedom guaranteed by the Convention in order to protect 'rights and freedoms' not, as such, enunciated therein. In such a case only indisputable imperatives can justify interference with enjoyment of a Convention right." This clearly sets a high threshold: there must be a verifiable impact ('indisputable') on the lives of others requiring that objectively necessary ('imperative') steps be taken. It is not enough that restrictions are merely expedient, convenient or desirable.

[272] *Király and Dömötör v. Hungary*, Application No 10851/13, 17 January 2017, paras. 80-82. The right to 'private life' covers the physical and moral integrity of the person, see for example, *X and Y v. The Netherlands*, Application No 8978/80, 26 March 1985, para. 22. The State must not merely abstain from arbitrary interference with the individual, but also positively ensure *effective* respect for private life. This can extend even in the sphere of relations between individuals. Where it is claimed that a right to privacy is affected by freedom of assembly, the authority should seek to determine the validity of that claim, and the degree to which it should tolerate a temporary burden. The case of *Moreno Gómez v. Spain*, Application No 4142/02, 16 November 2004, might give some indication of the high threshold that must first be overcome before a violation of Article 8 can be established. In the case of *Frisby v. Schultz*, 487 U.S. 474 (1988), the court upheld a statute prohibiting protest activities focused on a private home because it was limited to activities that invaded the privacy of the home's occupants.

[273] See, for example, *Chassagnou and Others v. France* (1999), *op. cit.,* para. 108, note 240; *Gustafsson v. Sweden,* Application No 15573/89, 25 April 1996). The right to peacefully enjoy one's possessions has been strictly construed by the European Court of Human Rights so as to offer protection only to proprietary interests. Moreover, a particularly high threshold must first be met before the exercise of this right would justify restrictions on peaceful assemblies. Businesses, for example, benefit from being in public spaces and, as such, should be expected to tolerate alternative uses of that space. See also, however, the case of *Lloyd Corp., Ltd. v. Tanner*, 407 U.S. 551 (1972), where the court upheld the right of owners of a shopping center to exclude protesters pursuant to state trespass laws. However, in the U.S., states can define private property rights to include a right of access for protestors where the property has been opened to the general public, see *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74 (1980).

[274] Note, however, that Article 5 ECHR is concerned with the total deprivation of liberty, not with mere restrictions upon movement (which might be covered by Article 2 of Protocol 4 on the freedom of movement). This distinction between deprivation of, and mere restriction upon, liberty has been held to be 'one of degree or intensity, and not one of nature or substance'. See *Guzzardi v. Italy*, Application No 7367/76, 6 November 1980, para. 92, and *Ashingdane v. the United Kingdom*, Application No 8225/78, 28 May 1985, para. 41. See also *R (on the application of Laporte) v. Chief Constable of Gloucester Constabulary* [2006] UKHL 55; and *Austin and Saxby v. Commissioner of Police of the Metropolis* [2009] UKHL 5. For critique of the latter judgment, see David Mead, "Of Kettles, Cordons and Crowd Control: Austin v. Commissioner of Police for the Metropolis and the Meaning of 'Deprivation of Liberty" 3 *EHRLR* 376-394 (2009); Helen Fenwick, *Marginalising human rights: breach of the peace, "kettling", the Human Rights Act and public protest*. Public Law, 2009, pp. 737-765.

- which specific rights and freedoms of others are engaged in the particular circumstances;
- the extent to which the proposed assembly would, if unrestricted, interfere with these rights and freedoms;
- how any restrictions on the proposed assembly would serve to mitigate these interferences, and why less restrictive measures would not lead to the envisaged success.

The authorities should be allowed a margin of appreciation when assessing these issues. In particular, despite the fact that no violent act or crimes have occurred during an assembly, the intimidating character of the rallies may be taken into account by the authorities. What matters is that the repeated organisation of the rallies was capable of intimidating others and therefore of affecting their rights, especially in view of the location of the parades.

144. Assemblies should not be aimed at the destruction of the rights of others. International standards set limits on the exercise of the right to freedom of peaceful assembly when it is aimed at the destruction of other rights and freedoms. As indicated in Article 5(1) ICCPR and Article 17 ECHR, no state, group or person may engage in any activity or perform any act aimed at the destruction of the rights and freedoms set out in these instruments. This means, for example, that counter-demonstrations organized with the sole, main or additional purpose of physically disrupting or preventing another assembly are not permissible. As this intention may be very difficult to detect ahead of an assembly, it should be possible for the authorities to prohibit an assembly when based on previous experiences there appears a serious risk that it may disrupt or prevent another assembly.

Categories of Restrictions

145. **Time, Place and Manner restrictions.**[275] The types of restriction imposed on an assembly should in principle relate only to its 'time, place, and manner', not to the message that is being communicated (see para 149 below).[276] Unlike with content-based restrictions, where States hardly have a margin of appreciation, they enjoy a certain discretion in relation to time, place and manner restrictions.[277] For instance, they may proportionally regulate, restrict or prohibit occupation of the essential public space, such as main roads or entries to essential facilities, while offering suitable alternative, when possible.[278] However, blanket bans, including bans of assemblies at particular times, are intrinsically disproportionate, because they preclude consideration of the specific circumstances of each proposed assembly.[279]

[275] The limitation of restrictions to considerations of 'time, place, and manner' originates in United States jurisprudence, and describes restrictions which do not interfere with the content of the message communicated, but rather allow reasonable regulation of the modalities of the communication of that message.

[276] *Sáska v. Hungary* (2012), *op. cit.,* note 74, para. 21: "[f]or the Court, the right to freedom of assembly includes the right to choose the time, place and modalities of the assembly, within the limits established in paragraph 2 of Article 11."

[277] *Lashmankin and Others v. Russia*, (2017), *op. cit.,* note 50, para 417.

[278] See G./Germany (13079/87), decision by the European Commission on Human Rights: with reference to the criminal conviction of the applicant for having blocked a public road during a public demonstration, the Commission found no violation of Article 11 considering especially that the applicant had not been punished for his participation in the demonstration of 12 December 1982 as such, but for particular behaviour in the course of the demonstration, namely the blocking of a public road, thereby causing more obstruction than would normally arise from the exercise of the right of peaceful assembly.) See also *Barraco v. France*, *Nosov and Others v. Russia* Applications Nos 9117/04 and 10441/04, 20 February 2014.

[279] Joint Report of the UN Special Rapporteurs (2016), A/HRC/31/66, *op. cit.,* note 52, para. 30. At the same time, as noted in *Cox v. Louisiana,* 379 U.S. 536 (1965): "The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time."

146. **Restrictions on 'time' or 'duration'.** Restrictions imposed on the time or duration of an assembly must be based on an assessment of the individual circumstances of each case.[280] The touchstone established by the European Court of Human Rights is that demonstrators ought to be given sufficient opportunity to manifest their views.[281] In some cases, the protracted duration of an assembly may itself be integral to the message that the assembly is attempting to convey or to the effective expression of that message.

147. **Restrictions on 'place'**. At the core of the right to freedom of assembly is the ability of the assembly participants to choose the place where they can best communicate their message to their desired audience.[282] It would be disproportionate if authorities categorically excluded places suitable and open to the public as sites for peaceful assemblies.[283] The use of such suitable sites must always be assessed in the light of the circumstances of each case.[284] The fact that a message could also be expressed in another place, is by itself insufficient reason to require an assembly to be held elsewhere, even if that location is within sight and sound of the target audience.[285] This means that legislators may not exclude entire categories of locations for the holding of assemblies (such as certain types of buildings,[286]

[280] See, for example, *Çiloğlu and Others v. Turkey*, Application no. 73333/01, 6 March 2007, (in French only), in which the Court noted that unlawful weekly sit-ins (every Saturday morning for over three years) of around 60 people in front of a High School in Istanbul had become an almost permanent event which disrupted traffic and clearly caused a breach of the peace. It thus found that when dispersing the assembly, the authorities had reacted within the margin of appreciation afforded to States in such matters. Similarly, in *Cisse v. France* (2002), *op. cit.,* note 55, paras. 39-40, the evacuation of a church in Paris which a group of 200 illegal immigrants had occupied for approximately two months was held to constitute an interference (albeit justified on public health grounds, para.52) with the applicant's right to freedom of peaceful assembly. Also worth noting is the UK case concerning 'Aldermaston Women's Peace Camp' (AWPC) which, over the past 23 years, had established a camp on government owned land close to an Atomic Weapons Establishment. The women camped on the second weekend of every month during which time they held vigils, meetings and distributed leaflets. In the case of *Tabernacle v. Secretary of State for Defence* [2009], a 2007 by-law which attempted to prohibit camping in tents, caravans, trees or otherwise in 'controlled areas' was held to violate the appellant's rights to freedom of expression and assembly. The court noted that the particular manner and form of this protest (the camp) had acquired symbolic significance inseparable from its message.

[281] *Cissé v. France, op. cit., paras. 50-54 ;*, *cf. Éva Molnár v. Hungary (*2008), *op. cit.,* para. 43, note 7, para. 42, and *Barraco v. France,* (2009), *op. cit.,* note 24. In finding a violation of Article 11 ECHR in the case of *Balcik and Others v. Turkey* (2007), *op. cit.,* note 77, the Court noted that since the rally at issue in the case began at about noon and ended with the group's arrest within half an hour at 12.30 p.m., it was "particularly struck by the authorities' impatience in seeking to end the demonstration."

[282] See, for example, UN Human Rights Committee, *Turchenyak et al v. Belarus*, *op. cit.,* note 129 : 'The organizers of an assembly generally have the right to choose a location within sight and sound of their target audience.'

[283] See Report of the UN Special Rapporteur (2012), A/HRC/20/27, 21 May 2012, *op. cit.,* note 56, paras.39-41. As another example, see Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), para. 29.1 (English translation): 'Inelastic restrictions, which are determined in legal norms as absolute prohibitions, are very rarely regarded as the most considerate measures.' See also *United States v. Grace*, 461 U.S. 171, 103 (1983), which invalidates a statute banning displays of protest signs and banners on the public sidewalks and grounds adjacent to the U.S. Supreme Court for lack of appropriate justification; *New York Times v. United States,* 403 U.S. 713 (1971) and *Organization for a Better Austin v. Keefe,* 402 U.S. 415 (1971).

[284] Joint Report of UN Special Rapporteurs (2016), A/HRC/31/66, *op. cit.,* note 52, para. 30: "To this end, blanket bans, including bans on the exercise of the right in specific places […], are intrinsically disproportionate, because they preclude consideration of the specific circumstances of each proposed assembly." See also Council of Europe Commissioner for Human Rights, Observations on the human rights situation in Azerbaijan: an update on freedom of expression, freedom of association, freedom of assembly and the right to property, 23 April 2014, CommDH(2014)10, p. 4, about the banning of demonstrations in easily accessible places.

[285] Republic of Latvia Constitutional Court, Judgment in the matter No. 2006 - 03 - 0106 (23 November 2006) [paras.29.1 and 32; English translation]: "If protesting is envisaged to take place in the centre, then it is not possible to make the procession move through the outskirts so that it does not disrupt the movement of traffic…" *Schneider v. State of New Jersey*, 308 U.S. 147, 151-52 (1939) cited in footnote 69. ("[O]ne is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place."). See also, Armijo, Enrique, 'The Ample Alternative Channels Flaw in First Amendment Doctrine', 73 *Wash. & Lee L. Rev.* 1657 (2016).

[286] OSCE/ODIHR 10 February 2014, Opinion on Amendments to Certain Laws of Ukraine Passed on 16 January 2014, Opinion-Nr.: GEN -UKR/244/2014 [RJU], para. 59: "[…] imposing criminal liability for all activities that block access to public and private buildings, however temporary, would potentially criminalize any larger assembly that takes place near a building. At the same time, depending on the circumstances, smaller assemblies would also

including presidential palaces or parliaments,[287] hospitals,[288] schools and educational institutions).[289] The same applies to privately-owned spaces, where no restrictions beyond those which ordinarily apply to such spaces (for example, in buildings, fire codes, sanitation laws, escape routes, etc.) should be applied. This also includes prohibitions which exclude the use of the Internet as a place for holding an assembly, through shut-down or limitation of access thereto. If, however, having regard to all relevant factors of a specific case, the authorities reasonably conclude that it is necessary to change the place of an assembly, a suitable alternative place should be made available.[290] Any alternative location must be such that the message which the assembly seeks to convey may still be effectively communicated to those at whom it is directed – in other words, the assembly should still take place within 'sight and sound' of the target audience (see also paragraph 61 above, and 'simultaneous assemblies' at paragraph 78). Other means of conveying expression, such as the placement of video screens near the target audience of the assembly, are not adequate substitutes for the physical presence of assembly participants within sight and sound of the intended audience.

148. **Restrictions on 'manner'**. The physical conduct associated with a peaceful assembly may be regulated where necessary to safeguard legitimate interests of the State, the public or the rights of other individuals, provided that the regulation is unrelated to the content of the assembly's message. An example of 'manner' restrictions might relate to the use of sound amplification equipment, or lighting and visual effects,[291] or the erection of protest camps or other non-permanent constructions.[292] In this case, regulation may be appropriate because of the location or time of day for which the assembly is proposed. Such restrictions must likewise be proportionate, for example they may not render effective communication of the message of the assembly difficult or even impossible.[293]

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be affected, e.g. if there is only one access road to a particular government building which forms the target of the message of participants in a peaceful assembly.**"**

[287] OSCE/ODIHR Venice Commission Opinion on the Amendments to the Law of the Kyrgyz Republic on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely hold Rallies and Demonstrations (Strasbourg/Warsaw, 27 June 2008), Opinion-Nr.: FOA – KYR/111/2008), para. 26.

[288] *Yilmaz Yildiz and others v. Turkey*, Application No 4524/06, 14 October 2014, para. 43: "The Court observes that although the applicants gathered to demonstrate in an area that had been prohibited by the relevant authorities, their intention was to participate in a debate on matters of public interest, namely the transfer of SSK hospitals to the Ministry of Health. The participants held a peaceful demonstration and did not cause any disruptions in the entrance of the hospitals; they also allowed patients to enter the hospitals. Moreover, there is no evidence to suggest that the demonstrators either presented a danger to public order or engaged in acts of violence."

[289] OSCE/ODIHR Venice Commission Opinion on the Amendments to the Law of the Kyrgyz Republic on the Right of Citizens to Assemble Peaceably, Without Weapons, to Freely hold Rallies and Demonstrations (Strasbourg/Warsaw, 27 June 2008), Opinion-Nr.: FOA – KYR/111/2008), at paras. 23-28.

[290] See *Bay Area Peace Navy v. United States*, 914 F.2d 1224 (9th Cir. 1990), where a restriction preventing protestors from entering a government designated buffer zone was declared null and void because it denied protestors access to their audience.

[291] *Ward v. Rock Against Racism* 491 U.S. 781 (1989): "The city's sound amplification guideline is narrowly tailored to serve the substantial and content-neutral governmental interests of avoiding excessive sound volume and providing sufficient amplification within the bandshell concert-ground, and the guideline leaves open ample channels of communication. Accordingly, it is valid under the First Amendment as a reasonable regulation of the place and manner of expression."

[292] In this context, see *Frumkin v. Russia*, Application No 74568/12, 5 January 2016, para. 107: "The Court notes that although Article 11 of the Convention does not guarantee a right to set up a campsite at a location of one's choice, such temporary installations may in certain circumstances constitute a form of political expression, the restrictions of which must comply with the requirements of Article 10 § 2 of the Convention". See also, *Nosov and Others v. Russia* Applications Nos 9117/04 and 10441/04, 20 February 2014

[293] OSCE/ODIHR 10 February 2014, Opinion on Amendments to Certain Laws of Ukraine Passed on 16 January 2014, Opinion-Nr.: GEN -UKR/244/2014 [RJU], <http://www.legislationline.org/documents/id/18720>, para. 50: "[t]he amendments introduce a permission system for a number of means of organizing assemblies, meaning that any kind of structure or sound equipment used for assemblies, be it a more short-term structure such as a stage, or amplifiers, or a potentially longer-term structure such as tents, would require prior authorization by the interior authorities. Such regulation significantly affects the ability to organize large-scale assemblies, which rely on stages, and sound amplifiers to convey their message"; and para. 52: "[t]he blanket limitation of such devices,

Article 1, Decree of the President in force of Law 'On procedure of organization and conduct of peaceful assemblies, mass-meetings, processions, pickets and demonstrations in the Republic of Kazakhstan' (1995) with changes from 20.12.2004
…the forms of expression of public, group and personal interests and protest referred to in the legislation as assemblies, meetings, processions and demonstrations shall also include hunger-strikes in public places and putting up yurts, tents, other constructions and picketing.

Section 11, Assembly Act, Finland (1999, as amended 2001)
In a public meeting, banners, insignia, loudspeakers and other regular meeting equipment may be used and temporary constructions erected. In this event, the arranger shall see to it that no danger or unreasonable inconvenience or damage is thereby caused to the participants, bystanders or the environment.

149. **The potential illegitimacy of content-based restrictions.** Speech and other forms of expression, including assemblies, enjoy protection under Article 11 ECHR and Article 21 ICCPR. In principle, therefore, any restrictions on assemblies should not be based on the content of the message(s) that they seek to communicate. Moreover, criticism of government policies or State officials' actions should never, of itself, constitute a sufficient ground for imposing restrictions on freedom of peaceful assembly – the European Court of Human Rights has often emphasized that the 'limits of permissible criticism are wider with regard to the government than in relation to a private citizen.'[294] This also applies to assemblies expressing views that may 'offend, shock or disturb' the State or any sector of the population.[295] The ECtHR has also stated that it is "unacceptable from the standpoint of Article 11 of the Convention that an interference with the right to freedom of peaceful assembly could be justified simply on the basis of the authorities' own view of the merits of a particular protest."[296] Similar considerations apply with regard to imparting information or ideas contesting the established order or advocating for a peaceful change of the Constitution or legislation by non-violent means.[297] It is the obligation of the State not only to refrain in principle from content based restrictions itself but also to protect against restriction by third party actors which may include ISPs.

Section 5, Public Assemblies Act, the Netherlands (1988)

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which practically renders every large-scale public assembly dependent on the authorization of the police, is a disproportionate..."

[296] *Hyde Park and Others v. Moldova No.1* (2009), *op. cit.,* note 173, para. 26. Here, an event to protest against Moldova's electronic voting in the Eurovision Song Contest was prohibited on the basis that "the Parliament was not responsible for organising the Eurovision song contest, which took place in Ukraine and the protest was groundless because it concerned past events." In finding a violation, the Court held that "[s]uch reasons cannot be considered compatible with the requirements of Article 11 of the Convention …" Cf., *Primov and Others v. Russia*, (2014), *op. cit.,* note 30, para. 137: "The Government should not have the power to ban a demonstration because they consider that the demonstrators' "message" is wrong. It is especially so where the main target of criticism is the very same authority which has the power to authorise or deny the public gathering, as in the case at hand. Content-based restrictions on the freedom of assembly should be subjected to the most serious scrutiny by this Court". Cf. also the position of the UN Human Rights Committee which stated that the restriction imposed on a person's right to organize a public assembly *on a specific subject* is "one of the most serious interferences with the freedom of peaceful assembly"; UN Human Rights Committee, *Nikolai Alekseev v. Russian Federation*, *op. cit.,* note 256,, para. 9.6. See also in the U.S., *Ward v. Rock Against Racism*, *op. cit.,* note 241; *Edwards v. S. Carolina*, *op. cit.,* note 219.

[297] *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), *op. cit.,* note 16, paras. 97-103: "the fact that a group of persons calls for autonomy or even requests secession of part of the country's territory – thus demanding fundamental constitutional and territorial changes – cannot automatically justify a prohibition of its assemblies. Demanding territorial changes in speeches and demonstrations does not automatically amount to a threat to the country's territorial integrity and national security. […] In a democratic society based on the rule of law, political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means." For similar examples, see *Women on Waves v. Portugal* (2009), *op. cit.,* note 26, paras. 28-29 and 41-42 (regarding the decriminalization of abortion), *Sidiropoulos and others v. Greece*, Application No 26695/95, 10 July 1998), paras. 44-45, regarding the assertion of a minority identity), and *Identoba and Others v. Georgia* (2015), *op. cit.,* note 114, para. 97 (regarding campaigns and awareness-raising of LGBTI rights).

A condition, restriction or prohibition may not relate to […] the thoughts or feelings to be expressed. [However, if the effect of the content is such that uncontrollable violence will ensue than restriction and prohibition is allowed]

District of Columbia, First Amendment Assemblies Act 2004, section 104
[…] (c) No time, place, or manner restriction regarding a First Amendment assembly shall be based on the content of the beliefs expressed or anticipated to be expressed during the assembly, or on factors such as the attire or appearance of persons participating or expected to participate in an assembly, nor may such restrictions favour non-First Amendment activities over First Amendment activities.

150. Incitement to imminent violence should be prohibited. While expression should normally still be protected even if it is hostile or insulting to other individuals, groups or particular sections of society, advocacy of national, racial or religious hatred that constitutes incitement to violence may be prohibited by law. [298] Restrictions imposed on the visual or audible content of assemblies for this reason need to face heightened scrutiny – they should be necessary in a democratic society and proportionate to the legitimate aim that they pursue.[299]

151. **Restrictions in the context of combating terrorism and violent extremism should not be interpreted broadly**. Domestic legislation designed to counter 'terrorism' or 'violent extremism' must not impose any limitations on fundamental rights and freedoms, including the right to freedom of peaceful assembly, that are not strictly necessary for the protection of national security and the rights and freedoms of others.[300] Any such legislation should therefore clearly define the term 'terrorism' (or associated terms such as 'extremism') so as not to include a wide range of activities (for example, the organization of, or participation in, assemblies).[301] Moreover, the designation of specific locations as prohibited areas, even on grounds of national security, constitutes a blanket prohibition. This is likely to be regarded as a disproportionate interference with the right to freedom of assembly because it precludes consideration of the specific circumstances (see para 133 above). In like manner, reliance on counter-terrorism powers (conceivably including stop and search, administrative detention and border control measures) must be shown to be necessary and strictly proportionate *in each*

[298] Article 20(2) ICCPR. See also Article 4 a) of the CERD, which requires states to declare all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, as well as any assistance to racist activities, as offences punishable by law.

[299] As the Human Rights Committee has noted in the context of freedom of expression, "Articles 19 and 20 [ICCPR] are compatible with and complement each other. The acts that are addressed in article 20 are all subject to restriction pursuant to article 19, paragraph 3. As such, a limitation that is justified on the basis of article 20 must also comply with article 19, paragraph 3. What distinguishes the acts addressed in article 20 from other acts that may be subject to restriction under article 19, paragraph 3, is that for the acts addressed in article 20, the Covenant indicates the specific response required from the State: their prohibition by law. It is only to this extent that article 20 may be considered as *lex specialis* with regard to article 19. It is only with regard to the specific forms of expression indicated in article 20 that States parties are obliged to have legal prohibitions. In every case in which the State restricts freedom of expression it is necessary to justify the prohibitions and their provisions in strict conformity with article 19." Human Rights Committee, General Comment No. 34, *op. cit.,* note 11, para. 50-52.

[300] The "Ten Basic Human Rights Standards for Law Enforcement Officials" (1998) adopted by Amnesty International, also provide that exceptional circumstances such as a state of emergency or any other public emergency cannot justify any departure from these standards.

[301] UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, "Report on Ten Areas of Best Practices in Countering Terrorism" A/HRC/16/51, 22 December 2010, paras. 27-28 (and Practices 7 and 8), where the Special Rapporteur notes that it is important for States to ensure that terrorism and associated offences are properly defined, accessible, formulated with precision, non-discriminatory, and non-retroactive. See also Report of the UN Special Rapporteur (2012), UN Doc. A/HRC/20/27, 21 May 2012, para. 84(d) which recommends "[t]o strictly and narrowly define the offence of terrorism in line with international law". See also UN Human Rights Committee, General Comment No. 34, *op. cit.,* note 11, para. 46, where it is stated that "[s]uch offences as 'encouragement of terrorism', and "extremist activity" as well as offences of 'praising', 'glorifying', or 'justifying' terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression"; and OSCE/ODIHR, *Guidebook on Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism* (Warsaw: ODIHR, 2014), p. 27-30.

application. Any discretionary counter-terrorism powers afforded to law enforcement officials should be narrowly framed and include adequate safeguards to reduce the potential for arbitrariness. Such safeguards might include prior judicial review, the right to appeal against state actions, an express limitation to permissible detention periods, and a requirement that law enforcement officers have 'reasonable suspicion' that one's activity is connected to 'terrorism' before certain powers may be invoked.[302] Furthermore, mere expressions of opinion, individually or as part of a peaceful assembly, should not be the object of counter-terrorism measures if they do not directly incite violence or other unlawful acts (e.g. unlawful incitement to hatred).[303] This means that laws prohibiting the public provocation of terrorism[304] should establish criminal liability only for activities which necessarily and directly imply the use or threat of violence with the intention to spread fear and provoke terror, where there is both an *intention* to incite violence/unlawful acts and a *likelihood* that such violence/unlawful acts will occur.[305] Counterterrorism laws should not be abused to limit the protest activities of political opponents or critical civil society activists.

Principle 8, Berlin Declaration of the International Commission of Jurists on 'Upholding Human Rights and the Rule of Law in Combating Terrorism'

In the implementation of counter-terrorism measures, States must respect and safeguard fundamental rights and freedoms, including freedom of expression, religion, conscience or belief, association, and assembly, and the peaceful pursuit of the right to self-determination, as well as the right to privacy, which is of particular concern in the sphere of intelligence gathering and dissemination. All restrictions on fundamental rights must be necessary and proportionate.

152. **Restricting symbolic displays of insignia and other objects.** Display of symbols such as flags, insignia, and other expressive items is protected communication that is entitled to the same freedom of speech and assembly protections as other forms of communication. Even where the insignia, uniforms, costumes, emblems, music, flags, signs or banners played or displayed during an assembly conjure memories of a painful historical

[302] See, for example, *Gillan and Quinton v. the United Kingdom* (2010), *op. cit.,* note 172, paras. 76-87, in which police stop and search powers under section 44 of the United Kingdom's *Terrorism Act* 2000 were held not to be 'in accordance with the law' for the purposes of Article 8 ECHR (the right to private and family life). This was in part due to the breadth of the powers (the exercise of which did not require reasonable suspicion on the part of the police officer) and also the lack of adequate safeguards against arbitrariness: "such a widely framed power could be misused against demonstrators and protestors." See also paragraphs 90 *et seq*. ('Legality') and paragraphs 177 and 219 (regarding police stop and search powers).

[303] *Ibid.* p. 42-43. UN Human Rights Committee, General Comment 34, *op. cit.,* note 11, states (at para. 46) that, "States parties should ensure that counter-terrorism measures are compatible with paragraph 3. Such offences as "encouragement of terrorism" and "extremist activity" as well as offences of "praising", "glorifying", or "justifying" terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression", citing the Committee's Concluding observations on the United Kingdom of Great Britain and Northern Ireland (CCPR/C/GBR/CO/6) and its Concluding observations on the Russian Federation (CCPR/CO/79/RUS).

[304] UN Security Council Resolution 1624 (2005) called on states to prohibit incitement to commit terrorist acts (though not expressly requiring a *criminal* law prohibition) – see further, Yael Ronen, "Incitement to Terrorist Acts and International Law", *Leiden Journal of International Law,* 2010, p648. Also, Article 5 of the Council of Europe Convention on the Prevention of Terrorism (2005) requires each State Party to "adopt such measures as may be necessary to establish public provocation to commit a terrorist offence … when committed unlawfully and intentionally, as a criminal offence under its domestic law" where "public provocation to commit a terrorist offence' is defined as 'the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed." See too, the EU Council Framework Decision on combating terrorism (2008/919/JHA of 28 November 2008 amending Framework Decision 2002/474/JHA).

[305] See, Stefan Sottiauz, "Leroy v. France: Apology of Terrorism and the Malaise of the European Court of Human Rights' Free Speech Jurisprudence", 3 EHRLR 415, 422 (2009). See also, Report of the UN Secretary-General on the protection of human rights and fundamental freedoms while countering terrorism, A/63/337, 28 August 2008, para. 62. The International Commission of Jurists has noted that "domestic provisions for 'incitement' appear to have introduced a much wider array of offences. … [Our] … attention was drawn to 'new' offences such as 'apologia' or 'praising', 'glorification or indirect encouragement', 'public justification', and the 'promotion' of terrorist acts." See, International Commission of Jurists, "Assessing Damage, Urging Action: Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights", (February 16, 2009), p.128.

past, this in general should not of itself be a reason to interfere with the right to freedom of peaceful assembly.[306] In cases where the respective insignia or symbols are prohibited from being displayed by law, law enforcement should first attempt to confiscate the prohibited items, while letting the assembly proceed (provided it continues to remain peaceful). On the other hand, where this leads to violence, or where such symbols are intrinsically and exclusively associated with acts of physical violence or expressions of racism or other forms of fundamentalism, the assembly might legitimately be restricted to prevent the occurrence or reoccurrence of such violence, unlawful intimidation or other significant violations of valid criminal laws.

153. **No blanket or routine restrictions on the wearing of masks and face-coverings.** The wearing of masks and face coverings at assemblies for expressive purposes is a form of communication protected by the rights to freedom of speech and assembly. It may occur in order to express particular viewpoints or religious beliefs or to protect an assembly participant from retaliation.[307] The wearing of masks or other face coverings at a peaceful assembly should not be prohibited where there is no demonstrable evidence of imminent violence. An individual should not be required to remove a mask unless his/her conduct creates probable cause for arrest and the face covering prevents his/her identification.[308]

154. **Restrictions or prohibition of weapons and similar objects and substances.** Given that international human rights law protects only peaceful assemblies, participants in an assembly may be banned from carrying weapons and weapon-like objects. The authorities may establish control points to check whether participants carry weapons if there is sufficient evidence that they may do so. However, they should do so based on an individualized suspicion, without treating everyone attending the assembly as suspects, as this might have a chilling effect on those who want to exercise their right to assemble peacefully. Public authorities should however always distinguish between items that are generally recognized as weapons and objects not normally considered to be weapons, but which may in some contexts be used as such. Such objects should be permitted during an assembly, unless there are clear indications that they will be used for acts of violence.

Restrictions on Organisers

155. **Organizers should not be required to pay for the facilitation of peaceful assemblies by the State.** State authorities should not make the policing or facilitation of a peaceful assembly contingent on the payment of the respective costs by the organizers. The facilitation of assemblies is an inherent part of the role of law enforcement and needs to be undertaken by the state regardless of the nature, size or other circumstances surrounding an assembly. Moreover, organisers of public assemblies should not be required to obtain public

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[306] *Fáber v. Hungary* (2012), *op. cit.,* note 31, paras. 56-59; cf. also the 'Red Star' case of *Vajnai v. Hungary*, Application No 33629/06, 8 July 2008, para. 49, where the Court found that there was "no real and present danger of any political movement or party restoring the Communist dictatorship."; cf. *Lehideux and Isorni v. France,* (55/1997/839/1045)*,* 23 September 1998. In the case of *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), *op. cit.,* para. 73, note 16, the Court rejected the Bulgarian government's assertion that national security concerns arose, noting that "the context of the difficult transition from totalitarian regimes to democracy, and due to the attendant economic and political crisis, tensions between cohabiting communities … were particularly explosive." See also *Association of Citizens Radko & Paunkovski v. the Former Yugoslav Republic of Macedonia*, Application No 74651/01, 15 January 2009.

[307] See also Report of the UN Special Rapporteur (2014), A/HRC/26/29, 14 April 204, *op. cit.,* note 138, paras. 32-33. For a discussion of this issue, see also Network for Policing Monitoring, 22 May 2015, "Why Cover up? The need for Protest Anonymity", <https://netpol.org/2015/05/22/why-cover-up-the-case-for-protest-anonymity/>.

[308] See, for example, the Polish Constitutional Court judgment of 10 July 2004 (Kp 1/04); *Ku Klux Klan v. Kerik*, 356 F.3d 197 (2d Cir. 2004) (upholds an anti-mask statute where use of masks had no expressive value); *Ryan v. Cnty. of DuPage*, 45 F.3d 1090 (7th Cir. 1995) upholds the prohibition of the use of masks where the mask implied intimidation). However, see *City of Dayton v. Esrati*, 125 Ohio App. 3d 60, 707 N.E.2d 1140 (1997) (overturning a conviction for wearing a "ninja" mask at a government commission meeting because the prosecution was based on the purely expressive nature of the conduct).

liability insurance prior to holding their event. Such a requirement conditions the right to freedom of assembly on the ability of organizers or representatives to obtain insurance on the commercial, profit-making insurance market. Obliging assembly organisers to pay such costs would create a significant deterrent for those wishing to enjoy their right to freedom of peaceful assembly and is likely to be prohibitively expensive.

Sweden, Public Order Act (1993:1617), chapter 2, section 16
Conditions (set by police authority) may not lead to an organizer being burdened with unnecessary costs or otherwise unnecessarily impede organizing an assembly or event.
Russia, Federal Law on Rallies, Meetings, Demonstrations, Marches and Picketing, No. 54-FZ, 2004 (as amended in 2016), article 18
Provision on conditions for holding a public event
[…] (3) The maintenance of public order, regulation of road traffic, sanitary and medical service with the objective of ensuring the holding of the public event shall be carried out on a free basis.
Kyrgyzstan, The Law of the Kyrgyz Republic on Peaceful Assemblies, article 6
Responsibilities of the Interior Bodies
The interior bodies: […] 8 assist in provision of medical care and safe evacuation from the location of the peaceful assembly

156. **A requirement to steward assemblies should not be imposed.** 'Stewards' and 'marshals' (the terms are often used interchangeably) are individuals who assist the organiser in facilitating an assembly.[309] Stewards typically work in cooperation with assembly organizers to facilitate the event and to help ensure compliance with any lawfully imposed restrictions. Their primary role is to guide, orient, explain, and give information to assembly participants, as well as to identify potential risks and hazards before and during an assembly. While the presence of stewards may lead law enforcement authorities to see less need for a heavy police presence, stewards should not be regarded as a substitute for an adequate presence of law enforcement personnel, as the State remains under a positive obligation to provide adequately resourced policing arrangements necessary for maintaining public order and safety.

157. **No legal obligation to employ commercial stewards.** In some jurisdictions, it is commonplace for professional stewards or private security firms to be contracted and paid to provide stewarding for assemblies. However, there should be no legal obligation requiring organisers to pay for stewarding or security arrangements. Overall, private security arrangements should never absolve the State from the duty to facilitate an assembly and make appropriate arrangements for policing such gatherings. In particular, the holding of assemblies should never be made contingent on the ability of organizers or participants to hire stewards, as this would constitute an excessive interference with their freedom of peaceful assembly (and would essentially curtail the organization of assemblies by those unable to pay).[310] While there is a practice of sharing costs for security in the case of some non-expressive mass events (e.g. commercial concerts, football matches or other commercial activities), these are born out of the specific character of such events. Generally, law enforcement agencies should work in partnership with event stewards, and each must have a clear understanding of their respective roles.

A Human Rights-based Approach to Policing Assemblies

158. **Human rights-based policing.** Law enforcement agencies should adopt a human rights-based approach to all aspects of the planning, preparation and policing of assemblies. This requires that they take into consideration and are fully aware of their duty to facilitate, enable and protect the right to freedom of peaceful assembly. Law enforcement officials

[309] For example, Article 3, Law on Assemblage and Manifestations in the Republic of Georgia (1997, as amended 2009) defines separate roles for 'Principal', 'Trustee', 'Organiser', and 'Responsible Persons'.
[310] See, for example, Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at para.34.4 (English translation): "… The requirement to appoint extra keepers of public order in all the cases, when peaceful process of the activity is endangered, exceeds the extent of the collaboration duty of a person."

should be appropriately trained to deal with public gatherings and on how to adequately prioritize human rights.[311]

159. **Duty to visibly wear or display individual identification.** Law enforcement personnel should visibly wear or display some form of identification (such as a nameplate or number) on their uniform and/or headgear during assemblies.[312] Such identifying information should not be removed or covered during the event. 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.[313]

160. **The need to ensure the health and safety of law enforcement personnel.** In the fulfilment of their obligation to protect human rights, law-enforcement personnel should pay regard to the rights, health and safety of police officers and other personnel. On occasion, law-enforcement officers may also suffer the emotional, physical and behavioural consequences of post traumatic or critical-incident stress. It is therefore the duty of the leadership of law enforcement agencies to ensure that their personnel get sufficient rest and avoid excessive shift durations that might affect the resilience of officers to meet the challenges they face.[314]

161. **Duty to adequately prepare for assemblies and engage in proper operational planning.** Once law enforcement agencies become aware of plans to hold an assembly they should prepare as far in advance as possible, to ensure the smooth conduct of the event.[315] They will need to be aware of the estimated number of persons, planned location and/or route, the purpose of the assembly and, if possible, of the different organizing groups involved. This will help law enforcement officials assess how a particular assembly needs to be policed, in particular how many personnel are required, and which other measures need to be taken (e.g. blocking of roads, additional equipment, etc.). This could also include special protection measures for the organizers and/or participants, which may become necessary due to the circumstances in which the assembly is held.[316]

162. **Post-event debriefing of law enforcement officials.** Post-event debriefing may usefully address a number of specific matters including human rights issues, health and safety considerations, media safety, community impact considerations, and operational planning and risk assessment. Other topics discussed during these de-briefings include communications, command issues and decision-making, tactics, resources and equipment, and future training needs. Event organisers should be invited to participate in debriefing sessions held by law enforcement officials after the assembly.

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[311] See OSCE/ODIHR Human Rights Handbook on policing assemblies, 2016.

[312] See Council of Europe Commissioner for Human Rights, Report by Nils Muižnieks following his visit to Spain from 3 to 7 June 2013, CommDH(2013)18, para. 149.

[313] See the European Code of Police Ethics, Recommendation Rec(2001)10, adopted by the Committee of Ministers of the Council of Europe on 19 September 2001, para. 45 and related explanatory memorandum, which state that during police interventions, police personnel shall normally be in a position to give evidence of their police status and professional identity, "as otherwise personal accountability, seen from the perspective of the public, becomes an empty notion". The identification of the police officer does not, however, imply that his/her name will be revealed. In the case of *Izci v. Turkey* (application no. 42606/05, 23 July 2013. the police officers had hidden their identity numbers to avoid recognition; the failure of the national authorities to investigate the broader issues relating to the planning and carrying out of the police actions and resulted in the police officers benefiting from hiding their identification numbers, as the investigations had been delayed and the proceedings had been discontinued on account of the statute of limitation. Furthermore, the police officers' superiors were also not called to account. The Court found a violation of the procedural aspects of Article 3 ECHR on account of the serious failures of the judicial authorities in establishing the true facts of the incident and in searching for the perpetrators, coupled with their failure to expedite the proceedings, which resulted in their becoming time-barred.

[314] See Council of Europe Commissioner for Human Rights, Memorandum on maintaining public order and freedom of assembly in the context of the "yellow vest" movement in France, CommDH(2019)8, 26 February 2019, para. 33.

163. **The role of new technologies in the organization of assemblies.** New technologies play an important role in the organization of assemblies; social media and similar types of communication ensure that assemblies can be organized almost immediately, thus often providing authorities with little time to plan ahead. In the case of smaller gatherings, this will not be a problem, but it may become challenging to manage and police mass demonstrations that gather suddenly. If the police have not had an opportunity to plan for the event and allocate resources, an immediate police response may still be required. In general, the police should have contingency plans in place to cover such situations.[317] Oftentimes, authorities may only find out about such assemblies because they trawled the Internet for relevant information. In such cases, it is important that any information gathered in this manner is used for the sole purpose of police preparedness and to prevent disorder during larger assemblies, and not for purposes of general profiling or monitoring or even surveillance of the activities of targeted individuals or groups.

Duty to establish effective channels of communication

164. **Clear command structures.** Clearly identifiable command structures and well defined operational responsibilities enable proper coordination between law enforcement personnel and between law enforcement agencies and the assembly organisers before and during the event and help ensure accountability for operational decisions. The responsible public authority must be adequately staffed and resourced to enable it to effectively fulfil its obligations in a way that enhances co-operation between the assembly organiser and state authorities.

165. **Police functions should not be delegated to third parties.** Assemblies should always be policed by regular law enforcement personnel, and not by members of the armed forces (including military police) who are not trained for such tasks, so as to avoid a possible escalation of violence.[318] The same applies to private security companies.[319] In this respect, it is important that state agencies retain the monopoly on the use of legitimate force in a given country.[320] Thus, private security firms may engage in services offering security for assets and valuables, but should not be employed to augment or supplant state obligations in the area of policing, as the State's responsibility for the protection of human rights, and of public order per se, is a non-delegable duty.[321] Where legislation permits the operation of private security firms, their competences and functions need to be regulated in detail, as well as the types of weapons and materials that these companies are allowed to use,[322] proper oversight mechanisms, licensing procedures and criteria. Likewise, legislation should specify the selection and training requirements that individuals hired by such firms should undergo.[323]

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[318] Inter-American Commission on Human Rights, "Report on Citizen Security and Human Rights", OEA/Ser.L/V/II. Doc. 57, 31 December 2009. In this report, the Commission makes the distinction between internal security as a function for the police, and national defense as a function for the armed forces, as it considers them to be "two substantively different institutions, insofar as the purposes for which they were created and their training and preparation are concerned". It is thus advisable to avoid the intervention of the armed forces in matters of internal security since it carries a risk of human rights violations, para. 101 (citing the IACHR, Report on the Situation of Human Rights in Venezuela, paragraph 272).

[319] See Council of Europe Commissioner for Human Rights, Report by Nils Muižnieks following his visit to Ukraine from 4 to 10 February 2014, CommDH(2014)7, para.70, on the co-operation with civilians for policing of demonstrations.

[320] *Ibid*, para. 72.

[321] *Ibid*, para. 73.

[322] See UN Office for Drugs and Crime and UN Office of the High Commissioner for Human Rights, "Resource Book on the Use of Force and Firearms in Law Enforcement", p. 100, which also talks of standards, licensing and record-keeping with respect to firearms (including storage); see also, Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions on the right to life and the use of force by private security providers in law enforcement contexts, UN Doc. A/HRC/32/39, 6 May 2016.

[323] Inter-American Commission on Human Rights, *op. cit.*, para. 73.

166. **Effective inter-agency communication channels.** In order to properly facilitate a peaceful assembly, law enforcement officials, and other public authorities, including public safety agencies (fire and ambulance services, for example), must be able to communicate with one another and exchange data during public assemblies. It is also good practice for assembly organisers to cooperate with these agencies prior to and during an assembly as much as possible. Thorough inter-agency contingency planning can help ensure that lines of communication are maintained even in the case of unforeseen events.[324]

167. **Availability of effective channels of communication for assembly organisers**. It is essential that law enforcement authorities conduct sufficient outreach prior to assemblies taking place. They should contact any known assembly organizers early on, to learn more about the manner in which the organizers plan to conduct the assembly. Such outreach measures may help establish trust and ensure that there are no unnecessary surprises at a later stage. Where possible, it is good practice for law enforcement officials to agree with organisers of assemblies on the necessary security and public safety measures to be put in place prior to the event. Such discussions may, for example, cover stewarding arrangements (see paragraph 157) and the size, positioning and visibility of the police deployment). Discussions might also focus upon contingency plans for specific locations or landmarks (such as monuments, transport facilities or hazardous sites), or upon particular concerns of the police or the organisers.[325] At the same time, while it is a good practice for public authorities to reach out to organizers or participants, the latter should not be under any obligation to meet with law enforcement prior to or during an assembly. Should the organizers refuse to meet, then this should not influence the way in which an assembly is managed and policed by the State, let alone negatively affect the facilitative approach of the authorities. On the other hand, should the organisers be willing to cooperate with the police, the latter must offer cooperative talks.

168. **Point of contact for assembly organizers.** There should be a designated contact person or team within the responsible law enforcement agency whom organizers can liaise with before or during an assembly. Relevant contact details of the police contact point should be widely advertised.[326] This person or team should serve as a contact point, and should not conduct other policing tasks, such as intelligence gathering, that could potentially restrict or affect the rights of the organizers or protesters, and fuel mistrust.[327] Law enforcement officers should outline their intentions to the organisers, representatives and participants prior to the assembly in order to defuse tensions and reduce the risk of an escalation of the situation.

169. **Dialogue and mediation procedures.** The designated public authorities and law enforcement officials should make every effort to reach a mutual agreement with the organizers of an assembly on the time, place, and manner of the event. Mediation procedures may be helpful to ensure that such dialogue results in a solution that is acceptable to all parties. Such procedures should be conducted on a purely voluntary basis and are usually best mediated by individuals or organizations not affiliated with either the state authorities, or the organizers. Mediation is usually most successful when conducted at the earliest possible opportunity, and often helps prevent the escalation of conflicts between the State and the organizers, and the ensuing imposition of potentially arbitrary or

[324] See OSCE, *Good Practices in Building Police-Public Partnerships by the Senior Police Adviser to the OSCE Secretary General* (2008).

[325] For example, the organiser may fear that a heavy police presence in a particular location would be perceived by participants as unnecessarily confrontational, and might thus request that the police maintain low visibility#

[326] Joint Committee on Human Rights, Demonstrating Respect for Rights? Follow-up (London: HMSO, HL Paper 141/ HC 522, 14 July 2009), at para.14.

[327] Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, Addendum: Mission to the United Kingdom of Great Britain and Northern Ireland, A/HRC/23/39/Add.1, 17 June 2013.

unnecessary restrictions. Law enforcement officers should send clear messages before and during assemblies that inform organizers and participants of the overall approach that the police will take in the management of the assembly (no surprises policy), to help reduce the potential for conflict escalation.[328]

Extract from the 2016 OSCE/ODIHR Human Rights Handbook on Policing Assemblies, p. 52:
The police should attempt to contact the organizers once they are made aware of an intended assembly, even in cases where they were not notified. Communication is a two-way street – dialogue will allow the police to highlight any concerns they may have for the planned assembly and to understand the needs and concerns of the organizer. One good practice is for the strategic commander to identify, early on, an officer to build trust with the organizers throughout the planning process and to provide the organizer with a link to the operational and tactical commanders, when necessary. It may also be appropriate to invite the assembly organizer to meet with the command team, so that any concerns can be addressed and trust built for future assemblies. During the event, police commanders will gather information through communication with organizers and what they can see on the ground or via camera. Monitoring and communicating through social media (e.g., Twitter and Facebook) about the assembly can be a useful tool for the police. Social media can be used not only to gain situational awareness, but also to send out event updates, to re-assure and counter potential misinformation.

170. **Duty to facilitate peaceful assemblies that do not have identified organisers.** While most assemblies have one or more individuals organizing the event, an identifiable organiser is not always part of the planning of an assembly. Assemblies should be facilitated by police whether they have a formal or named organizer or not. The increased use of social media allows assemblies to be organised in a more informal manner but the absence of an identifiable organizer does not diminish the protection afforded by the right to freedom of assembly to all expressive gatherings. Where there are no formal organizers of an assembly, public communication tools such as the media and social media can be used to inform participants about the police's preparations to facilitate the event. In such cases the authorities should communicate with all participants in an assembly through clear and audible statements, amplified by bullhorns or other sound equipment if necessary (see also para 124 above, 'Voluntary participation of organizers in pre-event planning').

171. **Duty to facilitate assemblies without advance notification or that deviate from the terms of notification**. The authorities must take reasonable and appropriate measures to facilitate assemblies that are convened at short notice or in response to an urgent or emerging situation (including spontaneous assemblies, flash mobs and non-notified assemblies) as long as they are peaceful in intent and execution.[329] The European Court of Human Rights has stated that 'a decision to disband assemblies solely because of the

[328] See "Recommendations for policing political manifestations in Europe", May 2013, produced by the GODIAC project (Good practice for dialogue and communication as strategic principles for policing political manifestations in Europe), a project managed by the Swedish National Police Board, pp. 42-43, which gave an example where mounted and foot officers were deployed to separate a group of counter protesters who had engaged in verbal aggression and used banners with abusive language. The intervention gave a clear sign that such behaviour would not be tolerated, while at the same time, dialogue officers were deployed to interact with those counter protesters behaving appropriately to reassure them and explain the police action. See also a publication by Her Majesty's Chief Inspector of the Constabulary (HMIC), *Adapting to Protest: Nurturing the British Model of Policing* (London: HMIC, November 2009), p.54. Moreover, in one UK example, the Metropolitan Police Service used Bluetooth messaging as a means to communicate with protesters during the Tamil protests in 2009, 'explaining the policing approach and stating their intention not to disperse protesters and to allow the protest to continue. See Joint Committee on Human Rights, Demonstrating Respect for Rights: A Human Rights Approach to Policing Protest? Follow-up: Government's Response to the Committee's Twenty-Second Report of Session 2008-09 (London: HMSO, HL Paper 45; HC 328, 3 February 2010) at p.7.

[329] In the case of *Plattform 'Ärzte für das Leben' v. Austria*, (1988), *op. cit.,* note 51, in finding that the authorities had *not* violated the applicant's right to freedom of peaceful assembly by failing to take reasonable and appropriate measures to protect them from counter-demonstrators, the Court took into consideration the fact that (para. 37): "a large number of uniformed and plain-clothes policemen had been deployed along the route originally planned, and the police representatives did not refuse the applicant association their protection even after it decided to change the route despite their objections."

absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction of freedom of peaceful assembly.'[330] The same applies if a small assembly is scheduled to take place and ends up being larger than expected due to an unexpectedly high turnout or continuing past the agreed or specified time for the ending of the assembly.

Digital image recording by the authorities

172. **Overt and covert surveillance of assembly participants should be strictly regulated and should follow a published policy.** Digital images of organizers and participants in an assembly should not be recorded except where specifically authorized by law and necessary in cases where there is probable cause to believe that the planners, organizers or participants will engage in serious unlawful activity. In general, intrusive overt or covert surveillance methods should only be applied where there is clear evidence that imminent unlawful activities, such as violence or use of fire arms are planned to take place during an assembly.[331] The use of image recording for the purpose of identification (including facial recognition software)[332] should be confined to those circumstances where criminal offences are actually taking place, or where there is a reasonable suspicion of imminent criminal behaviour. In all situations, there should be adequate safeguards against abuse.[333] The taking and retention of digital imagery for purposes of identifying persons engaged in lawful activities, or the retention of data extracted from such images (such as details of an individual's presence at an assembly) in a permanent or systematic record may give rise to violations of the right to privacy.[334] Moreover, the use of digital image recording devices by

[330] *Bukta and Others v. Hungary* (2007), *op. cit.,* note 46, para.36. See also the subsequent decision of the Hungarian Constitutional Court, *Decision 75/2008, (V.29.) AB*, finding that "...["...[I]t is unconstitutional to prohibit merely on the basis of late notification the holding of peaceful assemblies that cannot be notified three days prior to the date of the planned assembly due to the causing event." It is noteworthy that in the case of *Aldemir and Others v. Turkey*, Application nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, 18 December 2007, the dissenting opinion of Judges Türmen and Mularoni stated that the judgment failed "to provide any guidelines as to the circumstances under which non-compliance with the regulations may justify intervention by the security forces." See also *Biçici v. Turkey*, Application No 30357/05, 27 May 2010), para. 56, (see below excessive use of force in the dispersal of assemblies). See also *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1038 (9th Cir. 2008) (stating that a government restriction on assembly must be limited to serving genuine government interest). Also see *Collins v. Jordan*, 110 F.3d 1363, 1378 (9th Cir. 1996) cited in footnote … (noting that under California law a spontaneous assembly can only be dispersed as unlawful when it constitutes a clear and present danger).

[331] Joint report of the UN Special Rapporteur (2016), A/HRC/31/66, *op. cit.,* note 52.

[332] Concerns regarding the use of facial recognition software (specifically 'Vedemo 360') have, for example, been raised by the Hamburg Commissioner for Data Protection and Freedom of Information in relation to investigations into public order offenses during the 2017 G20 summit in Hamburg. See, for example, 'The Hamburg Committee objects to the use of facial scans by the police', 3 September 2018 <http://techn4all.com/the-hamburg-committee-objects-to-the-use-of-facial-scans-by-the-police/>; 'Grote hält an "Videmo 360" fest', 2 October 2018, <https://www.welt.de/print/welt_kompakt/hamburg/article181735976/Grote-haelt-an-Videmo-360-fest.html>

[333] See for example, Report of the UN Special Rapporteur (2011), UN Doc. A/HRC/17/27, *op. cit.,* note 93, paras. 61-66.

[334] The existence of a reasonable expectation of privacy is a significant, though not conclusive, factor in determining whether the right to private and family life protected by Article 8 ECHR is, in fact, engaged. See *P.G and J.H. v. United Kingdo*m, Application no. 44787/98, 25 September 2001, para. 57. At the same time, a person's private life *may* be engaged in circumstances outside their home or private premises. See, for example, *Herbecq and Another v. Belgium*, Application nos. 32200/96 and 32201, Commission decision of 14 January 1998. In the case of *Friedl v. Austria*, Application no. 15225/89, 26 January 1995, the police photographed a participant in a public demonstration in a public place, confirmed his identity, and retained a record of his details. They did so only after requesting that the demonstrators disperse, and the European Commission held that the photographing did not constitute an infringement of Article 8. On the other hand, warrantless electronic monitoring of genuinely private activities violates the right not to be subjected to arbitrary searches and seizures; see *United States v. Jones*, U.S. 132 S.Ct. 935 (2012) (stating that the GPS monitoring of an individual's movement constitutes search and seizure governed by guarantees against unreasonable searches and seizures). In the case of *Amann v. Switzerland,* Application No 27798/95, 16 February 2000), paras.65-67, the compilation of data by security services was held to constitute an interference with the applicants' private lives despite the fact that covert surveillance methods were not used. See also the UK case of *Wood v. MPC* [2009] EWCA Civ 414. See also the European Commission on Human Rights in *Friedl v. Austria* , Application No

law enforcement officers during a public assembly may have a 'chilling effect' on freedom of assembly and curtail the exercise of this right.[335] Laws, and policies of law enforcement agencies should codify operating procedures relating to digital recording 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.[336] The information obtained in this manner should be destroyed after a reasonable period set out in law.[337]

Use of undercover law enforcement personnel

173. **The deployment of undercover police must be exceptional and strictly regulated by law.** In some countries, law enforcement officers have, in the past, infiltrated assemblies and pretended to be participants. The use of undercover police officers, however, is only ever permissible (and only exceptionally so) if the purpose of collecting information during an assembly is to investigate specific criminal acts. In all cases, such practices must be subject to continuous and strict independent oversight and scrutiny. Collecting information on assembly participants in the absence of a concrete criminal investigation constitutes an interference with the participants' rights to freedom of assembly and privacy. As such, the exceptional circumstances in which undercover law enforcement officials may be deployed (either before, during or after assemblies) should be fully and clearly regulated in law, following a published policy that is compatible with international human rights standards. Any such legislation and policy should specify the permissible methods of gathering information, the purposes for which any information gathered may be used, the specific law enforcement agencies/personnel that may obtain access, and for how long the data obtained may be stored.

174. **The use of *agents provocateurs* is not permissible.** Undercover police or other third parties who purposely infiltrate an assembly to entice participants to commit illegal acts, or to implicate them in such acts, are known as *agents provocateurs*. The use of *agents provocateurs* by the state is not permissible. Moreover, *agents provocateurs* acting at the behest of a State or other third party should face criminal prosecution in the same way as anyone who intentionally disrupts a peaceful assembly, or who encourages others to engage in illegal acts during an assembly. Where the evidence allows, criminal liability should also attach to those who deploy *agents provocateurs*.

Poland, Transgressions Code, article 52, paragraph 1 (Law on Assemblies, 1990, article 14)
Whoever: 1) disturbs or attempts to disturb the organisation or progress of an assembly that has not been prohibited […]- shall be liable to the penalty of detention for up to two weeks, limitation of liberty for up to two months, or fine.

Malta, Public Meetings Ordinance, 1937, as amended in 2007, section 18
Any person who shall form part of any assembly with intent to break up a meeting lawfully convened or to disturb public peace at any such meeting, shall, on conviction, be liable to imprisonment from seven days to three months.

Restraint, Intervention and Dispersal

175. **Protection of the Right to Life.** The State has a positive obligation to protect the right to life (Article 6 of the ICCPR and Article 2 of the ECHR) and the right to freedom from inhuman or degrading treatment (Article 7 of the ICCPR and Article 3 of the ECHR). These rights enshrine some of the most basic values protected by international human rights law,

15225/89, Commission decision of 31 January 1995, cited in the judgment (see above) regarding the *use* of photographs.
[335] Joint report of the UN Special Rapporteurs (2016), UN Doc. A/HRC/31/66, *op. cit.,* note 52, para. 76.
[336] *Ibid*, para. 78.
[337] *Ibid*.

from which no derogation is permitted.[338] These rights must be protected in the context of all assemblies, whether or not an assembly itself falls within the protective scope of the right to freedom of peaceful assembly (see in particular, 'Duty to protect other rights, even in the context of non-peaceful assemblies' and 'Use of firearms' at para 183 *et seq.*).

176. **Duty to exercise restraint and take steps to de-escalate tensions.** Any actions by law enforcement personnel to intervene disperse an assembly, or use force should always be applied with restraint. Where an assembly occurs in violation of applicable laws, but is otherwise peaceful, the police response should be guided by non-intervention or the de-escalation of tensions through voluntary dialogue, persuasion and negotiation (see para 32 above).[339] The dispersal of an event may increase tensions or lead to violence and thus create more problems for law enforcement than its accommodation and facilitation[340] (although the police should be allowed a margin of appreciation). Furthermore, the costs of protecting freedom of assembly and other fundamental rights are likely to be significantly lower than the costs of policing disorder borne of dispersal or suppression, even in the case of minor violations of the law. Post-event prosecution for violation of the law always remains an option. (see paragraph 221 *et seq*.)

177. **Assembly participants should not be stopped, searched or detained *en route* to an assembly unless there is evidence of imminent violence or other serious crime.** The State should not intervene to prevent individuals from participating in an assembly, either by detaining them in advance, or by restricting access to the site of the assembly via physical or administrative obstacles, simply on the grounds of the possible commission of an offence. Unless a clear and present danger of imminent violence or of another crime can reasonably be deemed to exist, law enforcement officials should not intervene to stop, search and/or detain protesters *en route* to an assembly if there is no reason to believe that those participants are going to participate in the violence or crime.[341] The reason for the stopping, searching or detaining a participant should be particular to the person and not merely based on the fact that he or she is participating in an assembly. Exceptionally, in cases where there is evidence of probable violence, including evidence that a significant proportion of assembly participants may be armed, police control points may be set up on the way to assembly locations where participants may be searched for weapons. Relevant laws and operating procedures should outline the criteria for conducting searches in such situations and the legal and practical consequences in cases where weapons are found.

178. **No prevention of participation across borders.** States should also not put in place discriminatory measures (including through Visa requirements) to impede participation in an assembly across borders, e.g. where the prospective participants are not allowed to enter based solely on how they look, what opinions they hold or due to the fact that they are not citizens of the state where the assembly is to be held.[342] The unilateral temporary suspension of the Schengen Agreement between EU member states, and the ensuing re-imposition of border controls in order to prevent citizens from neighbouring states from

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[338] See, for example, *Giuliani and Gaggio v. Italy*, Application No 23458/02, 24 March 2011, para. 174.
[339] OSCE/ODIHR, Human Rights Handbook on Policing Assemblies, 2016, p. 30.
[340] In the case of *Aldemir v. Turkey* (application nos. Applications nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02 paras. 45 and 46), the Court noted that the violent character of the demonstration was caused by swift police intervention.
[341] A violation of Article 11 ECHR was found in the ECtHR case of *Nisbet Özdemir v. Turkey*, Application No 23143/04, 19 January 2010, (only in French), where the applicant was arrested while on her way to an unauthorised demonstration to protest against the possible intervention of US forces in Iraq. See also the facts of *Gasparyan v. Armenia (No.2)*, Application No 22571/05, 16 June 2009; and note 263 above, referring to *R (on the application by Laporte) (FC) v. Chief Constable of Gloucestershire* [2006] HL 55; and the report by the U.N. Special Representative of the Secretary-General on the Situation of Human Rights Defenders, *Human Rights Defenders: Note by the Secretary-General* U.N. Doc. A/61/312, 5 September 2006. See also *McCarthy v. Barrett*, 804 F. Supp. 2d 1126, 1135-1138 (W.D. Wash. 2011) (finding that the implementation of a ban preventing demonstrators from entering a protest zone violates freedom of speech and association).
[342] see *Djavit An v. Turkey* (2003), *op. cit.,* note 1, paras. 59-62.

participating in an assembly, may impose disproportionate and blanket restrictions on the freedom of movement and the right to freedom of peaceful assembly of those travelling to participate in or observe an assembly.[343]

179. **Dispersal of assemblies should be a last resort.** Dispersal is not permissible unless there is an imminent threat of violence[344] or where an assembly would otherwise be unlawful because it violates applicable criminal law and constitutes a serious violation of the rights of others, under circumstances in which prosecutions of demonstrators after the assembly is not a safer and more practicable alternative. Dispersal may at some point be deemed necessary in the interests of public order or health, depending on the size, location and circumstances of an assembly.[345] Dispersal should not, however, occur unless law enforcement officials have previously made efforts to resolve a tense situation by reasonable, less invasive measures, and to facilitate and maintain the peaceful nature of an assembly.

180. **Clear communication of (possibility of) dispersal.** If dispersal is deemed necessary, the assembly organiser and participants should be clearly and audibly informed. Participants should be given reasonable time to disperse voluntarily and only if they fail to do so may law enforcement officials intervene further. Dispersal should occur without the use of force, unless this becomes necessary due to the circumstances. Third parties (such as monitors, journalists, and photographers) may be asked to disperse where they are interfering with the ability of the police to maintain order, but 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.[346]

Extract from Section 107, First Amendment Rights and Police Standards Act District of Columbia, United States, (2004):

(d) The [police] shall not issue a general order to disperse to participants in a[n] ... assembly except where:

A significant number or percentage of the assembly participants fail to adhere to the imposed time, place, and manner restrictions, and either the compliance measures set forth in subsection (b) of this section have failed to result in substantial compliance or there is no reasonable likelihood that the measures set forth in subsection (b) of this section will result in substantial compliance;

A significant number or percentage of the assembly participants are engaging in, or are about to engage in, unlawful disorderly conduct or violence toward persons or property; or

A public safety emergency has been declared by the Mayor that is not based solely on the fact that the First Amendment assembly is occurring, and the Chief of Police determines that the public safety concerns that prompted the declaration require that the ... assembly be dispersed.

(e)(1) If and when the [police] determines that a[n] ... assembly, or part thereof, should be dispersed, the [police] shall issue at least one clearly audible and understandable order to disperse using an

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[343] See Lluis Maria de Puig (Rapporteur), "Democratic Oversight of the Security Sector in Member States," Report for the Political Affairs Committee, Parliamentary Assembly of the Council of Europe (2 June 2005, Doc. 10567), para. 97; and Tony Bunyan, "Protests in the EU: "Troublemakers" and "travelling violent offenders [undefined] to be recorded on database and targeted" (Statewatch: 2010), available at <http://www.statewatch.org/analyses/no-93-troublemakers-apr-10.pdf>.

[344] See *Rai and Evans v. United Kingdom*, Application Nos 26258/07 and 26255/07, 17 November 2009 (admissibility); *Samüt Karabulut v. Turkey* , Application No 16999/04, 27 January 2009, paras. 37-38. See also *Kandzhov v. Bulgaria*, Application No 68294/01, 6 November 2008, para. 73 (finding a violation of Article 10 ECHR), where the Court stated that, "the applicant's actions on 10 July 2000 were entirely peaceful, did not obstruct any passers-by and were hardly likely to provoke others to violence [...] However, the authorities in Pleven chose to react vigorously and on the spot in order to silence the applicant and shield the Minister of Justice from any public expression of criticism."

[345] See also *Nosov and Others v. Russia* (2014), *op. cit.,* note 278, para. 58: "after a certain lapse of time long enough for the participants to attain their objectives, the dispersal of an unlawful assembly may be considered to be justified in the interests of public order and the protection of the rights of others in order, for example, to prevent the deterioration of sanitary conditions or to stop the disruption of traffic caused by the assembly."

[346] *Pentikäinen v. Finland*, Application No 11882/10, 20 October 2015, paras. 111-114.

amplification system or device, and shall provide the participants a reasonable and adequate time to disperse and a clear and safe route for dispersal.
(2) Except where there is imminent danger of personal injury or significant damage to property, the MPD shall issue multiple dispersal orders and, if appropriate, shall issue the orders from multiple locations. The orders shall inform persons of the route or routes by which they may disperse and shall state that refusal to disperse will subject them to arrest.
(3) Whenever possible, MPD shall make an audio or video recording of orders to disperse.

The Use of Force

181. **Principles governing the use of force.** Force should only be applied to the minimum extent necessary, following to the principles of restraint, proportionality, and minimization of damage and the preservation of life. International documents give detailed guidance regarding the use of force when dispersing unlawful non-violent and violent assemblies. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide that "[i]n 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."[347] Law enforcement officials should only employ force on an exceptional basis, and only after announcing this by issuing a clear and unambiguous warning, and provide the persons present with sufficient time to heed any related police orders and to exit the area.

182. **Duty to minimize harm.** Governments and law enforcement agencies should ensure that ethical issues associated with the use of force are kept constantly under review.[348] States should comply with international standards concerning the use of force, including those regulating the use of potentially harmful techniques or tools of assembly management such as batons, tear gas or other chemical agents, water cannons, less lethal projectiles (rubber bullets) as well as horses and dogs. Given the extensive harm that such techniques may cause, water cannons, chemical agents, or less lethal projectiles should only applied following a decision taken at the highest level of command, and by police officers who have received extensive prior training on their proper use in circumstances where their negative effects for the health of the assembly participants can be kept to a minimum (e.g. water cannons should never be used at temperatures below zero, and chemical agents should not be released in confined spaces).[349]

183. **Duty to protect other rights, even in the context of non-peaceful assemblies.** Organizers and participants in an assembly continue to enjoy other human rights, regardless of the nature of the assembly. Thus, law enforcement authorities have the duty to protect these other rights, even if an assembly turns violent. This applies even to organizers or participants that are not themselves peaceful, and who may therefore forfeit their right to peaceful assembly;[350] they nevertheless continue to enjoy all other rights such as the right to life, right to freedom from torture or ill-treatment, and additional rights pertaining to the right to liberty upon their arrest or detention.

184. **Range of response and adequate equipment.** Following the principle of proportionality, governments should develop a range of means of response, and provide law

[347] *Ibid*, Principle 13. On means and measures to fully implement the UN Basic Principles, see also, Amnesty International "Guidelines for implementation of the UN Basic Principles on the use of force and firearms by law enforcement officials", in particular chapter 7 on the use of force in public assemblies. *Graham v. Connor*, 490 U.S. 386 (1989) (objectively unreasonable use of force by police gives rise to a claim for damages by victim).
[348] UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, *op. cit.*, para.1.
[349] OSCE/ODIHR Human Rights Handbook on Policing Assemblies, 2016, pp. 77-81.
[350] Joint report of the UN Special Rapporteurs (2016), A/HRC/31/66, *op. cit.,* note 52, para. 9.

enforcement officials with various types of equipment to enable responses that are appropriate to any given situation. These should include weapons appropriate for crowd control, which are not designed to be lethal, and which permit police personnel to apply the minimum force necessary to facilitate the maintenance of public order.[351] Law enforcement officials should be provided with self-defence equipment such as shields, helmets, fire-retardant clothing, bullet-proof vests and bullet-proof transport in order to decrease the need to use weapons of any kind.[352] All equipment and weapons should be fully functional and thoroughly tested prior to their use in the context of assemblies/protests. Necessary safeguards should be in place to prevent risks for third persons and misuse or abuse in practice.

185. **Specific means for officials to address disorder at an assembly.** The following good practice guidance relating to the specific means by which law enforcement officials may exercise, or seek to regain, control when an assembly becomes disorderly, draws on the developing practices of national policing institutions:

- Pepper spray or other hand-held irritant chemicals should only be used where the subjects' behaviour represents a serious risk to public order or the physical integrity of police officers.[353] If used, decontamination procedures must be followed immediately;
- The use of plastic/rubber bullets, baton rounds, attenuated energy projectiles (AEPs), or water cannons and other forceful methods of crowd control must be strictly regulated and recorded (how many rubber bullets/cans of tear gas/etc. discharged);[354]
- Tear gas canisters should never be fired directly at or against a person;[355]
- Electrical discharge weapons may only be used in situations where there is a real and immediate threat to life or risk of serious injury and where other less coercive methods have failed or are impracticable; such weapons should never be used for the sole purpose of securing compliance with an order;[356]
- Devices with indiscriminate effects such as tear gas or water cannons should be used for the purpose of dispersal only and should not be used where people (participants / bystanders; violent / peaceful persons) cannot leave the scene. They should only be used if

[351] See for example, *Simsek and Others v. Turkey*, Application Nos 35072/97 and 37194/97, 26 July 2005), para. 111.

[352] *Ibid*, para. 91. In *Güleç v. Turkey* (1998), *op. cit.,* para. 71, note 131, the Court recognised that the demonstration was not peaceful (evidenced by damage to property and injuries sustained by gendarmes). However, the Court stated that "[t]he gendarmes used a very powerful weapon because they did not have truncheons, riot shields, water cannon, rubber bullets or tear gas. *The lack of such equipment is all the more incomprehensible and unacceptable because the province …is in a region in which a state of emergency has been declared*" [emphasis added]. See also UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, *op. cit.,* note 347, Principle 2.

[353] See *Grămadă v. Romania*, Application No 14974/09, 11 February 2014 (only in French), para. 70. See *Ali Güneş v. Turkey*, Application No 9829/07, 10 April 2012, on the use of pepper spray on restrained person in violation of Article 3 ECHR; *İzci v. Turkey*, Application No 42606/05, 23 July 2013 on the use of tear gas on peaceful protesters; and *Ataykaya v. Turkey*, Application No 50275/08, 22 July 2014, on the use of tear gas as a weapon.

[354] See relevant guidance issued by the Police Service of Northern Ireland, *Service Guidance in relation to the Issue, Deployment and Use of Attenuating Energy Projectiles (Impact Rounds) in Situations of Serious Public Disorder*, available at <https://www.psni.police.uk/globalassets/advice--information/our-publications/conflict-management-manual/chapter_14_-_aep__public_disorder_.pdf>. This document states that "[t]he AEP has not been designed for use as a crowd control technology but has been designed for use as a less lethal option in situations where officers are faced with individual aggressors, whether such aggressors are acting on their own or as part of a group" (at para.2(4)(a)). See also, Association of Chief Police Officers (ACPO) Attenuating Energy Projectile (AEP) Guidance (Amended 16th May 2005), available at: <http://www.serve.com/pfc/policing/plastic/aep.pdf>.

[355] *Abdullah Yaşa and others v. Turkey,* Application No 44827/08, 16 July 2013, para. 42: "The instant case concerned not only the use of "tear gas" but also the launching of a tear-gas grenade at the demonstrators. In fact, firing a grenade by means of a launcher generates the risk of causing serious injury, as in the instant case, or indeed of killing someone, if the grenade launcher is used improperly."

[356] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) Standards, [CPT/Inf/E (2002) 1 - Rev. 2015], pp. 109 and 112.

violence has reached such a level that targeting individuals engaged in violence is not a possible or sufficient response.[357]

- Any use of force (including with batons, rubber bullets, etc.) should not be directed at peaceful demonstrators or by-standers, but only at persons engaged in violence.
- Police regulations should clearly exclude equipment or weaponry that is so inaccurate as to cause significant and indiscriminate injuries or that may cause disproportionate levels of harm.

Section 15(2), Act XXXIV on the Police, Hungary (1994):
Of several possible and suitable options for Police measures or means of coercion, the one which is effective and causes the least restriction, injury or damage to the affected person shall be chosen.

Extract from: Principles for Promoting Police Integrity (United States Department of Justice)[358]
Policing requires that at times an officer must exercise control of a violent, assaultive, or resisting individual to make an arrest, or to protect the officer, other officers, or members of the general public from a risk of imminent harm. Police officers should use only an amount of force that is reasonably necessary to effectively bring an incident under control, while protecting the lives of the officers and others… When the use of force is reasonable and necessary, officers should, to the extent possible, use an escalating scale of options and not employ more forceful means unless it is determined that a lower level of force would not be, or has not been, adequate. The levels of force that generally should be included in the agency's continuum of force include: verbal commands, use of hands, chemical agents, baton or other impact weapon, canine, less-than-lethal projectiles, and deadly force.

186. **Use of firearms.** Any use of firearms must be considered to be potentially lethal; firearms are therefore not an appropriate tactical tool for policing or dispersing assemblies and should be avoided. In particular, indiscriminate firing into a crowd is always unlawful and minimum force must always be used even in the context of violent assemblies (those that are neither lawful nor peaceful).[359] Intentional lethal use of force is only lawful where it is strictly unavoidable to protect another life from an imminent threat.[360]

187. **Legal provisions on the use of force.** The inappropriate, excessive or unlawful use of force by law enforcement officials before, during or after assemblies violates human rights and fundamental freedoms, undermines police-community relationships, and can cause widespread tension and unrest. The use of force should therefore be regulated by domestic law, which should in turn comply with international human rights law.[361] Domestic law should

[357] Cf. Amnesty International Netherlands Guidelines, Guideline no. 7h) and section 7.4.2, p. 157-8.
[358] United States Department of Justice, *Principles for Promoting Police Integrity*, at paras.1 and 4.
[359] Principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, *op. cit.,* note 347, provides that: "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."
[360] See Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, to the Human Rights Council, UN Doc. A/HRC/26/36, 1 April 2014 at para. 75. See further, Principle 14 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, *op. cit.,* note 347: "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." See also OSCE/ODIHR Human Rights Handbook on Policing Assemblies, p. 82
[361] Paragraph 13 of Resolution 690 on the *Declaration on the Police* adopted by the Parliamentary Assembly of the Council of Europe in 1979 states that, "police officers shall receive clear and precise instructions as to the manner and circumstances in which they may make use of arms." Similarly, paragraph 1 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, *op. cit.,* note 347, provides that

set out the circumstances that justify the use of force (including the need to provide adequate prior warnings,[362] law enforcement command structures and authorization procedures), as well as the level of force acceptable to deal with various threats. Adequate safeguards should be put in place at the State level to ensure that the use of force during public assemblies remains limited to exceptional cases. These should include "(a) implementation of mechanisms to prohibit, in an effective manner, the use of lethal force as recourse in public demonstrations; (b) implementation of an ammunition registration and control system; and (c) implementation of a communications records system to monitor operational orders, those responsible for them, and those carrying them out".[363]

Greece, Code of Police Ethics (Presidential Decree 254/2004)
Art. 2 (e). [Police personnel]: Shall use non-violent means while maintaining and enforcing law. The use of force is permitted only when absolutely necessary and to the extent envisaged and required for law enforcement. The use of force shall always respect the principles of necessity, adequacy and proportionality. Police shall use the most moderate means possible by avoiding any unnecessary disturbance, cruelty or unjustifiable damage to property. Police shall not proceed to abusive use of chemicals and other available means, in particular those that are likely to harm public health.

188. **Accountability for use of force.** In the event that force is used at an assembly, it is good practice for law enforcement officials to maintain a written and detailed record of the weapons deployed and force used.[364] The use of force should then trigger an automatic and prompt review process after the event. Where injuries or deaths result from the use of force by law enforcement personnel, an independent, open, prompt and effective investigation must be undertaken (See further, at paragraph 235 below).

Roles and rights of third parties at assemblies

189. **Third party actors.** In addition to the participants and law enforcement personnel a range of third party actors have a right to be present at an assembly to observe or monitor proceedings, to protect human rights, to report on what takes place and potentially to provide assistance to other participants and actors in case of injury or violence. State authorities and law enforcement personnel should be aware of the work of these different actors and of the need to facilitate such work as part of the wider process of protecting the right to peaceful assembly.

190. **Visibility of third party actors.** There is no formal requirement for third party actors to be readily identifiable or to make themselves known to the relevant authorities at an assembly, but being distinctively visible or having a means of identification may be useful if the third party actors wish to distinguish themselves from the general body of participants or request special treatment, such as access to specific areas or to cross through police lines.

Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. The European Court of Human Rights has noted that "… [a]s the text of Article 2 itself shows, the use of lethal force by police officers may be justified in certain circumstances. Nonetheless, Article 2 does not grant a *carte blanche*. Unregulated and arbitrary action by State agents is incompatible with effective respect for human rights. This means that, as well as being authorised under national law, policing operations must be sufficiently regulated by it, within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force." See *Giuliani and Gaggio v. Italy*, Application No 23458/02, 25 August 2009 (referred to the Grand Chamber on 1 March 2010), paras. 204-205.

[362] The Danish *Act on Functioning of Police* (Act no. 956 of 20 August 2015, section 9, subsection 5), for example, requires three warnings to be given before dispersal of an assembly, as does Article 12 (2) of the Polish *Law on Assemblies* 1990.

[363] See Report of the UN Special Rapporteur (2012), A/HRC/20/27, *op. cit.,* note 56, para. 36, referring to the Inter-American Commission on Human Rights' list of administrative controls (Report on the Situation of Human Rights Defenders in the Americas, para. 68).

[364] To ensure comprehensive reporting of uses of non-deadly force, agencies should define 'force' broadly. See further, for example, "Principles for Promoting Police Integrity", United States Department of Justice (2001). Available at <http://www.ncjrs.gov/pdffiles1/ojp/186189.pdf>, pp.5-6, para.7, "Use of Force Reporting."

Duty to protect and facilitate the work of journalists and media personnel

191. **Role of the media**. The media has a pre-eminent role and performs essential functions in any State governed by the rule of law.[365] The role of the media, as a 'public watchdog', is to gather and impart information and ideas on matters of public interest – information which the public has a right to receive.[366] Media professionals therefore have an important role to play in providing independent coverage of public assemblies, as assemblies are often "the only means that those without access to the media may have to bring their grievances to the attention of the public."[367]

192. **Importance of independent reporting of assemblies.** The OSCE Representative on Freedom of the Media has noted that 'uninhibited reporting on demonstrations is as much a part of the right to free assembly as the demonstrations are themselves the exercise of the right to free speech.'[368] The European Court of Human Rights has also stated that "[i]t is incumbent on the press to impart information and ideas on matters of public interest [...] (and) the public has a right to receive them. This undoubtedly includes reporting on […] gatherings and demonstrations."[369] In another judgment, the Court has underlined "the crucial role of the media in providing information on the authorities' handling of public demonstrations and the containment of disorder", especially as a guarantee for the accountability of authorities vis-à-vis assembly participants and the public at large during large gatherings, and the methods used to control or disperse protesters or to preserve public order.[370]

Guidelines of the Committee of Ministers of the Council of Europe on Protecting Freedom of Expression and Information in Times of Crisis (2007)

It is '[n]ot only that media coverage can be crucial in times of crisis by providing accurate, timely and comprehensive information but also that media professionals can make a positive contribution to the prevention or resolution of certain crisis situations by adhering to the highest professional standards and by fostering a culture of tolerance and understanding between different groups in society.'[371]

193. Thus, the media have the right to record police activities at assemblies, subject only to reasonable time, place, and manner restrictions.[372] This promotes critical discussion of public affairs and "aids in the uncovering of abuses" of government power.[373] Importantly, the police "are expected to endure significant burdens caused by citizens' exercise" of their expressive rights.[374]

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[365] As also noted in the EU Human Rights Guidelines on Freedom of Expression Online and Offline (adopted by the Council of the European Union on 12 May 2014), para. 4: "[B]y facilitating the free flow of information and ideas on matters of general interest, and by ensuring transparency and accountability, independent media constitute one of the cornerstones of a democratic society."

[366] See, *inter alia*, *Castells v. Spain*, Application No 11798/85, 23 April 1992, para. 43; *Thorgeir Thorgeirson v. Iceland*, Application No 13778/88, 25 June 1992, para. 63. See generally Potter Stewart, "Or of the Press", *Hastings Law Journal*, Vol. 26, 1975, p. 631.

[367] Justice Thomas Berger, Justice of the Supreme Court of British Columbia (1980).

[368] See OSCE Representative on Freedom of the Media, *Special Report (2007): Handling of the media during political demonstrations, Observations and Recommendations,* p. 1.

[369] See *Najafli v. Azerbaijan,* Application No 2594/07, 2 October 2012), para. 66.

[370] See *Pentikäinen v. Finland* (2015), *op. cit.,* note 346, para. 89.

[371] "Guidelines of the Committee of Ministers of the Council of Europe on Protecting Freedom of Expression and Information in Times of Crisis", adopted by the Committee of Ministers on 26 September 2007 at the 1005th meeting of the Minister's Deputies.

[372] *Turner v. Lieutenant Driver*, 848 F.3d 678, 688 (5th Cir. 2017); *Am. Civil Liberties Union of Illinois v. Alvarez*, 679 F.3d 583, 608 (7th Cir. 2012); *Gilk v. Cunniffee*, 655 F.3d 78, 82 (1st Cir. 2011); *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995); *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000).

[373] *Gilk v. Cunniffee*, 655 F.3d 78, 82 (1st Cir. 2011).

[374] *Ibid*.

194. **Importance of media access.** Media reports, including audio and video recording, provide an important element of public information-sharing. For this reason, 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. Media professionals may facilitate the police in the implementation of their tasks by clearly identifying themselves as members of the press. Law enforcement officials should receive proper training on how to collaborate with and how to treat media professionals wishing to report on an assembly; the role, function, responsibilities and rights of the media should be integral to the training curriculum for law-enforcers whose duties include crowd management.[375] The European Court of Human Rights has noted that any attempt to remove journalists from the scene of demonstrations must be subject to strict scrutiny.[376]The European Court of Human Rights has noted that any attempt to remove journalists from the scene of demonstrations must be subject to strict scrutiny.[377]

Article 17, Law on Public Assemblies of the Republic of Moldova (2008):
Observance of Assemblies
Any person can make video or audio recording of the assembly.
Access of the press is ensured by the organisers of the assembly and by the public authorities.
Seizure of technical equipment, as well as of video and audio recordings of assemblies, is only possible in accordance with the law.

195. **Types of media representatives.** Today, the production and distribution of news is widely dispersed, as technology has made it possible for a variety of people and organizations to perform journalistic acts and roles.[378] The respect for and protection of journalists should therefore not be limited to those formally recognized as journalists, but should cover "community media workers and citizen journalists and others who may be using new media as a means of reaching their audiences."[379] Moreover, "the function of the press includes the creation of forums for public debate, […] [and] the realisation of this function is not limited to the media or professional journalists."[380]

196. **Media accreditation.** No media credentials should be required to access or cover an assembly except where space is limited, in which case the accrediting criteria must be broad enough to account for the growing scope of media actors. The criteria must not be developed or applied by a state entity; rather, they should be applied by a body that is independent from Government and other state bodies. This approach helps prevent a situation where the state issues credentials arbitrarily or based on content-related preferences.

197. **The need to respect and protect the rights of journalists and other media representatives.** During assemblies, law enforcement and other state representatives need to ensure the safety of media professionals to the maximum extent, regardless of whether

[375] OSCE Representative on Freedom of the Media, "Special Report: Handling of the media during political demonstrations, Observations and Recommendations", Summary of Recommendations para. 4.
[376] See *Pentikäinen v. Finland* (2015), *op. cit.,* note 346, para. 89.
[377] See *Pentikäinen v. Finland* (2015), *op. cit.,* note 346, para. 89.
[378] Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors, adopted by the Committee of Ministers on 30 April 2014 at the 1198th meeting of the Ministers' Deputies.
[379] "UN Plan of Action on the Safety of Journalists and the Issue of Impunity," (UNESCO and OHCHR, Geneva, June 2017), available at: <http://www.unesco.org/new/en/communication-and-information /freedom-of-expression/safety-of-journalists/un-plan-of-action/>
[380] *Társaság a Szabadságjogokért v. Hungary,* Application No 37374/05, 14 April 2009, para. 27.

they represent national or foreign media.[381] This is a precondition for assuring these persons' freedom of expression.[382] Law enforcement need to protect media professionals from violence or harm emanating from third persons, but are also obliged to exercise restraint and refrain from interfering with the work of journalists and other media representatives. The need to ensure safety should not be used by States as a pretext to unnecessarily limit the rights of media professionals, including the rights to freedom of movement and access to information.[383]

198. **Right to report at all forms of assembly.** The fact that an assembly did not follow existing notification requirements, or state constraints or conditions does not restrict the media's right to access or cover it.[384] The mere occurrence of a demonstration, regardless of whether it is compliant with domestic legislation or not, may be newsworthy. "The media is impartial to the circumstances under which an event takes place," and thus it is the media's duty to provide accurate coverage of all assemblies.[385] To that end, the police must facilitate the exercise of press rights at all assemblies equally.

199. **Communication between the police and media.** The police should maintain open lines of communication with the media to reduce the risk of conflict.[386] Moreover, post-event debriefing by the police should be standard practice and should also address media safety.[387] The media must be free to "carry out their work independently, without undue interference and without fear of violence or persecution."[388]

200. **Freedom from arbitrary arrest or detention.** The police must not subject media actors to arbitrary arrest or unlawful detention in connection with their coverage of an assembly.[389] Moreover, law enforcement must respect not only a media actor's physical integrity but also that of his or her equipment and material. As stated by the OSCE Special Representative on Freedom of Media: "Willful attempts to confiscate, damage or break journalists' equipment in an attempt to silence reporting is a criminal offence, […] and [c]onfiscation by the authorities of printed material, footage, sound clips or other reportage is an act of direct censorship."[390]

201. **Proportionality of restrictions to media access.** The European Court of Human Rights has stated that there must always be a clear legal basis for restricting access of a journalist to a location where possibly unauthorised assemblies are occurring, rather than merely resorting to unsupported security assertions to limit access.[391] Moreover, in the event that a media representative is not wearing special clothing or badges identifying him or her as a journalist, the representative should still be permitted to conduct his/her journalistic work without interference once his/her identity and profession are known to be police.[392] In

[381] Guidelines of the Committee of Ministers, *op. cit.,* note 371, para. 2.
[382] Declaration of the Committee of Ministers, *op. cit.,* note 378. .
[383] Guidelines of the Committee of Ministers *op. cit.,* note 371, para. 2.
[384] *Ibid*, pp. 3-4.
[385] *Ibid*, p. 4.
[386] See OSCE Representative on Freedom of the Media, *Safety of Journalists Guidebook* (2nd edition), pp. 68-69.
[387] See Chapter 6, "Policing Public Assemblies", in paras. 31-33.
[388] EU Human Rights Guidelines on Freedom of Expression Online and Offline, *op. cit.,* note 365, para. 28. See also, UN Resolution on the safety of journalists and the issue of impunity (A/RES/68/163), adopted by the UN General Assembly at its sixty-eighth session on 18 December 2013.
[389] See OSCE Representative on Freedom of the Media, *Safety of Journalists Guidebook* (2nd edition), pp. 68-69
[390] OSCE Representative on Freedom of the Media, *op. cit.*, Summary of Recommendations, para. 4.
[391] See *Gsell v. Switzerland*, Application No 12675/05, 8 October 2009 (only in French), paras. 54-60.
[392] See *Najafli v. Azerbaijan* (2012) *op. cit.,* note 369, paras. 67-69.

that case, the respective journalist should likewise receive the protection usually afforded to all other members of the media. [393]

202. **Dispersal orders.** Journalists are not participants in, but rather observers of, an assembly. In principle, therefore, dispersal orders directed at assembly participants should not oblige journalists to leave the area (unless their individual safety is endangered).[394] Media representatives should not be prevented from observing and recording the policing operation, unless (exceptionally) their continued physical presence will significantly hinder or obstruct law enforcement officers in doing their work. In such cases, media representatives should be given clear instructions, and sufficient time to disperse. Other opportunities should then be provided to them to enable them to continue to adequately cover the assembly. If media representatives refuse to comply with a lawful dispersal order, the police may respond in a proportionate manner.[395]

203. **Accountability of state bodies.** Police conduct must be subject to judicial control, and officers must be held accountable for any violations of norms governing the use of force and police conduct.[396] In the case of violence against media representatives, as in all other instances of possible unlawful use of force, a thorough and independent investigation must be conducted and, if warranted, criminal charges should be sought—ultimately "to take all necessary steps to bring the perpetrators of crimes against journalists and other media actors to justice."[397] In addition, states should establish, if they have not already, professional sanctions for police officers who commit violent acts against media actors.

Facilitating independent monitoring of assemblies

204. **The right to monitor assemblies.** The right to be physically present in order to observe a public assembly is part of the general human right to receive and impart information (a corollary of the right to freedom of expression).[398] Furthermore, media and other reports about an assembly can be an important element for the assembly organizers and participants to get their message across and therefore the possibility to monitor and report on assemblies forms an essential part of the right to freedom of peaceful assembly. For the purposes of these Guidelines, monitors are defined as non-participant third party individuals or groups whose primary aim is to observe and record the actions and activities taking place at public assemblies. The monitoring of public assemblies provides a vital source of independent information about the activities of both participants and law enforcement officials during such events and helps ensure the accountability of the latter. Next to observing assemblies for more general human rights abuses, monitors should ideally

[393] *Ibid*.
[394] See *Pentikäinen v. Finland* (2015), *op. cit.,* note 346, paras. 95-115.
[395] See in this context *Pentikäinen v. Finland* (2015), *op. cit.,* note 346, para. 91, stressing that journalists cannot claim immunity from criminal liability for the sole reason that the commission of an offence was committed during the performance of their journalistic functions.
[396] See *Najafli v. Azerbaijan* (2012), *op. cit.,* note 369, para. 39.
[397] Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors, adopted by the Committee of Ministers on 13 April 2016 at the 1253rd meeting of the Ministers' Deputies.
[398] See, *inter alia*, *Castells v. Spain* (1992), *op. cit.,* note 366, para.43; *Pentikäinen v. Finland* (2015), *op. cit.,* note 346, para. 107; See also *Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2011) (noting that a private person's video recording of police conduct is part of the right to freedom of speech and press). Also see *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995) and *Martin v. City of Struthers*, 319 U.S. 141, 146-147 (1943) (where the court noted that the "Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved."). See also Joint report of the Special Rapporteurs (2016), A/HRC/31/66, *op. cit.,* note 52, para 68.

also pay attention to possible discriminatory behaviour on the side of law enforcement and see whether special protection was provided to groups and individuals considered to be particularly at risk.

205. **Ethical issues.** The purpose of monitoring assemblies should be to ensure that the right to freedom of peaceful assembly is guaranteed in practice, and to improve the protection and respect for human rights overall. In this context, monitors should respect the human rights of all parties, and should aim to 'do no harm'. Monitors should demonstrate respect for the law at all times and should seek to maintain their independence and objectivity throughout their activities. The OSCE/ODIHR has developed a handbook and training programme for monitoring freedom of assembly, which may provide good practice examples and useful guidance for potential monitors in this context.[399] This handbook also contains a Code of Conduct for Freedom of Assembly Monitors, which highlights and seeks to clarify some key ethical issues for monitors. This further includes the principle of non-interference in the assembly process, the need to base conclusions on first-hand observations or clear or convincing facts or evidence, limited communication with the media, maintaining personal safety, clear identification as a monitor at all times, and maintaining high levels of personal discretion and professional behaviour. While not binding, the purpose of this Code of Conduct is to help monitoring organizations ensure that the validity and effectiveness of their final reports and statements are not compromised in any way.

206. **Identifying monitors.** Monitors should have some means of identification to distinguish them from participants in an assembly. This may take a highly visible form through wearing some type of identifiable clothing, or may involve monitors carrying an identification card that can be produced on demand, or both.

207. **Duty to protect and facilitate independent monitoring of assemblies.** Individuals and groups should be permitted to operate freely in the context of monitoring assemblies, and the exercise of the right to freedom of peaceful assembly. State authorities should not prevent monitoring activities, irrespective of whether an assembly has complied with the requisite notification requirements, or whether it is peaceful or not.[400]

208. **Dispersal orders.** Monitors are observers of, rather than participants in, an assembly. In principle, therefore, dispersal orders directed at assembly participants should not oblige monitors to leave the area (unless their individual safety is endangered).[401] Monitors should not be prevented from observing and recording a policing operation, unless (exceptionally) their continued physical presence will significantly hinder or obstruct law enforcement officers in doing their work. In such cases, monitors should be given clear instructions and sufficient time to disperse, and should be directed to a safe location from which they may continue to observe the event. If monitors refuse to comply with a lawful dispersal order, the police may respond in a proportionate manner.[402]

209. **Categories of monitors.** The freedom to monitor public assemblies should be guaranteed to civil society actors who may be performing the role of 'social watchdogs' due to their contribution to informed public debate.[403] Independent monitoring may be carried out

[399] See further, OSCE-ODIHR *Handbook on Monitoring Freedom of Peaceful Assembly* (ODIHR, Warsaw, 2011).
[400] See also Joint report of the Special Rapporteurs (2016), UN Doc. A/HRC/31/66, *op. cit.,* note 52, para. 70.
[401] See *Pentikäinen v. Finland* (2015) *op. cit.,* note 346, paras. 95-115
[402] *Op. cit.*
[403] The European Court of Human Rights has repeatedly recognized civil society's important contribution to the discussion of public affairs. See, for example, *Steel and Morris v. United Kingdom*, Application No 68416/01, 15

by individuals, local NGOs, human rights defenders,[404] national human rights institutions, international human rights organizations, or intergovernmental organizations (such as the Council of Europe, the OSCE or the UN, particularly its Office of the High Commissioner for Human Rights and special thematic rapporteurs).[405] Ideally, monitoring teams should be from diverse backgrounds, and gender balanced.

210. **Focus of monitoring activities.** Monitoring public assemblies can be a difficult task, and the precise role of monitors will depend on why, and by whom, they have been deployed.[406] Monitors may, for example, be tasked with focusing on particular aspects of an assembly such as:

- The policing of an assembly (to consider whether the State is fulfilling its positive obligations under human rights law);
- Whether parties adhere to a prior agreement about how an assembly is to be conducted;
- Whether any additional restrictions are imposed on an assembly during the course of the event;
- Any instances of violence or use of force, both by participants or by law enforcement personnel;
- The interaction between participants in an assembly and an opposing assembly;
- The conduct of participants in a moving assembly that passes a sensitive location;
- Discrimination against assembly participants by police and other authorities.

211. **Right to digitally record and photograph at assemblies.** Monitors should not be prevented by law enforcement officials from using digital imagery recording equipment at an

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February 2005, para. 89: "…in a democratic society even small and informal campaign groups, ..., must be able to carry on their activities effectively and … there exists a strong public interest in enabling such groups and individuals outside the mainstream to contribute to the public debate by disseminating information and ideas on matters of general public interest…" See also *Társaság a Szabadságjogokért v. Hungary* (2009), *op. cit.,* note 380, para. 36, in which the Hungarian Civil Liberties Union was regarded as performing the role of a 'social watchdog'. Cf. also the ODIHR *Guidelines on the Protection of Human Rights Defenders*, (ODIHR: Warsaw, 2014), para. 62: "Human rights defenders and their organizations play a crucial watchdog role in any democracy and must, therefore, be permitted to freely observe public assemblies"; *Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2011) (stipulating that a private person's video recording of police conduct is part of the right to freedom of speech and press). Also see *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995).

[404] Some examples of such monitoring reports include, "Breakdown of Trust – A Report on the Corrib Gas Dispute", Frontline, 2010, available at: <http://www.frontlinedefenders.org/node/2527>; and "Freedom of Assembly: Review of the Situation, Russia 2008", Demos Center, Youth Human Rights Movement, Movement of Civil Actions GROZA, and Interregional Human Rights Group, available at <http://article20.org>. See also paragraph 3 of "Ensuring Protection – European Union Guidelines on Human Rights Defenders", Council of the EU (Foreign Affairs), 2008: "Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence." See Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, U.N. Doc. A/HRC/4/37, 24 January 2007 at para. 29. See also "Human Rights Defenders in the OSCE Region: Challenges and Good Practices", OSCE, 2008.

[405] See, for example, "Note by the Secretary-General on Human rights defenders: Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms", (A/62/225 Sixty-second session) at paras. 91-92 regarding the monitoring role performed by the Office of the High Commissioner for Human Rights (OHCHR) during the April 2006 protests in Nepal: "The OHCHR monitoring role has been acknowledged as fundamental in containing human rights violations and in documenting those that occurred for accountability purposes." See further, Office of the High Commissioner for Human Rights, "The April protests: democratic rights and the excessive use of force, Findings of OHCHR-Nepal's monitoring and investigations", Kathmandu, September 2006.

[406] See, for example, Christina Loudes, *Handbook on Observations of Pride Marches* (ILGA-Europe, June 2006). See also, Jennifer Prestholdt, "Familiar Tools, Emerging Issues: Adapting traditional human rights monitoring to emerging issues", 2004, available in Russian, Polish, Ukrainian, Kyrgyz and English at <http://www.newtactics.org/en/FamiliarToolsEmergingIssues>.

assembly, including the related policing operation. In general, they should have the right to record the assemblies themselves, as well as the actions of law enforcement officials at such events. This also includes the right to record an interaction in which participants are being recorded by state agents, sometimes referred to as the right to "record back".[407] Monitors should only be required to surrender digitally recorded images to law enforcement agencies if this is set out in a court order; in that case, the original owner should be entitled to retain an exact copy.[408] In any event, confiscation, seizure and/or destruction of notes and digital recording equipment without due process should be prohibited and punished.[409]

212. **Monitoring reports.** Monitors will usually summarize the findings from their observations in a report, which may be used to highlight issues of concern to the public and to competent State authorities. These reports can serve as a basis for dialogue and engagement on matters such as the effectiveness and implementation of the current law and the extent to which the State is respecting its obligations to respect, protect and facilitate freedom of peaceful assembly; online as well as offline, they are a good way to document police practices related to assemblies. Monitoring reports may also be used to engage with the relevant law enforcement agencies or other public authorities and may highlight areas where the revision of regulations and policing approaches, or further training, resources or equipment may be needed. Independent monitoring reports may also be a useful resource to inform international bodies, such as the Council of Europe, OSCE/ODIHR and the United Nations, about the level of respect and protection for human rights in a particular country (see further Appendix A, Enforcement of international human rights standards).

Duty to facilitate access to medical care and protect the work of medical practitioners

213. **Increased risk to health associated with diversity of weapons.** Recent years have seen increasing diversity in crowd control weapons, which in some instances also include former military grade weaponry. Often, the use of such weapons is insufficiently regulated or known, which leads to widespread use or misuse of such weapons, resulting in

[407] Joint report of the UN Special Rapporteurs (2016) UN Doc. A/HRC/31/66, *op. cit.,* note 52, para. 71.

[408] See *Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2011) (stipulating that a private person's video recording of police conduct is part of the right to freedom of speech and press). Also see *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995). See more recently, *Ahmad v. City of St* Louis No. 4:17 CV 2455 CDP, 2017 WL 5478410 (E.D. Mo. Nov. 15, 2017). Here, a federal judge ruled that the St. Louis Metropolitan Police Department must immediately adopt protocols to protect the constitutional rights of those observing or recording protest activity (officers were shown to 'have exercised their discretion in an arbitrary and retaliatory fashion to punish protesters for voicing criticism of police or recording police conduct.') See also, *Fields v. City of Philadelphia* 862 F3d 353 (3d Cir. 2017) and commentary on the case at *Harvard Law Review*, Vol. 131, No. 7, 2018, p.2049; Calvert Clay, "The Right to Record Images of Police in Public Places: Should Intent, Viewpoint, Or Journalistic Status Determine First Amendment Protection", *UCLA Law Review Disc.* Vol. 64, 2016, pp.230-253; Ashley Billam, "The Public's Evolution from News Reader to News Gatherer: An Analysis of the First Amendment Right to Video record Police", *Kansas Law Review* Vol. 66, 2017, pp.149-180; Vincent Nguyen, "Watching Big Brother: A Citizen's Right to Record Police", *Fordham Intell. Prop. Media & Ent. L.J.* Vol. 28, No.3, 2018, p.637; Matt Ford, "A Major Victory for the Right to Record the Police", *The Atlantic*, 7 July 2017, available at: <https://www.theatlantic.com/politics/archive/2017/07/a-major-victory-for-the-right-to-record-police/533031/>. For an example of police guidance, see: Cambridge Police Department (US), "Public Audio/Video Recordings of Police Actions", (Policy & Procedures, No. 427, February 2014) Available at: <http://www.cambridgema.gov/~/media/Files/policedepartment/Policies/publicaudiovideorecordingsofpoliceactions2014.pdf>.

[408] Ibid.

[409] Joint report of the UN Special Rapporteurs (2016) UN Doc. A/HRC/31/66, *op. cit.,* note 52, para. 71.

injury, disability or death of participants in assemblies.[410] Crowd control techniques and weapons routinely used during assemblies such as plastic bullets, chemical irritants such as tear gas, water cannons, disorientation devices such as flashbang or stun grenades or acoustic weapons such as sonic cannons have evolved quite significantly, and pose much greater risks to people's health than they used to.[411]

214. **Duty to facilitate access to medical practitioners.** It is thus all the more important that state authorities ensure that appropriate medical provision is available and accessible to all participants in public assemblies, as well as to non-participants who might be in the vicinity, and to police officers. Medical provision may be provided by health care professionals working professionally or voluntarily, or by volunteer organisations or street medics.[412] Doctors and other medical personnel have an ethical duty to prevent illness and to care for the sick and wounded, regardless of political affiliation, official or unofficial status, race, or religion and the authorities must refrain from interfering with this professional duty and the general functions of health systems and medical provisions at all times, including during disorder and violence.[413]

215. **Medical treatment should be provided on basis of need.** Medical treatment should be based on priority of need and should be available to people who have been detained or arrested. In this context, the special needs of potentially vulnerable assembly participants such as children, pregnant women, or disabled persons needs to be taken into account. Also, emergency vehicles need to be given speedy access to the injured and medical personnel, including people working on a volunteer basis, should be able to treat the injured without being targeted by the police, or other assembly participants.[414]

216. **Responsibility not to interfere with the work of medical practitioners.** The government and law enforcement officials should not interfere with the professional duty of doctors and medical professionals and the general functions of health systems, including during times of protests and disorder and must ensure that doctors and medical professionals have sufficient protection and resources to provide appropriate care to people during all forms of public assembly. In particular, this includes the obligation to protect the independence of medical personnel and their special role within society as they impartially heal the sick and treat the injured, in all situations. Law enforcement officials should also abstain from conducting raids, intimidating health personnel or searching medical services with a view to arrest injured participants of an assembly, as this may prevent people from seeking the medical assistance they might urgently need.

Arrest and detention of assembly participants

217. **The containment (or 'kettling') of assembly participants is only permissible in exceptional circumstances.** During assemblies, individuals should only be confined to designated areas in exceptional circumstances, such as actual or imminent violence, and

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[410] See the report "Lethal in Diguise: The Health Consequences of Crowd-Control Weapons", (Physicians and Human Rights and International Network of Civil Liberties Organisations, 2016) available at: <http://physiciansforhumanrights.org/library/reports/lethal-in-disguise.html>.

[411] Thus, kinetic impact projectiles (plastic bullets) can cause serious injury, disability and death, particularly if fired at close range; chemical irritants ("tear gas") cause irritation to eyes, dermal pain, respiratory distress, and psychological disorientation, and may cause serious injury and death; water cannons can cause injury to eyes and may cause hyperthermia or frostbite if used in cold weather; disorientation devices (flashbang or stun grenades) may fragment when exploding and carry risks of blast injuries; while acoustic weapons (sonic cannons) have the potential to cause significant harm to the ears, including hearing loss. See also *Ali Güneş v. Turkey*, (2012) *op. cit.,* note 353; *İzci v. Turkey* (2013), *op. cit.,* note 353.

[412] See, for example <https://atlantaresistancemedics.wordpress.com/the-library/history/> for a history of volunteer protest medics.

[413] See, "Contempt for Freedom: State Use of Tear Gas as a Weapon and Attacks on Medical Personnel in Turkey", (Physicians for Human Rights, 2013) <http://physiciansforhumanrights.org/library/reports/contempt-for-freedom.html>

[414] *Ibid*.

where no other measure short of dispersing the assembly would resolve the issue. Strategies requiring assembly participants to remain in one confined area under police control (known as 'kettling' or 'corralling') should generally be avoided, as they do not distinguish between participants and non-participants, or between peaceful and non-peaceful participants. Allowing some individuals to cross a police line whilst at the same time preventing others from doinğg so is also discriminatory and may exacerbate tensions, while an absolute cordon permitting no egress from a particular area potentially violates individual rights to liberty and freedom of movement.[415] The practice of kettling may also be particularly detrimental to vulnerable individuals such as children, pregnant women, and persons with disabilities, especially if those disabilities affect mobility.[416] Where it is used, it should be for the shortest time possible, and should involve clear communication to participants about the reasons for kettling, and proper care for those in need of assistance, including access to toilets and drinking water. Kettling should not be used for the purposes of gathering intelligence on participants, and where people contained in this manner are compelled to disclose personal information before being permitted to leave the contained area.[417]

Section 108, First Amendment Rights and Police Standards Act (2004), District of Columbia, United States

Use of police lines

No emergency area or zone will be established by using a police line to encircle, or substantially encircle, a demonstration, rally, parade, march, picket line, or other similar assembly (or subpart thereof) conducted for the purpose of persons expressing their political, social, or religious views except where there is probable cause to believe that a significant number or percentage of the persons located in the area or zone have committed unlawful acts (other than failure to have an approved assembly plan) and the police have the ability to identify those individuals and have decided to arrest them; provided, that this section does not prohibit the use of a police line to encircle an assembly for the safety of the demonstrators.

218. **Mass arrests or detentions should be avoided.** Law enforcement should in principle avoid mass arrests, which are frequently considered to be arbitrary under international human rights law[418] and contrary to the presumption of innocence.[419] Mass deprivations of liberty resulting from the simultaneous arrest of innocent persons and those believed to have violated the law should not be conducted simply because law enforcement agencies do not have sufficient resources to effect individual arrests of wrongdoers. Adequate resourcing forms part of the positive obligation that States are under to protect freedom of peaceful assembly (see paragraph 75 above) as well as the right not to be arbitrarily deprived of freedom.

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[415] See further note 274 above. See also *Vodak v. City of Chicago*, 639 F.3d 738, 742-747 (7th Cir. 2011) (stating that unjustified corralling [kettling] and arresting participants in a public assembly to maintain public order violates right to freedom of speech and right against unreasonable searches and seizures). Also see *Stauber v. City of New York*, No. 03 CIV. 9162 (RWS), 2004 WL 1593870, at *1 (S.D.N.Y. July 16, 2004), as amended (July 19, 2004), amended, No. 03 CIV.9162 RWS, 2004 WL 1663600 (S.D.N.Y. July 27, 2004) (unreported settlement of suit against police precluding the further use of large pens which prevent demonstrators from entering and exiting at will). See Report of the UN Special Rapporteur (2014), UN Doc. A/HRC/26/29, *op. cit.,* note 138, para. 40, where the Rapporteur considered such tactics to have a "powerful chilling effect on the exercise of freedom of peaceful assembly."

[416] *Ibid.*

[417] See Report of the UN Special Rapporteur (2013), A/HRC/23/39, *op. cit.,* note 56, paras. 53-54, and Addendum to the report. A/HRC/23/39/Add.1, *op. cit.,* note 327, para. 36-38.

[418] Amnesty International, Fair trial manual, 2nd edition, p. 34. See also HRC Concluding Observations: Canada, UN Doc. CCPR/C/CAN/CO/5 (2005) para. 20.

[419] HRC Concluding Observations, Burkina Faso, UN Doc. CCPR/C/BFA/CO/1 (2016), para 37: "concern that punishment of acts of vandalism committed during demonstrations on the public highway, is not in conformity with the Covenant, and notably with the principle of the presumption of innocence and individual criminal responsibility, as it allows for every member of a group to be held criminally responsible, regardless of whether the perpetrator of the offence has been identified or not."

219. **Clear and accessible protocols for the stop, search and arrest or detention of assembly participants must be established.** It is of paramount importance that States establish clear and prospective protocols for the lawful stop and search or arrest/detention of participants during assemblies. Such protocols should have a clear legal basis (see paras. 90 *et seq.* above (principle of legality)). Participants in assemblies should not be subjected to unreasonable searches and seizures.[420] State protocols should provide guidance as to when measures involving search and seizure are legal and appropriate, how they should be conducted, and what should happen to individuals following arrest. In principle, a police search may only be justified if it is prescribed by law (which should require such measures only, for example, where there is probable cause or reasonable suspicion of a crime), necessary and proportionate, and respects human dignity.[421] The retention of fingerprints, cellular samples and DNA profiles of arrested persons suspected but not convicted of offences must be strictly limited by law.[422] Moreover, police searches of individuals should be undertaken by trained police officer of the same sex, which requires that the composition of police units should be gender balanced wherever possible.[423] Stop, search and arrest protocols should also clearly define and prohibit ethnic profiling. Identity checks should be considered justified only if necessary to protect the rights and freedoms of others – for example when there is reasonable suspicion that checked individuals may engage in violence or otherwise criminal behaviour, or on the basis of other limitation grounds contained in international instruments. Otherwise, such checks could have a chilling effect on participation in assemblies. Any alleged cases of abuse of power, or of 'racial' or other discrimination or 'racially' motivated misconduct by the police should be investigated effectively and the perpetrators adequately punished.[424]

220. **Threshold for the arrest and detention of participants during an assembly**. The arrest and/or detention of participants during an assembly (for committing administrative, criminal or other offences) should meet a high threshold of probable cause in each individual case and particularly in cases involving mere administrative offences.[425] Where feasible, it may often be more appropriate to delay the arrest of assembly participants for illegal acts that took place prior to or during an assembly until after the event is over. Moreover, only individuals directly involved in illegal acts should be targeted for arrest,[426] and they should be

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[420] See e.g. *Terry v. Ohio*, 392 U.S. 1 (1968) (stating that even a brief on-street detention of a pedestrian for brief questioning triggers the constitutional guarantee against unreasonable searches and seizures).

[421] The ECtHR generally analyses whether (i) search measures are necessary and proportional to the legitimate aim, (ii) there is an effective oversight mechanism in place, (iii) the authorization to conduct such searches is subject to effective judicial review and action for damages, (iv) there are temporal and geographical restrictions to the said powers of search, (v) the modalities for carrying out stop and search measures are clearly stated, and (vi) there are any caveats to the decision to stop and search individuals (for instance, the necessity to demonstrate reasonable suspicion) (see for example, *Gillan and Quinton v. United Kingdom* (2010), *op. cit.,* note 172, paras. 80-83 and 86. Regarding human dignity, see for example, *Selmouni v. France*, Application No 25803/94, 28 July 1999, para. 99: "[i]n any event, the Court reiterates that, in respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3."

[422] See *S. and Marper v. United Kingdom* (2008), Applications nos. 30562/04 and 30566/04), 4 December 2008 in which the blanket and indiscriminate nature of powers concerning the retention of such data led the Court to find a violation of the right to private and family life.

[423] UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ("Bangkok Rules"), 22 July 2010, Rule 19.

[424] See Council of Europe European Commission against Racism and Intolerance (ECRI), General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, 29 June 2007, paras. 1 and 9; see also OSCE, *Publication on "Police and Roma and Sinti: Good Practices in Building Trust and Understanding"* (2010), pp.10 and 58.

[425] See for example, U.S. District Court, Southern District of New York, 30 September 2012, *Hacer Dinler et al. v. The City of New York,* No. 04 Civ 7921 (unpublished) pp. 4-7, regarding the unconstitutional nature of 'group probable cause'. Also see *Ybarra v. Illinois,* 444 U.S. 85, 91 (1975) (individualized, not group, probable cause required to search or seize an individual).

[426] "Climate conference mass arrests illegal, court upholds", January 25, 2012 <http://cphpost.dk/news/climate-conference-mass-arrests-illegal-court-upholds.628.html>; "More demonstrators may receive police compensation", February 3, 2012 <http://cphpost.dk/news/more-demonstrators-may-receive-police-compensation.717.html>, "Mass arrests after football game may have been illegal", December 3, 2013 <http://cphpost.dk/news/mass-arrests-after-football-game-may-have-been-illegal.7977.html>.

released as soon as the reasons for their detention are no longer applicable. Even short periods of detention will directly affect participants' right to assemble, their liberty of movement (Article 12 ICCPR and Article 2 of Protocol 4, ECHR), and may amount to a deprivation of liberty under Article 9 ICCPR and Article 5 ECHR (the right to liberty and security of person).[427] Detention should thus be used only if there is a pressing need to prevent the commission of serious criminal offences and where an arrest is absolutely necessary (e.g. due to violent behaviour). States should ensure that protesters are not detained simply for expressing disagreement with police actions during an assembly.[428] The UN Human Rights Committee has stated that '[a]rrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including [in cases involving] freedom of assembly.'[429]

Penalties Imposed After an Assembly

221. **No penalty without a (sufficiently clear) law**. After an assembly, the imposition of sanctions and penalties is only permissible if they were already prescribed by law at the time the assembly took place, as otherwise this may violate the principle that individuals may not be punished for acts that were not criminalized at the time when they were committed.[430] The same applies to punishment based on a law that was insufficiently clear, which would violate the principle of legality and foreseeability of legislation; legislation that does not adhere to these principles would not be a justifiable basis by which to restrict important human rights such as freedom of peaceful assembly.[431]

222. **Any penalties imposed must be necessary and proportionate.** Unnecessary or disproportionately harsh sanctions for behaviour during assemblies could, if known in advance, inhibit the holding of such events and have a chilling effect that may prevent participants from attending. Such sanctions could thus constitute an indirect violation of the freedom of peaceful assembly.[432] Penalties for minor offences that do not threaten to cause or result in significant harm to public order or to the rights and freedoms of others should accordingly be low and the same as minor offences unrelated to assemblies. In cases involving minor administrative violations, it may be inappropriate to impose any sanction or penalty on assembly participants and organizers.[433]

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[427] See further, UN Human Rights Committee, General Comment No. 35 on Article 9 (Liberty and Security of Person), CCPR/C/GC/35, 16 December 2014; *Brega and Others v. Moldova*, Application No 61485, 24 January 2012, paras. 37-44.

[428] US Justice Department (Civil Rights Division), Investigation of the Ferguson Police Department", March 4, 2015: "Even profane backtalk can be a form of dissent against perceived misconduct. In the words of the Supreme Court, "[t]he freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state." [citing Hill, 482 U.S. at 463]. Ideally, officers would not encounter verbal abuse. Communities would encourage mutual respect, and the police would likewise exhibit respect by treating people with dignity. But, particularly where officers engage in unconstitutional policing, they only exacerbate community opposition by quelling speech." <https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf>. See also note 408 above concerning retaliatory action against individuals recording the police.

[429] UN Human Rights Committee, General comment No. 35, *op. cit.,* note 427, para. 17.

[430] Article 15, ICCPR: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed."

[431] See *Vyerentsov v. Ukraine* (2013), *op. cit.,* note 37; *Mrktchyan v. Armenia* (2007), *op. cit.,* note 175, paras. 40-43.

[432] *Gün and Others v. Turkey*, (2013), *op. cit.,* note 113, paras. 82-84; see also *Yilmaz Yildiz and others v. Turkey* (2014), *op. cit.,* note 265, paras. 34 and 48; see also UN Human Rights Committee, Views (on the merits): *Igor Bazarov v. Belarus* (1934/2010) 24 July 2014, CCPR/C/111/D/1934/2010, paras. 7.2-7.4.

[433] See *Kudrevičius and Others v. Lithuania* (2015)**,** *op. cit.,* note 49, para. 149: "At the same time, the freedom to take part in a peaceful assembly is of such importance that a person cannot be subject to a sanction – even one at the lower end of the scale of disciplinary penalties – for participation in a demonstration which has not been prohibited, so long as that person does not himself commit any reprehensible act on such an occasion", citing

223. **Restrictions on participation in future assemblies.** Future participation in peaceful assemblies should not be restricted (for example, through the imposition of bail conditions) unless there is incontrovertible evidence that the person intends to violate the law during specific future assemblies. Where any such restrictions are imposed on future participation, there must be an opportunity to challenge their necessity and proportionality in court.

224. **Liability should be based on individual culpability and must be supported by evidence.** Organizers and stewards are obliged to make reasonable efforts to comply with legal requirements and to ensure that their assemblies are peaceful. However, they should not be held liable for the failure to perform their responsibilities in cases where they are not individually responsible, e.g. where property damage or disorder, or violent acts are caused by assembly participants or onlookers acting independently.[434] Liability will only exist where organizers or stewards have personally and intentionally incited, caused or participated in actual damage or disorder.[435] In particular, an organiser should not be liable for the actions of individual participants, or for the conduct of stewards who do not act in accordance with the terms of their briefing,[436] unless, for example, he/she explicitly incited them to commit such acts (in this case the organizer would be responsible for his/her own actions - incitement- not for the action of the participants). Individual liability will arise for any steward or participant if he or she intentionally, or with criminal negligence, commits an offence during an assembly or intentionally fails to follow the lawful directions of law enforcement officials. However, if an assembly degenerates into serious public disorder, it is the responsibility of the State, not the organiser, representative, or event stewards, to limit the damage caused. Assembly organisers and representatives should under no conditions be obliged to pay for damages caused by other participants in an assembly (unless they incited, or otherwise directly caused them).

225. **Penalties for acts and/or omissions in relation to the notification process**. Where organizers do not, by action or omission, fully comply with the requirement of notification, or with conditions imposed on assemblies during the notification process, this shall only be punished if there is evidence to prove that they have done so intentionally, and where the non-compliance is substantial. The burden of proof in such cases, however, rests with the public authorities. Thus, it would be inappropriate to punish an assembly organizer if the expected and notified number of participants unexpectedly rises above the threshold for notification. Moreover, if there are reasonable grounds for non-compliance with a notification or permit requirement, then no liability arises, and no sanctions should be imposed.

226. **Penalties for participation**. Participation in a peaceful assembly, even if unauthorized, should never be treated as a serious offence that leads to severe penalties.[437]

Ezelin v. France (1991), *op. cit.,* note 11, para. 53; The Court has held that this is true also when the demonstration results in damage or other disorder (see *Taranenko v. Russia*, (2014), *op. cit.,* note 60, para. 88.

[434] Joint report of the UN Special Rapporteur (2016), A/HRC/31/66, *op. cit.,* note 52, para. 26: "While organizers should make reasonable efforts to comply with the law and to encourage peaceful conduct of an assembly, organizers should not be held responsible for the unlawful behaviour of others. To do so would violate the principle of individual liability, weaken trust and cooperation between assembly organizers, participants and the authorities, and discourage potential assembly organizers from exercising their rights."

[435] See *Ezelin v. France* (1991), *op. cit.,* note 11, para. 53, where the Court found that even though the applicant had not disassociated himself from criminal acts committed during an assembly, he had not committed any of these acts himself; the imposition of the administrative fine against him was thus not necessary in a democratic society; and *Sergey Kuznetsov v. Russia*, (2008), *op. cit.,* note 80, paras. 43-48.

[436] See, for example, Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at para.34.4 (English translation): "If too great a responsibility before the activity, during it or even after the activity is laid on the organiser of the activity … then at other time these persons will abstain from using their rights, fearing the potential punishment and additional responsibilities."; *NAACP v. Claiborne Hardware*, 458 U. S. 886, 922-932 (1982).

[437] *Gün and Others v. Turkey* (2013), *op. cit.,* para. 83, note 113; *Akgöl and Göl v. Turkey*, Application Nos 28495/06 and 28516/06, 17 May 2011, para. 43.

Participants in a peaceful assembly should not be subject to criminal sanctions[438] or deprivation of liberty merely for participating in an assembly.[439] The ECtHR has held that "[w]hile rules governing public assemblies, such as the system of prior notification, are essential for the smooth conduct of public demonstrations, since they allow the authorities to minimise the disruption to traffic and take other safety measures, their enforcement cannot become an end in itself".[440] Moreover, the ECtHR has considered it disproportionate to sanction participants in an assembly that has not been prohibited if they themselves did not commit any reprehensible act on such occasion,[441] nor be punished for taking part in an unlawful assembly if they were not aware of the unlawful nature of the event.[442]

227. **Penalties for failure to comply with a dispersal order.** Imposing punishment on organizers or participants for failure to comply with a dispersal order if the order was given with insufficient clarity would violate a persons' right to freedom of assembly (and related rights). Likewise, punishment for failure to comply with a dispersal order without having been given a reasonable opportunity to do so will constitute an unnecessary interference with freedom of peaceful assembly.[443] Organizers of an assembly should never be held liable for failure of others to comply with a dispersal order.

228. **Penalties for acts of 'civil disobedience'.** Civil disobedience, i.e., non-violent actions that, while in violation of the law, are undertaken for the purpose of amplifying or otherwise assisting in the communication of a message, may also constitute a form of assembly. If those who incite, or engage in, acts of civil disobedience are subject to legal punishment for their acts, this should always be proportionate.[444] Sanctions shall take the nature of the unlawful conduct into account, but neither the offense nor the penalty must ever be increased due to the content of the expression or message that accompanies the unlawful conduct. Under no circumstances should a protestor engaged in civil disobedience be punished more severely than a person who committed the identical offense without expressive intent.

229. **Actions under the direction of law enforcement officials.** A participant should not be held liable for anything done under the direction of a law enforcement official. This means, for example, that if a location for a public assembly was initially approved, and later arbitrarily revoked, participants in the assembly will not be liable for violating the law.[445]

230. **No penalties for viewpoints.** A penalty should not be imposed or enhanced based on the content of the message communicated by an assembly or the viewpoints expressed by its participants, unless this message constitutes incitement to violence, hatred or discrimination.[446] While expression should normally be protected even if it is hostile or

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[438] See *Akgöl and Göl v. Turkey* (2011) *op. cit.,* note 437, para. 43.
[439] See *Gün and Others v. Turkey* (2013), *op. cit.,* note 113, para. 83.
[440] See *Primov and Others v. Russia* (2014), *op. cit.,* note 30, para. 118.
[441] *Ezelin v. France* (1991)*, op. cit.,* note 11,, para. 53; *NAACP v. Claiborne Hardware*, 458 U. S. 886 (1982).
[442] An example of such a defence is contained in Sections 6(7) and 6(8), Public Processions (Northern Ireland) Act 1998. There may be a number of ways to provide for the 'reasonable excuse' defence in the law, but good practice suggests that words such as 'without reasonable excuse' should be clearly identified *as a defence* to the offence where it applies, and not merely as an element of the offence which would have to be proved or disproved by the prosecution. See Preliminary Comments on the Draft Law "On Amendments to Some Legislative Acts of the Republic of Kazakhstan on National Security Issues"', OSCE-ODIHR Opinion-Nr. GEN-KAZ/002/2005, 18 April 2005. See also *Cox v. Louisiana*, 379 U.S. 536, 553-558 (1965).
[443] *Frumkin v. Russia* (2016), *op. cit.,* note 292, para. 166.
[444] See for example, UN High Commissioner for Human Rights, Report on Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, A/HRC/22/28, 21 January 2013, para. 51. See *Steel and Morris v. United Kingdom* (2005), *op. cit.,* note 403; and regarding specifically online civil disobedience, see for example, Council of Europe MSI-INT, "Report on Freedom of Assembly and Association on the Internet", 10 December 2015, paras. 58-61.
[445] See *Cox v. Louisiana*, 379 U.S. 536, 538-551 (1965).
[446] See for example, *Rufi Osmani and Others v. the Former Yugoslav Republic of Macedonia* (2001), Application no. 50841/99, 11 October 2001. In *Gregory v. City of Chicago*, 394 U.S. 111 (1969), the court found that the

insulting to other individuals, groups or particular sections of society, the advocacy of national, racial or religious hatred that constitutes unlawful incitement to discrimination or violence should be punishable by law.[447] Moreover, specific instances of hate speech "may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the European Convention on Human Rights to other forms of expression. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the Convention or at their limitation to a greater extent than provided therein."[448] Even then, the mere act of resorting to such speech by participants in an assembly does not justify the dispersal of the event. In such cases, law enforcement officials should take measures only against the particular individuals involved.[449]

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mere presence of hostile onlookers was insufficient evidence to sustain a conviction of protestors for disorderly conduct. Similarly, in *Cantwell v. Connecticut*, 310 U.S. 296, (1940) provocative speech in front of hostile onlookers was not considered to be a valid basis for a disorderly conduct conviction.

[447] Article 20(2) ICCPR. For the U.S. rule, see *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992) (on the other hand, a hate speech law only directed at race-based fighting words violates the right to freedom of speech because it is discriminatory and did not uniformly prohibit all fighting words).

[448] Principle 4 of the Council of Europe Committee of Ministers Recommendation No. R(97)20. The appendix to Recommendation No. R(97)20 defines 'hate speech' as "covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin." See further, the UN Convention on the Elimination of All Forms of Racial Discrimination, and Resolution (68) 30 of the Committee of Ministers on Measures to be taken against incitement to racial, national and religious hatred. See, for example, the Austrian Constitutional Court judgment of March 16 2007 (B 1954/06) upholding a prohibition on an assembly because (in part) national-socialist slogans had been used at a previous assembly (in 2006) with the same organiser. The Austrian National-Socialist Prohibition Act 1947 prohibited all national-socialist activities. See also the Holocaust denial cases: UN Human Rights Committee, *Ernst Zündel v. Canada* (953/2000, admissibility) 27 July 2003, UN Doc. CCPR/C/78/D/953/2000, para. 5.5: "The restriction ... served the purpose of protecting the Jewish communities' right to religious freedom, freedom of expression, and their right to live in a society free of discrimination, and also found support in article 20, paragraph 2, of the Covenant"; and *Robert Faurisson v. France* (No.550/1993, admissibility), 8 November 1996, UN Doc. CCPR/C/58/D/550/1993, para. 9.6: "Since the statements ... read in their full context, were of a nature as to raise or strengthen anti-Semitic feelings, the restriction served the respect of the Jewish community to live free from fear of an atmosphere of anti-Semitism." For the U.S. rule, see *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992) (noting that a hate speech law only directed at race-based fighting words violates the right to freedom of speech because it is discriminatory and did not uniformly prohibit all fighting words).

[449] In the case of *Incal v. Turkey*, Application No 22678/93, 9 June 1998, for example, the applicant's conviction for helping to prepare a political leaflet which urged the population of Kurdish origins to band together and 'set up Neighbourhood Committees based on the people's own strength' was held by the Court to have violated the applicant's freedom of expression under Article 10. Read in context, the leaflet could not be taken as an incitement to the use of violence, hostility or hatred between citizens. In this context, see also the case of *Virginia v. Black*, 538 U.S. 343, 363-368 (2003) (regarding a case where the expressive burning of a Ku Klux Klan cross not actually proven be intentional intimidation of identifiable persons constituted protected speech and could thus not be punished on the grounds it was legally presumed to be an intimidating act.) In the case of *Gregory v. City of Chicago*, 394 U.S. 111 (1969), the mere presence of hostile onlookers was insufficient evidence to sustain a conviction of protestors for disorderly conduct; In *Cantwell v. Connecticut*, 310 U.S. 296, (1940), provocative speech in front of hostile onlookers was not considered to be a valid basis for a disorderly conduct conviction. In the case of *Cisse v. France* (2002), *op. cit.,* note 55, para. 50, the ECtHR stated that "[t]he Court does not share the Government's view that the fact that the applicant was an illegal immigrant sufficed to justify a breach of her right to freedom of assembly, as ... [*inter alia*] ... peaceful protest against legislation which has been contravened does not constitute a legitimate aim for a restriction on liberty within the meaning of Article 11(2)." See also *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), *op. cit.,* note 16, paras. 102-3, and *United Macedonian Organisation Ilinden and Others v. Bulgaria*, Application No 59491/00, 19 January 2006, para. 76. In the case of the *Christian Democratic People's Party v. Moldova*, Application No 28793/02, 14 February 2006, the Court was '…not persuaded that the singing of a fairly mild student song could reasonably be interpreted as a call to public violence.' In the following ECtHR case of the *Christian Democratic People's Party v. Moldova (No.2)* (2010), *op. cit.,* note 126, para. 27, the Court rejected the Moldovan government's assertion that that the slogans, "Down with Voronin's totalitarian regime, '"Down with Putin's occupation regime)", even when accompanied by the burning of a picture of the President of the Russian Federation and a Russian flag, amounted to calls to violently overthrow the constitutional regime, to hatred towards the Russian people, or to an instigation to a war of aggression against Russia. The Court noted that these slogans should rather "be understood as an expression of dissatisfaction and protest" – "a form of expressing an opinion in respect of an issue of major public interest, namely the presence of Russian troops on the territory of Moldova." See also *Fáber v. Hungary* (2012), *op. cit.,* note 31, para. 56 where the Court stated that: "even assuming that some demonstrators may have considered the flag as offensive, shocking, or even 'fascist', for the Court, its mere display was not capable of disturbing public order or hampering the exercise of the demonstrators' right to

231. Fair trial standards. After assemblies, organizers or participants may be taken to court to establish potential wrongdoing. All proceedings that may affect the civil rights and obligations of these individuals, or relate to criminal charges levelled against them, should provide basic fair trial rights as set out in relevant international instruments.[450] These include access to a fair and public hearing within a reasonable time before an independent and impartial tribunal established by law. Similar considerations apply in the case of certain administrative procedures that are comparable to criminal procedures by nature and based on the severity of potential sanctions.[451] In the case of criminal charges, additional fair trial guarantees apply, including the right to be informed promptly and in a language that one understands of the charges, to be given adequate time to prepare one's defence, the right to defence council, equality of arms with respect to the examination of evidence, and, where needed, free interpretation.[452]

232. **Accountability of state authorities and/or state officials**

233. **Types of liability.** Public 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. Individual liability should be gauged according to the relevant principles of administrative or criminal law. When it comes to the use of excessive force, depending on the level of seriousness of the offence, various forms of liability may be appropriate. This may include civil liability to compensate victims for injuries and, in more serious cases, disciplinary liability of the law enforcement officer(s) involved. Excessive use of force may also constitute ill-treatment within the meaning of Article 3 of the ECHR.[453] Where certain acts amount to torture, inhuman or degrading treatment or punishment, criminal liability, in combination with adequate compensation for injuries and suffering, is the only appropriate response. Civil, disciplinary and criminal liability may also be appropriate, depending on the circumstances and gravity of the individual case. These types of liability may also arise where injuries result from a lack of police response, for example where insufficient protection is given to assembly participants against violent third parties.

Paragraph 21.2 of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991

(OSCE) participating States are urged to 'ensure that law enforcement acts are subject to judicial control, that law enforcement personnel are held accountable for such acts, and that due compensation may be sought, according to domestic law, by the victims of acts found to be in violation of the above commitments.'

Paragraph 7 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

'[G]overnments shall ensure that the arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.'[454]

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assemble as it was neither intimidating, nor capable of inciting to violence by instilling a deep-seated and irrational hatred against identifiable persons (see *Sürek v. Turkey (No. 1*), Application No 26682/95, 8 July 1999, para. 62. The Court stresses that ill feelings or even outrage, in the absence of intimidation, cannot represent a pressing social need for the purposes of Article 10 para. 2, especially in view of the fact that the flag in question has never been outlawed." See also *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

[450] See Article 14 of the ICCPR and Article 6 of the ECHR.

[451] See, *mutatis mutandis, Engel and Others v. the Netherlands*, Application Nos 5100/71, 5101/71, 5102/71, 5354/72, and 5370/72, 8 June 1976, para. 82.

[452] For further detail, see Article 14 para. 3 of the ICCPR and Article 6 para.3 of the ECHR.

[453] *Huseynov v. Azerbaijan* (2015), *op. cit.,* note 34, paras. 51-76.

[454] See also *Simsek and Others v. Turkey* (2005), *op. cit.,* note 351, para. 91.

Accountability of law enforcement authorities and personnel

234. **Monitoring and evaluation of state conduct during and after an assembly.** The compliance of law enforcement officials with international human rights standards should be closely monitored and evaluated after the event.[455] It is good practice for an independent oversight body to review and report on any large scale or contentious policing operation relating to public assemblies.[456] The respective complaints mechanism should be adequate, prompt, subject to public scrutiny (open and transparent), and should ensure the victim's/complainant's involvement in the process.[457] In Northern Ireland, for example, human rights experts from the police oversight body (the Policing Board) routinely monitor all elements of police operations related to controversial assemblies.[458] It is also good practice for such a body to publish statistics on the number of complaints received, their nature and consequences, to ensure transparency.[459] In certain cases, there may also be a monitoring role for the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment[460] or for national human rights institutions. The expectation that criminal or disciplinary proceedings will be brought against a police officer against whom there is evidence of misconduct is an important protection against impunity and essential for public confidence in the police complaints system. The prosecution authority, police and independent police complaints body should give reasons for their decisions relating to criminal and disciplinary proceedings for which they are responsible.

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[455] In a number of countries (including Hungary, Sweden, Moldova and the United Kingdom) high profile inquiries have been instigated in the aftermath of misuse of police powers during public demonstrations. Their recommendations have emphasized, amongst other things, the importance of narrowly framed powers and rigorous training of law enforcement personnel (see paragraphs 147-148). See, for example, "Report of the Special Commission of Experts on the Demonstrations, Street Riots and Police Measures in September-October 2006: Summary of Conclusions and Recommendations" (Budapest: February 2007), <http://www.gonczolbizottsag.gov.hu/jelentes/gonczolbizottsag_jelentes_eng.pdf>; Joint Committee on Human Rights, Demonstrating Respect for Rights: A Human Rights Approach to Policing Protest (Volume 1) (HL Paper 47-I; HC 320-I, 23 March 2009), and Follow-up Report (London: HMSO, HL Paper 141/ HC 522, 14 July 2009); Her Majesty's Chief Inspector of the Constabulary (HMIC), *Adapting to Protest: Nurturing the British Model of Policing* (November 2009). In Moldova, in the aftermath of violence occurring at the election related demonstrations on 6-7 April 2009, a parliamentary commission was established to investigate the causes and effects of the events. The commission was comprised of the deputies and civil society representatives. Its report examined the police response during and after the demonstrations and made a number of recommendations aimed at improving policing practices in Moldova.

[456] Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police, CommDH(2009)4, 12 March 2009: "An independent and effective police complaints system is of fundamental importance for the operation of a democratic and accountable police service. Independent and effective determination of complaints enhances public trust and confidence in the police and ensures that there is no impunity for misconduct or ill-treatment. A complaints system must be capable of dealing appropriately and proportionately with a broad range of allegations against the police in accordance with the seriousness of the complainant's grievance and the implications for the officer complained against. A police complaints system should be understandable, open and accessible, and have positive regard to and understanding of issues of gender, "race", ethnicity, religion, belief, sexual orientation, gender identity, disability and age. It should be efficient and properly resourced, and contribute to the development of a caring culture in the delivery of policing services.

[457] See Council of Europe Commissioner for Human Rights, Opinion concerning Independent and Effective Determination of Complaints against the Police, CommDH(2009)4, 12 March 2009; and Council of Europe, Recommendation Rec(2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics, para. 61.

[458] For further details, see <http://www.nipolicingboard.org.uk/index/publications/human-rights-publications/content-previous_hr_publications.htm>.

[459] UNODC, *Handbook on Police Accountability, Oversight and Integrity* (2011), page 36, available at <http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/PoliceAccountability_Oversight_and_Integrity_10-57991_Ebook.pdf>.

[460] See, for example, the CPT report on its visit to Italy in 2004, published on 17 April 2006 regarding the events that took place in Naples (on 17 March 2001) and in Genoa (from 20 to 22 July 2001) and actions taken in response to the allegations of ill-treatment made against the law-enforcement agencies. The CPT stated that it wished "to receive detailed information on the measures taken by the Italian authorities to prevent the recurrence of similar episodes in the future (relating, for instance, to the management of large-scale public-order operations, training of supervisory and operational personnel and monitoring and inspection systems)."

235. **Duty to conduct an effective investigation into abuse of power, including violent incidents and to provide effective remedies to victims.** Any abuse of state powers and violations of the law by state officials, including instances of unlawful dispersal or early termination of assemblies, should lead to prompt and independent investigations. This applies equally to acts of violence, threats of violence, or incitement to hatred against participants in an assembly by other participants, counter-demonstrators, law enforcement officials or third persons. Those responsible should be sanctioned in an appropriate manner and victims should be informed about possible remedies.[461] When investigating such cases, the authorities should, as the European Court of Human Rights has held, "do whatever is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of violence induced by, for instance, racial or religious intolerance, or violence motivated by gender-based discrimination".[462] Where there are allegations of excessive or otherwise unlawful use of force by law enforcement officers, the authorities should conduct effective investigations[463] into such actions in such a way as to ensure the accountability of the relevant police officers.[464]

236. **Use of standards and need for investigations.** When judging whether a state action or reaction was reasonable and proportionate, it is necessary to conduct an objective and real-time evaluation of the totality of circumstances.[465] The ECtHR has, in recent case law, ordered States to develop clear sets of rules concerning the implementation of directives relating to the use of force, including tear gas, as well as a system guaranteeing adequate training of law enforcement personnel and sufficient control and supervision of such personnel during assemblies. Moreover, the ECtHR has required States to conduct an effective ex post facto review of the necessity, proportionality and reasonableness of any use of force, especially against people who do not put up violent resistance.[466]

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[461] See for example, UN Human Rights Council, Resolution on the Promotion and Protection of Human Rights in the Context of Peaceful Protests, A/HRC/RES/22/10, April 2013, para. 156; and UN High Commissioner for Human Rights, Report on Discrimination and Violence against Individuals based on their Sexual Orientation and Gender Identity, A/HRC/29/23, 4 May 2015, para. 18, which specifically states that States should, "protect LGBT persons exercising these rights from attacks and reprisals through preventive measures and by investigating attacks, prosecuting perpetrators and ensuring remedy for victims". See also UN Special Rapporteur on the Situation of Human Rights Defenders, Report on the Situation of Women Human Rights Defenders and Those Working on Women's Rights or Gender Issues, A/HRC/16/44, 20 December 2010, para. 109. See also *Identoba and Others v. Georgia* (2015), *op. cit.,* note 114, paras. 75-78.

[462] *Identoba and Others v. Georgia* (2015), *op. cit.,* note 114, para. 67.

[463] The European Court of Human Rights has established five principles for the effective investigation of complaints against the police that engage Article 2 (right to life) or 3 (right to be free from torture or ill-treatment) of the European Convention on Human Rights: 1) Independence: there should not be institutional or hierarchical connections between the investigators and the officer complained against and there should be practical independence; 2) Adequacy: the investigation should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible; 3) Promptness: the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law; 4) Public scrutiny: procedures and decision-making should be open and transparent in order to ensure accountability; and f) Victim involvement: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests. These five principles must be adhered to for the investigation of a death or serious injury in police custody or as a consequence of police practice.

[464] *İzci v. Turkey* (2013), *op. cit.,* note 353, para. 98.

[465] In this regard, the ECtHR has held that 'the use of force by agents of the State in pursuit of one of the aims delineated in paragraph 2 of Article 2 of the Convention may be justified … where it is *based on an honest belief which is perceived, for good reasons, to be valid at the time but which subsequently turns out to be mistaken*. To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and those of others.' See, for example, *Giuliani and Gaggio v. Italy* (2011) *op. cit.,* note 338, para. 178, and the cases cited there. The US standard applicable to official use of excessive force is that the use of force must be objectively reasonable: see *Graham v. Connor*, 490 U.S. 386 (1989).

[466] *İzci v. Turkey* (2013), *op. cit.,* note 353, paras. 98-99.

237. **Accountability for violations of the right to life.** The right to life (Article 6 ICCPR, Article 2 ECHR) covers not only cases of intentional killing, but also cases where the use of force unintentionally results in the deprivation of life. The protection of this right entails 'a stricter and more compelling test of necessity'.[467] This means that the Government will need to demonstrate with convincing arguments that the use of force was necessary in the given circumstances and not excessive, meaning that other, less invasive measures would not have achieved the intended effect.[468] As the ECtHR has held, "there can be no such necessity where it is known that the person to be arrested poses no threat to life or limb and is not suspected of having committed a violent offence, even if a failure to use lethal force may result in the opportunity to arrest the fugitive being lost."[469] Any finding of civil or criminal liability for breach of the right to life on the side of the State should lead to compensation of the affected individual's next of kin, independent of the need to identify an individual criminally responsible for the respective act.

238. **Liability of law enforcement officials.** Law enforcement officials are liable for any failure to fulfil their positive obligations to respect, facilitate and protect the right to freedom of peaceful assembly. Moreover, liability should also extend where "the acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage that State's responsibility".[470] Where a complaint is received regarding the conduct of law enforcement officials or where a person has been seriously injured or deprived of his or her life as a result of the actions of law enforcement officers, an 'independent and effective official investigation' must be conducted.[471] 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. The particular form of investigation required to achieve those purposes may vary according to the circumstances.[472] If the use of force is not authorized by law, or if the resort to force is in violation of domestic legislation or international human rights law, law enforcement officers should face civil and/or criminal liability as well as disciplinary action.[473] The relevant law enforcement personnel should also be held liable for failing to intervene where this may have prevented other officers, or third parties from using excessive force. The individuals responsible for the investigation and those carrying out the inquiries should be independent from those involved in the events, which presupposes not only a lack of hierarchical or institutional connection but also a practical independence.[474]

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[467] See *Washington v. Glucksberg*, 521 U.S. 702, 710-17 (1997) (stressing that the government has a compelling interest in preserving human life).

[468] See for example, *Güleç v. Turkey* (1998) *op. cit.,* note 131, where the applicant's son was killed by security forces who fired on unarmed demonstrators (during a spontaneous, unauthorised demonstration) to make them disperse. The Court found a violation of Article 2 also because there was no thorough investigation into the circumstances, which needs to take place even in circumstances involving illegal assemblies, violent armed clashes or a high number of fatalities.' (para.81). See also *Washington v. Glucksberg*, 521 U.S. 702, 710-17 (1997) (stressing that the government has a compelling interest in preserving human life).

[469] *Nachova and Others v. Bulgaria* (2005), *op. cit.,* note 185, para. 95

[470] *Solomou and Others v. Turkey* (2008), *op. cit.,* note 146, para.46.

[471] See *McCann and others v. United Kingdom*, Application No18984/91, 27 September 1995, para.161; *Shanaghan v. United Kingdom*, Application No 37715/97, 4 May 2001, para.88. For cases involving violence against women, see also Report of the UN Special Rapporteur (2010), A/HRC/16/44, *op. cit.,* note 461,, para. 109.

[472] *Kelly and others v. United Kingdom* (Application No 30054/96 4 May 2001, para.94; *McShane v. United Kingdom*, Application No 43290/98, 28 May 2002, para. 94.

[473] Harlow v. Fitzgerald, 457 U.S. 800 (1982).

[474] In the case of *Saya and Others v. Turkey*, Application No 4327/02, 7 October 2008, a legal Health Workers' Trade Union march (for which authorization had been obtained) was stopped by police on May Day and forcefully dispersed. The applicants were taken into custody and released the next day. The ECtHR found that there had been a failure to carry out an effective and independent investigation into their allegations of ill-treatment. In particular, it found that the 'Administrative Councils' investigating the cases were not independent since they were chaired by governors and composed of local representatives of the executive and an executive officer linked to the very security forces under investigation. Cf. *Barbu Anghelescu v. Romania*, Application No 46430/99, 5 October 2004 (only in French), *Muradova v. Azerbaijan*, Application No 22684/05, 2 April 2009, para. 99.

Annex

International and Regional Instruments/Treaties

Within the OSCE space, the standards concerning freedom of peaceful assembly mainly derive from two legal instruments: the International Covenant on Civil and Political Rights (ICCPR)475 and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and their optional protocols.[476] Key OSCE commitments, which are politically binding, are also of relevance in this context.[477]

The right to freedom of peaceful assembly was also among the rights proclaimed in the 1948 Universal Declaration of Human Rights.[478] In addition, the American Convention on Human Rights is of particular relevance to member countries of the Organization of American States,[479] as is the African Charter on Human and Peoples' Rights to member States of the African Union.[480] Other relevant treaties include the UN Convention on the Rights of the Child,[481] the Charter of Fundamental Rights of the European Union,[482] and the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States (the CIS Convention).[483]

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[475] International Covenant on Civil and Political Rights (ICCPR) (General Assembly resolution 2200A (XXI) of 16 December 1966); cf. also its first Optional Protocol, as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR), (UN General Assembly, 16 December 1966, United Nations Treaty Series, vol. 993, (hereafter: ICESCR). The UDHR is a declaration rather than a binding treaty; the ICCPR and ICESCR were adopted in 1966 to give effect to the principles enunciated in the UDHR. The three documents, the UDHR, ICCPR and ICESCR together constitute the International Bill of Human Rights. The ICCPR sets out universally accepted minimum standards in the area of civil and political rights. The obligations undertaken by States ratifying or acceding to the Covenant are meant to be discharged as soon as a State becomes party to the ICCPR (Articles 2 par 1 and 2, ICCPR).

[476] The Council of Europe's European Convention on Human Rights, Rome, 4 November 1950, ETS No. 5, entry into force 3 September 1953, is the most comprehensive and authoritative human rights treaty for the European region. The treaty has been open for signature since 1950. All member States of the Council of Europe are required to ratify the Convention within one year of the State's accession to the Statute of the Council of Europe. The ECHR sets forth a number of fundamental rights and freedoms, and parties to it are obliged to secure these rights and freedoms to everyone within their jurisdiction (Article 1 ECHR).

[477] Copenhagen 1990, para. 9: "The participating States reaffirm that… (para. 9.2) - everyone 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 […] peaceful assembly (…)".

[478] Universal Declaration of Human Rights (UN General Assembly 10 December 1948, 217 A (III), (hereafter: UDHR), Article 20.

[479] As provided by Article 44 of the American Convention, "[a]ny person or group of persons, or any nongovernmental entity legally recognized in one or more member States of the Organization [of American States], may lodge petitions with the [Inter-American] Commission [on Human Rights] containing denunciations or complaints of violation of this Convention by a State Party." See further Annex A.

[480] Organization of the African Unity (OAU), African Charter on Human and Peoples' Rights (also known as the *Banjul Charter*), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), hereafter the African Charter, Article 11, which provides that "[e]very individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others".

[481] United Nations, Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990.

[482] European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02.

[483] Commonwealth of Independent States, *Convention on Human Rights and Fundamental Freedoms,* Minsk, 26 May 1995, 3 IHRR 1, 212 (1996). The CIS Convention was opened for signature on 26 May 1995 and came into force on 11 August 1998. It has been signed by seven of the twelve CIS member States (Armenia, Belarus, Georgia, Kyrgyzstan, Moldova, Russia and Tajikistan) and ratified by Belarus, the Kyrgyz Republic, the Russian Federation and Tajikistan. See further, for example, the ECtHR's Decision on the Competence of the Court to Give an Advisory Opinion concerning 'the coexistence of the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States and the European Convention on Human Rights' (2 June 2004).

The significance of these treaties and instruments derives, in part, from the jurisprudence developed by their respective monitoring bodies – the UN Human Rights Committee,[484] the European Court of Human Rights, the Inter-American Commission on Human Rights,[485] and the African Court on Human and Peoples' Rights.[486] This body of case-law is integral to the interpretation of these standards, and should be fully understood and applied by those charged with implementing domestic laws on freedom of peaceful assembly. It is recommended, therefore, that governments ensure that accurate translations of key cases decided by international decision-making bodies are made widely available.[487] Furthermore, recognizing the doctrine of subsidiarity, regional courts should remain open to a dialogic consideration of the leading judgments of national courts in OSCE and Council of Europe States.

Some of the main international and regional provisions in relation to the right to freedom of peaceful assembly are reproduced below.

Article 20(1), Universal Declaration of Human Rights
Everyone has the right to freedom of peaceful assembly and association.[488]

Article 21, International Covenant on Civil and Political Rights
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.

Article 11, European Convention on Human Rights
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.
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.

Article 15, UN Convention on the Rights of the Child
States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
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.

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[484] See Manfred Nowak, *op. cit.,* note 44, pp. 481-494; Melissa Castan and Sarah Joseph, *The International Covenant on Civil and Political Rights* (third edition) (New York: OUP: 2013), part III, section 19.
[485] See, for example, Organisation of American States, Annual Report of the Office of the Special Rapporteur for Freedom of Expression (2005), Chapter 5, "Public Demonstrations as an exercise of freedom of expression and freedom of assembly"; Human Rights Defenders: Note by the Secretary-General, U.N. Doc. A/62/225, 13 August 2007, Section D at pp.8-14: "Monitoring the right to protest at the regional level: jurisprudence and positions of regional mechanisms."
[486] See, African Court on Human and Peoples' Rights <http://en.african-court.org/>; African Commission on Human and Peoples' Rights <http://www.achpr.org/>. See also, *Guidelines on Freedom of Association and Assembly in Africa* (2017), available at: <http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf>.
[487] Unofficial translations of judgments of the European Court of Human Rights are available on its website; for more information, see http://www.echr.coe.int/Pages/home.aspx?p=caselaw/HUDOC/translations.
[488] See Article 29, UDHR for a general limitations clause.

Article 5, International Convention on the Elimination of All Forms of Racial Discrimination
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:
(…)
(d) Other civil rights, in particular:
(...)
(viii) The right to freedom of opinion and expression;
(ix) The right to freedom of peaceful assembly and association;

Article 15, American Convention on Human Rights
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.

Article 12, Charter of Fundamental Rights of the European Union
Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 11, African Charter on Human and Peoples' Rights
Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

Article 12, Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States (the CIS Convention)
Everyone shall have the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
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, public order, public health or morals or for the protection of the rights and freedoms of others. This Article shall not preclude the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or by members of the law-enforcement or administrative organs of the State.

Article 7, Council of Europe Framework Convention for the Protection of National Minorities[489]
The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

[489] It is noted here that in accordance with its Article 27, the Framework Convention may also be acceded to by other States not members of the Council of Europe at the invitation of the Council of Europe Committee of Ministers.

OSCE Copenhagen Document 1990
[The participating States reaffirm that]:
[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.