

**ACADEMY BRIEFING No. 5**

# Facilitating Peaceful Protests

**January 2014**

*Geneva Academy of International Humanitarian  
Law and Human Rights*  
*Académie de droit international humanitaire  
et de droits humains à Genève*

**Geneva  
Academy**

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INSTITUT DE HAUTES  
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GRADUATE INSTITUTE  
OF INTERNATIONAL AND  
DEVELOPMENT STUDIES



**UNIVERSITÉ  
DE GENÈVE**

ISBN: 978-2-9700866-3-5

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### **Acknowledgements**

This Academy Briefing was written by Milena Costas Trascasas, Research Fellow, and Stuart Casey-Maslen, Head of Research, at the Geneva Academy of International Humanitarian Law and Human Rights (Geneva Academy). The Academy would like to thank all those who commented on an earlier draft of this briefing, in particular Anja Bienart and Brian Wood of Amnesty International, and Neil Corney of Omega Research Foundation. The Geneva Academy would also like to thank the Swiss Federal Department of Foreign Affairs (DFAE) for its support to the Academy's work on facilitating peaceful protests, especially the Human Security Division for its funding of the publication of this Briefing. Editing, design, and layout by Plain Sense, Geneva.

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# **Facilitating Peaceful Protests**



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# Introduction

Academy Briefings are prepared by staff at the Geneva Academy of International Humanitarian Law and Human Rights (the Geneva Academy), in consultation with outside experts, to inform government officials, officials working for international organizations, non-governmental organizations (NGOs), and legal practitioners, about the legal and policy implications of important contemporary issues.

Freedom of assembly, and specifically for the purpose of protest, is an issue in every state.<sup>1</sup> Protests involve the rights to hold and express opinions and beliefs; to assemble peacefully; and to associate with others. Social protest and mobilization offer people the opportunity to petition the authorities in a peaceful manner and are natural channels for a wide range of legitimate complaints and grievances.

Protests occur in many contexts and are inspired by a highly diverse range of moral, religious,<sup>2</sup> political,<sup>3</sup> economic,<sup>4</sup> social,<sup>5</sup> and environmental concerns, among others.<sup>6</sup> In recent times, very large demonstrations have been linked to economic, social, and political uncertainty and upheaval in many countries. These protests are often planned, but are sometimes more spontaneous.<sup>7</sup>

In societies that are experiencing economic hardship or political repression, protests are unavoidable. Peaceful protests should be understood as an expression of individual and collective freedom which is essential to the exercise of personal liberty and vital to the life of a democracy. A state that obstructs or prevents peaceful protests, deems them unlawful, or uses force to disperse or deter them, is not only violating the right to freedom of assembly but also creating conditions that invite violence. It is in the state's own interest to ensure that protests can occur, and that they can occur peacefully.

At the same time, not all protests are peaceful. In prescribed circumstances, protests and assemblies may be dispersed, and in even more prescribed circumstances, may be dispersed by force. However, in many countries law enforcement officials are frequently accused of using excessive force against protesters.

The use of force to disperse demonstrations has been attracting increasing international attention. In 2011, the United Nations (UN) Security Council referred the situation in Libya to the International Criminal Court on the grounds that gross and systematic violations of human rights were taking

<sup>1</sup> For the purpose of this Briefing, 'protest' refers to gatherings of people of any number. The term covers planned and spontaneous meetings, and ones that are and are not authorized. The paper focuses on peaceful protests but covers assemblies that are initially peaceful but subsequently involve acts of violence, including acts of violence that are severe and widespread and endanger public order (such as riots).

<sup>2</sup> Demonstrations in Paris against same-sex marriage in 2012 and 2013, for example, assembled millions of people. See, for example, J. Lichfield, 'France: Huge gay marriage protest turns violent in Paris', *Independent*, 22 November 2012. At: <http://www.independent.co.uk/news/world/europe/france-huge-gay-marriage-protest-turns-violent-in-paris-8632878.html>.

<sup>3</sup> In December 2013, massive public protests demanded the resignation of the Ukrainian Government followed its decision not to sign a proposed association agreement with the European Union. Riot police were deployed to dismantle a number of barricades in the capital and many protesters were injured as a result of police use of force. In a statement on 11 December 2013 the EU High Representative, Catherine Ashton, said: 'I am deeply concerned about last night's action taken by riot police. I have been very much impressed with the peaceful and courageous nature of the ongoing protests in support of European aspirations. I condemn the use of force and violence - which cannot be the answer to peaceful demonstrations - and I call for utmost restraint'. 'Statement by EU High Representative Catherine Ashton on recent events in Ukraine on Kiev's Maidan Square', Brussels, 11 December 2013; [http://www.eeas.europa.eu/statements/docs/2013/131211\\_02\\_en.pdf](http://www.eeas.europa.eu/statements/docs/2013/131211_02_en.pdf).

<sup>4</sup> During demonstrations against austerity measures in Spain (September 2012), riot police reportedly used indiscriminate force against protesters, only some of whom were violent. Police officers were accused of provoking violence at protests to discredit the protesters involved and justify use of force by the authorities. See, for example, G. Tremlett, 'Spain reels at violent tactics by riot police', *Guardian*, 29 September 2012. At: <http://www.theguardian.com/world/2012/sep/29/spain-riot-police>.

<sup>5</sup> Heavy-handed policing of a peaceful demonstration against an urban renovation project in Istanbul (31 May 2013) triggered very large public protests in dozen of towns. Violent clashes led the security forces to fire tear gas, water cannon and, in some cases, rubber bullets against protesters. Four people were killed, including a police officer, and almost 4,000 people were injured. See, Resolution 1947(2013), Adopted by the Parliamentary Assembly of the Council of Europe at its 25th Sitting (27 June 2013), §3.3, and Amnesty International, 'Increased police repression continues to go unchecked in Turkey', 11 June 2013. At: <http://www.amnesty.org/en/news/increased-police-repression-continues-go-unchecked-turkey-2013-06-11>.

<sup>6</sup> Protests may condemn law enforcement practices; the police themselves may protest, too. See, for example, 'Portuguese police protest at parliament over cuts', BBC, 22 November 2013. At: <http://www.bbc.co.uk/news/world-europe-25046061>. On this occasion, riot police were deployed to 'police the police'.

<sup>7</sup> In the past two years, very large protests have occurred in Brazil, Egypt, France, Greece, Italy, Kenya, Portugal, the Russian Federation, South Africa, Spain, Sweden, Turkey, and the United Kingdom (UK), among many other states.

place, 'including the repression of peaceful demonstrations'.<sup>8</sup> With respect to Syria in 2012, the UN Human Rights Council condemned 'the excessive use of force and the killing and persecution of protesters, refugees, human rights defenders and journalists'.<sup>9</sup>

In 2011, the Human Rights Council appointed a Special Rapporteur on the rights to freedom of peaceful assembly and of association, reflecting concern that peaceful protest was insufficiently protected in many countries, and that the normative content of the relevant right needed to be examined, reaffirmed, and perhaps refreshed.<sup>10</sup>

In 2013, the Human Rights Council adopted a resolution on 'The Promotion and protection of human rights in the context of peaceful protests' which encouraged 'all States to avoid using force during peaceful protests, and to ensure that, where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force'.<sup>11</sup>

The right of assembly for the purpose of peaceful protest has become an increasingly pressing public issue. This Academy Briefing seeks to establish how states can responsibly discharge their obligation not only to allow but also to facilitate it.

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<sup>8</sup> UN Security Council, Resolution 1970 (2011), 26 February 2011, Preamble, §2.

<sup>9</sup> Human Rights Council, Resolution 19/22 (2012), 10 April 2012, §2(a). Amnesty International's 2012 Annual Report on human rights around the world suggests that more than 4,300 people died during or in connection with the protests and during funerals of demonstrators. Most were allegedly shot by members of the security forces, including snipers. See, <http://www.amnesty.org/en/region/syria/report-2012> and Human Rights Council, Outcome of the Universal Periodic Review: Syrian Arab Republic, Report of the Human Rights Council on its nineteenth session, UN doc. A/HRC/19/2, 24 May 2013, §135.

<sup>10</sup> See: Human Rights Council, Resolution 15/21 (2010), 30 September 2010, §5.

<sup>11</sup> Human Rights Council, Resolution 22/10, 21 March 2013, §7. See Annex for the text of the resolution.



## A. The Duty to Facilitate Peaceful Protests: National Legislation

The Human Rights Council has affirmed that ‘everyone must be able to express their grievances or aspirations in a peaceful manner, including through public protests without fear of reprisals or of being intimidated, harassed, injured, sexually assaulted, beaten, arbitrarily arrested and detained, tortured, killed or subjected to enforced disappearance’.<sup>12</sup> Although international human rights treaties do not recognize a ‘right’ to protest as such, it is generally agreed that the right to participate in protests is the exercise in concert of a number of rights. Specifically, the ‘right’ to protest depends on and exercises several rights that are at the heart of a democratic society, including to freedom of peaceful assembly, freedom of expression, and freedom of association.

The right to freedom of peaceful assembly is the logical point of departure for determining states’ legal obligations with respect to peaceful protest. This right is guaranteed by international human rights instruments and has been interpreted by human rights bodies.<sup>13</sup> Article 21 of the 1966 International Covenant on Civil and Political Rights (ICCPR) states that:

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 (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

The right to freedom of assembly has been described by the European Court of Human Rights as a ‘fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society’.<sup>14</sup> From this perspective, the way in which a state facilitates or hinders protest may be described as a measure of its democratic maturity. A tendency to prevent peaceful protests indicates a state’s predisposition to be authoritarian or repressive.

As discussed in this Academy Briefing, the content and application of this right have been clarified, in the context of peaceful assembly, particularly by the UN Human Rights Committee and the European Court of Human Rights. The African Commission on Human and Peoples’ Rights has also decided a number of cases on the issue.<sup>15</sup> In 2007, the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) and the European Commission for Democracy through Law (the Venice Commission) published ‘Guidelines on Freedom of Peaceful Assembly’.<sup>16</sup> Complemented by the Venice Commission’s opinions and country reports on freedom of assembly, the Guidelines established a standard that national authorities in the OSCE region should meet in promoting freedom of peaceful assembly and provide examples of good practice around the world.<sup>17</sup>

As noted above, efforts to define and promote a normative framework applicable to protests were strengthened by the appointment in 2011 by the Human Rights Council of a Special Rapporteur on the rights to freedom of peaceful assembly and of association.<sup>18</sup> The Special Rapporteurs on extrajudicial, summary or arbitrary executions and on torture and other cruel, inhuman or degrading

<sup>12</sup> Human Rights Council, Resolution 22/10, ‘The promotion and protection of human rights in the context of peaceful protests’, 21 March 2013, Preamble, §13.

<sup>13</sup> Art. 20, 1948 Universal Declaration of Human Rights (UDHR); Art. 21, 1966 International Covenant on Civil and Political Rights (ICCPR); Art. 11, 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Art. 15, 1969 American Convention on Human Rights (ACHR); Art. 11, African Charter on Human and Peoples’ Rights (ACHPR); Art. 24, 2003 Arab Charter on Human Rights; Art. 12, 2000 Charter of Fundamental Rights of the European Union.

<sup>14</sup> European Court of Human Rights (ECtHR), *Djavit An v. Turkey*, Judgment, 9 July 2003, §56.

<sup>15</sup> For example, *International Pen, Constitutional Rights Project, Interights on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organisation v. Nigeria*, Comm. Nos. 137/94, 139/94, 154/96 and 161/97 (1998), Twelfth Annual Report of the African Commission on Human and Peoples’ Rights, 1998-1999, AHG/215 (XXXV), p. 72.

<sup>16</sup> OSCE ODIHR, *Guidelines on Freedom of Peaceful Assembly*, Warsaw, 2007. The document was prepared by a panel of experts. A second edition was published in 2010.

<sup>17</sup> At: <http://www.venice.coe.int/webforms/documents/?topic=30&year=all>.

<sup>18</sup> The Special Rapporteur has drafted three reports. See, ‘Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai’, UN docs. A/68/299, 7 August 2013; A/68/299, 24 April 2013; and A/HRC/20/27, 21 May 2012.

treatment or punishment have also helped to define norms relevant to protests.<sup>19</sup>

At regional level, the Inter-American Commission on Human Rights appointed a Special Rapporteur on freedom of assembly<sup>20</sup> and the African Commission on Human and Peoples' Rights established a Special Rapporteur on Freedom of Expression and Access to Information.<sup>21</sup>

A number of relevant standards and interpretative guidelines have been identified so far. However, framing precisely states' obligations with respect to peaceful protest is still a work in progress. In particular, more work is needed to clarify what constitutes lawful use of force and good practice during the policing of protests, building on the 1979 Code of Conduct for Law Enforcement Officials (the 1979 Code of Conduct)<sup>22</sup> and the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (the 1990 Basic Principles).<sup>23</sup>

International human rights bodies and experts have affirmed that states have a duty to facilitate peaceful assemblies. Referring to peaceful protest, a resolution of the Human Rights Council affirmed in 2013 that states have a responsibility 'to promote and protect human rights and to prevent human rights violations', and called on them 'to promote a safe and enabling environment for individuals and groups to exercise their rights to freedom of peaceful assembly, of expression and of association, including by ensuring that their domestic legislation and procedures are in conformity with human rights obligations and commitments'.<sup>24</sup>

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has affirmed that 'states have a positive obligation under international human rights law not only to actively protect peaceful assemblies, but also to

facilitate the exercise of the right to freedom of peaceful assembly'.<sup>25</sup> In his opinion, states have three essential obligations:

- 1) To refrain from committing violations, including by use of excessive force, against individuals exercising their rights to peaceful assembly, expression, and association.
- 2) To protect individuals exercising these rights from abuses by non-state actors.
- 3) To fulfil these rights by taking positive measures to prevent violations from occurring, and ensuring that everyone can freely and effectively exercise them.<sup>26</sup>

The state's duty to facilitate peaceful protest has also been clearly recognized by the European Court of Human Rights, which affirmed in its judgment in *Oya Ataman v. Turkey* that 'the authorities have a duty to take appropriate measures with regard to lawful demonstrations in order to ensure their peaceful conduct and the safety of all citizens'. The Court further noted that states parties to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) must not only 'safeguard the right to assemble peacefully but also refrain from applying unreasonable indirect restrictions upon that right'. It concluded that Article 11 of the ECHR implies that states have a positive obligation to secure effective enjoyment of this right.<sup>27</sup>

The Inter-American Commission on Human Rights has taken a similar position, and has identified standards for assessing public demonstrations in terms of the 1969 American Convention on Human Rights.<sup>28</sup> In this context, the Commission has said that states have an obligation not to interfere with the rights of people to assemble and associate, and in certain circumstances have a duty to take 'positive

<sup>19</sup> See, for example, 'Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns', UN doc. A/HRC/17/28, 23 May 2011 and 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez', Mission to Morocco, UN doc. A/HRC/22/53/Add.2, 28 February 2013.

<sup>20</sup> See: <http://www.oas.org/en/iachr/expression/index.asp>.

<sup>21</sup> See: <http://www.achpr.org/mechanisms/freedom-of-expression/>.

<sup>22</sup> Adopted by UN General Assembly Resolution 34/169 of 17 December 1979.

<sup>23</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, UN doc. A/CONF.144/28/Rev.1 at 112 (1990).

<sup>24</sup> Human Rights Council, Resolution 22/10, 'The promotion and protection of human rights in the context of peaceful protests', 21 March 2013, §§2 and 3.

<sup>25</sup> 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai', UN doc. A/HRC/23/39, 24 April 2013, §49.

<sup>26</sup> Maina Kiai, 'Summary of the Human Rights Council panel discussion on the promotion and protection of human rights in the context of peaceful protests prepared by the Office of the United Nations High Commissioner for Human Rights', UN doc. A/HRC/19/40, 19 December 2011, §14.

<sup>27</sup> ECtHR, *Oya Ataman v. Turkey*, Judgment, 5 December 2006, §§35 and 36.

<sup>28</sup> See: Inter-American Commission on Human Rights (IACmHR), 'Report of the Office of the Special Rapporteur for Freedom of Expression', Annual Report of the Inter-American Commission on Human Rights, 2005, OEA/Ser.LV/II.124, Doc. 7, 27 February 2006, §§90–120.

measures ... to secure the effective exercise of the freedom, for example by protecting participants in a demonstration from physical violence by individuals who may hold opposite views'.<sup>29</sup>

The duty to facilitate peaceful protests implies that protests are not per se a threat to public order. When protests occur, the authorities should therefore engage in an open, inclusive, and meaningful dialogue with those who protest.<sup>30</sup> Currently, the tendency in many countries is to treat public demonstrations as a threat to public order or national security and to criminalize or forcefully repress protests even when they are peaceful.

The general duty to facilitate peaceful assembly includes obligations of specific importance for peaceful protest:

- To presume in favour of permitting peaceful protests.
- To avoid undue interference with peaceful protests.
- To protect participants who protest peacefully.

The following sections discuss how these duties can be respected in practice.

## Presumption in favour of allowing peaceful protests

A state must ensure that its national legislation guarantees the right to freedom of peaceful assembly, of expression, and of association, in accordance with international human rights law and standards. This implies that the state should seek to foster an environment in which these rights may be freely enjoyed. Any policy, action, or procedure that directly or indirectly hinders or impedes peaceful protests should be avoided.

The UN High Commissioner for Human Rights observed in 2013 that such an approach is not only legally warranted but also justified by its effects. Permitting protest reduces the risk of violence and assists societies to manage frustration and articulate grievances.

The recognition by the State of the right to peaceful assembly, both at the political and legal levels, is a crucial element. When the right to peaceful assembly is suppressed, there is a higher risk for demonstrations to escalate and turn violent. However, thorough respect by the State of the right to peaceful protest offers the opportunity to defuse tensions and avoid negative consequences, such as potential loss of life.<sup>31</sup>

As a general principle, national authorities should presume in favour of permitting protests. Policing of protests should reflect this position, and have the purpose of ensuring that protests can be completed peacefully and in safety. According to the OSCE:

As a fundamental right, freedom of peaceful assembly should, insofar as possible, be enjoyed without regulation. Anything not expressly forbidden by law should be presumed to be permissible, and those wishing to assemble should not be required to obtain permission to do so.<sup>32</sup>

Many national constitutions affirm the right to hold peaceful assemblies and participate in them. In most cases, nevertheless, exercise of the right is regulated and conditional.<sup>33</sup> When drafting legislation, it may be sensible to avoid too much detail. In the case of peaceful assembly, however, it is important to ensure that grounds for regulation are clear and predictable. To protect the right, it is necessary to specify precisely the circumstances in which assemblies are subject to particular legal obligations, legitimate grounds for restriction, and the overall content and time frame of such restrictions.<sup>34</sup>

In general, human rights law prohibits discrimination on any grounds. It follows from this principle that states must not discriminate against any individual or group when they regulate freedom of assembly. Assemblies that are comparable should be treated alike. On the same grounds, police must act consistently, without discrimination, when they intervene in or protect assemblies, including protests. The OSCE Guidelines state:

The freedom to organize and participate in public assemblies must be guaranteed to individuals, groups, unregistered associations, legal entities and

<sup>29</sup> IACmHR, 'Report on terrorism and human rights', OEA/Ser.L/V/II.116 Doc. 5, rev. 1 cor., 22 October 2002, §359.

<sup>30</sup> Human Rights Council, Resolution 22/10, 21 March 2013, Preamble, §16.

<sup>31</sup> 'Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protest', Report of the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/22/28, 21 January 2013, §21.

<sup>32</sup> OSCE ODIHR, *Guidelines on Freedom of Peaceful Assembly*, Warsaw, 2010, Principle 1.1, p. 15.

<sup>33</sup> Researchers at the Academy reviewed examples of national legislation in 40 states for this report. Most referred to a general right to assemble; some specified that this right must be exercised 'peaceably and without arms'.

<sup>34</sup> 'Michael Hamilton, Summary of the Human Rights Council panel discussion on the promotion and protection of human rights in the context of peaceful protests', UN doc. A/HRC/19/40, 19 December 2011, §28.

corporate bodies; to members of minority ethnic, national, sexual and religious groups; to nationals and non-nationals (including stateless persons, refugees, foreign nationals, asylum seekers, migrants and tourists); to children, women and men; to law-enforcement personnel; and to persons without full legal capacity, including persons with mental illnesses.<sup>35</sup>

The European Court of Human Rights has emphasized the importance of this principle, notably when demonstrations are organized by or involve minority groups. The Court concluded in one case that the Russian Federation had been discriminatory when it banned a protest by gays and lesbians on the grounds that the demonstration served to 'promote homosexuality'. Declaring that rights under the European Convention could not be made conditional on approval by the majority, it ruled that the Russian Federation had violated Article 14 of the ECHR (non-discrimination) and Article 11 (freedom of peaceful assembly).<sup>36</sup>

## Permissible and unlawful restrictions

Analysis of legal regimes in some 40 countries has revealed that national legislation restricts assembly in a range of ways. Specific laws may regulate the right to assembly (restricting the time, place, or manner in which meetings may be held); administrative regulations may require prior notification or permits; law enforcement policies or procedures may curtail enjoyment of the right; and in some countries unauthorized assemblies are subject to criminal sanctions. In all circumstances, the effect of restrictions should not undermine the essence of the right of individuals and groups of people to assemble peacefully, including for the purpose of protest.

As the Human Rights Committee has observed:

When a State party imposes restrictions ... it should be guided by the objective to facilitate the right,

rather than seeking unnecessary or disproportionate limitations to it. The State party is thus under the obligation to justify the limitation of the right protected by article 21 of the Covenant.<sup>37</sup>

As noted above, Article 21 of the ICCPR states that any restriction on the right to peaceful assembly must be imposed in conformity with the law and be necessary in a democratic society. Restrictions are justified only if the intention is to protect one of the legitimate grounds for restriction, namely: (a) national security; (b) public safety; (c) public order; (d) the protection of public health; (e) morals; and (f) the rights and freedom of others.

Though all these grounds are legitimate, in practice it is typically claimed that protests are being restricted to protect public order or the rights and freedoms of others. Restrictions on grounds of public order may be justified when there is evidence that protesters will incite lawless or disorderly acts and that such acts are likely to occur.<sup>38</sup>

It is acknowledged that freedom of assembly collides with competing rights, such as the right to freedom of movement. Protests 'may cause a certain level of disruption to ordinary life and encounter hostility'.<sup>39</sup> They can block roads, occupy public spaces, and cause disturbance, annoyance or harm that states may find it necessary to prevent or repair.<sup>40</sup> Nevertheless, the right to freedom of peaceful assembly, freedom of expression and freedom of association, are considered indispensable in a democratic society, and states are expected to accord due weight to their importance.<sup>41</sup>

Accordingly, human rights bodies have interpreted narrowly the circumstances in which restrictions are permissible. The European Court of Human Rights has said that the term 'necessary in a democratic society' implies 'pluralism, tolerance and broadmindedness'.<sup>42</sup> The Special Rapporteur on the rights to freedom of peaceful assembly and of association has consistently argued that freedom is to be considered the rule, and its restriction

<sup>35</sup> OSCE ODIHR, *Guidelines on Freedom of Peaceful Assembly*, Warsaw, 2010, Principle 2.5, p. 16.

<sup>36</sup> ECtHR, *Alekseyev v. Russia*, Judgment, 21 October 2010, §110.

<sup>37</sup> Human Rights Committee, *Denis Turchenyak et al. v. Belarus*, Comm. No. 1948/2010, UN doc. CCPR/C/108/D/1948/2010, 10 September 2013, §7.4.

<sup>38</sup> OSCE ODIHR, *Guidelines on Freedom of Peaceful Assembly*, Warsaw, 2010, §72.

<sup>39</sup> ECtHR, *Oya Ataman v. Turkey*, Judgment, 5 December 2006, §38.

<sup>40</sup> IACmHR, 'Report of the Office of the Special Rapporteur for Freedom of Expression', Annual Report of the Inter-American Commission on Human Rights 2008, Volume II, OEA/Ser.L/V/II.134, Doc. 5, 25 February 2009, §70.

<sup>41</sup> 'The right to freedom of expression is not just another right, but one of the primary and most important foundations of any democratic structure: the undermining of freedom of expression directly affects the central nerve of democratic system'. 'Report of the Office of the Special Rapporteur for Freedom of Expression', Annual Report of the Inter-American Commission on Human Rights, 2005, OEA/Ser.LV/II.124, Doc. 7, 27 February 2006, §93.

<sup>42</sup> See: *Castells v. Spain*, Judgment, 23 April 1992, §42.

the exception.<sup>43</sup> The European Commission for Democracy through Law (the Venice Commission) has said that enjoyment of these rights should be ‘practical and effective’, not ‘theoretical or illusory’.<sup>44</sup> The Inter-American Commission on Human Rights has stated:

Political and social participation through public demonstration is critical to the consolidation of democratic life in societies. Such participation, as an exercise of freedom of expression and freedom of assembly, contains a keen social interest, which leaves the state very narrow margins for justifying restrictions on this right.<sup>45</sup>

In line with this reasoning, human rights monitoring bodies have required states to show that restrictions are:

- 1) In accordance with a legitimate aim as set out in Article 21 of the ICCPR.
- 2) Necessary in a democratic society.<sup>46</sup>

- 3) Proportionate to the aim pursued (no lesser restriction would achieve the same purpose).<sup>47</sup>

Research for this Briefing has found that a number of states do not guarantee freedom of assembly in the terms required by human rights law, but strictly limit public gatherings.<sup>48</sup> This is particularly true of states where the right to peaceful assembly is regulated by criminal or public order laws, both of which tend to dissuade those who wish to protest from doing so.

A number of national legal regimes grant the authorities considerable discretion to restrict peaceful protests, notably on grounds of ‘public order’ or ‘security’. For example:

- Article 12 of the Law of the People’s Republic of China on Assemblies, Processions and Demonstrations (1989)<sup>49</sup> states that permission to hold an assembly, a procession or a demonstration will be refused if the event: a) is opposed to cardinal principles

### Box 1. Sierra Leone 1991 Constitution

#### Article 26. Protection of freedom of assembly and association

(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade unions or other economic, social or professional associations, national or international, for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) which is reasonably required: (i) in the interests of defence, public safety, public order, public morality, public health, or provision for the maintenance of supplies and services essential to the life of the community; or (ii) for the purpose of protecting the rights and freedoms of other persons; or

(b) which imposes restrictions upon public officers and upon members of a defence force; or

(c) which imposes restrictions on the establishment of political parties, or regulates the organisation, registration, and functioning of political parties and the conduct of its members; and except in so far as that provision, or as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

<sup>43</sup> ‘Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai’, UN doc. A/HRC/23/39, 24 April 2013, §47.

<sup>44</sup> European Commission for Democracy through Law, ‘Opinion on the Law on Freedom of Assembly in Azerbaijan’, CDL-AD (2006) 034, §5.

<sup>45</sup> IACmHR, ‘Report on the situation of human rights defenders in the Americas’, OAS doc. OEA/Ser.L/V/II.124, Doc. 5 rev.1, 7 March 2006, §60.

<sup>46</sup> The ECtHR has noted that ‘necessary’ is not synonymous with ‘indispensable’ and is not as flexible as ‘admissible’, ‘ordinary’, ‘useful’, ‘reasonable’, or ‘desirable’. It implies the existence of a ‘pressing social need’. See ECtHR, *Sunday Times v. United Kingdom*, Judgment, 26 April 1979, §59.

<sup>47</sup> ECtHR, *Chorherr v. Austria*, Judgment, 25 August 1993, §33.

<sup>48</sup> See, for example, European Commission for Democracy through Law, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE/ODIHR, CDL-AD(2020)16, §36.

<sup>49</sup> Adopted at the Tenth Meeting of the Standing Committee of the Seventh National People’s Congress on October 31, 1989, promulgated by Order No. 20 of the President of China on 31 October 1989 and effective from the same date.

specified in the Constitution; b) harms the unity, sovereignty and territorial integrity of the state; c) creates division between nationalities; or is likely to directly endanger public security or seriously undermine public order.

- Section 8 of the Public Order Management Bill of Uganda (2011)<sup>50</sup> states that it is legitimate to prohibit public meetings when: a) another public meeting is scheduled on the same date, at the same time, and at the same venue; b) the venue is considered unsuitable for crowd and traffic control or will interfere with other lawful business; c) for any other reasonable cause.

Protests seek to convey a message to a particular audience (person, group, or organization). As a general rule, therefore, they should be allowed to take place within ‘sight and sound’ of that target. The Special Rapporteur on the rights to freedom of peaceful assembly and of association has said that restrictions on the ‘time, place and manner’ of peaceful assemblies should meet the strict tests of necessity and proportionality. Any restriction on the content of a protest’s message (notably, criticisms of government policy) should be proscribed, unless the message constitutes an ‘incitement to discrimination, hostility or violence’ as prohibited under Article 20 of the ICCPR.<sup>51</sup>

In a number of cases the Human Rights Committee has decided against states that had restricted protests or assemblies. In *Govsha, Syritsa and Mezyak v. Belarus*, for example, it found that the government was not entitled to claim that ‘the organization of mass events aimed at promoting the change of the constitutional order by force or disseminating propaganda on war or social, national, religious or race hostility’ justified restriction of the right to peaceful assembly.<sup>52</sup> In *Denis Turchenyak et al. v. Belarus*, it concluded that the government was

not entitled to ban a picket because national laws authorized such a ban; on the contrary, the state had a duty to prevent such violations in the future and it requested Belarus to review its legislation so that the right of assembly could be fully enjoyed.<sup>53</sup>

When states restrict protests in a manner that accords with international human rights law, national authorities shall nonetheless:

- Explain their decision and provide reasons.
- Explain why it is not possible to take preventive measures to avoid the danger in question and enable the event to proceed.
- Propose alternatives so that the assembly can take place.
- Ensure that rapid and accessible mechanisms are in place to appeal the decision.

When a meeting or protest is restricted, the authorities must offer reasonable alternatives to the organizers. Ideally, these should still enable an assembly to occur within ‘sight and sound’ of the target audience.<sup>54</sup>

## Notification and authorization procedures

A number of national laws require those who organize meetings or protests to give prior notice or seek permission from the authorities. There is some case law to the effect that such requirements may not necessarily violate the right to peaceful assembly, particularly with respect to the requirement for prior notice.<sup>55</sup>

However, the OSCE Guidelines, and the Special Rapporteur on the rights to freedom of peaceful assembly and of association, have suggested as good practice that states should not impose

<sup>50</sup> 29 April 2011. Uganda Gazette No. 29, Volume CIV.

<sup>51</sup> ‘Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai’, UN doc. A/HRC/23/39, 24 April 2013, §59. Article 20(2) of the ICCPR states: ‘Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law’.

<sup>52</sup> Comm. No. 1784/2008, UN doc. CCPR/C/105/D/1790/2008, 14 September 2012, §9.4. The author of the Communication had informed the authorities that he wished to hold a meeting for ‘the free, independent and prosperous Belarus’. Authorization was denied because a similar meeting had been held recently on a similar subject. See also: *Sergey Kovalenko v. Belarus*, Comm. No. 1898/2008, UN doc. CCPR/C/108/D/1808/2008, 26 September 2013, §8.8.

<sup>53</sup> The petitioners planned to hold a picket in a pedestrian zone in the city of Brest for two hours on three consecutive days, to draw attention to the erection of a monument devoted to the 1,000th anniversary of the city. Comm. No. 1948/2010, UN doc. CCPR/C/108/D/1948/2010, 10 September 2013, §§8-9.

<sup>54</sup> ‘Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai’, UN doc. A/HRC/23/39, 24 April 2013, §60.

<sup>55</sup> A requirement to notify *de facto* restricts freedom of assembly. The Human Rights Committee has stated that a requirement to notify the police six hours before a demonstration in a public space is compatible with the permitted limitations laid down in Art. 21 of the ICCPR. See *Kivenmaa v. Finland*, Comm. No. 412/1990, UN Doc CCPR/C/50/D/412/1990, 31 March 1994, §9.2. See also: ECtHR, *Berladir and others v. Russia*, Judgment, 10 July 2012, §§41 and 42; ‘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, §28; OSCE ODIHR, *Guidelines on Freedom of Peaceful Assembly*, Warsaw, 2010, §113; and IACmHR, ‘Report on the situation of human rights defenders in the Americas’, OEA/Ser.LV/II.124, Doc. 5 rev.1, 7 March 2006, §57.

such requirements.<sup>56</sup> The UN High Commissioner for Human Rights has similarly stated that the organization of a protest should not be subject to prior authorization from the administrative authorities of the State.<sup>57</sup> For small protests or protests that create no risks, this should definitely be the case. Notification should only be required when many participants are expected.<sup>58</sup>

States that require prior notification before large planned protests or other large assemblies do not necessarily violate the right to freedom of assembly. Restrictions may be justified when they are objectively reasonable and necessary to protect public order, public safety, and the rights and freedoms of others. The purpose of such procedures should be to enable national authorities to put reasonable and appropriate measures in place to ensure that a demonstration passes off smoothly.<sup>59</sup> Planning and coordination arrangements should be designed to preserve the peaceful nature of the event. In sum, such procedures comply with human rights law and standards when they facilitate and do not interfere with the holding of protests. In the view of the Inter-American Commission on Human Rights:

The purpose of regulating the right to assembly cannot be to create the basis for prohibiting the meeting or the demonstration. To the contrary, regulations establishing, for example, advance notice, exist for the purpose of informing the authorities so that they can take measures to facilitate the exercise of the right without significantly disturbing the normal activities of the rest of the community.<sup>60</sup>

In practice, however, requiring notification or authorization is clearly prone to abuse. Review of national laws has found that many states apply overtaxing bureaucratic procedures, which are likely to have the effect of deterring protest. Where the police enjoy wide discretion in granting or refusing permits to assemble, discriminatory treatment of protests is more prone to occur and law enforcement officials are more likely to show bias in the course of policing protests, especially when a permit has been refused (see Box 2).<sup>61</sup>

In all cases, decisions to grant or deny authorization may reasonably consider the time, place and

## Box 2. Pakistan: 2002 Police Order

### Section 120. Regulation of public assemblies and processions and licensing of same

(1) Head of District Police or Assistant or Deputy Superintendent of Police may as the occasion requires, direct the conduct of assemblies and processions on public roads, or in public streets or thoroughfares and prescribe the routes by which and the times at which, such processions may pass.

(2) He may also, on being satisfied that it is intended by any persons or class of persons to convene or collect any assembly in any such road, street or thoroughfare, or to form a procession which would, in his judgment, if uncontrolled, be likely to cause a breach of the peace, require by general or special notice that the persons convening or collecting such assembly or directing or promoting such processions shall apply for a licence.

(3) On such application being made, he may issue a licence specifying the names of the licensees and defining the conditions on which alone such assembly or such procession is permitted to take place and otherwise giving effect to this Article:

Provided that no fee shall be charged on the application for, or grant of any such licence.

<sup>56</sup> According to the OSCE Guidelines, 'it is not necessary under international human rights law for domestic legislation to require advance notification about an assembly'. A permit requirement 'may accord insufficient value to the fundamental freedom to assemble and the corresponding principle that everything not regulated by law should be presumed to be lawful. It is significant that, in a number of jurisdictions, permit procedures have been declared unconstitutional'. OSCE ODIHR, *Guidelines on Freedom of Peaceful Assembly*, Warsaw, 2010, §113 and 118. See also: 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai', UN doc. A/HRC/23/39, 24 April 2013, §§51 and 52.

<sup>57</sup> Report of the UN High Commissioner for Human Rights, UN doc. A/HRC/22/28, 21 January 2013, §11.

<sup>58</sup> OSCE ODIHR, *Guidelines on Freedom of Peaceful Assembly*, Warsaw, 2010, §115; 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai', UN doc. A/HRC/23/39, §52.

<sup>59</sup> *Ibid.* IACmHR, 'Report on the situation of human rights defenders in the Americas', OEA/Ser.L/V/II.124, Doc. 5 rev.1, 7 March 2006, §56.

<sup>60</sup> *Ibid.*, §57.

<sup>61</sup> In some states, such as China, India, Kenya, or Pakistan, the police receive notification.

form of a demonstration; they should not lead to ‘content-based regulation’.<sup>62</sup>

With respect to notification, it is ‘unduly bureaucratic’ to impose any of the following conditions: to request more than one named organizer; to consider that registered organizations alone are legitimate organizers; to require production of formal identity documents, such as passports or identity cards; to require the identification details of others involved in the event, such as stewards; to demand reasons for holding an assembly; or to require the exact number of participants.<sup>63</sup>

On the contrary, authorities should show flexibility if notification is submitted late (provided there is a reasonable justification), if forms are completed incorrectly, or if the information provided is incomplete.<sup>64</sup> To conform with good practice, procedures should be free of charge (to avoid deterring), and the costs of protecting and facilitating protests (deploying police and security barriers, providing medical services or sanitary facilities, etc.) should not be borne by the organizers.<sup>65</sup>

Arguably, notification procedures should meet the following minimum requirements:

- Organizers of a peaceful assembly should be able to notify the authorities simply and quickly.<sup>66</sup>
- The procedure should require information only on the date, time, duration, and location or itinerary of the assembly, and the name, address, and contact details of the organizer.
- The period of notice should not be lengthy but sufficient to allow the authorities to plan and prepare measures necessary to minimize disruptions the demonstration may cause.
- The regulatory body should issue a receipt, confirming explicitly that the organizers have complied with the rules on notification.

- A prompt official response to initial notification should be given; non-response implies that a protest shall proceed.
- The organizers should have access to a rapid appeal process before a competent tribunal or court to challenge the legality of any restriction imposed.<sup>67</sup>

## Spontaneous protests

A society’s ability to respond spontaneously and immediately to an occurrence has been described as ‘an essential element of freedom of assembly’ and ‘an expectable, rather than an exceptional, feature of a healthy democracy’.<sup>68</sup> Accordingly, states are expected to protect and facilitate spontaneous protests.

Spontaneous forms of protests frequently occur very soon after a triggering event. By definition, they are events for which prior notification is impracticable, because there is no recognized organizer or because events simply move too fast. Under the influence of the Internet and social networks, spontaneous and unregulated forms of demonstration are becoming increasingly common.

National legislation should make provision for spontaneous demonstrations and exempt them from notification requirements, where these exist.<sup>69</sup> In practice, many legal regimes treat spontaneous protests as ‘illegal’ or ‘unlawful’. In some cases, the authorities are legally entitled to disperse them by force, and in others (for example, China, Egypt, Guinea, and Tunisia) the organizers and participants of unauthorized protests are subject to criminal or administrative sanctions (including the possibility of imprisonment). In China, holding a protest without having a police permit may be considered a ‘serious disruption to public order’ and may be punished under administrative or criminal law.<sup>70</sup>

62 OSCE ODIHR, *Guidelines on Freedom of Peaceful Assembly*, Warsaw, 2010, §119.

63 ‘Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai’, UN doc. A/HRC/23/39, §54.

64 *Ibid.*, §55.

65 *Ibid.*, §57.

66 A clear and concise form, available in the main local language(s), and ideally online (to avoid delays and uncertainty associated with surface mail) would be sufficient: see ‘Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai’, UN doc. A/HRC/23/39, §53.

67 OSCE ODIHR, *Guidelines on Freedom of Peaceful Assembly*, Warsaw, 2010, §116.

68 European Commission for Democracy through Law, Joint Opinion on the Act on Public Assembly of the Sarajevo Canton (Bosnia and Herzegovina) by the Venice Commission and OSCE ODIHR, CDL-AD(2020)16, §36.

69 OSCE ODIHR, *Guidelines on Freedom of Peaceful Assembly*, Warsaw, 2010, Principle 4.2, p. 18.

70 See: 1986 Regulations of the People’s Republic of China on Administrative Penalties for Public Security (Art. 2) and the 1979 Criminal Law (Arts. 158 and 159).



The European Court of Human Rights has emphasized that unauthorized, spontaneous assemblies must be protected and facilitated by the authorities provided they are peaceful in nature.<sup>71</sup> In *Bukta and Others v. Hungary*, for example, it stated 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.<sup>72</sup>

## Counter-demonstrations

Counter-demonstrations, i.e. events which are organized to express disagreement with another assembly that occurs simultaneously should be recognized and protected by national laws. The state is obliged to facilitate both events and, where possible, should put in place arrangements (in particular, adequate policing resources) that allow both demonstrations to be in ‘sight and sound’ of one another and for participants of both to be protected. Box 3 provides an example of state practice that prohibits counter-demonstrations.

The prohibition of one protest solely on the grounds that it will occur at the same time and location as

another is disproportionate and discriminatory. Since assemblies that are comparable should not be treated differently, national authorities should accommodate both.<sup>73</sup> In this regard, the European Court of Human Rights observed 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.<sup>74</sup>

At the same time both those who demonstrate and those who counter-demonstrate are entitled to do so safely. As the European Court of Human Rights has stated:

A demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold the demonstration without having to fear that they will be subject to physical violence by their opponents; such fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy, the right to counter-demonstrate cannot extend to inhibit the exercise of the right to demonstrate.<sup>75</sup>

### Box 3. Guinea: Law No. 98/036 of 31 December 1998 on the Penal Code

Article 108. L’Autorité administrative responsable de l’ordre public peut interdire une réunion ou une manifestation publique s’il existe une menace réelle de trouble à l’ordre public à la suite, entre autres :

1. De la surexcitation des esprits consécutive à des événements politiques ou sociaux récents ;
2. De la prévision de manifestations concurremment et concomitamment organisées par des groupements opposés.

La décision d’interdiction de toutes réunions ou manifestation publique doit être suffisamment motivée et notifiée aux signataires de la déclaration dans les quarante-huit heures de la réception de celle-ci.

L’Autorité de tutelle peut soit confirmer la décision d’interdiction, soit l’annuler. La décision d’interdiction peut faire l’objet d’un recours pour excès de pouvoir devant la Cour Suprême.

<sup>71</sup> ECtHR, *Oya Ataman v. Turkey*, Judgment, 5 December 2006, §§41 and 43.

<sup>72</sup> ECtHR, *Bukta and Others v. Hungary*, Judgment, 17 July 2007, §36.

<sup>73</sup> OSCE ODIHR, *Guidelines on Freedom of Peaceful Assembly*, Warsaw, 2010, Principle 4.3, p. 18.

<sup>74</sup> ECtHR, *Alekseyev v. Russia*, Judgment, 21 October 2010, §77.

<sup>75</sup> ECtHR, *Plattform “Ärzte für das Leben” v. Austria*, Judgment, 21 June 1988, §32.

## Access to public space

Public protests should be regarded as a legitimate use of public space, as legitimate as other more routine purposes. As the Spanish Constitutional Court has stated: ‘in a democratic society, the urban space is not only a space for circulation, but also a space for participation’.<sup>76</sup> A state’s obligation to facilitate peaceful protest implies granting protesters access to public spaces for their assemblies.<sup>77</sup>

Laws that regulate the use of public spaces commonly prohibit protests in certain locations (for example, in the vicinity of courts and parliament). States are not entitled, however, to impose restrictions that have the effect of preventing people from exercising their right to assemble. Accordingly, it is proposed that laws should not specify where public assemblies must occur, or compel organizers to meet only where the authorities want. Further, the privatization of public spaces should not unreasonably impede people from exercising their right to assemble or prevent them from protesting within ‘sight and sound’ of their target audience.

## Access to Internet and other communication networks

Across the world, citizens have made increasing use of Internet and other information technologies to organize peaceful protests and assemblies.<sup>78</sup> States should promote and facilitate access to the Internet and the right of people to ‘assemble’ peacefully online and should not restrict or deny access to these tools.<sup>79</sup>

The Human Rights Committee considers that prohibiting a website or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government is contrary to Article 19(3) of the ICCPR on the right to freedom of expression.<sup>80</sup>

‘Online journalists’ – both professionals and so-called ‘citizen journalists’ – play an increasingly important role by documenting and disseminating information as the situation unfolds on the ground. Illegal hacking into their accounts, monitoring of their online activities, arbitrary arrest and detention constitute intimidation and harassment, while the blocking of websites that contain information critical of the authorities, censorship.<sup>81</sup>

### Box 4. Philippines: 1985 Public Assembly Act

#### S. 4. Permit when required and when not required

A written permit shall be required for any person or persons to organize and hold a public assembly in a public place. However, no permit shall be required if the public assembly shall be done or made in a freedom park duly established by law or ordinance or in private property, in which case only the consent of the owner or the one entitled to its legal possession is required, or in the campus of a government owned and operated educational institution which shall be subject to the rules and regulations of said educational institution. Political meetings or rallies held during any election campaign period as provided for by law are not covered by this Act.

<sup>76</sup> Spanish Constitutional Court, STC 66/1995, 8 May 1995, §22.

<sup>77</sup> See: Human Rights Council, Resolution 22/10, 21 March 2013, §4.

<sup>78</sup> See: Maina Kiai, ‘Summary of the Human Rights Council panel discussion on the promotion and protection of human rights in the context of peaceful protests’, UN doc. A/HRC/19/40, 19 December 2011, §16.

<sup>79</sup> Human Rights Council, Resolution 24/5: ‘The rights to freedom of peaceful assembly and of association’, 26 September 2013, Preamble and §2.

<sup>80</sup> Human Rights Committee, ‘Article 19: Freedoms of opinion and expression’, General Comment No. 34, UN doc. CCPR/C/GC/34, 12 September 2011, §43.

<sup>81</sup> ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue’, UN doc. A/HRC/20/17, 4 June 2012, §§63 and 92.

## B. Protecting Participants in Peaceful Assemblies: Action by Law Enforcement Officials

The European Court of Human Rights has stated that peaceful protestors must be protected against those wishing to interfere with or disrupt them.<sup>82</sup> The state should guarantee that its law enforcement agencies protect all participants in a peaceful protest without discrimination, along with other people (such as passers-by, journalists, and observers), and public and private property.

Specific measures should be taken to protect groups who are particularly at risk of discrimination or of other violations of their rights, including women, youth, indigenous peoples, persons with disabilities, members of minority groups, non-nationals, and people at risk because of their sexual orientation or gender identity.<sup>83</sup>

Protection from intimidation or physical harassment and violence must also extend to those who are monitoring or reporting peaceful protests. Such persons include human rights defenders, journalists, community media workers, other media professionals, and bloggers.<sup>84</sup>

Human rights defenders and journalists have an important role to play in providing independent, impartial, and objective coverage of demonstrations and protests, including a factual record of the conduct of participants and law enforcement officials alike.<sup>85</sup> States must ensure that human rights defenders and journalists can have access to assemblies and that they can operate effectively in the context of protests. Law enforcement officials must not prevent or obstruct their work during peaceful protests, and policing operations should

be planned so as to facilitate this. States must adopt special measures of prevention and protection where such persons are subject to particular risks owing to their work or monitoring activities.<sup>86</sup> In the view of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression:

Ensuring that journalists can effectively carry out their work means not only preventing attacks against journalists and prosecuting those responsible, but also creating an environment where independent, free and pluralistic media can flourish and journalist are not placed at risk of imprisonment.<sup>87</sup>

In *Vélez Restrepo and family v. Colombia*, a case that concerned an attack on a video journalist who was attempting to film a demonstration, the Inter-American Court of Human Rights emphasized that the video would enable ‘those who saw it to observe and verify whether, during the demonstration, the members of the armed forces were performing their duties correctly, with an appropriate use of force’. It concluded that attacks against journalists limit the freedom of expression of all citizens, because they have an intimidating effect on the free flow of information.<sup>88</sup>

With regard to the situation of human rights defenders the Special Representative of the UN Secretary-General on this issue recommended that states take the following measures in the context of peaceful protests:<sup>89</sup>

<sup>82</sup> ECtHR, *Plattform “Ärzte für das Leben” c. Austria*, Judgment, 21 June 1988, §33.

<sup>83</sup> ‘Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai’, UN doc. A/HRC/23/39, 24 April 2013, §43.

<sup>84</sup> See: ‘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, §48. In a resolution on ‘Popular protests and challenges to freedom of assembly, media and speech’ (No. 1947), the Parliamentary Assembly of the Council of Europe urged Member States to ‘ensure media freedom, put an end to harassment and arrest of journalists and the search of media premises and refrain from imposing sanctions on media outlets covering popular protests’. Adopted by the Parliamentary Assembly of the Council of Europe at its 25th Sitting (27 June 2013), §9.5.

<sup>85</sup> OSCE ODIHR, *Guidelines on Freedom of Peaceful Assembly*, Warsaw, 2010, Principles 5.9 and 5.10, p. 21; ‘Human Rights Defenders’, UN doc. A/62/225, 13 August 2007, §91; ‘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, §48.

<sup>86</sup> IACtHR, *Case of Vélez Restrepo and family v. Colombia*, Judgment (Preliminary objection, merits, reparations and costs), 3 September 2012, §194; ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue’, UN doc. A/HRC/20/17, 4 June 2012, §§69 and 110.

<sup>87</sup> *Ibid.*, §78.

<sup>88</sup> IACtHR, *Case of Vélez Restrepo and family v. Colombia*, Judgment (Preliminary objection, merits, reparations and costs), 3 September 2012, §145.

<sup>89</sup> ‘Human rights defenders’, UN doc. A/62/225, 13 August 2007, §101.

- Investigate and prosecute instances of gender-based violence against women defenders occurring during demonstrations as a matter of priority.
- Train and instruct law enforcement officials on protection measures to be taken with regard to children taking part in demonstrations with their mothers.
- Take steps to create a conducive environment that allows children and young adults to associate and express views on matters affecting them as well as on broader human rights issues in student protests.
- Acknowledge trade unionists as human rights defenders entitled to the rights and protection set out in the Declaration on Human Rights Defenders and review restrictive legislation on the right to strike.
- Ensure the protection of participants in gay-pride parades before, during, and after marches from acts of violence and intolerance by counter-protestors.
- Ensure that counterterrorism legislation and measures are not applied against human rights defenders to prevent their human rights work.

## Contingency plans and precautionary measures

Especially when large protests are planned, it is good practice for law enforcement officials to agree with the organizers beforehand what security and public safety measures they will take. This helps those involved to evaluate the potential risks that exist and make arrangements to deal with them. States may also establish contingency plans for protecting particular spaces, such as monuments, transport facilities, or hazardous sites.

In the case of *Giuliani and Gaggio v. Italy*, the European Court of Human Rights held that states 'have the duty to take reasonable and appropriate measures with regard to lawful demonstrations to ensure their peaceful conduct and the safety of all citizens'. It said that 'it is important that

preventive security measures such, as for example, the presence of first-aid services at the site of demonstrations, be taken in order to guarantee the smooth conduct of any event'.<sup>90</sup>

States are under a stronger obligation to take precautionary measures when they have been notified of, or have authorized a demonstration.

## Communication channels

Communication between protesters, local authorities, and police is vital to the management of assemblies and protests. States are encouraged to police protests using a 'negotiated management' approach. Police using this approach play a more protective and facilitating role, helping to defuse tension and prevent escalation.

In some states, formal mechanisms have been established to improve communications between organizers, the police, and local or state authorities during protests (see Box 5 overleaf). Introducing the notion of a 'safety triangle' in domestic law and policing practice can help to avert risks and ensure that protests pass off without violence.<sup>91</sup>

## Specific training for law enforcement officials on crowd facilitation and human rights

Law enforcement officials need to know the legal framework that governs policing of protests and be adequately trained in techniques of crowd facilitation and management. They should be familiar with human rights principles and human rights law, aware of the circumstances in which restrictions on assembly may be imposed, and understand clearly the limits of their authority, notably with regard to the use of force. Training should include real-life scenarios, including instructions on use of force and 'less-lethal' weapons in the context of protests, to ensure that, when use of force is absolutely necessary, it is also appropriately targeted and proportionate to the circumstances.<sup>92</sup>

<sup>90</sup> ECtHR, *Giuliani and Gaggio v. Italy*, Judgment, 21 March 2011, §251.

<sup>91</sup> Report of the Special Rapporteur on extrajudicial summary or arbitrary executions, Christof Heyns', UN doc. A/HRC/17/28, 23 May 2011, §115.

<sup>92</sup> See, for example: Good practice for dialogue and communication as strategic principles for policing political manifestations in Europe (GODIAC), Field Study Handbook, May 2013. At: <http://polisen.se/en/Languages/The-Swedish-Police/International-cooperation/Cooperation-in-Europe/The-GodiAc-Project/> and 'Take back the streets. Repression and criminalization of protests around the world', October 2013. At: <https://www.aclu.org/>.

## Unauthorized protests

By definition, unauthorized protests do not comply with procedures or legal requirements (such as prior notification or authorization). Where national law obstructs rather than facilitates public assembly, spontaneous protests (in some situations, any protest) may automatically become ‘unlawful’ or ‘illegal’.

According to the European Court of Human Rights, ‘an unlawful situation does not justify an infringement of freedom of assembly’.<sup>93</sup> The fact that unauthorized protests are subject in some countries to administrative sanctions, fines or even imprisonment, does not curtail the right to participate peacefully in protests or imply that protesters are no longer entitled to protection.

A range of concerns arise in relation to unauthorized protests. One concern is whether, and, if so, how unauthorized peaceful protests are ended and dispersed. Another is how the police deal with sporadic and isolated acts of violence.

It is a matter of concern that many national legal regimes permit the authorities to disperse

unauthorized protests by force. As a result, participants in peaceful protests are frequently detained, or hurt, in violation of their right to assemble. Legal reform should address this issue, and at the same time remove or review the sanctions that organizers of unauthorized protests face in a number of countries. In addressing both issues, governments need to give full weight to the principle of freedom of assembly. Law enforcement officials should not intervene to stop, search, or detain protesters unless a clear danger of imminent violence exists.

Analysis of crowd behaviour shows that individuals in a crowd are not more likely to be provoked into violent behaviour by other violent participants, than they are by excessive use of force by police. Moreover, people in a crowd do not all behave in the same way and, therefore, a distinction must be made between protesters who behave violently and protesters who do not.<sup>94</sup>

In normal circumstances, use of force is presumed not to be necessary to police peaceful demonstrations. National legislation must specify that law enforcement officials must avoid the use of force and, where that is not practicable, must restrict

### Box 5. South Africa: Standing Order (General 62) of 16 September 2004

#### Crowd Management during Gatherings and Demonstrations

##### 3. Pro-active conflict resolution

(1) Area and station commissioners must identify indicators of potential violent disorder in their areas by means of continuous information gathering by the information managers.

(2) All potential problems must be analysed and reported to the Provincial Commissioners. If there is any threat for public safety, the area or station commissioners concerned must initiate a facilitation process to resolve the factors that underline the disorder peacefully. They must identify role players and stake holders who can play a role in resolving the problem, bring them together for talks and identify and implement problem solving initiatives. They must engage in conflict resolution processes to prevent any form of physical conflict or the eruption of violence.

(3) Area and station commissioners must support the commitment to partnership with the community by:

(a) building positive and constructive relationships with event organizers, community leaders and non-governmental organizations;

(b) participating in safety advisory groups of local authorities to deal with issues relating to public safety; and

(c) exploring the potential for establishing formal liaison panels, to prevent and defuse community disorder in conjunction with institutions such as local authorities, civic associations, community policing forums and non-governmental organizations.

<sup>93</sup> This principle has been affirmed by the European Court of Human Rights, for example, in *Oya Ataman v. Turkey*, Judgment, 5 December 2006, §39.

<sup>94</sup> C. de Rover, *To Serve and to Protect*, ICRC, 1998, p. 201.

such force to the minimum necessary. Non-violent means should be employed whenever possible.

Precautionary measures, including use of stewards, and use of amplification equipment to direct the demonstrators or warn that force may be used, can help to maintain peaceful behaviour. In contrast, measures that are menacing (such as the deployment of heavily armed police, police dogs, water cannon, etc.) tend to escalate violence.<sup>95</sup> The police should be adequately trained and equipped, but when they carry riot control weapons and wear heavy protective equipment this may influence the behaviour of protesters and should be appropriate to the circumstances.

The use of force in policing protests is the last resort regardless if the protest is authorized or not. In this regard, firearms are not a tool for policing assemblies; they may only be used for saving or protecting life. According to the 1990 Basic Principles 'law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms'.<sup>96</sup>

## The peaceful character of a protest must be presumed

Many of the national constitutions analyzed for this Briefing specify that the right to freedom of assembly must be exercised 'peaceably' and 'without arms' (see Box 6).<sup>97</sup> An assembly should be deemed peaceful if its organizers have professed their peaceful intentions and the conduct of the assembly is non-violent. This should be presumed unless there is compelling and demonstrable evidence that those organizing or participating in that particular event themselves intend to use, advocate, or incite imminent violence.<sup>98</sup>

'Peaceful' should be understood to include acts that may annoy or give offence, and even conduct that temporarily hinders, impedes, or obstructs the activities of third parties. Sporadic or isolated acts of violence (including the use of provocative language that amounts to incitement) by a small number of participants does not entitle the authorities to describe the entire assembly as non-peaceful and to manage it accordingly.<sup>99</sup>

Policing should be particularly carefully scrutinized when violent acts occur in the context of a peaceful protest, or peaceful protests are disturbed by groups of violent protesters.

If it remains peaceful, a protest that is unauthorized is nonetheless entitled to protection. The protest's status under national law does not prejudice its entitlement to protection under international law. This applies specifically to restrictions on the use of force by law enforcement officials. Under international human rights law, use of force is strictly limited in the context of a peaceful assembly, regardless of whether the assembly is authorized or not.

Is an assembly automatically to be deemed violent if protesters carry weapons? This legal issue has not been settled. It can be argued that a protest does not become violent unless and until a significant percentage of the protesters act violently. If a protest must be dispersed, however, in all circumstances the dispersal of peaceful participants should be conducted peacefully, without resort to force. This remains the case when violence is provoked, either by groups of violent demonstrators or by state *agents provocateurs* who have infiltrated the crowd.

### Box 6. Egypt: Constitutional Declaration (approved by the Interim President on 8 July 2013)\*

Article 10: Citizens have the right of public assembly, marches and peaceful demonstrations without bearing arms, based on a notice regulated by the law.

\* This wording has been included without major change in Article 73 of the new draft Constitution of Egypt (2013).

<sup>95</sup> C. de Rover, *To Serve and to Protect*, ICRC, 1998, p. 201.

<sup>96</sup> They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result. See 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 4.

<sup>97</sup> See also: Angola (2010 Constitution, Art. 47); India (2011 Amended Constitution, Art. 19(b)); Kenya (2010 Revised Constitution, Art. 37); Pakistan (1973 Constitution, Art. 16); the Philippines (1987 Constitution, S. 4); and South Africa (1996 Constitution, Art. 17).

<sup>98</sup> OSCE ODIHR, *Guidelines on Freedom of Peaceful Assembly*, Warsaw, 2010, §25.

<sup>99</sup> See OSCE ODIHR *Guidelines on Freedom of Peaceful Assembly*, Warsaw, 2010, §159.

## Protests involving acts of violence

Assemblies that are peaceful and lawful may turn violent and result in social disruption, damage to property, injury, or loss of life. Protests involving acts of violence are not consistent with the spirit or letter of the right to peaceful assembly.

In any case, the occurrence of acts of violence does not alter the state's obligation to protect human rights. In particular, the state continues to have a duty to protect the rights to life and to freedom of expression and assembly of protesters, and to prohibit their arbitrary detention or torture and ill-treatment, in particular. With respect to the use of force, human rights standards do not distinguish unauthorized from authorized protests; they distinguish peaceful from non-peaceful ones.

Violent protests amounting to a grave public disturbance of the peace are ordinarily described in national law as 'riots' or 'disturbances'. Depending on the level and extent of violence, violent assemblies may be dispersed and those who commit violent acts may be arrested and prosecuted.<sup>100</sup> When these cause a clear and immediate danger of damage or injury to people or property, more robust police action may be required.

Under such circumstances, national authorities should take account of the different interests at stake, and with this in mind consider limiting the right to assembly, taking due account of the principles of necessity and proportionality.

National authorities are entitled to a margin of discretion when they assess the threat that violent acts represent. However, since dispersing an assembly restrains enjoyment of a fundamental right, the necessity and proportionality of such decisions need careful evaluation. If the risk of disturbance is not high, police should seek to remove violent individuals from the crowd and allow an otherwise peaceful protest to continue. Even when the risk of violent clashes is high, dispersal of the assembly should arguably be envisaged only if attempts to neutralize violent participants have failed.

The European Court of Human Rights has assessed in a number of cases the necessity and proportionality of force used to disperse violent protests. In *Solomou and Others v. Turkey*, it stated

that, although the demonstrators had sticks and iron bars and were throwing stones at the Turkish forces, the killing of a demonstrator who had crossed the ceasefire line and was unarmed was not 'absolutely necessary' and was thus a violation of the right to life.<sup>101</sup>

In *Güleç v. Turkey*, the police response to spontaneous unauthorized violent demonstrations, including the destruction of property and attacks on gendarmes, was held to be disproportionate since 'a balance must be struck between the aim pursued and the means employed to achieve it'.<sup>102</sup> The police were apparently not equipped with 'less-lethal' weapons, deployed two armoured vehicles, and fired bullets at the crowd, hitting many demonstrators in the legs and killing one. The Court observed that the lack of appropriate equipment was unacceptable, since the events occurred in a region in which a state of emergency has been declared, where disorder could reasonably have been expected. It concluded that, in the circumstances of the case, the force used to disperse the demonstrators was not absolutely necessary within the meaning of Article 2 of the ECHR on the right to life.<sup>103</sup>

Finally, although freedom of assembly is not absolute, a general derogation from the right would not be admissible. In the view of the Human Rights Committee, permissible restrictions on freedom of assembly are adequate and no derogation from the right would be justified by circumstances, including the occurrence of mass demonstrations accompanied by instances of violence.

The issues of when rights can be derogated from, and to what extent, cannot be separated from the provision in article 4, paragraph 1, of the Covenant according to which any measures derogating from a State party's obligations under the Covenant must be limited 'to the extent strictly required by the exigencies of the situation'. This condition requires that States parties provide careful justification not only for their decision to proclaim a state of emergency but also for any specific measures based on such a proclamation. If States purport to invoke the right to derogate from the Covenant during, for instance, a natural catastrophe, a mass demonstration including instances of violence, or a major industrial accident, they must be able to justify not only that such a situation constitutes a threat to the life of the nation, but also that all their measures derogating from the

<sup>100</sup> Minor offences in relation to property (e.g. burning dustbins) should not justify heavy-handed police intervention.

<sup>101</sup> ECtHR, *Solomou v. Turkey*, Judgment, 24 June 2008, §78.

<sup>102</sup> ECtHR, *Güleç v. Turkey*, Judgment, 27 July 1998, §71.

<sup>103</sup> *Ibid.*, §73.

Covenant are strictly required by the exigencies of the situation. In the opinion of the Committee, the possibility of restricting certain Covenant rights under the terms of, for instance, freedom of movement (article 12) or freedom of assembly (article 21) is generally sufficient during such situations and no derogation from the provisions in question would be justified by the exigencies of the situation.<sup>104</sup>

Likewise, political instability or any other public emergency or exceptional circumstance cannot be invoked by states to justify any departure from the basic principles on the use of force.<sup>105</sup>

## Dispersal of protests

Dispersal of a peaceful protest (whether authorized or not) should be a measure of last resort.<sup>106</sup> According to the 1990 Basic Principles, ‘in the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force, where that is not practicable, shall restrict such force to the minimum extent necessary’.<sup>107</sup>

Regarding the dispersal of violent assemblies, it is stated that: ‘law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary’.<sup>108</sup> Law enforcement shall not use firearms in such cases. In any event, intentional lethal use of firearms may only be made when strictly unavoidable to protect life.<sup>109</sup>

The European Court of Human Rights has stated that dispersal of demonstrations or protests, ‘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.<sup>110</sup> In several cases it has considered the proportionality of police conduct while dispersing unauthorized public demonstrations.

In *Oya Ataman v. Turkey*, the Court found dispersal, to prevent disorder, had been unnecessary and disproportionate. Some 50 people holding placards had been dispersed violently by the police using tear gas; those who refused to obey the dispersal order had been arrested.<sup>111</sup>

In the case of *Berladir and Others v. Russia*, the dispersal of an assembly that was unlawful under domestic law was deemed legitimate because the organizers had refused to accept alternative venues or other times to hold the event.<sup>112</sup> In this controversial decision, the Court did not challenge the grounds on which the demonstration was ‘automatically’ declared unlawful, nor the fact that national legislation offered the applicants no swift or effective form of appeal.<sup>113</sup>

Under many national legal regimes, an unauthorized demonstration is to be dispersed automatically and resort to lethal force is permitted in circumstances that would violate the right to life (see Box 7 overleaf). In some cases the police are authorized to arrest individuals who participate in protests peacefully.

Analysis of national legislation by the authors of this Briefing has found that states adopt a wide variety of means when they order the ‘forcible’ dispersal of a crowd. In China, for example, the Law of the People’s Republic of China on Assemblies, Processions and Demonstrations (1989) explicitly empower police to detain people who remain on the scene.<sup>114</sup> The law on assemblies recently passed in Egypt seemingly allows the complete dispersal of a demonstration in cases where any violent act is committed (by a small group or even one person). Under the law, police may use shotguns and rubber bullets to disperse peaceful protesters and they are allowed to respond to any use of firearms by protesters by means proportionate to the level of threat to lives, money and property.<sup>115</sup> Such laws do not conform to international standards governing the dispersal of assemblies and protests, which require that dispersal should be a measure of last resort.

<sup>104</sup> Human Rights Council, ‘States of Emergency (article 4)’, General Comment No. 29, UN doc. CCPR/C/21/Rev.1/Add.11 (2001), §5.

<sup>105</sup> 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 8.

<sup>106</sup> See, for example, Human Rights Council, Resolution 22/10, 21 March 2013, §8 and UN Doc. A/HRC/22/28, 21 January 2013, §13.

<sup>107</sup> 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 13.

<sup>108</sup> *Ibid.*, Principle 14.

<sup>109</sup> *Ibid.*, Principles 9 and 14.

<sup>110</sup> ECtHR, *Berladir and Others v. Russia*, Judgment, 10 July 2012, §43.

<sup>111</sup> ECtHR, *Oya Ataman v. Turkey*, Judgment, 5 December 2006, §§41 and 43.

<sup>112</sup> *Berladir and Others v. Russia*, Judgment, 19 November 2012, §§47-58.

<sup>113</sup> See: Joint Dissenting Opinion of Judges Vajić and Kovler.

<sup>114</sup> See Article 27(2).

<sup>115</sup> Law 107 (2013) organizing the right to public meetings and rallies and peaceful protests, 24 November 2013, Arts. 11 and 13. See: Amnesty International, ‘Egypt: New protest law gives security forces free rein’, 25 November 2013, at: <http://www.amnesty.org/en/news/egypt-new-protest-law-gives-security-forces-free-rein-2013-11-25#.UpRYu01fVgl.gmail>.



In general, the police should seek to de-escalate, negotiate, and/or mediate with protesters before seeking to disperse a crowd. In addition, police should give a clear verbal warning before using force. Arguably, three conditions should be in place before force may be used to disperse a crowd:

- An assembly which has the object of committing acts of violence or where there are clear indications of a likely disturbance of the peace.
- An explicit order to disperse to demonstrators, made by a competent authority.
- Failure by protesters to move away, after such an order has been given.<sup>116</sup>

## General prohibition on the use of firearms

The commentary on Article 3 of the 1979 Code of Conduct for Law Enforcement Officials states that ‘the use of firearms is considered an extreme measure’. According to Principle 9 of the 1990 Basic Principles:

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.

National law in the Philippines, for example, recognizes the principle of ‘maximum tolerance’, meaning that the military, police, and other law enforcement authorities shall observe ‘the highest degree of restraint... during a public assembly or in the dispersal of it’. ‘The unnecessary firing of firearms by a member of any law enforcement agency or any person to disperse the public assembly’ is prohibited.<sup>117</sup>

National laws, and in particular police manuals, codes of conduct, and operational documents (operational policies on use of force and firearms or guidance manuals), should explicitly prohibit use of lethal force during peaceful assemblies.<sup>118</sup> On the basis of research on more than 70 states, the Special Rapporteur on extrajudicial, summary or arbitrary executions concluded that a significant proportion of national laws do not adhere to international standards on the use of deadly force during protests.<sup>119</sup>

In particular, use of firearms cannot be justified merely because a particular gathering is unauthorized and has to be dispersed, or to protect property. A worrying number of states have passed laws that authorize the use of firearms to disperse crowds: shooting indiscriminately into a crowd is manifestly unlawful, and firearms may be aimed only at persons who present an imminent threat of causing death or serious injury.

### Box 7. Zimbabwe: Public Order and Security Acts 2002, 2004, and 2005

#### Section 29. Dispersal of unlawful public gatherings

(1) A police officer and any person assisting him may do all things reasonably necessary for:

(a) dispersing the persons present at a public gathering the holding or continuance of which is unlawful by virtue of any direction or order under section 25, 26 or 27; and (b) apprehending any such persons; and, if any such person makes resistance, the police officer or the person assisting him may use such force as is reasonably justifiable in the circumstances of the case for overcoming any such resistance.

(2) If a person is killed as a result of the use of reasonably justifiable force in terms of subsection (1), where the force is directed at overcoming that person’s resistance to a lawful measure taken in terms of that subsection, the killing shall be lawful.

<sup>116</sup> Similar conditions were identified by the Punjab-Haryana High Court in *Karam Singh v. Hardayal Singh And Others*, 8 August 1979. At: <http://indiankanoon.org/doc/500184/>.

<sup>117</sup> Public Assembly Act (1985), Ss. 3 and 13(e).

<sup>118</sup> Report of the UN High Commissioner for Human Rights, UN doc. A/HRC/22/28, 21 January 2013, §13.

<sup>119</sup> ‘Report of the Special Rapporteur on extrajudicial summary or arbitrary executions, Christof Heyns’, UN Doc. A/HRC/17/28, 23 May 2011.

Legislation in Kenya explicitly allows use of firearms to maintain public order but without adequate safeguards (see Box 8). Legislation in Tunisia, currently under revision, permits law enforcement officers to shoot at the body to disperse a crowd (see Box 9 overleaf). This indicates the extent to which a fuller application of human rights standards is necessary.

## Graduated use of force

According to the 1990 Basic Principles: 'governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind'.<sup>120</sup>

At national level, clear protocols should be established on appropriately graduated use of force, taking into account the significant risks that arise when certain 'less-lethal' weapons (such as tear gas) are used to control crowds and riots, and in particular to disperse protests.

## Use of 'less-lethal' weapons

'Less-lethal' does not mean 'non-lethal'. Such weapons can and have caused deaths, including in the context of protests. As noted above, the 1990 Basic Principles call for a differentiated use of force, which should include weapons not designed to kill, but in providing at the same time that the development and deployment of such weapons 'should be carefully evaluated in order to minimize the risk of endangering uninvolved persons' and that 'the use of such weapons should be carefully controlled'.<sup>121</sup>

For example, police regularly use tear gas (including pepper spray) to control crowds. The use of tear gas is prohibited as a method of warfare but its use is not prohibited for the purpose of law enforcement, including domestic riot control.<sup>122</sup>

The only legitimate use of 'tear gas' is to control the movement of a crowd when the threat of violence and injury is manifest and to disperse or stop the crowd coming forward or moving into a place where violent acts would likely erupt.<sup>123</sup> The European Court of Human Rights has not always found that it is unlawful to use tear gas to disperse violent gatherings,<sup>124</sup> but examples of excessive use occur with alarming frequency.

The serious effects of tear gas on health have led some human rights monitoring bodies to disapprove of its use for law enforcement, and guidelines on the use of such substances have been established. For example, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has stated:

### Box 8. Kenya: Section 14 of the 1950 Public Order Act (as revised in 2012)

1. Whenever in this Act it is provided that force may be used for any purpose, the degree of force which may be so used shall not be greater than is reasonably necessary for that purpose; whenever the circumstances so permit without grave risk of uncontrollable disorder, firearms shall not be used unless weapons less likely to cause death have previously been used without achieving the purpose aforesaid; and firearms and other weapons likely to cause death or serious bodily injury shall, if used, be used with all due caution and deliberation, and without recklessness or negligence.

2. Nothing in this section shall derogate from the lawful right of any person to use force in the defence of person or property.

<sup>120</sup> 1990 Basic Principles on the use of Force and Firearms by Law Enforcement Officials, Principle 2.

<sup>121</sup> *Ibid.*, Principles 2 and 3.

<sup>122</sup> See Art. II(9)(d), 1992 Chemical Weapons Convention, affirmed by the ECtHR in *Ali Güneş v. Turkey*, Judgment, 10 April 2012, §38.

<sup>123</sup> *Oya Ataman v. Turkey*, Judgment, 5 December 2006, §25.

<sup>124</sup> In *Oya Ataman v. Turkey* the Court did not find a violation of Article 3 of the ECHR because the applicant had not submitted medical reports to show that the alleged ill-effects she had suffered were due to exposure to the gas.

Pepper spray is a potentially dangerous substance and should not be used in confined spaces. Even when used in open spaces the CPT has serious reservations; if exceptionally it needs to be used, there should be clearly defined safeguards in place. For example, persons exposed to pepper spray should be granted immediate access to a medical doctor and be offered an antidote. Pepper spray should never be deployed against a prisoner who has already been brought under control.<sup>125</sup>

In the case of *Ali Güneş v. Turkey*, the European Court of Human Rights judged that the use of tear gas against people who are restrained can amount to inhuman and degrading treatment under Article 3 of the ECHR. The applicant was demonstrating in one of the thirteen locations where national authorities permitted demonstrations during the 2004 North Atlantic Treaty Organization (NATO) summit in Istanbul. Police officers who had been circling the crowds grabbed the applicant and other demonstrators by the arms, sprayed them with tear gas, and attacked them, though they were unarmed and had behaved in a peaceful manner. In its judgment, the Court recollected previous cases involving tear gas and law enforcement, and recalled that its use can cause respiratory problems, nausea, vomiting, irritation of the respiratory tract, irritation of the tear ducts and eyes, spasms, chest pain, dermatitis, and allergies.<sup>126</sup> Given these effects,

the Court concluded that spraying the appellant's face while two police officers held him 'must have subjected him to intense physical and mental suffering and was such as to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him'.<sup>127</sup> The Court further observed that firing of tear gas by means of a launcher can result in serious injury or even death and cannot be considered an appropriate police action.

In a more recent case, *Abdullah Yaşa and Others v. Turkey*, the Court concluded that using a launcher to fire tear-gas grenades at demonstrators (whether or not they were violent) could result in serious injury amounting to a violation of Article 3 of the ECHR (the prohibition of torture). The Court concluded that firing tear gas in this way could not be considered an appropriate police action and called for stronger safeguards to minimize the risk of death and injury.<sup>128</sup>

Taking account of these decisions, the Parliamentary Assembly of the Council of Europe urged member states 'to draw up clear instructions concerning the use of tear gas (pepper spray) and prohibit its use in confined spaces'.<sup>129</sup> The CPT also stated that clear safeguards for the use of tear gas should be established.<sup>130</sup> In referring to its use in the context of protest, the Special Rapporteur on the rights to freedom of peaceful assembly and of association has observed that gas does not discriminate

### Box 9. Tunisia: Law No. 69-4 of 24 January 1969 regulating public meetings, processions, marches, demonstrations, and crowds

#### Chapitre IV – Usage des armes

Article 21 – Au cas où les agents de la Sûreté se trouveraient en présence de manifestants qui refusent de se disperser malgré les avertissements qui leur sont adressés et qui sont énoncés dans les articles précédents de la présente loi, ils emploieront progressivement pour les disperser, les moyens suivants :

- 1- arrosage d'eau ou charge à coups de bâton ;
- 2- jets de bombes lacrymogènes ;
- 3- tir à feu vertical en air pour faire peur aux manifestants ;
- 4- tir à feu par-dessus leur tête ;
- 5- tir à feu en direction de leurs jambes.

<sup>125</sup> Report to the Government of Bosnia and Herzegovina on the visit to Bosnia and Herzegovina carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 30 March 2007, CPT/Inf (2009) 25, §79.

<sup>126</sup> *Ali Güneş v. Turkey*, Judgment, 10 April 2012, §37. See also *Oya Ataman v. Turkey*, Judgment, 5 December 2006, §§17–18.

<sup>127</sup> *Ibid.*, §43.

<sup>128</sup> *Abdullah Yaşa and Others v. Turkey*, Judgment, 16 July 2013, §§48-51.

<sup>129</sup> Resolution 1947 (2013) adopted by the Parliamentary Assembly of the Council of Europe at its 25th Sitting (27 June 2013) §9.4.

<sup>130</sup> See, for example: 'Report to the Government of Bosnia and Herzegovina on the visit to Bosnia and Herzegovina carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 30 March 2007 (CPT/Inf (2009) 25), §79.

between demonstrators and non-demonstrators, or healthy people and people with medical conditions. He warned against any modification of the chemical composition of the gas for the sole purpose of inflicting severe pain on protesters and, indirectly, bystanders.<sup>131</sup>

## Responsibility of the organizers

Organizers of protests also have responsibilities. Beforehand, they are expected to comply with (reasonable) regulations. During the protest, they should cooperate with the authorities to ensure that demonstrators respect the law and respect the rights of others. They should also assist the authorities in responding to emergencies or criminal conduct.

States may impose sanctions on organizers and participants for non-compliance or refusal to obey the lawful orders of law enforcement officials. However, failure to comply with administrative procedures does not necessarily permit a state to restrict freedom of assembly.

Some legal regimes permit the prosecution of peaceful protesters who fail to give advance notice of their protest to the police, and impose disproportionate civil and criminal sanctions (see Box 10). Such laws have the effect of dissuading (even intimidating) those who wish to protest, breaching a state's duty to facilitate peaceful protests.

A merely formal breach of the requirement to notify a demonstration does not justify convicting demonstrators of a criminal offence. In *Sergey Kuznetsov v. Russia*, the European Court of Human Rights concluded that a technical breach of the notification time limit was not a sufficient reason to find the applicant guilty of an offence. The Court stated that 'the freedom to take part in a peaceful assembly is of such importance that a person cannot be subjected 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 this person does not himself commit any reprehensible act on such an occasion'.<sup>132</sup> In other cases, the Court has granted states some discretion when they sanction organizers of unlawful or unauthorized assemblies. In *Berladir and Others v. Russia*, notably, the Court did not find it disproportionate to impose 'small' fines on the organizers, who had 'failed to display diligence and placed themselves and other participants in a situation of unlawfulness when they held a public gathering in the planned location'.<sup>133</sup> However, when it assessed the proportionality of the measure, the Court did not consider the fact that Russian legislation only contemplated two alternatives if the organizers disagreed with the authority's proposal for another venue and time: to abstain from the activity or face dispersal and prosecution. The organizers had no effective access to appeal.<sup>134</sup>

### Box 10. Guinea: Law No. 98/036 of 31 December 1998 on the Penal Code

Article 109: Seront punis d'un emprisonnement de 6 mois à 1 an et d'une amende de 100.000 à 500.000 francs guinéens ceux qui auront fait une déclaration incomplète ou inexacte de nature à tromper l'Autorité administrative sur les conditions de la manifestation projetée ou qui, soit avant le dépôt de la déclaration prescrite à l'article 106 soit après l'interdiction, auront adressé par un moyen quelconque, une convocation à y prendre part.

Seront punis d'un emprisonnement de 2 à 5 ans et d'une amende de 100.000 à 1.000.000 de francs guinéens ceux qui auront participé à l'organisation d'une manifestation non déclarée ou qui a été interdite.

Dans les cas prévus aux deux alinéas précédents, les coupables pourront être condamnés à l'interdiction de séjour dans les conditions prévues à l'article 40 du présent Code.

<sup>131</sup> '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, §35. Amnesty International and the Omega Research Foundation have since 2001 published several reports on the human rights risks of particular law enforcement equipment. See, for example, 'The Pain Merchants: Security Equipment and its use in Torture and other Ill-Treatment', Amnesty International report, AI Index: ACT 40/008/2003.

<sup>132</sup> *Sergey Kuznetsov v. Russia*, Judgment, 23 October 2008, §43.

<sup>133</sup> *Berladir and Others v. Russia*, Judgment, 19 November 2012, §57.

<sup>134</sup> See: Joint Dissenting Opinion of Judges Vajić and Kovler.

## C. Preventing Unlawful Use of Force and Ensuring Accountability

According to the 1990 Basic Principles, states ‘shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law’.<sup>135</sup>

Maintenance of public security cannot be invoked to justify violation of the right to life.<sup>136</sup> States have a duty to investigate any death or injury that occurs during protests, including those resulting from the discharge of firearms or the use of ‘less-lethal’ weapons by law enforcement officials.<sup>137</sup> Any person who considers that his or her rights have been violated has the right to pursue justice through the courts.<sup>138</sup> These obligations are applicable in all circumstances, including to riots and other situations of disturbance of public order.<sup>139</sup>

In the context of peaceful protests, violations of human rights may occur when use of force is deemed to be unnecessary (not strictly necessary in the situation); excessive (not strictly proportionate to an actual or imminent threat or use of violence); or indiscriminate (not directed at specific individuals or groups who are engaged in acts of criminal violence or about to commit such acts).

### Planning and prevention measures

With a view to preventing unlawful force from being used with impunity during protests, states should establish administrative controls that ensure force is only used in exceptional circumstances, when it is strictly necessary. Controls should include measures to plan for and prevent inappropriate use of force, and to investigate cases in which unlawful force may have occurred. The Inter-American Commission on Human Rights has identified a list of best practices for avoiding arbitrary deprivation of life during protests.<sup>140</sup>

- Implement effective mechanisms to prohibit use of lethal force in the context of public demonstrations.
- Implement an ammunition registration and control system.
- Implement a communications records system to monitor operational orders, and identify who issued them and who carried them out.
- Promote visible markings that personally identify police agents who participate in public law enforcement operations.
- Promote opportunities for communication and dialogue with the organizers of demonstrations before they occur; appoint liaison officers to coordinate during protest activities and law enforcement operations to prevent conflict situations from arising.
- Appoint political officials responsible for law enforcement operations during marches, particularly during scheduled marches or prolonged social conflicts or where potential risks to the rights of the demonstrators or others can be anticipated.
- Instruct such officials to supervise field operations and ensure strict compliance with norms governing use of force and police conduct.
- Establish administrative sanctions for law enforcement personnel who commit abuses or acts of violence; involve independent investigators and victims.
- Adopt measures to ensure that police or judicial officials (judges or prosecutors) who are directly involved in operations are not responsible for investigating irregularities or abuses committed during the course of those operations.

<sup>135</sup> 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 7.

<sup>136</sup> IACmHR, ‘Report on the Situation of Human Rights Defenders in the Americas’, OEA/Ser.L/V/II.124, Doc. 5 rev.1, 7 March 2006, §67.

<sup>137</sup> Human Rights Council, Resolution 22/10, 21 March 2013, §9.

<sup>138</sup> The Inter-American Court of Human Rights has rightly observed that compliance with this duty not only benefits victims but society as a whole. IACtHR, *Case of the Caracazo v. Venezuela*, Judgment (Reparations and Costs), 29 August 2002, §115.

<sup>139</sup> Maina Kiai, ‘Summary of the Human Rights Council panel discussion on the promotion and protection of human rights in the context of peaceful protests’, UN doc. A/HRC/19/40, 19 December 2011, §14.

<sup>140</sup> IACmHR, ‘Report on Citizen Security and Human Rights’, OEA/Ser.L/V/II. Doc. 57, 31 December 2009, §201. See also, UN Office on Drugs and Crime, *Handbook on police accountability, oversight and integrity*, Criminal Justice Handbook Series, New York, 2011, esp. pp. 89–100.

## Reporting and review procedures

National laws should guarantee effective reporting and review of every incident during a protest that result in death or injury as a consequence of the use of force or firearms. Law enforcement officials who have reason to believe that a violation has occurred, or is about to occur, must report the matter to their superior authorities and, where necessary, to authorities or organs vested with review or remedial power.<sup>141</sup> A detailed report must be sent promptly to the competent authorities responsible for administrative review and judicial control.<sup>142</sup>

States must put strict controls in place, including a clear chain of command, with respect to all officials who are responsible for policing protests. Controls are especially necessary for officers authorized to use firearms. Rules should clearly describe the responsibility of superiors, and the authority of superior orders. Senior law enforcement officials are responsible if they know or had reason to know that officials under their command are resorting, or have resorted, to unlawful use of force and firearms. No

criminal or disciplinary sanction may be imposed on law enforcement officials who have refused to carry out an unlawful order to use force or firearms or who report their unlawful use by another official. Obedience to superior orders cannot be used by a law enforcement official to justify the unlawful use of force if he or she knew that the order was unlawful.<sup>143</sup>

Most national legal regimes support these rules, which are particularly relevant when protests are forcibly dispersed and the use of firearms or unnecessary force causes fatalities or injuries.<sup>144</sup> However, important flaws are observed in practice. In Kenya, for example, recent reforms were introduced in response to violence that followed elections in 2007.<sup>145</sup> A new Constitution (2010) addressed shortcomings in police accountability but, as noted above, serious concerns remain about laws on use of firearms and use of excessive force by the police (see Box 8). Pakistan's legal regime also grants immunity to law enforcement officials (see Box 11) as long as the relevant act is 'done in good faith'.

### Box 11. Pakistan: 2002 Police Order

171. No police officer to be liable to any penalty or payment of damages on account of acts done in good faith in pursuance of duty.

No police officer shall be liable to any penalty or to payment of damages on account of an act done in good faith in pursuance or intended pursuance of any duty imposed or any authority conferred on him by any provision of this Order or any other law for the time being in force or any rule, order or direction made or given therein.

<sup>141</sup> 1979 Code of Conduct for Law Enforcement Officials, Article 8.

<sup>142</sup> 1990 Basic Principles on the Use of Force and Firearms, Principle 22.

<sup>143</sup> *Ibid.*, Principles 24, 25, 26.

<sup>144</sup> The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has underlined that, in the context of demonstrations, 'depending on the seriousness of the pain and suffering inflicted, excessive use of force may constitute cruel, inhuman or degrading treatment or even torture'. 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez', Mission to Morocco, UN doc. A/HRC/22/53/Add.2, 28 February 2013, §22.

<sup>145</sup> From December 2007 to January 2008, Kenya was struck by a wave of ethnic violence triggered by a disputed presidential election held on 27 December 2007.

## Independent investigation and access to justice

Where allegations of unnecessary or excessive use of force are made, there must be a prompt, impartial and thorough investigation.<sup>146</sup> In particular, law enforcement officials who are implicated in or found to be responsible for arbitrary deprivation of life during protests must be brought to justice. To that end, national laws should ensure that victims of the use of force or firearms have access to an independent complaints process, including a judicial process. Victims must also be entitled to fair and adequate compensation within a reasonable period of time.

A number of states have recently set up independent fact-finding missions or commissions of inquiry to investigate alleged excessive use of force by police during large-scale protests. Such bodies have been established, for example, in Egypt,<sup>147</sup> South Africa,<sup>148</sup> and Tunisia.<sup>149</sup> In the absence of a model, the performance of these bodies can only be assessed case-by-case. It should be emphasized, however, that these mechanisms cannot replace, though they can complement, judicial processes. They provide a measure of public accountability, can help to clarify the facts, and should be empowered to refer cases to national courts for criminal prosecution.

### Box 12. The European Code of Police Ethics (2001)<sup>150</sup>

*61. Public authorities shall ensure effective and impartial procedures for complaints against the police.*

#### *Commentary*

Complaints against the police should be investigated in an impartial way.

“Police investigating the police” is an issue which generally raises doubts as to impartiality. States must therefore provide systems which are not only impartial but also seen to be impartial, to obtain public confidence. Ultimately, it should be possible to refer such complaints to a court of law.

<sup>146</sup> 1990 Basic Principles on the Use of Force and Firearms, Principle 23.

<sup>147</sup> Two national commissions of inquiry have been established (one by the former government and the other under the National Council for Human Rights and the Arab Organization of Human Rights) to examine the events of January 2011, when demonstrations, plaza occupations, riots, and non-violent civil resistance brought together millions of protesters demanding the overthrow of then-President Hosni Mubarak. At least 846 people were killed and 6,000 injured in violent clashes between security forces and protesters. See: Office of the United Nations High Commissioner for Human Rights, ‘Report of the OHCHR Mission to Egypt (27 March – 4 April 2011)’, §21 and ‘Results of the Fact-Finding Committee on the Acts of Violence in Egypt during November and December 2011’ at: <http://www.nchregypt.org/index.php/en/media-center/news/915-2012-02-09-09-28-09.html>.

<sup>148</sup> The President has appointed a Commission of Inquiry to investigate incidents at the Lonmin Mine in Marikana (11 – 16 August 2012). 44 people were killed, more than 70 injured, and 250 arrested when police opened fire on striking mineworkers. The Commission is investigating the facts and the circumstances which gave rise to use of force by the police and whether the force used was reasonable and justifiable. See: <http://www.marikanacomm.org.za/>.

<sup>149</sup> A National fact-finding commission was created on 18 February 2011 to investigate alleged abuses and violations committed during the uprising that started on 17 December 2010. An unprecedented movement of peaceful demonstrations culminated with the fall of former President Ben Ali on 14 January 2011. Figures from the Ministry of Justice indicate that 147 persons died during or in circumstances surrounding the demonstrations, while another 510 were injured. See: Office of the United Nations High Commissioner for Human Rights Report of the OHCHR Assessment to Tunisia (26 January – 2 February 2011), §39.

<sup>150</sup> Recommendation (2001) 10 adopted by the Committee of Ministers of the Council of Europe on 19 September 2001 and explanatory memorandum.





# A Summary of Legal and Policy Recommendations

Sixty-five years after the adoption of the Universal Declaration on Human Rights, one of the messages in its preamble is as relevant today as it was in 1948: human rights must be protected by the rule of law, for otherwise people may feel compelled, as a last resort, to rebel against tyranny and oppression. The ability to protest peacefully is a cornerstone of that protection, which requires the state's active facilitation, not just an attitude of tolerance. The following paragraphs summarize some of the key legal and policy recommendations made in this Briefing.

**The state must ensure that national laws on the right to peaceful assembly, and the rights to freedom of opinion, expression, and association, comply with international human rights law and standards.** Laws and government policy should presume in favour of permitting assemblies and protests, and should not impose restrictions except when it is absolutely necessary. **The State should facilitate and protect peaceful protests without discrimination on any ground.**

Some restrictions may be imposed on freedom of assembly, but they should be strictly necessary in a democratic society, established by law, and proportional. Restrictions may legitimately be imposed on the time, place, and form of a protest, where necessary; but no restrictions should be imposed on the messages that organizers and participants wish to convey (unless these incite discrimination, hostility, or violence). The grounds for restriction should be made public and the state should offer organizers reasonable alternatives. Efforts should be made to ensure that protests can be held within 'sight and sound' of their target audiences.

National authorities may legitimately ask organizers of planned protests to notify them in advance, so that adequate security and safety measures can be arranged. The procedure for doing so should be simple, non-onerous, and swift. States should avoid excessive regulation and bureaucratic procedures. Procedures for authorizing protests could only be admissible in cases of large planned protests or when a protest is particularly likely to lead to public

disorder. An expeditious and accessible appeal system should exist, permitting protesters to appeal a decision to prohibit or curtail an assembly before a competent tribunal.

**National laws should recognize and protect the right to hold spontaneous protests.**

The right to hold counter-demonstrations should also be recognized and protected by law. To prohibit a protest only because it is due to occur at the same time and place as another meeting is disproportionate and discriminatory. The principle of non-discrimination requires that comparable assemblies are treated similarly. Law enforcement personnel should be trained to manage counter-demonstrations and ensure they take place peacefully. Protesters and counter-protesters are all entitled to protection.

The state should favour the right to peaceful protest by ensuring access to information and communication technologies, including Internet and social media. States may restrict access to websites, or control their content, only on one of the grounds for restriction that are recognized in the ICCPR and in a manner that respects the principles of necessity and proportionality.

The role of the police and other law enforcement agencies is to make it possible to hold assemblies and protests peacefully, and to protect participants and others in accordance with human rights and domestic law, without discrimination or political bias. For instance, human rights defenders, journalists, women, representatives of ethnic minorities, indigenous persons, and lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons may need specific protection at protests.

The Special Rapporteur on extrajudicial, summary or arbitrary executions has suggested that guidelines should be drafted on use of force in the context of protests.<sup>151</sup> This is long overdue. The 1990 Basic Principles on the Use of Force and Firearms provide essential guidance but do not give specific advice on facilitating peaceful protests, including how to avoid use of force wherever possible, and how to minimize use of force when force is necessary.

<sup>151</sup> 'Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns', UN doc. A/HRC/17/28, 23 May 2011, §143.

**A protest should be presumed peaceful unless there is compelling or clear evidence that the organizers or participants intend to use or incite violence and violence is likely to occur.** Acts of violence by a small number of participants do not render a whole assembly violent and do not justify its dispersal. The fact that a number of protesters may have weapons should not automatically render an assembly violent and subject to dispersal.

**Dispersal of peaceful assemblies or protests should be a measure of last resort.** The fact that an assembly is unauthorized does not justify its dispersal. If it becomes necessary to order the dispersal of a peaceful assembly, dispersal should be carried out peacefully. Force should not be used against peaceful demonstrators.

Law enforcement personnel should be equipped with adequate and appropriate protective equipment, to minimize resort to force. **Consonant with their obligations under human rights law and Human Rights Council Resolution 22/10 (2013) states should draw up clear regulations and instructions as well as agree on protocols concerning the use of ‘less-lethal’ weapons, particularly tear gas (pepper spray).<sup>152</sup> States should prohibit the use of tear gas in confined spaces and where it would cause panic.** Tear gas cartridges should never be fired directly at a person. Police manuals, codes of conduct, and other regulations should make clear that law enforcement authorities will not use lethal force in the context of peaceful assemblies, and will only use force in exceptional circumstances.

Law enforcement personnel who police protests should be trained in use of firearms and ‘less-lethal’ weapons, to ensure that any use of force is absolutely necessary, is proportionate, and is not arbitrary or indiscriminate. **Firearms may be used only in response to an imminent threat to life or serious injury. The use of firearms simply to disperse a protest is prohibited.** Any use of firearms should be reported and investigated. Lethal force is permissible only when it is strictly unavoidable to protect life.

**Particular care should be taken by police officers and other law enforcement officials to avoid using force against children, the elderly, and persons with disability, among others. Any form of sexual violence against participants, and in particular against girls and women, is prohibited.**

States should adopt policies to reduce the risk of violence during protests. They should establish focal points and opportunities for dialogue with organizers, before and during the event. National regulations should adopt the ‘safety triangle’ approach to promote the negotiated management of protests. Human rights monitoring of protests, including by independent media, should be permitted and facilitated.

States should not criminalize participation in, or organization of, peaceful protests, whether authorized or not. Organizers should co-operate with law enforcement agencies to ensure that participants comply with the law and help to manage criminal acts or emergencies. If the organizers fail to comply with legal procedure, or fail to prevent foreseeable acts of violence or criminal behaviour, they may be sanctioned, but any civil or criminal sanctions should be proportionate to the offence.

**States have a duty to thoroughly investigate alleged violations and provide effective remedy to victims.** Incidents that involve death or injury of protesters, or any use of firearms, must be reported and properly investigated. Allegations of excessive or unnecessary use of force should also be promptly, thoroughly, and impartially investigated. Law enforcement officials who are shown to have been responsible for arbitrary or abusive use of force must be brought to justice.

A thematic General Comment on peaceful protest or at least a General Comment on the right to freedom of peaceful assembly under Article 21 of the ICCPR would be an important step forward in understanding the content of the right to assembly, including for the purpose of protest. There is also ample practice, including examples of good practice, to justify the elaboration of international guidelines on facilitating peaceful protests.

<sup>152</sup> See: Paragraph 11 of the resolution: ‘Encourages States to make protective equipment and non-lethal weapons available to their law enforcement officials and to refrain from using lethal force during peaceful protests, while pursuing efforts to regulate and establish protocols for the use of non-lethal weapons’.

# Annex

## Human Rights Council Resolution 22/10 (2013) on ‘The promotion and protection of human rights in the context of peaceful protests’

*The Human Rights Council,*

*Reaffirming* the purposes and principles of the Charter of the United Nations,

*Reaffirming also* the Universal Declaration of Human Rights, and recalling relevant international human rights treaties, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights,

*Reaffirming further* that, consistent with the Universal Declaration of Human Rights, States Members of the United Nations have pledged to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms for all without distinction such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

*Recalling* Human Rights Council resolutions 12/16 of 2 October 2009 and 16/4 of 24 March 2011, on freedom of opinion and expression, 15/21 of 30 September 2010 and 21/16 of 27 September 2012, on the rights to freedom of peaceful assembly and of association, 19/35 of 23 March 2012, on the promotion and protection of human rights in the context of peaceful protests, and 21/12 of 27 September 2012, on the safety of journalists,

*Recalling also* the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,

*Recognizing that,* pursuant to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, the rights to freedom of peaceful assembly, of expression and of association are human rights guaranteed to all, while their exercise may be subject to certain

restrictions, in accordance with States’ obligations under applicable international human rights instruments,

*Recognizing also* that any such restrictions must be based in law, in accordance with States’ obligations under applicable international human rights instruments, and subject to a competent, independent, impartial and prompt administrative or judicial review,

*Acknowledging* that peaceful protests can occur in all societies, including protests that are spontaneous, simultaneous, unauthorized or restricted,

*Acknowledging also* that participation in peaceful protests can be an important form of exercising the rights to freedom of peaceful assembly, and of association, freedom of expression and of participation in the conduct of public affairs,

*Acknowledging further* that peaceful protests can contribute to the full enjoyment of civil, political, economic, social and cultural rights,

*Reaffirming* that everyone has the right to life, liberty and security of person,

*Reaffirming also* that participation in public and peaceful protests should be entirely voluntary and uncoerced,

*Stressing* therefore that everyone must be able to express their grievances or aspirations in a peaceful manner, including through public protests without fear of reprisals or of being intimidated, harassed, injured, sexually assaulted, beaten, arbitrarily arrested and detained, tortured, killed or subjected to enforced disappearance,

*Deeply concerned* about acts that can amount to extrajudicial, summary or arbitrary executions committed against persons exercising their rights to freedom of peaceful assembly, of expression and of association in all regions of the world,

*Expressing its concern* at the number of attacks targeting journalists in the context of peaceful protests,

*Stressing* that peaceful protests should not be viewed as a threat, and therefore encouraging all States to engage in an open, inclusive and meaningful dialogue when dealing with peaceful protests and their causes,

*Recognizing* that national human rights institutions and representatives of civil society, including non-governmental organizations, can play a useful role in facilitating continued dialogue between individuals taking part in peaceful protests and the relevant authorities,

*Stressing* the need to ensure full accountability for human rights violations or abuses in the context of peaceful protests,

*Recalling* the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, as adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

1. *Takes note with appreciation* of the thematic report of the United Nations High Commissioner for Human Rights on effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests,<sup>1</sup> submitted in accordance with Human Rights Council resolution 19/35;

2. *Recalls* that States have the responsibility, including in the context of peaceful protests, to promote and protect human rights and to prevent human rights violations, in particular extrajudicial, summary or arbitrary executions, arbitrary arrest and detention, enforced disappearances, and torture and other cruel, inhuman or degrading treatment or punishment, and calls upon States to avoid the abuse of criminal and civil proceedings or threats of such acts at all times;

3. *Calls upon* States to promote a safe and enabling environment for individuals and groups to exercise their rights to freedom of peaceful assembly, of expression and of association, including by ensuring that their domestic legislation and procedures relating to the rights to freedom of peaceful assembly, of expression and of association are in conformity with their international human rights obligations and commitments;

4. *Urges* States to facilitate peaceful protests by providing protestors with access to public space and protecting them, where necessary, against any forms of threats, and underlines the role of local authorities in this regard;

5. *Underlines* the role that communication between protestors, local authorities and police can play in the proper management of assemblies, such as peaceful protests;

6. *Urges* States to pay particular attention to the safety and protection of women and women human rights defenders from gender-based violence, including sexual assault in the context of peaceful protests;

7. *Calls upon* all States to avoid using force during peaceful protests, and to ensure that, where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force;

8. *Calls upon* States, as a matter of priority, to ensure that their domestic legislation and procedures are consistent with their international obligations and commitments in relation to the use of force by law enforcement officials, in particular applicable principles of law enforcement, such as the principles of necessity and proportionality, bearing in mind that lethal force may only be used to protect against an imminent threat to life and that it may not be used merely to disperse a gathering;

9. *Also calls upon* States to investigate any death or injury committed during protests, including those resulting from the discharge of firearms or the use of non-lethal weapons by law enforcement officials;

10. *Further calls upon* States and, where applicable, the relevant governmental authorities to ensure adequate training of law enforcement officials and military personnel and to promote adequate training for private personnel acting on behalf of a State, including in international human rights law and, where appropriate, international humanitarian law;

11. *Encourages* States to make protective equipment and non-lethal weapons available to their law enforcement officials and to refrain from using lethal force during peaceful protests, while pursuing efforts to regulate and establish protocols for the use of non-lethal weapons;

12. *Underlines* the necessity to address the management of assemblies, such as peaceful protests, so as to contribute to their peaceful conduct, and to prevent loss of life of, and injuries to, protestors, bystanders, those monitoring such protests, and law enforcement officials, as well as any human rights violations or abuses;

13. *Recognizes* the important role played by national human rights institutions, civil society, including non-governmental organizations, journalists and other media workers, Internet users and human rights defenders, and other relevant stakeholders, in documenting human rights violations or abuses committed in the context of peaceful protests;

14. *Urges* States to ensure that national mechanisms, based on law in conformity with their international human rights obligations and commitments, can ensure accountability for human rights violations and abuses, including in the context of peaceful protests;

15. *Also urges* States to ensure that victims of human rights violations and abuses have, through existing national mechanisms, access to a remedy and that they obtain redress, including in the context of peaceful protests;

16. *Stresses* the importance of international cooperation in support of national efforts for the promotion and protection of human rights and fundamental freedoms in the context of peaceful protests, in order to raise the capacities of law enforcement agencies to deal with such protests in a manner that conforms with their international human rights obligations and commitments;

17. *Requests* the Office of the High Commissioner:

(a) To organize, before the twenty-fifth session of the Human Rights Council, from within existing resources, a seminar on effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, with the participation of States, relevant Council special procedures, members of the treaty bodies and other stakeholders, including academic experts and civil society representatives, with the aim of building upon the above-mentioned report of the High Commissioner and other related work of the Council;

(b) To prepare a report on the deliberations held during the seminar and to submit it to the Human Rights Council at its twenty-fifth session;

18. *Decides* to continue its consideration of this topic at its twenty-fifth session under agenda item 3.

*48th meeting  
21 March 2013*

[Adopted without a vote.]

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ISBN 978-2-9700866-3-5

