



THE RIGHT TO PEACEFUL ASSEMBLY

SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE
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AMNESTY
INTERNATIONAL



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1. INTRODUCTION

Amnesty International welcomes the opportunity to provide the following preliminary observations on the right of peaceful assembly, following the Human Rights Committee's (the Committee) invitation to provide written information for the half day of general discussion on 20th March 2019 on the preparation of General Comment No. 37 on Article 21 (Right to Freedom of Peaceful Assembly) of the International Covenant on Civil and Political Rights (hereafter: the Covenant). Amnesty International would like to encourage the Committee to allow for further consultations on the future Draft General Comment.

The organization would like to express at the outset its strong support for this initiative. The draft General Comment provides a key opportunity for the Committee to clarify important principles underlying the right of peaceful assembly so as to help to ensure better implementation of this right.

Rather than commenting on every question posed in the issues for consideration posed by the Rapporteur the present submission aims to inform the general discussion by commenting on elements of interpretation on some of the key aspects of Article 21 of the Covenant, as well as providing Amnesty International's main observations and recommendations. Furthermore, the structure of this submission should not be seen as implying an order of prioritisation of the issues commented on. In addition to the Committee's practice, which forms the primary source of interpretation of Article 21 of the Covenant, this document also draws on pertinent international and regional standards, rulings, decisions and observations, as well as in decisions of domestic courts and academic commentary, with a view to providing supplemental authority for the Committee's consideration. The issues we have chosen to focus on are those which we have seen take prominence in our global work defending human rights.

2. GENERAL OBSERVATIONS

2.1 IMPORTANCE OF THE RIGHT OF PEACEFUL ASSEMBLY

The ability to assemble has been historically of fundamental importance not only as a means of political expression but also for the safeguarding of other human rights. Peaceful protests are a fundamental aspect of a vibrant society, and as recognized by the UN High Commissioner for Human Rights, states should recognize the positive role of peaceful protests as a means to strengthen human rights.¹ Amnesty International wishes to state at the outset the importance we have seen attached to Article 21 through our work on the ground be it through indigenous rights protests in Malaysia or protests for the realisation of Economic, Social, and Cultural Rights in Chad our body of work demonstrates the particular meaningful importance of this right.

Indeed, the right to freedom of peaceful assembly constitutes a means of political engagement across societal demographics and has long been recognised as means for engagement by minority groups,² as well as providing an important means for the airing of political grievances,³ and of engagement and expression beyond the ballot box.⁴

The European Court of Human Rights has held the right of peaceful assembly to be “a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society”.⁵ The Inter-American Court of Human Rights has similarly determined that “the right of assembly is a basic right in a democratic society and should not be interpreted restrictively.” Commenting on the ability to protest, one of the many forms of assembly protected, the Inter-American Court of Human Rights has stated that “the ability to protest publicly and peacefully is one of the most accessible ways to exercise the right to freedom of expression, and can contribute to the protection of other rights”.⁶ As summarised by the then Special

¹ UN High Commissioner for Human Rights, Report on Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, A/HRC/22/28, 21 January 2013, para. 77.

² L. Richardson, ‘*The Rights of Assembly*’, New Zealand Law Journal, (1956) p. 265:

“There are several aspects of the right of assembly but it seems that the two most important practical applications relate to meetings held in public places and processions. This is so not only because minority groups, owing to local prejudice or lack of finance, sometimes have difficulty in hiring halls for their meetings, but also because they have to recruit their audiences from the passers-by. Thus minorities must rely on the streets and parks of their cities in order to disseminate their views effectively.”

³ Abraham Lincoln once called “the right of peaceable assembly” part of “the Constitutional substitute for revolution.” (Letter from Abraham Lincoln to Alexander H. Stephens (Jan. 19, 1860), in UNCOLLECTED LETTERS OF ABRAHAM LINCOLN (Gilbert A. Tracy ed., 1917))

⁴ T. Abu El-Haj, ‘Defining Peaceably: Policing the Line Between Constitutionally Protected Protest and Unlawful Assembly,’ *Missouri Law Review*, (vol. 80, 2015) p. 981:

“Outdoor assembly has unique attributes as a form of political participation, even in the twenty-first century. Elections are limited both as civic experiences and as vehicles for political change. Outdoor assemblies can compensate for the limits of electoral politics.

Congregating outdoors for political ends also provides a uniquely face-to-face experience of citizenship. Walking and talking with others similarly affected enables one to process difficult events in ways that many other forms of political action do not. Organizing and participating in protests and demonstrations tends to create and strengthen exactly the sort of social ties that encourage additional civic and political engagement. Ideas and political commitment alone turn out to be poor motivators of political engagement. Political participation is driven by relationships, especially those formed in civic experience and groups.”

⁵ *Kudrevičius and Others v. Lithuania* (37553/05), European Court Grand Chamber (2015) para. 91. See also *Navalnyy v. Russia* (29580/12), European Court Grand Chamber (2018) para. 93.

⁶ *Lopez Lone and others vs. Honduras*, Inter-American Court of Human Rights, (2015), para. 167; *Women Victims of Sexual Torture in Atenco vs. Mexico*, Inter-American Court of Human Rights, (2018), para. 171.

Neither the African Court on Human and Peoples’ Rights nor the African Commission on Human and Peoples’ Rights has elucidated on the importance of the right, however they have made important findings demonstrating the importance of which they hold it. See, for example: *Kevin Mgwanga Gunme et al v Cameroon* (266/03), African Commission on Human and Peoples’ Rights (2007) and

Rapporteur on the rights to freedom of peaceful assembly and of association and the then Special Rapporteur on extrajudicial, summary or arbitrary executions:

"The ability to assemble and act collectively is vital to democratic, economic, social and personal development, to the expression of ideas and to fostering engaged citizenry."⁷

The Committee has recognised this to be the case, routinely stressing "that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right that is essential for the public expression of an individual's views and opinions and indispensable in a democratic society".⁸ The right to freedom of peaceful assembly is important not only as a means for the expression of views, but also as a means for people to come together and secure a forum for public debate.⁹ It should be noted that the audience of an assembly may be more than policy makers, but rather could include interest groups, businesses, and the public at large.

In this sense, the Committee has stressed the integral relationship between the right to freedom of peaceful assembly and the right to freedom of expression.¹⁰ In particular, the Human Rights Committee has analysed the strong correlation between the rights to freedom of expression and of peaceful assembly, and has recognized that it is sometimes difficult to separate them.¹¹ The Inter-American Commission of Human Rights has stated that demonstrations are "a form of expression involving the exercise of related rights such as the right of citizens to assemble and demonstrate and the right to the free flow of opinions and information".¹² Similarly, the European Court has also acknowledged that there is no clear line dividing the two rights and has analysed certain forms of protest as an exercise of the right to freedom of expression.¹³

As described by the UN Special Rapporteur on the right to freedom of opinion and expression, the right to freedom of expression is also a collective right that "endows social groups with the ability to seek and receive different types of information from a variety of sources and to voice their collective views. This freedom extends to mass demonstrations of various kinds. It is also a right of different peoples, who, by virtue of the effective exercise of this right, may develop, raise awareness of, and propagate their culture, language, traditions and values".¹⁴

2.2 IMPORTANCE TO HUMAN RIGHTS DEFENDERS

The right to freedom of peaceful assembly has a particular relevance to the right to defend human rights.¹⁵ Public assembly has long been a tool used by human rights defenders to influence social change and, despite increasing activism online, peaceful protests in person are not on the decline as a method of communicating unrest or dissatisfaction with the authorities.

Article 5 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote, and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders) particularly affirms the right of everyone to meet or assemble peacefully.¹⁶ Furthermore, the Declaration stresses the importance of the right to know, seek, obtain, receive and hold

International PEN, Constitutional Rights Project, Civil Liberties Organisation and Interights (on behalf of Ken Saro-Wiwa Jnr.) v Nigeria (137/94-139/94-154/96-161/97).

⁷ Joint report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on Extra Judicial, Summary or Arbitrary Executions on the Proper Management of Assemblies, UN Doc. A/HRC/31/66, para. 5.

⁸ *Marina Statkevich and Oleg Matskevich v Belarus*, UN Human Rights Committee, UN Doc. CCPR/C/115/D/2133/2012 (2015) para. 9-4. See also for identical or similar wording: *Zinaida Shumilina et al v Belarus*, UN Human Rights Committee, UN Doc.

CCPR/C/120/D/2142/2012 (2017); *Yan Melnikov v Belarus*, UN Human Rights Committee, UN Doc. CCPR/C/120/D/2147/2012 (2017); *Anatoly Poptavny and Leonid Sudalenko v Belarus*, UN Human Rights Committee, UN Doc. CPR/C/118/D/2139/2012 (2016).

⁹ *Eva Molnár v Hungary* (10346/05), European Court of Human Rights, (2008), para. 42: "The Court also emphasises that one of the aims of freedom of assembly is to secure a forum for public debate and the open expression of protest."

¹⁰ Human Rights Committee, *General Comment 34, Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/GC/34, para. 4.

¹¹ *Galina Youbko v. Belarus*, Human Rights Committee, UN Doc. CCPR/C/110/D/1903/2009 (2014)

¹² Inter-American Commission of Human Rights, *Report on the criminalization of human rights defenders*, (2015), para 119.

¹³ *Women on Waves and Others v. Portugal*, European Court of Human Rights (31276/05), (2009), para. 28.

¹⁴ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/HRC/14/23, (2010), para. 29.

¹⁵ UN General Assembly Resolution 72/247, adopted on 24 December 2017, UN Doc. A/RES/72/247, op. 2; Report of the Special Rapporteur on the situation of human rights defenders, UN Doc. A/HRC/25/55, para. 66.

¹⁶ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Adopted by General Assembly Resolution A/RES/53/144, Art. 5.

information for the defence of human rights and recognizes the right of everyone to, individually and in association with others, participate in peaceful activities against violations of human rights.¹⁷

The UN Special Rapporteur on the Situation of Human Rights Defenders has underlined the importance of human rights defenders to be able to exercise their rights to freedom of expression, association and peaceful assembly without undue restrictions when it comes to claiming and defending rights.¹⁸ Similarly, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association has stated that “the free exercise of the rights to freedom of peaceful assembly and of association, among other rights, underpins a vibrant and dynamic civil society”.¹⁹

The Inter-American Commission on Human Rights has similarly emphasised the significance of the right to peaceful assembly for the defence of human rights, through which individuals can share opinions, express their positions on human rights, coordinate action plans or criticise the activities of the authorities.²⁰ Accordingly, in the words of the Commission, restrictions on the exercise of this right “are serious obstacles to the people’s ability to vindicate their rights, make known their petitions, and foster the search for changes or solutions to the problems that affect them”.²¹

Amnesty recommends that the draft general comment reflects the importance of article 21 of the Covenant to the protection of human rights more generally, and to the specific role of human rights defenders.

2.3 ECONOMIC, CULTURAL AND SOCIAL RIGHTS

In addition to exploring the relationship between article 21 and other provisions of the Covenant, we would wish to draw to the Committee’s attention the crucial interlinkage and interdependence between article 21 and economic, social and cultural rights.²² This relationship encompasses two aspects.

Firstly, the exercise of their right to freedom of peaceful assembly is a key way by which people across the world advocate and mobilize against violations of, and for the realization of, their economic, social and cultural rights (ESCR). Consequently, when governments violate the right to freedom of peaceful assembly, they also impact the ability of individuals to advocate for their economic, social and cultural rights and to participate in how these rights are protected, monitored and implemented. In recent years, Amnesty International has documented several examples of the right to freedom of peaceful assembly being violated in the context of protests about violations of economic, social and cultural rights.²³ For example, in 2018, an Amnesty International report described how the Chadian authorities had undermined the right to freedom of peaceful assembly by denying authorizations for peaceful protests, arbitrarily arresting and detaining people who were seeking to exercise their rights to freedom of expression and peaceful assembly, and restricting access to social media. This was in response to dozens of protests concerning the implementation of severe austerity measures in response to an economic crisis, with devastating impacts on the rights to health and education.²⁴ Similarly, in 2014, an Amnesty International report noted how the Spanish authorities’ response to protests - including

¹⁷ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Adopted by General Assembly Resolution A/RES/53/144, Articles 6 and 12.

¹⁸ Report of the Special Rapporteur on the Situation of Human Rights Defenders, UN Doc. A/HRC/25/55, para. 66

¹⁹ Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, UN Doc. A/HRC/35/28, (2017), para. 9.

²⁰ Report on the situation of Human Rights Defenders in the Americas, Inter-American Commission on Human Rights, OEA/Ser.L/V/II.124, 7 March 2006, para. 52.

²¹ Report on the situation of human rights defenders in the Americas, Inter-American Commission on Human Rights, OEA/Ser.L/V/II.124, 7 March 2006, para. 51.

²² Aspects of the right to freedom of peaceful assembly are also reflected in Article 8 of the International Covenant on Economic, Social and Cultural Rights.

²³ Additional examples include: Tunisia: Security forces must respect the rights of protesters amid planned acceleration of anti-austerity rallies, available at <https://www.amnesty.org/en/latest/news/2018/01/tunisia-security-forces-must-respect-the-rights-of-protesters-amid-planned-acceleration-of-anti-austerity-rallies/>; Sudan: Stop Abuse of Peaceful Demonstrators, available at: <https://www.amnesty.org/download/Documents/AFR5478102018ENGLISH.PDF>; Greece: Tear gas fired as Greek police clash with Athens protesters, available at: <https://www.amnesty.org/en/latest/news/2011/06/tear-gas-fired-greek-police-clash-athens-protesters/>.

²⁴ Amnesty International, Chad: Strangled Budgets, Silenced Dissent: The Human Cost of Austerity Measures in Chad, 16 July 2018, Index number: AFR 20/8203/2018.

concerning austerity measures with serious consequences for a range of economic, social and cultural rights²⁵ - was inconsistent with the rights to freedom of peaceful assembly and association and freedom of expression.²⁶

Secondly, making explicit the linkages between the freedom of assembly and ESCR can also enhance protection to those who are advocating for those rights whilst expanding the scope of how the right to freedom of peaceful assembly is viewed and defined. For example, right to housing advocates who occupy empty buildings as a form of protest to highlight the failure of governments to provide adequate and affordable housing are entitled to have their right to freedom of peaceful assembly protected.²⁷ This protection would be particularly relevant where the state has not ratified the International Covenant on Economic, Social and Cultural Rights and therefore other legal provisions need to be drawn on to effectively protect economic, social and cultural rights, such as the right to adequate housing including the prohibition on forced evictions.

Amnesty recommends that the draft general comment reflects the importance of article 21 of the Covenant to the protection of economic, social and cultural rights.

2.4 CHILDREN

Further to Article 21 of the Covenant, the Convention on the Rights of the Child (CRC) establishes the right to freedom of peaceful assembly for children on an equal basis with adults,²⁸ and children of all groups must enjoy the right without discrimination.²⁹ Children are capable of forming and expressing views on matters that affect them in accordance with their evolving capacities.³⁰ Meanwhile, the need to prioritise consideration of children's best interests and to ensure their protection from all forms of violence means that there are special considerations when it comes to children's enjoyment of the right to freedom of peaceful assembly.³¹ The realization of children's rights to freedom of peaceful assembly therefore necessitates a recognition of both children's capacities and vulnerabilities, such that states must facilitate their right and implement special measures to protect them.

Children can face various constraints to their enjoyment of the right to freedom of peaceful assembly, such as parental consent, school regulations and restrictive legislation. States must remove legislative obstacles to children's enjoyment of the right, such as laws setting a lower age for organising or participating in peaceful assemblies,³² those requiring parental consent to join associations,³³ and those which allow the police to remove children who assemble peacefully in groups.³⁴

Pursuant to the specific obligations states have under the CRC, states must ensure that children are protected from harm in the context of peaceful assemblies. The Committee on the Rights of the Child has expressed concern over situations in which children have been forced to participate in political activities, including demonstrations, or government controlled initiatives.³⁵

Children can also face higher risks of physical harm than adults participating in an assembly, particularly if it becomes violent or because of repressive policing. The Committee on the Rights on the Child has identified several instances of concern when children have participated in demonstrations, such as abusive use of detention measures,³⁶ torture or other ill-treatment,³⁷ and brutal repression of peaceful protest, even resulting

²⁵ See for example Amnesty International, *Wrong Prescription: The Impact of Austerity Measures on the Right to Health in Spain*, 24 April 2018, Index number: EUR 41/8136/2018.

²⁶ Amnesty International, *Spain - The right to protest under threat*, 24 April 2014, Index number: EUR 41/001/2014.

²⁷ The most recent of such actions have been in August – September 2018 by Take Back City, a coalition of housing groups in Dublin whose stated aim is to highlight the housing crisis in the city by occupying buildings that have been lying empty. In relation to the removal of the protestors, Amnesty International Ireland called for an investigation into reports of excessive use of force and the use of private security. See <https://www.amnesty.ie/amnesty-calls-for-investigation-into-reports-of-excessive-force-in-policing-eviction-of-protesters-in-dublin/>

²⁸ Article 15 of the UN Convention on the Rights of the Child.

²⁹ Concluding Observations of the UN Committee on the Rights of the Child, UN Doc. CRC/C/KEN/CO/3-5 (2016) para 27-28.

³⁰ Article 12 of the UN Convention on the Rights of the Child.

³¹ Articles 3 and 19 of the UN Convention on the Rights of the Child.

³² Report to Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/26/29, para 24; Concluding observations of the UN Committee on the Rights of the Child, UN Doc. CRC/C/FRA/CO/5 (2016) para 34-35.

³³ Concluding Observations of the UN Committee on the Rights of the Child, UN Doc. CRC/C/15/Add.231 (2004) para 29-30.

³⁴ Concluding Observations of the UN Committee on the Rights of the Child, UN Doc. CRC/C/AUS/CO/4 (2012) para 39-40.

³⁵ Concluding Observations of the UN Committee on the Rights of the Child, UN Doc. CRC/C/ZWE/CO/2 (2016) para 38-39; Concluding Observations of the UN Committee on the Rights of the Child, UN Doc. CRC/C/ETH/CO/4-5 (2015) para 39-40.

³⁶ Concluding Observations of the UN Committee on the Rights of the Child, UN Doc. CRC/C/CHL/CO/4-5 (2015) para 36.

³⁷ Concluding Observations of the UN Committee on the Rights of the Child, UN Doc. CRC/C/CHN/CO/3-4 (2013) para 43.

in deaths.³⁸ States must ensure that children can enjoy the right to freedom of peaceful assembly without undue interference³⁹ or risk of harm.

States should implement law enforcement training and protocols that are compliant with human rights standards, in particular the CRC⁴⁰ – including advance planning for the presence of children at assemblies and training on how to deal with children engaged in protest or other assemblies, both protecting persons at risk and limiting the use of force against them.⁴¹ Incidents of police violence or other abusive conduct towards children must be effectively investigated, with perpetrators prosecuted and victims provided with access to a remedy.⁴²

3. THE SCOPE OF THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY

3.1 THE MEANING OF ASSEMBLY

The right to freedom of peaceful assembly protects any intentional and temporary presence of individuals in a private or public space for a specific purpose.⁴³ Such assemblies include but are not limited to political demonstrations, strike actions, sit-ins, rallies, street closures, pot-banging sessions, vigils, cultural or religious celebrations, both static and moving assemblies, as well as those that take place on publicly or privately-owned premises or in enclosed structures.

Regional human rights courts have constantly reiterated the relevance of the right to freedom of peaceful assembly and their jurisprudence is clear on the need not to interpret assembly restrictively.⁴⁴

3.2 THE MEANING OF PEACEFUL

Under international human rights law and standards, the right to assembly need to be exercised in a peaceful manner.⁴⁵ The authorities must always apply a presumption that an assembly will be, or is, peaceful unless there is compelling evidence of a clear and demonstrable intent to use, or an actual and generalised use of, violence or advocacy of hatred constituting incitement to violence, hostility or discrimination, on the part of

³⁸ Concluding Observations of the UN Committee on the Rights of the Child, UN Doc. CRC/C/ETH/CO/4-5 (2015) para 39.

³⁹ Concluding Observations of the UN Committee on the Rights of the Child, UN Doc. CRC/C/ETH/CO/4-5 (2015) para 40.

⁴⁰ Concluding Observations of the UN Committee on the Rights of the Child, UN Doc. CRC/C/CHL/CO/4-5 (2015) para 37.

⁴¹ UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, UN Doc. A/C.3/69/L.5 (2014).

⁴² Concluding Observations of the UN Committee on the Rights of the Child, UN Doc. CRC/C/CHN/CO/3-4 (2013) para 44; Concluding Observations of the UN Committee on the Rights of the Child, UN Doc. CRC/C/ETH/CO/4-5 (2015) para 40.

⁴³ Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, UN Doc. A/HRC/20/27, (2012), para. 24; *Women Victims of Sexual Torture in Atenco vs. Mexico*, Inter-American Court of Human Rights, (2018), para. 171.

⁴⁴ *Taranenko v. Russia*, (19554/05), European Court First Section (2014), para. 65; *Women Victims of Sexual Torture in Atenco vs. Mexico*, Inter-American Court of Human Rights, (2018), para. 171.

⁴⁵ Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, UN Doc. A/HRC/20/27, (2012), para. 25.

participants.⁴⁶ It must be stressed that the fact that an assembly is unlawful under domestic law does not mean that it is not peaceful, and tolerance must be accorded to conduct that temporarily hinders, impedes or obstructs the activities of third parties, for example by temporarily blocking traffic.⁴⁷

Accordingly, an assembly can only be considered outside of the protection of the right to freedom of peaceful assembly where there is compelling and demonstrable evidence of resort to violence, or to advocacy of hatred constituting incitement to violence, hostility or discrimination on the part of a majority of the participants. Where a minority tries to turn a peaceful assembly into a violent one, the authorities should ensure that those who are protesting peacefully are able to continue to do so, and not use the violent acts of a few as a pretext to restrict or impede the exercise of rights of the others.⁴⁸

As stressed by the European Court of Human Rights, an individual does not cease to enjoy the right to freedom of peaceful assembly as a result of sporadic violent acts committed by others in the course of an assembly if the individual in question remains peaceful in his or her own intentions or behaviour.⁴⁹ According to the Inter-American Court of Human Rights, sporadic acts of violence or crimes committed by some individuals must not be attributed to others whose intentions and behaviour are peaceful.⁵⁰

Further, no assembly should be considered 'unprotected' as even where the right of peaceful assembly is no longer engaged other fundamental rights are.⁵¹

The Draft General Comment should reflect the need for the definition of an assembly to be interpreted broadly. It is also important to note that sporadic acts of violence do not render an assembly outside of the protection of the right to freedom of peaceful assembly.

3.3 THE INTERNET AND ASSEMBLY

The right to freedom of peaceful assembly must be protected both in the online and offline spheres.⁵² Importantly, the UN Human Rights Council has noted that, although an assembly has generally been

⁴⁶ Joint report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 18.

⁴⁷ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/20/27 (2012) para. 41.

⁴⁸ *Gsell v. Switzerland* (12675/05), European Court of Human Rights (2009), para. 60; *Women Victims of Sexual Torture in Atenco v. Mexico*, Inter-American Court of Human Rights, (2018), para. 175.

⁴⁹ *Kudrevičius and Others v. Lithuania* (37553/05), European Court Grand Chamber (2015) para. 94 citing *Ziliberberg v. Moldova* (61821/00), European Court of Human Rights Fourth Section (Admissibility Decision) (2004) p.10. See also *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, UN Doc. A/HRC/31/66, para. 5.

⁵⁰ *Women Victims of Sexual Torture in Atenco vs. Mexico*, Inter-American Court of Human Rights, (2018), para. 175.

⁵¹ *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, UN Doc. A/HRC/31/66, para. 9; *Women Victims of Sexual Torture in Atenco vs. Mexico*, Inter-American Court of Human Rights, (2018), para. 175.

⁵² The Committee of Ministers of the Council of Europe have adopted a declaration supporting this assessment (Committee of Ministers, Declaration on the protection of freedom of expression and freedom of assembly and association with regard to privately operated Internet platforms and online service providers, (2013)):

1. Freedom of expression and the right to receive and impart information and its corollary, freedom of the media, are indispensable for genuine democracy and democratic processes. ... The right to freedom of assembly and association is equally essential for people's participation in the public debate and their exercise of democratic citizenship, and it must be guaranteed in full respect of Article 11 of the Convention. All Council of Europe member States have undertaken, in Article 1 of the Convention, to "secure to everyone within their jurisdiction the rights and freedoms" protected by the Convention (without any online/offline distinction).

...

5. These developments illustrate that free speech online is challenged in new ways and may fall victim to action taken by privately owned Internet platforms and online service providers. It is therefore necessary to affirm the role of these actors as facilitators of the exercise of the right to freedom of expression and the right to freedom of assembly and association.

6. Interference with content that is released into the public domain through these means or attempts to make entire websites inaccessible should be judged against international standards designed to secure the protection of freedom of expression and the right to impart and receive information, in particular the provisions of Article 10 of the Convention and the related case law of the European Court of Human Rights. Furthermore, impediments to interactions of specific interest communities should be measured against international standards on the right to freedom of assembly and association, in particular the provisions of Article 11 of the Convention and the related case law of the European Court of Human Rights.

understood as a physical gathering of people, human rights protections for the right to freedom of peaceful assembly must be applied equally to analogous interactions taking place online.⁵³

We are mindful of the extent to which modern association and expression are facilitated by the internet, and the potential importance of the internet both as a facilitator of physical assembly, and as a venue for assembly within its own right.

"Online groups simplify logistics, eliminate the need for bodily presence, and remove the burdens long associated with physical distance and national borders. Instead of being physically present to participate in a protest, one can send an avatar to a virtual site to join a virtual protest. This means of participation removes the risk of bodily harm or arrest and eliminates overhead for transportation, food, water, or shelter."⁵⁴

The ability of people to access communication technologies in a secure and private manner has become vital for the organization and conduct of peaceful assemblies and is an essential tool for effective human rights work.⁵⁵ Different international human rights mechanisms have highlighted the growing importance that the Internet plays in the exercise of human rights, including the right to peaceful assembly. The UN Human Rights Council adopted in 2013 a resolution stressing states' "obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline".⁵⁶ The UN Special Rapporteur on Freedom of Opinion and Expression, the African Commission Special Rapporteur on Freedom of Expression and Access to Information, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, and the Organization of American States (OAS) Special Rapporteur on Freedom of Expression jointly declared that access to the Internet is necessary to promote respect for, among others, the right to assembly.⁵⁷ Similarly, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association emphasised the relevance of the Internet to the exercise of the right to peaceful assembly and has warned against regulations and practices that seek to curb the enjoyment of this right online, including the imposition of undue restrictions to the right to freedom of expression and opinion on the Internet.⁵⁸ Restrictions on access to the internet have a widespread impact, however it should be noted that this impact can be particularly poignantly felt by younger generations, who are especially reliant on the internet for mobilising and communicating their common interests.⁵⁹

Internet shutdowns can have a notable chilling effect on the right to peaceful assembly, as they particularly undermine the ability of organizers to communicate and publicise the event, and to mobilize a large group of people in a prompt and effective manner.⁶⁰ In a joint report to the Human Rights Council, the UN Special Rapporteur on the rights to freedom of peaceful assembly and association and the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, stressed that the practice of blocking communications can have the effect of impeding the organization or publicizing of an assembly online.⁶¹ They stressed that internet shutdowns rarely satisfy the requirements of necessity and proportionality, rendering them unlawful restrictions of the right to freedom of peaceful assembly.⁶² In this regard, the UN Special Rapporteur on

⁵³ The promotion and protection of human rights in the context of peaceful protests, Resolution adopted by the Human Rights Council on 6 July 2018 (UN Doc. A/HRC/RES/38/11) p.2.

⁵⁴ J. Inazu, 'Virtual Assembly,' *Cornell Law Review*, (2012) p.1108.

⁵⁵ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/38/34 (2018), para. 82.

⁵⁶ UN Human Rights Council, *Resolution on the rights to freedom of peaceful assembly and of association*, A/HRC/RES/24/5 (2013), para. 2.

⁵⁷ UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and African Commission Special Rapporteur on Freedom of Expression and Access to Information, Joint declaration on freedom of expression and the Internet, 1 June 2011, para. 6(b).

⁵⁸ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/38/34 (2018), para. 81, 84.

⁵⁹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/38/34 (2018), para. 83 "A report issued under the mandate in 2014 indicated that, with youth being the most active social media users overall, restrictions placed on access to social media sites would disproportionately affect their ability to organize and mobilize for their common interests."

⁶⁰ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/38/34 (2018), para. 82.

For examples, see Amnesty's work in Gambia and Zimbabwe. *Dangerous to Dissent: Human Rights Under Threat in Gambia* (<https://www.amnesty.org/en/documents/afr27/4138/2016/en/>); *Zimbabwe: Security forces must be held accountable for the brutal assault on human rights* (<https://www.amnesty.org/en/latest/news/2019/01/zimbabwe-security-forces-must-be-held-accountable-for-the-brutal-assault-on-human-rights/>)

⁶¹ Joint report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on the proper management of assemblies, UN Doc. A/HRC/31/66 (2016), para. 75.

⁶² Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66 (2016), para. 75.

Freedom of Opinion and Expression has specifically called on states to ensure that Internet access is maintained at all times, including during times of political unrest.⁶³

The Draft General Comment needs to be drafted with the ever-evolving nature of online assembly in mind, and in such a way that will 'future-proof' its application. This is particularly important in light of the increasing tendency of governments to use internet shutdowns as a means of stifling the right to freedom of peaceful assembly.

3.4 CIVIL DISOBEDIENCE

Civil disobedience and non-violent direct action refer to a spectrum of activities such as rallies, demonstrations, media stunts, sit-ins and other similar tactics intended to bring about change using methods of disruption through direct and non-violent means, often including conscientious and deliberate violation of the domestic law.⁶⁴ Regardless of the infringement of a country's law, civil disobedience may also constitute a form of assembly, and when carried out in a non-violent manner, should be protected under the rights to freedom of expression and peaceful assembly.

Some acts of civil disobedience engage the premeditated violation of a law which unduly restricts expression of particular beliefs, prohibits the exercise of a human right or that is similarly in conflict with international human rights law and standards. In such cases, the authorities should not prosecute those involved in the protest and instead should repeal or substantially amend the laws that contravene international law and standards.

However, acts of civil disobedience might imply breaking an ordinary law by which an internationally recognizable offence is criminalized (such as trespass, defacing property or obstructing roads) which is not in conflict with international human rights law and standards, and where the person did so not because that was the only means available to the peaceful exercise of human rights but rather to deliberately break the law for reasons of conscience. All too often, when faced with civil disobedience, states have responded with charging those involved with vague and overly-broad crimes or serious criminal offences that are not justified by their actions such as, for example, terrorism, treason or rebellion.⁶⁵

Bringing overly harsh charges which are not commensurate with the recognizable criminal offence committed during acts of civil disobedience has a chilling effect on the rights to freedom of expression and peaceful assembly. Law enforcement authorities and judges should be able to consider the different elements of the protest on a case-by-case basis, including its intent (for example, to protest or express political or social dissent, to get the attention of the general public and contribute to the political debate) and its overall impact (causing of temporary harm as opposed to permanent negative consequences for the general public).⁶⁶ Under no circumstances should a protestor engaged in civil disobedience be punished more severely than a person who committed the identical offense without expressive intent.

Amnesty International calls on the Human Rights Committee to recognize in the Draft General Comment that peaceful acts of civil disobedience or non-violent direct action are protected under the right to freedom of peaceful assembly. When facing cases of civil disobedience that conscientiously and deliberately infringe on an ordinary law by which an internationally recognizable offence is penalized, law enforcement and judicial authorities should be able to consider the particular elements of the protest to ensure no undue restriction on the right to peaceful assembly is imposed.

⁶³ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/HRC/17/27 (2011), para. 79.

⁶⁴ Article 19, Background on the "Right to Protest", 2015, p.7.
https://www.article19.org/data/files/medialibrary/38581/Right_to_protest_principles_final.pdf

⁶⁵ See, for example, the case of the 'Stanstead 15' in the UK (<https://www.amnesty.org/en/latest/news/2018/12/stansted-15- verdicts-show-uk-authorities-have-used-a-sledgehammer-to-crack-a-nut/>); and the case of the pro-democracy Umbrella Movement in Hong Kong (<https://www.amnesty.org/download/Documents/ASA1793792018ENGLISH.PDF>)

⁶⁶ Council of Europe MSI-INT, "Report on Freedom of Assembly and Association on the Internet", 10 December 2015, para. 60

3.5 STATE OBLIGATIONS TO FACILITATE PEACEFUL ASSEMBLY

Article 21 of the Covenant obliges states not merely to passively permit peaceful assembly but rather to actively facilitate it. This Committee has through its jurisprudence reiterated this point time and again.⁶⁷ Such has also been echoed by regional human rights mechanisms.⁶⁸ In order to meet their obligations to guarantee the right of peaceful assembly, states have an obligation to tolerate disruption, provide adequate services, and to communicate with those organising or participating in an assembly.

Inherent to the state's obligation to facilitate the right to freedom of peaceful assembly is the need to tolerate behaviour which, in another setting, might be deemed unacceptable to the state concerned. The European Court of Human Rights has clearly established that "where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance."⁶⁹

As shall be discussed further in subsequent sections tolerance must also be shown towards peaceful assemblies in situations where legal or administrative procedures and formalities have not been followed. As stated by the then Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association "Tolerance of others, pluralism and broadmindedness must be harnessed... it is not necessary to agree with what people do, but as long as it is done peacefully, and does not incite violence and hatred, it should be allowed."⁷⁰

It is for the state to provide services such as security, cleaning services and first aid. It is not the responsibility of assembly organisers to fund and commission such services. The Committee has found violations of the state's duties under Article 21 of the Covenant here the state has required organisers to pay for such costs.⁷¹ The provision of first aid wherever there is a risk that the authorities may use force is required of the state by the UN Basic Principles on the Use of Force and Firearms.⁷²

State authorities should seek to open a dialogue with assembly organisers so as to facilitate the enjoyment of their right of peaceful assembly.⁷³ The overall policing approach should be driven by communication, seeking to prevent conflicts from occurring through dialogue and mediation, as well as to de-escalate and peacefully settle any conflicts that may occur.⁷⁴

The state must take reasonable measures to guarantee the safety of those exercising their right to assemble peacefully. This includes measures to protect those whose views are unpopular to the extent to which their assembly faces a security risk from those with opposing views.⁷⁵ (The right of counter-protestors to be within sight and sound of their intended audience shall be discussed below).

Amnesty International urges that the Draft General comment requires states to facilitate peaceful assembly, explains the steps states must take in doing so, and stresses the need for tolerance.

⁶⁷ See for example: *Derzhavtsev v Belarus*; UN Human Rights Committee, UN Doc. CCPR/C/115/D/2076/2011 (2015) para. 8.6; *Pugach v Belarus*, UN Human Rights Committee, UN Doc. CCPR/C/114/D/1984/2010 (2015) para 7.7; and *Evrezov v Belarus*, UN Human Rights Committee, UN Doc. CCPR/C/114/D/1988/2010 (2015) para 7.4.

⁶⁸ See for example: *Djavit An v Turkey* (20652/92), European Court of Human Rights Third Section, (2003) para. 57; *Oya Ataman v Turkey*, European Court of Human Rights Second Section (2006) para 36; Second report on the situation of human rights defenders in the Americas, Inter-American Commission on Human Rights (2011), OEA/Ser.L/V/II.Doc. 66, para. 130

⁶⁹ *Kudrevičius and Others, v. Lithuania* (37553/05), European Court Grand Chamber (2015), para. 150.

⁷⁰ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (2014), UN Doc. A/HRC/26/29, para. 31.

⁷¹ See, for example: *Sekerko v Belarus*, UN Human Rights Committee, UN Doc. CCPR/C/109/D/1851/2003 (2013) para. 9.6; *Zalenskaya v Belarus*, UN Human Rights Committee, UN Doc. CCPR/C/101/D/1604/2007 (2011) paras 7.2 taken with 10.6

⁷² Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, General Provision 5(c).

⁷³ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, para. 38. See also *Frumkin v. Russia* (74568/12), European Court of Human Rights, (2016) para. 128.

⁷⁴ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para 38.

⁷⁵ *Ozgur Gundem v. Turkey* (23144/93), European Court of Human Rights (2000), paras. 42-43.

4. CHALLENGES TO THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY

4.1 UNDUE RESTRICTIONS AND A SHRINKING SPACE FOR CIVIL SOCIETY

4.1.1 LEGALITY, NECESSITY AND PROPORTIONALITY

While international human rights law permits the exercise of the right to freedom of peaceful assembly to be subject to certain restrictions, any such restrictions are only permissible if they are provided by law, for the purpose of protecting certain limited public interests, and are demonstrably necessary and proportionate to that purpose.⁷⁶ States have very narrow margins for justifying restrictions to this right, and therefore restrictions must be construed narrowly so that the rights are “practical and effective” not “theoretical or illusory”.⁷⁷ Any restrictions imposed which do not meet all elements of this “three-part test” constitute violations of the right.

This Committee has in the past provided guidance on the application of the permissible limitations on the exercise of the right to freedom of expression in Article 19(3) of the Covenant,⁷⁸ and has further clarified that these provisions also offer guidance with regard to elements of the right to freedom of peaceful assembly, given that the limitations contained in the Covenant in both articles 19 and 21 are almost identically formulated.⁷⁹

In this regard, the Committee has underlined that any restriction may be imposed only for the purposes permitted under international human rights law – that is, to ensure the protection of national security or public safety, public order, public health or morals, or the rights and freedoms of others, must conform to strict tests of necessity and proportionality for that particular purpose and that no lesser restriction will suffice, and must not put in jeopardy the right itself.⁸⁰ The Committee has further clarified that states must demonstrate in a “specific and individualised fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat”.⁸¹ In addition, the European Court of Human Rights has found that such assessment must be supported by evidence and should not be speculative.⁸²

Any limitation on the right to freedom of peaceful assembly must be provided by law, which, as established by this Committee, requires all limitations to be set out in a provision “formulated with sufficient precision to

⁷⁶ Article 21 of the ICCPR; Article 15 of the American Convention on Human Rights; Article 11(2) European Convention on Human Rights; Article 11 of the African Charter on Human and People’s Rights;

⁷⁷ Inter-American Commission, Report on the Situation of Human Rights Defenders in the Americas (2006), para. 60; *Djavit An vs Turkey*, European Court of Human Rights (20652/92) (2003), para. 56; Venice Commission Opinion on the Law Making Amendments and Addenda to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations in Armenia, (2005), para. 30.

⁷⁸ Human Rights Committee, General Comment 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, paras 21-36.

⁷⁹ *Govsha, Syritsa, and Mezyak v. Belarus*, Human Rights Committee (2012), UN Doc. CCPR/C/105/D/1790/2008, para. 9.4

⁸⁰ *Bakur v. Belarus*, Human Rights Committee (2015), UN Doc. CCPR/C/114/D/1902/2009, para. 7.8; *Pugach v. Belarus*, Human Rights Committee (2015), UN Doc. CCPR/C/114/D/1984/2010, para. 7.7; See also Human Rights Committee, General Comment 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, paras 21-22.

⁸¹ Human Rights Committee, General Comment 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, para. 35.

⁸² *Alekseyev v. Russia*, European Court of Human Rights (2010), para. 86.

enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public".⁸³ The European Court of Human Rights has similarly determined that the law should be accessible to the persons concerned and formulated with sufficient precision to enable them to foresee the consequences which a given action may entail.⁸⁴ States should pay particular attention to neutral laws that could have an impact on the exercise of the right to peaceful assembly, for example those barring obstruction of traffic or commerce, that may result in unlawful restrictions if applied without exception to peaceful assemblies such that the exercise of the right is treated as a criminal offence.

States must ensure that restrictions imposed on assemblies based on states obligations under Article 20(2) of the Covenant to prohibit by law "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence", do not unduly limit the right to freedom of peaceful assembly which must also comply with the three-part test outlined above.⁸⁵ As further explained by the Special Rapporteur on the rights to freedom of opinion and expression, hatred must amount to advocacy which constitutes incitement, rather than incitement alone, and such incitement must lead to one of the listed results, namely discrimination, hostility or violence.⁸⁶

Commonly, states have imposed restrictions on assemblies based on arguments for the protection of public order. However, as clarified in the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, "the expression 'public order (*ordre public*)' as used in the [Covenant] may be defined as the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded. Respect for human rights is part of public order (*ordre public*)".⁸⁷

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has similarly stressed that assemblies should be presumed lawful and not constituting a threat to public order.⁸⁸ The Inter-American Commission has emphasized that the right to freedom of assembly is not incompatible with public order, stating that "governments may not invoke one of the lawful restrictions of freedom of expression, such as the maintenance of 'public order,' as a means to deny a right guaranteed by the Convention or to impair it of its true content. If this occurs, the restriction, as applied, is not lawful".⁸⁹ Likewise, the European Court has determined that while states have an obligation to guarantee law and order, it is important for public authorities to show a degree of tolerance for the inevitable disruption that demonstrations entail.⁹⁰

The Draft General Comment should detail the requirements of legality, necessity and proportionality, elaborating on their meaning in practice.

4.1.2 RESTRICTIONS ON THE TIME, PLACE, CONTENT AND MANNER OF PROTESTS

The right to freedom of peaceful assembly requires that protestors are able to have a real opportunity to peacefully convey their message to the right people, group or organization. Therefore, as recommended by the Special Rapporteur on Freedom of Peaceful Assembly, assemblies should as a general rule be facilitated within the "sight and sound" of their target audience.⁹¹

⁸³ Human Rights Committee, General Comment 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, para. 25.

⁸⁴ *Mkrtchyan v. Armenia*, European Court of Human Rights, application no. 6562/03 (2007), para. 39.

⁸⁵ Human Rights Committee, General Comment 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, para. 50.

⁸⁶ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (2012), UN Doc. A/67/357, para. 43.

⁸⁷ UN Commission on Human Rights, The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 28 September 1984, para. 22, UN Doc. E/CN.4/1985/4.

⁸⁸ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (2013), UN Doc. A/HRC/23/39, para. 50.

⁸⁹ Inter-American Commission, Chapter V, Annual Report 1994, Report on the Compatibility of 'Desacato' Laws with the American Convention on Human Rights, OEA/Ser. L/V/II.88, Doc. 9 rev.

⁹⁰ *Bukta and Others v. Hungary* (4755/16), European Court of Human Rights (2007), para. 37; *Oya Ataman v. Turkey*, European Court of Human Rights (2007), paras 41-42.

⁹¹ Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, UN Doc. A/HRC/20/27, (2012), para 40; OSCE/ODIHR and the Venice Commission, Guidelines on Freedom of Peaceful Assembly (2010), 3.5 and para.45; Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, para 24.

Restrictions can be made to the “time, place and manner” of an assembly, but such restrictions must pass the test of necessity and proportionality as described above.⁹² In such cases, the authorities should always give preference to the least intrusive means. Even in cases where certain restrictions to the time, place or manner of an assembly are imposed, the authorities should try to facilitate such an assembly by offering reasonable alternatives.⁹³

Blanket bans on the permissible time or location of an assembly or a demonstration are impermissible restrictions because they necessarily prevent authorities from engaging in a case-by-case assessment of the restrictions by preventing authorities from evaluating specific circumstances and assessing proportionality. In this regard, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has concluded that blanket bans are “intrinsicly disproportionate and discriminatory measures as they impact on all citizens willing to exercise their right to freedom of peaceful assembly”.⁹⁴ The OSCE Guidelines had explained in this sense that “the principle of proportionality is a vehicle for conducting a balancing exercise. It does not directly balance the right against the reason for interfering with it. Instead, it balances the nature and extent of the interference against the reason for interfering. The extent of the interference should cover only the purpose that justifies it.”⁹⁵ The OSCE has therefore concluded that time or location-based bans tend to be “over-inclusive” and should be regarded as a prima facie violation of the right to freedom of peaceful assembly.⁹⁶

The right to hold assemblies and demonstrations on public roads has been upheld consistently by regional and international human rights bodies, which have established that urban space is not only an area for circulation but also a space for participation. The UN Special Rapporteur on Freedom of Peaceful Assembly and Association has stipulated that “the free flow of traffic should not automatically take precedence over freedom of peaceful assembly”.⁹⁷ Similarly, the Inter-American Commission has said that the urban space is not only an area for circulation, but also a space for participation.⁹⁸ Likewise, the IACHR Special Rapporteur for Freedom of Expression has endorsed the right to protest on roads, stating that “naturally, strikes, road blockages, the occupation of public space, and even the disturbances that might occur during social protests can cause annoyances or even harm that it is necessary to prevent and repair. Nevertheless, disproportionate restrictions to protest, in particular in cases of groups that have no other way to express themselves publicly, seriously jeopardize the right to freedom of expression”.⁹⁹

The IACHR Special Rapporteur has specifically rejected the “criminalization per se of demonstrations in public thoroughfares” when “carried out in exercise of the rights to freedom of expression and to freedom of assembly.”¹⁰⁰ The Special Rapporteur has stipulated that, in balancing for example the freedom of movement and the right to assembly, “it should be borne in mind that the right to freedom of expression is not just another right, but one of the primary and most important foundations of any democratic structure”.¹⁰¹ Accordingly, the Inter-American Commission has concluded that the state has a duty to design operating plans and procedures to facilitate the exercise of the right of assembly, including rerouting pedestrian and vehicular traffic in a certain area.¹⁰²

The case law of the European Court also supports the notion that the potential impedance of traffic is an insufficient ground for blanket limitations on the right to freedom of peaceful assembly, and has determined that there must be some tolerance for protests to permissibly disrupt traffic.¹⁰³ In this regard, the European Court held that “any demonstration in a public place may cause a certain level of disruption to ordinary life,

⁹² OSCE/ODIHR and the Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2010, para 99

⁹³ OSCE/ODIHR and the Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2010, para 45; Second report on the situation of human rights defenders in the Americas (2012). Inter-American Commission on Human Rights, OEA/Ser.L/V/II.Doc.66 para. 139.

⁹⁴ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (2013), UN Doc. A/HRC/23/39, para. 63.

⁹⁵ OSCE/ODIHR and the Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2010, para. 39.

⁹⁶ OSCE/ODIHR and the Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2010, para. 43.

⁹⁷ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/20/27, (2012), para. 41.

⁹⁸ Second Report on the Situation of Human Rights Defenders in the Americas (2012). Inter-American Commission on Human Rights, OEA/Ser.L/V/II.Doc.66 para. 136.

⁹⁹ Office of the Special Rapporteur for Freedom of Expression Inter American Commission on Human Rights, A Hemispheric Agenda for the Defense of Freedom of Expression, (2010) OEA/Ser.L. V/II CIDH/RELE/INF. KG576 .158 2010 OEA Ser.L/V/II CIDH/RELE/INF. 4/09.

¹⁰⁰ Annual Report of the Inter-American Commission on Human Rights 2005, (2006) para. 96.

¹⁰¹ Annual Report of the Inter-American Commission on Human Rights 2005, (2006) para. 96.

¹⁰² Inter-American Commission on Human Rights, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II.Doc.57, para. 193.

¹⁰³ *Balcik v. Turkey* (63878/00), European Court of Human Rights, (2005) paras. 51-52; *Ashughyan v. Armenia*, (33268/03) European Court of Human Rights, (2008)

including disruption of traffic and, where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the ECHR is not to be deprived of all substance".¹⁰⁴

Similarly, the European Court of Justice held that "whilst the competent national authorities must endeavour to limit as far as possible the inevitable effects upon free movement of a demonstration on the public highway, they must balance that interest with that of the demonstrators, who seek to draw the aims of their action to the attention of the public".¹⁰⁵ Hence, the Court determined, "an action of that type usually entails inconvenience for non-participants, in particular as regards free movement, but the inconvenience may in principle be tolerated provided that the objective pursued is essentially the public and lawful demonstration of an opinion".¹⁰⁶ The OSCE Guidelines also state that "participants in public assemblies have as much a claim to use such sites for a reasonable period as anyone else. Indeed, public protest, and freedom of assembly in general, should be regarded as "equally legitimate" uses of public space as the more routine purposes for which public space is used (such as commercial activity or for pedestrian and vehicular traffic)".¹⁰⁷ The Guidelines go on to conclude that "temporary disruption of vehicular or pedestrian traffic is not, of itself, a reason to impose restrictions on an assembly."¹⁰⁸

The prohibition of a planned demonstration based on the assessment of its legitimacy by state authorities amounts to prior censorship of expression, which is not permissible under international standards applicable to the right to freedom of expression.¹⁰⁹ Furthermore, as stressed by the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, any restriction imposed on the nature or content of an assembly should be proscribed, unless the message amounts to advocacy of hatred that constitutes incitement to hostility, violence or discrimination according to article 20 of the Covenant.¹¹⁰ The European Court of Human Rights has similarly rejected broad preventative measures which restrict the rights to freedom of expression and peaceful assembly, except in cases of incitement to violence or acts aimed at the destruction/abuse of others' rights and freedoms – "however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be."¹¹¹

As regards the restriction of peaceful assembly for the purposes of protecting public morals, Amnesty International stresses the importance of tolerance towards minority opinions. We have noted with concern that the protection of public morals has been used as a pretext to violate the right to freedom of peaceful assembly of LGBTI persons. The protection of public morals must be interpreted restrictively and cannot be used as a pretext to limit the rights of those who are not in favour with popular opinion or those in power. The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity clearly encapsulate the right of LGBTI people to assemble freely in international law.¹¹²

Amnesty International recommend that the Draft General Comment explains the importance of the 'Sight and Sound' principle. All potential restrictions on the right to freedom of peaceful assembly must be assessed on a case-by-case basis, in accordance with the principles of legality, proportionality and necessity. Accordingly blanket restrictions are impermissible.

¹⁰⁴ *Ashughyan v. Armenia*, (33268/03) European Court of Human Rights, (2008), para. 90; *Kuznetsov v. Russia* (108877/04), *European Court of Human Rights*, (2008), para. 44; *Patyi and Others v. Hungary*, *European Court of Human Rights*, (5529/05), *European Court of Human Rights* (2008) para. 42.

¹⁰⁵ *Eugen Schmidberger Internationale Transporte Planzuge v Austria* (European Court of Justice), 12 June 2003, para 90

¹⁰⁶ *Eugen Schmidberger Internationale Transporte Planzuge v Austria* (European Court of Justice), 12 June 2003, paras 90 and 91.

¹⁰⁷ OSCE/ODIHR and the Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2010, para. 20.

¹⁰⁸ OSCE/ODIHR and the Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2010, para. 80.

¹⁰⁹ *Kimel v. Argentina*, Merits, Reparations and Costs, Inter-American Court of Human Rights (2008) Series C No. 177, para. 54

¹¹⁰ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (2013), UN Doc. A/HRC/23/39, para. 59.

¹¹¹ *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (29221/95), European Court of Human Rights (2001), para. 97.

¹¹² Yogyakarta Principles on the Application of International Human Rights Law In Relation To Sexual Orientation And Gender Identity, (2006) Principle 20.

4.1.3 NOTIFICATION, AUTHORIZATION AND PROHIBITION OF PROTESTS

Participating in and organizing assemblies is a right, not a privilege, thus its exercise does not require authorization by the state.¹¹³

The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association has, for example, stressed that states should not impose prior-authorisation requirements for the exercise of fundamental freedoms.¹¹⁴ The OSCE Guidelines on Freedom of Peaceful Assembly state that assembly is a fundamental right, and it should “be enjoyed without regulation insofar as is possible” and “those wishing to assemble should not be required to obtain permission to do so”.¹¹⁵ The UN High Commissioner on Human Rights has stressed that “the organization of a protest should not be subject to prior authorization from the administrative authorities of the state, but at the most to a prior notification procedure, the rationale of which is to allow state authorities to facilitate the exercise of the right to freedom of peaceful assembly and to take appropriate measures to protect public safety and order and the rights and freedoms of protesters and other individuals affected by the protests”.¹¹⁶ The Inter-American Commission has reiterated that “the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out”.¹¹⁷

The difference between advance notifications and authorisations has been elucidated by different international human rights mechanisms. This Committee is clear that advance notice requirements are only legitimate to the extent that they allow states to plan to adequately facilitate assemblies, and should serve no other purpose (such as of advance authorisation).¹¹⁸ The Committee has routinely rejected advance notice requirements that crossed the line from notification to authorisation.¹¹⁹ The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association has stated that prior notification procedures should be subject to a proportionality assessment, and has explained that a prior notification procedure should only be required to allow the authorities to facilitate the exercise of the right to freedom of peaceful assembly and to take measures to protect public safety, public order, and the rights and freedoms of others.¹²⁰ The Guidelines on Freedom of Association and Assembly in Africa establish that “a system of prior notification may be put in place to allow states to facilitate the exercise of this right and to take the necessary measures to protect public safety and rights of other citizens”.¹²¹

Similarly, the Inter-American Commission has stated that advance notifications exist only 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. The Commission has emphasized that “any requirement that creates the basis for prohibiting or restricting a meeting or demonstration, for example through a requirement for an advance permit, is not compatible with this right”.¹²² The IACHR Special Rapporteur on Freedom of Expression has stipulated that “the requirement of prior notification should not become a demand that permission be granted beforehand by an officer with unlimited discretionary

¹¹³ *Guidelines on Freedom of Association and Assembly in Africa*, African Commission on Human and Peoples' Rights, para. 71; Joint Report to the Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, para. 21.

¹¹⁴ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/20/27, (2012), para. 28.

¹¹⁵ OSCE/ODIHR and the Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2010, para. 30.

¹¹⁶ Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests. Report of the United Nations High Commissioner for Human Rights (2013), UN Doc. A/HRC/22/28.

¹¹⁷ Second report on the situation of human rights defenders in the Americas (2012). Inter-American Commission on Human Rights, OEA/Ser.L/V/II.Doc.66 para. 139.

¹¹⁸ *Kivenmaa v. Finland*, Human Rights Committee (1994) UN Doc. CCPR/C/50/D/412/1990, para 9.2.

¹¹⁹ Concluding Observations on Mauritius (1996) UN Doc. CCPR/C/79/Add.60, para. 20; Concluding Observations on Belarus (1997), UN Doc. CCPR/C/79/Add.86, para. 18; Concluding Observations on Morocco (1999) UN Doc. CCPR/C/79/Add.113, para. 24; Concluding Observations on the Republic of Moldova (2002) UN Doc CCPR/C/75/MDA, para 15.

¹²⁰ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/20/27, (2012), , para. 28. “Such a notification should be subject to a proportionality assessment, not unduly bureaucratic and be required a maximum of, for example, 48 hours prior to the day the assembly is planned to take place”

¹²¹ ACHPR Guidelines, paragraph 71 The Guidelines go on to require that any notice period should be as short as possible, and the procedure should be simplified, flexible – including in terms of the information required –, and free of charge. Lack of notification should not make an assembly illegal or be subject to criminal or administrative sanctions resulting in fines or imprisonment.

¹²² Second report on the situation of human rights defenders in the Americas (2012). Inter-American Commission on Human Rights, OEA/Ser.L/V/II.Doc.66 para. 136.

authority.”¹²³ The European Court of Human Rights has held that notice requirements “should not represent a hidden obstacle to the freedom of peaceful assembly as it is protected by the Convention”.¹²⁴ In the same sense, the OSCE Guidelines on Freedom of Peaceful Assembly recommend that notice requirements only be implemented “when a substantial number of participants are expected or only for certain types of assembly”.¹²⁵

Notification and authorization regimes can also pose risks for spontaneous assemblies, which are generally regarded as those organized in response to some occurrence, incident, other assembly or speech, where the organizer – if there is one – is unable to meet the legal deadline for prior notification, or where there is no organizer at all.¹²⁶

Numerous regional and international bodies address spontaneous assemblies and require states to equally protect the right to freedom of assembly when these occur. The Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association has stipulated as best practice that states adopt legislation actively allowing for the “holding of spontaneous assemblies, which should be exempted from prior notification”.¹²⁷ The UN Special Rapporteur on the Situation of Human Rights Defenders similarly endorsed spontaneous assemblies for human rights defenders, stipulating that while authorities need to be notified of the occurrence of an assembly in advance in order to be able to fulfil their responsibility to protect human rights defenders participating in such assembly, “States are encouraged to consider in exceptional circumstances that defenders, with the aim of protesting human rights violations, should have the possibility of responding immediately to an event by holding public, peaceful assemblies”.¹²⁸ The European Court found that a decision to disband a peaceful assembly because it was spontaneous and not notified to the authorities was disproportionate.¹²⁹

The OSCE recommends that advance notification laws “should explicitly provide for an exception from the requirement where giving advance notice is impracticable” and that “authorities should always protect and facilitate any spontaneous assembly so long as it is peaceful in nature”.¹³⁰ The Guidelines on Freedom of Association and Assembly in Africa establish that the notification requirement should be exempted for spontaneous assemblies.¹³¹

Failure to notify authorities of the intention to assemble must not render an otherwise peaceful assembly unlawful. It must not be used as a purported justification for dispersal. The ACHRP’s Guidelines on Policing Assemblies state that the lack of prior notification of an assembly, including spontaneous assemblies, “does not render an assembly unlawful and should not form the sole basis of a decision by law enforcement officials to disperse an assembly”.¹³²

Amnesty International recommends that the Draft General Comment calls for states to repeal provisions which require authorisation to be sought in order to assemble. While they can be permissible in international law, notification regimes must not be overly onerous and must allow for spontaneous assemblies.

¹²³ Annual Report of the Inter-American Commission on Human Rights (2005), Chapter V, Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly, OEA/Ser.L/V/II.124 Doc., para. 95.

¹²⁴ *Balcik v. Turkey* (63878/00), European Court of Human Rights, (2005) para. 49.

¹²⁵ OSCE/ODIHR and the Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2010, para. 115.

¹²⁶ OSCE/ODIHR and the Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2010, para. 126.

¹²⁷ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/20/27, (2012), paras. 29, 91.

¹²⁸ Commentary to the Declaration on Human Rights Defenders, UN Special Rapporteur on the Situation of Human Rights Defenders, (2011), p. 32.

¹²⁹ *Bukta and Others v. Hungary*, (25691/04) European Court of Human Rights (2007).

¹³⁰ OSCE/ODIHR and the Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2010, para. 4.2.

¹³¹ *Guidelines on Freedom of Association and Assembly in Africa*, African Commission on Human and Peoples’ Rights, para. 75

¹³² Guidelines on Policing Assemblies in Africa, African Commission on Human and Peoples’ Rights, para. 9.1.

4.2 CRIMINALISATION AND THE USE OF NATIONAL SECURITY MEASURES

4.2.1 CRIMINAL SANCTIONS

As a matter of principle, those engaging in a peaceful assembly must not be subject to the threat of criminal sanctions, and notably to the threat of deprivation of liberty.¹³³ This Committee has made clear that “arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19) freedom of assembly (art. 21), freedom of association (art. 22), freedom of religion (art. 18) and the right to privacy (art. 17)”.¹³⁴ The Inter-American Commission on Human rights has similarly emphasized that “the arrest of participants at peaceful demonstrations violates freedom of assembly”.¹³⁵

The application of criminal sanctions to those engaged in peaceful assembly has a chilling effect on the enjoyment of this right and might deter others from engaging in future protests.¹³⁶ Such an effect has been noted by regional courts. For example, the European Court of Human Rights found that the prosecution and conviction of two protesters “could have had a chilling effect and discouraged them from taking part in other similar meetings”.¹³⁷ The Inter-American Commission on Human Rights has noted the chilling effect that criminal prosecutions have on human rights defenders.¹³⁸ Likewise, the IACHR Special Rapporteur on Freedom of Expression has explained that “the per se criminalization of public demonstrations is, in principle, inadmissible, provided they take place in accordance with the right of free expression and the right of assembly”.¹³⁹

Broadly speaking, affronts to the right to freedom of peaceful assembly through use of criminal sanctions arise through penalties for participating in or organizing an assembly, penalties for failure to disperse, and arrest for minor offences. Penalties for participation frequently take the form of sanctions for failure to notify authorities of the participants intention to assemble. Such should not be the subject of criminal sanctions as they constitute undue restrictions on the right to peaceful assembly.¹⁴⁰

Where a dispersal order is legitimately made, and so where it is in accordance with the principles of legality, necessity and proportionality, those assembling must be given sufficiently clear instructions to disperse and sufficient time to do so. As has been established by this Committee, sanctions for failure to disperse where the order made is not legitimately made, is made with insufficient clarity, or where insufficient time is given before sanctions are sought constitute a violation of the right of peaceful assembly.¹⁴¹

Finally, overzealous prosecutions should not be brought for minor breaches of the criminal law in a manner designed to stifle the right of peaceful assembly.

¹³³ *Kudrevičius and Others v. Lithuania* (37553/05), European Court Grand Chamber (2015) para. 146.

¹³⁴ UN Human Rights Committee General Comment No. 35, UN Doc. CCPR/C/GC/35 (2014) Para. 17.

¹³⁵ Report on the situation of human rights defenders in the Americas, Inter-American Commission on Human Rights, OEA/Ser.L/V/II.124, 7 March 2006, para. 56.

¹³⁶ See examples in Turkey (<https://www.amnesty.org/en/latest/news/2018/12/workers-arrested-in-turkey-for-protesting-conditions-at-airport-construction-site-must-be-released/>), Spain (<https://www.amnesty.org/en/documents/eur41/001/2014/en/>), Poland (<https://www.amnesty.org/en/documents/eur37/8525/2018/en/>) France (<https://www.amnesty.org/en/documents/eur21/6104/2017/en/>) Peru and Paraguay (<https://www.amnesty.org/en/documents/amr01/8158/2018/en/>).

¹³⁷ *Yilmaz Yildiz and others v. Turkey* (4524/06), European Court of Human Rights Second Section (2014), para. 33.

¹³⁸ Second report on the situation of human rights defenders in the Americas, Inter-American Commission on Human Rights, OEA/Ser.L/V/II.Doc. 66, 31 December 2011, para. 76.

¹³⁹ Chapter IV, Annual Report 2002, Vol. III “Report of the Office of the Special Rapporteur for Freedom of Expression,” OEA/Ser. L/V/II. 117, Doc. 5 rev. 1, para. 35.

¹⁴⁰ See *Akgöl and Göl v. Turkey* (28495/06 and 28516/06), European Court of Human Rights (2011), para. 43:

43. Moreover, the Court reiterates that, where demonstrators do not engage in acts of violence, as was the case in the present application, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (see *Nurettin Aldemir and Others v. Turkey*, nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, § 46, 18 December 2007). The Court is concerned by the fact that the applicants were prosecuted - and convicted at first instance - on account of the mere fact of their participation in an unauthorised but peaceful demonstration. It considers that a peaceful demonstration should not, in principle, be made subject to the threat of a penal sanction.

¹⁴¹ *Frumkin v. Russia* (74568/1), European Court of Human Rights (2016), para. 166.

The IACHR Office of the Special Rapporteur has voiced concerns about the existence of criminal provisions that make criminal offenses out of the mere participation in a protest, road blockages (at any time and of any kind) or acts of disorder that in reality, in and of themselves, do not adversely affect legally protected interests such as the life, security or liberty of individuals.¹⁴²

4.2.2 CRIMINAL LIABILITY OF ORGANISERS

Organisers of assemblies should never be held liable for the actions of individual participants in an assembly,¹⁴³ and may only be prosecuted where there is sufficient evidence that they themselves committed a recognizable criminal act.¹⁴⁴ The European Court of Human Rights found that a penalty imposed on an organiser was unlawful given that the state was unable to prove his responsibility for the crimes. It held that sanctions against organisers cannot be imposed "so long as the person concerned does not himself commit any reprehensible act on such an occasion".¹⁴⁵

4.2.3 COUNTER-TERRORISM CHARGES

Around the world, countries are increasingly using terrorism-related charges in the context of protest. In some countries, powers initially envisaged for use in the sphere of counter-terrorism have been transferred to use in public order situations in such a way that threatens the right of peaceful assembly.¹⁴⁶

Different Special Procedures of the Human Rights Council have expressed their concern over the increase in counter-terrorism laws that include provisions that restrict the right to freedom of peaceful assembly.¹⁴⁷ The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has noted with concern that "definitions of terrorism that include damage to property, including public property, also seriously affect the right to freedom of assembly, as in the absence of other qualifications, they can be used against individuals engaging in social movements, where damage to property is unwittingly incurred".¹⁴⁸

Similarly, the UN General Assembly has expressed grave concern over national security and counter-terrorism legislation and other measures, such as laws regulating civil society organizations, that are being misused to target human rights defenders or that have hindered their work and endangered their safety in a manner contrary to international law, including in the context of peaceful assemblies.¹⁴⁹

Charging protestors with terrorism-related offences, even in the context of protests which are no longer peaceful, has a significant chilling effect that permeates across similar protest movements.¹⁵⁰

¹⁴² A Hemispheric Agenda for the Defense of Freedom of Expression, Office of the Special Rapporteur for Freedom of Expression Inter American Commission on Human Rights (2010), OEA/Ser.L. V/II CIDH/RELE/INF. KG576 .158 2010 OEA Ser.L/V/II CIDH/RELE/INF. 4/09.

¹⁴³ Joint Report to the Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66,, para. 26; Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/20/27, (2012), para. 31

¹⁴⁴ See for example the US Supreme court case of *NAACP v. Claiborne Hardware*, 458 U. S. 886, 922-932 (1982), in which the court held that civil liability may not be imposed merely because an individual belonged to, or was leader of, a group, some members of which committed acts of violence. This case is in the civil context, however remains pertinent to criminal liability.

¹⁴⁵ *Ezelin v. France* (11800/85), European Court of Human Rights (1991), para. 53.

¹⁴⁶ Droit De Manifester: Les Parlementaires Doivent Arrêter La Casse, https://www.amnesty.fr/liberte-d-expression/actualites/droit-de-manifester-loi-france?utm_medium=reseaux-sociaux&utm_source=twitter (2019)

¹⁴⁷ Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, UN Doc. A/HRC/20/27, (2012), para. 21; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

UN Doc. A/HRC/40/52 (2019), para. 36; Report of the Special Rapporteur on Human Rights Defenders, UN Doc. A/70/217, para. 37.

¹⁴⁸ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

UN Doc. A/HRC/40/52 (2019), para. 41.

¹⁴⁹ Twentieth anniversary and promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms Statement of financial implications (A/72/675), UN General Assembly, (2017) UN Doc. A/RES/72/247

¹⁵⁰ See, for example, the case of the 'Stanstead 15' in the UK, who were charged with 'endangering the safety of an aerodrome' following non-violent direct action which took place on an airport runway (<https://www.amnesty.org/en/latest/news/2018/12/stanstead-15-verdicts-show-uk-authorities-have-used-a-sledgehammer-to-crack-a-nut/>) and the example of students detained in Turkey for participating in anti-war protests (<https://www.amnesty.org/en/documents/eur44/8142/2018/en/>)

Amnesty International recommend that the Draft General Comment addresses the misuse of counter-terrorism powers in violating the right to freedom of peaceful assembly.

4.2.4 STATES OF EMERGENCY

Amnesty International has documented how measures adopted under a state of emergency have led to violations of the right to freedom of peaceful assembly.¹⁵¹ This Committee has previously determined that while states are permitted in exceptional circumstances to derogate from the right to peaceful assembly under Article 4 of the Covenant, the existing possibility for states to restrict some rights, including the right to peaceful assembly, provided by international human rights law, including the ICCPR (article 21), are generally sufficient in emergency situations and no derogation from the provisions in question would be justified by the exigencies of the situation.¹⁵²

Should a state declare a state of emergency, derogations are permitted only in time of an officially proclaimed state of emergency which threatens the life of the nation, and only to the extent required by the exigencies of the situation.¹⁵³ So far as we are aware this Committee has not explicitly defined what constitutes a "threat to the life of the nation", however the European Court of Human Rights has held that this refers to an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the state is composed.¹⁵⁴

This Committee has stated that measures derogating from the provisions of the Covenant pursuant to a state of emergency must be exceptional and temporary.¹⁵⁵ The state's predominant objective must be the restoration of the state of normalcy.¹⁵⁶ Therefore, derogation measures must be limited to the extent strictly required by the exigencies of the situation. This requirement relates to the duration, geographical coverage and material scope of the state of emergency and any measures of derogation resorted to because of the emergency. Derogation in emergency situations is clearly distinct from restrictions or limitations allowed even in normal times under the specific provisions of the Covenant which permit such restrictions. Nevertheless, the obligation to limit any derogations to those strictly required by the exigencies of the situation reflects the principle of proportionality which is common to derogation and limitation powers. Moreover, the mere fact that a permissible derogation from a specific provision may, of itself, be justified by the exigencies of the situation does not obviate the requirement that specific measures taken pursuant to the derogation must also be shown to be required by the exigencies of the situation.¹⁵⁷

Each measure adopted under a state of emergency must be narrowed down to what is strictly required by the exigencies of the situation, which requires a careful analysis under each article of the Covenant based on an objective assessment of the actual situation.¹⁵⁸ Effective remedies must be available to persons claiming that derogation measures affecting them are not strictly required by the exigencies of the situation.¹⁵⁹

The General Comment should reiterate its position that restrictions on the right to peaceful assembly under the terms of article 21 of the Covenant should generally be sufficient in situations of emergency, and therefore no derogation would be justified by the exigencies of the situation. If a state imposes any further restrictions to the right to peaceful assembly by invoking a state of emergency, it must be demonstrated that the situation it confronts reaches the very high threshold of a public emergency which threatens the life of the nation in light of which restrictions must be strictly necessary and proportionate. States of emergency must be exceptional and temporary.

¹⁵¹ See, for example, Amnesty International, *France: A Right Not A Threat: Disproportionate Restrictions On Demonstrations Under The State Of Emergency In France*, (<https://www.amnesty.org/en/documents/eur21/6104/2017/en/>) in which infringements of climate change activists' rights to assemble are documented.

¹⁵² *General Comment No. 29 States of Emergency (Article 4)*, UN Human Rights Committee, UN Doc. CCPR/C/21/Rev.1/Add.11, para. 5.

¹⁵³ *General Comment No. 29 States of Emergency (Article 4)*, UN Human Rights Committee, UN Doc. CCPR/C/21/Rev.1/Add.11, para. 2. At a regional level there are similar provisions in the European Convention on Human Rights (Article 15) and the American Convention on Human Rights (Article 27).

¹⁵⁴ *A and others v. UK* (3455/05), European Court of Human Rights, (2009) paras 173-190.

¹⁵⁵ *General Comment No. 29 States of Emergency (Article 4)*, UN Human Rights Committee, UN Doc. CCPR/C/21/Rev.1/Add.11, para. 2.

¹⁵⁶ *General Comment No. 29 States of Emergency (Article 4)*, UN Human Rights Committee, UN Doc. CCPR/C/21/Rev.1/Add.11, para. 1-2.

¹⁵⁷ *General Comment No. 29 States of Emergency (Article 4)*, UN Human Rights Committee, UN Doc. CCPR/C/21/Rev.1/Add.11, para. 4.

¹⁵⁸ *General Comment No. 29 States of Emergency (Article 4)*, UN Human Rights Committee, UN Doc. CCPR/C/21/Rev.1/Add.11, para. 6.

¹⁵⁹ *General Comment No. 29 States of Emergency (Article 4)*, UN Human Rights Committee, UN Doc. CCPR/C/21/Rev.1/Add.11, para. 14.

4.3 SURVEILLANCE

4.3.1 FACIAL RECOGNITION

Facial recognition technologies are increasingly being trialled or used by police and security forces to monitor public spaces, including demonstrations. These technologies generally compare live camera feeds of faces in real time against an existing 'watchlist' in order to locate persons of interest. Analysis has shown the significant flaws in these technologies, of the alerts the system generates over two thirds are false positives.¹⁶⁰

Remotely-piloted aerial vehicles, or drones, are also being equipped with facial recognition technologies.¹⁶¹ Different laws to allow the police to use drones equipped with facial recognition technology to monitor peaceful protests and identify individual participating in them, even without reasonable suspicion of wrongdoing, have been discussed recently.¹⁶²

Such use of facial recognition technologies may involve the widespread and bulk monitoring, collection, storage, analysis or other use of material and not be based on individualised reasonable suspicion. Therefore, the use of facial recognition technologies could constitute indiscriminate mass surveillance. In Amnesty International's view, indiscriminate mass surveillance is never a proportionate interference with the rights to privacy, freedom of expression, freedom of association and of peaceful assembly. Moreover, what could in effect amount to automatic compulsory registration of those attending an assembly could have a long-term chilling effect on the enjoyment of these rights.

In addition, the lack of a legislative framework to regulate the use of facial recognition technologies, the lack of transparency regarding when and where these technologies can be and are being used (and to what end), the potential for discrimination,¹⁶³ the absence of public information and rights of review or appeal, all indicate that the use of facial recognition technologies, and the retention of related data, could be unlawful.

The Guidelines on Policing Assemblies in Africa clearly state that surveillance tactics should not be used to harass or intimidate participants or to discourage people from attending assemblies:

Law enforcement officials must not use recording and surveillance tactics as a means to harass or intimidate assembly participants, or to discourage persons or groups from exercising their right to assemble freely with others. Law enforcement agencies must not disseminate information to third parties in violation of the right to privacy, due process, freedom of expression or the right to assemble freely with others.¹⁶⁴

Amnesty International therefore recommends the General Comment explicitly expresses the view that facial recognition technologies should not be deployed unless governments can demonstrate that they can be used in line with international law, including international human rights law and the principles of legality, proportionality and necessity.

¹⁶⁰ For example, in the UK the London's Metropolitan Police Service (MPS) used automated facial recognition (AFR) at the annual Notting Hill Carnival in 2016 and 2017. The use of this technology by the MPS returned false positives in more than 98% of alerts generated according to a Freedom of Information request (see https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/disclosure_2018/april_2018/information-rights-unit---mps-policies-on-automated-facial-recognition-afr-technology). South Wales Police has been using AFR since May 2017, including at sporting events and concerts. The AFR system used by South Wales Police has returned confirmed false positives at a rate of at least 50% from its new algorithm. Its previous algorithm returned false positives at a rate of at least 72% (See Universities' Police Science Institute Crime and Security Research Institute, Cardiff University, *An Evaluation of South Wales Police's Use of Automated Facial Recognition*, September 2018, <http://afr.south-wales.police.uk/cms-assets/resources/uploads/AFR-EVALUATION-REPORT-FINAL-SEPTEMBER-2018.pdf>)

¹⁶¹ <http://www.gizmodo.co.uk/2018/06/dji-and-taser-maker-axon-are-teaming-up-to-make-police-drones/>; <https://www.haaretz.com/israel-news/israel-bolsonaro-discuss-drone-sale-senior-source-says-1.6801993>

¹⁶² For example, a proposal was put forward in January 2018 by the City of Chicago to authorise police to use drones equipped with facial recognition technology to monitor peaceful protests without first securing a judicial warrant (see <http://www.ilga.gov/legislation/BillStatus.asp?GA=100&DocTypeID=SB&DocNum=2562&GAID=14&SessionID=91&LegID=109479#actions>). Conversely, a member of San Francisco City's Board of Supervisors put forward in January 2019 a proposal to ban government use of facial recognition technology (see https://cdn.vox-cdn.com/uploads/chorus_asset/file/13723917/ORD__Acquisition_of_Surveillance_Technology.pdf)

¹⁶³ See study by the American Civil Liberties Union in July 2018, in which the facial recognition tool, called "Rekognition," incorrectly matched 28 members of Congress, identifying them as other people who have been arrested for a crime: <https://www.aclu.org/blog/privacy-technology/surveillance-technologies/amazons-face-recognition-falsely-matched-28>

¹⁶⁴ Guidelines on Policing Assemblies in Africa, *African Commission on Human and Peoples' Rights*, para 15.3

4.3.2 OTHER NEW TECHNOLOGIES AND THE RIGHT TO PEACEFUL ASSEMBLY

The increasing adoption by law enforcement officials of new technologies, including the use of CCTV, IMSI catchers, and bodycams pose new risks to the right to peaceful assembly. This is especially true where such technologies are used in combination with one another as part of existing state surveillance and data retention powers.

The use of surveillance technologies, alone or in combination, gives rise to a risk not only of real-time violations of the right to peaceful assembly, but also to the creation of chilling effects that may deter people from exercising their rights in future.¹⁶⁵

An example of this dynamic is present in the context of surveillance of civil society in Belarus.¹⁶⁶ In 2010, widely-disputed elections gave rise to widespread protests, which saw numerous people arrested for the exercise of their human rights, including for participation in peaceful protests against the outcome of the elections. Following the post-election protests, numerous media outlets reported that the authorities used mobile phone data to determine who was present at the locations of protests, and to summon people who were detected there for interrogation.

Though Belarus has not seen a crackdown on this scale in the intervening years, these events, including several well-publicized prosecutions, were cited by many people who spoke to Amnesty International in 2015 as a key reason why they believed they were not safe from state surveillance. As a result, activists and journalists in Belarus told Amnesty International how the widespread fear of surveillance makes it nearly impossible for them to carry out daily activities like sending emails, making phone calls or organizing meetings or peaceful protests.

It is well recognized that metadata constitutes “information that is no less sensitive, having regard to the right to privacy, than the actual content of communications”.¹⁶⁷ In the context of peaceful assembly, the variety of tools available to state authorities which can discern and retain metadata about the locations, movements, social networks, political affiliations and activities of participants, is likely to create a chilling effect on the future exercise of this right. When participants in a peaceful assembly are unable to know what information authorities at the assembly will be able to access regarding their criminal, immigration, or other personal histories, or for how long the records of their activities, associations or opinions are likely to be accessible to the authorities, they are more likely to hesitate before participating, to the detriment of human rights.

¹⁶⁵ An example of this can be seen in Baltimore, in the United States, where people were protesting the death of Freddie Gray in police custody. There police used a combination of the social media monitoring tool Geofeedia, coupled with facial recognition technology and retained data in order to arrest protestors with outstanding warrants, raising concerns about the potentially discriminatory impact of the use of these technologies to curtail the right to freedom of peaceful assembly. This had a particularly significant impact on the rights of people from minority communities.

¹⁶⁶ Amnesty International, “Belarus: ‘It’s Enough for People to Feel it Exists’: Civil Society, Secrecy and Surveillance in Belarus,” July 2016, <https://www.amnesty.org/download/Documents/EUR4943062016ENGLISH.PDF>

¹⁶⁷ *Telez Sverige AB and C-698/15 Watson and Others* (ECLI:EU:C:2016:970) (“*Watson*”) Court of Justice of the European Union, Joined Cases C-203/15 at para. 99.

5. POLICING

In the policing of assemblies, law enforcement agencies should adopt a human rights based approach in full consideration of their duty to facilitate, enable and protect the right to freedom of peaceful assembly. Accordingly, law enforcement agencies should seek to carry out the policing of assemblies in a manner that ensures the best possible and effective enjoyment of the right to freedom of peaceful assembly by participants, and not limit their planning to the anticipation of problems and how to respond to any outbreaks of violence.

5.1 GENERAL APPROACH IN POLICING ASSEMBLIES – DUTY TO FACILITATE

In the handling of public assemblies, it is the primary responsibility of the police to facilitate and protect the exercise of the right to freedom of peaceful assembly.¹⁶⁸ When fulfilling this duty, police are supposed to take all reasonable and appropriate measures to enable people to exercise this right without undue interference and without intimidating those who wish to participate in the assembly.¹⁶⁹ In doing so, they should always act in an impartial manner.¹⁷⁰ When having to balance different interests at stake, police should give due consideration to the importance of the right to freedom of peaceful assembly. A policing approach that displays a heavy handed, zero-tolerance attitude with robust interventions from the outset may contribute to increase tension and provoke hostility or aggressive reactions, leading to the overall escalation of a situation.¹⁷¹ Accordingly, the European Court has affirmed that “where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance”.¹⁷²

Generally, the peacefulness of an assembly should be presumed,¹⁷³ and the overall policing approach should be driven by communication, seeking to prevent conflicts from occurring through dialogue and mediation, as well as to de-escalate and peacefully settle any conflicts that do occur.¹⁷⁴ The physical appearance (equipment, numbers) and attitude displayed by the police should be non-threatening in order not to unnecessarily fuel tensions. Where acts of violence by some individuals are anticipated, police should seek to constructively engage with those who wish to assemble peacefully in order to develop a strategy that allows the assembly to be held in a smooth and undisturbed manner. This may then also allow for police, or organizers, to influence in a constructive way those who appear to be hostile. In any case, law enforcement agencies should in such situations avoid further fuelling tensions by treating the entire assembly as hostile and all participants as potentially violent law-breakers. The mere existence of risks is insufficient to justify the prohibition of an assembly.¹⁷⁵

¹⁶⁸ OSCE/ODIHR, “The right to freedom of peaceful assembly”, *Human Rights Handbook on Policing Assemblies*, 2016, pp. 13-14 (hereinafter: OSCE/ODIHR, *Human Rights Handbook on Policing Assemblies*)

¹⁶⁹ Concluding Observations of UN Human Rights Committee: Republic of Moldova, UN Doc. CCPR/C/MDA/CO/3 (2016), para. 34: “[...] states should [...] take appropriate measures to ensure that organizers and participants of assemblies do not face any acts of intimidation, including police interference prior to the organization of assemblies”. See also: Concluding Observations of UN Human Rights Committee: Azerbaijan, UN Doc. CCPR/C/AZE/CO/4 (2016), paras 38-39. See also: Report to the Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/20/27, 21 May 2012, para. 63.

¹⁷⁰ OSCE/ODIHR, “Key Principles in Policing Assemblies”, *Human Rights Handbook on Policing Assemblies*, p. 22

¹⁷¹ OSCE/ODIHR, “Key Principles in Policing Assemblies”, *Human Rights Handbook on Policing Assemblies*, p. 24

¹⁷² European Court of Human Rights: *Bukta and others v. Hungary*, (25691/04) (2007), para. 37; *Oya Ataman v. Turkey*, (74552/01) (2006), paras 41-42.

¹⁷³ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, para. 18.

¹⁷⁴ Joint Report to the Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, para. 38.

¹⁷⁵ *Alekseyev v. Russia*, (4916/07, 25924/08, and 14599/09) European Court of Human Rights First Section (2010), para. 75; Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, para. 25.

Containing participants of an assembly in a certain area without permission to leave is an infringement of the right to freedom of peaceful assembly. The UN Special Rapporteur has repeatedly voiced concerns in relation to the use of containment (also known as “kettling”), which consists of deploying a police cordon around a group of protestors, often for long periods, with a view to enclosing them and preventing other protestors from joining the “kettled” group. It is a tactic which has a powerful chilling effect on protestors seeking to exercise their peaceful assembly and expression rights.¹⁷⁶ If at all, it should only be carried out in order to avoid having to disperse the entire assembly, so as to ensure that the rest of the assembly can continue in an undisturbed and peaceful manner.¹⁷⁷ Even in such circumstances it should only take place for the shortest time possible.

As has been discussed above, the duty to facilitate an assembly also applies in cases of spontaneous assembly.¹⁷⁸ Even if domestic legislation establishes the requirement for organizers to notify authorities in advance of assembly, when people decide spontaneously to take their views to the streets police should facilitate such assemblies as long as they are peaceful. Law enforcement agencies should have contingency plans readily available for such spontaneous situations.

The Draft General Comment should call upon states to ensure that law enforcement officials are properly trained in the policing of assemblies in a human-rights-compliant manner, enabling them to fulfil their duty to facilitate the enjoyment of the right to freedom of peaceful assembly.¹⁷⁹

Amnesty International recommend that the Draft General Comment emphasizes the duty of law enforcement agencies to facilitate the holding of peaceful assemblies, and avoid approaches that might be perceived as measures to intimidate or harass people wishing to enjoy their right to freedom of peaceful assembly. It bears repeating that zero-tolerance approaches are generally counterproductive to the aim of maintaining public order, with the risk of worsening a potentially tense situation, and have a chilling effect on those who wish to assemble peacefully. The approach of law enforcement agencies in the policing of assemblies should be driven by communication, negotiation and mediation, seeking peaceful settlement of conflicts with the overall aim to ensure a smooth holding of the assembly.

5.2 EXERCISE OF POLICE POWERS PRIOR TO AND IN THE RUN-UP OF AN ASSEMBLY

In general, the exercise of the police powers to stop and search, as well as to arrest and detain, should be with a view to prevent and detect crime – based on a reasonable suspicion that a person is likely to be involved in a criminal offence or of carrying an item related to such a criminal offence. Suspicion should be based on the behaviour of a specific person, a condition which continues to apply in the context of an assembly. Arresting people only in view of their peaceful participation in an assembly is a violation of article 21 – particularly if there is no justification in light of the conditions set out in article 21 to restrict or prohibit an assembly.¹⁸⁰ Furthermore, mass-interventions which address a large number of persons wishing to attend an assembly without such an individualized suspicion are disproportionate and are likely to have a chilling effect on the people affected. UN Special rapporteurs have clearly stated that “stop-and-search must not be arbitrary and must not violate the principle of non-discrimination. It must be authorized by law, necessary and proportionate.

¹⁷⁶ Report to the Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/35/28/Add.1, para. 65 and A/HRC/23/39/Add.1, paras 36-38; Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, 4 February 2016, para. 43.

¹⁷⁷ OSCE/ODIHR, *Human Rights Handbook on Policing Assemblies*, pp. 101-103; OSCE/ODIHR, *Report Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States*, 2014, pp. 15-16, recommendation 55: “(...) when necessary to prevent serious damage or injury and when no alternative police tactics that would be less restrictive of the rights to liberty and the freedom of movement can be employed.”

¹⁷⁸ OSCE/ODIHR, *Human Rights Handbook on Policing Assemblies*, p. 16.

¹⁷⁹ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, para. 42; Concluding Observations of UN Human Rights Committee: Republic of Moldova, UN Doc. CCPR/C/MDA/CO/2, 4 November 2009, para. 8, recommendation d): the Committee requested Moldovan authorities to: “(d) Ensure respect for the right to freedom of assembly in accordance with article 21 of the Covenant, including through the enforcement of the 2008 Law on Assemblies and put in place safeguards, such as appropriate training, to ensure that such violations of human rights by its law enforcement officers do not occur again.”

¹⁸⁰ *Yuriy Bakur v. Belarus*, UN Human Rights Committee, UN Doc. CCPR/C/114/D/1902/2009 (2015), paras 7.9-7.10

The mere fact that an individual is participating in a peaceful assembly does not constitute reasonable grounds for conducting a search.¹⁸¹

Confiscation of property should be limited to items that are clearly unlawful and/or may be used for the commission of a crime, such as weapons, or that provide evidence that a crime has already been committed. It furthermore must be underscored that violent intentions should not be presumed peremptorily.¹⁸² In addition to being unnecessary and disproportionate, an approach treating everybody as a potentially violent person is likely to fuel tension and contribute to the outbreak of violence, rather than to prevent it.

Amnesty International recommend that the General Comment underscores that the focus of pre-emptive measures, such as stop and search activities, arrest and detention of persons wishing to participate in an assembly, or the confiscation of any items, should exclusively be carried out with a view to prevent and detect crime based on individualized suspicions and not be based on a generalized assumption of potential unlawful behaviour or intentions by assembly participants.

5.3 SIMULTANEOUS AND COUNTER-DEMONSTRATIONS

The duty to facilitate assemblies applies equally to simultaneous assemblies and to counter-demonstrations.¹⁸³ Police must, so far as is possible, seek to accommodate simultaneous assemblies. Where this is not possible due to the size of the expected assemblies and the available space, a reasonable solution should be sought that allows both assemblies to achieve their respective objectives to the greatest extent possible. The proposed solution should not afford preferential treatment on the basis of the purpose or content of the respective assemblies.

The right to freedom of peaceful assembly applies to counter-demonstrations, which should be allowed within sight and sound of the initial assembly.¹⁸⁴ However, counter-demonstration should not seek to impede participants from the initial assembly from fully enjoying their right to freedom of peaceful assembly. Accordingly, it is the police duty to protect the main assembly from any unlawful interference by counter-demonstrators,¹⁸⁵ including from violent acts or acts that seek to impede the holding of the initial assembly. Violent intentions among counter-demonstrators should not be used as a justification to prohibit or disperse the initial assembly.¹⁸⁶

The General Comment should call on law enforcement agencies to ensure that counter-demonstrations can take place within sight and sound of the initial demonstration, while protecting both assemblies from violence or other unlawful interference. However, violent behaviour by counter-demonstrators should not be used as a pretext to prohibit or disperse the initial assembly.

¹⁸¹ Joint report to the Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, para. 43.

¹⁸² UN Human Rights Committee, General Comment No. 35, Liberty and Security of Person (on Article 9 of the International Covenant on Civil and Political Rights), UN Doc. CCPR/C/GC/35, para. 17: "arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the covenant is arbitrary, including [in cases involving] freedom of assembly."; see also: Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/23/39/Add.1, paras. 41-42.

¹⁸³ Report to the Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc. A/HRC/35/28/Add.1, para. 69.

¹⁸⁴ Joint report to the Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, para. 14.

¹⁸⁵ *Plattform "Ärzte für das Leben" (Doctors for the Right to Life) v. Austria*, (10126/82) European Court of Human Rights Chamber (1988), para. 32: "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 subjected to physical violence by their opponents; such a 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 inhibiting the exercise of the right to demonstrate."

¹⁸⁶ *Christian Democratic Party v. Moldova (No. 2)*, (25196/04) European Court of Human Rights Fourth Section, (2010), para. 23: "The possibility of violent counter-demonstrations or the possibility of extremists with violent intentions joining the demonstration cannot as such take away that right."

5.4 USE OF FORCE

5.4.1 GENERAL PRINCIPLES

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles) clearly establish that law enforcement officials can use force only if non-violent means are unlikely to be effective.¹⁸⁷ In the use of force, law enforcement officials must seek to minimize harm and injury.¹⁸⁸ The Basic Principles require that in the dispersal of peaceful assemblies which are unlawful under domestic legislation law enforcement officials must exercise utmost restraint.¹⁸⁹ In any case, priority must be given to voluntary dispersal without the use of force, and if force has to be used, it needs to be proportionate to the level of resistance by the demonstrators; force that is likely to cause harm should be directed only at those individuals who are engaged in violence, and force with indiscriminate effects can only be justified in cases of widespread violence against persons, when it is no longer possible to contain the violence by dealing only with the individuals engaged in violence. It is important to underscore that participants of an assembly who engage in violence are no longer protected by the right to freedom of peaceful assembly but retain all other human rights including the right to life, to security of person and to freedom from torture and other cruel, inhuman or degrading treatment. In no circumstances may force, including the resort to less lethal weapons, be used as a means of punishment.

5.4.2 LESS LETHAL WEAPONS

General considerations

In order to fulfil their duties, law enforcement agencies should have a range of less lethal weapons and equipment at their disposal that allows for a differentiated use of force in full respect of the principles of necessity and proportionality,¹⁹⁰ and to ensure that harm and injury are kept to the minimum. Equally, law enforcement officials should be provided with adequate security and safety equipment for their own protection, like shields, helmets, fire-retardant clothing, bullet-proof vests, with a view to minimizing the need to resort to the use of force.¹⁹¹

The decision on the type of weapons and ammunition to be used by law enforcement officials must be based on an assessment of operational policing needs and technical requirements, taking into account the weapons' accuracy, their effectiveness at achieving the law enforcement objective, the risk of being discharged involuntarily, the type of injuries they may cause, and the risks involved to third persons.¹⁹²

As part of the legal review, testing should be conducted independently of the manufacturer and in accordance with recognised standards. A multidisciplinary approach should be taken with the weapon's use constantly monitored. The decision to use them must be revised in view of their effectiveness and/or the emergence of unexpected/excessive risks.¹⁹³ The results of the testing should be made public. Newly procured weapons

¹⁸⁷ The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN BPUFF), Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Principle No. 4 (hereinafter: UN BPUFF).

¹⁸⁸ UN BPUFF, Principle No. 5b).

¹⁸⁹ UN BPUFF, Principle No. 13.

¹⁹⁰ UN BPUFF, Principle No. 2: "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".

¹⁹¹ *Gülec v. Turkey*, (21593/93), European Court of Human Rights Chamber (1998), para. 71 the Court emphasized the importance of law enforcement personnel being appropriately resourced: "gendarmes used a very powerful weapon because they apparently did not have truncheons, riot shields, water cannon, rubber bullets or tear gas. The lack of such equipment is all the more incomprehensible and unacceptable because the province [...] is in a region in which a state of emergency has been declared."; see also: UN Human Rights Council, Resolution on the promotion and protection of human rights in the context of peaceful protests, UN Doc. A/HRC/RES/25/38, para. 14.

¹⁹² Amnesty International - The Netherlands, *Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, August 2015, Guideline No. 6 (on development, testing, selection and evaluation of less lethal weapons).

¹⁹³ UN Human Rights Council, Resolution on the promotion and protection of human rights in the context of peaceful protests, UN Doc. A/HRC/RES/25/38, para. 15.

should be assessed and evaluated in a pilot program and assessed in consultation with medical experts, scientists, human rights defenders and other relevant stakeholders.

Each device should be accompanied by clear protocols with instructions as to the situations in which, and how, it should be used, explaining the effects and risks of the device and the necessary precautions to be taken, as well as warnings on the circumstances or situations in which the device may not be used. Law enforcement officials must have received adequate training and certification on the device as a precondition for being allowed to use the device.

Preventing unnecessary damage and escalation needs to be taken into account when authorities are determining what equipment should be used in public assemblies (including for the purpose of dispersing assemblies). The accuracy of weapons or other equipment and the risks for demonstrators as well as uninvolved persons are important considerations to that end.

Safeguards should aim to prevent risks to third persons, and misuse or abuse in practice. Equipment or weaponry that is so inaccurate as to cause significant and indiscriminate injuries, or that may cause disproportionate levels of harm should be excluded. Law enforcement agencies should ensure that all devices deployed to their officials are accompanied by clear instructions as to when and how they may be used, along with a description of effects and risks, and necessary precautions that should be taken. Further, they should establish piloting processes for new devices to see whether they meet operational needs and technical requirements and whether instructions and training on their use were adequate. The use of any device must be subjected to pre-established thorough and rigorous reporting, supervision and control mechanisms that continually evaluate the effectiveness and effects of the device.

Weapons initially developed for military purposes should not be used in law enforcement; unless they have been adapted and tested to ensure they are effective at achieving the law enforcement objective pursued and appropriate use in law enforcement.

The manufacture, supply and use of less lethal weapons or devices that are inherently abusive, i.e. whose design has no other practical use in law enforcement than for torture or other ill-treatment, must be prohibited (e.g. spiked batons, thumb cuffs, blinding lasers and direct contact electric shock devices).

Specific considerations

Any use of less-lethal weapons should not be directed at peaceful demonstrators or by-standers, but only at persons engaged in violence. This section shall now examine certain specific less-lethal weapons in turn, providing brief recommendations on their use.

HAND-HELD KINETIC IMPACT DEVICES

- Hand-held kinetic impact devices such as batons, should not be used against a person resisting passively for the purpose of obtaining compliance with an order.
- Baton strikes to certain areas of the body should be avoided, such as head, neck and spine in view of their potentially lethal consequences.

RESTRAINTS

- Handcuffs or other restraints should never be used with the sole aim of punishing someone, They should only be kept on the minimum time necessary, and be taken off as soon as the person no longer poses a risk of harm or of attempting to flee.

CHEMICAL IRRITANTS

- Pepper sprays, or other hand-held irritant chemicals,¹⁹⁴ are not appropriate for dispersal purposes or to gain compliance¹⁹⁵ and may only be used where the subjects' behaviour presents a serious risk to public order or the physical integrity of police officers¹⁹⁶. If used, repeated or prolonged exposure should be

¹⁹⁴ The most common chemicals used in law enforcement include o-Chlorobenzylidene Malononitrile (CS), Chloroacetophenone (CN), and Dibenz(b,f)-1,4-oxazepine (CR), which are often referred to as "tear gases", and oleoresin capsicum (OC) and pelargonic acid vanillylamide (PAVA), often referred to as "pepper sprays"

¹⁹⁵ OSCE/ODIHR, "Operational", *Human Rights Handbook on Policing Assemblies*, p. 79.

¹⁹⁶ European Court of Human Rights: *Grămadă v. Romania*, (14974/09) (2014) (only in French), para. 70; *Ali Güneş v. Turkey*, (9829/07) (2012), paras 39-42 on the use of pepper spray on restrained person; *Izci v. Turkey*, (42606/05) (2013) paras 37-42, 65-66, 75, 89, 90, 95 on the use of tear gas on peaceful protesters; and *Ataykaya v. Turkey*, (50275/08) (2014).

avoided and decontamination procedures must be followed immediately. Sprays should never be used at a distance of less than one metre, in an enclosed area (e.g. a car) or on a subject who is restrained or handcuffed;¹⁹⁷

- Devices with indiscriminate effects such as tear gas or water cannons (also known as Riot Control Agents) may be used for the purpose of dispersal only and should not be used where people (participants / bystanders; violent / peaceful persons) cannot leave the scene. They may only be used where proportionate and where more targeted means have failed to contain the violence¹⁹⁸;
- Tear gas canisters should never be fired directly at a person;
- Tear gas or water cannons should never be used in confined spaces or in areas where the assembly may have difficulty in dispersing, such as football stadiums or dead-end streets.
- Law enforcement agencies should use a chemical irritant with the lowest level of toxicity that is still likely to be effective for the law enforcement objective;
- Law enforcement agencies should not expose the same targets to riot control agents several times during a short time period;

KINETIC IMPACT PROJECTILES

- The use of kinetic impact projectiles (rubber bullets, rubber balls, round batons, etc) should be the subject of clear instructions relating to range and targeting, never used for dispersal and only used against persons engaged in violence against another person;
- Kinetic impact weapons should never be shot indiscriminately into a crowd; should not be fired to bounce off the ground, and should only be aimed at the lower torso or legs;
- The use of multiple projectiles, such as metal pellets and similar ammunitions, are highly inaccurate and their use cannot comply with the principles of necessity and proportionality, and should be prohibited in crowd control situations;
- Certain projectiles with combined effects – impact, light, an explosion and / or the release of a chemical irritant – can have serious consequences that are difficult to predict and are likely to cause excessive harm. Their use should be prohibited in the context of crowd control;

ELECTRIC SHOCK WEAPONS AND DEVICES

- Projectile electric shock weapons may only be used in order to prevent the loss of life or risk of serious injury and to avoid the use of a firearm, and only where other less coercive methods have failed or are impracticable. Such weapons should never be used for the sole purpose of securing compliance with an order.¹⁹⁹ PESWs should not be used for the purpose of dispersing a crowd, but rather only in the most serious situations against individuals who present a serious threat of causing serious injury or loss of life.

OTHER INDISCRIMINATE WEAPONS

- Some less lethal weapons, such as malodorants, optical and acoustic weapons, pose particular risks which have been insufficiently researched. Their circumstances of use (distance, volume/frequency etc.) and their indiscriminate nature – the fact that they cannot differentiate between peaceful protestors and those that are engaged in violence - raise serious concerns. Their use should therefore be suspended until robust, independent research can guarantee that they can be deployed lawfully.

Amnesty International recommends that the General Comment underscores/highlights the threats to the right to life and serious injury emanating from the use of less lethal weapons and equipment in law enforcement and stresses the need for appropriate regulation of such weapons and training in their use.

It is important for the General Comment to also stress the need for such weapons to be subjected to rigorous independent testing before a decision is made to make them available for use in law enforcement. Training in their use is crucial and must include training not only in the technical skill required to use the weapon, but also in the surrounding context of a law enforcement official's duties – that is, the obligation to attempt non-violent means first, human rights and the ethics of use of force, as well as communication, de-escalation and negotiation, and minimum use of force. In that regard in referring to the international

¹⁹⁷ UN Office on Drugs and Crime (UNODC), *Resource book on the use of force and firearms in law enforcement*, New York, 2017, p. 87.

¹⁹⁸ Amnesty International - The Netherlands, *Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, August 2016, Guideline number 7, p. 37..

¹⁹⁹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *CPT Standards*, (CPT/Inf/E (2002) 1 - Rev. 2015), pp. 109, 112..

protocols for their use, it would be important to refer explicitly to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

It would be most helpful if the General Comment includes a statement prohibiting certain types of weapons, conventionally regarded as 'less lethal', but with regard to which there are known risks of serious harm, such as rubber-coated bullets and multipurpose projectiles²⁰⁰. The use of other less lethal weapons - those that can play a legitimate role in law enforcement - must be stringently regulated.

5.4.3 SEMI-AUTONOMOUS SYSTEMS

Semi-autonomous systems that deliver force through remote control, or automatically, may only be authorised for use during public assemblies where it can be ensured that such use would comply with international law, in particular international human rights law. The latter requires that there must be at any moment of the operation the respect of the principles of legality, necessity and proportionality. Individual personal accountability must be possible for any decision taken at any moment.

5.4.4 FULLY AUTONOMOUS WEAPONS SYSTEMS

The rapid development of autonomous weapons systems (AWS) could not only change the entire nature of warfare, it could also dramatically alter the conduct of law enforcement operations and raises extremely serious human rights concerns, including threats to the right to freedom of peaceful assembly. Indeed, as then UN Special Rapporteur on extrajudicial, summary or arbitrary executions noted:²⁰¹

On the domestic front, LARs could be used by states to suppress domestic enemies and to terrorize the population at large, suppress demonstrations and fight "wars" against drugs. It has been said that robots do not question their commanders or stage coups d'état.²⁰²

As it is unlikely that AWS without meaningful and effective human control could ever reach the human levels of judgement required in the lawful conduct of law enforcement, it is improbable that AWS could comply with international standards governing the use of force in law enforcement situations. It is particularly doubtful that the guiding human rights principles of legality, necessity and proportionality could be adhered to by AWS.

AWS without meaningful and effective human control would not have the capacity to correctly assess complex policing situations and comply with international standards, in particular the principles of necessity and proportionality. In addition, unlike highly trained and strictly accountable law enforcement personnel, robots could not by themselves distinguish between legal and illegal functions, or make decisions regarding the use of force, thereby seriously undermining accountability and the right to an effective remedy for arbitrary, abusive and excessive uses of force. Given the potentially grave consequences of such technology and states' existing obligations under international human rights law and international humanitarian law, Amnesty International is calling for a pre-emptive ban on the development, production, and use of fully AWS.

On 27 September 2018 the European Parliament passed a resolution calling for an international ban on lethal autonomous weapon systems and ensuring meaningful human control over the critical functions of selecting and attacking individual targets. The resolution calls for the start of negotiations on an international treaty that would prohibit lethal autonomous weapons systems. In addition, the resolution elaborates on why these weapons should be banned, underlining that lethal autonomous weapons have the potential to fundamentally change warfare by prompting an unprecedented and uncontrolled arms race. These weapons raise fundamental ethical questions and their use would raise key questions about the implementation of international human rights law and international humanitarian law, specifically that "robots cannot make human-like decisions involving the legal principles of distinction, proportionality and precaution."²⁰³ It also affirms that international law, including international humanitarian law and human rights law, fully applies to all weapons systems and their operators.

²⁰⁰ African Commission on Human and Peoples' Rights, Policing Assemblies in Africa: Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, para. 21.2.5.

²⁰¹ Report to the Human Rights Council, Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/HRC/23/47. **Error! Hyperlink reference not valid.**

²⁰² Report to the Human Rights Council, Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/HRC/23/47, p. 16.

²⁰³ European Parliament resolution of 12 September 2018 on autonomous weapon systems (2018/2752(RSP))

Amnesty International therefore recommends the General Comment explicitly expresses the view that AWS, which can select, attack, injure and kill targets without meaningful human control, should be prohibited. This call would be consistent with the recommendation made in February 2016 by the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies.²⁰⁴

5.4.5 HORSES AND DOGS

Horses are used for a series of tactical operations from hi-visibility patrols to state occasions, crowd control at demonstrations to sporting events and ceremonial duties. Canine units, are often called upon to assist in law enforcement in identifying and pursuing a suspect, detecting illegal substances (including bombs and controlled substances like illegal drugs), deterring crime, protecting officers, and controlling demonstrations. The use of horses and dogs in the management of public assemblies should comply with the same principles concerning the use of force, in particular the principles of necessity and proportionality.

The notion that dogs present a dissuasive factor during demonstrations and contribute to deseculation of violence, is not always correct. Dogs cannot differentiate between peaceful protestors and those engaged in acts of violence; and so accordingly there is a high risk of unwarranted injury. Their presence might be seen as threatening and provocative, thus resulting in the escalation of violence and causing panic. Unmuzzled dogs should be considered as highly dangerous.

Dogs should not be used as a weapon in the management of public assemblies²⁰⁵. They can be used as cordons, but not in the dispersal of an assembly. Only dogs that have been fully trained alongside their handlers can be used for law enforcement situations. The handler bears ultimate responsibility for their dog's actions.

While horses provide an advantage in terms of visibility and overview of a crowd, they can be intimidating and there is a risk of serious injuries being caused by horses charging demonstrators or by demonstrators panicking and causing a stampede. The mounted officer does not have total control of the horse and its actions. Horses must be selected following a process taking into account criteria such as size and temperament.

Horses should never be used as an offensive tool and should never be used to charge against demonstrators. Horses should only be used for the purposes of overseeing an assembly and facilitating communications with demonstrators.

5.4.6 USE OF FORCE AGAINST GROUPS AT RISK

In the use of force, special caution is required with regard to groups facing particular risk of suffering serious harm or injury, such as children or elderly. Law enforcement officials should show particular restraint when dealing with such persons. For instance, with regard to children (discussed further above), the UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, urge states to "prohibit the use of firearms, electric shock weapons and violent methods to apprehend and arrest children, and to adopt measures and procedures that carefully limit and guide the use of force and instruments of restraint by the police while apprehending or arresting children".²⁰⁶

5.4.7 FIREARMS

According to the UN Basic Principles, the use of firearms is only considered lawful in response to an imminent threat of death or serious injury,²⁰⁷ and only when less dangerous means are insufficient to achieve the intended goal - a threshold that equally applies in the context of public assemblies.²⁰⁸ Firearms may not be used as a

²⁰⁴ Joint report to the Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, para. 67(f).

²⁰⁵ OSCE/ODIHR, "Operational", *Human Rights Handbook on Policing Assemblies*, p. 72.

²⁰⁶ UN General Assembly, United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, UN Doc. A/C.3/69/L.5, para. 34.

²⁰⁷ UN BPUFF, Principle No. 9.

²⁰⁸ UN BPUFF, Principle No. 14.

means of managing public order, e.g., for the dispersal of assemblies.²⁰⁹ Even if an assembly turns violent, the use of such lethal force must remain restricted to situations of an imminent threat to life or of serious injury, subject to the requirements of necessity and proportionality.²¹⁰ Thus, firearms are not a tool for the handling or dispersing of assemblies²¹¹ and their use should be clearly limited to the serious situations mentioned in Basic Principle No. 9. Indiscriminate firing into a crowd is always unlawful.²¹² The European Court of Human Rights has clearly stated that “the use of force should be ‘absolutely necessary’ for pursuing one or more of the aims laid down in paragraph 2 of Article 2 [of the European Convention of Human Rights, which protects the right to life] and that a potential illegal or violent action from a group of persons cannot, as such, justify the immediate shooting and killing of one or more other individuals who are not themselves posing a threat.”²¹³ Therefore, utmost attention must be given to the protection of third persons, and in particular the concept of acceptable incidental harm to the lives or physical integrity of other persons, as can apply in situations of armed conflict, is not applicable in law enforcement.²¹⁴ Accordingly planning and conducting a law enforcement operation in which incidental harm is accepted from the outset would, if this results in loss of life, amounts to an arbitrary deprivation of life in contravention of the principles established by this Committee in General Comment 36.²¹⁵

Amnesty International recommends that the General Comment affirms that the use of force in the course of assemblies should be the last resort. Law enforcement officials must clearly distinguish between those engaged in acts of violence and those who are not when utilising force. Weapons and devices that are likely to cause excessive harm, including to people who are not engaged in violence, should be prohibited. Weapons that have an indiscriminate effect may only be used when there is widespread violence that authorities cannot contain by dealing exclusively with the individuals engaged in the acts of violence. Firearms are not a tool for the dispersal of public assemblies, they should only be used when there is an imminent threat of death or serious injury and when there is no danger for uninvolved people being killed or injured by law enforcement officials.

5.5 DISPERSAL

The decision to disperse an assembly should be the last resort.²¹⁶ The mere reason of an assembly being considered unlawful under domestic legislation should not lead to the dispersal of an assembly. According to the European Court of Human Rights, the mere fact that notification requirements were not fulfilled may not justify the dispersal of an assembly.²¹⁷ As long as an assembly remains peaceful, authorities should show restraint and tolerance in order to respect the right to freedom of peaceful assembly and so as not to unduly fuel tensions.²¹⁸ Furthermore, the violent acts of some individuals do not deprive those who assemble

²⁰⁹ Human Rights Council, Resolution on the promotion and protection of human rights in the context of peaceful protests, UN Doc. A/HRC/RES/25/38, paras 10, 11; see also: UN BPUFF, Principle No. 14.

²¹⁰ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/HRC/17/28, paras 60-61

²¹¹ Joint report to the Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, para. 60.

²¹² Joint report to the Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, para. 60; Report to the Human Rights Council, Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/26/36, para. 75.

²¹³ *Solomou and others v. Turkey*, (36832/97) European Court of Human Rights Fourth Section (2008), para. 78.

²¹⁴ Amnesty International – The Netherlands, *Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, August 2015, Chapters 2.5 and 5.4.

²¹⁵ Human Rights Committee, *General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, UN Doc. CCPR/C/GC/36,

²¹⁶ Joint report to the Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, para. 61.

²¹⁷ *Bukta and Others v. Hungary*, (25693/04), European Court of Human Rights Second Section (2007), para. 36: “In the Court’s view, 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.”

²¹⁸ *Nurettin Aldemir and others v. Turkey*, (32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02) European Court of Human Rights Second Section (2007), para. 46: “In the Court’s view, where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance.”

peacefully of their right to do so²¹⁹. Participants must be given the opportunity and time to disperse voluntarily²²⁰.

As a rule, there should be no dispersal of peaceful assemblies, even if they are considered unlawful under domestic legislation. In all cases, including in situations of violence, dispersal should be a measure of last resort, when all other less restrictive means have proven to be ineffective, and participants must be given the opportunity to disperse voluntarily. Force used must be proportionate to the resistance met and when using force law enforcement agencies must avoid causing injury to persons who are only passively resisting.

5.6 ACCOUNTABILITY OF LAW ENFORCEMENT AGENCIES

States must ensure the full accountability of law enforcement agencies for all their actions,²²¹ and in particular for any incidents in relation to the use of force. Where death or serious injury occurs a prompt, independent and impartial investigation must be carried out.²²² Appropriate disciplinary or criminal sanctions are essential in response to human rights violations committed by law enforcement officials. The European Court of Human Rights has established that law enforcement officials should be individually identifiable through name or personal number tags.²²³ Superior and commanding officers must be held accountable for any action or omission that led to such human rights violations being committed.²²⁴

Body-worn cameras can help to hold law enforcement officials to account. However, it should be noted that they will only ever record a situation from a certain angle and so may not provide a sufficiently clear picture of the situation to ensure the desired accountability. Furthermore, they should not be used for surveillance purposes and, therefore, storage and use of recordings needs to be clearly regulated and restricted (as discussed above in the 'Surveillance' section.). The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has underscored that "[u]nder certain exceptional situations where states may limit the right to privacy for the purposes of administration of criminal justice or prevention of crime, [...] such measures must be in compliance with the international human rights framework, with adequate safeguards against abuse. This includes ensuring that any measure to limit the right to privacy is taken on the basis of a specific decision by a state authority expressly empowered by law to do so, and must respect the principles of necessity and proportionality."²²⁵

²¹⁹ *Ziliberg v. Moldova*, (61821/00) European Court of Human Rights Fourth Section (2004), (admissibility), para. 53: "An individual does not cease to enjoy the right to freedom of peaceful assembly as a result of sporadic violence or other punishable acts committed by others."; see also: Joint report to the Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, para. 20; OSCE/ODIHR, "The Right to Freedom of Peaceful Assembly", *Human Rights Handbook on Policing Assemblies*, p. 17.

²²⁰ Joint report to the Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, para. 63; OSCE/ODIHR, "Managing Disorder", *Human Rights Handbook on Policing Assemblies*, p. 103.

²²¹ CSCE, *Moscow Meeting of the Conference on the Human Dimension of the CSCE*, 03. October 1991, www.osce.org/de/odihr/elections/14310, para. 21.2: "[OSCE] participating States are urged to 'ensure that law enforcement acts are subject to judicial control, that law enforcement personnel are held accountable for such acts, and that due compensation may be sought, according to domestic law, by the victims of acts found to be in violation of the above commitments.'"

²²² Council of Europe, *Opinion of the Commissioner for Human Rights: Concerning Independent and Effective Determination of Complaints Against The Police*, CommDH(2009)4, 12 March 2009, rm.coe.int/opinion-of-the-commissioner-for-human-rights-thomas-hammarberg-concern/16806daa54: "An independent and effective police complaints system is of fundamental importance for the operation of a democratic and accountable police service. Independent and effective determination of complaints enhances public trust and confidence in the police and ensures that there is no impunity for misconduct or ill-treatment. A complaints system must be capable of dealing appropriately and proportionately with a broad range of allegations against the police in accordance with the seriousness of the complainant's grievance and the implications for the officer complained against. A police complaints system should be understandable, open and accessible, and have positive regard to and understanding of issues of gender, race, ethnicity, religion, belief, sexual orientation, gender identity, disability and age. It should be efficient and properly resourced, and contribute to the development of a caring culture in the delivery of policing services."

The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016)

²²³ *Hentschel and Stark v. Germany*, (47274/15), European Court of Human Rights Fifth Section (2015), para. 91.

²²⁴ See also: UN BPUFF, Principle No. 24.

²²⁵ Report to the Human Rights Council, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/HRC/17/27, para. 84; see also: Joint report to the Human Rights Council, Special Rapporteur on the rights to

Independent monitoring of assemblies through the media, as well as by members of civil society, is essential to ensure full accountability of law enforcement agencies. Law enforcement officials should not interfere when journalists, human rights defenders or other are observing an assembly.²²⁶ In this regard, the European Court of Human Rights has affirmed that the public has a right to be informed about public assemblies taking place and how they unfold.²²⁷ The OSCE/ODIHR Guidelines on the Protection of Human Rights Defenders affirm that “human rights defenders and their organizations play a crucial watchdog role in any democracy and must, therefore, be permitted to freely observe public assemblies.”²²⁸

Amnesty International recommends that the General Comment emphasizes the state’s obligation to ensure full accountability for all law enforcement actions, to provide for prompt, independent and impartial investigations where human rights violations are alleged to have occurred, and to hold those responsible for such violations to account through appropriate disciplinary and criminal sanctions. Monitoring of assemblies by journalists or members of civil society, such as human rights defenders, should be respected, facilitated and protected.

5.7 THE ROLE OF PRIVATE ACTORS AND OF THE MILITARY IN THE POLICING OF ASSEMBLIES

The duty to maintain public order and to respect and fulfil the right to freedom of peaceful assembly is a duty of the state. The Inter-American Commission of Human Rights has confirmed that it is the responsibility of the state to defend, protect and ensure people’s security – a responsibility that also involves the state monopoly on the use of force - which as a rule, should not be delegated to private actors (e.g. private security companies).²²⁹ Where the state involves private actors, the state as a guarantor of human rights remains responsible for all acts and omissions by these private actors.²³⁰ The Special Rapporteur on the rights to freedom of peaceful assembly and of association has recommended civilian private security services should not perform policing-type functions in relation to assemblies.²³¹

When police provide security services to a company on a company’s property or premises under a contract stipulating the services which the police will provide in return for payment by the company, international standards on law enforcement are nevertheless clear that police must at all times fulfil their duty to serve the community and protect all persons against illegal acts, and to respect and protect human dignity and maintain and uphold the human rights of all persons.²³² That includes respecting and protecting the rights of protesters to peaceful assembly, at the same time as protecting the company’s premises, property and personnel against

freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, paras 76, 78.

²²⁶ *Pentikäinen v. Finland*, (11882/10), European Court of Human Rights Grand Chamber, (2015), para. 88: “The Court further emphasises the essential function the media fulfil in a democratic society. Although they must not overstep certain bounds, their duty is nevertheless to impart – in a manner consistent with their obligations and responsibilities – information and ideas on all matters of public interest [...]”, para. 89. In this connection, and with reference to the facts of the instant case, the crucial role of the media in providing information on the authorities’ handling of public demonstrations and the containment of disorder must be emphasised. The “watchdog” role of the media assumes particular importance in such contexts since their presence is a guarantee that the authorities can be held to account for their conduct *vis-à-vis* the demonstrators and the public at large when it comes to the policing of large gatherings, including the methods used to control or disperse protesters or to preserve public order. Any attempt to remove journalists from the scene of demonstrations must therefore be subject to strict scrutiny.”

²²⁷ *Najafli v. Azerbaijan*, (2594/07), European Court of Human Rights First Section (2012), para. 66.

²²⁸ OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders*, 2014, www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders, para. 62.

²²⁹ Inter-American Commission on Human Rights, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. 57, 31 December 2009, para. 72-73; Joint report to the Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, para. 85.

²³⁰ *Rochela Massacre v. Colombia*, Inter-American Court of Human Rights, Judgment of 11 May 2007 (Merits, Reparations, and Costs), para. 102; Joint report to the Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, para. 87.

²³¹ Joint report to the Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, para. 85.

²³² Article 1 and 2 of the UN Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979.

illegal acts, without giving preferential treatment to one or the other. Amnesty International has observed that this form of security arrangements often leads to confusion amongst the general population, including the police itself, about their role, responsibilities and to whom the police were accountable, as well as mistrust and a perception of bias from the local communities. In order to reduce tensions and allay perceptions of lack of impartiality, the police should take all possible steps to be seen to act in an impartial manner in carrying out all these aspects of their law enforcement duties. In particular, they should ensure that individual police officers who are engaged in providing security to the company do not take part in policing protests, and vice versa.

As a rule, the military should not be involved in the handling of public assemblies, since they are neither trained nor equipped to handle such situations which are completely alien to their mandate and fighting mission.²³³ If – exceptionally – they are to be deployed they must be fully trained and equipped to fulfil this task in compliance with international human rights law and standards, and they should be subject to a civilian authority.²³⁴

Amnesty International recommends for the General Comment to uphold that the responsibility to maintain public order and to facilitate the enjoyment of the right to freedom of peaceful assembly lies with the state and its organs, including its law enforcement agencies. It should confirm that, as a rule, private security companies should not be tasked with this responsibility and, if on an exceptional basis, private actors carry out law enforcement functions in relation to public assemblies, it is the utmost duty of the state to ensure that human rights remain fully respected and protected. Ultimately, the state must be held accountable for any human rights abuses occurring in such a setting. The General Comment should further urge states not to deploy the military in the handling of public assemblies.

²³³ Inter-American Commission on Human Rights, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. 57(2009), para. 101; Inter-American Commission on Human Rights, *Report on Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II Doc. 54 (2009), para. 682.

²³⁴ Joint report to the Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc, A/HRC/31/66, para. 66.

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THE RIGHT TO PEACEFUL ASSEMBLY

SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

125TH SESSION, HALF-DAY OF DISCUSSION, MARCH 2019

Amnesty International welcomes the opportunity to provide the following preliminary observations on the right of peaceful assembly, following the Human Rights Committee's (the Committee) invitation to provide written information for the half day of general discussion on 20th March 2019 on the preparation of General Comment No. 37 on Article 21 (Right to Freedom of Peaceful Assembly) of the International Covenant on Civil and Political Rights.