



FUTURE CHALLENGES TO THE PROTECTION AND PROMOTION OF THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION

SUBMISSION TO THE UN SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION

Amnesty International submits this briefing to the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association in relation to the call for inputs ahead of the report to the 44th session of the Human Rights Council in June 2020.

This submission sets out examples of future challenges to the protection and promotion of the rights to freedom of peaceful assembly and association. It should not be seen as an exhaustive list.

FUTURE CHALLENGES IN RELATION TO THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY

Online assemblies

Around the world, restrictions on the internet are having a negative impact on the right to freedom of peaceful assembly. In today's world, the internet has become both a facilitator of physical assembly, and a venue for assemblies online.

As evidenced during the unprecedented global health challenge caused by the COVID-19 pandemic, meetings and assemblies will increasingly move online. The right to freedom of peaceful assembly must be protected both in the online and offline spheres, and human rights protections for the right to freedom of peaceful assembly must be applied equally to analogous interactions taking place online. The internet has become a crucial facilitator of modern association and expression.

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. Internet shutdowns are becoming more frequent, particularly in the context of assemblies and demonstrations, including generic bans on specific sites or systems such as social media. Internet shutdowns have a notable chilling effect on the right to peaceful assembly as they particularly undermine the ability of organizers to communicate and publicize the event, and to mobilize a large group of people in a prompt and effective manner.

Facial recognition

Facial recognition technologies are increasingly being trialled or used by police and security forces to monitor public spaces, including demonstrations. 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. 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. Moreover, the use of facial recognition technologies could constitute indiscriminate mass surveillance.

Remotely-piloted aerial vehicles, or drones, are also being equipped with facial recognition technologies. 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.

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, 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.

Other surveillance technologies

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.

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.

Civil disobedience

Civil disobedience has been historically used as a tactic to raise awareness, to increase pressure and to promote change. Activists around the world have used different methods of civil disobedience to disrupt through direct and non-violent means, often including intentional violations of law. Yet, as we saw during 2019, States have responded by charging those involved in acts of civil disobedience 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.

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). 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.

International human rights standards recognise that, regardless of the infringement of a country's law, acts of civil disobedience may 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.

Counter-terrorism measures

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. 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.

Policing

States have continued to show a heavy-handed approach when policing demonstrations, often relying to the use of unnecessary and excessive force.

Weaponry

‘Less lethal weapons’ are increasingly used to disperse peaceful protests, in violation of international law. While there are circumstances in which some use of force by authorities may be lawful, we are seeing extensive misuse of weaponry. For example, teargas should only be used where there is serious and widespread violence, and a clear verbal warning has been issued urging participants to disperse. However we are frequently seeing teargas used following only sporadic violent incidents, or following a mere refusal to disperse.

Use of the military

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. 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.

Private security companies

Increasingly, States are relying on private security companies to carry out policing functions. The duty to maintain public order and to respect and fulfil the right to freedom of peaceful assembly is a duty of the state. 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). 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.

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. 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 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.

Corporations

Businesses and corporations are increasingly having a role in restricting the right of individuals to protest peacefully, including by imposing barriers on the realization of protests in private spaces.

Amnesty International has noted an increased privatization of space globally. Indeed, this is often space which was formerly publicly owned, and often continues to perform a public function. This could include, for example, the privatisation of the areas around national parliaments, or the selling off of public monuments or parks. Where privately owned spaces are open to the general public and serve a similar function as public spaces, they should be treated as a public space for the purposes of the right of peaceful assembly, and people should be allowed to carry out protests therein unless restrictions are necessary and proportionate.

Based on a corporation's responsibility to respect human rights, companies should pay attention to the risks of committing abuses of the right to freedom of peaceful assembly through their operations, as well as the circumstances in which it could contribute or be directly linked to an abuse by a customer, for example, by supplying surveillance technology to a state that monitors an assembly in a manner violating the right to privacy or while protecting private property during an assembly. Accordingly, the responsibility on businesses is to carry out due diligence to identify, prevent and address abuses of the right of peaceful assembly and associated rights by companies within their operations (including subsidiaries) and their business partners (including suppliers and customers), wherever they may be located.

States of emergency and undue restrictions to the right to freedom of peaceful assembly

Faced with an unprecedented public health emergency, and a looming economic crisis, global solidarity to safeguard our human rights has never been more needed. With tens of thousands of people already having died as a result of Covid-19, the majority of the world's population is currently facing significant restrictions and hundreds of millions are at risk of losing their jobs or incomes.

States around the world have declared states of emergency, and are imposing stringent restrictions on the right to peaceful assembly. While states are permitted in exceptional circumstances to derogate from the right to peaceful assembly, it is crucial to ensure that measures taken under a state of emergency do not become a "new normal". States must lift all emergency measures as soon as it is no longer warranted by the pandemic-related emergency, and ensure that restrictions or other derogations on human rights do not become permanent.

As restrictive measures become more long term, a conflict between justified (necessary, proportionate and time bound) restrictions to protect public health may clash against the effects these very same restrictions have on peoples' access to necessary basic provisions, such as food and clean water in many parts of the world. Potential street protests and civil unrest as the restrictions are prolonged and as its economic crash starts taking its toll, pose an increased risk of more episodes of violence in which security forces react with force to impose compliance with the restrictions and disperse assemblies amidst growing fears of the disease.

FUTURE CHALLENGES TO THE RIGHT TO FREEDOM OF ASSOCIATION

Registration

Legislation and other regulations continue to be introduced, posing barriers to the registration of civil society organizations. These have included proceedings requiring the need for authorization to operate or to gain legal personality, drawn-out and costly registration procedures, and a lack of clarity around these procedures.

Authorization regimes that require an association to apply to register and then await authorization continue to lead to delays, the need to meet additional requirements, and open the door to arbitrary decision-making by the authorities. Requirements, steps and the timing of the registration process is often complex and unclear, creating confusion in the process and leading to applications being rejected. In some cases, authorities deny registration based on unsound reasons or without any justification. Sometimes there are no effective remedies available to organizations to challenge a rejection before an impartial and independent court.

Bureaucratic hurdles and complications in the registration process have also become tools used to gather information for intelligence purposes, to discourage or disband organizations deemed undesirable, muzzle critical voices and exclude those who cannot afford the legal process and the registration fees.

Excessive burdens, arbitrary interference and powers to dissolve associations

The imposition of strict registration requirements often goes hand in hand with other complicated and onerous requirements at all stages of the life of an association, including the requirement for frequent and detailed reporting

on activities and the organization's finances. Tax and money laundering legislation is also used in some countries to control civil society organizations as well as to punish them.

Failure to comply with such regulations often leads to de-registration, suspension of licences and activities, and prosecution. Requirements and provisions are often vaguely worded, allowing for a level of arbitrariness and discretion that give authorities a free hand to target certain organizations. As a result, civil society organizations are often working in an environment where they are closely monitored and even spied on. Many organizations have taken the decision to self-censor or divert substantial energies and resources to avoid or resist reprisals.

In addition, ordinary legislation (such as tax, anti-money laundering regulations, or other legislation), and temporary or special measures including counter-terror legislation, have been misused to target and criminalize individual members of organizations or shut down entire organizations.

Counter terror legislation, including due to muddled or vague definitions and ever-shifting lists of proscribed organizations, is particularly problematic, including for humanitarian organizations who are affected in their neutrality and may see their legitimate aid work criminalized.

The right to privacy is frequently trampled by administrative requirements for organizations by imposing a highly intrusive scrutiny of their members, functions and funds prior to registration or for renewing their registration. In some countries, individuals applying for a registration licence are required to submit personal information that is not relevant for the purpose of the registration process or are required to reveal the identity of its funders and supporters. Other countries allow wide powers to the authorities to intervene in critical decisions of an organization, including by requiring the presence of a government representative at board meetings or interfering in the determination of the association's statutes, structure and activities.

Access to funding

Sources of funds for organizations have decreased and many countries have imposed tighter controls and restrictions for organizations to access resources. National sources of funding are often tied to government priorities (for example when organizations become implementers of state sponsored social and health services).

Government funding has been reducing in recent years, and it is often only open to organizations that align with government views or do not criticize and scrutinize government policy.

Access to foreign or international funding has been severely restricted in many countries around the world, where illegitimate restrictions have been imposed on organizations that receive funding from abroad, forcing many to close. Controlling or limiting such funding has been an effective way of silencing organizations perceived as critical or independent of the authorities or out of line with government policies.

Organizations that seek and rely on foreign and international funding have been constantly stigmatized, and legislation interfering with international and foreign sources is often part of a broader strategy to undermine the legitimacy of civil society organizations by portraying them as "foreign agents", "enemies of the state", or "tools of foreign governments' propaganda".

Concepts like "national or "public interest", "national security", "sovereignty" and "counterterrorism" are frequently used to justify restrictive measures and send the message that these organizations are "disloyal" and threaten the nation.

Restrictions targeting "unacceptable" voices

An increasing number of countries are enacting laws to limit certain activities and to target individuals and organizations who carry them out, such as those providing assistance to refugees and migrants, combating corruption, protecting the environment, or defending the rights of women and LGBTI people. Foreign organizations and those who receive funds from abroad have particularly been targeted by restrictive laws regulating associations. These organizations are often viewed with suspicion - as tools of foreign governments or acting against national

interests - when in reality they are promoting human rights and accountability. In many cases, legitimate activities are seen as “dangerous”, “criminal”, “against national unity” or as “acts of terrorism”.

These laws are often based on divisive politics and vague notions and the introduction of such legislation is justified on grounds such as national identity, morality, religious values or national security. They not only unduly limit the rights to freedom of association, expression and peaceful assembly of human rights defenders and civil society organizations, but also expose them to an increased risk of smear campaigns, stigmatization, harassment and attacks simply for carrying out or being related to human rights activities which those in power dislike, often because they do not align with their views or political agendas.

While there may be no legislation that explicitly prevents women from forming organizations, in practice groups who are composed of women or who defend women’s rights, including gender equality and sexual and reproductive health rights, are confronted with a variety of barriers. Many times, these barriers stem from strict rules imposed on women, the criminalization of sexual and reproductive rights, entrenched patriarchy and traditional notions about gender identity and roles, coupled with contexts of fundamentalism and other forms of religious and national extremisms, the militarisation of public security and high levels of violence in society, as well as widespread privatization of services and austerity policies.

Similarly, civil society groups who defend the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people face serious challenges in many countries due to stigmatization, discrimination, and criminalization of same-sex sexual acts. In countries where the right to freedom of association is restricted for LGBTI groups, these groups work with fewer resources and face more risks, and the communities they serve are therefore less protected.