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INTERNATIONAL



# GUIDELINES ON THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY



**PROTECT  
THE PROTEST**

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INTERNATIONAL



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**Cover photo:**

*Nairobi, Kenya, 16 July, 2024.  
A Protester holds a placard  
during an anti-government  
demonstration.*

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# INTRODUCTION

The right to freedom of peaceful assembly is universally recognized in all major international legal documents and treaties:

Art. 20 of the Universal Declaration of Human Rights (UDHR), Art. 21 of the International Covenant on Civil and Political Rights (ICCPR), Art. 11 of the European Convention on Human Rights (ECHR), Art. 11 of the African Charter on Human and Peoples' Rights (African Charter), Art. 24 (6) Arab Charter on Human Rights (Arab Charter), and Art. 15 of the American Convention on Human Rights (ACHR).

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**DEFINITION:** An “assembly” is generally understood as a gathering of two or more people for a specific purpose in a public, private or online<sup>1</sup> space (or a combination of these, whether indoors or outdoors).<sup>2</sup> Assemblies can take many different forms (including processions, occupations and encampments) and may also be long-term. They can serve many different purposes (including entertainment, education, culture, sport and commerce). While many assemblies seek to express a message to an external audience, having such an expressive purpose is not a necessary element of an assembly.<sup>3</sup>

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Where the right is engaged, states have an overarching obligation **to respect and ensure**, without discrimination, the exercise of the right to freedom of peaceful assembly.<sup>4</sup>

This obligation includes:<sup>5</sup>

- The duty to respect the right to freedom of peaceful assembly and to abstain from doing anything that infringes on the right to freedom of peaceful assembly. Hence, the authorities should not prevent, hinder or restrict people's rights except when it is necessary to do so (and then, within a human rights approach).
- The duty to take all measures to protect the exercise of the right to freedom of peaceful assembly against interference by other individuals or groups.
- The duty to fulfil the right to freedom of peaceful assembly through the creation of an environment in which people can actually exercise and enjoy the right to freedom of peaceful assembly in practice, in particular to *facilitate* the exercise of the right in ways that make it possible for participants to achieve their objectives.

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### 05/ STATE RESPONSIBILITY

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### 07/ PLANNING FOR POLICING

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### 09/ DUTY TO PROTECT

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States must put in place a legal and operational framework (alongside other measures) to comply with these obligations and to ensure that people can freely and fully enjoy the right to freedom of peaceful assembly, and they must refrain from any measures that unduly limit or restrict the exercise of the right to freedom of peaceful assembly. **The present Guidelines serve to summarize the concrete obligations states must comply with in this regard.**

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**NOTE:** These Guidelines aim to address mainly offline assemblies. However, the online and offline worlds intersect in the exercise of the right in many respects: for instance the preparation and organization of an assembly or the sharing of information prior to, during and after an assembly often take place in online spaces and are therefore an essential part of the exercise of the right to freedom of peaceful assembly. Furthermore, where assemblies take part in online spaces, many of the aspects in the present Guidelines will be applicable as well.

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# METHODOLOGY AND APPROACH

Despite its worldwide recognition, the right to freedom of peaceful assembly has been threatened in law and practice across the globe. Many international institutions, bodies and mechanisms have sought to strengthen the international human rights rules and standards applicable to this right. Relevant sources include General Comments by treaty monitoring bodies, reports of UN Charter-based bodies (including the UN Human Rights Council and its special procedure mandate holders), decisions by human rights courts, as well as thematic outputs by regional human rights bodies.

**The present Guidelines draw from a selected number of international reference documents to list in a condensed form the most important obligations that state authorities must comply with to ensure the full respect of the international human rights obligations of their country in relation to the right to freedom of peaceful assembly. These obligations cover the following 16 topics:**

1. The legal framework governing the right to freedom of peaceful assembly
2. Authorization and notification
3. Restrictions and prohibitions
4. No criminalization of organizers and participants
5. State responsibilities in relation to assemblies
6. Multiple assemblies
7. Planning and preparation for the policing of assemblies
8. A human rights based policing approach
9. Police duty to protect assemblies, organizers and participants
10. Non-discrimination in policing
11. No threats, harassment or intimidation
12. Dispersal of assemblies
13. Use of force in the context of assemblies
14. Weapons
15. Monitoring of assemblies
16. Police accountability

**The Guidelines are accompanied by explanatory notes to detail the meaning of these obligations and what is required to fulfil them.**

As much as possible, the Guidelines are directly linked to the reference documents which are drawn from universal as well as from regional sources of international law. In particular the regional references are supposed to provide human rights activists and other practitioners with the most directly applicable

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**Note for users:** Navigation to the endnotes is interactive: you can click on an endnote number<sup>n</sup> to get to its content in the list of endnotes and return to the related part of the main text when clicking on the endnote number you looked up.

You may also navigate to chapter starts by clicking on the sidebar tabs on all pages.

rules and standards for their respective contexts. Where more depth and detail is needed for a given situation in a country, the reference documents cited offer further orientation and references that may serve to address a specific problem.

Please note that in the endnotes, we have marked the publications from OSCE and Venice Commission as “Applies in Europe”, which is the region to which they are directly applicable, in addition to a number of other countries – from other regions – that are also part of the OSCE region and / or represented in the Venice Commission and you may look up whether this is the case for your country.

We are aware that weblinks provided might change; we have therefore made sure that all documents can also be found on a website which we have dedicated to collect a wide ranges of resources related to police and human rights: [Police and Human Rights Resources](#).



# ABBREVIATIONS

|                         |                                                                                                          |
|-------------------------|----------------------------------------------------------------------------------------------------------|
| <b>African Charter</b>  | African Charter on Human and Peoples' Rights                                                             |
| <b>ACHPR</b>            | African Commission on Human and Peoples' Rights                                                          |
| <b>ACHR</b>             | American Convention on Human Rights                                                                      |
| <b>Arab Charter</b>     | Arab Charter on Human Rights                                                                             |
| <b>Basic Principles</b> | United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement                      |
| <b>CCPR</b>             | Human Rights Committee                                                                                   |
| <b>CEDAW</b>            | Committee on the Elimination of Discrimination against Women                                             |
| <b>CERD</b>             | Committee on the Elimination of Racial Discrimination                                                    |
| <b>CJEU</b>             | Court of Justice of the European Union                                                                   |
| <b>CmRC</b>             | Committee on the Rights of the Child                                                                     |
| <b>CoE CommHR</b>       | Council of Europe Commissioner for Human Rights                                                          |
| <b>CPT</b>              | European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment        |
| <b>CRC</b>              | Convention of the Rights of the Child                                                                    |
| <b>ECHR</b>             | European Convention on Human Rights                                                                      |
| <b>ECRI</b>             | European Commission against Racism and Intolerance                                                       |
| <b>ECtHR</b>            | European Court of Human Rights                                                                           |
| <b>FRA</b>              | Fundamental Rights Agency                                                                                |
| <b>GC</b>               | General Comment                                                                                          |
| <b>HR</b>               | Human Rights                                                                                             |
| <b>HRC</b>              | Human Rights Council                                                                                     |
| <b>IACHR</b>            | Inter-American Commission on Human Rights                                                                |
| <b>IACtHR</b>           | Inter-American Court of Human Rights                                                                     |
| <b>ICCPR</b>            | International Covenant on Civil and Political Rights                                                     |
| <b>LGBTI</b>            | Lesbian, gay, bisexual, transgender and intersex                                                         |
| <b>ICRC</b>             | International Committee of the Red Cross                                                                 |
| <b>LLW</b>              | Less lethal weapons                                                                                      |
| <b>OSCE/ODIHR</b>       | Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights |
| <b>SR</b>               | Special Rapporteur                                                                                       |
| <b>UDHR</b>             | Universal Declaration of Human Rights                                                                    |
| <b>UN</b>               | United Nations                                                                                           |
| <b>UN WG</b>            | United Nations Working Group                                                                             |
| <b>UNGA</b>             | United Nations General Assembly                                                                          |
| <b>UNICEF</b>           | United Nations Children's Fund                                                                           |
| <b>UNODC</b>            | United Nations Office on Drugs and Crime                                                                 |
| <b>UNOHCHR</b>          | Office of the United Nations High Commissioner for Human Rights                                          |

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*Police move people on as they gathered in the Causeway Bay district of Hong Kong on 4 June, 2021, after police banned any protests on the anniversary of China's Tiananmen Square crackdown in 1989 citing the coronavirus pandemic.*

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# 1

## DOMESTIC LAW MUST GUARANTEE THAT EVERYONE IS ABLE TO FULLY EXERCISE AND ENJOY THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY WITHOUT DISCRIMINATION.<sup>6</sup>

### 1.1

#### EXPLANATORY NOTE:

States must establish a clear and explicit **legal basis** for the right to freedom of peaceful assembly that should be recognised in states' constitutions and/or legislation.<sup>7</sup> The freedom of peaceful assembly must be treated as a human right – an entitlement, not merely a privilege.<sup>8</sup>

Everyone has the right to freedom of peaceful assembly, and everyone should be able to enjoy it without discrimination.<sup>9</sup> Domestic laws must recognise the right to freedom of peaceful assembly and the legal framework should be formulated in a spirit of respecting, protecting and facilitating the exercise of this right for everyone, rather than restricting it. Such laws should neither be vague and open to overbroad interpretation, nor confer undue powers or discretion upon public officials (such as municipal authorities or the police).<sup>10</sup> The law should clearly establish the duty and responsibility of the relevant authorities to ensure everyone can exercise the right freely without discrimination.

The right to freedom of peaceful assembly is closely intertwined with other rights, such as the rights to freedom of association, freedom of expression (including the right to access information), and freedom of political participation. Restrictions on or violations of these related rights can thus lead to an interference with the enjoyment of the right to freedom of peaceful assembly. The right to freedom of peaceful assembly can only be fully protected when other overlapping rights are also protected.<sup>11</sup>

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## 1.2

### EXPLANATORY NOTE:

Everyone should be able to effectively exercise and enjoy the right to freedom of peaceful assembly free from discrimination, and **authorities must respect, protect and facilitate the right for everyone.** State authorities must not impose discriminatory restrictions on participation in peaceful assemblies and must actively address systemic forms of discrimination that undermine the effective exercise of the right.<sup>12</sup>

Each individual person has the right to freedom of peaceful assembly and authorities must respect, protect and facilitate the exercise and enjoyment of the right by *all* persons. The possibility to exercise and enjoy this right must be granted for everyone and there must be no restrictions directed against specific groups; in particular, any restrictions based on **age, citizenship, sexual orientation or gender identity and/or expression, race, colour, gender, language, religion, political or other opinion, national or social origins, property, birth or other status** would violate the duty not to discriminate.<sup>13</sup> Discrimination also operates based on the intersection of multiple protected grounds,<sup>14</sup> where it is the combination of characteristics, such as gender and ethnicity, that lead to or exacerbate compound or distinctive forms of disadvantage. States should repeal legislative provisions that perpetuate discriminatory practices or that negatively affect the exercise of the right to freedom of peaceful assembly by persons or groups historically subjected to discrimination, such as racialized people or indigenous groups, and should refrain from enacting any legislation with such an effect.<sup>15</sup>

■ **Children have the right to freedom of peaceful assembly.**<sup>16</sup> They should neither be forced to participate in assemblies nor be banned from participating only because of their age.<sup>17</sup> There should be no additional limitations on the exercise of the right to freedom of peaceful assembly by children, compared to those placed on adults.<sup>18</sup> Taking part in public debates and assemblies should be considered part of their personal development and their participation in public affairs.<sup>19</sup> Domestic legislation, regulations and any restrictions regarding their participation must be determined by the child's best interest. They must not be overly protective<sup>20</sup> and measures should be taken to facilitate and empower all children to exercise their right to freedom of peaceful assembly positively.<sup>21</sup> The concept of the child's best interest should not be used as an excuse to limit the full enjoyment of their right to freedom of peaceful assembly.

■ People who are **not citizens** of a country and **migrants** also have the right to freedom of peaceful assembly and the exercise and enjoyment of the right must be respected, protected and facilitated in the same way as for anybody else, including citizens and/or people born in the country. The fact that a person does not hold citizenship or legal status

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should not exclude them from participating in their country of residence's political, economic or social affairs.<sup>22</sup>

■ Around the world, there are many groups who **have historically been affected by discrimination**, including through legislation, such as LGBTI people, women, indigenous groups, and racialized people, including as a result of racist practices and the legacy of colonialism and slavery. This has often also had an impact on their ability to effectively exercise the right to freedom of peaceful assembly, such as preventing them from accessing certain areas, appearing together in public in groups or voicing certain calls for the respect of their rights. In a similar vein, repression of a range of women's rights, the prevalence of gender stereotypes and norms of and continued impunity for gender-based violence continue to impact the ability of women, in all their diversity, from being able to assemble freely in public and raise their voices. States should abolish any legislation that has such a discriminatory and restrictive impact on any of these groups and take proactive measures to address discrimination that impedes their enjoyment of the right to freedom of peaceful assembly.<sup>23</sup>

■ States should also **refrain from enacting legislation, or interpreting and applying legislation, in a manner that limits the enjoyment of the right to freedom of peaceful assembly by certain groups**: for instance, States must refrain from placing undue notification requirements, arbitrary restrictions and preventive bans on peaceful assemblies by LGBTI persons as well as restrictions on the public expression of sexual orientation and gender identity<sup>24</sup> (including, for example, on grounds of protecting public morality or the protection of minors or protection of 'public order').<sup>25</sup> This would amount to a discriminatory limitation of the rights to freedom of expression and freedom of peaceful assembly.

■ States have an obligation not only to refrain from enforcing discriminatory laws and practices against groups that face historical discrimination, but also to take steps to **ensure equal and effective facilitation and protection of the right to freedom of peaceful assembly of such groups**.<sup>26</sup>

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## 1.3

### EXPLANATORY NOTE:

**The peacefulness of an assembly must be presumed.**<sup>27</sup> The burden of proof for violent intentions by organizers or participants lies with the authorities<sup>28</sup> and mere anticipation of violence, or actual violence by only a few participants, does not render an assembly non-peaceful.<sup>29</sup> The right of those taking part to peacefully assemble must be respected, protected and facilitated even when others engage in acts of violence.<sup>30</sup>

Authorities should presume assemblies are peaceful and not immediately associate them with violence or regard them as a threat to public order.<sup>31</sup> The term “peaceful” should be interpreted broadly to include behaviour and actions that may annoy or offend individuals who do not support the ideas or goals promoted by an assembly.<sup>32</sup> Furthermore, mere pushing and shoving does not amount to violence.<sup>33</sup> To meet the threshold of violence or non-peacefulness in the context of assemblies, behaviour must amount to the use of physical force against others that is likely to result in injury or death, or serious damage to property.<sup>34</sup>

**The authorities should assume the participants’ intentions are peaceful unless proven otherwise.** The burden of proving that assembly organizers or participants have violent intentions lies with the authorities who must present credible evidence in that regard.<sup>35</sup> This requires objectively verifiable factual indications in relation to the specific assembly – mere assumptions based on experiences from the past are not sufficient.<sup>36</sup>

Isolated acts of violence by a few participants do not make the whole assembly non-peaceful.<sup>37</sup> Every protester exercises their right to freedom of peaceful assembly individually.<sup>38</sup> Therefore, if some assembly participants engage in violent behaviour, the peaceful participants should not be prevented from exercising their right to freedom of peaceful assembly.<sup>39</sup>

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## 1.4

**State obligations in relation to assemblies apply to *peaceful* assemblies, not only *lawful* assemblies.<sup>40</sup>**

### EXPLANATORY NOTE:

The obligations arising from the right to freedom of *peaceful* assembly apply irrespective of whether a peaceful assembly is also *lawful* under domestic law.

And breaches of domestic legislation that do not entail any violent behaviour do not render an assembly non-peaceful and do not place an assembly outside the protected scope of the right to freedom of peaceful assembly. Hence, states must not equate non-compliance with notification or other administrative regulations or non-violent acts of civil disobedience or direct action that breach domestic legislation with non-peacefulness.<sup>41</sup>

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*Bangladeshi Hindu community members gather in Sylhet on 11 August 2024 to protest against the attacks on Hindu homes, temples and shops in various parts of Bangladesh.*  
© Rafayat Khan, Majority World CIC / Alamy Stock Photo

## 2

## THE LEGAL FRAMEWORK MUST ESTABLISH A PRESUMPTION IN FAVOUR OF THE HOLDING OF AN ASSEMBLY.<sup>42</sup>

## 2.1

### EXPLANATORY NOTE:

Holding an assembly must **not be subject to prior authorization** or permission.<sup>43</sup>

A legal requirement to obtain authorization or permission to hold an assembly goes against the concept that freedom of peaceful assembly is **a right and an entitlement, not a privilege**.<sup>44</sup> The holding of an assembly should not be subject to a process of prior approval by the authorities. Only where it is necessary for the protection and facilitation of an assembly or the rights of those affected by it may the authorities establish a simple notification procedure through which those organizing a protest inform the authorities of their plans.

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## 2.2

### EXPLANATORY NOTE:

A **mandatory requirement to notify** the holding of an assembly is itself already a restriction of the right to freedom of peaceful assembly **and must be established in law, and be necessary and proportionate**. Assemblies that do not present any particular challenges, such as assemblies with only very few participants, should not be subject to a notification requirement.<sup>45</sup> Where states establish such a requirement, this should serve the purpose of enabling the authorities to prepare for facilitating the protest and, for example, protecting the rights and freedoms of others, or upholding public safety and/or public order.<sup>46</sup> Notification should not serve or be used as a means to restrict the right to freedom of peaceful assembly.<sup>47</sup> A requirement for notification should not be discriminatorily applied to target and restrict the rights of specific groups, including LGBTI persons.<sup>48</sup> The notification procedure should not be designed nor in practice be implemented in a way that would turn this process into a de-facto authorization regime.<sup>49</sup>

Many types of assembly should be enjoyed without any form of regulation at all, and should not be subject to a mandatory requirement to notify the authorities in advance, in particular those with limited impact on others because of their nature, location or limited size or duration. And the purpose of any notification requirement must be **to help the authorities to protect and facilitate an assembly** or the rights of those affected by it.<sup>50</sup> Hence assemblies that do not present any particular challenges such as assemblies with only a few participants should not be subject to a notification requirement at all.<sup>51</sup>

**Notification procedures should not be burdensome** and organizers should only be expected to share with the relevant authorities information necessary for the facilitation of an assembly. The notice period should not be excessively long and in general not be more than a few days.<sup>52</sup> Various means of filing a notification should be available to the assembly organizers, such as online, by mail, email, or submission at a designated location. Overall, the notification process should be flexible and established in a way that it is accessible for *all* people – including for people with disabilities or low levels of literacy. Notification should be free of charge.<sup>53</sup> The procedure should be flexible and allow for late notification (see further 2.4 below in relation to spontaneous assemblies) and the submission of incomplete information so that an upcoming protest can still be facilitated in accordance with the needs and preferences of the organizers and participants.<sup>54</sup> The obligation to submit formal identity documents as part of notification, list details of all assembly participants, or indicate the exact or predicted number of participants would be considered unduly bureaucratic, burdensome, and unnecessary.<sup>55</sup> Such excessive requirements could discourage people from participating in a protest.

The notification procedure should not of itself impose or trigger a requirement for further contact, dialogue or meeting with the authorities since this would render the assembly conditional on the holding or outcome of such a process (and thus essentially becomes a de-facto request for authorization). Hence, organizers should not be required to wait for a confirmation or any other form of response from the authorities.<sup>56</sup> Similarly, a notification regime would also function as an authorization system where the

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authorities routinely and systematically respond to notifications by imposing restrictions or prohibitions on the holding of assemblies, to the extent that an organizer would not proceed with the assembly unless they receive a response from the authorities.

## 2.3

### EXPLANATORY NOTE:

Where notification is required, the non-submission of prior notification should not render participation in an assembly unlawful.<sup>57</sup>

**Non-notification does not absolve the authorities from their obligations to facilitate and protect the assembly.**<sup>58</sup>

The purpose of notification should be to allow the authorities to better prepare for the facilitation and protection of the assembly. It should not be considered as “an end in itself”.<sup>59</sup> This implies that mandatory notification requirements must not be enforced unless enforcement is itself strictly necessary and proportionate to achieve one or more of the legitimate aims for which notification requirements may be introduced, notably to assist the authorities in facilitating a peaceful assembly and protecting the rights of others. **Lack of notification should not affect the freedom to hold an assembly** and the authorities should facilitate non-notified assemblies that remain peaceful.<sup>60</sup> Non-notification should not be used as a justification to disperse an assembly, arrest its participants and organizers or charge them with criminal offences.<sup>61</sup>

Ideally, in view of the very purpose of the notification, notification procedures should be voluntary, rather than mandatory. In case of any mandatory notification requirement states must be able to demonstrate that this is the least intrusive measure needed to achieve a legitimate aim (in relation to the different forms of assembly that are subject to it); at the same time they should expand the range of assemblies that are subject only to a voluntary notification scheme, and consider how voluntary notification might be encouraged (while also fully satisfying their obligations in relation to assemblies that are not notified).

**States should not impose any criminal sanction or any other undue sanctions** on organizers of peaceful assemblies for lack of notification.<sup>62</sup> Furthermore, administrative sanctions should not automatically be imposed for failure to notify,<sup>63</sup> but only where such a sanction is judged to be necessary and proportionate to achieve one of the legitimate aims underlying the notification requirement. No sanctions should be imposed on participants for taking part in an unnotified assembly.<sup>64</sup>

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## 2.4

Domestic legislation should provide for the possibility of **spontaneous assemblies** and explicitly exempt them from prior notification requirements.<sup>65</sup>

### EXPLANATORY NOTE:

Assemblies may be described as ‘spontaneous’ for at least two different reasons: lack of time and/or lack of an organizer. Assemblies may happen as a direct reaction to a recent event where the need for people to assemble at a certain time may make timely compliance with the notification period impossible. Alternatively, an assembly may be regarded as spontaneous because people come together without any identifiable organizer initiating or coordinating the assembly (so there is no organizer to submit the notification form). **All such assemblies should be explicitly recognised by domestic law and should be facilitated by the authorities.**<sup>66</sup> Spontaneous assemblies must not be dispersed merely because of the absence of prior notification.<sup>67</sup>

Where a mandatory notification system is in place and an assembly was not notified, the authorities should assess in each individual case whether the assembly could be considered to be spontaneous (and thus notification would not have been required).<sup>68</sup> This same assessment should also be made by the authorities where, during the holding of an assembly, it somehow departs from the initial plans and/or notification.

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*Amnesty International USA hosted a visual stunt to call on President Biden to demand a ceasefire now. The installation represented corpses of 300+ infants, children and adults in white body bags/sheets laid out in front of the White House.*  
© Lauren Murphy/Amnesty International USA



## 3

# THE LEGAL FRAMEWORK MUST RECOGNIZE THE HOLDING OF PEACEFUL ASSEMBLIES AS A RIGHT AND A FREEDOM MEANING THAT, AS A RULE, PEOPLE CAN PEACEFULLY ASSEMBLE *WHEREVER, WHENEVER, HOWEVER AND FOR WHATEVER* THEY WANT.<sup>69</sup>

## 3.1

## EXPLANATORY NOTE:

As a rule, **there should be no restrictions on the holding of an assembly.**<sup>70</sup> The possibility for the authorities to impose restrictions must be considered an exception<sup>71</sup> and the burden to justify restrictions lies with the state.<sup>72</sup>

Any restriction must have **a basis in domestic legislation** and this must be easily accessible to the public, be formulated clearly and be foreseeable in its application.<sup>73</sup>

**Any restrictions must also pursue a legitimate aim, be necessary and proportionate, and non-discriminatory.**<sup>74</sup> They should be

done in the spirit of facilitating the right to freedom of peaceful assembly and not discourage participation in assemblies.<sup>75</sup>

There must be a presumption in favour of holding an assembly. The prohibition of an assembly must be the last resort, and should be considered only if no other measure can achieve the legitimate objective.<sup>76</sup>

**Legality:**

Legal provisions on possible restrictions or prohibitions must not be overly vague or broad, which would open them to abuse or misinterpretation.<sup>77</sup> The public must know what to expect and be able to comply with the requirements of the law.<sup>78</sup>

To be sufficiently foreseeable in its application, law and/or relevant regulations must clearly set out criteria and considerations that should govern the decision about whether to restrict an assembly (and the form of restriction to be imposed) and under which (exceptional) circumstances an assembly may be prohibited to achieve a legitimate objective.

**In pursuit of a legitimate aim:**

Any restrictions imposed on the right to freedom of peaceful assembly must pursue one or more of the interests exhaustively listed in international human rights law – namely, the interests of national security, public safety, public order (*ordre public*), the protection of public health or morals, or the protection of the rights and freedoms of others.<sup>79</sup>

**Necessity and Proportionality:**

The **principle of necessity** requires that any restriction must be “necessary in a democratic society” (Art. 21 ICCPR, Art. 11 ACHPR, Art. 15 ACHR, Art. 24 (7)

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Arab Charter, Art. 11 ECHR) and the term “necessary” is to be understood as a pressing social need,<sup>80</sup> not just being “useful” or “reasonable”.<sup>81</sup> Restrictions on peaceful assemblies must be the least intrusive to achieve the legitimate aim being pursued,<sup>82</sup> and be guided by bearing in mind the state’s duty to facilitate assemblies.<sup>83</sup> A prohibition is the most serious interference with the right to freedom of peaceful assembly. It also can have a chilling effect on the persons who intend to participate in an assembly even if the assembly subsequently proceeds without hindrance on the part of the authorities.<sup>84</sup> A prohibition may only be pronounced as a last resort if there are no less restricting means available to achieve the legitimate objective.<sup>85</sup>

In terms of **proportionality**, any interference with the right to freedom of peaceful assembly must be strictly proportionate to the legitimate aim being pursued. The principle thus requires authorities to assess the detriment resulting from the interference with the right to freedom of peaceful assembly against its benefit to achieve a legitimate objective and the detriment should never outweigh the benefit.<sup>86</sup> This requires a careful balancing of interests with a presumption in favour of holding an assembly.<sup>87</sup>

### Non-discrimination:

The imposition of restrictions must be carried out without discrimination against those who wish to assemble and not serve to restrict the exercise of the right to freedom of peaceful assembly on protected (single, multiple and/or intersecting) grounds of discrimination such as age, citizenship, sexual orientation or gender identity and/or expression, race, colour, gender, language, religion, political or other opinion, national or social origins, property, birth or other status.

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## 3.2

**The list of legitimate objectives that may justify restrictions of the right to freedom of peaceful assembly should be interpreted narrowly by states for maximum protection of the right.<sup>88</sup>**

### 3.2.1

Restrictions in the interests of **national security** may only be imposed to protect the existence of a nation, its territorial integrity or political independence against an imminent and credible threat or use of force<sup>89</sup> and must not be based on vague general security considerations. Calls for autonomy, demanding territorial changes or changes to the constitution do not endanger territorial integrity and cannot justify the prohibition of an assembly.<sup>90</sup>

### EXPLANATORY NOTE:

States must demonstrate the precise nature of the threat, as well as its imminence and the specific risks it poses.<sup>91</sup> A general threat to the security situation would not be a sufficient ground. Authorities must not use the interest of national security as a reason to impose vague or arbitrary limitations on peaceful assemblies. For example, restrictions in the name of national security should not be used as a disguise to suppress political opposition or carry out other repressive practices. “National, political or government interest is not synonymous with national security”.<sup>92</sup> Calls to change the country’s constitution or for independence or autonomy are part of normal political debate and as such do not present a threat to national security as long as they are not associated with calls for serious violence.<sup>93</sup> Further, the risk of terrorism related attacks occurring in the context of an assembly will generally not suffice to establish a threat to the existence of the nation, its territory or political independence.<sup>94</sup> Such risks may, however, fall under the scope of public safety (3.2.2.) or public order (3.2.3.).

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### 3.2.2

Authorities may only impose restrictions on grounds of **public safety** if the presence of the assembly participants creates a real and significant risk to the life or security of persons or a real and significant risk of serious damage to property.<sup>95</sup>

### EXPLANATORY NOTE:

Public safety could come into play in relation to **the planned location of an assembly**: for instance, if the expected number of participants does not allow for the safe holding of an assembly in a particular area due to a risk of overcrowding or stampede, or because of the weight limits of a bridge, or because the area is insufficiently secured against the risk of accidents (such as people falling from height, into water, or onto railroads or highways). The proximity of a hazardous facility with the presence of explosives, high-voltage installations, or an otherwise unsecured environment could also give rise to public safety concerns.<sup>96</sup> However, the obligation to facilitate assemblies and the principle of necessity requires in such a situation that authorities take extra precautionary measures – for instance through cordoning off the infrastructure, while facilitating the assembly at a safe distance – to protect assembly participants and others, rather than choosing to unnecessarily restrict the right to freedom of peaceful assembly. Only if that is not possible, should authorities offer suitable alternatives, such as a place that can accommodate the anticipated number of participants within sight and sound of the target audience if this can be safely achieved, limiting the number of participants to the assembly area or channelling a suitable number of participants through the problematic area. And in doing so, the authorities should choose the least intrusive option.

**Anticipated terrorism related acts** could potentially be considered a threat to public safety. However, a general fear would not suffice to justify restrictions on an assembly: the risk must be real and significant and relate to the holding of a particular assembly (for example, to the time and place where an assembly is supposed to be held). Where the authorities have credible information that indicates a generally heightened risk of terrorism related attacks, any restrictions on assemblies should not exceed those imposed on other activities in the public space and should not exclusively limit the exercise of the right to freedom of peaceful assembly.<sup>97</sup>

Further, **the relevant authorities must first seek to mitigate the risks involved as much as possible before imposing restrictions** on an assembly and there must be a case-by-case analysis of the risks relating to the particular assembly in question. Any restrictions should be the least restrictive to effectively address the threat.

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The holding of a peaceful assembly must never be demonized, categorized or treated as a terrorism related act. Any statement by the authorities or any piece of domestic legislation that equates peaceful assemblies (or a certain type of assemblies) with terrorism related acts, and thus discourages or otherwise curtails the exercise of the right, would be a violation of the right to freedom of peaceful assembly.<sup>98</sup>

### 3.2.3

Only serious disorder can justify restrictions of the right to freedom of peaceful assembly for the purpose of protecting **public order**.<sup>99</sup> A certain level of disturbance of public life, including free flow of traffic, is inherent to the right to freedom of peaceful assembly, must be tolerated and cannot justify restrictions or even a prohibition of an assembly.<sup>100</sup> Further, the fact that a peaceful assembly may be met with hostility by others does not necessarily justify its restriction, let alone its prohibition.<sup>101</sup>

### EXPLANATORY NOTE:

The term “public order” has been defined as “the sum of the rules that ensure the proper functioning of society, or the set of fundamental principles on which society is founded.”<sup>102</sup> However, given the importance of the right to freedom of peaceful assembly and that a certain level of disruption is inherent to the holding of assemblies, authorities are required to concretely spell out the specific public order risks they anticipate and these must be sufficiently serious to justify restrictions on the assembly at stake. A merely hypothetical risk of public disorder due to the assembly or the presence of hostile (counter-)protesters would not be legitimate grounds for imposing restrictions, unless they would serve to better facilitate and protect the assembly without countering its purposes.<sup>103</sup> Moreover, even though peaceful assemblies may cause some disruption to society’s daily functioning, annoyance, discomfort or shock to bystanders, this would not amount to a disruption of public order.<sup>104</sup> **Only serious disruption could justify restrictions, when this is placing an excessive burden on the public.** Even then, the authorities are required as much as possible to take measures mitigating the disruption, for instance through the diversion of traffic, before restricting an assembly. In any case, prohibition must be the last resort when the disruption is so serious and sustained that it goes beyond what must be tolerated and cannot otherwise be mitigated or prevented.

### 3.2.4

Restrictions on peaceful assemblies to **protect the rights and freedoms of others** who are not participating in the assembly but who may potentially be impacted by it<sup>105</sup> must be the exception rather than the rule and be kept to the minimum necessary for the purpose. Members of the public must expect and tolerate some interferences with their rights in light of the importance of the right to freedom of peaceful assembly.<sup>106</sup>

### EXPLANATORY NOTE:

Assemblies, by their nature, may impact upon or disrupt the ordinary life of others, such as businesses, schools, and public services. Considering the importance of the right to freedom of peaceful assembly, such disruption should be tolerated and accommodated.<sup>107</sup> **Only if the disruption amounts to a disproportionate interference with these rights may the authorities decide to impose certain restrictions to protect the rights and freedoms of others.** Any such restrictions should be kept to the minimum necessary for this purpose and be the result of a careful balancing exercise giving due weight to the right to freedom of peaceful assembly.<sup>108</sup> Furthermore, the authorities should explicitly state:

- which specific rights and freedoms of others they aim to protect in the particular circumstances,
- the extent to which the proposed assembly would, if unrestricted, interfere unduly or excessively with these rights and freedoms,
- how any restrictions on the proposed assembly would serve to mitigate these interferences,
- why less restrictive measures would not be successful.<sup>109</sup>

### 3.2.5

If at all, states may only in rare and exceptional cases be able to justify restrictions of the right to freedom of peaceful assembly on the basis of the protection of **public morals**.<sup>110</sup>

### EXPLANATORY NOTE:

**States may only impose restrictions that can be aligned with the universality of human rights, the principle of pluralism and the right to freedom from non-discrimination.**<sup>111</sup> They must not impose restrictions to protect public morals solely based on a single social, philosophical or religious tradition.<sup>112</sup> In particular, laws that seek to prohibit or restrict public discussion of sexual orientation and gender identity, often under the pretext of “protecting minors”, encourage the stigmatization of and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI ) persons. They lead to the targeting and ongoing persecution of the country’s LGBTI community, including through abuse and violence, and such laws should be repealed. States must ensure that LGBTI groups are not subjected to any forms of discrimination and raise the public’s awareness of equality and non-discrimination on the basis of sexual orientation and gender identity.<sup>113</sup>

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## 3.2.6

States may only exceptionally impose restrictions in the interests of protecting **public health** if they are evidence-based and there is a serious threat to health. Authorities may only impose such restrictions on assemblies if other similar gatherings, such as crowds in shopping areas, concerts or sports events, are also restricted due to public health concerns.<sup>114</sup> Protection of public health should not justify pre-emptive blanket bans on assemblies.<sup>115</sup> Instead, any limitations imposed on assemblies must be on a case-by-case basis, and only as a measure of last resort if less restrictive means would not be sufficient to protect public health.<sup>116</sup>

## EXPLANATORY NOTE:

Restrictions on grounds of public health may be justified for example, if there is a substantial risk to participants' health or the general public during an assembly due to an outbreak of an infectious disease or sanitary situation.<sup>117</sup> The Covid-19 pandemic has revealed the challenges in ensuring the protection of public health and enabling the exercise of the right to freedom of peaceful assembly. Nevertheless, **even when a highly infectious disease poses a significant risk to public health, public assemblies may only be prohibited as a last resort** and based on a compelling need, when other measures such as physical distancing and wearing face masks are insufficient to address the situation. Being able to exercise the right to freedom of peaceful assembly and publicly voice opinions or concerns is important during a pandemic (and sometimes precisely because of the difficulties brought about by it). Measures and restrictions related to holding assemblies during a pandemic should be applied consistently with the measures and restrictions related to other activities, which members of the public are still allowed to carry out.<sup>118</sup>

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## 3.3

**States must not impose blanket prohibitions** on holding assemblies at certain times, places or in a certain manner, since they are intrinsically disproportionate and thus a violation of the right to freedom of peaceful assembly.<sup>119</sup> In particular, participants must be able to hold an assembly within **sight and sound** of their target audience.<sup>120</sup> Any restrictions related to the **time, place or manner** of holding an assembly must be determined on a case-by-case basis and be necessary and proportionate, and must not be applied in a discriminatory manner.<sup>121</sup> Furthermore, **the prohibition of a specific assembly must be a measure of last resort**, imposed only if there is a pressing need in the concrete circumstances and when restrictions or other less intrusive measures are manifestly ineffective in achieving the objective in the given situation. Public assemblies constitute as legitimate a use of public space as any other.<sup>122</sup> An assembly should never be prohibited merely for the purpose of guaranteeing the uninterrupted use of public space for routine purposes such as commercial activities or the free flow of traffic.<sup>123</sup>

**EXPLANATORY NOTE:**

A blanket ban of assemblies is the general prohibition of all assemblies, of a certain type of assemblies (held by certain groups, or for certain purposes, or in a certain manner), or of all assemblies to be held at a particular time or place. It is a sweeping one-size-fits-all approach that does not allow for case-by-case consideration of the particular facts (and thus of different situations, intentions, activities, conduct or consequences). Blanket bans on the exercise of the right to freedom of peaceful assembly are disproportionate because they preclude an individualized assessment which weighs, in the particular circumstances, the impact on the right to freedom of peaceful assembly against the benefit to the interest motivating the interference with this right. Blanket bans also fail to allow for legitimate exceptions where these might be justified.

**Time:** There should be **no general prohibition on holding assemblies, for instance, at night time, on specific dates or during specific times such as election periods.**<sup>124</sup> While the holding of assemblies at night time can generate legitimate, additional concerns related to the safety and security of participants and neighbourhoods, this does not justify the general prohibition of assemblies at night time. Rather, the authorities must take into consideration the size, duration and manner of the assembly to determine whether there is a need for restriction and to prioritise additional measures (for example, regarding street lighting, limitation of the use of acoustic devices) to ensure the safety and security of all involved or potentially affected.<sup>125</sup>

Electoral periods are particularly important times for the holding of assemblies.<sup>126</sup> While tensions may also occur in such a context, the prohibition of assemblies will likely increase such tensions. Instead, authorities should undertake particular efforts to facilitate and protect assemblies and take appropriate precautionary measures to prevent tensions leading to physical confrontations and violence.

Further, participants of peaceful assemblies should have sufficient time to express their views or pursue other assembly goals.<sup>127</sup> Authorities should generally leave peaceful assemblies to end by themselves.<sup>128</sup>

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**Place:** No location (such as in the proximity of government buildings, parliaments or other public institutions) should be completely excluded for holding assemblies,<sup>129</sup> nor should assemblies be limited to specifically designated areas. **Holding an assembly within sight and sound of the intended target audience is an essential element of the right to freedom of peaceful assembly** and requiring that an assembly takes place at a location that is not within sight and sound is incompatible with the right to freedom peaceful assembly – unless the restriction can be justified as necessary and proportionate in the particular circumstances.<sup>130</sup> The same applies to holding assemblies at a place of particular symbolic importance for the topic of the assembly.

Large public assemblies can affect the free flow of traffic and the accessibility and functioning of businesses, public services and institutions, etc. However, this does not justify banning assemblies in certain locations: The use of public space for the purpose of holding an assembly is as legitimate a use of public space as its use for traffic, businesses or other purposes.<sup>131</sup> Hence, a certain level of disruption must be accepted and tolerated and authorities should rather consider mitigating measures such as diverting traffic, or keeping sidewalks open to enable access to buildings.<sup>132</sup>

**The holding of peaceful assemblies in privately owned spaces is also protected.**<sup>133</sup> As a rule, there is no justification for authorities restricting peaceful assemblies held in private spaces with the consent of the owner. Only exceptionally could an interference be justified for safety and security concerns, such as the need to comply with fire protection standards or similar regulations. For assemblies held without the consent of the owner, a careful balancing of interests is required, including considering whether the concerned space is generally open to the public, such as shopping malls or privatized public places,<sup>134</sup> whether or not the conduct of an assembly disproportionately impacts the rights of the owners and other users of the same space, as well as taking into account the importance of an assembly being held within sight and sound of the target audience.<sup>135</sup>

**Manner:** People are free to decide the way in which they will hold an assembly, for example as a static demonstration or a march or procession (by any means: on foot, with bicycles, cars etc.), with acoustic devices, speakers or music, and/or the use of cultural, religious or ceremonial items or activities.<sup>136</sup> They may also display flags, signs and banners,<sup>137</sup> wear uniforms, or decide to conceal their faces for instance through the use of face coverings.<sup>138</sup> To achieve a legitimate objective as provided for in Art. 21 ICCPR, these elements can be regulated on a case-by-case basis, but only if this is necessary and proportionate in the concrete situation. For instance, in the context of a public health crisis such as the Covid-19 pandemic, instead of completely prohibiting an assembly, authorities could request certain measures to prevent the further spreading of the disease, such as wearing face masks and keeping physical distance between participants.<sup>139</sup>

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## 3.4

## EXPLANATORY NOTE:

Restrictions and prohibitions must **not be discriminatory and must be content-neutral**, provided that the content does not constitute propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, which (under international law) states are required to prohibit.<sup>140</sup> The messages conveyed by an assembly or the goals it strives to achieve, even if offensive, shocking or disturbing, should not give grounds for states to impose restrictions.<sup>141</sup> States must not, explicitly or implicitly, restrict peaceful assemblies which express political opposition to a government, challenge the authorities, call for changes of government, the constitution or the political system, or pursue self-determination.<sup>142</sup>

The exercise of the right to freedom of peaceful assembly must be protected equally for everyone without discrimination.<sup>143</sup> Any restrictions imposed by states on peaceful assemblies should be content-neutral, must not discriminate against certain groups or individuals, and the **authorities should not misuse their powers to restrict peaceful assemblies to prevent assembly messages with which they disagree**. States should not impose restrictions where peaceful protests are organized specifically to challenge forms of discrimination, such as anti-racism protests, and particular efforts should be made to protect the rights of those who are or have been subjected to discrimination.<sup>144</sup> In particular, the authorities should not use counter-terrorism measures as a tool to repress the exercise of the right to freedom of peaceful assembly.<sup>145</sup> Where participants of assemblies incite others to discrimination, hostility or violence, authorities should, as far as possible, adopt the least intrusive and restrictive measures to address the issue,<sup>146</sup> for instance by taking action only against the perpetrators rather than imposing restrictions on the assembly as a whole.<sup>147</sup>

**The display of flags, signs and banners is a legitimate form of expression** (including in the context of assemblies) that should not be restricted, even in circumstances where their display is perceived as offensive or shocking.<sup>148</sup> Given too that flags and symbols can often have multiple meanings, restrictions on their use should be limited to exceptional cases – namely, where their display amounts to advocacy of hatred constituting incitement to discrimination, hostility, or violence. Any restrictions on symbols, flags or other forms of expression must meet the requirements that apply to any permissible limitation of the right to freedom of expression – they must be set forth in law, formulated precisely, meet the requirements of necessity and proportionality, and be non-discriminatory.

The mere display of a symbol or flag, without more, is very unlikely to reach the threshold of advocacy of hatred that constitutes incitement to discrimination, hostility or violence. States may prohibit only forms of expression that reach that threshold, having made a careful assessment of the relevant contextual elements on a case-by-case basis.<sup>149</sup>

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### 3.5

As a rule, there is **no need to derogate** from the right to freedom of peaceful assembly even in a state of emergency.<sup>150</sup>

#### EXPLANATORY NOTE:

Generally, the possibilities to prohibit individual assemblies and restrict the right to freedom of peaceful assembly are sufficient to respond to any emergency situation.<sup>151</sup> Often, **a situation of a state of emergency seriously impacts on people in ways that make it even more important for them to raise their voices.**<sup>152</sup>

Hence, in such situations, all options to enable people to raise their voices should be explored despite the declaration of a state of emergency<sup>153</sup> and authorities should undertake particular efforts to facilitate assemblies despite the circumstances.

Decisions to restrict or even to prohibit an assembly must be made for each individual case and be thoroughly justified – a generalized reference to the state of emergency would be clearly insufficient in that regard. When states nevertheless decide to derogate the right to freedom of peaceful assembly, they must be able to justify this by a situation presenting a threat to the life of the nation, and that the derogation is strictly required by the exigencies of the situation in compliance with Article 4 ICCPR.<sup>154</sup>

### 3.6

States must ensure that any decision that prohibits an assembly or otherwise restricts in any way the exercise of the right to freedom of peaceful assembly is subject to **effective, timely, independent and impartial judicial review.**<sup>155</sup>

#### EXPLANATORY NOTE:

Organizers and participants must have the possibility to take legal action and to appeal against any restrictions in relation to the intended assembly to the judiciary in a timely manner.<sup>156</sup>

Decisions of the authorities to prohibit an assembly or to impose any other restrictions must be taken sufficiently in advance of the assembly to allow for judicial proceedings to take place before the planned date of the assembly. **An independent and impartial judicial authority should be readily available** to fully assess the restrictions in view of their legality, necessity and proportionality.<sup>157</sup> **Appeal proceedings should be simple and speedy** enough to allow for a review – and where necessary, a correction – of restrictions prior to the intended time of the assembly.<sup>158</sup> Where domestic proceedings require a prior appeal with the administrative authorities in charge of the decisions related to the assembly, such proceedings must also be easy and speedy enough and they should not prevent a judicial review if the administrative appeal was not successful.<sup>159</sup>

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*Nigerian Police officials arrest a protester during a demonstration against violence by the police at the Lekki tollgate in Lagos on 13 February 2021.*  
© Olukayode Jaiyeola/NurPhoto/Alamy Stock Photo



# 4

## STATES SHOULD NOT CRIMINALIZE THE ORGANIZATION AND PARTICIPATION IN PEACEFUL ASSEMBLIES.<sup>160</sup>

### 4.1

Activities that are commonly observed during assemblies, such as road blockages, should not be treated as criminal offences.<sup>161</sup> **There should be no sanctions for peaceful acts of civil disobedience that break a domestic law that is itself violating international human rights law and standards.**<sup>162</sup> Where such peaceful acts violate a domestic law that is complying with international human rights law and standards, authorities must consider the specific circumstances of the act of civil disobedience and if restrictions or sanctions are imposed, they must be permissible under international human rights law – in particular, they must pass the three part test of being in conformity with the law, pursuing a legitimate objective, and being necessary and proportionate. If criminal or administrative sanctions are imposed, they must be commensurate with the recognizable offence committed<sup>163</sup> and custodial sentences should be avoided. Authorities must give due consideration to the importance of the right to freedom of peaceful assembly and peoples' need to get their voices heard.<sup>164</sup> Mere participation in a peaceful assembly that is considered unlawful under domestic law is protected and should not be treated as a criminal offence.<sup>165</sup>

#### EXPLANATORY NOTE:

Freedom of peaceful assembly is a right. The mere exercise of the right to freedom of peaceful assembly should not be treated as a criminal offence. Authorities must not criminalise either those organizing or those participating in peaceful assemblies.<sup>166</sup> And public officials **must refrain from making statements that stigmatize or incriminate** those who are merely exercising their human rights.<sup>167</sup> Further, failure to comply with assembly requirements such as to obtain authorization for holding an assembly – which is in contravention with international human rights law – or for failing to notify an assembly must not be criminalized.<sup>168</sup> And organizing or participating in a spontaneous assembly or a not-notified assembly does not make it unlawful and must not be considered a criminal offence.<sup>169</sup> **Authorities should also not criminalise activities that are typical for peaceful assemblies**, such as expressing criticism or verbally responding to police.<sup>170</sup> Laws that criminalize the organization and/or participation in assemblies by specific groups, such as racialized people, foreigners, LGBTI, or women, are a violation of the duty not to discriminate and must be repealed.

Further, they should refrain from applying terms for criminal offences such as “incitement to rebellion”, “terrorism”, “sabotage”, “incitement

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to crime”, and “attack or resistance to public authority” to the mere organization of or participation in an assembly, and must not arbitrarily apply these terms to justify arrests or prosecutions of assembly organizers or participants.<sup>171</sup> **Authorities may only charge protesters suspected of committing serious offences and posing a real threat to public safety or public order**, and only if the criminal offence is established in a law that is unambiguous, providing strict, precise and unequivocal terms and defines clearly the punishable acts.<sup>172</sup> Any such legislation must not be applied in a discriminatory manner by targeting specific groups, such as racialized people, foreigners, LGBTI people, or women.

Moreover, **authorities must not criminalize expression in the context of public assemblies**<sup>173</sup> unless it is concluded that it amounts to advocacy of hatred that constitutes incitement to discrimination, hostility or violence and when it reaches a particularly high threshold, including the presence of intent to incite violence or other harm; the likelihood that others will commit such violence or other harm; and a clear and direct link between the expression and that violence or other harm. The fact that participants may choose to conceal their identity does not by itself present a threat to public safety or order and should not automatically be considered to indicate the intention of participants to commit an offence.<sup>174</sup> The concealment as such should not be established as an offence.<sup>175</sup> Any act that consists of merely exercising a human right such as the rights to freedom of peaceful assembly or freedom of expression should not be established as an offence, and acts of civil disobedience that break such a law should not be sanctioned.

**Authorities must not restrict, including through criminal sanctions or custodial sentences, peaceful acts of civil disobedience that break a domestic law that does not itself comply with international human rights law and standards.**

When peaceful acts of civil disobedience break a domestic law that does comply with international human rights law and standards, authorities must take into account the protections granted to the exercise of the rights to freedom of expression and peaceful assembly. Should any criminal or administrative sanctions be imposed, these must be commensurate with the recognizable offence committed. The risk of facing severe sanctions may have a chilling effect on those wishing to take part in peaceful assemblies and hence present an undue interference with the right to freedom of peaceful assembly.<sup>176</sup> This applies for instance to protests involving road blockages, that may cause annoyance or even damages, but that should not be met with

disproportionate restrictions – this would seriously jeopardize the rights to freedom of expression and peaceful assembly, in particular for groups that have no other way to express themselves publicly.<sup>177</sup>

Furthermore, recognizing the importance of the rights to freedom of expression and peaceful assembly, domestic laws must provide public interest defences for anyone charged with peaceful acts of civil disobedience so that, on a case-by-case basis, courts take into account the motivation(s) for, and the expressive nature of, the act(s) in question. Custodial sentences for peaceful acts of civil disobedience should be avoided as they are likely to constitute a disproportionate restriction of the right to freedom of peaceful assembly.

## 4.2

Neither organizers nor participants should be held liable for the acts of others.<sup>178</sup>

### EXPLANATORY NOTE:

**Organizers of peaceful assemblies must not be held liable for unlawful acts of other participants.**<sup>179</sup> Even if a protest that was initially peaceful turns violent, organizers should not be charged with criminal offences, for example, for organizing the demonstration, nor be held financially liable. Organizers should only be held responsible for their own conduct (for instance, if they themselves directly incited others to violence). The same applies for participants who should only be held liable for their own conduct, but not for acts of other participants. If some participants in an assembly are behaving violently or committing other offences, those behaving peacefully should not be held criminally responsible for taking part in the assembly or for any offences committed by others.

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*Protester in Warsaw at a protest in front of the parliament against new laws violating the independence of the judiciary, July 2018.*

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# 5

## AUTHORITIES MUST PROVIDE FOR AN ENVIRONMENT IN WHICH PEOPLE CAN ASSEMBLE FREELY.

It is the state's responsibility to facilitate peaceful assemblies.<sup>180</sup>

### 5.1

#### EXPLANATORY NOTE:

The responsibility for maintaining public order and providing safety and security lies with state authorities, not with the organizers and should not be shifted towards them.<sup>181</sup>

The authorities may not require assembly organizers to ensure public order, safety and security. This is and remains a core responsibility of the authorities.<sup>182</sup> The possibility of holding an assembly should not be dependent on organizers making arrangements to protect public order, safety and security. While the authorities may discuss measures aimed at maintaining public order, safety and security with organizers to ensure the holding of the assembly as intended, such discussions should be voluntary on the side of the organizers and the responsibility for the implementation of these measures remains with the state. If the organizers do not wish to engage in such discussions, this does not absolve the authorities from facilitating the assembly in the best possible way. Often, organizers of assemblies arrange stewards to assist and give directions to assembly participants. Such measures, however, must be voluntary and should not be a legal requirement.<sup>183</sup> Stewards should not be given the responsibility to maintain public order.

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## 5.2

### EXPLANATORY NOTE:

**Organizers should not be financially liable for the costs of an assembly.**<sup>184</sup>

It is part of the obligation to facilitate peaceful assemblies that state authorities provide all relevant services such as policing, cleaning and medical aid.<sup>185</sup> The authorities may not request that the organizers of an assembly provide such services, nor should they impose the related costs.<sup>186</sup>

Charging fees to assembly participants or organizers is an interference with the right to freedom of peaceful assembly, one that might prevent people from being able to exercise the right to freedom of peaceful assembly, or at a minimum, have a chilling effect on the exercise of the right. Organizers should neither be financially liable for costs related to public disorder or other harms, nor should they be required to get an insurance to cover such costs.<sup>187</sup>

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### 5.3

States also have an obligation to **address underlying structural factors** that impede the enjoyment of the right to freedom of peaceful assembly by specific groups, such as intersectionally discriminated groups, and to proactively address any barriers these groups may face.<sup>188</sup>

#### EXPLANATORY NOTE

**States should proactively address any stereotypes, norms, attitudes and behaviours that perpetuate discrimination** against groups on the basis of gender, sexual orientation and gender identity and/or expression, race, caste, class, disability, migration status, religion and others. They should also establish effective policies, public campaigns and educational programmes to combat discriminatory social norms, attitudes and harmful stereotypes about women's and girls' roles and capabilities that discriminate and discourage their involvement in public life and the exercise of the rights to freedom of peaceful assembly and of association. Participation of women in protests should be facilitated by tackling unpaid care work and gender stereotypes that act as barriers to women's ability to exercise their right to assembly.<sup>189</sup> Access to peaceful assemblies must be ensured for persons with disabilities.<sup>190</sup>

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London, UK, 27 April 2024. British-Israelis and other supporters staged a counter-protest alongside the route of the National March for Palestine, calling for the release of the remaining hostages held captive in Gaza since 7 October 2023.  
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# 6

## AUTHORITIES MUST ACCOMMODATE THE INTERESTS OF DIFFERENT ASSEMBLIES, INCLUDING SIMULTANEOUS ASSEMBLIES AND COUNTER-DEMONSTRATIONS.<sup>191</sup>

### 6.1

#### EXPLANATORY NOTE:

**Simultaneous assemblies** intended to take place at the same time and in the same place should be facilitated as far as possible and authorities should not prioritize one of the assemblies if both can be accommodated.<sup>192</sup> Only if that is not possible should the authorities find a fair, non-discriminatory and transparent solution for both assemblies, offering alternatives that still allow the message of each assembly to be effectively communicated.<sup>193</sup>

Authorities must accommodate as much as possible simultaneous assemblies and find **suitable solutions for all assemblies** intended to occur at the same place and time. If two assemblies cannot be accommodated at the same time in the same place, for example, due to a lack of space, authorities should make alternative locations or times available for both assemblies to be able to reach their target audiences. When it is not possible to accommodate two (or more) assemblies at the same time and place, authorities must apply **fair, non-discriminatory and transparent rules** regarding any prioritization. Rules should not favour a specific group or purpose of an assembly (such as government friendly assemblies) nor allow for one group intentionally preventing another group to hold an assembly at a given time or place (for example, systematic pre-emptive notification of assemblies at times and places of symbolic nature for another group).<sup>194</sup> Solutions could also imply granting different time slots to both assemblies at the same place or finding a suitable location nearby for one of the assemblies. In any case, the procedure should not allow one group to “block-book” an assembly place and date with a view to impede another assembly to take place.<sup>195</sup>

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## 6.2

## EXPLANATORY NOTE:

**Counter-demonstrations** to express opposition to other assemblies must be facilitated in the same manner as the assembly they are opposing and be allowed to take place within sight and sound of the assemblies at which they are directed.<sup>196</sup> However, the authorities must ensure that participants of assemblies and counter-demonstrations do not impede each other's right to freedom of peaceful assembly.

**Counter-demonstrations are assemblies in their own right,** and they must be allowed to be held **within sight and sound** of the assembly they are opposing. While facilitating a counter-demonstration, the authorities should ensure that there is no physical interference with the other assembly and that any threat of imminent violence can be reduced or prevented.<sup>197</sup>

Whenever needed, law enforcement agencies must take precautionary measures and **protect both assemblies from violence** or from attempts to prevent participants from exercising their right to freedom of peaceful assembly.<sup>198</sup> This could, for example, be achieved through a police cordon or other barriers that prevent direct physical contact between the two groups, while ensuring that they are within sight and sound of each other.

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*Tunisian lawyers hold a protest outside the Palace of Justice in Tunis over the arrest of two lawyers during recent police raids at the national bar association headquarters on 16 May 2024.*

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# 7

## LAW ENFORCEMENT AGENCIES MUST BE DULY PREPARED FOR THE FACILITATION OF PEACEFUL ASSEMBLIES.<sup>199</sup>

### 7.1

#### EXPLANATORY NOTE:

Law enforcement agencies should have policies, regulations and contingency plans in place that enable them to appropriately police assemblies and these must be formulated with a **focus on facilitation**, not just the anticipation of problems and violence.<sup>200</sup>

Law enforcement agencies need to have policies and protocols in place that guide the policing of assemblies. These should be formulated in a spirit of facilitation with the objective to ensure as much as possible the holding of each assembly in a way that makes it possible for organizers and participants to achieve their objectives.<sup>201</sup> While law enforcement officials also need to take into consideration a wide range of potential problems, the overall approach towards assemblies should not from the outset focus on possible eruption of violence and public disorder, but rather consider a way of policing that seeks to prevent problems from occurring and to maintain a constructive (and voluntary) relationship with assembly organizers and participants. Plans and protocols that concentrate primarily on how to address public disorder and violence, are likely to lead to a rather aggressive, if not repressive policing approach that is likely to lead to an escalation of tensions that will actually produce the very problems, police should try to prevent and avoid.

While in many instances, law enforcement agencies will know with sufficient time ahead that an assembly is going to take place, this may not be the case for unnotified and/or spontaneous assemblies, that should also be facilitated.<sup>202</sup> For such situations, it is important that law enforcement agencies have contingency plans in place<sup>203</sup> that enable (if necessary) an immediate deployment of required resources with clear responsibilities for all involved levels of the agency. Contingency plans should include the provision of essential services, including traffic management, emergency services and medical services.<sup>204</sup> Public communication protocols should ensure that the public is

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immediately informed about such an assembly taking place and how daily routines, including traffic, public transport and access to the assembly area might be affected. Even if an assembly is unnotified and/or spontaneous, or if organizers and participants do not want to engage in dialogue with authorities, the response of the law enforcement agency should still be driven by a facilitative approach.<sup>205</sup>

## 7.2

Only law enforcement officials **duly trained in the facilitation of assemblies** should be deployed to public assemblies.<sup>206</sup> Units exclusively trained for addressing violence should not be deployed from the beginning of an assembly but only be called-in once a situation is seriously deteriorating.<sup>207</sup>

### EXPLANATORY NOTE:

The policing of assemblies should be conducted only by law enforcement officials trained for that purpose and who have received training on the relevant human rights standards.<sup>208</sup> The training should provide knowledge of the laws applicable to assemblies, an understanding of assembly facilitation, as well as effective communication, negotiation, and mediation skills.<sup>209</sup> Training of law enforcement officials deployed to public assemblies should be practical, scenario based and include as a minimum the following elements:<sup>210</sup>

- A full understanding of their obligation to facilitate assemblies and the practical implications of that duty;
- The development of communication skills, in particular of de-escalation, negotiation, mediation and peaceful settlements of conflicts;
- The human rights compliant use of force, including how to avoid the need to resort to the use of force;
- The human rights compliant handling of the equipment and weapons they are provided with.<sup>211</sup>

Police should also be trained to recognize the specific needs of individuals or groups, for example, women, children, or persons with disabilities, in situations of heightened risk.<sup>212</sup>

In most countries, law enforcement agencies have specific units in charge and trained for the handling of public assemblies. Such specialization can be a very useful approach, provided they are instructed and trained for the wide range of assemblies they may encounter and that in their training, they can develop all skills required for effective facilitation of assemblies, including

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communication and de-escalation skills. However, where specialized units are instructed and trained as what are often called “anti-riot”-units, their deployment must be handled with great care, since their instructions and training will specifically focus on situations of violence and the use of force in response to these situations.<sup>213</sup> Therefore, they should not be routinely deployed in response to peaceful assemblies. They should only be deployed to an assembly when the situation has deteriorated to a level where serious violence is likely to occur and dialogue or other de-escalation measures are not working anymore. In turn, law enforcement officials directly deployed to assemblies should have received the full range of instructions and training enabling them to fulfil their responsibilities in a constructive, facilitative attitude with a view to avoiding the need to resort to the use of force.<sup>214</sup>

In addition, training of law enforcement officials should be periodically reviewed, taking into account lessons learnt from past assemblies and legal and policy developments aimed at enhancing the protection of human rights.

## 7.3

All law enforcement officials should have **appropriate, fit-for-purpose, equipment and weapons**.<sup>215</sup> Equipment and weapons that cannot be used in a human rights compliant way or that have not been tested for their suitability in a law enforcement context should never be used.<sup>216</sup>

### EXPLANATORY NOTE:

A law enforcement agency must have a wide range of equipment available, allowing for responses that are appropriate to the different challenges that public assemblies may present, such as:

- Communication equipment both for internal communication and communication with the assembly participants and the general public.
- Protective equipment (including shields, helmets, not-inflammable uniforms, protective gear).<sup>217</sup>
- Less lethal weapons to address specific forms of violence in a differentiated manner.<sup>218</sup>
- Different means of transport.
- Mobile barricades.<sup>219</sup>

A law enforcement agency should only have at its disposal equipment that is specifically fit for lawful law enforcement purposes. This excludes from the outset any equipment and weapons that have been developed for other purposes and/or not been tested for their suitability and human rights compliance in a law enforcement context and/or that otherwise cannot be handled in accordance with human rights law<sup>220</sup> (in particular, in light of the harm(s) they might cause, if that is per se excessive and therefore disproportionate, and cannot be mitigated), such as:

- **Water trucks from the fire brigade:** not developed nor tested for use in law enforcement;<sup>221</sup>
- **Water cannons combined with chemical irritants:** lack of testing regarding appropriate concentration, risk of excessive concentration of chemical irritants as well as prolonged exposure;<sup>222</sup>
- **Bird shot ammunition:** developed for hunting purposes and highly inaccurate and excessively harmful;<sup>223</sup>
- **Other highly inaccurate and / or harmful kinetic impact projectiles** such as multiple projectiles,<sup>224</sup> rubber balls and rubber coated metal projectiles;<sup>225</sup>

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■ **Long range acoustic devices:** developed for maritime long distance communication and never assessed for their suitability and human rights compliance as a weapon in law enforcement: unclear risk of serious harm to hearing, nose and nervous system;<sup>226</sup>

■ **Electrified shields<sup>227</sup> or barriers:** high risk of causing excessive harm and producing escalation and panic;

■ **Barbed wire:** high risk of causing excessive harm;<sup>228</sup>

■ **Electric shock batons:** inherently abusive and dangerous;<sup>229</sup>

■ **Spiked batons:** inherently abusive and causing excessive harm;<sup>230</sup>

■ **Tear gas grenades combined with additional effects** such as blasts and explosives: serving contradictory purposes and likely to cause excessive harm;<sup>231</sup>

■ **Any other explosives:** causing excessive harm;

■ **Automatic firing weapons:** uncontrollable risk of causing serious injury and death to many people.<sup>232</sup>

Any equipment or weapon deployed in public assemblies must have undergone thorough testing regarding its effects and potential risks, as well as its suitability (i.e. that it is capable of being used in a human rights compliant manner in a public order context, including public assemblies).<sup>233</sup> It must be accompanied by appropriate instructions and law enforcement officials deployed must be proficient and certified in its use. However, this means its deployment in a given situation will have to be decided on a case-by-case basis based on careful consideration of each individual assembly.

## 7.4

**A clear chain of command** must be in place for decision making, supervision and control in the policing of assemblies and decisions taken in the context of assemblies must be traceable with clear responsibilities assigned to the respective command level to ensure accountability.<sup>234</sup>

### EXPLANATORY NOTE:

In the course of an assembly a great variety of decisions may have to be taken and these can impact at different levels. From a situation that can be handled by an individual law enforcement official (for instance calling for medical assistance to a participant who has become unwell), to the sudden need to close a certain route for the general public because the incoming number of participants is greater than expected, up to a decision to disperse an assembly or to resort to the use of weapons. Who within the chain of command is given the responsibility to make a given decision must be clear from the outset.<sup>235</sup>

In this regard it is particularly important that responsible commanders ensure that all law enforcement officials are properly briefed prior to their deployment about the operational plans in respect of an assembly and what is expected of them.<sup>236</sup>

**Decisions taken must be traceable**<sup>237</sup> to ensure proper accountability for any departure from domestic law or internal plans and protocols, for human rights violations that may have been committed and for any casualties caused as a result of a decision taken (or of any omission).

Furthermore, a pre-established system of supervision and control must be in place in order to allow for corrective measures whenever needed.

There should be different levels of command and control within a law enforcement agency to ensure that decisions are taken at the most appropriate level,<sup>238</sup> bearing in mind that even apparently low level decisions can impact the entire assembly: For instance, the use of a weapon by an individual law enforcement official can easily lead to an escalation of the situation resulting in more widespread violent confrontations between police and participants. Hence, except for very concrete situations of individual self-defence, the decision on the use of weapons should be limited to a level within the chain of command where the overall situation can be duly assessed and a careful balancing can be made between the need to respond to a given situation and the risks of contributing to an escalation that could be avoided.

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Decisions that directly affect the entire assembly should similarly be reserved to a high level in the command chain: for instance, decisions to disperse an assembly, or decisions to resort to wide area chemical irritants or water cannons, need to be taken at the highest level of the chain of command where all relevant information can be accessed, and an informed decision can be taken.<sup>239</sup>

Such a clear chain of command and decision-making structure becomes particularly important in contexts where several units or forces are deployed that normally don't operate together: the risk that one unit or force does not know or understand what is decided or done at the level of another unit or force can easily lead to contradictory decisions and actions with potentially disastrous outcomes for the entire assembly situation.

The internal communication process must ensure that any decision taken at whatever level is transmitted throughout the chain of command.

**Relevant decisions must be recorded** in order to identify the law enforcement official responsible for the decision at stake.<sup>240</sup> This will also allow for proper oversight of what happened after the assembly and facilitate a lessons-learned process for future assemblies.

## 7.5

**Military armed forces are generally not suitable** for policing assemblies and should not be deployed to police public assemblies.<sup>241</sup> If unavoidable, it must be ensured through instructions, training and appropriate equipment that they can carry out that task in full compliance with international human rights law.<sup>242</sup> They should be placed under civilian command and they should be held accountable for their actions in front of ordinary (not military) jurisdiction.<sup>243</sup>

### EXPLANATORY NOTE:

The military should not be involved in policing assemblies because they are not adequately instructed, trained and equipped for law enforcement.<sup>244</sup> Only in exceptional circumstances may they be deployed temporarily in support of the police.<sup>245</sup> In such cases, **military personnel must have received appropriate instructions and training in relation to policing assemblies in a human rights compliant way and follow the same international law standards as law enforcement officials.**<sup>246</sup> The military should be placed under the civilian command.<sup>247</sup>

Military personnel deployed in policing assemblies must:

- Be given appropriate law enforcement equipment and weapons (such as protective gear and batons) and be proficient in their use (see Guideline 7.3);
- Understand that they have the obligation to protect and serve the public in the context of an assembly, are not dealing with an enemy and that any intervention in relation to a peaceful assembly should aim to facilitate it in a way that makes it possible for participants to achieve their objectives;
- Operate in a way that seeks to facilitate the assembly and ensure its smooth running;
- Be able to constructively and politely communicate with any member of the public and to solve conflicts peacefully;
- Know that the use of force should be last resort and that – as a rule – there is no place at all for the use of lethal force.

The implementation of all this is quite a complex undertaking given that military are instructed, trained and equipped for a totally different purpose: to neutralize an enemy. In circumstances where military deployment is unavoidable, state authorities must carefully assess whether they can ensure that military deployed can carry out law enforcement duties in a lawful, human rights compliant manner. If this cannot be ensured, they must refrain from deploying the military.<sup>248</sup>

It must furthermore be ensured that **the military are fully accountable for any human rights violations or otherwise unlawful behaviour.** For the policing of assemblies they should not be subject to the opaque jurisdiction of military courts and rules of military discipline, but to the ordinary and not the military jurisdiction, in full transparency and with respect for fundamental judicial guarantees.<sup>249</sup>

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A vigil in Brussels, featuring pictures of the disappeared, to express solidarity with the Saturday Mothers, ahead of their 1000th vigil. Saturday Mothers/People are relatives of victims of enforced disappearances, who have been prevented from organizing peaceful assemblies in Istanbul's Galatasaray Square, a place of symbolic importance to the group.

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# 8

## LAW ENFORCEMENT AGENCIES MUST PRIORITIZE THE FACILITATION AND PROTECTION OF ASSEMBLIES.<sup>250</sup>

Their approach should be driven by the concept of *Knowledge, Facilitation, Dialogue, and Distinction*.<sup>251</sup>

### 8.1

#### EXPLANATORY NOTE:

**Knowledge:** Law enforcement agencies should try to understand those who are organizing and participating in the assembly with a view to better facilitating the assembly in accordance with the interests and aims of those participating and to avoid misunderstandings or unnecessary provocations.<sup>252</sup>

**Understanding of the public taking part in an assembly helps law enforcement agencies to duly prepare for an assembly** and adopt appropriate measures to ensure the assembly can take place as intended.<sup>253</sup> However, this is not to be confused with surveillance and similar intelligence gathering measures that involve interference with human rights, such as the right to privacy and other rights, and that therefore require a justification on an individual case-by-case justification in accordance with international human rights law and standards.

Obtaining a good knowledge and understanding the issues around a particular assembly should be possible without any intrusive measures and law enforcement agencies should seek to obtain this knowledge and understanding in particular in the following areas:

- What is important to those taking part in the assembly: their aims and interests, history and traditions, including symbolic places or actions;
- Any particular sensitivities or critical aspects (with a view to avoid misunderstandings or unintended provocations);
- Their relationship with specific groups or the general public to anticipate potential hostilities;
- The degree of heterogeneity: the larger an assembly, the more likely that there are many different smaller groups that may have different objectives or sensitivities;<sup>254</sup>

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- The presence of any persons with specific needs such as children, older persons, or persons likely to face hostility and discrimination.

This should enable authorities to properly prepare and take appropriate measures to guarantee that the objectives of the organizers and participants can be met. However, the obligation to facilitate an assembly (and to ensure the safety of participants) persists irrespective of the level of knowledge and understanding law enforcement agencies have regarding a particular assembly.

## 8.2

### EXPLANATORY NOTE:

**Facilitation:** Law enforcement agencies should have a facilitative approach towards the assembly through supportive measures and the display of a degree of tolerance.<sup>255</sup> Zero-tolerance approaches, for instance in response to non-violent acts of civil disobedience, must be avoided since they are counterproductive, likely to contribute to unnecessary tensions and escalation,<sup>256</sup> and have a chilling effect on those taking part in the assemblies.

Law enforcement agencies should contribute to creating a suitable environment for the assembly participants to convey their message and achieve their goals, while also ensuring their safety.<sup>257</sup> They should identify what measures are needed to ensure that the assembly can take place as planned and should be ready to take all measures that can help and support this.<sup>258</sup>

**Measures to support the holding of an assembly** include for instance:<sup>259</sup>

- Information and guidance of the general public, in particular of people living, working or running businesses in the area where the assembly is likely to take place;<sup>260</sup>
- Information of organizers and participants of any potential problems, for instance construction areas, hazardous places, other events taking place in the vicinity, risks related to weather conditions;
- Diversion and orientation of traffic;<sup>261</sup>
- If necessary, keeping sidewalks open to allow for access to buildings;
- Anticipating any needs for protecting the assembly against hostility from others and taking protective measures as required;
- Provision of medical assistance;

- Offer contact points for organizers, participants, media, journalists, observers.

Police should display a certain degree of tolerance in case of minor unlawful conduct that does not present any more serious risk to anyone or to the peaceful character of the assembly.<sup>262</sup> Zero-tolerance approaches characterized by a robust intervention in relation to minor offences or misbehaviour can have a chilling effect including for those behaving peacefully and lawfully and also lead to unnecessary confrontation and a dangerous escalation of an otherwise peaceful assembly.

If, for example, individual protesters cause minor damage to property, such as damaging street signs, immediate police intervention may further escalate the situation, leading to more serious violence. In such cases, showing restraint and tolerating minor unlawful actions, for the time being, may overall be beneficial to handling the situation and thus ensure that the assembly can proceed without hindrance. If justified, prosecution or fines may be initiated at a later stage.<sup>263</sup>

Such tolerance should also be displayed in case of minor departures from pre-established conditions of the assembly:<sup>264</sup> for instance, if a specific route was predetermined, but the protesters take a different turn, police should consider letting the assembly proceed its course if the new route does not harm anyone and does not present any particular risk.<sup>265</sup>

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## 8.3

### EXPLANATORY NOTE:

**Dialogue:** Communication and dialogue must be the preferred mode of interaction of law enforcement with assembly organizers and participants as well as other stakeholders.<sup>266</sup> Communication with organizers and participants should reflect the goal of facilitation and take place in a way that enables an open and transparent two-way dialogue<sup>267</sup> and not a top-down, one-sided order-like communication. Dialogue should always be voluntary on the side of organizers and participants<sup>268</sup> and their refusal should not negatively impact on the willingness or the efforts of the authorities to effectively facilitate the assembly. Police should address any problems primarily through communication, de-escalation and peaceful settlement of conflicts.<sup>269</sup>

**Constructive communication between police and assembly participants can contribute to effective assembly facilitation and protest policing.**<sup>270</sup> Law enforcement officials should reach out to the assembly organizers before the assembly.<sup>271</sup> This can allow relevant parties to discuss and potentially agree on the necessary security and public safety measures to be undertaken before the assembly takes place and develop a mutual relationship of trust. However, this communication should be voluntary on the side of the organizers and participants; the authorities should not oblige organizers or participants to negotiate any aspects of an assembly,<sup>272</sup> and the absence of such communication should not negatively impact on the authorities' willingness and efforts to effectively facilitate the holding of the assembly. They might, however, consider involving other stakeholders who may be better placed to constructively engage with organizers than law enforcement officials.<sup>273</sup>

It is a good practice for law enforcement agencies to adopt a **transparent approach** whereby the police inform, and explain to, organizers and participants beforehand how they intend to operate in the context of an assembly (sometimes referred as a "no-surprises policy").<sup>274</sup> For instance, the measures intended by police to facilitate the assembly, to handle traffic and to maintain public order, or any potential problems the police anticipate and how they would eventually handle such problems.

Such a policy can help to prevent misunderstandings and avoid situations when assembly participants will be taken aback by something they may not have expected and that they do not understand – provided it is done in a constructive manner that maintains the facilitative approach and is not done in a threatening way, such as: "If you do / do not do this, we will do this!"

Law enforcement agencies must be aware that their presence actively influences the evolution of an assembly, whether they intervene or not. Hence, they should not be driven by a purely reactive way of responding to problems, but should instead seek to **proactively uphold human rights in a constructive and facilitative manner** to avoid tensions from arising. If tensions arise during an assembly, police should first attempt to de-escalate them.<sup>275</sup> The peaceful settlement of conflicts should always be prioritized and a strict, zero-tolerance and robust policing approach must be avoided.

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■ **Verbal techniques of de-escalation** can include, for example, dialogue with protesters (where this is voluntary) and methods of mediation and reassurance.<sup>276</sup> Police must always try to engage with the assembly participants and pick up communication lines if they have been lost. Police officials should also be ready to explain their actions and omissions and accept responsibility for them where appropriate.<sup>277</sup> Such actions might quickly relieve tensions or help restore public order and thus avoid more intrusive forms of intervention. They should make sure that their direct or indirect communication and attitude are not perceived as intimidating, offensive or insulting by participants.<sup>278</sup>

■ **Offering a point of contact** for organizers, participants or stewards can serve to enable discussion of any problems occurring and possible ways to address them.<sup>279</sup> The visible presence of dedicated law enforcement officials specifically trained in engaging with protesters may provide a useful point of contact and may help establish and maintain open lines of communication between protesters and the police command, but any such engagement must always be entered into entirely voluntarily on the part of protesters.<sup>280</sup>

■ **Removing signs of force** in a tense but not yet violent situation can have a de-escalating effect, for example: Moving water cannons or police vehicles out of sight when they are not being used or calling off anti-riot police in protective equipment and letting local police officers in regular uniforms take charge of the situation.<sup>281</sup>

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## 8.4

### EXPLANATORY NOTE:

**Distinction:** Law enforcement authorities must distinguish between people who are behaving unlawfully and / or violently and those who are not.<sup>282</sup> They should not treat the entire assembly as a homogenous group.<sup>283</sup>

Law enforcement agencies must be aware that **participants in an assembly are not a homogeneous group** and they must be able to distinguish between participants when reacting to the behaviour of individuals. The fact that one or a few individuals engage in violent or otherwise unlawful behaviour does not automatically mean that the rest of the assembly will do so as well. Since everyone taking part in an assembly is exercising their individual right to freedom of peaceful assembly, the behaviour of others, including if this is violent, does not take away or diminish the right of those acting peacefully.<sup>284</sup> Hence, if police intervention is warranted, the police must try to address the situation as much as possible by dealing directly and exclusively with the individuals concerned – and this, in the first place, through dialogue and de-escalation, while ensuring that others in the assembly may proceed without interference.<sup>285</sup>

Furthermore, how a situation evolves in the case of violent or otherwise unlawful behaviour of a few individuals will to a large extent also depend on how police react to such behaviour. They must carefully assess whether the behaviour in question indeed warrants intervention or whether it can be tolerated with a view to maintaining the overall peaceful atmosphere of the assembly. In particular, **law enforcement officials must show a high level of tolerance to unlawful conduct that remains peaceful.**<sup>286</sup>

Where the police consider that the removal of certain individuals from the assembly is a necessary and proportionate measure, it will be crucial to explain the intervention to the rest of the participants in order to avoid a general increase of tension.

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*'Reclaim the Night' protest by women in front of RG Kar Hospital in Kolkata, India, following the rape and murder of a female doctor. Thousands of women participated in this rally and protest on 15 August 2024*  
© Swattik Jana/Pacific Press

# 9

## AUTHORITIES MUST PROTECT ASSEMBLY PARTICIPANTS FROM ANY HARM OR VIOLENCE FROM OTHER PEOPLE OR GROUPS WHO OPPOSE OR SEEK TO PREVENT OR DISRUPT THE ASSEMBLY.<sup>287</sup>

Law enforcement agencies have a particular duty to protect – before, during and after the assembly – those who are likely to suffer from discrimination and hostility<sup>288</sup> and they should fulfil this duty without any form of discrimination.

### EXPLANATORY NOTE:

If the content of an assembly presents controversial or unpopular ideas, authorities should ensure that organizers and participants of such an assembly are protected from hostility or acts of violence from individuals or groups holding opposing positions.<sup>289</sup> While peaceful counter-protests must be allowed and facilitated in the same way as the main assembly,<sup>290</sup> **violent actions or acts that seek to prevent another assembly from taking place in the intended way should be prevented.**<sup>291</sup> Authorities should ensure that all people present at a protest or involved in the assembly organization are protected from harassment, violence, including all forms of discriminatory abuse and attacks.<sup>292</sup>

Authorities must also investigate any allegations of human rights violations and abuses against assembly participants and organizers, and if there is sufficient evidence, ensure that perpetrators are brought to justice in court proceedings that comply with international fair trial standards.

The duty to protect extends to the run-up and immediate aftermath of the assembly:<sup>293</sup> authorities should ensure the protection of the participants during the assembly itself and when exercising activities associated with an assembly but outside the immediate context of the gathering. For example, planning an assembly, distributing information about it, communicating and exchanging information between assembly participants and organizers before and during an assembly, and travelling to the assembly location as well as when leaving the assembly.<sup>294</sup>

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Law enforcement agencies must comply with their duty to protect at all times and without discrimination towards anyone taking part in an assembly – including when protests are directed against the state and the law enforcement agency itself.

**The fact that an assembly may be met with hostility and violence from other groups does not justify its prohibition or dispersal.**<sup>295</sup> It is the duty of law enforcement agencies to protect the assembly from such hostility and violence and they may not use the situation as a pretext to prohibit or disperse the assembly.<sup>296</sup> Only in rare and exceptional situations, when it becomes clear that it will be impossible for a law enforcement agency to sufficiently protect the assembly could restrictions or a prohibition be considered.

Law enforcement agencies should also be aware of and trained regarding **specific (groups of) individuals within an assembly who might require particular protection** and take appropriate measures:<sup>297</sup> people who are often discriminated against might face an increased risk of being intimidated, harassed or attacked. This may apply often for instance to racialized people. In addition to that, women or LGBTI people might face a particular risk of sexual harassment and other forms of violence. Furthermore, some people might experience intersectional discrimination, which places additional hardship on them due to the combination of characteristics, such as for instance indigenous women or LGBTI people of colour. Law enforcement officials should be specifically sensitized to such risks and be trained on how to address them. There must be adequate and accessible survivor-centric protection mechanisms, developed in consultation with human rights groups, to prevent and rapidly respond to all acts of gender-based violence during protests, including legal aid and medical support, which takes into account the situations of risk in which they find themselves as a result of historical social contexts of discrimination. This should include the immediate assessment of risk and provision of protection through the implementation of a wide range of effective measures and survivors must be supported in seeking protection, accountability and redress. Any protective measures should avoid imposing undue financial, bureaucratic or personal burdens on survivors.

Protective measures should not just be taken in the area of the assembly. A particularly dangerous situation for participants likely to face hostility can also arise at the moment they leave the assembly and law enforcement officials should be available to ensure participants can leave the area safely without being attacked.

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*Pride in Brussels on 18 May 2019. Amnesty theme: we march for those who can't.*

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# 10

## IN THE POLICING OF ASSEMBLIES, LAW ENFORCEMENT AGENCIES MUST FULFIL THEIR DUTY NOT TO DISCRIMINATE AND REFRAIN FROM ANY DISCRIMINATORY BEHAVIOUR THROUGH ACTIONS OR OMISSIONS.<sup>298</sup>

### EXPLANATORY NOTE:

Law enforcement agencies must ensure the facilitation and protection of all peaceful assemblies irrespective of who is participating and what is the purpose of the assembly and law enforcement officials must refrain from any discriminatory behaviour towards anybody in the assembly – be it through actions, omissions or verbally.<sup>299</sup>

It would not be acceptable for police to let some assemblies happen without interference and intervention, while displaying a strict, zero-tolerance or even repressive approach with others.<sup>300</sup> **No police reaction in a given situation – for instance, the decision to disperse an assembly, the use of force, or the way they communicate with certain members of the public – should be discriminatory towards specific individuals or groups.** In particular, law enforcement agencies must not practice discriminatory and racist policing including racial profiling, over-policing, disproportionate arrests and incarceration, discriminatory use of criminal offenses against protesters, or use of technology potentially leading to discrimination, and they must always refrain from any unlawful use of force, including in a discriminatory manner specifically targeting specific individuals or groups.

In a similar vein, the omission of effective protection for certain groups such as racialized people, women, LGBTI people, who are likely to face hostility by others would not only constitute a violation of the duty to protect, but potentially also the duty not to discriminate.<sup>301</sup>

States should thoroughly review relevant laws, policies and practices to effectively address the structural discrimination that people of African descent or other groups are facing by law enforcement agencies.<sup>302</sup>

To stop and prevent any discriminatory behaviour in the context of assemblies, **law enforcement agencies need to address discrimination in a systemic manner.**<sup>303</sup> they should be equipped to identify and investigate patterns of

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discrimination by police, such as ethnic profiling, use of force that unnecessarily, excessively or arbitrarily targets specific groups, or any other forms of discrimination. They should collect and publicize disaggregated data and examine the extent and impact of systemic racism or other forms of discrimination and adopt effective measures that address and eradicate them at an institutional level.<sup>304</sup> Law enforcement agencies should design and fully implement effective policies and programmes to prevent and detect interventions by police officers and other law enforcement personnel which are motivated by racism, racial discrimination, xenophobia or related intolerance. They must ensure full accountability and sanction perpetrators for such misconduct. **Effective measures must be taken to eliminate any law enforcement practices relying, to any degree, on race, colour, descent or national or ethnic origin as the basis for subjecting persons to investigatory activities or for determining whether an individual is engaged in criminal activity (“racial” or “ethnic” profiling).**<sup>305</sup> There also needs to be effective training for all law enforcement officials in how to carry out their work in a non-discriminatory manner as well as how to confront any discriminatory acts by their colleagues. Such training should be adequately resourced, and rigorously enforced and monitored.

The command leadership of a law enforcement agency should publicly condemn all forms of harassment and violence committed against assembly participants who are members of groups facing historical discrimination, and express commitment to protect and respect the right to freedom of peaceful assembly of these groups.<sup>306</sup> They should robustly intervene in case of any discriminatory acts or omissions by law enforcement officials and the agency should offer specific opportunities for reporting such behaviour and ensure effective investigation.<sup>307</sup>



*Kyung Seok Park, the representative of the South Korean movement Solidarity Against Disability Discrimination (SADD), and other activists are blocked by the police shields during a protest in Seoul in January 2023. The movement seeks to remove stigma against disability and advocate for the right of the disabled community to mobility, education, and labour.*

© SADD



# 11

## LAW ENFORCEMENT AGENCIES MUST NOT TREAT ASSEMBLIES AS A THREAT.<sup>308</sup>

They must themselves refrain from any measures that are threatening, overly intrusive, harassing or may have a chilling effect on those wishing to exercise their right to freedom of peaceful assembly.<sup>309</sup>

### 11.1

#### EXPLANATORY NOTE:

The appearance of law enforcement officials deployed must as much as possible be non-threatening to avoid a chilling effect on assembly participants as well as an unnecessary increase of tension.<sup>310</sup> The number of law enforcement officials deployed should be commensurate to the situation (number of participants, level of pre-existing tensions, and the overall security situation).<sup>311</sup> Any show of force, or deployment of special, often so-called “anti-riot”, forces in full body armour should only ever start once a situation has seriously deteriorated.<sup>312</sup> Law enforcement officials should be individually **identifiable by their name or an individual number** assigned to them, clearly displayed and visible on their uniform as well as on their protective gear.<sup>313</sup>

Law enforcement agencies should ensure that verbal communication, body language, gestures, and any type of indirect communication are not perceived by the organizers and participants as intimidating, offensive, or insulting.<sup>314</sup> In particular, a strong show of force can have a chilling effect on participants of an assembly, likely to dissuade people from joining the assembly and exercising their right to freedom of peaceful assembly.<sup>315</sup> It will also from the outset increase tensions with a high risk of escalation and violence.<sup>316</sup> Deploying excessively large numbers of officials compared to the size of the assembly, forces wearing full body armour and the large presence of heavy weaponry such as rifles for tear gas or kinetic impact projectiles, water cannons or even firearms with lethal ammunition – all this is giving the impression to participants that they are perceived as a threat that will be countered with heavy force, instead of being part of an assembly that the law enforcement agency should be willing to facilitate. Such an appearance is also contradicting any constructive communication and cooperation with organizers that may have taken place in the run up to the assembly, since participants will perceive this as intimidating and confrontational, turning the relationship to police into an enemy relationship.<sup>317</sup>

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Generally, law enforcement officials deployed should wear regular uniforms, possibly only with some lighter protective equipment. The deployment should be proportionate to the number of participants and the anticipated need for their protection.<sup>318</sup> Only in exceptional circumstances, when it is justified by the concrete circumstances, should they wear full body armour.<sup>319</sup> When law enforcement agencies consider it necessary to have more heavily equipped units available to respond to potential large scale violence, it is a good practice to keep them out of sight of the assembly in stand-by to avoid any unnecessary intimidation and provocation.<sup>320</sup>

Law enforcement officials should have nameplates or numbers visibly displayed on their uniform or riot gear.<sup>321</sup> Displaying such means of individual identification – besides fulfilling the agency's duty to be accountable – is a sign of transparency and willingness to be accountable<sup>322</sup> that has on its own a de-escalating effect.

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## 11.2

## EXPLANATORY NOTE:

Law enforcement officials should not carry out any **stops and searches** in the context of assemblies, unless there is an objective and individualised, reasonable suspicion of a person committing a serious offence.<sup>323</sup> Generalized stop-and-search activities in the context of assemblies (for instance at checkpoints established for that purpose), as well as random stops or discriminatory stops targeting specific people because of who they are, are overly intrusive, will have a chilling effect on anyone taking part in the assembly and are a violation of the right to privacy.<sup>324</sup>

**The use of police powers to stop and search a person must at all times comply with the principles of legality, necessity and proportionality** and it should not be carried out with a view to harass people or to dissuade them from participating in an assembly. Law enforcement officials may only stop a person and search them – in a non-discriminatory manner – if they have reasonable grounds to suspect the commission or threat of a serious offence.<sup>325</sup> Mere participation of people in a peaceful protest is not a reasonable ground to apply “stop-and-search” powers to them.<sup>326</sup> Law enforcement agencies must have clear protocols in place indicating when conducting “stop-and-search” is appropriate, how it should be conducted and how to deal with individuals following their arrest.<sup>327</sup>

Law enforcement agencies should refrain from establishing check-points in the surroundings of the assembly area to systematically stop and search people: this is overly intrusive and has a chilling effect on those who wish to exercise their right to freedom of peaceful assembly. The same applies to random stops carried out in the run-up to the assembly. Stops targeting certain people because they belong to a specific group, for instance being from a specific ethnic or religious group – besides being overly intrusive and having a chilling effect on all members of this group – is a violation of the duty not to discriminate.

Where there is a reasonable, individualized suspicion justifying the stop and search of a person, this should be done in a polite, non-humiliating manner, in a way that keeps the potential embarrassment of the concerned person to a minimum and without infringing on the person’s dignity.<sup>328</sup>

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## 11.3

Law enforcement agencies should not use any -overt or covert- means of **mass surveillance, or other forms of unlawful surveillance**, in the context of assemblies.<sup>329</sup>

General surveillance of participants in an assembly is a violation of privacy and has a chilling effect, and hence also affects the enjoyment of the right to freedom of peaceful assembly.<sup>330</sup> Any use of means of surveillance should be done using

legitimate tools in a targeted manner and be clearly justified by a specific and concrete need to detect and prosecute a crime and without using tools that are considered by design to be incompatible with international human rights law, including for instance, 1:n facial recognition (see *Definition* on page 71), or highly-invasive spyware.<sup>331</sup>

Body worn cameras should not be permanently switched on but only when a concrete situation so warrants. Video recordings should not be linked to facial recognition technologies for identification, mass, and discriminatory surveillance (1:n).<sup>332</sup>

Undercover police officers should not be deployed merely for the purpose of providing intelligence in the context of peaceful assemblies.<sup>333</sup>

**EXPLANATORY NOTE:**

Even though assemblies take place in public, violations of the right to privacy can still occur.<sup>334</sup> For example, through using recording devices, facial recognition, undercover policing and technologies capable of identifying individual assembly participants in a crowd or monitoring social media to obtain information about them.<sup>335</sup> It is important to recognize the multi-faceted nature of personal autonomy protected by the right to privacy. This includes a person's physical and psychological integrity which might itself depend on the age or other relevant characteristic of the individual(s) concerned. The right to privacy will also be engaged (and differently impacted) by the ways in which data is captured, stored and processed by law enforcement officials.

Such measures all too often present an unlawful interference with the right to privacy and also have a chilling effect on those wishing to enjoy their right to freedom of peaceful assembly. Actually, it is often the ability to be part of an anonymous crowd that allows many people to participate in peaceful assemblies. The chilling effect that results from the fear of surveillance is not an accident; it is the direct result of the law and practice governing surveillance and inadequate human rights safeguards around communication. In such circumstances the menace of surveillance can be claimed in itself to restrict free communication.<sup>336</sup> This causes violations of the rights to privacy, to freedom of expression, peaceful assembly and association, and others. States violate these rights not only when they directly target people for surveillance because of their participation in protest, but also through the maintenance of laws and practices around surveillance that are not in line with international human rights standards and that therefore drive people to self-censor.

Therefore, authorities must ensure that surveillance is only carried out for legitimate purposes such as the detection of crime.<sup>337</sup> Its use must be strictly in line with the principles of legality, necessity, and proportionality.<sup>338</sup> The thresholds for meeting these principles must be sufficiently high.<sup>339</sup>

**Mass surveillance – the use of technical means (for instance through CCTV cameras or drones)<sup>340</sup> to surveil continuously all participants of an assembly – is overly intrusive and violates the right to privacy of all affected:**<sup>341</sup> Indiscriminate mass

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surveillance is never a proportionate interference with the rights to privacy, freedom of expression, association and peaceful assembly.

Further, targeted surveillance of an individual cannot be justified merely because the person is participating in a peaceful assembly. And authorities must not use surveillance technologies such as photo or video recordings, monitoring of social media or tracking a person's location merely for the purpose of locating those who are participating in an assembly.

Focused and continuous photographing or recording of individual participants is unnecessarily intrusive and should not be done regularly.<sup>342</sup> Such recordings or their systematic processing or permanent storage may interfere with the right to privacy and have a chilling effect on the protesters.<sup>343</sup>

**Filming and recording should only be carried out to detect crime based on a concrete suspicion of a serious crime being or likely to be committed.** In any case, the participation in an assembly considered unlawful under domestic legislation should not be established as a criminal offence (see GL 4) and therefore does not justify such an invasion of privacy as long as the person taking part in the assembly remains peaceful.

**Storage, use and deletion of data must be regulated and be in line with international data protection regulations.** In particular, safeguards – including transparency – around the use of video surveillance are especially important given technical advances by which many existing video cameras can be connected to more complex systems of data storage and analysis, including facial recognition technology and other biometric surveillance technologies. Similarly, while monitoring of “public” social media content may seem at first blush to be a less intrusive form of surveillance than some others, it is important to note that so called OSINT (open source intelligence) tools have evolved into highly invasive and detailed technologies, often combined with other technologies such as facial recognition technology and big data analytics tools capable of mapping networks, contacts, locations, and much more granular and intimate personal data. Especially when used in the absence of adequately robust data protection and privacy safeguards, the use of such tools may pose significant risks of chilling the legitimate exercise of expression and assembly rights. Using such means in the context

of assemblies can lead to an unnecessary increase of tension and is also likely to have a chilling effect on the participants.

Further, recordings should not be linked to facial recognition technology.

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**DEFINITION:** 1:n facial recognition involves the widespread and bulk monitoring, collection, storage and analysis of biometrics-based identification data at scale. Facial recognition uses existing cameras in combination with new software and commercial databases to track individuals. This software is built by companies using millions of images taken for instance from social media, drivers' license registries and other databases, without people's prior knowledge or consent. These tools often claim to be able to identify and track individuals irrespective of time of day and in any urban environment when paired up with a CCTV camera network. 1:n refers to the fact that for identification purposes the picture of a person is run through a wider database containing many pictures (in opposition to the individual matching 1:1 of a person's pictures with their identity document for instance during a passport check).

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Facial recognition technology that scans, captures and oftentimes stores data from all faces within its radius, and relies on massive databases curated often without individuals' knowledge and consent, is a tool of mass surveillance by design and indiscriminate mass surveillance, including through facial recognition technology, is never a proportionate interference with the right to privacy. This technology poses a particular challenge to protest, exacerbating the chilling effect of surveillance measures, deterring people from exercising their right to freedom of expression and peaceful assembly,<sup>344</sup> out of fear that they might be surveilled and persecuted, and therefore should be banned.

Further, it can and is being used to intentionally target certain individuals or groups of people based on characteristics, including ethnicity, race and gender, without individualized reasonable suspicion of criminal wrongdoing and in most of its applications, it violates the right to equality and non-discrimination.<sup>345</sup>

Law enforcement agencies should have clear and publicly available guidelines on the use of digital recording in assemblies in line with international standards on privacy to prevent an

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unlawful interference with the right to privacy and the right to freedom of peaceful assembly and without creating a chilling effect on participation in assemblies.<sup>346</sup> Hence, when law enforcement personnel is equipped with **body worn cameras, they should not be permanently recording, but only be switched on in case of a concrete need as established in human rights compliant policies**, such as the commission of an offence by an assembly participant or other person; or when police resort to the use of force or carry out an arrest. Law enforcement agencies should inform participants about the use of such means and the purpose. Persons affected by the exercise of police powers such as stop and search or the use of force should also have access to the recordings.

States must never oblige internet service providers to disclose information on or communications between the persons participating in a protest unless a court has issued an order based on sufficient evidence.<sup>347</sup> The information and data should only be retained for a limited period of an investigation process and destroyed after that.<sup>348</sup>

**The use of undercover police officers must be strictly regulated in law and be justified by a concrete suspicion of criminal behaviour.**<sup>349</sup> Their deployment in the context of peaceful assemblies merely for infiltrating and gathering intelligence on certain groups of participants has generally a chilling effect on those participating and presents an unlawful interference with the right to freedom of peaceful assembly. And it goes without saying that authorities should never deploy so-called agents provocateurs for the purpose of creating unrest or inciting people to violence or the commission of offences.<sup>350</sup>

## 11.4

**Arbitrary arrests are prohibited at all times,**<sup>351</sup> and law enforcement officials may not arrest a person when there is no intention to carry out judicial proceedings, or carry out mass arrests of a large number of people without regard to their individual involvement, or not, in unlawful behaviour.<sup>352</sup> And even if not arbitrary, **the arrest of a person interferes with their right to participate in an assembly and should only take place when unavoidable.** Non-violent acts of civil disobedience for instance could easily be addressed at a later stage and not during the assembly. As a rule, no one should be preventively detained with a view to impede their participation in an assembly.<sup>353</sup> Any arrest must be carried out in a human rights compliant manner and in full respect of fundamental judicial guarantees.<sup>354</sup>

### EXPLANATORY NOTE:

No one should be arbitrarily arrested or detained under any circumstances.<sup>355</sup> **Police may only arrest people based on a reasonable suspicion that the person may have committed or is about to commit a serious offence and provided there are sufficient grounds for an arrest,** such as the risk to commit another offence or to abscond from the proceedings.

- Authorities must never arrest or detain assembly participants merely to prevent them from or punish them for exercising their right to freedom of peaceful assembly.<sup>356</sup>
- **Mass arrests** of assembly participants before, during or after a protest are arbitrary practices and thus unlawful.<sup>357</sup>
- **Administrative detention** should be prohibited at all times since it almost inevitably will be carried out without due process and respect for fundamental judicial guarantees and hence be arbitrary.<sup>358</sup>
- **Preventive detention** of individuals to preclude them from participating in an assembly may also constitute an arbitrary deprivation of liberty and shall not be imposed.<sup>359</sup>

Not each unlawful behaviour in the context of an assembly justifies an arrest and it must be born in mind that an arrest for a minor issue might appear unjustified or excessive to the people present in the assembly and can lead to an unnecessary rise of tension. Furthermore, the arrest of a person in the context of an assembly will impede the enjoyment of the right to freedom of freedom of peaceful assembly.<sup>360</sup> Hence, authorities should, where possible, in particular in case of minor offences, for instance non-violent acts of civil disobedience, prioritize other measures such as taking the identity of the person to initiate proceedings at a later stage, to allow people to continue in the exercise of their right to freedom of peaceful assembly and to prevent any unnecessary escalation of the situation.

An arrest must be carried out in full respect of human rights and fundamental judicial guarantees<sup>361</sup> – including even when authorities may have to arrest a larger number of people, for instance in case of large-scale violence. They may not just arrest whomever they can get hold of, but only persons that are indeed involved in serious violence. And they must have a system in

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place that ensures even in case of large numbers that all arrests are carried out in a human rights compliant manner.<sup>362</sup> This must be ensured regarding the conditions of arrest and detention (for instance: access to food, water and sanitary facilities, no prolonged exposure to problematic weather conditions such as extreme heat or cold during transportation etc.)<sup>363</sup> as well as in terms of full respect of all fundamental judicial guarantees (in particular: being informed about the reason of the arrest and the right to remain silent, as well as being given access to a lawyer).<sup>364</sup>

## 11.5

### EXPLANATORY NOTE:

The police tactic of **containment, “kettling”, must be avoided** and should, if at all, only be carried out as an exceptional measure to contain a few violent individuals with a view to avoid having to disperse the entire assembly.<sup>365</sup> It should only take place for a short period of time, people not involved in violence should be allowed to leave and those kept must be provided with access to medical or sanitary facilities and be protected from any hazards, such as harsh weather conditions.<sup>366</sup>

The police tactic of containment or “kettling” consists of cordoning off (a group of) participants of an assembly preventing them from carrying on with the assembly.<sup>367</sup> This is a serious interference with the right to freedom of peaceful assembly as well as the freedom of movement. Depending on a range of factors, including the duration, effects and manner of implementation, it could amount to a deprivation of liberty.<sup>368</sup> It can also have a particularly chilling effect on people, dissuading them from participating in future assemblies.<sup>369</sup> Containment tactics pose the risk of capturing a large number of assembly participants who have been acting peacefully or bystanders who happened to be close to a source of disorder. Another risk is that containment might be disproportionate in terms of length and/ or impact, especially if it is not planned and coordinated well.<sup>370</sup> Containment might also lead to panic, inability to access medical assistance or sanitary facilities, and leave contained people unable to seek shelter from weather conditions.

In view of these serious human rights consequences and risks, authorities should avoid applying such a tactic.<sup>371</sup> If at all, it could only be acceptable as a less intrusive measure, in a situation when authorities would otherwise have to disperse the entire assembly. Hence, **the purpose of applying this tactic should be to contain some violent individuals with a view to allowing the rest of the assembly to proceed peacefully.** Even then, law enforcement officials should keep the human rights impact of this measure to a minimum and for the shortest time possible.<sup>372</sup>

In such a case, authorities need to effectively inform assembly participants about the reason(s) for the containment as well as

the intended duration and further action. They must also give people access to emergency services and sanitation facilities if required.<sup>373</sup> Harsh weather conditions (for instance extreme heat or cold) might require additional measures such as distribution of water, blankets or cover or even to stop the measure entirely. Other people caught in the cordon should be allowed to exit the containment area, in particular non-violent protesters, bystanders and persons at risk of suffering more serious consequences as a result of the containment, such as pregnant women, children, older persons, and people with illnesses, injuries or disabilities.<sup>374</sup>

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*A police official with a leaflet on dispersal powers during a protest in Manchester, United Kingdom, February 2019.*  
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## 12

**AUTHORITIES MAY ONLY RESORT TO THE DISPERSAL OF AN ASSEMBLY AS LAST RESORT.<sup>375</sup>**

The dispersal of an assembly may only be carried out when there is a pressing need and when all other means have failed to achieve a legitimate objective.<sup>376</sup> As a rule, authorities should not disperse a peaceful assembly. Non-violent acts of civil disobedience that block public roads or disrupt traffic should not be dispersed or prohibited solely on the basis of the disruption they cause.<sup>377</sup> In case of violence, police should first focus on violent individuals and prevent violence from spreading, instead of dispersing the entire assembly. Participants must be given the opportunity to disperse voluntarily without the use of force by police.<sup>378</sup>

**EXPLANATORY NOTE:**

The dispersal of an assembly is an extreme measure that completely deprives people of the opportunity to exercise their right to freedom of peaceful assembly. Like other restrictions, **dispersal must always meet the principles of legality, necessity and proportionality.**

If an assembly is peaceful, only very few circumstances may justify its dispersal under international human rights law. Failure to notify authorities of a protest must not be used as a ground for dispersing the assembly.<sup>379</sup>

A peaceful assembly remains protected even in case of acts of civil disobedience as long as these are peaceful: non-violent acts of civil disobedience that block public roads or disrupt traffic should not be dispersed or prohibited solely on the basis of the disruption they cause, given that urban space should not be considered only an area for circulation, but also as a space for public participation. Law enforcement authorities should consider the different elements of an act of civil disobedience on a case-by-case basis, including its intent (for example, to protest or express

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political or social dissent, to bring an issue to the attention of the general public and contribute to political debate, or to stop or prevent human rights abuses) and its overall disruptive impact (causing temporary damage as opposed to permanent negative consequences for the general public, or the extent of harm to other peoples' rights and property) when considering sanctions or other restrictions for people who have broken a law in an act of civil disobedience.

Only a peaceful protest that is causing **serious and sustained disruption to public life**, such as blocking the driveway of an emergency department of a hospital, thus preventing ambulances from accessing the hospital, or causes otherwise serious *and* sustained disruption, could justify a dispersal, provided that there are no other less intrusive measures available and likely to be effective (for instance, freeing only a sidewalk or a limited area to mitigate the disruption).<sup>380</sup> This cumulative test means that dispersal is not appropriate where a peaceful assembly is causing only serious disruption that is not also sustained, or sustained disruption that is not also serious.

When an assembly is no longer peaceful or if there is clear evidence of an imminent threat of serious violence, the assembly may be dispersed, provided the violence cannot be contained anymore by targeting violent individuals only.<sup>381</sup>

**The decision to disperse an assembly does not automatically justify the use of force:**<sup>382</sup> police should always clearly communicate the intention to dissolve the assembly and ask participants to leave voluntarily. They must be given enough time and reasonable opportunities to disperse by themselves and they must be warned of the police intention to use force if they don't disperse.<sup>383</sup> Only when they don't disperse, may police start to use force in a necessary and proportionate manner.



*Protester being arrested by a group of police men in front of the City Hall during clashes between Hong Kong's riot police and young protesters during the Anti-Extradition Law to China demonstrations.*

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# 13

## THE USE OF FORCE MUST BE A LAST RESORT.<sup>384</sup>

### 13.1

#### EXPLANATORY NOTE:

**Any use of force must comply with the principles of legality, necessity and proportionality and non-discrimination.<sup>385</sup> And authorities must take all available precautionary measures to avoid the need to use of force and to limit the level of harm in case that force is used.<sup>386</sup>**

The principle of **legality** provides that the use of force must be resorted to in compliance with domestic legislation and only for a legitimate law enforcement purpose as established in law.<sup>387</sup>

The principle of **necessity** provides that “law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.”<sup>388</sup> Authorities should generally police assemblies without using force.<sup>389</sup> They must try non-violent means – such as communication, negotiation, mediation, and de-escalation – first. And when using force, they must use the minimum force likely to be effective<sup>390</sup> and only until the legitimate objective has been achieved (or cannot be achieved anymore at all).

The principle of **proportionality** requires police to “exercise restraint in such use [of force] and act in proportion to the seriousness of the offence and the legitimate objective to be achieved.”<sup>391</sup> It means that there should be a balance between the type and level of force used and the harm that it can cause to an individual taking into account the threat posed by the individual.<sup>392</sup> The harm caused by the use of force may never outweigh the harm that needs to be prevented.<sup>393</sup>

When resorting to the use of force, police must respect and protect the human rights of every person **without discrimination** based on their age, citizenship, sexual orientation or gender identity and/or expression, race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>394</sup> This means that force must

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never be used against individuals out of prejudice or with direct or indirect discriminatory intent.<sup>395</sup>

To comply with these principles it is essential that law enforcement authorities take all available **precautionary measures** that prevent a situation from requiring the use of force and that when they have to use force, enable them to minimize the harm caused by the use of force.<sup>396</sup> Such measures relate to the appropriate planning and problem solving strategies, the availability of appropriate equipment (including communication equipment, protective equipment and appropriate weaponry allowing for a graduate response) and services (incl. medical assistance) and the deployment of duly trained law enforcement officials.<sup>397</sup> Failure to take the possible precautionary measures may lead to state responsibility for unlawful use of force even if the individual law enforcement official in the concrete situation may not have had the choice but to respond in a certain way.<sup>398</sup>

## 13.2

### EXPLANATORY NOTE:

As a rule, force must **not** be directed **against peaceful protesters**.<sup>399</sup> The use of force for the purpose of punishment is prohibited at all times.<sup>400</sup>

The use of force against people behaving peacefully will only in very limited circumstances be justified and meet the principles of necessity and proportionality. This may be the case when there is an important legitimate objective at stake that cannot be achieved otherwise, for instance when an assembly causes serious and prolonged disruption.<sup>401</sup> However, as long as people remain peaceful and are just passively resisting an order to disperse, the use of force must be limited: The use of force in such a situation should not cause (more than negligible) injuries to people.<sup>402</sup> For instance, it could consist in pushing people aside or carrying them away; no force should be used that is likely to cause more than minor injury (some bruises). In any event, police must be aware that any use of force bears the potential of provoking anger and aggression, implying the risk of an outbreak of violence, reason why police should as much as possible exercise restraint in this regard.<sup>403</sup>

The use of force as a means of punishment amounts to cruel, inhuman and degrading treatment or even torture and is prohibited at all times.<sup>404</sup>

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## 13.3

### EXPLANATORY NOTE:

Police should first use **non-violent means** and attempt to de-escalate a situation.<sup>405</sup> If the use of force is unavoidable, they must warn people about their intention to resort to the use of force.<sup>406</sup>

If an assembly is overall peaceful, but there are isolated outbreaks of violence, police should first attempt to de-escalate arising violence before resorting to force. If de-escalation techniques are unsuccessful, they may use force to deal with the violent behaviour. In that case, they must issue a clearly audible warning and give people sufficient time to comply with the order. However, even though protesters who engage in acts of violence are not protected by the right to freedom of peaceful assembly, they retain all their other rights, such as the rights to life, security of person, physical integrity and to be free from torture and other ill-treatment. Police should also always consider the risk of escalation of violence due to the use of force.<sup>407</sup>

Before using any force, law enforcement officials are obliged to give a prior warning that they intend to use force, giving sufficient time for people to respond to the warning.<sup>408</sup>

## 13.4

### EXPLANATORY NOTE:

In the use of force police must as much as possible **target the individuals engaged in violent behaviour** only.<sup>409</sup>

If the use of force against violent individuals turns out to be ineffective to stop the violence or if violence becomes widespread, authorities may decide to disperse the assembly. Again, they should prioritize voluntary dispersal prior to the use of force and in the use of force, keep the force used to the minimum.<sup>410</sup> As long as possible, law enforcement officials should target those who are engaged in violence or are threatening to commit violence. Only when violence becomes so widespread that this is not possible, may law enforcement officials resort to a use of force that could affect violent and peaceful protesters alike.

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## 13.5

Any use of force must be **reported**<sup>411</sup> and anyone injured or harmed must be provided with **medical assistance**.<sup>412</sup>

### EXPLANATORY NOTE:

Policies must be in place to ensure that each use of force is reported promptly to allow for a proper assessment of its lawfulness and accountability for any human rights violations committed.<sup>413</sup>

Any person injured or harmed as a result of the use of force must be provided with medical assistance – by law enforcement officials trained in the provision of first aid, by medical services in stand-by to an assembly or being called in.<sup>414</sup> Police should never block access for medical services or prevent people from reaching them.

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*Protesters in Nairobi, Kenya, July 2024. They protested for months seeking better leadership and accountability. In response, Kenyan police unlawfully used tear gas, water cannons and batons against peaceful protesters.*  
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## 14

# IN THE USE OF ANY WEAPON, LAW ENFORCEMENT OFFICIALS MUST MINIMIZE HARM AND INJURY AND THEY MAY NOT CAUSE ANY HARM GREATER THAN THE HARM THAT NEEDS TO BE PREVENTED.<sup>415</sup>

## 14.1

## EXPLANATORY NOTE:

Law enforcement agencies should equip their personnel with a range of less lethal weapons to respond to the various situations they may encounter.<sup>416</sup> They need to have **specific, publicly accessible rules and regulations in place for each weapon** in accordance with the level of harm, including unwarranted risks, involved with the use of that specific weapon.<sup>417</sup> Weapons may only be used in case of violence – **never against peaceful protesters** or against people only passively resisting any orders. The use of any weapon must be preceded by a warning and people must be given sufficient time to comply with the order.<sup>418</sup>

The availability of a range of less lethal weapons to manage protests can help police to respond to violent situations in a differentiated manner. However, law enforcement agencies must carefully consider which less-lethal weapons they will deploy, and their intended and actual use must strictly comply with the principles of necessity and proportionality.

Since each weapon – even if used as intended – bears different levels of danger to people, **the threshold and purpose of use must be specific to each individual weapon**. Therefore, law enforcement agencies must establish clear and specific rules and regulations for the use of each weapon deployed. Vague and general regulations that authorize the use of a range of weapons for very broadly formulated purposes imply a great danger of misuse of these weapons in unjustified circumstances and in an inappropriate manner.<sup>419</sup> The regulations should be made public.

All weapons are designed to cause a certain degree of harm or injury to persons. Hence, they may only be used to contain violence in assemblies, and only when less harmful means are insufficient. They may never be used against peaceful protesters and people only passively resisting any orders.<sup>420</sup> The greater the harm a weapon is likely to cause, the higher must be the threshold of danger required for its use.

As for any use of force, prior to the use of a weapon, law enforcement officials should issue a clear warning and give time for people to comply with the order.

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However, the threat to use a certain weapon against participants of an assembly can only be permissible if the actual use would also be lawful in the given circumstances. Issuing a threat of force when the use would not be justified by the situation may cause unnecessary escalation and bears also a great risk – if the order is not complied with – of the weapon being used despite not being lawful in the circumstances.

## 14.2

Striking weapons, “batons”, may only be used in a **targeted response to violent people** or a threat of imminent violence.<sup>421</sup> The purpose should be to make the person stop the violent behaviour through the pain inflicted but not to injure the person severely. So-called “baton charges”, with police running after people to hit whoever gets within reach, are an unlawful use of force and must be prohibited.

### EXPLANATORY NOTE:

**Batons are designed to inflict blunt trauma through strikes and obtain compliance through the pain inflicted without causing severe injuries.**<sup>422</sup> However, depending on their design and use, they have a great potential to cause more serious injury. Batons are means of self-defence or defence of others.<sup>423</sup> Police may only use batons against persons engaged in violence against persons and where there are no less harmful means available to stop this violence.<sup>424</sup> They may never use batons against persons offering only passive resistance, when the person is already under control, for punishment or to disperse a peaceful assembly.<sup>425</sup> Random hitting at people, such as in so-called baton charges (running behind people who are dispersing and hitting whoever is within reach), are arbitrary and unlawful and must be prohibited.

To avoid more serious injury law enforcement officials should target the larger muscle mass, such as upper arms or legs and avoid sensitive areas such as the head, neck, throat, spine.<sup>426</sup>

## 14.3

**Kinetic Impact Projectiles (KIPs)** may only be used in an **individualized response against persons who are involved in serious violence against other persons** and pose an immediate risk of considerable injury or death.<sup>427</sup> The purpose should be to make the person stop the violent behaviour through the pain inflicted but not to injure the person severely. They may never be fired randomly at a crowd, and they should be aimed at the lower part of the body to avoid serious injuries for instance to the eyes.<sup>428</sup>

**EXPLANATORY NOTE:**

**Kinetic Impact Projectiles (commonly known as rubber bullets, plastic bullets, impact rounds or baton rounds or KIP) are designed to cause pain and blunt trauma without penetrating the skin, but not to cause any more serious injury.** However, depending on their design and use, they have a great potential to cause more serious injury, for instance to the eyes.<sup>429</sup> Hence, they may only be used against persons involved in serious violence against other persons and who pose an immediate risk of severe injury or death<sup>430</sup> and only if less harmful methods are insufficient to address the violence.<sup>431</sup>

Only a few specifically trained law enforcement officials should be deployed with KIP-weapons to ensure a targeted use of the weapon and full accountability for its use. They should be placed under the command of a superior officer in charge of authorizing the use of the weapon.<sup>432</sup> They should carefully aim at a specific individual directly engaged in serious violence and target the lower torso or legs to avoid causing serious injury.<sup>433</sup> Police must never fire KIPs randomly at a crowd<sup>434</sup> or use them to disperse a peaceful assembly,<sup>435</sup> nor should they be fired in “skip fire” (re-bouncing off the ground).<sup>436</sup> Devices that fire multiple projectiles are inherently inaccurate, cannot be targeted only to an individual engaged in violence and cause unwarranted injury, and therefore have no legitimate law enforcement use and must be prohibited.<sup>437</sup>

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## 14.4

## EXPLANATORY NOTE:

Wide-area chemical irritants, “tear gas”, may only be used in case of widespread violence against persons that cannot be addressed anymore by targeting violent individuals alone.<sup>438</sup>

Isolated acts of violence do not justify the use of tear gas, since it has by nature an indiscriminate effect, likely to affect bystanders and peaceful protesters alike. The use of tear gas for the dispersal of peaceful protesters must be prohibited.<sup>439</sup>

The purpose should be to make people disperse and it should never be used in enclosed areas where people cannot disperse.<sup>440</sup> Tear gas canisters should never be fired directly at people.<sup>441</sup> Only thoroughly tested and approved chemical irritants should be used, with clear instructions when and how to use them.<sup>442</sup>

Wide-area chemical irritants, commonly called “tear gas”, are designed to cause temporary sensory irritation, including to the eyes, upper respiratory tract and skin.<sup>443</sup> However, the harm can be much greater depending on the quantity used and the individual conditions of the persons affected. Due to its indiscriminate effect, tear gas affects violent protesters as well as peaceful protesters, bystanders and third persons alike.<sup>444</sup> Therefore, they may only be used to disperse a crowd in case of widespread violence against persons, which can no longer be contained by targeting those engaged in the violence and only when there are no less harmful means to contain violence.<sup>445</sup>

Tear gas may only be used in the open space, where it is easy for people to disperse.<sup>446</sup> It is supposed to only affect people through irritation and not through a kinetic impact. Hence, canisters should not be directly fired at people since this bears the risk of serious injury, including, death. Its deployment should stop as soon as people have started to disperse.<sup>447</sup>

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## 14.5

Smaller, mostly hand-held chemical irritants, “**pepper spray**”, may only be used in **self-defence or defence of others** against persons who pose an imminent threat of injury to another person.<sup>448</sup>

The purpose should be to make the person stop the violent behaviour through the pain inflicted, but not to injure the person severely.

**EXPLANATORY NOTE:**

**Handheld chemicals, commonly called “pepper spray”, are supposed to be sprayed on a person’s face, to cause temporary irritation to the eyes, upper respiratory tract and skin.**<sup>449</sup>

Police may use pepper spray in self-defence or defence of others against persons who pose an imminent threat of injury. In assemblies, pepper spray may only be used against specific individual persons violently resisting or engaged in violence against others. Police may not use pepper spray repeatedly or for a prolonged time, against persons offering only passive resistance,<sup>450</sup> when the person is already under control, or randomly at a group of people unless they all are involved in violence against others.<sup>451</sup>

Pepper spray should only impact through the irritant effect of its content and not cause any injury through impact. Hence, it should only be used from the minimum distance as indicated by the manufacturer and approved by the law enforcement agency in order to avoid more serious injury for instance to the eyes as a result of the jet of the spray.<sup>452</sup>

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## 14.6

## EXPLANATORY NOTE:

**Water cannons** in high-pressure mode may only be used **in case of widespread violence against persons** that cannot be addressed anymore by targeting violent individuals alone.<sup>453</sup> In such circumstances, the deployment of water cannon must be limited to the **purpose of implementing an order to disperse**. Isolated acts of violence do not justify such a use of water cannons, since it has a high risk of affecting bystanders and peaceful protesters alike. In high-pressure mode, police should never target people at close range or aim directly at people's heads or faces. Water cannons may never be used or aimed at individuals who are restrained or unable to move.<sup>454</sup>

**Water cannons are pumping systems meant to shoot jets of water at people.** They generally have two alternative modes of operation – high-pressure mode and low-pressure mode. In low-pressure (“rain shower”) mode, their use is designed to soak persons to deter them from doing something, whereas in high-pressure (“jet”) mode, their use is designed to physically push people or keep them at a distance.<sup>455</sup> **High-pressure jet-mode can cause considerable injury**, in particular when targeting people at very close range, hitting the head or making people fall down<sup>456</sup> and it is difficult to exclusively target individuals without affecting others nearby. Hence, police may only use water cannons in high-pressure mode when strictly necessary in cases of widespread violence which can no longer be contained by targeting individual persons. Water cannons may only be used when people are able to disperse.<sup>457</sup>

In the exceptional case that the dispersal of a peaceful assembly is justified under international human rights law in view of a legitimate objective that cannot be otherwise achieved, the use of the water cannon in “rain-shower”-mode could be permissible. However, the use of high-pressure jet mode in such circumstances is always disproportionate and unlawful.<sup>458</sup>

**The use of water cannon must be properly regulated with clear instructions and required precautions to be taken.**<sup>459</sup> In high pressure mode, police should never target people at close range or aim directly at people's heads or faces. Water cannons should never be used or aimed at individuals who are restrained or unable to move. Mixing water and chemical irritants for use in water cannons must be prohibited, given that this implies risk of excessive concentration and prolonged exposure.<sup>460</sup> Furthermore, the water should not be combined with any sort of colour marker/dye to identify people at a later stage since it bears a risk of stigmatization and harassment or even arbitrary arrest of uninvolved people who might be marked as well.<sup>461</sup>

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## 14.7

Law enforcement officials deployed in public assemblies should not be equipped with projectile electric shock weapons (PESWs, also known as “Tasers”). These are **not suitable weapons for public order situations** that are extremely volatile, making it difficult to carefully target precisely the person presenting a serious threat, and implying a high risk of leading to an escalation of violence.<sup>462</sup>

**EXPLANATORY NOTE:**

**Projectile electric shock weapons (or PESWs, also known as “taser”) deliver electric current to the body and carry significant risks of death or serious injury because of the impact the electric current has on the human body.** PESWs should only be used in most extreme situations against a person who poses a serious threat of injury or death – with a view to avoid the need to resort to a firearm.<sup>463</sup> They should only be used in dart-firing mode and only if less extreme methods are insufficient.<sup>464</sup> However, in case of widespread violence during a protest, the chances of effectively hitting the violent individual are very low and they are unlikely to contribute to bringing the situation under control. Hence, they are unsuitable for managing assemblies and should never be used to disperse protesters.<sup>465</sup>

## 14.8

**Horses** should only be deployed with great care and **only for logistical purposes** (for instance allowing for a better overview, facilitating law enforcement movements or as a physical barrier), but not as a weapon.<sup>466</sup>

**EXPLANATORY NOTE:**

Horses can be a support for the policing of assemblies. Law enforcement officials on horses have a better view over the assembly and can identify problems more easily. They will also be faster at a given place where a problem occurs than law enforcement officials on foot. Horses might also be an effective barrier: for instance, between an assembly and a counter-demonstration, or to separate people engaged in violence from others who are behaving peacefully. However, they can also have an intimidating effect and be perceived as a threat. Hence, in their deployment, police must act with care to ensure that they do not contribute to an escalation of tension or have a chilling effect on those wishing to exercise their right to freedom of peaceful assembly. And they should not use a horse as a weapon. A horse running with speed into groups of people is a particularly dangerous action. It can cause panic and provoke a stampede; depending on the circumstances it can be difficult for the law enforcement official to ensure the horse stops at the right place and moment in order not to cause serious injury to any person, in particular to other people nearby who might be peaceful; people might also react violently against the horses, causing the horse to panic and run over people.

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## 14.9

**As a rule, dogs should not be used as a weapon in public assemblies.<sup>467</sup>**

**EXPLANATORY NOTE:**

Dogs can have a meaningful role in law enforcement, for instance in the detection of drugs or weapons. **As a weapon, however, they are particularly dangerous.** Once unleashed and unmuzzled, they are almost impossible to control. Hence, if at all they should only be used to disarm a person threatening to use a dangerous weapon against another person. However, even this can be highly problematic in the context of a public assembly. Already the mere presence of dogs has a chilling effect on the people present and can also lead to an unnecessary increase of tension and escalation of violence – in particular if the dogs are barking. And even when a person is engaged in violence in the context of an assembly, the situation of a noisy crowd will make it even more difficult to control the dog and can lead to unpredictable behaviour of the dog, possibly even attacking people who do not present a threat. Utmost care and precaution are needed for the use of such dangerous weapons.

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## 14.10

**Firearms** are not a tactical tool for the management of assemblies.<sup>468</sup> they may only be used as a last resort **against an individualized threat of danger to another life**<sup>469</sup> and only when there is no risk to other people who are not presenting such a serious risk, including bystanders.<sup>470</sup> It is prohibited at all times to fire randomly at a crowd.<sup>471</sup> **Automatic firearms should not be used** in the policing of assemblies under any circumstances.<sup>472</sup>

**EXPLANATORY NOTE:**

**Firearms are weapons designed to kill.** Therefore, they may only be used “in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives.”<sup>473</sup> They are not a suitable tool for managing assemblies and must not be used in policing assemblies unless in strictly exceptional circumstances.<sup>474</sup> Police must make every effort to avoid the use of firearms.

Police must never fire indiscriminately into a violent crowd to disperse them.<sup>475</sup> The fact that authorities consider a gathering “illegal” and want to disperse it, does not justify the use of firearms.<sup>476</sup>

In the extreme circumstances that it is unavoidable to use firearms, **police must aim only at those persons presenting an immediate and real threat to the life of others**<sup>477</sup> and only when they can ensure not to hit other persons besides or behind. They should only fire single aimed shots.<sup>478</sup> Automatic firearms do not allow for such target shots, and they are likely to injure and kill other people – even far away or in buildings. They should therefore never be used in the context of public assemblies.<sup>479</sup>

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*Amnesty Peru's protest observation team during a protest in Lima, July 2024.*  
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## 15

## THE DUTY OF LAW ENFORCEMENT AGENCIES TO FACILITATE AND PROTECT EXTENDS TO THOSE WHO ARE MONITORING THE ASSEMBLY,<sup>480</sup> SUCH AS JOURNALISTS OR ANY OTHER OBSERVERS.

Monitors must be given unhindered access to the assembly and be able to document the assembly without interference.<sup>481</sup>

## 15.1

### EXPLANATORY NOTE:

Authorities must ensure that **everyone has access to and can share information about an assembly prior, during and after the event** – this is an essential element of the assembly as such and must be equally protected as the assembly itself.<sup>482</sup> Authorities should not cut off access to the internet in reaction to assemblies<sup>483</sup> and they must facilitate the monitoring of assemblies.<sup>484</sup> **Everyone has the right to observe, monitor and report on assemblies,**<sup>485</sup> not just formally accredited journalists. Monitors must be given unhindered access to the assembly site, regardless, whether the assembly is considered lawful, unlawful, peaceful or non-peaceful<sup>486</sup> and must be able to carry out the monitoring without interference. This includes the right to digitally record and photograph at assemblies, in particular to record the actions of law enforcement officials.<sup>487</sup> Related equipment may not be confiscated, damaged or destroyed.<sup>488</sup>

It is an essential aspect of the right to freedom of peaceful assembly that information about the assembly, its messages and how it evolves is publicly accessible and shared and authorities must ensure that everyone has access to information relating to assemblies, before, during and after an assembly.<sup>489</sup> This includes access to the Internet, that should not be cut off,<sup>490</sup> as well as the possibility for anyone to monitor and report on an assembly. Hence, the **monitoring of an assembly must be facilitated in the same way as the entire assembly.**

A monitor is any non-participant, third party, individual or group whose primary aim is to observe and record the actions and activities at public protests. Monitors can be formally accredited representatives of the media, freelance journalists, citizen journalists, formally accredited monitors (for example OSCE monitoring teams), observers from international or national human rights institutions or organizations, human rights defenders<sup>491</sup> or any other member of the public. The possibility to monitor should not be dependent on any form of accreditation required and no one should be prohibited or restricted from observing and documenting the events happening during an assembly or its dispersal, including the actions of protesters and police.<sup>492</sup>

Authorities must give media, monitors and other observers access to the site of an assembly, regardless, if the assembly is considered lawful, unlawful, peaceful, or

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violent. They should not impose any restrictions on media access, unless in exceptional circumstances, on a clear legal basis.<sup>493</sup>

Law enforcement agencies should offer a point of contact to media and other monitors that can respond to any question.<sup>494</sup> Those monitoring the assembly must be treated with respect and are allowed to carry out the observation without interference.

**The filming/recording of police action during an assembly should not be prohibited.** The right to document and record assembly events includes a right for participants to “record back” when law enforcement officials are recording them.<sup>495</sup> Police should not interfere with the documentation and reporting and refrain from confiscating or damaging their equipment or materials, and not harass, intimidate, arrest or assault journalists, human rights defenders, monitors, and observers for performing their functions. The seizure of cameras, recording equipment, footage, or other materials should be prohibited.<sup>496</sup> Causing intentional damage to the equipment should be treated as a disciplinary and criminal offence, and law enforcement officials responsible for this should be held accountable.<sup>497</sup>

Law enforcement officials involved in policing assemblies should also undergo proper training on collaboration and treatment of the media representatives reporting on an assembly<sup>498</sup> and other people monitoring the assembly.

## 15.2

**Dispersal of an assembly does not terminate the right to monitor** and law enforcement officials should not interfere with the monitoring merely because of the assembly being dispersed.<sup>499</sup>

### EXPLANATORY NOTE:

The right to monitor, observe and document the events of an assembly extends to the situation when an assembly is dispersed.<sup>500</sup> The police must not interfere with the work of monitors and may not prohibit or restrict them from observing and documenting the events happening during dispersal, including the actions of protesters and police.<sup>501</sup>

When authorities disperse an assembly, monitors should be allowed to continue exercising their functions in so far as their safety is not at risk and their presence does not hinder the dispersal process.<sup>502</sup> In these exceptional circumstances, police should give them clear instructions and sufficient time to disperse and guide them to a safe location where they can continue observation and monitoring.<sup>503</sup>

## 15.3

**Journalists, monitors and other observers must be protected against attacks and violence.**<sup>504</sup>

### EXPLANATORY NOTE:

Authorities must provide protection to media representatives, observers and monitors against any human rights violations or abuses and ensure that their equipment is not confiscated or damaged.<sup>505</sup> Any violations or abuses must be thoroughly investigated and sanctioned.<sup>506</sup>

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*A silent demonstration against racism and violence by the police in Berlin, Germany, June 2020.*  
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## 16

# AUTHORITIES MUST ENSURE APPROPRIATE OVERSIGHT OVER HOW AN ASSEMBLY IS POLICED AND ENSURE FULL ACCOUNTABILITY FOR ANY HUMAN RIGHTS VIOLATIONS THAT MAY HAVE OCCURRED.<sup>507</sup>

## 16.1

## EXPLANATORY NOTE:

States should have a **pre-established mechanism of oversight** to assess the lawfulness of policing throughout the entire assembly.<sup>508</sup> An investigation should be mandatory in all instances when there was violence, when police resorted to the use of force,<sup>509</sup> and when there were people injured or otherwise harmed during the assembly.<sup>510</sup> This should also include a **review of the overall policing approach, as well as related policies and instructions** and also serve as an effective lessons-learned process.<sup>511</sup> Law enforcement officials should have nameplates or individually assigned numbers visibly displayed on their uniform or riot gear to allow for individual identification and accountability.<sup>512</sup>

The **policing of assemblies should be subject to independent oversight with access to all relevant information from the preparation to the aftermath of the assembly** – irrespectively whether there have been individual complaints or not. To ensure independent oversight, authorities should inform national human rights institutions or other relevant oversight bodies about upcoming assemblies and facilitate their access to assemblies.<sup>513</sup>

An investigation should be **mandatory in all instances when there was violence, when police resorted to the use of force, and when there were people injured or otherwise harmed** during the assembly.<sup>514</sup> The purpose of the investigation should be to identify whether the right to freedom of peaceful assembly has been effectively facilitated, whether there were any human rights violations committed by law enforcement officials, and whether there were any shortcomings regarding the policing approach, including law enforcement policies, tactic, equipment, weapons and training.

Authorities should continue communicating with protest organizers and others involved or affected after an event, particularly if problems have occurred, and include them in the lessons learned process.<sup>515</sup>

**The findings of the mechanisms should be made public**<sup>516</sup> and authorities should also ensure that the public has sufficient access to official documents, including information from the police.<sup>517</sup> These documents and information should only be restricted in accordance with the law and in the instances where the reasons to withhold such information override the public

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interest of having access to such information.<sup>518</sup> The findings and recommendations should serve to establish full accountability at all levels (of individual law enforcement officials, of the command leadership of a law enforcement agency, the agency as a whole and even at the political level)<sup>519</sup> as well as a lessons learned process leading to improvements in the policing of assemblies through changes in policies, tactics, equipment, weapons and/or training of law enforcement officials. Independently of such an investigation should police themselves regularly review their policies, equipment and practices and make them accessible to the public.<sup>520</sup>

## 16.2

### EXPLANATORY NOTE:

States must ensure that anybody whose human rights have been affected as a result of the policing of an assembly has the possibility to have such interference reviewed by a judicial authority.<sup>521</sup>

**Full accountability must be ensured for any human rights violation** that may have occurred, including criminal and/or disciplinary sanctions against responsible law enforcement officials,<sup>522</sup> as well as reparation and rehabilitation for victims.<sup>523</sup>

Accountability must involve not only the immediately acting law enforcement officials, but also any **commanding or superior officer**: for any unlawful orders they may have given, for any failure to stop or prevent human rights violations by law enforcement officials under their command or control, as well as for any failure to take required precautionary measures in the operational planning.<sup>524</sup>

**Access to justice and remedies is an integral element of the protection of the right to freedom of peaceful assembly.**<sup>525</sup>

Authorities must provide an adequate, effective, and prompt remedy to persons whose rights have been violated during a protest.<sup>526</sup> The right to remedy constitutes “equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms”.<sup>527</sup> Reparations require restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>528</sup> Such remedies have to be determined by a competent authority that has the power to enforce remedies.<sup>529</sup>

Authorities must develop a robust, transparent and auditable record-keeping system for all interferences with human rights, in particular the use of force, to enable effective review and facilitation of oversight, while ensuring that any decision to record participants is exceptional and limited to specified legitimate law enforcement purposes.<sup>530</sup> Where law enforcement officials are equipped with body worn cameras, policies should oblige them to switch them on whenever they resort to the use of force, and those affected by the use of force must be granted access to the recordings in subsequent proceedings.<sup>531</sup> The records and inventories of all weapons and ammunition used during a protest must also be kept.<sup>532</sup> Such records should also contain communications equipment and specify the persons assigned to, which is essential for restoring and clarifying the event in an assembly and finding those responsible for specific actions or omissions.<sup>533</sup>



Governments must establish accessible and effective complaint mechanisms to investigate allegations of human rights violations or abuses in an independent, prompt and thorough manner and hold accountable those suspected to be responsible for such violations.<sup>534</sup> **Laws granting immunity for law enforcement officials who have committed human rights violations must not be enacted and where in place, must be repealed.**<sup>535</sup> If a person dies resulting from the use of force during a protest, the authorities must investigate and bring to justice those responsible.<sup>536</sup> A failure to conduct such an investigation would amount to a violation of the right to life itself.<sup>537</sup>

Everyone should be able to file a complaint against the law enforcement agency, either directly with the agency or through the prosecutor's office.<sup>538</sup> In addition, authorities should ensure that everyone can lodge such complaints with independent bodies responsible for overseeing the complaints process.<sup>539</sup> This is important to ensure independence and impartiality and protect the persons filing the complaints from any intimidation or harassment. Those who cannot afford to pay for it, should have access to legal aid.

**Any law enforcement official found to be responsible for a human rights violation must be held accountable and be subject to commensurate disciplinary and/or criminal sanctions.**<sup>540</sup> This must also include commanding officers: if they ordered or failed to prevent human rights violations, if they omitted to take all the necessary precautions in the planning, preparation and conduct of law enforcement operations, for decisions taken regarding the use of certain weapons and ammunitions and when failing in terms of reporting and disciplinary punishments.<sup>541</sup> Furthermore, failure to incorporate knowledge of past law enforcement mistakes into the planning, preparation and concrete policing of assemblies, leading to "repeating the mistakes of the past with deadly consequences", also constitutes a failure in command responsibility,<sup>542</sup> that must lead to appropriate sanctions.

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*Amnesty activists in Mexico show support for the Indigenous Wet'suwet'en Nation, who are demanding the protection of their territory and sacred sites against the construction of a gas pipeline, and an end to harassment, intimidation, and unlawful arrest. The protest called on the Canadian government to drop the charges, stop the pipeline, and respect the free, prior and informed consent of Indigenous peoples everywhere.*

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| 09/ DUTY TO PROTECT                          | <ul style="list-style-type: none"> <li>ECtHR, <i>Case of Vyrentsov v. Ukraine</i>, <a href="#">Application 20372/11</a>, Judgment, 11 April 2013;</li> </ul>                                                        |
| 10/ NON-DISCRIMINATION                       | <ul style="list-style-type: none"> <li>ECtHR, <i>Case of Sáska v. Hungary</i>, <a href="#">Application 58050/08</a>, Judgment, 27 February 2013;</li> </ul>                                                         |
| 11/ NO THREATS, HARRASSMENT, OR INTIMIDATION | <ul style="list-style-type: none"> <li>ECtHR, <i>Case of Najafli v. Azerbaijan</i>, <a href="#">Application No. 2594/07</a>, Judgment, 2 October 2012;</li> </ul>                                                   |
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*Belarusian musician and opposition politician, Maryia Kalesnikava, called for change and offered hope to many. Prior to her arrest, she mobilized people in Belarus and stood at the frontline of peaceful protest.*

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- 14 CERD, Gen. Rec. 32 on Special Measures, [CERD/C/GC/32](#), para. 7.
- 15 HRC, Promotion & Protection of HR of Africans, [A/HRC/47/CRP.1](#), para. 223, 227; *ACHPR, Guidelines for the Policing of Assemblies, para. 2.1.3.1*.
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interpreted narrowly and can only be justified in extremely rare circumstances (see below, section 3.2.5, on restrictions on the grounds of public morals). See also CCPR, GC 37, Peaceful Assembly, [CCPR/C/GC/37](#), para. 46.

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[Applies in Europe](#)

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## POLICE AND HUMAN RIGHTS PROGRAMME

Amnesty The Netherlands' Police and Human Rights Programme aims to increase the knowledge and understanding of police and policing within the Amnesty movement and the wider human rights community in order to be more effective when dealing with the police or police-related issues. We also seek to promote human rights in policing, in the belief that only human rights-compliant policing is good and effective policing. Through our work and publications – including these Guidelines – the Police and Human Rights Programme constantly seeks to demonstrate that it is both possible and essential to implement human rights law and standards in everyday policing practice.

### Do you want to know more?

- Have a look at our [webpage](#)
- Follow the [Police and Human rights course](#) on Amnesty's Academy
- Find all relevant publications on our [Police and Human Rights resources database](#)
- Contact us via: [phrp@amnesty.nl](mailto:phrp@amnesty.nl)



## AMNESTY'S PROTECT THE PROTEST CAMPAIGN

Through our [Protect the Protest](#) campaign, Amnesty International is working to expose when the right to protest is violated and to support movements around the world as they strive for positive change. Our goal is to enable all people to take peaceful action and exercise their right to protest safely and without repercussions, and we are doing so by challenging attacks on peaceful protest, acting in solidarity with those targeted and supporting the causes of social movements pushing for human rights change.

The campaign calls on governments to send a clear message that protesters should be protected and to remove unnecessary barriers and restrictions on peaceful protest.

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# GUIDELINES ON THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY

Peaceful assemblies have been the driving force behind some of the most powerful social movements, exposing injustice and abuse, demanding accountability and inspiring people to keep hoping for a better future.

The full enjoyment of the right to freedom of peaceful assembly is intrinsically linked to other human rights that must also be respected and protected: The rights to freedom of expression and of association, the rights to privacy, life, liberty and security of person, and the rights to be free from arbitrary arrest and detention, from any forms of discrimination and from torture or other ill-treatment or punishment.

Unfortunately, these precious rights are under attack. Governments and others in power are constantly finding new ways to stifle protest and silence critical voices. Global trends towards militarisation of police, increased use of force by police at protests, and shrinking civic space mean that it is becoming increasingly difficult to stay safe while making your voice heard.

Many international institutions and mechanisms have worked towards strengthening the international human rights rules and standards that apply to these rights. For example General Comments by treaty monitoring bodies, reports of UN Charter-based bodies, including the UN Human Rights Council and its special procedure mandate holders, decisions by human rights courts, and thematic outputs by regional human rights bodies.

These guidelines provide a condensed overview of the key obligations that government authorities must fulfil to ensure they comply with their country's international human rights obligations relating to the right to freedom of peaceful assembly and other related human rights.

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