

NOTICE OF FILING

Details of Filing

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File Number:	VID1612/2025
File Title:	TARNEEN ONUS BROWNE & ANOR v ASSISTANT COMMISSIONER OF POLICE, NORTH WEST METRO REGION & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 59

Rule 29.02(1)

Affidavit

No. 1612 of 2025

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law and Human Rights

TARNEEN ONUS BROWNE and BENJAMIN ZABLE

Applicants

ASSISTANT COMMISSIONER OF POLICE, NORTH WEST METRO REGION and others

Respondents

Affidavit of: **Sarah Schwartz**

Address: 17/461 Bourke Street, Melbourne VIC 3000

Occupation: Solicitor and Legal Director, the Human Rights Law Centre

Date: 7 January 2026

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	human rights in the context of assemblies, including peaceful protests” (UN Doc. A/HRC/44/24)		

I, Sarah Schwartz, solicitor and Legal Director at the Human Rights Law Centre affirm:

1. I am a solicitor and Legal Director at the Human Rights Law Centre. I have day to day carriage of this matter on behalf of the Applicants.
2. I make this affidavit in support of the Applicants’ application for the relief set out in paragraphs [2](b) and [3]-[4] of the Amended Originating Application.
3. I make this affidavit from information derived from the sources identified below and from my review of publicly available materials.
4. This affidavit documents materials going to the nature and practice of:
 - (a) the use of face coverings as a form of political expression; and
 - (b) the use of face coverings by protesters to avoid or mitigate the risks of harassment, doxxing and targeting arising from protest participation.

The use of face coverings as political expression

5. Based on the materials annexed to this affidavit, it is my understanding that face coverings, including full-body costumes covering the face, are frequently worn in Australia and elsewhere as a form of political expression, including at protests and demonstrations.

News articles and images

6. I have located a number of published articles and webpages containing images depicting protesters wearing face coverings, masks or costumes as a form of political expression.
7. Annexed and marked “**SS-1**” is a copy of an image from the National Library of Australia catalogue titled ‘*Demonstrators wearing John Howard and George Bush masks outside Parliament House during President Bush's visit to Canberra, 23 October 2003 [picture] / Brendan Bell*’. It is available online at < <https://catalogue.nla.gov.au/catalog/3123346>>.

8. Annexed and marked “**SS-2**” is a copy of an image from the National Library of Australia catalogue titled ‘*The end of the Women's Day March makes its way along Elizabeth St. to Hyde Park, 9 March 2002 [picture] / Wendy McDougall*’. It depicts a Women's Day protester wearing a facemask of former Prime Minister John Howard. It is available online at <<https://catalogue.nla.gov.au/catalog/3120159>>.
9. Annexed and marked “**SS-3**” is a copy of a Greenpeace webpage dated 13 April 2025 titled ‘*Greenpeace activists crash Coalition launch event to say: Don't Risk Dutton's Nuclear*’, together with a number of images of activists at the event, accessed through the google drive link available at that webpage. The images depict protesters using gas masks and full body suits as part of political messaging against nuclear power. It is available online at <<https://www.greenpeace.org.au/news/greenpeace-activists-crash-coalition-launch-event-to-say-dont-risk-duttons-nuclear/>>
10. Annexed and marked “**SS-4**” is a copy of an article from *The Conversation* dated 23 May 2023, which contains an image of a protester with a facemask depicting former Victorian Premier Daniel Andrews during protests concerning native forest logging. It is available online at <<https://theconversation.com/after-the-chainsaws-the-quiet-victorias-rapid-exit-from-native-forest-logging-is-welcome-and-long-overdue-206181>>.
11. Annexed and marked “**SS-5**” is a copy of a Greenpeace Australia Pacific webpage dated 3 March 2016, concerning palm-oil campaigning, which includes an image of activists wearing full-body orangutan costumes and holding signs while delivering petitions to PepsiCo, Colgate-Palmolive and Johnson & Johnson in Sydney. It is available online at <<https://www.greenpeace.org.au/article/palm-oil-whos-still-trashing-forests/>>.
12. Annexed and marked “**SS-6**” is a copy of a *News.com.au* article dated 27 August 2023 including an image of a demonstrator in a full-body owl costume with their face fully covered while protesting native forest logging. It is available online at <<https://www.news.com.au/technology/environment/back-the-chainsaws-albo-slammed-amid-calls-to-end-decadeslong-damaging-forest-logging/news-story/0add77f23b869ae6edfe91dba712581a>>.
13. Annexed and marked “**SS-7**” is a copy of a *SBS News* article dated 29 November 2019 which includes images of demonstrators wearing surgical masks containing political messaging, ‘Australia is on Fire’ and gas masks covering their face as part of climate strike protests. It is available online at

<<https://www.sbs.com.au/news/article/australian-students-lead-global-climate-strike-protests/0x4yrr0d4>>.

14. Annexed and marked “**SS-8**” is a *Guardian* article dated 5 September 2023 reporting on protests concerning the use of spit hoods. The accompanying image depicts protesters wearing spit hoods and corrections uniforms as part of political protest held in relation to the death in custody of Aboriginal man Wayne Fella Morrison in South Australia. It is available online at <<https://www.theguardian.com/australia-news/2023/sep/05/nt-police-watchdog-calls-for-ban-on-spit-hoods-on-children-northern-territory>>.
15. Annexed and marked “**SS-9**” is a copy of a *News.com.au* article dated 18 May 2014 reporting on protests against Commonwealth budget measures, containing an image of a protester wearing a full facemask with tears and a bandaid holding a sign protesting against cuts to healthcare by former Prime Minister Tony Abbott. It is available online at <<https://www.news.com.au/national/victoria/premiers-demand-meeting-with-prime-minister-tony-abbott-as-thousands-voice-anger-at-budget-in-melbournes-cbd/news-story/b8ffd6421f1fac751a61c6bc3b4accea>>.
16. Annexed and marked “**SS-10**” is a copy of a *PerthNow* article dated 23 October 2015 concerning a protest by education staff, depicting participants wearing masks of former Western Australian Premier Colin Barnett. It is available at <<https://www.perthnow.com.au/wa/wa-school-staff-wearing-colin-barnett-masks-rally-for-higher-wages-in-northbridge-ng-269ce66d0756daf8f2d4a7cfb11d7569>>.
17. Annexed and marked “**SS-11**” is a copy of an *ABC News* article dated 1 January 2024 containing an image of demonstrators wearing masks of former Prime Minister John Howard and former US President George Bush during protests regarding the Iraq War. It is available at <<https://www.abc.net.au/news/2024-01-01/2003-cabinet-documents-released-iraq-war-sars-climate-change/103255744>>.
18. Annexed and marked “**SS-12**” is a copy of a *Seattle Post-Intelligencer* article dated 15 November 2018 depicting protesters in the United States wearing masks of Jeff Bezos in opposition to Amazon’s provision of facial recognition software to migration agencies. It is available at <<https://www.seattlepi.com/seattlenews/article/dozens-protest-Amazon-facial-recognition-13352769.php?>>.
19. Annexed and marked “**SS-13**” is a copy of an article from *The Conversation* dated 24 October 2025 depicting and describing activists wearing inflatable frog costumes during protests against the policies of former US President Donald Trump. It is

available online at <<https://theconversation.com/why-us-activists-are-wearing-inflatable-frog-costumes-at-protests-against-trump-267975>>.

20. Annexed and marked “SS-14” is a copy of a *SBS News* article dated 1 November 2019. The article reports that democracy activists in Hong Kong continued to wear Halloween and political masks to mock and defy an official ban on face coverings during protests, with images of demonstrators wearing masks depicting political figures such as Xi Jinping. It is available online at <<https://www.sbs.com.au/news/article/tear-gas-and-costumes-as-hong-kong-protesters-don-halloween-masks-in-defiance-of-face-covering-ban/6lv62wjly>>.

Use of face coverings as a form of anonymity and to protect against harassment, doxxing and targeting

21. It is also my understanding, based on the annexed material, that face coverings are often used by protesters to avoid identification and consequent harassment, doxxing or targeting, including in Australia by foreign state actors.

News articles and reports

22. Annexed and marked “SS-15” is an excerpt of a Human Rights Watch report dated 30 June 2021 titled “*They Don’t Understand the Fear We Have – How China’s Long Reach of Repression Undermines Academic Freedom at Australia’s Universities*”. The excerpt contains introductory and summary pages and chapter 2 of the report detailing allegations of Chinese authorities threatening international students after they were identified as having participated in protests in Australia. It is available online at <<https://www.hrw.org/report/2021/06/30/they-dont-understand-fear-we-have/how-chinas-long-reach-repression-undermines>>.
23. Annexed and marked “SS-16” is a copy of a *Sydney Morning Herald* article dated 15 May 2024, titled ‘*Aaron staged a protest in Australia, then Chinese police paid his parents a visit*’. The article reports on police in China visiting the parents of a person following his participation in protests in Australia. It is available online at <<https://web.archive.org/web/20251209041334/https://www.smh.com.au/world/asia/aaron-staged-a-protest-in-australia-then-chinese-police-paid-his-parents-a-visit-20240514-p5jdly.html>>.
24. Annexed and marked “SS-17” is a copy of an *ABC* article dated 20 August 2019, titled ‘*Hong Kong protester targeted on Chinese social media platform WeChat following protest in Adelaide*’. The article reports on the targeting and doxxing of

Hong Kong protesters in Australia, including images of protesters wearing face coverings to avoid identification. It is available at

<https://www.abc.net.au/news/2019-08-20/hong-kong-protester-targeted-in-doxxing-attack-on-social-media/11429520?>>.

25. Annexed and marked “**SS-18**” is a copy of an *Amnesty International UK* article dated 16 May 2024 summarising the digital abuse and targeting of Thai activists. Among other material, it includes a testimony of a young person whose personal information was disclosed online by an anonymous individual following their participation in a peaceful protest. It is available at <https://www.amnesty.org.uk/press-releases/thailand-state-backed-digital-abuse-used-silence-women-and-lgbti-activists-new?>>.

Academic articles

26. I have also reviewed academic literature concerning the wearing of facemasks for political expression, and anonymity, privacy and the wearing of masks or face coverings by protesters to avoid surveillance, identification and retaliation.
27. Annexed and marked “**SS-19**” is a copy of the article by Domingo A. Lovera-Parmo titled ‘*Protesting Without a Face: Privacy in Public Demonstrations*’ (2022). The article argues that anonymity and the ability to protest without revealing one’s identity form part of the human rights and legal foundations of the right to protest.
28. Annexed and marked “**SS-20**” is a copy of an article by Baal Delupi titled ‘*Concealment of the face in social protests: performances, affects and politics*’. The article examines how the concealment of the face through masks, make-up and balaclavas functions as a form of political expression and collective resistance during protests, particularly in an age of digital surveillance. See in particular pages 7 and 9 of the article for descriptions of a political demonstrations in Argentina and page 10 of the article discussing the political meaning of face covers.
29. Annexed and marked “**SS-21**” is a copy of an article by Nicholas Doherty titled ‘*Anti-Masking Statutes and Anonymous Protest in the Age of Surveillance*’ (2020). The article critiques anti-mask laws in the context of modern surveillance, doxing and the online harassment of protesters. It notes that many protesters use masks to avoid being singled out, identified online, doxed or subjected to reprisals at work or in their communities. See in particular, pages 287-290 of the article.

Use of face masks for health purposes

30. I have searched online for Victorian Government health guidance relating to face masks.
31. Annexed and marked “**SS-22**” is a copy of a Victorian State Government Department of Health webpage, titled “Face masks and COVID-19” which states that face masks can lower your chance of catching and spreading an airborne virus. The webpage recommends that you wear face masks for at least 7 days if you have COVID-19 and you cannot maintain physical distance. The webpage also recommends that you choose a more protective respirator or mask in large crowded areas – especially if there are many people not wearing masks or it is not possible to physically distance. It is available at <<https://www.betterhealth.vic.gov.au/covid-19/face-masks-covid-19>>.

International human rights guidance concerning anonymity and expression

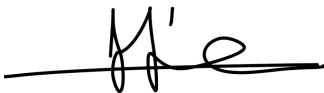
32. I have also reviewed international human rights materials addressing masking and anonymity in the context of peaceful assembly and protest.
33. Annexed and marked “**SS-23**” is a copy of *General Comment No. 37 of the United Nations Human Rights Committee on Article 21 (Right of Peaceful Assembly)*. The General Comment states that the wearing of masks or face coverings may form part of the expressive element of a peaceful assembly and may also serve to counter reprisals or protect privacy. Relevantly, at paragraph [60] it states that the anonymity of participants should generally be allowed unless there are reasonable grounds for arrest.
34. Annexed and marked “**SS-24**” is a copy of the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly. Relevantly paragraph [153] of these Guidelines states that wearing masks or face coverings at peaceful assemblies may serve expressive purposes and should not be prohibited in the absence of evidence of imminent violence.
35. Annexed and marked “**SS-25**” is a copy of the United Nations General Assembly Human Rights Council “Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests”. The Model Protocol provides guidance to law enforcement officials and recognises that individuals participating in protests have a legitimate expectation of a degree of anonymity, and gives guidance on human-rights compliant policing of assemblies. Relevantly, in chapter 6 ‘During a protest: facilitation, restraint and de-escalation’ at paragraph

[71(d)] the legitimate expectation of a degree of anonymity is recognised and law enforcement agencies are guided to refrain from interpreting with suspicion tactics intended to preserve anonymity.

36. Annexed and marked “**SS-26**” is a copy of the United Nations High Commissioner of Human Rights, “Impact of new technologies on the promotion and protection of human rights in the context of assemblies, including peaceful protests” (UN Doc. A/HRC/44/24). The report considers how public assemblies have traditionally allowed participants a certain level of protection against being singled out or identified, but that facial recognition technology has led to a paradigm shift by dramatically increasing the capacity to identify all or many participants in an assembly. See in particular paragraphs [24]-[26] and [30]-[37].

Affirmed by Sarah Schwartz
at Melbourne
in Victoria
on 7 January 2026
Before me:

) 
)
)
) Signature of deponent
)



.....
Signature of witness

Sophie L'Estrange, Australian Legal Practitioner

In accordance with section 27(1A) of the *Oaths and Affirmations Act 2018* this affidavit was signed and sworn or affirmed by the deponent by audio visual link and the authorised affidavit taker has used a scanned or electronic copy of the affidavit and not the original in completing the jurat requirements.

Certificate Identifying Annexure

No. 1612 of 2025

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law and Human Rights

TARNEEN ONUS BROWNE and BENJAMIN ZABLE

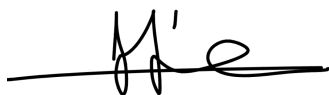
Applicants

ASSISTANT COMMISSIONER OF POLICE, NORTH WEST METRO REGION and others

Respondents

This is the annexure marked “SS-1” now produced and shown to Sarah Schwartz at the time of affirming her affidavit on 7 January 2026.

Before me:



Sophie L'Estrange, Australian Legal Practitioner

Annexure “SS-1”

Filed on behalf of (name & role of party)	Tarneen Onus Browne, First Applicant and Benjamin Zable, Second Applicant		
Prepared by (name of person/lawyer)	Sarah Schwartz		
Law firm (if applicable)	Human Rights Law Centre		
Tel		Fax	
Email			
Address for service (include state and postcode)	17/461 Bourke Street, Melbourne VIC 3000		

Search Trove

TROVE

ABOUT HELP NEWS PARTNERS SIGN UP LOGIN

Home / Demonstrators wearing John Howard and George Bush masks outside Parliament House during President Bush's visit to Canberra, 23 October 2003 [picture] / Brendan Bell

Creator
Bell, Brendan

Call Number
PIC Box PS 17400 #PIC/8908/1

Created/Published
2003

Extent
1 photograph : b&w. ; image 15.3 x 24.3 cm., on sheet 20.2 x 25.3 cm.

Physical Context
PIC Box PS 17400 #PIC/8908/1-Demonstrators wearing John Howard and George Bush masks outside Parliament House during President Bush's visit to Canberra, 23 October 2003 [picture]

[View Catalogue](#)

Image: 0



Certificate Identifying Annexure

No. 1612 of 2025

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TARNEEN ONUS BROWNE and BENJAMIN ZABLE

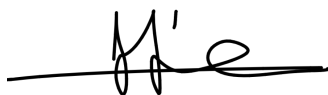
Applicants

ASSISTANT COMMISSIONER OF POLICE, NORTH WEST METRO REGION and others

Respondents

This is the annexure marked "SS-2" now produced and shown to Sarah Schwartz at the time of affirming her affidavit on 7 January 2026.

Before me:



Sophie L'Estrange, Australian Legal Practitioner

Annexure "SS-2"

Filed on behalf of (name & role of party)	Tarneen Onus Browne, First Applicant and Benjamin Zable, Second Applicant		
Prepared by (name of person/lawyer)	Sarah Schwartz		
Law firm (if applicable)	Human Rights Law Centre		
Tel		Fax	
Email			
Address for service (include state and postcode)	17/461 Bourke Street, Melbourne VIC 3000		



The end of the Women's Day March makes its way along Elizabeth St. [i.e. Street] to Hyde Park, 9 March 2002 [picture] / Wendy McDougall

Creator

McDougall, Wendy, 1961-

Call Number

PIC Drawer PM 17647 #PIC/8891/5

Created/Published

2002

Extent

1 photograph : b&w ; image 31.5 x 22 cm., on sheet 40.7 x 30.5 cm.

Physical Context

PIC Drawer PM 17647 #PIC/8891/5-The end of the Women's Day March makes its way along Elizabeth St. [i.e. Street] to Hyde Park, 9 March 2002 [picture]

[View Catalogue](#)

Image: 0



The end of the Veterans Day March makes its way along Elmwood St. to
Dyke St. 4th March Day

Certificate Identifying Annexure

No. 1612 of 2025

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law and Human Rights

TARNEEN ONUS BROWNE and BENJAMIN ZABLE

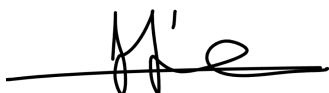
Applicants

ASSISTANT COMMISSIONER OF POLICE, NORTH WEST METRO REGION and others

Respondents

This is the annexure marked "SS-3" now produced and shown to Sarah Schwartz at the time of affirming her affidavit on 7 January 2026.

Before me:



Sophie L'Estrange, Australian Legal Practitioner

Annexure "SS-3"

Filed on behalf of (name & role of party)	Tarneen Onus Browne, First Applicant and Benjamin Zable, Second Applicant		
Prepared by (name of person/lawyer)	Sarah Schwartz		
Law firm (if applicable)	Human Rights Law Centre		
Tel		Fax	
Email			
Address for service (include state and postcode)	17/461 Bourke Street, Melbourne VIC 3000		



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Greenpeace activists crash Coalition launch event to say: Don't Risk Dutton's Nuclear



Kate O'Callaghan

April 13, 2025 • 8 min read



SYDNEY, Sunday 13 April 2025 – Greenpeace activists have staged a 'hazard cleanup' at the Coalition's election campaign launch at Liverpool Catholic Club in Western Sydney to send a clear message to Australian voters: Don't risk Dutton's nuclear.

Greenpeace activists dressed in hazmat suits and gas masks staged the clean up with Geiger counters outside the launch event during Peter Dutton's election launch, and displayed banners reading: "Don't risk Dutton's nuclear". The activists were escorted away from the entrance by security, but continued protesting near the building. Greenpeace is calling on Peter Dutton to dump his nuclear policies, saying the plans are too risky for Australia.

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“Greenpeace will always challenge policies that harm people, nature, and the climate. That is why today we have sent a loud and clear message to Australian voters — don’t risk Dutton’s nuclear plan.

“The Coalition has no plan for dealing with toxic waste safely, nor for protecting locals and emergency services in communities like Collie, LaTrobe Valley and the Hunter Valley, where it wants to build nuclear reactors.

“Nuclear is a dangerous distraction from the urgent need to slash emissions this decade and phase out coal, oil, and gas at emergency speed and scale. It is a smokescreen to prolong coal and gas while we wait decades for nuclear.

“We have the solutions — why risk nuclear when we’re already almost halfway towards powering Australia with clean, safe and affordable wind and solar power? A credible energy policy is one that rapidly scales up renewables and storage, not one that locks us into dangerous, unnecessary nuclear and fossil fuels for decades.

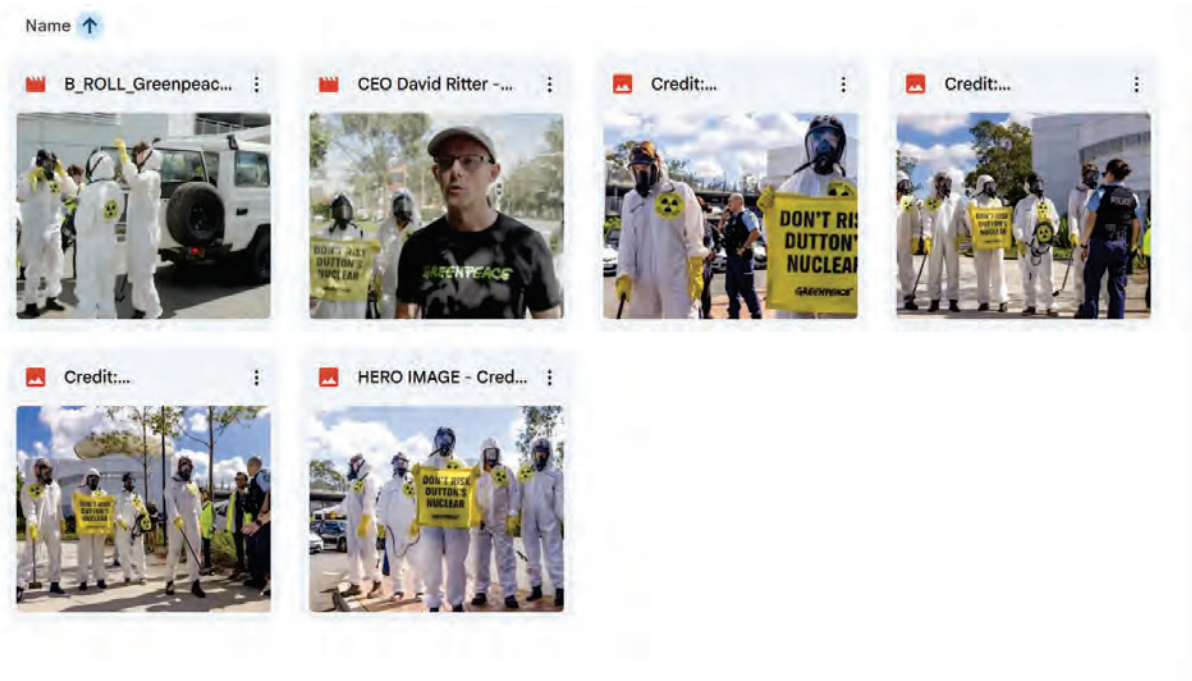
“Greenpeace is calling on Peter Dutton to dump his unpopular, unviable, and dangerous nuclear plan, and instead support the proven, safe, and affordable renewable energy solutions that will benefit our economy, our communities and our planet.”

—ENDS—

Photos and video of the protest will be uploaded [here](#) by 2pm

**For more information or to arrange an interview please contact
Kate O’Callaghan on 0406 231 892
kate.ocallaghan@greenpeace.org or Kimberlev Bernard on**

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Certificate Identifying Annexure

No. 1612 of 2025

Federal Court of Australia

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TARNEEN ONUS BROWNE and BENJAMIN ZABLE

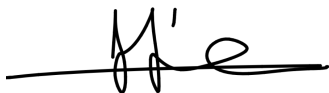
Applicants

ASSISTANT COMMISSIONER OF POLICE, NORTH WEST METRO REGION and others

Respondents

This is the annexure marked “SS-4” now produced and shown to Sarah Schwartz at the time of affirming her affidavit on 7 January 2026.

Before me:



Sophie L'Estrange, Australian Legal Practitioner

Annexure “SS-4”

Filed on behalf of (name & role of party)	Tarneen Onus Browne, First Applicant and Benjamin Zable, Second Applicant		
Prepared by (name of person/lawyer)	Sarah Schwartz		
Law firm (if applicable)	Human Rights Law Centre		
Tel		Fax	
Email			
Address for service (include state and postcode)	17/461 Bourke Street, Melbourne VIC 3000		

THE CONVERSATION

Academic rigour, journalistic flair



Phillip Mallis/Flickr, CC BY-SA

After the chainsaws, the quiet: Victoria's rapid exit from native forest logging is welcome – and long overdue

Published: May 23, 2023 4.04pm AEST

David Lindenmayer

Professor, The Fenner School of Environment and Society, Australian National University

Chris Taylor

Research Fellow, Fenner School of Environment and Society, Australian National University

DOI

<https://doi.org/10.64628/AA.6w97p356w>

<https://theconversation.com/after-the-chainsaws-the-quiet-victorias-rapid-exit-from-native-forest-logging-is-welcome-and-long-overdue-206181>

By the end of the year, Victoria's trouble-plagued native forest industry will end – six years ahead of schedule. The state's iconic mountain ash forests and endangered wildlife will at last be safe from chainsaws. And there will be no shortage of wood – there's more than enough plantation timber to fill the gap.

Tuesday's [announcement](#) by Premier Daniel Andrews is excellent news for forests, the state's economy, and its threatened species. We congratulate the Victorian government for this decision.

Ending native forest logging is long overdue. For decades, we've known of how much damage it does to biodiversity. Logging vast areas of Victoria's native forests over the past several decades has pushed many once-common animals, such as the [greater glider](#), to become endangered.

Even now, the last remaining logging areas proposed under the state's Timber Release Plan overlap directly with the areas of highest conservation value for biodiversity.

Our research has catalogued the damage done to produce low-value products such as woodchips and paper pulp. The industry never made economic sense. The state-owned logging company, VicForests, has been running at a loss for many years. The industry can switch to our abundant plantations of eucalyptus and pine.



For years, protestors have called for an end to native forest logging. Now it's about to arrive. Joel Carrett/AAP

What damage did native forest logging do?

The vast majority of areas slated for logging provide habitat for more than 50 threatened and rare species. We know that the more forests are logged, the less likely we are to find species such as the critically endangered Leadbeater's Possum. Logging pushes species into decline. Common species become threatened and threatened species move closer to extinction.

The lead author of this article has been part of a team conducting ecological monitoring and research in Victoria's forests for almost 40 years.

We have seen the damage first-hand. We've watched old forests of high conservation value be clearfelled when they should not have been. We've watched essential habitat such as large old trees, with their all-important nesting hollows, become rarer and rarer.

We have seen extraordinary animals such as the Southern Greater Glider go from the most common species identified in night surveys to so scarce they're now endangered.

We have seen once intact landscapes become dominated by highly flammable young forest at risk of extremely severe wildfires.

And we watched in dismay as logging fragmented landscape. Now up to 70% of Victoria's critically endangered mountain ash forests are either severely disturbed by wildfire and logging or within 200 metres of such areas.



The greater sooty owl depends on large old hollow-bearing trees to rear young and will benefit from the cessation of native forest logging. Darren Bellerby / Flickr

Native forest logging never made sense

Almost all (86%) of felled native forests in Victoria are turned into low-value products such as woodchips, paper pulp and boxliners.

In 2018, we estimated sawn timber equates to just 14% of the volume of logs cut from native forests.

By contrast, more than 80% of all sawn timber in Victoria comes from plantations. Native forest timber does not help build houses.

Read more: Logged native forests mostly end up in landfill, not in buildings and furniture

Bringing forward the end of native forest logging from 2030 will be a major boost for climate action – equal to removing 730,000 petrol or diesel cars from our roads every year. This single decision gives Victoria – and Australia – a far greater chance of meeting their emissions reductions targets.

In its last annual report, VicForests announced a loss of A\$54 million and a loan of \$80 million. It's now propped up only by the Victorian Treasury.

Even before these losses, the Victorian Parliamentary Budget Office showed the state would be \$190 million better off without it.



Logging practices left little behind to support native plants and animals, and could contribute a lot of ash and sediment to streams if it rained. David Blair

How can we help forests recover?

Ending logging will take pressure off our forests. But we can't simply walk away from heavily damaged areas. Many areas have never properly regenerated after logging or repeated fire.

In north-eastern Victoria, years of logging have warped the composition of tree species in the forest; many areas are dominated by trees that are largely unsuitable as food sources for koalas and greater gliders.



A mixed age forest in Melbourne's O'Shannassy water catchment. Mature forests produce higher quality water for Melbourne and more of it than logged areas. David Blair / The Australian National University

The urgent task is to restore forests across Victoria while managing fire and invasive species such as deer.

That's not all. We will still need wood and paper. Ending native forest logging requires getting things right in Australia's plantations.

At present, we export up to 95% of all plantation eucalypt logs we grow for processing overseas. That's a missed opportunity for local jobs.

Even now, the plantation sector is crying out for more workers in haulage and processing. This sector offers comparable jobs for workers leaving the native forest sector. But there will be other jobs: forest restoration, firefighting, feral animal control, carbon stock management and more. Getting the transition right is important.

The exit from native forest logging must now be coupled with the declaration of a Great Forest National Park in the Central Highlands region. The region has been a hotspot for native forest logging in recent decades.

It's almost ten years since the state's then-environment minister Lisa Neville promised this park would be declared. Once established, the new park should be co-managed with First Nations peoples to ensure Aboriginal self-determination, as well as good opportunities to work on Country.

Today is a day for celebrating. At last, Victoria's government has acted for the future. Preserving our native forests is worth much more in carbon storage, water production and tourism than they ever were as woodchips.

Victoria's move is a clarion call for other Australian states still doggedly logging their precious forests.

Read more: *When is a nature reserve not a nature reserve? When it's already been burned and logged*

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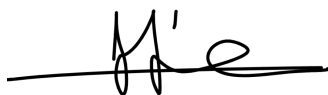
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Palm oil: who's still trashing forests?

**Greenpeace Australia Pacific**

March 3, 2016 • 1 min read



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Hey there! Just a quick note: the stuff you're browsing through is mostly for nostalgia and archival kicks. So, before you go basing any big decisions on what you find here, maybe double-check with some fresher content.

[Read the latest from Greenpeace Australia Pacific](#)

How 'clean' is the palm oil used by major brands around the world? Today, we're releasing the results of our investigation into which companies are keeping promises to stop deforestation in Indonesia for palm oil.

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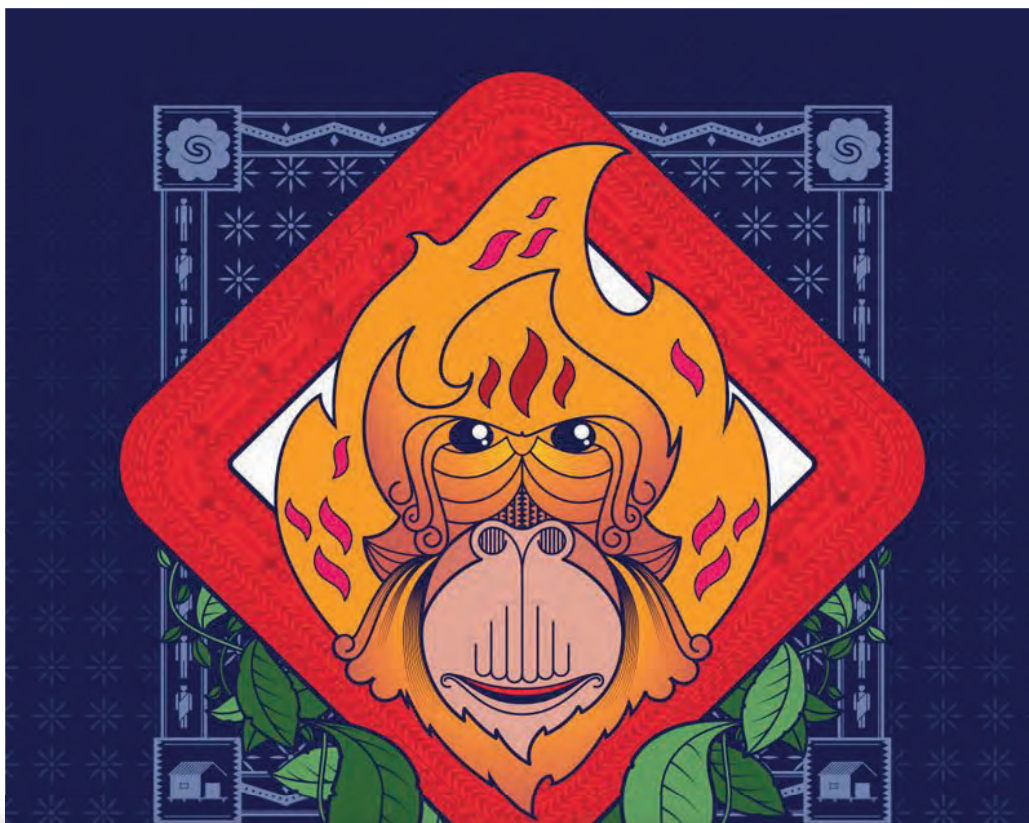
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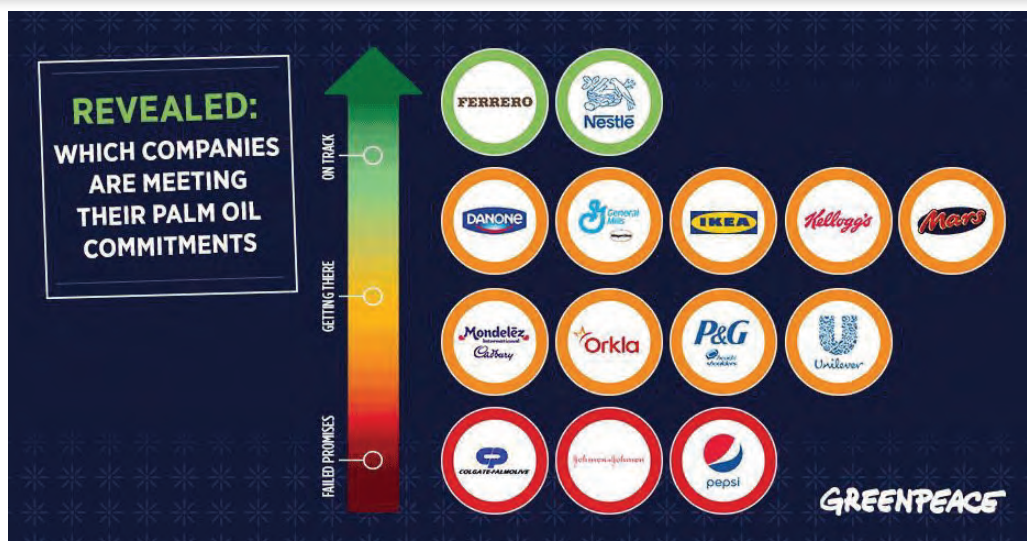
Greenpeace activists deliver petitions to PepsiCo, Colgate-Palmolive and Johnson & Johnson in Sydney. The companies use palm oil in a range of their products, but are failing to keep the ‘no deforestation’ promises they have made.



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GREENPEACE



The biggest forest fires of the century tore through Indonesia just six months ago. They reduced millions of hectares of vibrant, living tropical rainforest and peatland to smoking ash – and with it, some of the last habitat of Indonesian orangutans.

A forest fire in Indonesia may seem like a far away issue, but for the past ten years, our investigations have exposed how the everyday products in our cupboards and on our bathroom shelves have direct links to the destruction of Indonesia's rainforests.

For the average person, being a part of the solution isn't as simple as making a few changes to your shopping habits. From Doritos to Colgate to Johnson & Johnson baby soap, palm oil is in so many products that it's hard to avoid. Even if you could, palm oil isn't the problem – deforestation is the problem, and that will only stop when corporations take responsibility for the palm oil they buy.

So when hundreds of thousands of Greenpeace supporters took action, they took the fight straight to the companies responsible. Using the power of mass pressure, one by one we

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And that's not the end of the good news! This kind of collective action from corporations – with their immense purchasing power – puts huge pressure on traders and producers working directly on the ground. Companies like Wilmar International and Golden Agri Resources may not be household names, but they're giants in the industry. And because of this they agree to end deforestation – an incredible result!

Now, the best part of a successful campaign like that is getting to see the real results: Protected forest, healthy orangutans, and an end to rampant deforestation and forest fires. That's why we have to make sure the companies are keeping their promises.

So last December Greenpeace contacted 14 massive companies to find out how they were getting on with their commitments. What we found was a bit alarming. Only a few companies are making significant headway towards ensuring that there is no deforestation in their palm oil supply chains, and most are moving far too slowly.

It turns out, some companies might think that making a promise is easy – and that no one's going to notice if they don't keep it.

Cutting deforestation out of the palm oil supply chain

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The truth is, we can't afford to wait. Unbelievably, deforestation rates in Indonesia are actually increasing, instead of decreasing. And those huge fires from six months ago? They're due to return in just a few months.

The palm oil industry is still a leading cause of all this destruction. And what's even more frustrating is that palm oil can be produced responsibly. One amazing project we've been working with is a community in Dosan, Sumatra that is producing palm oil and protecting and restoring the surrounding rainforest. And there are lots of other schemes like this in Indonesia that need support.

It's so important that these companies step up and deliver. Everyone knows what needs to happen, and how – so don't let them get away with empty promises. Demand real change and real action on the ground.



Big news! we've got a boat. Help get it ready for action.

Take Action

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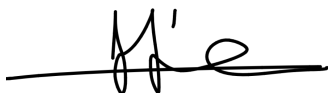
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'Back the chainsaws': Albo slammed amid



The decades-long fight to end native forest logging across Australia has come to a head as campaigners call on Anthony Albanese to intervene and end the “damaging”, costly action for good.

Demonstrators have gathered over the past two weeks across Australia, from Melbourne and Sydney to logging-affected towns like Ulladulla, as part of a co-ordinated protest action targeting Labor MPs.

Led by the Tasmania-based Bob Brown Foundation, the campaign aimed to pressure on Labor to end native forest logging countrywide.

During the ALP National Conference in Brisbane last week, founder Bob Brown issued an ultimatum to the Prime Minister.

Mr Brown, a former Greens leader, said if Mr Albanese kept felling forests, then voters would “clear-fall him”.



Demonstrators rallied on Victorian parliament steps in Melbourne to call for an end to native forest logging nationwide. Picture: NCA NewsWire / Josie Hayden



The rally formed part of a weeks-long campaign by the Bob Brown Foundation. Picture: NCA NewsWire / Josie Hayden

“Polls show voters of all parties favour ending logging,” Mr Brown said.

“With Labor, eight out of 10 Labor voters want it to end.

“But, Albo is with the small minority who back the chainsaws.

“Along with climate inaction, more coal mines and gas fracking, the tragedy of killing forests and wildlife will tell on Labor.”

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The weeks-long campaign comes after decades of activism by environmentalists across the country to end native forest logging, including recent high-profile action on the NSW Central Coast and in Victoria.



The campaign targeted Labor MPs, with protests also held outside local offices. Picture: NCA NewsWire / Josie Hayden



Protesters called out the damaging environmental impact of native forest logging. Picture: NCA NewsWire / Josie Hayden

State-run agencies currently manage state forests across the country under longstanding Regional Forest Agreements (RFAs), struck between the federal government and the states in 2002.

Under the agreements, states are given an exemption from Commonwealth environment law to undertake logging operations in public forests, which proponents say provides jobs and crucial timber supply.

But environmental advocates claim native forest logging is not financially viable and is destroying important ecosystems, such as crucial habitat for endangered koalas on the NSW Central Coast.



South Brooman resident Bob Chapman surveys an area of logged forest in the Brooman State Forest. Picture: Nathan Schmidt

In May, the Victorian government announced it will end all native forest logging in the state some six years earlier than planned following severe bushfires and legal campaigns.

The move resulted in renewed pressure on the new NSW Labor government to also end logging in the state following extensive grassroots campaigns, including on the NSW south coast.

Following the Black Summer bushfires, south coast resident Takesa Frank launched a state government petition to end native forest logging which garnered more than 20,000 signatures.



Debris left behind after a logging operation in Shallow Crossing State Forest. Picture: Nathan Schmidt

Ms Frank, from Shallow Crossing near Ulladulla, said the Forestry Corporation of NSW (FCNSW) had resumed logging operations in forests near her lifelong home only months after the deadly firestorms.

“After the bushfires, we should have been recovering as a community,” Ms Frank said.

30
 “Instead, we had to go into defence-protection mode because FCNSW ... started logging in forests we fought hard to protect.”



The 20-year-old is one of many residents in the region involved in local grassroots environmentalist agencies, such as the South Brooman State Forest Conversation Group and Friends of the Forest.

The groups, many of which sprung up after the 2019-20 bushfires, have been involved not only in pushing to end native forest logging, but helping document alleged breaches by FCNSW of forestry rules.



Logging equipment in Shallow Crossing State Forest. Picture: Nathan Schmidt

FCNSW was fined \$230,000 last year after the Environmental Protection Agency found it had allegedly carrying out illegal forestry activity at Dampier State Forest near Bodalla, potentially threatening at-risk bat species there.

At the time, a FCNSW spokesperson said the Forestry Corporation regretted that it made an error during operations, and removed trees from an area that should have been protected around a disused mine shaft.

NSW Nature Conservation Council CEO Jacqui Mumford described FCNSW as a “rogue” agency under the previous Liberal government.



Brooman State Forest Conversation Group is one of a number of grassroots movements that sprung up after the Black Summer bushfires. Picture: Nathan Schmidt



The group have campaigned to stop local logging, including at Shallow Crossing. Picture: Nathan Schmidt

She said changes to logging rules would put them on a “path to sustainable operations”.

“Public native forests create an economic gain from being protected, by generating carbon credits, tourism and recreation,” Ms Mumford said.

“Over 90 per cent of native forest that is logged in NSW is pulped and sent overseas to be used in woodchips and cardboard.”

Ms Mumford believed NSW was now “laggard” in the native forest logging space amid inaction by NSW Labor.



NSW Nature Conservation Council CEO Jacqui Mumford. Picture: Supplied

Western Australia, alongside Victoria, is poised to halt the practise, while Queensland will stop it south of Noosa.

“The NSW government has been covering the losses of the native forest logging industry for nearly a decade,” she said.

“It is not a profitable industry; in the past two years alone, \$29 million of taxpayer money was spent subsidising native forest logging.

“Ending native forest logging and focusing on the profitable plantation sector would save taxpayers and our precious forests.”

For its part, the NSW government's audit office found FCNSW did not consistently monitor compliance of its contractors or assess risks.

33
An FCNSW spokesperson said in response committed to “making continued improvements to our operations where necessary”.

“Our staff care passionately about the forests they work in and, over the last three years, we have significantly increased our efforts around compliance,” the spokesperson said.

“This has included investment in technology solutions, putting more staff on the ground and a regular program of internal audits to supplement the external audits undertaken by our third party certifier and the EPA.”

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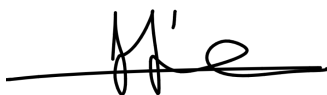
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Australian students lead global climate strike protests

Thousands of Australian students walked out of class to demand stronger action to combat climate change, which they said is contributing to the country's bushfire crisis.



Hundreds of students gathered in Sydney to demand the rejection of all new oil, coal and gas projects. Source: AAP

Australia has been battling wildfires for weeks, which have killed at least four people, burnt about 2.5 million acres (1 million hectares) of farmland and bush and destroyed more than 500 homes.

The rallies, in Sydney and other major Australian cities, were the first in a series of protests by students across the globe demanding governments do more to protect the environment.

The protests come ahead of the annual UN climate conference that starts in Madrid on Monday.

Holding home-made signs, including "The climate is changing, why aren't we?", protesters in Sydney accused the government of inadequate action in addressing Australia's bushfire crisis.

Smoke from the bushfires in New South Wales state formed a haze overhead.

"Our government's inaction on the climate crisis has supercharged bushfires," said 18-year-old Shiann Broderic, one of the event's organisers, whose home was destroyed in a bushfire.



Bushfire survivor Shiann Broderic tells protesters how she lost her home in the recent bushfire at Nymboida, NSW. Source: SBS News

"People are hurting. Communities like ours are being devastated. Summer hasn't even begun."

Prime Minister Scott Morrison has previously rejected suggestions his government is not doing enough to address climate change.

Australia has pledged to cut carbon emissions by 26 per cent from 2005 levels by 2030, but recent data shows emissions are unchanged.



Students hold a 'Solidarity Sit-down' outside of the office of the Liberal Party of Australia in Sydney. Source: AAP



Red Rebels from Extinction Rebellion at the protest in Sydney. Source: AAP

Protesters also dressed up in animal costumes to portray the impact of the recent bushfires. A koala outfit and a costume of the Lorax character from the Dr Seuss story made an appearance at protests around the country.



A protester dresses up in a Lorax costume from Dr Seuss in Melbourne. Source: AAP

However, data released on Friday showed Australia's greenhouse gas emissions were roughly unchanged in the 12 months ended June.

The release of the data came as firefighters continued to battle more than 150 blazes still alight across the country that has left more than 5 million people residing in Sydney struggling under hazardous air pollution that has lingered for much of the last week.

READ MORE



Hot, windy weekend prompts new bushfire warnings across NSW

While a cool change has eased the threat of more fires, Australia's Bureau of Meteorology on Thursday said much of the country will suffer from continued hot and dry conditions this summer, increasing the chances of more bushfires.

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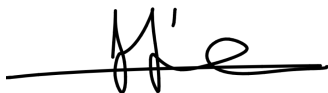
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Northern Territory

🕒 This article is more than **2 years old**

Activists want NT to make spit hoods illegal after report found they were used on children 27 times

Campaigners says case of child who may have lost consciousness while restrained in spit hood highlights need to legislate ban

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(A)manda Parkinson

Tue 5 Sep 2023 11.37 AEST

The sibling of an Aboriginal man who died after being placed in a spit hood while detained in South Australia has criticised the Northern Territory government for [refusing to legislate a ban](#) as recommended by the territory's ombudsman.

Northern Territory police have used spit hoods on children at least 27 times since 2016, in a move labelled “extraordinary” by the NT ombudsman last week.

[Peter Shoyer's report](#) exposed serious misconduct in the use of spit hoods and emergency restraint chairs on children almost six years after the landmark [royal commission into youth detention in the NT](#), which was prompted by [images of a teenager being restrained](#) in a similar manner.

Despite spit hoods being banned in Northern Territory youth jails since 2016, police have used the device 27 times and emergency restraint chairs at least six.

Shoyer detailed several instances of spit hoods being incorrectly fitted and placed on children who were intoxicated and vomiting - a move explicitly banned in NT police procedures.

Spit hoods are legally banned in all custodial settings in South Australia following the [death of Wayne Fella Morrison who was restrained and put in a spit hood](#) in 2016.

Morrison's sibling Latoya Aroha Rule began the national Ban Spit Hood Coalition which advocates for all jurisdictions to ban the devices in law.

Latoya welcomed the NT report but said it was "bittersweet".

"Justice delayed is justice denied; again, there are young people and adults who are reliving the trauma and harm of spit hoods every day ... they deserve peace of mind and peace in their bodies," they said.

Latoya urged the Northern Territory government to hasten their response and legislate a ban on spit hoods before more deaths occurred.

"How does the government expect us to trust that they want to engage with First Nations people in a way that protects our wellbeing and gives us a voice when they're actively subjugating our voices with things like spit hoods."

After reviewing footage from police, Shoyer detailed one child's horrific experience.

"The child was heard making noises that sounded as if he was choking or gasping, and it appeared that when he was placed on the ground outside there may have been a short loss of consciousness with the child lying momentarily still," the report reads.

"One member controlled the child's head with pressure from his foot while he donned medical gloves."

Only minutes later he was placed incorrectly in a spit hood - with the elastic placed around his throat instead of the back of his neck - and told to vomit into the device as "that's what they are for".

It was noted when the hood was removed there appeared to be "blood or bile" inside of it.

The ombudsman implied the young person was lucky to have survived, which acting NT children's commissioner Nicole Hucks echoed.

In October last year, [police agreed to end the use of spit hoods on young people](#) in custody, but that ban has not been legislated.

Shoyer noted there were at least three times when the hood and restraint chair were used simultaneously and that six children were subjected to the restraints more than once. In 82% of cases, the child was Aboriginal.

In other cases, a child was held down on a police counter and stripped while placed in a spit hood, and another was hooded for more than 20 minutes while being held alone in a cell.

Children who threatened self-harm and asked for mental health support were placed in emergency restraint chairs, including one child who continued to self-harm while she was in custody.

In all case studies, the ombudsman identified issues with police procedure or use of force that were not identified in internal reviews.

In relation to one child's case, Shoyer said it was "disappointing" the senior members did not identify "aspects of the interaction that escalated" the child's behaviour.

"In addition, it appears that there was a failure to identify non-compliance with the regime of health checks required under the [policy], and consequently, this was not addressed with the members involved."

Among his 18 recommendations, Shoyer called on the territory government to legally ban the use of spit hoods on people in all custodial settings and phase out emergency response chairs.

His investigation also revealed both Palmerston and Darwin continued to use padded cells as a form of restraint despite the Aboriginal deaths in custody royal commission recommending an end to their use 30 years earlier.

The NT police minister, Kate Worden, reneged on promises from October 2022 "to consider further legislative bans", instead insisting the territory had already implemented a legal ban on spit hoods and emergency restraint chairs in youth jails and a procedural ban on police for children in custody.

"Spit hoods are only used on adults in police watch houses in exceptional circumstances with mandatory reporting requirements ... there are no plans to ban the use of spit hoods on adults," Worden said.

This story was amended on 8 September 2023 to remove quotes wrongly attributed to Nicole Hucks as a result of an editing error.

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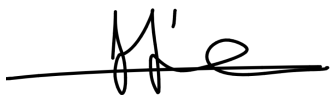
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Premiers demand meeting with Prime Minister



Greens MP Adam Bandt told the protesters that Prime Minister Tony Abbott "lied his way to power". Picture: Eugene Hyland.

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The leaders are demanding an urgent summit with Prime Minister Tony Abbott before July 1.

Victoria could lose hundreds of hospital beds, Dr Napthine warned, as he declared the funding cuts "unaffordable ... unsustainable ... and those people who'll be directly affected are ordinary Australian families.

"We've got immediate issues with reductions in funding from the federal government in this budget that start from the first of July."

It comes as thousands of people took to the streets in Melbourne's CBD to voice their anger at the Budget.

But the rally was undermined by lewd and offensive jibes aimed at the Prime Minister.

“Resign, D---head” and “F--- Tony Abbott” were popular statements while signs comparing the Prime Minister to a lizard, a sex organ and Gollum from Lord of the Rings were also visible.

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Victoria Police said there were about 10,000 people protesting. No arrests were made and no one was injured.

Minor traffic delays occurred in the CBD while the protesters marched along Swanston St from the State Library to Federation Square.

Before the march, Greens leader Adam Bandt told the crowd he expected a new prime minister by Christmas.

“No one voted for this Budget,” he said. “He lied his way to power.”

“Tony Abbott has rounded on us. It takes guts and courage to stand up to the powerful and wealthy but a coward to take an axe to the young, the sick and the poor.

“They are making life brutal for everyone who comes after them.

“This administration will be devastating to Gen Y.

“When you are looking for a job the government will take away your income while you are looking.

“This Budget is a poisonous recipe for young people in this country.”

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Originally published as [Premiers demand meeting with Prime Minister Tony Abbott as thousands voice anger at Budget in Melbourne's CBD](#)

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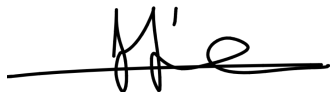
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 Education staff, many wearing Colin Barnett masks, rallied in Northbridge for a 4 per cent wage increase. Credit: News Limited, Matthew Poon

WA school staff wearing Colin Barnett masks rally for higher wages in Northbridge

CLAIRE BICKERS, AAP | PerthNow | 23 October 2015, 7:18pm

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SUPPORT workers at West Australian public schools have voted in favour of a raft of work bans after wage talks with the state government stalled.

Almost 700 United Voice members turned out for a mass meeting in Northbridge on Friday and fully endorsed a list of 19 work bans including yard duty for education assistants, vacuuming for cleaners and emptying of bins by gardeners.

The Education Department will not budge on its public sector wage policy which limits increases to the inflation rate, but the union is pushing for a four per cent per year salary increase over the next three years.

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Education assistants, gardeners and cleaners protested against “doing more with less” at the Northbridge Piazza.

Many were concerned about their jobs and the ongoing effects of past years’ budget cuts on schools and students.

The workers were calling for a wage increase of 4 per cent other conditions such as domestic violence leave and a “no privatisation” clause.

“After years of school budgets being slashed, we are seeing tremendous pressure on staff and

resources,” United Voice secretary Carolyn Smith said.

“Enrolments have been growing, yet funding has been stagnant or cut for many WA schools.

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“Support workers are sick of doing more with less and ultimately it’s the kids who suffer.

“This meeting today is telling the Premier ‘enough is enough’.

“Emperor Barnett has ripped our schools to shreds and we are now fighting, not just for a new EBA deal, but for a new government.”

Workers at the rally called for industrial action across WA schools, with gardeners to stop emptying bins, cleaners to stop vacuuming and education assistants to stop doing yard duty.

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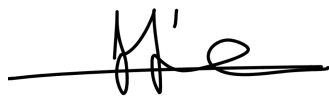
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NEWS

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Previously secret 2003 cabinet documents reveal high-level conversations prior to Australia joining Iraq War

By political reporter **Evelyn Manfield**

Federal Government

Mon 1 Jan 2024 at 8:58am



John and Janette Howard with George W and Laura Bush during an official visit to Canberra in October 2003.
(Supplied: David Foote, Michael Jones)

It was the biggest decision of 2003, but discussions about sending Australian troops as part of the US-led invasion of Iraq account for only a sliver of hundreds of pages of never-before-seen cabinet documents.

A six-page minute reveals then-prime minister John Howard had "extensive discussions over a period of time" with both US president George W Bush and UK prime minister Tony Blair about the "possible use of force against Iraq if it failed to disarm".

Key points:

- Cabinet documents from 2003 have been unsealed
- The documents reveal some of the high-level

The 20-year-old cabinet documents have been released as part of an annual dispatch by the National Archives of Australia, after the documents' confidentiality period expired.

Despite the 246-document dump, there is still so much not known about Australia's involvement in the war, as the majority of the government's high-level deliberations were made by an inner circle of ministers in the National Security Committee (NSC) — with those records kept secret.

But here's what we do know.

March 18, 2003

March 18 would go on to be the most important briefing cabinet would have in 2003, according to historian David Lee.

On that day, Mr Howard told his cabinet Iraq had the "potential to damage gravely Australia's security" and posed a "real and unacceptable threat to international peace and security".

"The risk of weapons of mass destruction falling into the hands of terrorists constitutes one of the greatest present threats to the security of Australia and the entire international community," the document reads.

It also shows Mr Howard told his cabinet he received a "request" from Mr Bush for Australia to join the military operation, and the president would soon issue a "final ultimatum" to Iraq.

discussions of the government, including on the Iraq War

- Much of the deliberations on the war have been kept secret, despite the then-defence minister supporting their release



George Bush's visit to Australia became controversial following the invasion of Iraq. (AAP: Mick Tsikas)

Shortly after the Australian cabinet met, Mr Bush delivered a statement: "Saddam Hussein and his sons must leave Iraq within 48 hours. Their refusal to do will result in military conflict commenced at a time of our choosing."

Back in Canberra, Mr Howard announced Australia's joining of what was dubbed the "coalition of the willing" at a press conference in Canberra, saying it had been done to protect Australia's "national interest".

"The government strongly believes the decision it has taken is right, it is legal," he said.

"I realise very much it's an extremely serious decision and I've thought about it a great deal and it does weigh very heavily on me.

"These are the sorts of things that do keep you awake at night."

Despite Mr Howard's plea that day for Australians to support the decision, mass protests opposing Australia's involvement in the war were held —

from the steps of Parliament House to city streets.

In a major public showing, "NO WAR" was painted in big red letters on the sails of the Sydney Opera House.



Protests were held across Australia in opposition to the war. (AAP: Mick Tsikas)

Labor leader Simon Crean and his opposition opposed Australia's involvement.

"We are divided because the government and the prime minister have committed us to a war we should not be in," Mr Crean said in an address to the nation in March.

Robert Hill was Australia's defence minister at the time.

Two decades later, he insisted Australia's decision received strong public support.

"I think the view of cabinet was that the majority of Australians thought the action that had been taken via the Australian government was warranted," he said.



Robert Hill believes the government made the right call on Iraq based on the information it had at the time. (AAP: Peter Eve)

Even though the mission was to find weapons of mass destruction – as it turned out none were there – Mr Hill still argued it was the right call.

"On the basis of the information we had at the time, we made what we believe was the right decision, and I still believe on the basis of that information that was the right decision," Mr Hill said.

April 1, 2003

Other than the short briefing on March 18, the Iraq War barely received a mention at the full cabinet table.

The vast majority of government discussions about the war were had within a cabinet subgroup, the National Security Committee, which met regularly and had intelligence from spy agencies including ASIO.

The lack of Iraq-related cabinet record keeping is clear from a minute dated April 1, 2003.

The records from that meeting are only one sentence long: "The Cabinet noted an oral report by the Prime Minister on the progress of military operations in Iraq and the contribution made by the Australian Defence Force."



An anti-Iraq War protest in front of Parliament House. (David Foote)

Despite the majority of Iraq War discussions happening at the NSC, those records have not been made public, but both Mr Hill and historian associate professor Lee were in support of their release for transparency's sake.

"What we hope to see in due course is release of those records which will help to give a fuller picture of decision making," historian Dr Lee said.

Climate change, SARS on the agenda

The records show climate change was an issue the government continued to grapple with in 2003, with cabinet discussing an emissions trading system on September 8.

But records showed the government chose to oppose it after Mr Howard met with industry leaders.



Climate change, bushfires and SARS were among the significant issues facing the government in 2003. (*David Foote*)

Severe acute respiratory syndrome (SARS) also made it to the cabinet table, with ministers noting on April 1 there were possible cases in Australia, as quarantine arrangements were being made at major airports.

Cabinet also discussed security arrangements made for Mr Bush's visit to Canberra, which would prove to be highly contentious.

It saw protests both out the front of parliament and inside – from two Greens MPs.

What's old is new again

One of the striking elements of the 2003 cabinet papers, as is the case with years gone by, is how many of the issues discussed then are still hotly debated topics now.

Among the key issues: a "desirability" to "resolve the long-standing Israeli-Palestinian conflict", free trade agreements, the "national interest", the fuel excise and relations with both the US and China.

Also in the political spotlight, like in 2023, were Indigenous affairs.

The Aboriginal and Torres Strait Islander Commission (ATSIC) was under review and would soon be dumped, something Mr Hill conceded was the incorrect call.

"On ATSIC, I think we made the wrong decision ... it would have been better for Australia for ATSIC to continue," he told the ABC.

He also admitted the Howard government was wrong for refusing to apologise to the Stolen Generations.

The Coalition would go on to win a fourth, and final, term the following year.

Posted Mon 1 Jan 2024 at 8:58am

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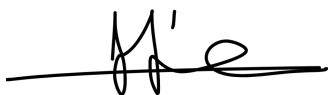
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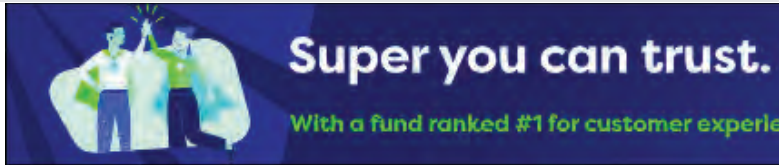
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LOCAL

Dozens of Bezos faces protest Amazon facial recognition

Protesters denounce Amazon cooperation with ICE

By **Genna Martin, Alex Halverson**, *SeattlePI*

Updated Nov 15, 2018 10:30 a.m.



Several dozen protesters hold up Jeff Bezos masks as they gather downtown to denounce Amazon for providing their facial recognition software, "Rekognition," to the Immigration and Customs Enforcement Agency (ICE) and, thereby, supporting the Trump Administration immigration policies, Wednesday, Oct. 31, 2018. The event was organized by NWDC Resistance and Mijente.

GENNA MARTIN/SEATTLEPI.COM

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Several dozen protesters gathered in front of the Amazon Spheres, Wednesday, to denounce Amazon's cooperation with U.S. Immigration and Customs Enforcement around their new facial recognition system.

In November 2017, Amazon announced real-time facial recognition, a tool used in their Rekognition technology. Amazon said in a blog post that the Washington County Sheriff's Office in Oregon used the technology, adding, "over the past year to reduce the identification time of reported suspects from 2-3 days down to minutes and had apprehended their first suspect within a week by using their new system."

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The ACLU wrote to Jeff Bezos in May 2018 urging him not to sell surveillance technology to law enforcement. In the letter they said that "Rekognition is a powerful surveillance system readily available to violate rights and target communities of color."

The letter also said that rather than restrict the technology's use by government, Amazon has helped facilitate the use by offering product support and free consulting services.

"Amazon even signed a secrecy agreement with a prominent law enforcement customer," the letter said.

RELATED: [Sen. Sanders introduces bill to stop Jeff Bezos from offering low wages](#)

On Halloween at noon, demonstrators held Jeff Bezos masks and shouted "No tech for ICE!" The protest, organized by NWDC Resistance and Mijente, called for Amazon to stop marketing their software to ICE and other law enforcement agencies and supporting the Trump administration's immigration policies.

Protester Elizabeth Pring said she was there because Amazon's software was "empowering ICE to target vulnerable communities."

Oct 31, 2018 | Updated Nov 15, 2018 10:30 a.m.

**Genna Martin****PHOTOGRAPHER**

Genna is a photographer for seattlepi.com.

Alex Halverson**SENIOR PRODUCER**

Alex is a senior producer for the [SeattlePI](https://seattlepi.com).

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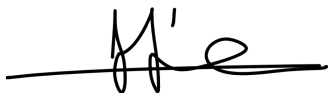
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THE CONVERSATION

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AP/Jenny Kane

Why US activists are wearing inflatable frog costumes at protests against Trump

Published: October 24, 2025 6.09am AEDT

Blake Lawrence

PhD Candidate (Design) and Performance Artist, University of Technology Sydney

DOI

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<https://theconversation.com/why-us-activists-are-wearing-inflatable-frog-costumes-at-protests-against-trump-267975>

Three frogs, a shark, a unicorn and a *Tyrannosaurus rex* dance in front of a line of heavily armoured police in riot gear.

Over the past few weeks, activists taking part in protests against Immigration and Customs Enforcement (ICE) across the United States have donned inflatable animal costumes. The aim is to disrupt the Trump administration's claim that the protests are violent "hate America" rallies.

The result is a sight to behold, with many encounters between police and protestors going viral.

Whether they know it or not, these costumed activists are contributing to a rich history of using humour and dress to mobilise against and challenge power.

The ICE crackdowns

Since its creation in 2003, ICE has enforced immigration laws on the ground, arresting, detaining and deporting undocumented immigrants convicted of criminal activity.

During Donald Trump's first term as president (2017–2021), the agency expanded its operations to target and deport many people with no criminal record.

This expansion sparked the June 2018 Occupy ICE protests, inspired by the broader global Occupy movement challenging corporate power and economic inequality.

The first major Occupy ICE action in 2018 occurred in Portland – a city known for its creativity and dissent. It grew from a rally organised by the Direct Action Alliance into what federal officials called a “very, very peaceful” encampment with kitchen tents, kids’ spaces and media hubs.

The protesters forced the temporary closure of the facility for about eight days, before federal officers cleared the site and erected a fence around its perimeter.

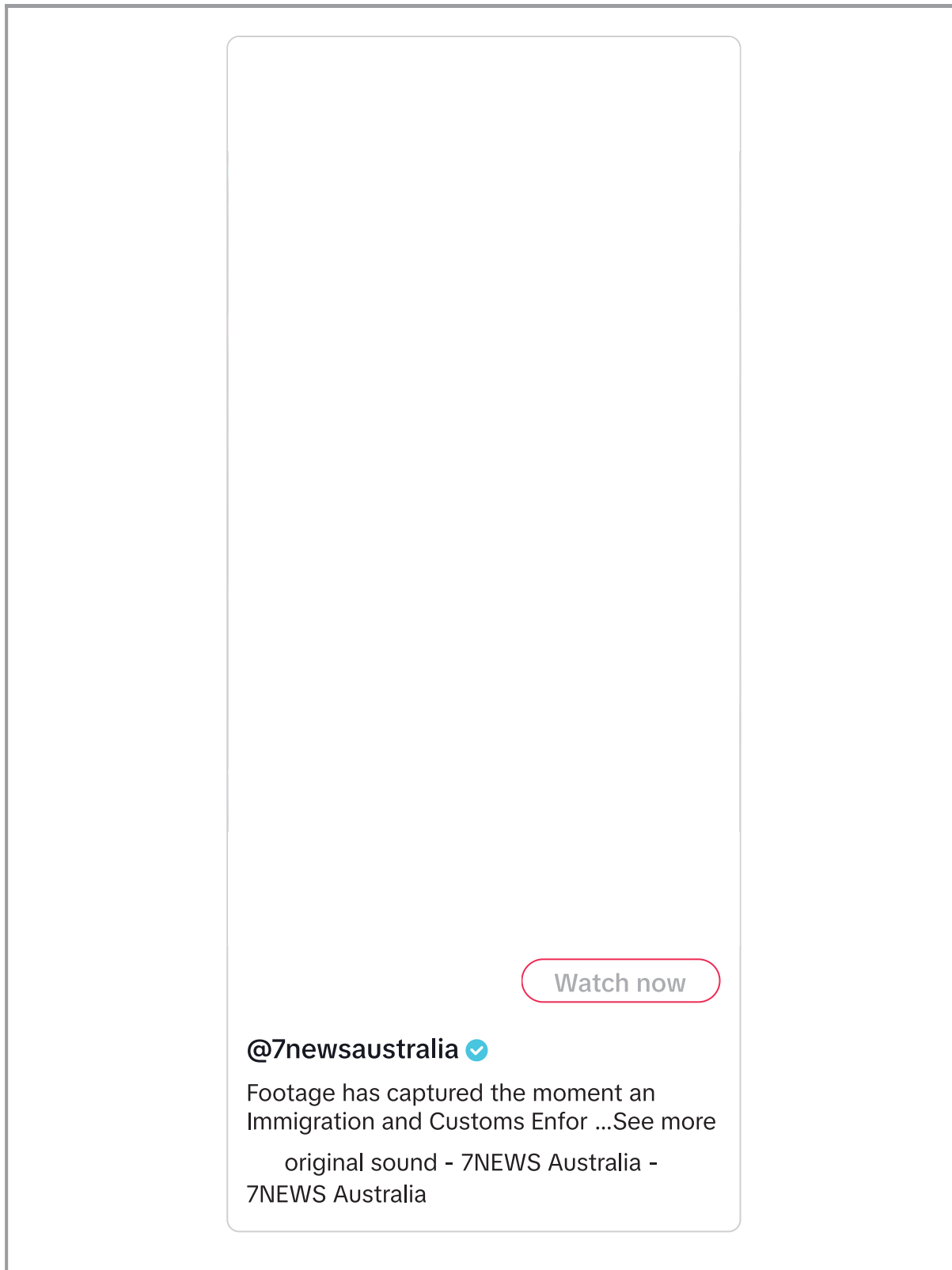
Following Trump’s re-election this year, ICE operations have intensified again, with the repealing of policies that prevented enforcement operations in sensitive areas such as schools and hospitals. Protests have followed.

In Portland, tensions escalated again this September, when Trump described the city as “burning to the ground” and “overrun with domestic terrorists,” announcing his plans to deploy the National Guard.

A federal judge has so far blocked Trump from doing so, saying the protests don’t meet the requirements for rebellion. He will likely keep trying.

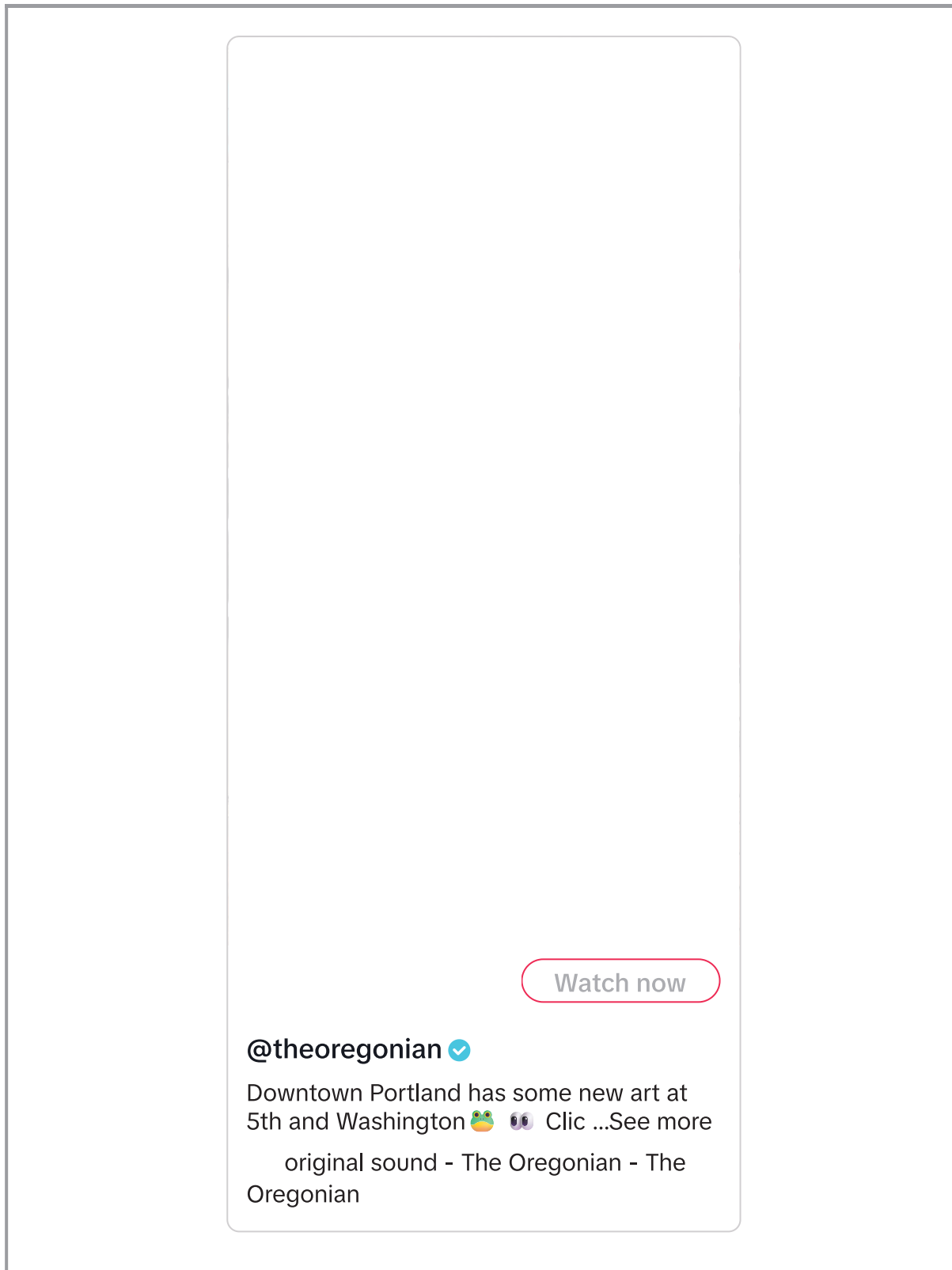
Operation inflation

Protesters in Portland and across the US have long used humour and costume in their demonstrations. In October, a TikTok video showing an ICE agent spraying pepper spray into the air vent of an activist’s inflatable frog costume amassed more than two million views.



The clip exposes the absurd levels of police force against peaceful demonstrators. The protester, Seth Todd, said his intention was to contradict the “violent extremists” narrative, and “make the president and the feds look dumb”.

The Portland frog has quickly become emblematic of resistance, appearing on shirts, signs and street art, including parodies of artist Shepard Fairey’s iconic OBEY design – the authoritarian face replaced by a cartoon amphibian surrounded by the words DON’T OBEY.



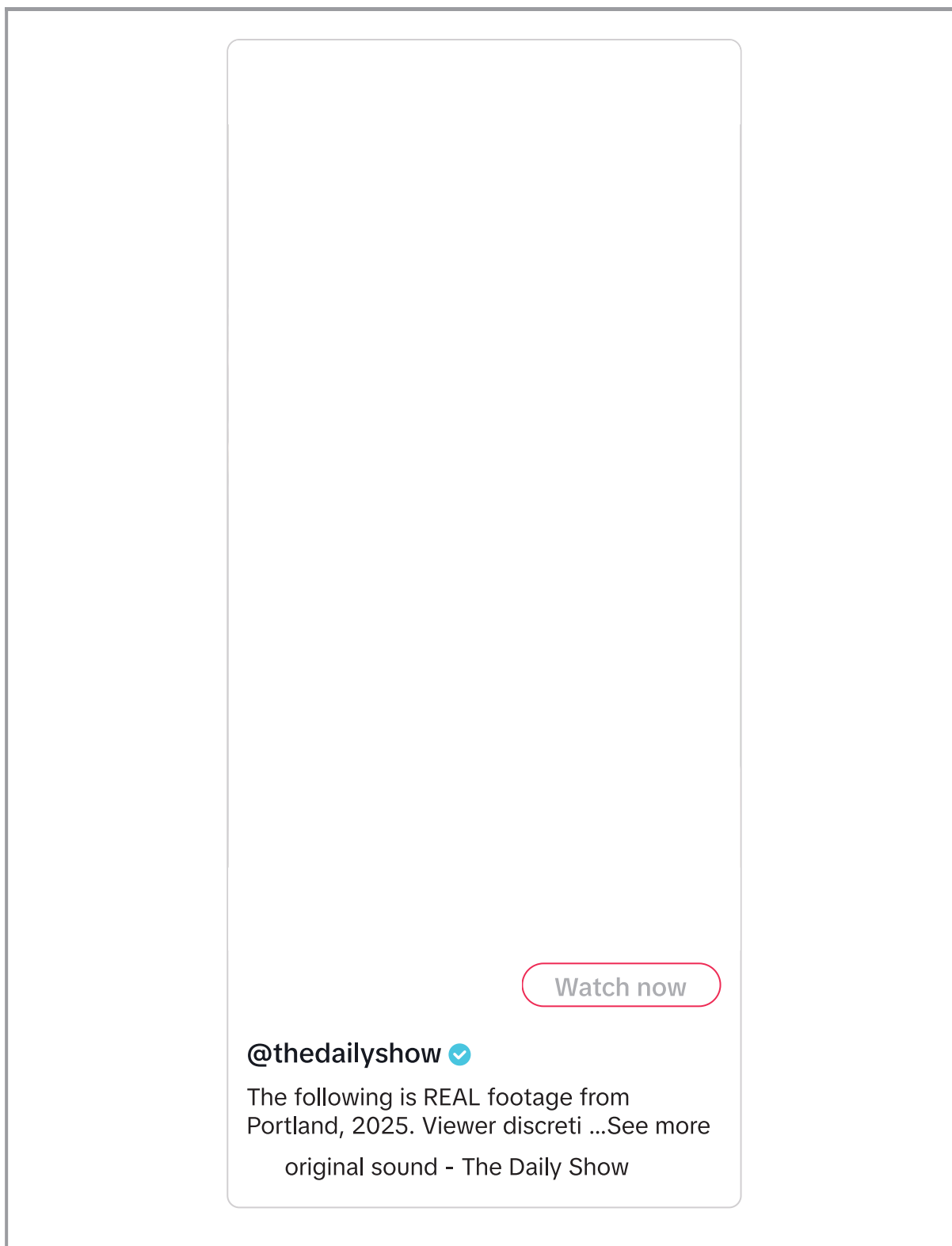
And the frog costume has spawned imitators, with creatures multiplying in protests across the country, including at the recent No Kings rallies. One group of activists launched Operation Inflation, a website that crowdfunds inflatable suits for protesters, aiming to make resistance more visible, playful and safe.

Strategic silliness

One example that echoes Portland's blow-up menagerie is London's Clandestine Insurgent Rebel Clown Army (CIRCA). Members of CIRCA dressed as clowns during anti-war protests in the early 2000s. They played tag around police lines, hugged officers, and marched in absurd choreography.

As [scholar Eve Kalyva notes](#), such actions employ “strategic frivolity”: silliness or absurdity in a way that disrupts the scripts between police and protester. By appearing playful rather than menacing, costumed activists directly counter narratives that paint them as violent threats.

The Portland frog and its friends work with the same strategies of silliness. Their dancing and cartoon-like actions make it impossible to frame them as thugs. Their soft forms bounce in contrast to the hard utility of riot gear.



From suffragette sashes to handmaids

Beyond frivolity, activists throughout history have also used dress and costume to more serious effect. In Britain in the early 20th century, suffragettes wore coordinated purple, white and green sashes to project unity in the fight for women's voting rights.

In the US, dress and costume have played important roles in successive movements for African American liberation. During the 50s and 60s Civil Rights Movements, many marched in their best suits and dresses to assert their dignity against dehumanising racism.

The Black Panther Party had an unofficial uniform of sunglasses, berets and black leather jackets, embodying a more defiant style.



The Black Panthers March in New York, in protest of the 1968 trial of co-founder Huey P. Newton in Oakland, California. Getty Images

More recently, demonstrators in the US, Northern Ireland and Argentina have donned the red cloaks and white bonnets of *The Handmaid's Tale* to protest abortion bans.

Similarly, The Extinction Rebellion–affiliated group Red Rebel Brigade stages actions in flowing red robes to mourn environmental loss.

And the wearing of the fishnet-patterned keffiyeh has now become a global symbol of Palestinian support.

Naked solidarity

On October 12, Portland's anti-ICE demonstrators – many in their inflatable suits – were joined by thousands of naked cyclists in the Emergency World Naked Bike Ride. As costume designer and historian Camille Benda writes in *Dressing The Resistance: The Visual Language of Protest* (2021), nakedness in protest lays bare the body's vulnerability to state violence.

In Portland, the mix of bare skin and soft blow-up animals heightens both the absurdity and tenderness of the scene. These protesters offer new avenues for direct action at a time when many people's rights and freedoms are at stake.

At the time of writing, ICE was reported to have increased its weapons budget by 700% from last year.

Whether Trump will ultimately deploy the National Guard remains unclear. But across the US, the frogs (and their friends) keep multiplying. Their placards declaring “frogs together strong” remind us of the strength to be forged in unity and laughter.

[Watch now](#)

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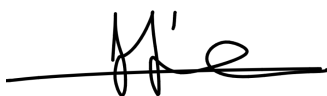
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Tear gas and costumes as Hong Kong protesters don Halloween masks in defiance of face covering ban

Hong Kong has banned masks - but protesters were out on the streets in full Halloween spirit.



A protester in clown costume gestures at police during a Halloween rally in Lan Kwai Fong, a bar district in Central in Hong Kong. Source: EPA

Hong Kong democracy activists have donned Halloween masks lampooning the city's pro-Beijing leaders, defying an emergency law that bans face coverings and sparking renewed clashes with police.

Tear gas was fired in multiple locations Thursday evening, including near a popular nightclub district where thousands of protesters had gatecrashed Halloween celebrations.



A group of revelers dressed as Jokers watch police disperse protesters. Hong Kong has officially enacted laws banning masks and face paint. Source: EPA

Online forums used to organise the largely leaderless movement encouraged supporters to use a night when revellers traditionally embrace costumes to mock a recently enacted ban on face masks at protests.

Flashmob rallies broke out in multiple locations, hours after the city announced it has plunged into a technical recession for the first time since the global financial crisis over a decade ago.

Police set up checkpoints around Lan Kwai Fong, a tightly-packed entertainment district that hosts a large annual Halloween party, as protesters descended on the area.

Many mocked the officers, shouting sarcastic chants such as "I want to drink alcohol and get laid", as well as more familiar protest slogans, as small groups of confused revellers looked on.



A protester in clown costume gestures at police during a Halloween rally in Lan Kwai Fong, a bar district in Central in Hong Kong. Source: EPA

Police declared an "unlawful assembly" and eventually fired tear gas to disperse the crowds sending plumes of acrid smoke wafting through the city's commercial district once more.

Many of those protesting wore outfits poking fun at the city's leadership.



A man in a Halloween costume walks past police officers in riot gear in Hong Kong. Source: AP

Yan Lee, an accountant in her 50s, wore a mask that combined the face of justice secretary Theresa Cheng with the Disney villain Maleficent.

"For months she has done nothing for Hong Kong but defend the authorities," she told AFP.

Another protester, who gave her surname as Loo, had painted her face in the style of Batman's nemesis, The Joker.

She said she was inspired by the recent Hollywood film that traces The Joker's origin story as he launches a revolution against Gotham City's elites.

"The idea that everyone owns the spirit to fight touched me a lot," she said.

Tear gas was also fired across the harbour in Mongkok and Prince Edward where hardcore protesters had adopted a less satirical but more familiar tactic - blocking roads and setting fire to makeshift barricades.



A protester wearing a mask of Chinese President Xi Jinping. Source: EPA

Activists were marking two months since police were filmed beating protesters in Prince Edward subway station, one of the multiple incidents this summer that have fanned hostility towards the force.

Legal challenge to mask ban

Hong Kong has been upended by nearly five months of huge, often violent, pro-democracy protests in which participants routinely wear masks to hide their identities and protect themselves from teargas and pepper spray.

Earlier this month city leader Carrie Lam invoked colonial-era legislation for the first time in more than fifty years to outlaw face coverings at rallies.

The move was seen as a watershed legal moment for the city since its 1997 return by Britain to China - but the ban has done little to stop the protests or dissuade people from wearing masks.

Earlier on Thursday, activists went to court to challenge the emergency law.

"This is a duel between the rule of law and totalitarianism," politician Dennis Kwok told reporters outside the High Court at the start of a two-day hearing.



The city of Hong Kong has been wracked by two months of protests fuelled by growing political unease.
Source: AP

The sweeping 1922 emergency law was passed by then colonial master Britain to deal with striking workers and allows the city's leader to make "any regulations whatsoever" in a time of emergency or public danger.

It was last used in 1967 by the British to help suppress Maoist-backed leftist riots that raged for nearly a year and killed some 50 people.

READ MORE



Here are five major protest movements happening in the world right now

Lam's use of the law was controversial because it bypassed the Legislative Council, the partially-elected chamber that approves Hong Kong's laws.

Critics said the move undermined the city's reputation for being a dependable business and legal hub at a time of growing concern over Beijing's control of the city.



Certificate Identifying Annexure

No. 1612 of 2025

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law and Human Rights

TARNEEN ONUS BROWNE and BENJAMIN ZABLE

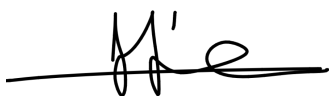
Applicants

ASSISTANT COMMISSIONER OF POLICE, NORTH WEST METRO REGION and others

Respondents

This is the annexure marked "SS-15" now produced and shown to Sarah Schwartz at the time of affirming her affidavit on 7 January 2026.

Before me:



Sophie L'Estrange, Australian Legal Practitioner

Annexure "SS-15"

Filed on behalf of (name & role of party) Tarneen Onus Browne, First Applicant and Benjamin Zable, Second Applicant

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HUMAN
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“They Don’t Understand the Fear We Have”

How China’s Long Reach of Repression Undermines
Academic Freedom at Australia’s Universities

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“They Don’t Understand the Fear We Have”

How China’s Long Reach of Repression Undermines Academic Freedom at Australia’s Universities

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Glossary

ASIO	Australian Security Intelligence Organisation
CSSA	Chinese Students and Scholars Association, the main student body in Australia for Chinese students, which has formal links with the Chinese embassy and consulates, including funding support and organizing pro-Communist Party political gatherings
CCP	Chinese Communist Party
Doxing	Publishing personally identifiable information about an individual without their consent, sometimes with intent to provide access to them offline, exposing them to harassment, abuse, and possibly danger
Hong Konger	A person from Hong Kong
Lennon Wall	Artistic expressions of support created by Hong Kong pro-democracy demonstrators that feature sticky notes covered in protest slogans and messages of support, forming large colorful pop-up mosaics
PRC student	A student from mainland People's Republic of China
The Group of Eight	An alliance of Australia's leading research-intensive universities. It includes the Australian National University, Monash University, the University of Adelaide, the University of Melbourne, the University of New South Wales, the University of Sydney, the University of Queensland, the University of Western Australia
Universities Australia	An industry representative body for universities in Australia that attempts to advance higher education through voluntary, cooperative, and coordinated action
WeChat	A Chinese-language multi-purpose messaging, social media, and mobile payment app developed by the Chinese company Tencent. It became the world's largest standalone mobile app in 2018 and currently has more than 1 billion monthly active users

Summary

I have to censor myself. This is the reality. I come to Australia and still I'm not free.

—Lei Chen (pseudonym), student from mainland China describing his experience studying in an Australian university, September 25, 2020

You have to choose your words very carefully. I look at my university and see the place is absolutely hooked on Chinese foreign student money.

—Academic “T” (pseudonym), November 12, 2020

In 2020, nearly 160,000 students from China were enrolled in Australian universities. Despite the Chinese government in Beijing being thousands of kilometers away, many Chinese pro-democracy students in Australia say they alter their behavior and self-censor to avoid threats and harassment from fellow classmates and being “reported on” by them to authorities back home.

Students and academics from or working on China told Human Rights Watch that this atmosphere of fear has worsened in recent years, with free speech and academic freedom increasingly under threat. The Chinese government has grown bolder in trying to shape global perceptions of the country on foreign university campuses, influence academic discussions, monitor students from China, censor scholarly inquiry, or otherwise interfere with academic freedom.

Before the Covid-19 pandemic, approximately 40 percent of all onshore international students in Australia came from China, with Chinese students making up roughly 10 percent of all students attending Australian universities. Even with borders closed due to the pandemic, international education remains one of Australia's top exports as universities put courses online and some international students remain in the country.

This research builds on Human Rights Watch's 2019 research into the Chinese government's efforts to undermine academic freedom globally, which included a 12-point Code of Conduct for colleges and universities to adopt to respond to Chinese

government threats to the academic freedom of students, scholars, and educational institutions.

Surveillance, Harassment, and Threats

The Chinese government maintains surveillance of Chinese mainland and Hong Kong students in Australian universities. Human Rights Watch verified three cases of students whose family in China were visited or were requested to meet with police regarding the student's activities in Australia. While this number is low (though other cases may not have been reported to Human Rights Watch), the fact this occurs at all is enough to keep thousands of other students on edge and fearful.

Current threats to and limitations on academic freedom at Australian universities stem from China-related pressures and documented cases of harassment, intimidation, and censorship of students and academics from China, and faculty members who criticize the government or express support for democracy movements. These corrosive dynamics set in motion considerable self-censorship.

Students said the fear of fellow students reporting on them to the Chinese consulate or embassy and the potential impact on loved ones in China led to stress, anxiety, and affected their daily activities. Fear that what they did in Australia could result in Chinese authorities punishing or interrogating their parents back home weighed heavily on the minds of every pro-democracy student interviewed. It was a constant concern that had to be evaluated before decisions were made of what to say, what they could attend, and even with whom they were friends.

Pro-democracy students from mainland China and Hong Kong experience direct harassment and intimidation from Chinese classmates—including threats of physical violence, being reported on to Chinese authorities back home, being doxed online, or threatened with doxing. These acts occurred in various environments, including online, in-person, and on and off campus.

Students were targeted for harassment and intimidation after being identified by their classmates as criticizing the Chinese Communist Party, expressing support for democracy in China or Hong Kong, or if they attended a protest in support of Hong Kong democracy.

This abusive behavior of intimidating or “reporting on” classmates does not represent most Chinese students in Australia, the majority of whom do not get involved in political disputes or choose to express their views peacefully. Instead, it is carried out by a small but highly motivated and vocal minority who have the potential to influence many others.

Many students expressed disappointment and dismay that Australian universities were not doing enough to protect them and their academic freedom. Most pro-democracy students interviewed who experienced harassment and intimidation said they did not report it to their university. Those who did not report these incidents believed that their university would not take the threat seriously, believing their university was sympathetic to nationalistic Chinese students or gave priority to maintaining their relationship with the Chinese government.

Students and social media users supportive of the Chinese government have subjected academics to harassment, intimidation, and doxing if the academics are perceived to be critical of the Chinese Communist Party or discuss “sensitive” issues such as Taiwan, Tibet, Hong Kong, or Xinjiang. Such incidents have taken place numerous times over the last few years on Australian campuses, and they continue to occur.

Interviewees attributed the recent increase in harassment and intimidation of students and academics to the deteriorating human rights situation in Hong Kong, and Australian-based students’ involvement in demonstrations and expressions of solidarity with those back home. The growing number of incidents should also be seen in the context of efforts by the Chinese government and the Party to influence and “call on” Chinese students studying abroad, with Chinese President Xi Jinping designating them as a “new focus” of United Front Work in 2015. Nearly all academics interviewed pointed to a marked increase in the level of nationalism among their students from China since President Xi came to power in 2013.

Culture of Self-Censorship

Both students from China and academics who work on China have adopted self-censorship as the most common strategy to avoid threats, harassment, and surveillance. As a result, frequent self-censorship on issues relating to China now threatens academic

freedom in Australia. A significant majority of pro-democracy Chinese and Hong Kong students interviewed said they self-censored while studying in Australia.

More than half of faculty interviewed, selected because they are from or specialize in China studies, or teach a large number of PRC students, said they practiced regular self-censorship while talking about China. University administrators censoring staff also occurred but was much less frequent, with examples of administrators asking staff not to discuss China publicly, or discouraging them from holding public China-related events or speaking to the media about sensitive China issues.

Self-censorship is common by academic staff who do not feel protected enough to discuss controversial topics around China because they feel that universities do not “have their back.” For nearly all academics interviewed, how to discuss China in the classroom had become a major issue in their professional lives.

Rising self-censorship is also related to fears of nationalistic Chinese students recording and reporting on class discussions, the now-regular university practice of recording and uploading most lectures and tutorials, and concerns of doxing online.

Fears of visas to China being rejected, for Chinese colleagues, or for family still in China also drove academics to self-censor. Nearly all academics highlighted their university’s failure to recognize this culture of self-censorship or develop any official policy to address it and support staff, even in circumstances when staff raised it with their supervisors.

Failure to Recognize Risks to Students and Staff

Teaching online during the Covid-19 pandemic has also posed new challenges for academics who suddenly had to teach units to students who had returned to mainland China. Course material designed for Australian campuses was now being accessed by students behind the “Great Firewall” of China, which posed new and difficult security risks for students and academics alike. Despite this, many academics said their university had not offered any official guidance on teaching Chinese students remotely and the security considerations.

Australian universities have also not grasped the full consequences of the extraterritorial reach of Hong Kong's new National Security Law and the potential impact it could have students studying in Australia. The law, which China's government imposed in June 2020, is Beijing's most aggressive assault on Hong Kong people's freedoms since the transfer of sovereignty in 1997. Its provisions include creating specialized secret security agencies, the denial of fair trial rights, sweeping new powers to police, increased restraints on civil society and media, and the weakening of judicial oversight.

Students and academics consistently raised concerns that Chinese students studying in Australia are able to live in an information vacuum akin to life in China. This is largely due to an overreliance on the heavily censored Chinese social media platform WeChat, which is the dominant social platform in China and often the only way to communicate with loved ones back home. The misinformation and lack of diverse views that exist in this Communist Party-controlled environment are viewed as a potential motivating factor behind the harassment and intimidation by some students of those who want to speak out or express different opinions. Embassy and consulate-linked student bodies dominate the support networks for students from China, and this poses difficulties for those who do not want to have any association with the Chinese state.

Focus on National Security, Rise in Racism

In 2017, Australia's intelligence agency, the Australian Security Intelligence Organisation (ASIO), warned of an increase in China's alleged attempts to interfere in domestic affairs, sparking a national debate around "foreign interference" and concerns around national security implications for Australia. Since then, political and media commentary has focused on many alleged examples of interference. As part of that, some media outlets have portrayed Chinese students as unthinking, untrustworthy, manipulable defenders of the Chinese Communist Party.

This depiction—simplistic, unfair, and at times racist—fails to consider the many challenges these young people face when suddenly living in a multicultural democracy after growing up in a strictly controlled state. Many of these students have only ever been exposed to an academic system in which diverse views are not encouraged. The institutions hosting them do little to protect their academic freedom, leaving them vulnerable to pressure from other students and from Chinese authorities.

Racism and discrimination faced by Asians in Australia has increased dramatically in the past year. A March 2021 report by the Lowy Institute in Sydney found that almost one in five Chinese Australians say they have been physically threatened or attacked in the past year, with most blaming tensions stemming from the Covid-19 pandemic or hostility between Canberra and Beijing. Around one in three community members reported they have faced verbal abuse or discriminatory treatment.

University officials are acutely aware of the financial impact full fee-paying international students have on their institutions and how reliant they have become on their fees, which accounted for 27 percent of total operating revenue for the Australian university sector by 2019. Australian universities are in a difficult position: while the government once encouraged engagement with China, Canberra now views relationships with Chinese state institutions with suspicion. Border restrictions imposed due to the Covid-19 pandemic are forcing the Australian higher education sector to examine its over-reliance on full fee-paying international students.

A plethora of reviews, taskforces, and inquiries in the past few years that have examined issues of foreign interference at Australian universities have not made concrete recommendations to protect the safety and well-being of students and staff. There is a lack of oversight and accountability mechanisms to ensure their academic freedom and security.

In Australia, university administrators of eminent institutions have repeatedly expressed to Human Rights Watch that they have robust policies to protect free speech and academic freedom. They point to their current student and staff codes of conduct as well as existing student complaint and support systems to assert their institutions are well placed to manage these threats. Universities have highlighted a commitment to implement the new government-commissioned Model Code on Free Speech or steps taken to already implement the code when we asked about these issues. But despite these services, policies, and commitments, the threats to free speech and academic freedom continue.

These issues have been difficult to identify, partly because most students and staff do not report these incidents. As a result, Australian universities have not been aware of the extent of the problem, leaving academic freedom eroded by self-censorship rather than outright repression. This also makes it easier for Chinese authorities to escape scrutiny

over their actions. In the meantime, students, faculty, and genuine academic freedom of instruction and inquiry all suffer.

Positive Steps

Public hearings in March 2021 as part of the Parliamentary Joint Committee on Intelligence and Security's inquiry into national security risks affecting the Australian higher education and research sector indicated a greater willingness by universities towards confronting Chinese government interference.

Testimony by vice-chancellors from several of Australia's largest universities signify that they are now taking these issues seriously and are keen to work with the government's recently established University Foreign Interference Taskforce (UFIT) to develop new systems and safeguards for their institutions and how to adopt the taskforce's guidelines for dealing with foreign interference.

However, despite making these commitments, discussion remains focused on protecting university research interests and national security while the universities remain unprepared to address threats to academic freedom in a systematic way for students from China and China-focused academics, or responding to issues of censorship and self-censorship.

Australian government departments, universities, and the higher education sector should adopt concrete procedures for dealing with threats, intimidation, self-censorship, and censorship affecting students from China and Hong Kong and China-focused academics.

Universities will be best served if they commit to acting together to confront China's threats to academic freedom. Alongside sector representatives like Universities Australia and The Group of Eight, universities should, where beneficial, work collaboratively on these issues. By doing so, they will reduce the risk of being individually targeted by the Chinese government for retribution for daring to speak out.

II. Harassment, Intimidation, and Surveillance

At around 2 a.m. I received a message from a mainland classmate.
He was like, “I’m watching you.”

—Zhang Xiuying, PRC student at an Australian university, November 2020⁵⁷

Of the 24 pro-democracy international students studying at Australian universities interviewed by Human Rights Watch, 11 from mainland China and 13 from Hong Kong, over half reported direct harassment and intimidation from fellow classmates from China. These included threats of physical violence, threats of being reported to Chinese authorities back home, being doxed online or threatened with doxing. Doxing is when personally identifying information about someone is shared online without their consent.⁵⁸ These acts occurred in a mix of environments, including online, in-person, and on and off campus.

Students said they were targeted for harassment and intimidation after their classmates from China identified them as critical of the Chinese Communist Party, expressing support for democracy in Hong Kong or China, or if they attended a protest in support of Hong Kong democracy.

Most pro-democracy students interviewed who experienced harassment and intimidation said they did not report it to their university. Those who did not report these incidents cited their belief that their university would not take the threat seriously or that they feared their university was sympathetic to pro-Beijing Chinese students only.

Human Rights Watch has documented that the harassment, surveillance, and intimidation of pro-democracy students from China has steadily increased in Australia in the past decade.⁵⁹ Pro-Chinese government students and social media users have also subjected academics to harassment, intimidation, and doxing if the academics are perceived to be

⁵⁷ Human Rights Watch interview with student Zhang Xiuying (pseudonym), November 2, 2020.

⁵⁸ Jasmine McNealy, “What is doxing, and why is it so scary?” *The Conversation*, May 16, 2018, <https://theconversation.com/what-is-doxing-and-why-is-it-so-scary-95848> (accessed June 2, 2021).

⁵⁹ This conclusion is based on Human Rights Watch’s research in 2017-2018 and 2020-2021.

critical of the CCP or discuss sensitive issues such as Taiwan, Tibet, Hong Kong, or Xinjiang.

Those interviewed generally believed monitoring and surveillance of students by Chinese government officials and individuals supportive of the CCP is prevalent in Australia. Several students described how Chinese officials had monitored their activities in Australia or been informed about them, which then led to authorities questioning their family members in China about their actions.

Harassment and Intimidation of Students

In mid-2019, as massive pro-democracy protests filled the streets of Hong Kong, many of the approximately 15,000 students from Hong Kong studying in Australia wanted to express their solidarity with their families and citizens back home.⁶⁰ On campuses and in city squares across Australia, these students organized demonstrations and speeches, highlighting their concerns at Beijing’s tightening grip on Hong Kong and the growing police violence that left many protesters injured and hundreds arrested. Protests were held in Melbourne, Sydney, Canberra, Perth, Adelaide, and Brisbane. Most were organized and led by university students from Hong Kong studying in Australia.⁶¹

The aftermath of these protests on and off Australian university campuses resulted in many instances of harassment and intimidation of pro-democracy Chinese and Hong Kong students by fellow students. The very participation of students in these pro-Hong Kong solidarity events “outed” the political views of students to their peers.

A female student from China, Zhang Xiuying, who joined in a demonstration to support democracy in Hong Kong, received a threatening message from a fellow PRC student just hours after attending the demonstration. She said:

⁶⁰ Australian Trade and Investment Commission, “Education Market Profile—Hong Kong,” undated, <https://www.austrade.gov.au/Australian/Education/Countries/hong-kong> (accessed January 3, 2021).

⁶¹ These expressions of solidarity were not just supported by students from Hong Kong. Some sympathetic mainland students joined in, at great personal risk. But most of the 253,000 Chinese students studying in Australia did not support Hong Kong democracy protests and some Chinese student groups on campuses and in certain cities organized counter demonstrations.

At around 2 a.m. I received a message from a mainland classmate. He was like, “I’m watching you.” He ended the conversation with, “I support the Hong Kong police.” I knew him for a long time, and I knew he had different opinions. I had told him before, “I didn’t want to talk about Hong Kong stuff with you.” Personally, I felt really scared. I went to go see the uni [university] psychologist because I was so stressed. I blocked him [the classmate] on Facebook. I was in a course with 98 percent mainland students. Students were bad-mouthing me. That I was not loyal to the country.⁶²

Zhang Xiuying said that she did not feel comfortable reporting the threat to her university because she said she felt that they would not take the threat seriously and she perceived her university as only being sympathetic to pro-Beijing Chinese students.

“In their mind, Chinese-speaking students are pro-CCP and they don’t want to hurt their relationship with the Chinese student association,” Zhang Xiuying said.⁶³

While some students received anonymous threats, others were also the subject of doxing attempts online by fellow students. A male student, Wang Wei, who supported the Hong Kong democracy protests, said social media users threatened him as well as circulating his name online and leaking elements of his address:

There were attempts to dox me and someone leaked the name of the building I was living in as well as the floor number (although they didn’t get the floor number right) online. There were many rumors circulating on WeChat claiming that I have been beaten up and hospitalized. Another post said, “The CBD [Central Business District] has many dark alleys without CCTV and these will be good places to attack him.” I was recognized in the lobby of my apartment once, although he just asked me, “Have all Hong Kongers died yet?” and left the building.⁶⁴

⁶² Human Rights Watch interview with student Zhang Xiuying (pseudonym), September 2, 2020.

⁶³ Ibid.

⁶⁴ Human Rights Watch interview with student Wang Wei (pseudonym), September 3, 2020.

Wang Wei did not report these threats to his university. He said this was because he felt that his university was too worried about getting “one step wrong” and the impact this could have on “Chinese students who were the biggest customers.” However, he reported the incident to the local police: “I went to the police station to report these threats. However, the officer in attendance was unable to file a report because he said the people who posted these threats could not be identified.”⁶⁵

Adam, a PRC student who attended a pro-Hong Kong democracy rally off campus, described what happened to him at the protest and in the days after:

They [the counter-protesters] were taking photos of us. One of the Chinese guys that I knew, he was a bartender, and I was a security guy at this bar, and after that protest he sent me pictures of me on Chinese social media and he said, “I didn’t know you support Hong Kong.” And he said, “If I tell my family and my friends about you being there, you will become so famous.” I said, “Don’t threaten me like this, I thought you were my friend.” And then he said, “I was just joking, man.” After that we stopped talking.⁶⁶

Violence also flared at some smaller campus demonstrations. One student described how she reported an assault by pro-Chinese government protesters: “We reported to the university as one of the Chinese interveners acted up and tried to hurt our protesters. The security team came and separated us.”⁶⁷

One of the largest pro-Hong Kong democracy demonstrations was held at the at the University of Queensland (UQ) on July 24, 2019, with hundreds of students gathering in UQ’s “Great Court” at lunchtime. A student journalist speaking to *The Guardian* estimated there were initially about 50 Hong Kong international students and 100 or more Australian

⁶⁵ Ibid.

⁶⁶ Human Rights Watch interview with student Adam (pseudonym), September 28, 2020.

⁶⁷ Human Rights Watch interview with student Amy (pseudonym), September 2, 2020.

students attending, before around 200 or more pro-Chinese government counter-protesters arrived.⁶⁸

The Guardian reported that the pro-Chinese government students “interrupted the sit-in, tearing down banners, punching and shoving.”⁶⁹ One of the Hong Kong student organizers, Nelson, said:

We were being peaceful and suddenly there is a group of Chinese students around us. Hundreds of them. They got their speakers and slogans, and they seem well prepared and organized. Three of them surrounded my friend and they assaulted him. The police and security came. One of my Hong Kong friends got choked around the neck and one of my friends wearing a Hong Kong student association hoodie got bullied by three Chinese students. They cornered him in the carpark in the dark and intimidated him. It was really threatening.⁷⁰

Videos posted on social media showed shouting and abuse between the two sides, turning into physical violence with police arriving to break up the four-hour-long standoff.⁷¹ The Queensland police told Human Rights Watch they received no “formal” complaints, and therefore no charges were made in relation to the July 24 protest. The University of Queensland issued a statement regarding the protest on the afternoon on July 24:

One of the roles of universities is to enable open, respectful and lawful free speech, including debate about ideas we may not all support or agree with. The University expects staff and students to express their views in a lawful and respectful manner, and in accordance with the policies and values of the University. Earlier today, in response to safety concerns resulting from a student-initiated protest on campus, the University requested police

⁶⁸ Naaman Zhou, “Pro-China and pro-Hong Kong students clash at University of Queensland,” *Guardian*, August 4, 2019, <https://www.theguardian.com/australia-news/2019/jul/24/china-hong-kong-students-clash-university-queensland> (accessed January 8, 2021).

⁶⁹ Ibid.

⁷⁰ Human Rights Watch interview with student Nelson (pseudonym), September 28, 2020.

⁷¹ Nilsson Jones, Twitter post, July 24, 2019, https://twitter.com/nilssonjones_/status/1153903723292192769?s=20 (accessed January 8, 2021).

support. On the advice of police, protestors were requested to move on. The safety of all students is paramount to the University. Any student requiring support should contact Student Services.

The statement was sent to media groups and put on the university's Facebook page.⁷² The university sent a copy of their statement that evening to the Chinese Consulate in Brisbane. The next day, Consul-General Xu Jie, who had controversially been appointed several weeks earlier as an honorary adjunct professor of language and culture at the University of Queensland, praised what he called the "spontaneous patriotic behavior" of the counter-protesters.⁷³ At the time, the university did not criticize the consul-general's comments.

In September 2019, UQ's Vice-Chancellor Peter Høj told the *ABC* that, "I'm not in the issue of debating with diplomats, and, but I made it very clear that, we don't endorse any violence acts in a peaceful demonstrate [sic], and through that you can conclude that I would disagree with somebody who would endorse that type of behaviour."⁷⁴ It wasn't until 11 months after the comments by Consul-General Xu Jie that the UQ chancellor, Peter Varghese, publicly labelled them as "unacceptable."⁷⁵

In the days after the protest, Chinese state media outlet *Global Times* published the full real name of Nelson, the Hong Kong student who helped organize the rally at the University of Queensland. The student was then doxed online, with his real name and photo published on Chinese social media sites Weibo and WeChat in the days after the event. Nelson told Human Rights Watch:

⁷² The University of Queensland, Facebook post, July 24, 2019, <https://www.facebook.com/uniofqlld/posts/2343705985706976> (accessed April 5, 2021).

⁷³ John Power, "University of Queensland faces heat for naming Chinese diplomat Xu Jie as faculty member," *South China Morning Post*, July 26, 2019, <https://www.scmp.com/week-asia/geopolitics/article/3020168/university-queensland-faces-heat-naming-chinese-diplomat> (accessed January 7, 2021); Ben Packham, "China diplomat slapped down over uni protest," *The Australian*, July 27, 2019, <https://www.theaustralian.com.au/nation/politics/china-diplomat-slapped-down-over-uni-protest/news-story/7boacc2e8b2b8541adcof61e6a2e3a68> (accessed January 7, 2021).

⁷⁴ Sean Rubinsztein-Dunlop, "Red Flags," *ABC Four Corners*, September 10, 2019, <https://www.abc.net.au/4corners/red-flags/11601456> (accessed May 14, 2021).

⁷⁵ Ben Smee, "University of Queensland to ban foreign diplomats from gaining honorary positions," *Guardian*, May 23, 2020, <https://www.theguardian.com/australia-news/2020/may/23/university-of-queensland-to-ban-foreign-diplomats-from-gaining-honorary-positions> (accessed April 5, 2021).

After this my name got doxed. My full name and my photo, a really close-up photo. It was really scary for us. At the beginning we didn't wear masks and we didn't think there was a big threat. After that incident I was easily recognized on campus and felt like I was being followed and they were looking at me. I'm worried about being doxed again and the intimidation. I changed my name on Facebook. Sometimes I feel like I am being watched on campus.⁷⁶

Nelson said he did not report what happened to the University of Queensland, citing the university's failure to criticize previous intimidating actions by Chinese nationalist students on his campus: "We have not reported it to UQ as we've seen how UQ deals with our Lennon Wall being ripped apart by Chinese students.⁷⁷ We don't think UQ would help us, like they'd just want to put down the incident to cause less trouble."⁷⁸

Human Rights Watch interviewed three pro-democracy students from China and Hong Kong who participated in the University of Queensland protests on July 24, 2019. All three said they felt that the university did not adequately respond to the events at the time.

The University of Queensland told Human Rights Watch that "in the past three years, we have not had any formal complaints from students or staff" relating to Chinese government harassment, surveillance or threats on campus, but confirmed they had received four complaints making allegations about UQ students in relation to "conduct broadly in the nature of 'doxing.'" UQ confirmed that they did take action in respect to three complaints and that one is still being investigated. The parties involved "are from diverse countries of origin," the university wrote.⁷⁹

One year after the protests and following intense criticism of UQ's handling of events and the university's close relationship with the Chinese consul-general in Brisbane, the

⁷⁶ Human Rights Watch interview with student Nelson (pseudonym), September 28, 2020.

⁷⁷ 'Lennon Walls' are artistic expressions of support with the Hong Kong pro-democracy demonstrators, featuring thousands of sticky post-it notes covered in protest slogans and messages of support, forming large colorful pop-up mosaics and appearing in train tunnels, walkways and streets around Hong Kong. Hong Kong students in Australian universities replicated these walls in walkways and school buildings across dozens of campuses.

⁷⁸ Human Rights Watch interview with student Nelson (pseudonym), September 28, 2020.

⁷⁹ The University of Queensland's full response can be found on Human Rights Watch's website.

university leadership announced several new measures to limit Chinese government interference.⁸⁰

These include ensuring that the university's Confucius Institute, a Chinese government-funded language institute, no longer had any involvement in credit-bearing courses. UQ's senate also ruled that serving foreign government officials will no longer be offered honorary or adjunct positions at the university—a direct response to the controversy around the Brisbane Chinese consul-general given an honorary professor title at UQ in 2019. At the time of writing, Consul-General Xu retained his honorary position at the university, which is due to end in December 2021.⁸¹

The university says it has also increased its liaison with the Queensland Police to develop a strategy for “ensuring that any further protests remained peaceful and safe for all students,” as well as arranging for enhanced security on campus for protests. UQ says it has also conducted “online and physical initiatives to reinforce campus harmony and tolerance,” employed additional student casual staff to speak to concerned students and offer peer-to-peer support, and formed a “community operations group” consisting of representatives from Student Affairs, Security, and the Student Union to meet on a regular basis and advise the deputy vice-chancellor on concerns among the student population.

Regarding an internal investigation into the July 2019 protest at UQ, the university told Human Rights Watch that while it requested 10 students to provide statements and other evidence about the protest, only three came forward to do so. The university advised that “in the end, UQ's investigation did not uncover sufficient information to indicate that any UQ students engaged in inappropriate conduct,” and therefore no disciplinary action was taken.⁸²

⁸⁰ The University of Queensland, “Freedom of Speech,” July 17, 2020, <https://www.uq.edu.au/news/uq-responds/freedom-of-speech> (accessed April 9, 2021).

⁸¹ The University of Queensland, School of Languages and Cultures, “Dr Jie Xu,” undated, <https://languages-cultures.uq.edu.au/profile/4580/jie-xu> (accessed May 9, 2021).

⁸² The University of Queensland's full response can be found on Human Rights Watch's website.

UQ also disclosed to Human Rights Watch that it had separately investigated “a number of reports of vandalism” in relation to the Lennon Walls on campus. “Nine of these reports resulted in UQ students being identified and actions taken by the university,” UQ said.⁸³

Despite threats and violence at UQ, Hong Kong and Chinese students and their Australian supporters continued to hold demonstrations in Brisbane. At another protest in September 2019, Fung, a recently arrived student from Hong Kong was introduced to the crowd as a “real Hong Kong protester.” Recently arrived and feeling a long way from Hong Kong, Fung felt comfortable standing on stage at the rally without a mask. Fung told Human Rights Watch that about three weeks later, when leaving his home in a suburb of Brisbane, he found four Mandarin-speaking men waiting in front of his home:

One of those men called my name in a very angry way. So me and my friend ran away. They said, “Don’t go, stay there!” They picked up sticks and they were wearing masks. Not like a surgical mask, a hiking scarf that was put up to cover the bottom of the faces. They were about 30 meters away from me and they started to come after me and shouted and so I ran. I live on a hill and I ran down for 10 minutes and they didn’t chase. I was so scared after this incident I stayed with my friend for several days and didn’t come back home. I moved out to rent another place a week later. I slept in my car for two or three nights because I didn’t want to go back there.⁸⁴

Fung was attending an English college at the time, and he said he did not feel comfortable reporting the incident to his school. But at the insistence of a flatmate, he reported it to local police. He said:

My flatmate took me to the police station to report the case in November. And the police said to me because of where I live, they don’t have any CCTV. But they wrote down what happened. The police officer hasn’t called

⁸³ Ibid.

⁸⁴ Human Rights Watch interview with student Fung (pseudonym), November 11, 2020.

me back. They said it's very difficult to determine who chased me, that it would be impossible.⁸⁵

Another student, Amy, told Human Rights Watch that mainland students who tried to stand up for Hong Kong protesters at a rally in Melbourne were among those doxed:

There was a Chinese student at the rally who tried to explain to other Chinese students that we were not promoting Hong Kong Independence—we were protesting the extradition law at the time—and eventually she got bullied, verbally insulted and they shared her personal information online because she was considered a “treason.”⁸⁶

At the University of Technology (UTS) in Sydney, a cartoon written in Chinese with a death threat directed at pro-Hong Kong protesters was removed only after an *ABC* journalist brought it to the attention of campus security.⁸⁷ The cartoon, put up on a Lennon Wall near the university's main entrance, showed a man holding another man over a cliff with the caption: “Take back your Hong Kong independence speech if you don't want to die.”

In Perth, a Hong Kong university student organizer told the *ABC* that police tipped her off that she had been filmed at a pro-Hong Kong democracy rally.⁸⁸ She said she had been followed home by Chinese nationals and had received death threats. A male student told the *ABC* he too had been doxed and followed in the wake of the Perth rally. Both students declined to be interviewed by Human Rights Watch about their experiences, citing the passing of the national security law in Hong Kong.

⁸⁵ Ibid.

⁸⁶ Human Rights Watch interview with student Amy (pseudonym), September 2, 2020.

⁸⁷ Kevin Nguyen and Echo Hui, “Pro-China death threat poster directed at Hong Kong protesters guarded by university security,” *ABC News*, August 20, 2019, <https://www.abc.net.au/news/2019-08-20/chinese-death-threats-at-hong-kong-uts-students-lennon-wall/11430440> (accessed January 17, 2021).

⁸⁸ Eliza Borrelo, “Pro-Hong Kong democracy students in Perth allege death threats, intimidation from Chinese nationals,” *ABC News*, July 7, 2020, <https://www.abc.net.au/news/2020-07-07/perths-pro-hong-kong-democracy-scene-alleges-death-threats/12418266> (accessed January 16, 2021).

Hong Kong's National Security Legislation

On June 30, 2020, the Chinese government in Beijing passed a sweeping new National Security Law for Hong Kong that has been used to prosecute peaceful speech, curtail academic freedom, and generate a chilling effect on fundamental freedoms in the city.⁸⁹ The law contains provisions that are already proving devastating to human rights protections in Hong Kong. These include creating specialized secret security agencies, denying fair trial rights, providing sweeping new powers to the police, increasing restraints on civil society and the media, and weakening judicial oversight. The extraterritorial reach of the National Security Law means the law also applies to offenses committed against Hong Kong “from outside the Region by a person who is not a permanent resident of the Region.”⁹⁰

A mainland pro-democracy Chinese student, Lim, said that he had been threatened on campus while standing in front of his university's Lennon Wall:

Just in front of the Lennon Wall, I was contacted directly by a senior Chinese student. He threatened me in a number of ways. He was an international student representative. I reported it to the student's organization. They said they would contact him. Actually, he did not contact me again. I only reported it to the uni administration, not police.⁹¹

Lim says he was never informed by the student association regarding what action, if any, was taken against the student who threatened him. Human Rights Watch wrote to his university asking if they had any record of this complaint but received no response.

In August 2020, the University of New South Wales (UNSW) published an article about Hong Kong's national security law on its media page with quotes from Elaine Pearson,

⁸⁹ “China: New Hong Kong Law a Roadmap for Repression,” Human Rights Watch news release, July 29, 2020, <https://www.hrw.org/news/2020/07/29/china-new-hong-kong-law-roadmap-repression>.

⁹⁰ Eryk Bagshaw, “Hong Kong's new national security laws reach beyond China,” *Sydney Morning Herald*, July 1, 2020, <https://www.smh.com.au/world/asia/hong-kong-s-new-national-security-laws-reach-beyond-china-20200701-p557zd.html> (accessed January 20, 2021).

⁹¹ Human Rights Watch interview with student Lim (pseudonym), September 29, 2020.

Human Rights Watch's Australia director and an adjunct lecturer at UNSW's law school. UNSW removed the article in reaction to a campaign of harassment against the university and Pearson by pro-Chinese government students.⁹² The article was later reinstated, but only on the law page of the website. In discussing this incident, a student at the university was openly harassed in a UNSW law student WeChat group after expressing sympathy for Hong Kong. "I have screen capped this and sent it to the [Chinese] embassy," replied his classmate to the WeChat group, which contained 177 students.⁹³

A mainland pro-democracy student who was a member of the WeChat group, said:

We had a WeChat group for Chinese law students just to share some study information. Some students got very angry about the article and wanted an apology. There was a Chinese student who was pro-democracy, and he expressed his view in the group chat. And he said he stands with the professor and with Hong Kong. And they threatened to report his speech to the embassy. They kicked that pro-democracy student out of the group chat. Only one person had the guts to speak out.⁹⁴

Other demands and insults were tweeted at the university's official Twitter account by people who openly identified as UNSW students on their social media profiles.

"Annihilate English dog, Destroy Hong Kong independence," wrote a young male student. "Refund this year's school fees for Chinese international students, apologize to all Chinese international students, fire all teaching staff who made such statements, head of UNSW must resign, expel all 'yellow' Hong Kong international students."⁹⁵

While UNSW's Vice-Chancellor Ian Jacobs affirmed the university's commitment to free speech and academic freedom in a statement on August 5, it was in general terms and did

⁹² Fergus Hunter and Eryk Bagshaw, "'Craven cowardice': UNSW condemned for deleting posts critical of Beijing," *Sydney Morning Herald*, August 3, 2020, <https://www.smh.com.au/politics/federal/craven-cowardice-unsw-condemned-for-deleting-posts-critical-of-beijing-20200803-p55hy5.html> (accessed April 5, 2021).

⁹³ WeChat image supplied. On file with Human Rights Watch.

⁹⁴ Name of interviewee withheld to protect identity.

⁹⁵ Twitter image supplied. On file with Human Rights Watch.

not mention the words “China” or “Hong Kong.” It also initially only went to UNSW staff. Five days later, the statement was made available on the university website.⁹⁶

Following this incident, Human Rights Watch wrote to and met with UNSW management and urged the university to hold a public online meeting to clarify academic freedom to students and staff. Human Rights Watch also urged the university to conduct a thorough investigation into the online campaign targeting the university to determine who organized it, whether any are UNSW students, and whether UNSW students were involved in intimidation, harassment, or threats to inappropriately report discussions to off-campus authorities such as the Chinese consulate.

Human Rights Watch asked UNSW if it had reprimanded any students over such comments. In response, UNSW advised that they were “not able to provide details of the complaints currently lodged in our Complaints Management System but can advise that we do not currently have any complaints registered” in relation to the online harassment and intimidation of staff and fellow students following the outcry over the Hong Kong article published in August 2020.⁹⁷

UNSW said that “complaints raised following the Hong Kong article published on Twitter in August 2020 were of a general nature relating to UNSW’s response to the incident and were not directed towards individual students.”⁹⁸

To date, the university has not publicly released the results of any investigation into the incident nor confirmed what investigation, if any, took place. Vice-Chancellor Ian Jacobs told Human Rights Watch that “I have already made a public statement on UNSW’s handling of that matter and have taken steps to ensure that such an incident will not happen again.” However, he has not indicated what new policies UNSW has adopted to ensure similar incidents do not occur again.⁹⁹

⁹⁶ The University of New South Wales, President and Vice-Chancellor, “Statement on Freedom of Speech,” August 10, 2020, <http://www.president.unsw.edu.au/news/statement-freedom-speech> (accessed May 23, 2021.)

⁹⁷ The University of New South Wales’ full response can be found on Human Rights Watch’s website.

⁹⁸ Ibid.

⁹⁹ Ibid.

In February 2021, Freedom of Information documents revealed that a confidential report to the UNSW board recommends the university adopt a “more assertive, forward-leaning approach to China engagement” and “position UNSW as a leading advocate for constructive engagement with China.” The report was delivered only months before UNSW was embroiled in the censorship controversy.¹⁰⁰

Teaching over Zoom, which became standard during 2020 due to the Covid-19 pandemic, also presented the opportunity for a new type of harassment within the online classroom.

In August 2020, Hong Kong students in a chat group at a Melbourne university were warned by fellow students that a mainland classmate had harassed and intimidated a young female student, after he noticed a Hong Kong revolution flag in her bedroom during a class Zoom call.

Said Jonathan, a student, “[T]he mainland classmate started to private message and harass her. He said he was recording it and would put the video up on TikTok.”¹⁰¹

The student who was the alleged target of the harassment did not want to speak to Human Rights Watch directly due to security fears.

Only one of the 24 pro-democracy students interviewed by Human Rights Watch said that their university had discussed a point of contact or how these kinds of political pressures, threats, or acts of retaliation can be privately or anonymously reported. Every other student reported that their university had never raised this. A few students remarked that this was in sharp contrast to the policies on sexual harassment: Zhang Xiuying said, “I know you could report sexual harassment. But I didn’t know threats from Chinese students [could also be reported].”¹⁰²

¹⁰⁰ Eryk Bagshaw and Lisa Visentin, “Confidential review told UNSW to foster ‘constructive engagement’ with China,” *Sydney Morning Herald*, February 6, 2021, <https://www.smh.com.au/world/asia/confidential-review-told-unsw-to-foster-constructive-engagement-with-china-20210205-p56zyj.html> (accessed April 9, 2021).

¹⁰¹ Human Rights Watch interview with student Jonathan (pseudonym), September 22, 2020.

¹⁰² Human Rights Watch interview with student Zhang Xiuying (pseudonym), September 2, 2020.

Harassment and Intimidation of Academics

Pro-Chinese government students and social media users have also subjected academics to harassment, intimidation, online abuse, and doxing if perceived to be critical of the Chinese Communist Party or discuss sensitive issues such as Taiwan, Tibet, Hong Kong, or Xinjiang.

These incidents are not just political disagreements or heated exchanges in class. Academics have been subjected to doxing, the release of their personal information online, which is then amplified and shared, and the basis for targeted abuse. They have also been targeted with direct threats and complaints to employers about their suitability to hold their position and by bringing particular academics and their universities to the attention of the Chinese embassy or consulate.

In August 2020, a Taiwanese engineering student enrolled at a university in Melbourne joined his tutorial discussion over Zoom. The student was the only Taiwanese student in a class in which about 20 to 25 students were from mainland China. Studying remotely due to Covid-19, the Taiwanese student was discussing the class assignment, which involved walking around his neighborhood in Taipei. During this chat, the student mentioned Taiwan as a country. In response, a mainland classmate messaged the student, thinking it was private but sending it to the whole class, telling him that Taiwan was not a country and that he should not refer to it as such.

The class tutor told the mainland Chinese student that his language was inappropriate. Another tutor in the engineering course, after learning what happened, wrote a post to students in the division, cautioning of the need to tolerate and respect others. Human Rights Watch saw a copy of the post which included the following:

Dear Students,

I was appalled to hear about the behavior of one student today in this subject. This person publicly denied the existence of the country where another student in the class is from and currently lives. Here at

[university location withheld] we celebrate the diversity of international countries of origin that our students and staff are from.

This includes Australia, Taiwan (Republic of China) and China (People's Republic of China) and many other national states. Please take this opportunity in a tutorial class to learn from each other and meet people from different backgrounds to grow and become a more mature and enlightened adult.

We all need to ensure that the learning environment is inclusive and welcoming to our diverse staff and student cohort.¹⁰³

Soon, the tutors began to receive emails from Chinese students angered by her message. News of what the tutor said began circulating on Chinese social media, where she was doxed with her name, email, and course information. One of the emails sent to the tutor, which the sender also copied to the university's vice-chancellor said:

I've seen your email about Diversity through a very famous Chinese social media and now many Chinese students know what you publicly said. I think it's really bad as now we Chinese had a bad impression to [University name withheld] because of YOU. I know everyone has his/her own political idea, but I don't think you should express it by sending this kind of email to many students. I'm now seriously concerned about how this thing will go on, and I firmly ask you for public apologize. Otherwise, I think not only myself, but many Chinese will not recommend [University name withheld] as it does not respect Chinese.¹⁰⁴

The tutor was advised that her message to students had been spotted on WeChat by academic colleagues in China. Several students interviewed separately confirmed

¹⁰³ Post by tutor to student group, supplied to Human Rights Watch. On file with Human Rights Watch.

¹⁰⁴ Email supplied to Human Rights Watch. On file with Human Rights Watch.

they were aware of this incident through WeChat. Concerned for her safety, the university removed the original post and temporarily removed all the tutor's public details and contacts from their website.

The incident was reportedly dealt with quietly and Human Rights Watch is not aware of any wider policy changes or reviews in response.

Following the incident, the Taiwanese student decided he did not want to present his assignment to the class, telling the tutor he did not feel comfortable and that he was worried about "inflaming an argument."

Merely mentioning Taiwan as a separate political entity was identified by several academics as a cause of harassment and intimidation. "K," an academic who specializes in China and teaches Chinese students, said:

Whole areas are becoming off limits. I have a colleague who had students' complaining about content of classes, due to mentioning Taiwan. Another colleague had a guest lecturer who mentioned Taiwan. Even saying that Taiwan could be a political entity was enough for some Chinese students to lodge complaints against the lecturer for inviting the guest.¹⁰⁵

This academic explained that they and their colleagues worry about numerous student complaints because it can result in the tutor receiving low scores on their Subject Experience Survey (SES), an online feedback system in which students give feedback on their courses and teachers. Said "K": Because if those students will give you low SES scores and if you have a lot of low scores, those scores will be on your record and when it comes to your own promotion it has an impact."¹⁰⁶

Most academics interviewed said their university had no adequate response to this kind of harassment or any policy to deal with it. Instead of directly addressing the issues, with

¹⁰⁵ Human Rights Watch interview with academic "K" (pseudonym), December 9, 2020.

¹⁰⁶ Ibid.

universities proactively explaining the lines of acceptable behavior to students, these incidents tended to be quickly swept under the carpet with institutions simply muddling through until the next time. The systemic failure to respond at a policy level has a direct correlation to the self-censorship academics feel forced to practice that is discussed in Section III of this report.

Said “K”:

The universities are behind the curve on all of this. There is not a strategy for dealing with it. In internal meetings for the last few years, it’s been raised by more and more departments. More and more people are having these problems. At our uni there hasn’t so far been any strategy.¹⁰⁷

The online targeting and harassment of academics in Australian universities who have strong public opinions on issues deemed sensitive to the CCP has become common online in the last 10 years on Twitter. There is evidence that this online harassment then sometimes extends into academic’s daily lives. An academic became the subject of a targeted email harassment campaign beginning in 2018 after giving public interviews critical of the Chinese Communist Party. The academic said:

I haven’t shared this before, but since December 2018 I started getting harassing emails on an almost daily basis. They set up a fake Gmail account in a name of someone I knew. They said, “Oh, you’re coming to your end.” And then last year in December, whoever this person is actually set up an email in my name and sent a fake resignation letter to my entire school. I was at home having a BBQ and I got a phone call from the head of my department, who said they were sorry to hear me go. I didn’t bother going to police over threatening emails. When I went to them over the resignation email, which is fraudulent activity, the police seemed very uninterested. For a little while there I thought it might be one crazy guy, but the police did say that the sheer amount of emails sent seems to indicate that it’s not just some lonely crazy guy in his basement.¹⁰⁸

¹⁰⁷ Ibid.

¹⁰⁸ Name withheld to protect identity.

Students and academics told Human Rights Watch that classroom disturbances and arguments when controversial issues relating to China were discussed were not unusual.

“R,” an academic who specializes in China and teaches Chinese students, told Human Rights Watch:

We have had attempts to shout down students. Chinese PRC students shouting down Hong Kong students in class, talking about the Hong Kong independence movement. I told them it was inappropriate. You have to be a really good negotiator to stop problems popping up.¹⁰⁹

In January 2021, the Chinese language pro-CCP online media outlet *Today Melbourne* featured the case of two Chinese students at Monash University who complained after two articles assigned by their tutor for their Data in Society class referenced oppressive digital surveillance of Muslim citizens in China’s Xinjiang region.¹¹⁰ The articles were from the acclaimed academic journal *Nature*, one entitled “Crack down on genomic surveillance,”¹¹¹ and the other “The ethical questions that haunt facial-recognition research.”¹¹²

“The articles slander the Chinese government, spread rumors, sow discontent between ethnicities, and have a strong anti-China sentiment,” the Monash students told the online website.¹¹³

The students said that 95 percent of the students enrolled in the summer semester class were PRC students and that by selecting these articles as recommended readings, they believed that the tutor was “seriously disrespecting the students.”

¹⁰⁹ Human Rights Watch interview with academic “R” (pseudonym), December 4, 2020.

¹¹⁰ “Slandering the Chinese Government and disrespecting us,” *Melbourne Today*, January 14, 2021, <https://mel.jinriaozhou.com/content-1021396683567017?lang=zh-CN> (accessed April 5, 2021).

¹¹¹ Yves Moreau, “Crack down on genomic surveillance,” *Nature*, December 3, 2019, <https://www.nature.com/articles/d41586-019-03687-x> (accessed May 15, 2021).

¹¹² Richard Van Noorden, “The ethical questions that haunt facial-recognition research,” *Nature*, November 18, 2020, <https://www.nature.com/articles/d41586-020-03187-3> (accessed May 15, 2021).

¹¹³ “Slandering the Chinese Government and disrespecting us,” *Melbourne Today*.

Today Melbourne wrote that some of the Chinese students had already contacted the Chinese embassy and “the school management and demanded the retraction of the readings.”¹¹⁴ The website published the email that had purportedly been sent by the Monash University tutor to the students who complained and Human Rights Watch has verified its authenticity:

Hi all,

I’m sorry you have found the content of some of the articles so distressing. The idea behind critical thinking is as you say—to identify and evaluate arguments made by others. Sometimes these arguments will be flawed. It is your job to identify these flaws and point them out by drawing on evidence (including anecdotal evidence).

Unfortunately, we all know there is a lot of misinformation out in the world, part of this assignment is about you being able to identify misinformation and respond in a constructive way. If you feel there are errors of fact in the article you were assigned, please feel free to say so in your assignment and explain how you know they are incorrect.

The nature of ethics is intrinsically political, so most of what is taught in this unit can be explored from a political perspective. The unit takes a socio-political perspective and draws on concepts from a range of fields including philosophy and sociology (both quite political). I hope you understand then that political content is unavoidable.

Human Rights Watch wrote to Monash University inquiring about this incident.¹¹⁵ The university responded, confirming what had happened and saying that its response upheld “academic freedom and freedom of speech.”¹¹⁶

¹¹⁴ Ibid.

¹¹⁵ Letter on file with Human Rights Watch.

¹¹⁶ Monash University’s full response can be found on Human Rights Watch’s website.

However, it is concerning that the academic at Monash tried to appease the students by apologizing, writing “Sincerest apologies again for any distress caused and thank you for letting us know” and telling the students they were “welcome” to choose to study a different article for their assignment.¹¹⁷

Teaching staff reported that Chinese students often retort that as full fee-paying students, the universities are lucky to have them; therefore, their views and opinions should be respected and not challenged, a position incompatible with academic freedom.

Academics interviewed believed these students are often not directed or led by any external force, but rather have their own personal motivation of loyalty to the state when they believe there has been an affront to China and they feel compelled to defend their country. “R” told Human Rights Watch:

These incidents in the classroom, a lot of that has got to do with this patriotic education making them hypersensitive. It’s not like they are being told to act [like this], they react emotionally on the spur of the moment. That element has been a bit overlooked. In many cases its totally unnecessary for the consulate to tell them what to do.¹¹⁸

There also appears to be state-backed harassment aimed at intimidating academics working on sensitive topics in China.

In late 2017, three Australian academics received funding from the Australian Research Council to work on a project regarding Tibet in conjunction with a colleague at a Chinese university. In February 2018, one of their China-based research partners was warned that the project was being monitored by the Public Security Bureau, China’s police, and that they should distance themselves from the work.¹¹⁹

In June 2018, the research office of the Australian university where the lead investigator worked, received a call from a woman claiming to be from the Chinese embassy in

¹¹⁷ Email verified and on file with Human Rights Watch.

¹¹⁸ Human Rights Watch interview with academic “R” (pseudonym), December 4, 2020.

¹¹⁹ Name of interviewee withheld to protect identity.

Canberra. She asked about the Tibet research and the lead academic named on the project, before warning the university “not to proceed with the project.” The caller specifically asked the university to “look after our relations with China” and said that “this project was not in favor of keeping good relations.” The woman hung up quickly and when the research officer tried to call the number back (listed as a Queensland number) it did not connect.¹²⁰

Following this pressure, the institution pledged its full support for the academics involved and the continuation of the research project. However, several months later, Chinese authorities denied two of the Australian researchers on the project a visa.

Monitoring and Surveillance of Students and Academics in Australia

Several pro-democracy students described how Chinese officials or their proxies had evidently monitored them in Australia and then questioned their family members back home about their activities. In some cases, family members were used to pass on warnings to students in Australia to change their behavior. In other cases, the threats and fear of being “reported on” by fellow students to the local consulate or embassy and the impact this could have on their loved ones still in China led to stress, anxiety and modified behavior. Some of these concerns about surveillance started before students even left for Australia.

Julie, who came to study in Australia, explained how her university in China warned her to stay away from political events and made it clear that authorities back home had her contact details. She said:

I, along with all the exchange students, were organized and taught to “hold position firmly” and stay away from any political event during our study by the International Cooperation and Exchange Office of my university. As I know, they shared my personal information, including my Australian phone number, with [Chinese] police.¹²¹

¹²⁰ Name of interviewee withheld to protect identity.

¹²¹ Human Rights Watch interview with student Julie (pseudonym), September 25, 2020.

Migration agents specializing in education help China-based students apply to universities in Australia. Students pay for the service and agents can also work on behalf of universities to market and promote their courses.

Zhang Min, a student, explained that the agent in China who organized her study in Australia created a WeChat group with other PRC students studying at the same university, which made her worry that the chats could be accessed by Chinese government officials. Zhang Min said:

These agents will create a WeChat group already for those students that are going to Australia, so even before they come, they know each other. It's an online community. To go to a certain uni to do a certain course. So, I think the embassy, or the Chinese official organizations talk to each other. And apparently, they maintain good relationships so it's really easy for just some random guy to have access to the Chinese students WeChat groups. So, I would be worried that they would report me to the embassy. So, I don't feel I can think freely or express my views in class.¹²²

Some mainland Chinese students experienced surveillance while in Australia.

In 2019, Li Wei, a student from mainland China, arrived in Australia to study. He opened a Twitter account under a fake name posting views critical of the CCP, garnering several thousand followers. He said:

I started the account because I was in Australia. I thought it was safe here. I thought they wouldn't be able to trace it back to me. In March 2020 the local police department contacted my parents and asked my parents to come to the police station and issued an official warning and they told me to "shut the fuck up" and that I will pay a very heavy price if I come back home. They said I must shut down my Twitter, stop spreading antigovernment messages and if I don't cooperate, they may charge me with a crime if I ever come back home. They said I would face a minimum

¹²² Human Rights Watch interview with student Zhang Min (pseudonym), September 27, 2020.

three years. They didn't call me. Just contacted my parents. So far, it's ok. I deleted the Twitter account. Because I'm worried about my parents.¹²³

Twitter told Human Rights Watch that they have “not disclosed any account information of any user in response to a legal demand from Chinese authorities, nor removed content on the basis of a legal demand from Chinese authorities.”¹²⁴

Li Wei believes Chinese authorities were able to trace him because the recovery email account linked to his Twitter used his real name. He described why he wanted to speak out after coming to study in Australia:

In our department there are a lot of students who share the same opinion as me, but they are too afraid to speak out, they are afraid of retaliation. If you protest against CCP abroad, they will find people you love to make you pay. Even if you are in Australia, they will hurt someone you care about it.... My parents stand 100 percent with me. The only reason I am pro-democracy is because my parents are pro-democracy. My dad graduated from uni in 1988 but in 1989 he was at the protest in Tiananmen.¹²⁵

Fears of jail for social media use have increased recently, in an escalation of Communist Party assault on the use of foreign social media. Chinese authorities have sentenced more than 50 people to prison in the past three years for using Twitter and other foreign platforms—all blocked in China—allegedly to disrupt public order and attack Party rule.¹²⁶

In January 2020, in a case that attracted significant attention among Chinese students studying abroad, a Chinese student who had been studying at the University of Minnesota was arrested in China and sentenced to six months in prison for tweets he posted while studying in the US. The court document says that “in September and October 2018, while

¹²³ Human Rights Watch interview with student Li Wei (pseudonym), September 3, 2020.

¹²⁴ Letter from Twitter on file with Human Rights Watch.

¹²⁵ Ibid.

¹²⁶ Chun Han Wong, “China Is Now Sending Twitter Users to Prison for Posts Most Chinese Can't See,” *Wall Street Journal*, January 29, 2021, <https://www.wsj.com/articles/china-is-now-sending-twitter-users-to-prison-for-posts-most-chinese-cant-see-11611932917> (accessed April 6, 2021).

he was studying at the University of Minnesota, Luo used his Twitter account to post more than 40 comments denigrating a national leader's image and indecent pictures," which "created a negative social impact."¹²⁷

Jimmy, a Hong Kong student studying in Victoria, described how Hong Kong police questioned him about his activities in Australia when returning home to Hong Kong several times in 2019.

There were police who stopped me and searched me and asked me a lot of questions about "why you came back?" "Did you do anything about supporting the movement in Australia?" They asked me this at the airport. I told them I'm back for a holiday, I tried to avoid this topic. But the second or third time it happened, I was honest and said, "Yes, I support the movement in Australia, what are you going to do, arrest me?" They then said bad language and asked, "Were you paid from America and the Australian government?" But now the National Security Law was passed in July and so if I went back to Hong Kong now and told them this now, they definitely would fuck me up. That why I can't go back now, because I told them this.¹²⁸

Jimmy was applying for asylum in Australia at time of writing.¹²⁹

A mainland student, Wang Li, said Chinese authorities questioned him after he returned home in 2020:

¹²⁷ Bethany Allen-Ebrahimian, "University of Minnesota student jailed in China over tweets," *AXIOS*, January 23, 2020, <https://www.axios.com/china-arrests-university-minnesota-twitter-e495cf47-d895-4014-9ac8-8dc76aa6004d.html> (accessed April 6, 2021).

¹²⁸ Human Rights Watch interview with student Jimmy (pseudonym), October 23, 2020.

¹²⁹ At the time of writing, so far in 2021, 450 PRC citizens have applied for asylum in Australia. The number of asylum claims from PRC citizens has fluctuated in recent years with 3,300 claims filed in Australia in 2019-2020 4,800 claims filed in 2018-2019 and 9,300 filed in 2017-2018. Of those 17,000 claims, only 260 so far have been granted asylum. The number of asylum claims from Hong Kongers has increased in the past year with 145 people with Hong Kong passports applying for asylum, up from 62 applications the prior year. It is unclear how many of these asylum applications are individuals in Australia on student visas.

I have been asked by the office of Ministry of State Security. They asked me all the details in Australia. They asked me to tell some names of people I know; did I notice any differences in Australia. Since I didn't want to tell them anything, they intimidated me to detain me for a long time, if I don't cooperate with them. The conversation lasted for two hours.¹³⁰

Adam, a student from the Muslim Uyghur minority in northwest China was studying in Australia when he returned home briefly. While in China, state security officers summoned him for questioning.

Adam said:

They were trying to get information about the Uyghur community in Australia. They gave me a list. They were trying to convince me to spy for them. They said they would pay for my Australian studies if I spied. They said I only have to go to the events; I just have to take videos of who joined the events. Adelaide and Melbourne Uyghur events. Visit the families and provide their addresses, car registration, what kind of car they drive and what kind of job they do. It would be in my best interest, they said. It would cover my school and it would be good for my family back home, which is really like a threat.

The officials summoned the student three or four times over several months, reiterating their demands. Due to return to Australia soon to finish his studies, Adam was terrified and unsure what to do. He decided to move from where he had been living in Australia and relocate to a different state where there was not a large local Uyghur community.

I felt that if I stayed in that city they would keep pushing me to send them info and threaten me. So, I applied to transfer my university education. I told them I'm moving to [location withheld]. And they said can you do the same thing in [location withheld] but I said there's no Uyghurs there.

¹³⁰ Human Rights Watch interview with student Wang Li (pseudonym), September 3, 2020.

Upon returning to Australia and even after his move to a different state, Chinese authorities continued to harass and monitor Adam. “They added my WeChat. And they kept trying to contact me and saying, ‘Hi.’ They kept saying, ‘Hey, how’s your life?’”

As the situation worsened in Xinjiang, some of Adam’s relatives disappeared into camps and the local police in his hometown advised his parents not to talk to him. In 2019, as pro-Hong Kong democracy demonstrations broke out, Adam attended one of the protests at his Australian university. He believes someone circulated his image at the demonstration back home because not long after he attended the rally, local police in Xinjiang contacted him. He said:

After I joined the demonstration, police asked my mum to go to the local station. It happened a few times. Most of the time there was a police officer next to my mum and she would say I should be very grateful to the Party and without the Party you couldn’t go and study overseas. I knew she had to say what they wanted. There was even once my mum, when she was at the police station, she said send my passport details and my residential address and my student ID. I told my mum I can’t... I said, “Oh it’s against the Australian law.” I made this up. And she asked again, and I said, “Oh, get the police station to write a letter and ask.” And then all of a sudden, a police officer took the phone away from my mum and was speaking in fluent Uyghur to me. The officer said, “Don’t talk bullshit, just send it.” The officer said, “Aren’t you worried about your family here?” I said, “Of course, I am very worried about them.”¹³¹

On another occasion, Adam received a voice message from his mother referring to his presence at the Australian protests that he had not discussed with her.

My mum called and said I was on the wrong side and that I should be on the Chinese side and that I should try and avoid protests like that. She said, “Oh, just don’t go to uni.” I said, “Oh, I was on the other side, the

¹³¹ Human Rights Watch interview with student Adam (pseudonym), September 28, 2020.

cameraman just made it look like I was on the wrong side.” I said, “Don’t worry, I will do the right thing.”¹³²

Scared and worried about these contacts, Adam tried to call the Australian Federal Police, but he says they were dismissive of his complaint.

I thought they might have some kind of department or service that could help me. But when I called them, they said so what, that was their attitude. They were pretty careless; I don't remember exact words but mainly what they said was, “So what if they’re asking your details? If you’re concerned, just don't tell them.” And when I told him they have my mum sitting next to them and they’re threatening me, he said he can't do anything about it.¹³³

Adam said that he decided not to report any of this to his university, saying that he did not think they “would care or help him”:

I never said anything. There is always the fear that everyone is after money not their conscience. Especially universities they get hundreds of millions from Chinese students. I usually follow the news and all the news made me feel I shouldn’t talk too much about anything. There was not anyone I could trust, no lecturer or tutor.... Everyone is busy with their life, with their teachings, with their studies. I have Australian friends, they don’t believe it. They say, “Are you making this up?” Since I came here until now, I just feel like I don’t belong to anywhere. It feels better not to talk about this. It just stresses me out.¹³⁴

The student discussed the psychological toll this stress took on him and how lonely he felt in Australia, not knowing who to turn to about this harassment.

I started smoking, I was stressed, I was drinking, I didn’t want to go to uni. I didn’t want to talk to anymore. I stopped talking to my friends. I just

¹³² Ibid.

¹³³ Human Rights Watch interview with student Adam (pseudonym), September 28, 2020.

¹³⁴ Ibid.

became so alone. I just feel like I'm living in a parallel world, but no one understands me or my experience. There was one time I failed three courses in one semester because of what happened and wanted to defer my study, but at the same time I wanted to really finish.¹³⁵

Academics also confirmed pro-democracy students from China are fearful of surveillance. An academic, "N," explained how in 2017 a mainland Chinese student gave a presentation in his class on Tibet. Chinese officials later raised it with the student's parents in China. "N" said:

One of the students discussed self-immolation in Tibet. Later she came to speak with me during office hours. She said her parents' "superiors" had been notified through one of their workplaces specifically about her Tibet presentation. There's no other way for her parents to have learned about that other than a reporting mechanism. I told her that if she had any indications of how this had happened, she should let me know. But she didn't. I would have liked to get to the bottom of how this happened but in a class of 80 or 90 students, it's hopeless.¹³⁶

"N" said they did not take the matter further:

I did not raise it with the uni. If the same thing happened now, I would raise it. My impression of administrative matters at the university was that even if I spoke to someone above me about it, they wouldn't know any more about it than I did, and it would just be brushed aside. Sometimes I regret not talking to the class about it. I didn't want to draw any more attention to it.¹³⁷

One academic who has published work on the Chinese Communist Party believes Chinese authorities targeted his computer. Despite raising these concerns with his university, he did not receive firm help or advice. "R" said:

¹³⁵ Ibid.

¹³⁶ Human Rights Watch interview with academic 'N' (pseudonym), November 10, 2020.

¹³⁷ Human Rights Watch interview with academic 'N' (pseudonym), November 10, 2020.

I keep getting malware in my computer which the uni doesn't take seriously and so I have to pay for my own anti-malware program. They don't take it seriously enough, that's what pisses me off.¹³⁸

Academics expressed concerns around students monitoring and recording anything sensitive they might say in class, fear of complaints to their university, or being doxed online. Advances in technology and camera phones make recording by students easier. "D," an academic who specializes in China and teaches Chinese students, said:

If a student takes out an iPhone and hits record and suddenly, I'm in trouble. I do think about these things now. You could say no recording devices or no phones in classrooms but that's impossible to police.¹³⁹

An academic who hosted a class discussion about Xinjiang, was later approached by several mainland students who wanted to voice their concern at the discussion. The academic organized a Zoom call with them all, which he cited as a good opportunity to chat the issues through. What worried the academic was how one student declined to turn her camera on. As "T" said, "And I felt very uncomfortable at this, thinking is she recording this? Who knows if that is now circulating on a Chinese website?"¹⁴⁰

¹³⁸ Human Rights Watch interview with academic 'R' (pseudonym), December 4, 2020.

¹³⁹ Human Rights Watch interview with academic 'D' (pseudonym), November 6, 2020.

¹⁴⁰ Human Rights Watch interview with academic 'T' (pseudonym), November 12, 2020.

Certificate Identifying Annexure

No. 1612 of 2025

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law and Human Rights

TARNEEN ONUS BROWNE and BENJAMIN ZABLE

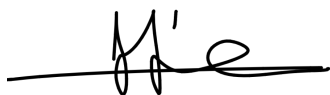
Applicants

ASSISTANT COMMISSIONER OF POLICE, NORTH WEST METRO REGION and others

Respondents

This is the annexure marked "SS-16" now produced and shown to Sarah Schwartz at the time of affirming her affidavit on 7 January 2026.

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Sophie L'Estrange, Australian Legal Practitioner

Annexure "SS-16"

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Prepared by (name of person/lawyer)	Sarah Schwartz		
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The Sydney Morning Herald

World Asia CCP influence

This was published 1 year ago

Aaron staged a protest in Australia, then Chinese police paid his parents a visit



Lisa Visentin

May 15, 2024 – 4.14pm

Aaron, an international student studying in Sydney, knows all too well that the industrial-scale surveillance deployed by the Chinese government on its citizens doesn't stop at the border.

In March, ahead of Chinese Foreign Minister Wang Yi's visit to Australia, Aaron received a flurry of missed calls from his parents in China. When he answered, their voices were strange and unusually monotonous.



Chinese international student Aaron dressed as Winnie the Pooh as part of his protest against Chinese President Xi Jinping at a bus stop outside the entrance to the University of Sydney in February 2023.

“It was like they were reading a script. They told me not to attend any protests or organise any protest, and don’t use Twitter from Monday to Friday,” said Aaron, a University of Sydney student who prefers to be known only by his Western pseudonym.

He suspects that a Chinese police officer was standing over his parents while they gave him the instructions.

If so, it was not the first time Chinese authorities had paid his parents a visit. Aaron, who regularly participates in anti-Chinese Communist Party protests, first attracted the attention of the Chinese government when he staged a demonstration at a bus stop outside the entrance of the University of Sydney in February last year.

Dressed in a Winnie the Pooh costume, which has become a figure of derision and dissent used to mock Chinese President Xi Jinping, Aaron displayed handmade posters and signs featuring photos of CCP critics who had disappeared in China after participating in the [White Paper protests that swept the country in 2022](#) in response to years of gruelling COVID lockdowns and growing censorship.

Over the course of the days-long protest, he sparred with groups of pro-Beijing Chinese nationals, who he says verbally abused him and tore down his posters, and in one incident kicked him in the chest. He filmed some of the confrontations, including one where university staff appeared to try to defuse the situation after his posters were torn down and cautioned him against following the pro-government student through campus.

Soon after, authorities knocked on his parents’ door.

“[The police] threatened my parents about their income and their superannuation, and about my relatives’ future ability to become public servants or get a job in national-owned companies if I did not stop,” he said.

His experience reflects the price paid by many CCP critics who, in exercising their democratic rights in Australia, cannot escape the long arm of the Chinese government – particularly on university campuses.

A 2021 [Human Rights Watch report](#) compiled one of the most comprehensive accounts to date of CCP influence stifling free speech on Australian campuses. It found that Chinese students would often self-censor comments critical of the Chinese government for fear they would be reported to authorities or harassed by their pro-Beijing peers.

Universities, in collaboration with Australia’s security agencies, have since beefed up foreign interference guidelines aimed at countering CCP influence on campuses, and have adopted free speech charters – though [some have been more proactive than others](#) in tackling on-campus intimidation.

The surveillance of Chinese international students in Australia is part of the broader picture of what Amnesty International has called “transnational repression”.

[In a report released this week](#), the organisation detailed a pattern of Chinese students at universities in western Europe, Canada and the US being monitored and intimidated by Chinese authorities or their agents, including photographing them at protests and pressuring their families back home in China.

“The Chinese authorities have honed a strategy to curb students’ human rights wherever they are in the world,” Sarah Brooks, China director of Amnesty International, said.

A Chinese Foreign Ministry spokesman dismissed Amnesty’s report as “smear and vilification”, saying “the vast majority of Chinese nationals overseas are proud of the development achievements of their home country”.

Amnesty’s report also contained accounts of politically active students being harassed by other Chinese students with pro-government views, bearing a similarity with the abuse Aaron says he encountered during his protest outside Sydney University last year.

During one altercation, he says his sunglasses were snatched from his face, thrown on the ground and kicked, causing them to break. In another incident, he says he was assaulted after he followed a group of student-age Chinese nationals, who had been harassing him, onto a nearby bus. At the next stop, he claims he was repeatedly kicked in the chest by one man with such force that his Apple watch falsely detected he had been in a car crash. He reported the abuse to NSW Police, which launched an investigation but was ultimately unable to identify those responsible. “The investigation is currently suspended pending further information,” a police spokesperson said.

Sydney University also investigated a complaint Aaron made through its channels and identified one student involved in destroying his posters. The university informed him in a written response to his complaint that it had no jurisdiction to act because the posters were affixed to a bus stop outside the campus grounds. It nonetheless sent a caution letter to the student warning him that such actions, if repeated on campus, could breach the university’s free speech charter.

The university declined to comment on Aaron’s case citing privacy concerns, but said it routinely provided support for students to peacefully protest on campus.

“When we are aware a student may be at risk, we work to provide appropriate support and assistance – and if we find members of our community have violated our codes of conduct, we don’t hesitate to take disciplinary action in line with our policies,” a spokesperson said.

Several months after his university protest, CCP authorities tightened the screws on Aaron again, banning the social media accounts he used to communicate with friends and family back home, severing a key link to his life back in China. This, too, is a common tactic in the arsenal of the Chinese state in its efforts to silence dissent abroad.

“I am socially dead to people in my past,” he said. “I lost all of my contacts with my friends and classmates. I had no preparation; they were all gone in the one day.”

Get a note directly from our foreign correspondents on what’s making headlines around the world. [Sign up for the weekly What in the World newsletter here.](#)



Lisa Visentin is the North Asia correspondent for The Sydney Morning Herald and The Age. She was previously a federal political reporter based in Canberra. Connect via [Twitter](#).

Certificate Identifying Annexure

No. 1612 of 2025

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law and Human Rights

TARNEEN ONUS BROWNE and BENJAMIN ZABLE

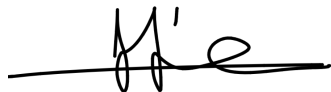
Applicants

ASSISTANT COMMISSIONER OF POLICE, NORTH WEST METRO REGION and others

Respondents

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NEWS

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Hong Kong protester targeted on Chinese social media platform WeChat following protest in Adelaide

By Joshua Boscaini

Demonstrations

Tue 20 Aug 2019 at 1:43pm



Police at the scene of a Hong Kong protest held at UniSA last Friday. (ABC News: Lincoln Rothall)

A pro-Hong Kong protester says she has been targeted on social media after attending a pro-democracy rally in Adelaide's CBD last week.

A social media expert told the ABC the harassment, known as "doxxing", was aimed at silencing critics of Beijing.

Aski*, from Hong Kong, who did not want her name published, said she turned up to the protest at the University of South Australia on Friday without wearing a mask.

Key points:

- A protester claims she has been the victim of online attacks on Chinese social media

Tensions quickly boiled over between pro-Hong Kong and pro-Beijing protesters, and she was captured on camera by a pro-Beijing supporter.

She said the photo was then shared on Chinese social media app WeChat.

**"They thought I was the head of the whole thing,"
Aski said.**

- "Doxxing" is an attack on a person's privacy in which personal details are shared online
- The claims come as protests continue to escalate in Adelaide and throughout Australia

She said less than an hour after the protest finished she started receiving messages from her friends claiming her personal details had been shared widely on the platform.

ABC News has sighted WeChat posts which publicly reveal her full legal name, workplace, WeChat account and a photo of her at the protest.



Pro-Hong Kong demonstrators hold up signs at the rally in Rundle Mall. (ABC News: Joshua Boscaini)

"I was a little depressed ... as I don't know what they are going to do and I don't know what will be affected, so at that moment I shut down all the ways you can search for my WeChat ID," she said.

"I was a bit embarrassed at that particular moment."

'Worried about family in Hong Kong'

She said following the protest she received another message of a screenshot from WeChat which had a photo of her sitting down to eat at Costco, while she was there.

"I then asked [my friend] 'how do you know that?'" she said.

"They said 'well it's in the WeChat group, it says where you are online'.

"I thought 'wow, is that really happening in Australia' and I was shocked as well.

"When I drove back from Costco to my home I couldn't stop looking at my back mirror and my left and right mirror to make sure no-one was following me.

"I spent another 30 minutes trying to go through other suburbs to try and hide my tracks."

Aski said she was worried the dissemination of her personal information could have consequences for her family living in Hong Kong.

"The Chinese Government can know everything so you're not going to know what the Chinese Government is going to do," she said.



Hong Kong students in Adelaide have held several rallies in support of their home. (ABC News: Lincoln Rothall)

She said she would not be going to another pro-democracy protest because of it.

"I didn't go [to the protest in Adelaide on Sunday] because I am worried about working my job, I'm worried about my family in Hong Kong," she said.

Sexually abusive messages among threats

Pro-Hong Kong protest organiser Charlotte*, who also did not want her real name published, told ABC News other leaked messages appeared to show someone threatening to bring a knife to Friday's protest.

"A lot of people that have ... [been] submitting screenshots of conversations on WeChat telling us ... someone's threatening to bring a knife," Charlotte said.

"We are becoming a bit concerned because that



escalated really quickly."

Charlotte (not her real name) says threats of sexual violence have been made. *(ABC News: Claire Campbell)*

She said some messages involved threats of sexual violence.

Former New York Times journalist Vicky Xiuzhong Xu, said members of a closed WeChat group spread sexually abusive messages directed at her after she covered protests in Sydney at the weekend for the Sydney Morning Herald.

"They realised I'm Chinese so they started sharing pictures ... and they took screenshots of the article ... and they went to my Facebook and to my Instagram and took screenshots of everything," she said.



Journalist Vicky Xiuzhong Xu received abusive messages after covering pro-Hong Kong rallies. *(Supplied: Monica Pronk)*

She said pro-Beijing supporters on WeChat began calling her a "traitor" because it appeared she did not support what they were calling for.

She said some of the messages were also explicit in nature and threatened violence against her.

ABC News contacted the Chinese embassy in Canberra for an interview about intimidation against pro-democracy protesters online.

They did not respond to a request for an interview but instead referred the ABC to Chinese Ambassador Cheng Jingye's comments about the situation in Hong Kong.

The remarks said the pro-democracy movement seeks to undermine the "one country, two systems" model.

What is doxxing?

International Cyber Policy Centre and Australian Strategic Policy Institute (ASPI) analyst Fergus Ryan said the spread of Aski's personal information online was classified as "doxxing".

He said "doxxing" was being used by Chinese nationalists to scare dissidents at home and abroad.



Pro-Hong Kong demonstrators rally in Adelaide at the weekend. (ABC News: Joshua Boscaini)

"It's intimidation pure and simple. The aim of it is to have a chilling effect on the debate about whatever it is we're debating at any particular point in

time," he said.

"The hope is the information about them will go viral and spread online, particularly within China, and that will help the authorities to identify who these people are."

Mr Ryan said the method has been used against Chinese officials when there was less censorship on Chinese social media platforms.

"An example would be an official who is officially and technically on a low salary, there is a photograph of them at an event wearing an expensive Rolex watch, that was a sort of typical example of a photo that would go viral," he said.

"By revealing these people's personal information, you are putting them in very real danger of their family being locked up and mistreated in a many number of different ways.

"[The Chinese Government] have the ability to stop these articles if they want to, but that's not happening and so that tells me that this kind of behaviour has the acceptance of the state."

'Zero tolerance for harassment'



Protesters hold up signs and cover their faces at a rally held in Adelaide last Friday. (ABC News: Lincoln Rothall)

In a statement, the University of South Australia said it took the safety of its students "extremely seriously", however, it had concerns following the escalating protests in Adelaide.

"In the current environment of tension in Hong Kong we are particularly concerned for the wellbeing of all of our Chinese students who may feel impacted by events at home," the statement said.

"We would reiterate that while we respect and uphold peoples' right to express their views, it is vital that they do so with respect and courtesy.

"UniSA has zero tolerance for harassment, aggression and sexual assault."

It said any students feeling stressed, harassed or bullied could seek counselling at the university, use the after-hours crisis phone and text line or use the university's SafeZone app.

Posted Tue 20 Aug 2019 at 1:43pm, updated Tue 20 Aug 2019 at 10:42pm

Certificate Identifying Annexure

No. 1612 of 2025

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law and Human Rights

TARNEEN ONUS BROWNE and BENJAMIN ZABLE

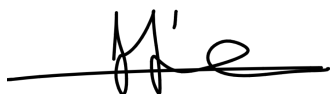
Applicants

ASSISTANT COMMISSIONER OF POLICE, NORTH WEST METRO REGION and others

Respondents

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Tel		Fax	
Email			
Address for service (include state and postcode)	17/461 Bourke Street, Melbourne VIC 3000		



Amnesty International UK

PRESS RELEASES

Thailand: State-backed digital abuse used to silence women and LGBTI activists - new report

16 May 2024, 06:37pm



Evidence points to Thai government's involvement in use of highly-invasive Pegasus spyware against activists

Report based on in-depth interviews with 40 women and LGBTI activists, including many young activists

'The ultimate goal of these attacks is to assassinate activists' character, undermine their credibility, delegitimise their role and isolate them' - Elina Castillo Jiménez

Women and LGBTI activists in Thailand are being subjected to an onslaught of online misogynistic, homophobic and transphobic language, sexualised content and other forms of technology-facilitated gender-based abuse, Amnesty International said in a major new report today.

The 102-page report, *“Being Ourselves is Too Dangerous,”* highlights how women and LGBTI activists in Thailand have been unlawfully targeted with digital surveillance, including Pegasus spyware and online harassment by state and non-state actors in an effort to silence them.

Following the 2014 military coup, activists at the forefront of peaceful protests in Thailand have used digital technology to speak out about human rights but this technology is also being used to harass them, spread gendered disinformation and channel hateful speech and sexualised content that’s degrading to women and LGBTI people.

The report is based on in-depth interviews with 40 women and LGBTI activists, including many young activists and those living in the country’s Malay Muslim-majority southern border provinces. Among those interviewed are nine of the 15 women activists confirmed to have been targeted in 2020 and 2021 by Pegasus, the highly-invasive spyware developed by the Israeli cybertechnology company NSO Group. Amnesty’s report shows how this targeted digital surveillance disproportionately impacted women and LGBTI activists, creating a uniquely gendered fear that the breach of their private data could lead to further blackmailing, harassment and discrimination.

A 22-year-old student activist, Niraphorn Onnkhaow, was shocked when she received an Apple threat notification informing her that her device might be a target of “[s]tate-sponsored attackers”. In fact, her iPhone had been infected with Pegasus spyware 14 times - the highest number among all targeted individuals in Thailand. She believes this was linked to her participation in the youth-led pro-democracy protest movement that began in 2020.

Niraphorn Onnkhaow said:

“As a woman, having my privacy invaded is frightening. If I have private photos on my phone, they could be leaked to smear my reputation and hurt me to the extent that I’d have to stop my activism. I believe women and LGBTI activists are being watched, monitored and scrutinised more closely.”

Technical and circumstantial evidence, combined with the NSO Group’s policy of selling its products exclusively to governments, strongly point to the involvement of one or more Thai state actors in cases where Pegasus was used. Thailand’s National Human Rights Commission shares the same assessment that a Thai government agency was involved in the use of the spyware.

Amnesty also interviewed activists who received alerts from Meta that their Facebook accounts were targeted by a “government-backed or sophisticated attacker”. Patcharadanai Rawangsub, a gay man, was a member of Talu Fah, a pro-democracy group and one of several activists to receive the alert. After

learning that his online activities were under surveillance, he feared his private data could be used to prosecute him.

Patcharadanai Rawangsub said:

“Going to prison is my worst nightmare. For gay men and trans women, Thai prisons can be brutal as you will most likely be sexually harassed and assaulted and face discrimination.”

Chanatip Tatiyakaroonwong, Amnesty International’s Thailand Researcher, said:

“Thailand has long positioned itself as a champion of gender equality and made various pledges at the international level to protect women’s and LGBTI rights. However, the reality is that women and LGBTI activists in the country continue to face severe gender-based violence facilitated by digital technology.

“The Thai government must publicly commit to refrain from the use of targeted digital surveillance and online harassment, protect activists, investigate all cases and provide individuals who have been targeted with effective remedy.”

Wide-ranging tactics of online harassment

Some activists have faced violence in the form of doxing - the revealing of personal or identifying documents or details about someone online without their consent. Non-binary youth feminist activist Nitchakarn Rakwongrit told Amnesty that when they were 17 years old an anonymous X (formerly Twitter) account publicly posted their private information, including ID card number and criminal charges which they faced due to their involvement in peaceful protests. The aim of the doxing appeared to be to intimidate and discourage Rakwongrit from continuing with their activism.

Many LGBTI activists in the Muslim community have faced online threats of violence for their activism, including in the case of three Muslim transgender women activists threatened after giving an online media interview about anti-LGBTI discrimination within their community.

Elina Castillo Jiménez, Amnesty International’s Security Lab Researcher on targeted digital surveillance, said:

“The ultimate goal of these attacks is to assassinate activists’ character, undermine their credibility, delegitimise their role and isolate them from the rest of society. It is a pervasive tactic that sends a clear warning: women and LGBTI activists will be punished if they dare to challenge the status quo.”

Silencing women and LGBTI activists

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Amnesty found that digital abuse caused many women and LGBTI activists to censor themselves, in some cases stopping their human rights work altogether. Some activists also suffered serious mental health conditions, including paranoia, depression and post-traumatic stress disorder. “We use digital tools [...] to communicate with each other. However, we wouldn't post anything about our activities on social media. It's too dangerous,” said a Malay Muslim gender-diverse student activist from Pattani province.

Globally, more than half of women and girls are [reported](#) to have been abused and harassed online. Those facing further marginalisation due to their sexual orientation, gender identity and/or expression and sex characteristics, and other forms of discrimination, are disproportionately impacted.

Lack of investigations

The Thai government denied any involvement in the targeted digital surveillance and online harassment of women and LGBTI activists but did not express any willingness to investigate the cases highlighted in Amnesty's research. Amnesty is calling on the Government to ban highly-invasive spyware and establish a human-rights compliant regulatory system for other types of spyware. Until then, it should enact a global moratorium on the sale, use, export, transfer and support of other forms of spyware.

Amnesty sent letters to NSO Group and affiliate entities asking about the sale of Pegasus software used to target nine of the 40 interviewees. None of the companies replied. NSO Group must stop the production, sale, transfer, use and support of Pegasus or other similar highly-invasive spyware and provide adequate redress to victims of unlawful targeted surveillance through Pegasus in Thailand.

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Certificate Identifying Annexure

No. 1612 of 2025

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law and Human Rights

TARNEEN ONUS BROWNE and BENJAMIN ZABLE

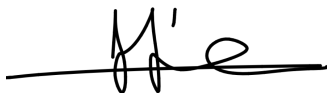
Applicants

ASSISTANT COMMISSIONER OF POLICE, NORTH WEST METRO REGION and others

Respondents

This is the annexure marked "SS-19" now produced and shown to Sarah Schwartz at the time of affirming her affidavit on 7 January 2026.

Before me:



Sophie L'Estrange, Australian Legal Practitioner

Annexure "SS-19"

Filed on behalf of (name & role of party)	Tarneen Onus Browne, First Applicant and Benjamin Zable, Second Applicant		
Prepared by (name of person/lawyer)	Sarah Schwartz		
Law firm (if applicable)	Human Rights Law Centre		
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Protesting without a face: Privacy in public demonstrations

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1 | INTRODUCTION: MASK BANS AND PRIVACY

Regimes of all stripes feel deep discomfort at being exposed to citizen scrutiny. While the democratic environment makes direct persecution of critics difficult although not impossible, governments seek more surreptitious ways to control and stifle criticism. Citizens, for their part, seek to keep open the communicative channels of expression. Thus, faced with forms of control of public discourse they devise new forms of communication or design mechanisms to either circumvent or frustrate these more surreptitious forms of control (Brunton & Nissenbaum, 2015, p. 1).

Protests are, precisely, in this situation. Through their intense regulation, states have sought ways to contour the once disruptive character of public appearances to the point of transforming them in some cases—as protests have not been deprived of all their political significance—into allegorical events (King, 2013). Protests, some have claimed, have been institutionalized in terms of their form, and of where and at what the time of day they can take place (McCarthy & McPhail, 1998). Since legal doctrine, in general, is satisfied that these regulations are neutral in their content, it loses sight of other less obvious forms of control. One of these has been the mass surveillance of streets, either through cameras installed on them or those worn by police officers, as a means of threatening those who protest with the possibility of being identified. How has the citizenry responded? By resorting to elements, such as masks, hoods, and balaclavas, or more recently umbrellas, to avoid identification and to safeguard their right to protest by fending off this threat (Kwok, 2021, p. 6).

States, however, have increasingly criminalized this citizen strategy. Whereas antimask legislation is far from being new—criminalization in some places is possible thanks to statutes passed as far back as the 1840s (Doherty, 2020, p. 276)—there is a renewed trend toward their use. What is more troubling is that experience shows that regimes come in all forms and shapes when it comes to criminally banning the use of masks in protests. I briefly mention just a few examples in section 2.

The right to protest is regularly built upon a cluster of foundational rights, most notably freedom of expression and of assembly—without them, there can be no right to protest. This work proposes to include the right to privacy in the cluster of constitutional rights and freedoms that lie at the foundation of the right to protest.¹ The matters discussed in this work expand that cluster in a twofold sense. First, because they oblige us to consider situations that normally would go unnoticed or at least are not necessarily related to protection of the right to protest. Second, because their consideration would strengthen the constitutional protection of protests. Therefore, it is not just that general

antimasking laws infringe some constitutional principle or right. It is a matter of including privacy as a right that also contributes to shape the constitutional right to protest.

This work rests on a socially vitalized form of privacy to justify the political right to participate “without a face.” Social protests take place in the public sphere, a place states watch 24/7—a trend that does nothing but enhances the need for privacy protection (Daly, 2017, pp. 175–176; Lachmayer & Witzleb, 2014). Surveillance, however, meets with obfuscation: the “creat[ion of] many plausible, ambiguous, and misleading signals within which the information we want to conceal can be lost” (Brunton & Nissenbaum, 2015, p. 7). The image of protesters covering their faces—whether with a hood, a scarf, a balaclava, or with Guy Fawkes masks like those the “Occupy” movement popularized—is common in protests (Gerbaudo, 2017, p. 3), even in jurisdictions where this practice has been criminalized (Lee et al., 2019, p. 3). The use of masks might be justified on various grounds: that they are a form of symbolic speech that help protesters to communicate their claims (Allen, 1991); as performative challenges against the very acts of state surveillance that freedom of expression protects (Skinner-Thompson, 2017); as devices that catalyze solidarity and affection toward (and within) the group protesting, thus, helping them to build a common identity (Beer, 2018, pp. 4–6; Bruce, 2015); or as mechanisms through which people both build power from below as well as defy existing relations of power (Ruiz, 2013; Spiegel, 2015). However, I want to insist on a different, yet complementary justification: the protection of privacy.

As I will argue here, the right to participate without a face mask requires us to go a step further by considering the social and political dimension of informational privacy. In other words, we need to move on from considering privacy, along with its implications, as an individual right and begin to view it as a societal value.² I explain this argument in more detail in the following section and consider in section 3 the specific consequences it has in expanding our understanding of the protection of protesters. I then analyze the impact and possible effects that this vitalized conception of privacy have on two (already quite expanded) practices that usually affect the right to protest: governmental surveillance (section 4) and the prohibition of using masks when in public (section 5). I will argue that considering the social dimensions of informational privacy, states should be restricted in using information gathered through surveillance and refrain from banning protesters from wearing masks during demonstrations.

2 | CONTEXTUAL INTEGRITY

In their much-quoted piece, Samuel Warren and Louis Brandeis argued that privacy was better understood (and legally protected) as “a more general right of the individual to be left alone ... of an inviolate personality” (1890–1891, p. 205), a right “as against the world” (Warren & Brandeis, 1890–1891, p.213). For this reason, the right ceased to exist as soon as the individual publicized the facts or consented to their publication (Warren & Brandeis, 1890–1891, p.218). The very acts of the person also speak for the person. Whereas some have “in varying degrees ... renounced the right to live their lives screened from public observation” (Warren & Brandeis, 1890–1891, p.215), there are others who live exactly in the opposite way.

Would it not then be an oxymoron to claim privacy in public spaces? Not really. Privacy has long ceased to be a right attached to space and has become a matter of the control of information and expectations (Smith & Low, 2006, p. 5). No longer confined to the intimate and personal spheres, privacy also encompasses information about us in the public realm, since it can transcend the setting (Nissenbaum, 1997, pp. 212, 214). As Julie Cohen has convincingly argued against what she calls the liberal approach to privacy, the self is culturally and socially situated, and therefore, communally and communicatively shaped (Cohen, 2013, pp. 1905–1908). While places are elements that help to frame these contexts, they are not the only, or even the most important elements. Privacy, then, cuts across a “panoply of realms” (Nissenbaum, 1997, p. 215) in which the private or public distinction cannot automatically account for what is private or public.

In fact, the texture of people’s lives shows that we “cross[] dichotomies ... move[] about, into, and out of a plurality of distinct realms” (Nissenbaum, 2004, p. 137). What best accounts for privacy, therefore, is this multiplicity of

realms, relations, and norms governing roles, expectations, behaviors, and limits. Precisely because privacy enables distinct relationships with different people depending on the context, what Nissenbaum calls “contextual integrity” (Nissenbaum, 1997, p. 216), the information we deem appropriate to share in the context of one relationship maybe not in another.

Contextual integrity, rather than a focus on private or public space, explains how privacy contributes to our identity and individuality (Westin, 1967, p. 34)—and it also helps us to understand why privacy is rooted in public relations rather than in solitude. Privacy permits the interplay between selfhood and social shaping, rendering these two concepts mutually reinforcing (Cohen, 2013, p. 1909). This is possible, thanks to the dynamic nature of the concept, that is, privacy is not a fixed notion that takes place in just one realm, but a license to conduct what Cohen calls “boundary management” (Cohen, 2013, p. 1911). When we lack privacy, we lack this valve that allows the autonomous, although not isolated, definition of the self. Privacy, thus seen, ensures that “the development of subjectivity and the development of communal values do not proceed in lockstep” (Cohen, 2013, p. 1911).

This approach allows us to understand privacy beyond its individual right carapace and to highlight its other benefits as a right of the citizen. We care about protecting privacy not only because it is an individual right, but also because harms to privacy are socially dysfunctional. Seen in this way, rather than setting individuals apart from their community, privacy is essential to both (Solove, 2006, p. 488–489). This also holds true in a comparative constitutional perspective. In fact, the core of privacy has been conceptualized as going beyond the right to shelter from unwelcome intrusion and to involve, equally, the right to shape one’s own identity in social relations, whether public or private (Cepeda, 2012, p. 969).

Is privacy a concern for protesters? Examples from France, Venezuela, and Hong Kong show that it is. During 2018 and early 2019, the *gilets jaunes* took to the streets of different cities of France to challenge President Macron’s proposal to increase fuel costs to address economic deficits. Once relative calm was restored, restrictive legislation on the right to protest (Décision n° 94-352, 1995) followed.³ Macron proposed the “loi anticasseurs”—a law aimed to protect the French from insecurity and violence in demonstrations, as France’s Minister of Interior tweeted on April 11, 2019 (Castener, 2019). Among its many restrictive regulations—which included preventive detention of those identified as disruptive participants⁴—it added a new crime with a fine of €15,000 and a 1-year jail sentence to those who conceal or dissimulate their faces during a protest (LOI n° 2019-290, 10 April 2019). Although some voices warned that these measures would undermine the right to protest, the Conseil Constitutionnel found that they affected neither freedom of expression nor the principle of proportionality (Décision n° 2019-780 DC, 2019, para. 33).

In the province of Táchira, Venezuela, a progovernment governor issued a decree prohibiting the use of hoods and masks during demonstrations. According to article 4 of Decree N° 175, April 27, 2017, it is strictly forbidden to take part in either demonstrations or riots concealing personal identity. A day later, the governor of Vargas—another province—issued a similar order. Sections 1 and 3 of Decree N° 051 (April 28, 2017), while prohibiting action seen as breaching the peace considered the involvement of persons concealing their “visible identity” to be an aggravating circumstance.

During recent protests in Hong Kong authorities banned the use of masks, hoods, and even face painting in public assemblies. Invoking a colonial-era regulation (Wong, 2011), the authorities claimed that the prohibition would help “to stop violence and restore calm to society as soon as possible” (Berlinger & Regan, 2019). According to section 3.1 of the ordinance (Cap. 241K Prohibition on Face Covering Regulation), face coverings “likely to prevent identification” were banned in unlawful assemblies including riots, unauthorized assemblies, and public meetings. Offenders faced a 1-year jail sentence and a fine of HK\$25,000. Additionally, section 5.3 prescribed a 6-month jail term and a fine of HK\$10,000 for those refusing a police order to remove masks or hoods. As in other cases, courts were called upon to protect the rights involved and initially sided with the authority. A Hong Kong High Court judge dismissed injunctions brought against the ban, in which claimants claimed that the measure infringed their right of peaceful assembly, personal freedom, and freedom of expression (*Shum Lester and other v. Chief Executive in Council*, 2019, para. 15). In one of the injunctions brought before the court by 24 members of the Legislative Council of Hong Kong, the court ruled that the measure’s “undisputed purpose... is to restore public order and reduce acts of violence” (*Kwok Wing Hang and*

others v. Chief Executive in Council and others, 2019a, para. 9), eventually deciding that the case merited a deeper and detailed analysis that the injunction procedure did not satisfy.

As in each of these cases, authorities typically claim that restrictions on face covering are not directed at protesters, but at those who seek to commit crimes during demonstrations—that if you have nothing to hide you have nothing to fear from these restrictions. Only those intending to commit crimes will object to this sort of legislation, the Chilean government argued in justification of a similar proposed measure (“Presidente Piñera firma proyecto de ley”, 2013). However, as Professor Solove has observed, a false tradeoff is involved when people are asked not to fear if they have done nothing wrong (Solove, 2011, p. 21). First, it is uncommon for anyone to have nothing to hide. Second, it is wrong to suggest that privacy is about hiding *bad* things. Most of the time privacy works to protect totally legal actions. Moreover, encroachment of privacy may prevent perfectly legal actions—such as joining a demonstration (Solove, 2011, pp. 21–27). Third, it is misleading to see privacy exclusively as secrecy. As noted above, privacy protects a myriad of situations, which include some forms of secrecy. Observation of the public by governments, for instance, is problematic even when the information they collect is not something people may have wanted to hide. The pernicious effect of these forms of privacy invasion, which include governmental public observation and citizen identity control, is the “suffocating powerlessness and vulnerability” the use of personal data creates (Solove, 2011, p. 27). In other words, privacy protects us from forms of harm that go beyond the government having access to, and exposing, our secrets (Solove, 2011, p. 29). We value privacy not because it permits us to hide things, but because it enables us to move in a series of realms, while feeling empowered to do so.

In a form of privacy, such as the one presented here, what is the role of masks—or as in the case of the protesters in Hong Kong, umbrellas? Wearing masks in public allows people to maintain their anonymity. While it is true that anonymity and privacy often go hand in hand, they are not equivalent. Anonymity—for these purposes, the masks that ensure it—operate as the valve that people have at hand to control the boundary between the private, in this case our identity, and publicly accessible information. In Matthews’ words: “[a] person who chooses anonymity regulates such boundaries, thereby preventing others from connecting her name with her identity and in that way ensures her privacy” (2010, p. 353). The anonymity provided by using masks, then, is the key to the door that privacy builds between what is public and what is hidden from public inspection. In that sense, it is an anonymity that is chosen and freely exercised (Matthews, 2010, pp. 352–355). This is not the only ramification that the more general right to privacy has in the context of protests. Other alternatives, different from the one that will be developed in this work, could include recourse to other legal remedies that, like a tort claim, can also vindicate the interest that privacy protects.

Therefore, none of the above means that privacy and anonymity are equivalent. Rather, anonymity protects the interests protected by privacy (Matthews, 2010, p. 351). It also means that from a constitutional point of view the use of tools that allow people to maintain their anonymity while in public is naturally favored when these tools are considered to be protected by the general right to privacy (Solove, 2008, pp. 125–126), rather than by other rights such as equal dignity or physical or psychological integrity.

3 | HARM TO PROTESTS

At this point, it is possible to see more specific implications for the right to protest. The harms a socially infused understanding of privacy should protect us against can only be aptly grasped if privacy is considered a right of citizenship—a right whose structure invites and enables civil engagement. Such rights allow people to become authors of their political fate through the cooperative task of democratic will-formation (Honneth, 2014, pp. 72, 85–86). These rights, in other words, “enable subjects to do what they could not do alone and in a stance of individual retreat” (Honneth, 2014, p. 259). Instead of protecting individuals at the expense of society, privacy makes an important contribution to the social good. “It is hard to imagine,” Solove writes, “how people could freely participate in public life without some degree of control over their reputation and private life” (2008, p. 93).

In the specific case of protests, what should trouble us are those harms that could affect people's willingness to join others and take an active part in political life. In fact, these are forms of harm that lead people to withdraw from public opinion-shaping activities due to the risk of future harm or to fear of it. This risk includes direct attacks on reputation and financial and bodily harm (Solove, 2006, p. 488). It also affects peoples' lives by preventing them from engaging in political or cultural activities that they would otherwise engage in such as political rallies or writing critical of the accepted viewpoint (Solove, 2006, p. 488). Nissenbaum holds a similar notion. For her, privacy in public is relevant to secure both political autonomy and freedom. Where there is absolutely no restriction in access to personal information, critical reflection may shrink. Certain spaces, in fact, are crucial to provide people with freedom to "experiment, act, and decide without giving account to others or being fearful of retribution" (Nissenbaum, 2004, pp. 148–149). Freed from such inhibitions, people are empowered to articulate those controversial views that may have a lasting positive impact on society (Nissenbaum, 2004, p. 149).

This is what Simmel called the phenomenon of the stranger, a sociological liberation that permits specific forms of interaction in liberty:

the objective individual is bound by no commitments which could prejudice his perception, understanding, and evaluation of the given. (...) he is freer, practically and theoretically; he surveys conditions with less prejudice; his criteria for them are more general and more objective ideals; he is not tied down in his action by habit, piety, and precedent (Simmel, 1950, pp. 402–405).

Unconstrained and unchecked surveillance, then, affects what is at once an essential condition to define ourselves and our capacity of self-government. In fact, surveillance permits the burgeoning of what Cohen terms "modulated democracy," a form of democracy where our decisions are molded from the outside (Cohen, 2013, 1912–1915). Citizenship, therefore, is crucially affected, for the scope of participatory practices "will be defined in part by the practices that existing institutions encourage, permit, or foreclose" (Cohen, 2013, p. 1912).

4 | SURVEILLANCE

Large-scale surveillance systems can turn all of us into possible suspects. They are an expression of power that can "override the speech of the city," Saskia Sassen has argued (2013, p. 219), transforming a vibrant civil society into an uncivilized one (Dauvergne & LeBaron, 2014, pp. 75–77). As I show here, such constant monitoring should be viewed as a serious disturbance of the right to protest in public. It takes many forms: mass surveillance by cameras located throughout cities (Koskela, 2003); direct policing by police agents carrying portable cameras, and information gathered through cell phone monitoring (Neumayer & Stald, 2014, p. 118).

There are several reasons why surveillance is detrimental to protests. First, surveillance can induce citizens to censor themselves by avoiding (public) places where they do not want to be seen or and practices that they do not want to be seen to be involved in. Second, it can limit freedom and autonomy by permitting the state to have a record of our past actions and omissions, which compromises our anonymity (Solove, 2011, pp. 178–179). This constraint on freedom is critical for people engaging in political protests or dissent from accepted norms, potentially leading to persecution, obloquy, or blacklisting (Solove, 2011, p. 179; Human Rights Council, 2014, para. 31). From a more historical perspective, some researches have shown governmental surveillance directed precisely at exposing, disrupting, misdirecting, discrediting, and neutralizing social mobilizations seen as undesirable (Starr et al, 2008, p. 253; Solove, 2006, p. 496). Finally, massive surveillance technologies allow the state to gather an amount of information exceeding its original objective to prevent crime. This is not only problematic in itself, but also due to the raw material it provides for the inferential analysis of data with as yet unknown purposes (Balkin, 2009, p. 201).

In the end, these forms of protest surveillance have the effect of seriously constraining political dissent. By promoting anxiety and discomfort, massive surveillance may persuade people to make sure that their behavior and views

adhere to mainstream ideas (Kaminski & Witnov, 2015). Whereas democracy needs discomfort to have citizens constantly engaged in pursuing their political ideals, surveillance, and modulated democracy transform these elementary actions into risky attitudes or push people into conformism. Even if surveillance is not actually happening—one of the few unexplored components of surveillance is its “unverifiability” (Koskela, 2003, p. 298), creating the general fear of being watched is where governmental power resides. A likely result of this internalization of control is that people are too scared to suggest new visions (Koskela, 2003, p. 299, for experimentation requires a certain level of privacy, an assurance that there will be no retribution (Nissenbaum, 2004, pp. 148–149).

In courts, however, this is still disputed territory. Some, like the US courts, have held that citizens do not have a reasonable expectation of privacy in public. Although in *Katz* (1967), the Court declared that privacy protects people rather than places, it has never really abandoned the secrecy paradigm, according to which something is private “only if it is completely secret” (Solove, 2011, pp. 94). In *California v. Ciraolo*, for instance, the Court held that a person had no reasonable expectation of privacy even when in his backyard, against a governmental “observation from a public vantage point where he has a right to be and which renders the activities clearly visible” (1986). Therefore, to claim the protection of their privacy, people must act as reasonable paranoids by taking every imaginable step to prevent exposure to the public eye (Paton-Simpson, 2000, pp. 305–306).

In Canada, the Supreme Court also abandoned its property approach to adopt its own version of reasonable expectations of privacy (Murray, 1986). In *Hunter et al. v. Southam Inc.* (1984), it also held that privacy protected persons, not places.⁵ However, this standard has also proven futile in protecting privacy rights in what are normally seen as public spaces. Whereas some commentators have noted that Canadian courts seem more willing to protect some forms of privacy in public (Lai, 2007, p. 67; Paton-Simpson, 2000, p. 318), overall, matters are much the same. In *United Food and Commercial Workers, Local 401 v. Alberta* (2011), the Supreme Court of Canada decided whether a picketing union had the right to record individuals crossing the picket line. Individuals recorded by the union claimed that their privacy rights were infringed. The Supreme Court dismissed these privacy concerns. It found the union to be exercising “journalistic” powers as granted in the relevant legislation and, therefore, considered the union had engaged in expressive activities. It is understood that there is no such thing as a reasonable expectation of privacy when in public places.⁶ In fact, it has been suggested more recently, the series of cases regarding privacy matters heard by Supreme Court have missed important differences between being seen, watched, recorded, and monitored (Boa, 2007).

In Australia, the Victoria Civil and Administrative Tribunal found the police had sensible reasons to film and photograph protesters, even when they were peacefully demonstrating (*Caripis v. Victoria Police*, 2012). The court held that the police may gather and retain information about protesters for intelligence purposes, no matter how broadly defined, and that there was no privacy violation: “very public activities,” the Court held, “did not engage (or infringe)” a right to privacy (*Caripis v. Victoria Police*, 2012, para. 65).

Not all courts have followed the same path, however. Spain’s Constitutional Court ruled on the action of police officers who recorded images of a picket of striking workers who were informing bystanders about the main reasons for a general labor strike. The Court, although resting on the constitutional right to collective bargaining and strike, held that the police affected the workers’ labor rights (STC 37, 1998). The Court reasoned that while the police did not impede the strike, their actions were certainly aimed at intimidating and threatening striking workers. In the context of the European Court of Human Rights, there is no clarity on how that court would react to a demand from citizens who wished to hide their identity in public, despite a context of increasing antimask legislation (Daly, 2017, pp. 174–176).

What should be done then? A socially vitalized version of privacy should bring states to act within more demanding limits as to the information they can capture, gather, and keep. It should certainly control the uses the State can make of that information. The practical answer to state surveillance, therefore, is not that states should relinquish every form of public vigilance. However, they should keep it within limits that do not unnecessarily threaten the right to protest (Solove, 2008, p. 187). Roughly put, this means that for all purposes states should consider protesters who join a protest to be first-time attendees, as if they had no protesting past. As things are, it is common police practice to record and aggregate information on demonstrators, thus, creating protester profiles that may be used later to obstruct their right to protest. The means to achieve this objective, again, is not to drop public surveillance but to

impose stringent standards on it including a judicial overview (Solove, 2011, p. 181). In other words, governmental surveillance must be subject to more effective accountability measures, something probably hard to imagine in conditions of rampant neoliberalism and deregulation (Harcourt, 2015, p. 73).

5 | "A MASK ON AN HONEST FACE"

Whereas preventing crime may be a sound reason for the current wave of regulations banning face coverings, my concern is with protesters who are not committing crimes and still wish to remain anonymous. So, is anonymity alien to democracy? Not at all. Some police officers wear masks in the presence of dangerous criminals, while concealed witnesses can appear before courts. Of course, these measures are aimed to protect them from possible reprisals—a concern that protesters concealing their identities may also have.⁷ However, there are also positive (as opposed to defensive) anonymous acts that lie at the very core of democracy. One of the most important rituals in current democracies takes place under anonymity: the secret ballot. Its justifications are strong: secret voting was aimed not only at preventing bribery (Nichter, 2008), but also at ensuring that citizens could act freely in the face of political and economic power, even though in England in the 1840s some saw secret voting as “a mask on an honest face” (Urbinati, 2002, p. 105). By securing the secrecy of the ballot citizens, particularly those worst-off who largely depend on government economic assistance, would not be vulnerable to threats and intimidation by political power (Reeve & Ware, 1992, p. 111). Their social and material inequality would not translate into political disparities (Hasen, 2000, pp. 1329–1330). The anonymity citizens enjoy in the voting booth, seen in this light, amounts to “political privacy”: a constitutional guarantee that they would be able to participate by “vot[ing] according to their best judgment, rather than to avoid political ostracism or penalty, or to seek approval of favors ...” (Bloustein, 1978, p. 152).

Is it a contradiction to participate in demonstrations and conceal one's identity, given that protests take place on the streets, before many eyes? Alan Westin argued that privacy takes a specific shape when exercised among a larger group, that of becoming a condition of anonymity or reserve (1967, p. 7). Even when the individual is participating in a public activity in a public space, anonymity can be desired as a way of avoiding the state's watchful eye, as crowds normally allowed before widespread installation of street cameras (Westin, 1967, p. 31). And that decision to participate anonymously in society is an individual and autonomous one. Westin describes it as “a personal adjustment process” in which the individual “balances the desire for privacy with the desire for disclosure and communication of himself to others ...” (Westin, 1967, p. 7). As Slogobin put it, “[p]eople who engage in expressive conduct in public know they will be observed. But they may choose, like the pamphleteer or the petitioner, not to reveal their identity for all sorts of reasons” (Slogobin, 2002, p. 256). With the banning of masks that decision ceases to be autonomous as the individual is forced to either abandon anonymity or face a penalty.

Could democracy require citizens to appear with uncovered faces? After all, the requirement of publicity has been held to be a precondition for justice. This is, no doubt, a sensible claim that demands examination. First, it should be noted that the publicity requirement primarily applies to states and not to their citizens (Darwin Winet, 2012). This is so because citizens and governments perform different duties and functions (Nissenbaum, 2004, p. 142). Differences in power and responsibility entail very different standards of publicity and accountability (Lever, 2007, pp. 359–361). Furthermore, imposing on citizens the standards of publicity or of access to information suited for the State would be an injustice (Nissenbaum, 2004, pp. 143–144). Of course, the differentiation of function is not the only reason. While it is correct to see privacy as anonymity as perfectly compatible with public participation, not every anonymous political intervention will be deemed democratically acceptable. There are many situations, such as lobbying or campaign financing, in which transparency is equally expected of citizens. To explain why this is so, we must examine the democratic principle that underlies the public nature of government action.

The reason why we want governments to be transparent is to promote what has been called independency through dependency; to assure as far as possible that governments remain responsive to the people and to the rules framing their public duties, and not to undue influences (Lessig, 2011, pp. 130–131). The standard of independency through

dependency, and not an unqualified duty of publicity applicable to all citizens, allows us to highlight differences between social protests and other means of political intervention such as lobbying. In fact, while protesters present their arguments in a public fashion, regardless of having concealed their faces, lobbyists and campaign financiers do so secretly even though their face is not covered. This is the reason why it is sound to require lobbyists to appear in public light. Because they have sought to conceal not so much of their identity, but their arguments, interests, and motivations—precisely the aspects that social protests present publicly—they jeopardize the public good for the benefit of private interests (Teachout, 2011, pp. 138–146). Put differently, whereas in public protests we know, even when we do not see the protesters' faces, with what ideas or interests they aim to influence a governmental decision, with secret lobbying and anonymous electoral financing we are denied access to such knowledge (Schultz, 2014, p. 260).

Finally, some have argued that open voting might encourage someone “to vote in a discursively defensible manner” (Brennan & Pettit, 1990, p. 311). While this is an important argument, it does not affect my claim here. For one thing, in a social protest, the message remains public, and the same is true of the reasons and arguments that protesters put forward. For another, I am not suggesting, as is the case with secret voting, that protesters *must* cover their faces when participating in protests, but that they may do so if they think it necessary. In the end, a protester who conceals his or her face neither ceases to be a public-minded citizen nor corrupts the government by forcing it to answer private interests (Teachout, 2009, pp. 377–379). In fact, it could be argued that the opposite is the case: a protester who conceals his or her face wants to bring attention exclusively to arguments, rather than to the faces that pronounce them (Solove, 2006, p. 515).

Apart from those practices that dishonor the independency through dependency principle, it is reasonable to consider a second set of practices that are not constitutionally covered by privacy: the commission of crimes. The problem here is how to strike the right balance between governments' interest in preventing/prosecuting crime and that of the protesters in exercising their constitutional rights. While this is a hard question to answer in the abstract, it is useful to consider some general ideas in the context of social protests. I want to argue that to strike the right balance we should *start* by paying attention to the harms that overreaching criminal legislation may cause to the exercise of privacy rights.

It is useful to begin by distinguishing between “general antimask” laws, where the mere fact of wearing a mask is criminalized, from “criminal antimask” laws, where wearing a mask is criminalized if authorities can prove criminal intent (Simoni, 1992, pp. 241–2–43). From the constitutional viewpoint of the right to protest, the former laws end up being tremendously problematic, for they ban the use of any masks, including those used for politically legitimate reasons. Whatever citizens may argue—that they fear retribution or experience anxiety due to having their faces associated with specific groups—is no defense, the use of a mask is illegal *per se* in such laws. Criminal antimask laws might also be problematic if the mere fact of wearing a mask is considered by the police to be an indicator of criminal intent. As long as masks themselves are not seen in this light, there might be a way of reconciling these laws with the exercise of rights (Simoni, 1992, pp. 268–269). Assuming this to be the case for the second kind of law—although the practice and governmental intent often proves the opposite—I will focus attention on “general laws.”

First, even when the State claims to be preventing crime it is not shielded from constitutional objections. Simoni, for one, argued that constitutional objections could be derived from freedom of expression principles. These objections, he suggests, are of two kinds: direct, when statutes prohibit the use of masks (which is itself considered to be a form of expressive conduct),⁸ or indirect, when the prohibition of masks prevents people from taking part in what would otherwise be lawful activities (Simoni, 1992, p. 245). Others have made a similar claim when noting that in *Ghafari v. Municipal Court* the Court held that a general law intended to be applied to masked student demonstrators outside the Iranian Consulate in San Francisco was “overbroad, vague, and denied equal protection” (Darwin Winet, 2012, pp. 233–234).

However, a defense that rests exclusively on freedom of expression is limited, in that it requires protesters to show that masks themselves serve an expressive purpose. In *Aryan v. Mackey*, Darwin Winet notes that a court prevented the enforcement of an antimask general law against Iranian students who wore masks while protesting. The Court reasoned that the masks themselves constituted a form of symbolic speech that deserved constitutional protection. The problem with this argument is that while the Iranian students succeeded in showing that the masks themselves

were a means of expression, many others have failed in trying to prove the same (Darwin Winet, 2012, pp. 233–235). This was the case of the Klu Klux Klan in *Kerik* (2004) where the court considered that the masks worn by the Klan's members were not symbolic speech, but instead "redundant with the Klan robes and other regalia;" the masks added "no expressive force to the message portrayed by the rest of the outfit" (Kerik, 2004, p. 206). Moreover, in *Miller*, the Georgia Supreme Court found that members of the Ku Klux Klan had not provided evidence that reprisals were likely to follow (1990, p. 675).

Does privacy protection need to satisfy this high standard? Not necessarily. In the first place, there are many forms of privacy protection that do not require showing uncontrovertibly that some kind of negative effect will follow an intrusion.⁹ Peeping Toms, for instance, are legally sanctioned for intruding on spheres of informational privacy, and not because the information surreptitiously captured poses any specific risk, let alone an uncontrovertibly proven risk such as future threats, harassments, etc. (Moore, 2010, pp. 82–7). In fact, as Moore (2010, pp. 96–97) argues, an individual might not even know that his or her privacy has been invaded or the specific and "uncontroverted" risks associated with this but his privacy would still be affected. In the second place, we consider that privacy concerns do not rule dignity out of the picture as a sound foundation for privacy protection. Many times, dignity is actually the underlying value that justifies privacy protection. This is the case of continental privacy law which, as Whitman (2004, pp. 1161–1164) has argued,¹⁰ rests on personal dignity.

Could it be that excessively permissible legislation on mask wearing can incentivize crime? As Darwin Winet notes, "criminal antimask" laws are perceived to be less effective from the law enforcement viewpoint, in these situations, the police have to wait for masked people to "manifest[] clear intent to commit a crime ..." (2012, p. 232). I think this depends to a large extent on *how much anonymity* is actually achievable. The fact that even when we can (constitutionally) hold a reasonable expectation of privacy in public, total anonymity is impossible to achieve. And that should balance governmental anxiety regarding mask wearing at protests. Someone might be able to keep her identity hidden, but not the fact that she is committing a crime (Brenner, 2003, pp. 141–142).

Admittedly, calling authorities' attention to the importance of these collective harms has proven difficult. Courts and legislators do not seem to consider harms other than specific injuries to particular individuals (Solove, 2008, pp. 179–183). This narrow approach has prevented them from noticing the impact these overreaching regulations on the use of masks and other devices have had, and may have, on protesters. Whereas some have suggested tackling these harms by paying exclusive attention to individuals' freedom of expression, I prefer to see freedom of expression as another victim (*harm*) of the scant attention protesters' privacy has received.

6 | CONCLUSIONS

We know that rights are not simple entities but embody a cluster of legal positions. This is also true of the right to protest. Traditional accounts of the right to protest mention both freedom of expression and the right to assembly as its foundations. While relying on those foundations, this work proposed to expand the constitutional basis of this right to include a socially vitalized conception of the right to privacy. In doing so, we can observe a series of regulations that while supposedly aimed to tackle other objectives, such as preventing crime, end up harming the right to protest. This is the case of the prohibitions to attend public protests wearing masks, on which I have focused here.

Antimask laws are becoming more and more common and are added, like those recently passed in France, Venezuela, and Hong Kong, to others that have been in force for hundreds of years. In this work, I have tried to show that prohibition of the use of masks and of other anonymity control techniques affects people's right to privacy. Bans, in other words, leave people without a tool—a technique, says Matthews—"to control their social presentation" (2010, p. 360).

Despite this, people still resort to protest, sometimes wearing masks precisely in defiance of these prohibitions. Why? First, in this article, I have argued that mask bans do not necessarily stifle dissent, but that they might do so (and some empirical studies account for this). If people protest anyway, none of this means that those people's right to

privacy is not affected by the bans. Therefore, the fact that people join protests with their faces uncovered does not validate the constitutionality of the prohibitions on the use of masks. And it certainly does not do so when there are people who join wearing masks in open defiance of those regulations.

Second, many times people who resort to protest do so because it is the only mechanism they have at hand to participate in a meaningful way. Stakes involved, therefore, are too high and there is simply no possibility of opting out, however, costly it may be to the privacy rights of those involved in a demonstration (Brunton & Nissenbaum, 2015, pp. 53–54). Perhaps the most obvious case in this regard is represented by the protests in the context of the claims for racial equality of the Black Lives Matter movement. In fact, these were not only protests whose legal environment was hostile, but also protests that were taking place in the midst of the COVID-19 pandemic. And yet, these protests could not wait and happened anyway. Why? Because stakes involved were, and are, high. How high? Extremely high, so high that they cease to be “a choice [to become a] necessity—a matter of life and death” (Douglas, 2020, p. 209). Many times, the interests involved in protests are equally relevant and this makes people put their rights at risk, as happens with privacy, when they go out to shout their demands. But none of this leads to the conclusion that privacy is not important to them or that the practices that affect privacy do not deserve to be reconsidered.

LIST OF CASES

1. **Australia:** *Caripis v. Victoria Police (Health and Privacy)*, [2012] VCAT 1472.
2. **Canada:** *Hunter et al. v. Southam Inc.* [1984] 2 S.C.R. 145; *R. v. Ward*, [2012] 296 O.A.C. 298; *United Food and Commercial Workers, Local 401 v. Alberta*, [2011] 509 AR 150.
3. **France:** *Confédération Générale du Travail et autres*, No. 427390 (Conseil d'État 2019); *Décision no. 94-352 DC* (Conseil Constitutionnel 1995); *Décision no. 2019-780 DC* (Conseil Constitutionnel 2019); *M. A.A et autres*, No. 427418, (Conseil d'État 2019); *Union Départementale de Paris du Syndicat de la Confédération Générale du Travail*, No. 427386 (Conseil d'État 2019).
4. **Hong Kong:** *Kwok Wing Hang and others v. Chief Executive in Council and others*, [2019] HKCFI 2476 (The High Court of Hong Kong 2019a); *Kwok Wing Hang and others v. Chief Executive in Council and others*, [2019] HKCFI 2820 (The High Court of Hong Kong 2019b); *Shum Lester and other v. Chief Executive in Council*, [2019] HKCFI 2471 (The High Court of Hong Kong 2019).
5. **Spain:** Judgment of February 17, 1998, Constitutional Court, Second Chamber, STC 37/1998.
6. **United States:** *Abrams v. United States* (250 U.S. 616, 1919); *California v. Ciraolo*, 476 U.S. 207 (1986); *Church of the American Knight of the Klu Klux Klan v. Kerik*, 356 F.3d 197 (2d Cir. 2004); *Katz v. United States*, 389 U.S. 347 (1967); *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995); *N.A.A.C.P. v. Alabama*, 357 U.S. 449 (1958); *State v. Miller*, 260 Ga. 669 (1990).

Notes

- ¹ Whereas constitutional texts generally recognize the right to privacy, those which do not—as the U.S. Constitution or the German Basic Law—have been interpreted to do so (Cepeda, 2012, pp. 966–967). Of course, some differences that must be considered when translating the argument developed here into domestic jurisdictional claims (Krotoszynski, 2016, pp. 10–11). However, the argument advanced here is not a universal one that seeks to be imposed in top-down fashion. Rather, it develops in the opposite direction: from the bottom up. This means that in some jurisdictions privacy claims in the context of protest will be easier to invoke than in others.
- ² Therefore, this argument does not consider, although it does not is repugnant to, those claims that defend the use of face-veils when in public based on what could be termed identity reasons against a racialized approach (Williamson & Khiabany, 2010). Neither has it built, although the legal connections are tight with, those contending face-veils bans undermine the right to freedom of religion (Bienkowski, 2010).
- ³ To be sure other restrictive measures, such as allowing the police the use of rubber bullets to disperse disruptive manifestations, were also implemented. Although the measure was challenged before the Conseil d'Etat, it ruled these measures

were allowed when protests pose a serious risk to public order (*Union Départementale de Paris du Syndicat de la Confédération Générale du Travail*, 2019; *Confédération Générale du Travail et autres*, 2019; *M. A.A et autres*, 2019).

- ⁴ This regulation was eventually considered unconstitutional by the Conseil Constitutionnel, which held the proposed measure was an unnecessary and disproportionate restriction on the right to collectively express ideas and opinions (*Décision n° 2019-780*, 2019, para. 26).
- ⁵ However, the court was not so quick to admit that the people lose their privacy rights once in public (Lai, 2007, p. 66).
- ⁶ In *Ward*, the Ontario Court of Appeals read the Supreme Court case law as securing a right to privacy even when in public (2012). However, it is worth noticing this standard has been built in the context of criminal investigations and evidence collection (Lai, 2007, p. 70).
- ⁷ Precisely one of the grounds upon which the High Court of Hong Kong eventually struck down the Emergency Regulations Act that prohibited wearing masks while taking part in protests, at least when it was applied to public danger situations. However, the court here was still considering privacy almost exclusively as a means to prevent reprisals (*Kwok Wing Hang and others v. Chief Executive in Council and others*, 2019b).
- ⁸ Those laws may end up directly affecting the exercise of freedom of expression can be easily seen when considering the kinds of exceptions regulations contain. For instance, the use of masks for purposes other than political matters (i.e., entertainment) is usually allowed as accepted exceptions. This shows these regulations are far from being totally neutral and that these regulations, therefore, do depend on "the actor's message" (Simoni, 1992, pp. 250–251). Richard Parker made an argument in favor of anonymity when discussing *Abrams v. United States* (1919). There, the elitist approach he criticized suggested all individuals should express themselves unmasked. (Parker, 1993, p. 577).
- ⁹ As the Supreme Court of the United States held in *McIntyre* (1995, pp. 341–342), "[t]he decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible." Whereas the High Court of Hong Kong considered privacy as a ground upon which it invalidated the antimask regulations, it was still considering privacy to be a means to prevent reprisals (*Kwok Wing Hang and others v. Chief Executive in Council and others*, 2019b, paras. 148, 153 and 157).
- ¹⁰ This does not mean that all privacy violations should be treated in the same way nor that they all cause the same harms as if they were based on a same essential core. As Solove has argued, privacy is better understood as a "pluralistic concept ... [that] does not have a uniform value. Its value varies across different contexts depending upon which form of privacy is involved and what range of activities are imperiled by a particular problem" (Solove, 2008, pp. 173, 185–187).

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Division: Administrative and Constitutional Law and Human Rights

TARNEEN ONUS BROWNE and BENJAMIN ZABLE

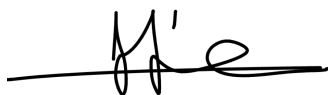
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This is the annexure marked “SS-20” now produced and shown to Sarah Schwartz at the time of affirming her affidavit on 7 January 2026.

Before me:



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Annexure “SS-20”

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RELIGACIÓN

R E V I S T A

Concealment of the face in social protests. Performances, affects and politics

Ocultamiento del rostro en la protesta social. Performances, afectos y política

Baal Delupi

ABSTRACT

Throughout time, the mask has been a fundamental semiotic device in social protest and artistic practices, and it is considered a versatile figure that expresses a double identity: the one that it hides and the one that it shows. In today's digital society, the concealment of the face through masks and make-up has become a symbol of protest facial recognition that exercises biopolitical control of faces. The objective of this work is to analyze, from a sociosemiotic perspective in connection with the theory of affects and performance studies, the construction of aesthetic-political meanings that emerge from the concealment of faces in two actions of artistic activism in Argentina: "8M, Women's Day", action of the ContraArte collective in the streets of Córdoba, and "Radio funo vol. 7 portraits" of the FUNO group in the city of Buenos Aires. Said analysis will be carried out on the images of both interventions that are published on the social network Facebook. The research results show how the masks used in both experiences configure signs of collective resistance that activate affections in the public space as policy of dissent.

Keywords: Semiology; aesthetics; political crises; resistance to oppression; emotions.

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RESUMEN

A lo largo del tiempo, la máscara ha sido un dispositivo semiótico fundamental en la protesta social y las prácticas artísticas, y es considerada como una figura polivalente que expresa una doble identidad: la que oculta y la que muestra. En la sociedad digital actual, el ocultamiento del rostro a partir de antifaces y maquillaje se ha vuelto un símbolo de reclamo ante el reconocimiento facial que ejerce un control biopolítico de la fisonomía. El objetivo de este trabajo es analizar, desde una perspectiva sociosemiótica, en vinculación con la teoría de los afectos y los estudios de performance, la construcción de sentidos estético-políticos que se desprenden del ocultamiento de los rostros en dos acciones de activismo artístico en Argentina: “8 M, día de la mujer”, acción del colectivo ContraArte en las calles de Córdoba, y “Radio funo vol. 7 retratos” del grupo FUNO en la ciudad de Buenos Aires. Dicho análisis se realizará sobre las imágenes de ambas intervenciones que se encuentran publicadas en la red social Facebook. Los resultados de la investigación muestran cómo las máscaras y los antifaces que se utilizan en ambas experiencias configuran signos de resistencia colectiva que activan afectos en el espacio público como una política del disenso.

Palabras clave: Semiología; estética; crisis política; resistencia a la opresión; emociones.

Introduction

In recent years, social media has been the battlefield where faces are disputed, from profile pictures in apps such as Facebook, Tinder, Instagram, and Twitter and the creation of selfies and avatars, to the activist faces that show resistance to control and surveillance devices. Regarding these devices, more and more governments and companies use facial recognition devices for different purposes. They use faces to design, organize, discourage, repress, control, and surveil. They are no longer faces from paintings from other centuries as central figures. Today we talk about digital, algorithmic, and artificial intelligence faces; let aside contemporary cosmetic surgeries and how those faces spread in social media as the acceptable and readable subject norm (Angenot, 2010). What does it mean to talk about faces? And about face concealment? From what and how are faces concealed? This article focuses on the concealment of faces in social protests, more specifically on artistic activism initiatives. The author of this paper developed this topic as a member of the project “Biopolitics of the digital face: surveillance, control, concealment and protest,” which is part of a more extensive project called FACETS–Face Aesthetics in Contemporary E-Technological Societies that have a subsidy from the European Union. The host institution of the FACETS project is the Università di Torino, and its director is Dr. Massimo Leone.

Talking about faces involves talking about signs and rhizomatic groups of semiotic cells whose structure and reordering are shaped by changing and varied discourses. Faces turn into a bodily story of life through the meaning of discursive devices that biopolitically organize bodies and define inclusions and exclusions. Thinkers like Lévinas (1967), have characterized faces as an opening to others, while Montaigne holds a theory of faces as bastions of singularity (Leone, 2021). Deleuze y Guattari (2012), on their part, developed the concept of faciality as a progressive loss of expression created by the semiotics of power. Based on Le Bretón’s ideas of the body and how it represents a barrier between individuals, that is to say, the closure of the subject, Pagnotto

(2010), states that the face is precisely the most individualized part of the body that becomes a person's hallmark to which three functions can be attributed: 1) individualizing, 2) socializing (it shows a social role) and 3) communicative (it ensures communication between two people and within oneself). Soledad Boero (2012), on her part, analyzes the face as a privileged semiotic system that accounts for a set of transformations related to subjectivity and writing. The face becomes and comes to subjectivity. Finally, we can mention Nancy's works (2006), who studied portraits and stated that "the value of the face as the sense of the other is truly given only in the portrait (in art)" (p. 131).

This gives us some clues to reflect upon the face, but what about concealment? Why do certain people decide not to show their habitual faces? What do they hide from, and what aesthetic resources do they use to do it? The mask has occupied a preponderant place in semiotic studies. Paolo Fabbri (2012), for example, has analyzed the forms of concealment and camouflage as they relate to representation systems and their distortion. Another unavoidable reference is that of Bakhtin, who, in his study on carnival, characterizes the mask as an expression of transferences, metamorphoses, the break with natural borders, ridicule, and nicknames; the mask embodies the principle of the game of life, establishes a relationship between reality and the individual image (1985). The re-masking does not hide but multiplies the subject, re-connects it with other worlds, transforms it, and empowers it.

We can go back to the Greek mortuary or carnival masks from the Middle Ages and the Renaissance, among many others. However, this research studies the use of masks in the second half of the 21st century when two big groups that use this resource appeared. 1) the pro-privacy movements against facial recognition and create distorting and concealing mechanisms; 2) the activists who build performances with different aesthetic resources, such as masks, balaclavas, and make-up that allow the creation of aesthetic and political meanings in their discursive productions. The aim is to focus on the second group from which we can construct a contemporary history of using masks can (such as Anonymous), balaclavas (Zapatistas in México), and make-up in the public protests against the existing inequalities. This issue has been studied by different authors, among which we highlight Benali (2020), who talks about the political and artistic potential of the use of masks in social protests, and the research by Subirats (2011), about identity and non-identity that enable the use of masks as a symbology play. Masks are considered, from these perspectives, a multipurpose figure that functions as a mismatch (Gramigna, 2022).

With the aim of creating a powerful image of protests and avoid persecution and authoritarian repression, masks very often detach from the idea of an individual identity to create a collective ethos. These artifacts create signifiers that can assign or apply meanings of identity policies about themselves (the ones wearing masks) or others (the external watchers). Masks represent, but mainly transform and enable the creation of new imaginaries. It affirms and it denies; it is a presence and an absence.

In recent years, different ways of concealing the face have been used in protests in Chile (with the famous balaclavas), Hong Kong (with various witty masks), France (the Joker masks that the yellow vests wore), Argentina (the green make-up worn in pro-abortion protests), especially to denounce gender, political, institutional, and environmental inequalities (Young, 2017). The different masks are part of the activist aesthetics and protect protesters from possible facial recognition and subsequent repression. Moreover, those identities exposed with masks create community bonds that shape special affectivity, a topic we will develop later.

From the perspective of this double sense (concealment as an aesthetic and protective resource), this research is interested in studying this issue in groups called artistic activism. To make a brief characterization, we consider Ana Longoni's ideas. Based on the German Dadaist proposals, this author defines them as a set of "productions and actions, many time collective, which draw on artistic resources intending to take a stance and have some impact on the political field" (2009, p. 1). These groups propose aesthetic forms of relationality, placing social action before the traditional view of autonomy in art and presenting artistic overflowings towards politics without restricting them to art history or museums since that hybridity between art and activism has a semantic mechanism in which art is considered a channel through which the possibility of change and transformation can be communicated (Aladro-Vico et al., 2018).

The analysis will focus on two Argentinean groups that have performed actions for more than a decade in public spaces establishing strategic alliances with social movements and groups, assemblies, organizations, and other artists, generating space-time of group expressions on social issues: *ContraArte*, created in 2009 in the city of Córdoba, and *Colectivo Fin de UN MundO* (FUNO), founded in 2012 in Buenos Aires. In turn, both have significant differences: the first one performs actions with and in a specific community, a strategy that can be linked with community theatre (Proaño Gómez, 2012), while the second one performs more spectacularly with displays in strategic places of the city. In addition, most of the *ContraArte* performances are put on spontaneously without much planning. At the same time, FUNO strategically prepares the previous moments, the ongoing performance, and primarily the subsequent actions (Verzero y Manduca, 2019), that is to say, how a particular action will spread in social media. This group has a Facebook page with folders with all the actions (and the rehearsals), unlike *ContraArte*, whose material is disorganized and all over this social network.

Two actions were selected: 8M, Women's Day, a *ContraArte* intervention in the streets of Córdoba, and "Radio funo vol. 7 retratos" of the FUNO group in the city of Buenos Aires. Two demonstrations on emblematic days of Argentine history: Women's Day and March 24th, Day of Remembrance for Truth and Justice, commemorating the beginning of the last military dictatorship in 1976 to say "never again". In addition, both took place in 2019, during the beginning of the COVID-19 crisis that spread globally in 2020, changing habits and ways of life. In that calendar

period, society was going through turmoil globally. Demonstrations in places such as Chile, Lima, Lebanon, Paris, Puerto Rico, and Argentina, among others, were evidence of one of the most acute crises in recent years. An institutional and political crisis and, above all, of the democratic system (Gutierrez-Rubí, 2020).

What have we said up to here allows us to formulate these questions: What types of concealment of the face operate in these performances? What aesthetic-political meanings are constructed with the use of masks? What affects and emotions are configured? These are some of the questions that we will try to answer in this paper. From a sociosemiotic perspective, particularly from Angenot's theory (2020) and in connection with the theory of affects and emotions (Illouz, 2007; Verzero, 2022) and the performance studies (Taylor, 2015) our research's main goal is to analyze the configuration of aesthetic and political senses from the concealment of the face in contemporary performances.

Theoretical and methodological perspective

The actions that both groups perform can be called "performances in public spaces," embracing the "untranslatability" nature of the term (Taylor, 2015) as art and theory, which, even though it led to misunderstandings, has also provided the ground for debates that "enrich its field of analysis, making it more sensitive to the community of voices that address it" (Prieto Stambaugh, 2009, pp. 24-25). Taylor (2005), states that performance is not limited to mimetic repetitions. It also includes the possibility of change, criticism, and creativity within repetition. The author, and we may say that other thinkers as Verzero (2013), and Diéguez (2016), consider that artistic activism "uses performance to be involved in the contexts, struggles or political debates in which they live. Performances are the continuation of politics through other means" (Taylor, 2015, p. 115). In turn, every performance has the distinctive feature of not having a closure since, as Diéguez (2016), based on Bakhtin's theory, states, it is a discourse with a responding nature, immediate or not, but that is always open to dialogue. This idea of performance allows us to reflect upon the discursive performativity of these actions, based on Austin's proposal [1975] (2016), that linguistic utterances describe states of affairs and have a performative nature. Performativity, then, involves both performance and discourse. We should thus, from a contemporary reading of Butler (2002), Ardti (2014), Taylor (2015), and Fisher-Lichte (2011), consider the journey of words toward bodies taking into account that actions transform the world (and politics) as we know it.

We can then say that specific performances also create affection as a political experience. In his analysis of Argentine performances, Verzero (2022), states that "activist actions work on the intersection of affect and emotion. In that sense, every performance deploys emotional politics made up of some common elements and other specific ones" (p. 191). At the same time, it is not easy to talk about affect without talking about bodies. In this case, we will focus on faces. Deleuze y Guattari (2012), state that a close connection exists between creation, art, bodies, and resistance.

We should consider the artistic experience (in this case, the performance experience) as changes into artistic power that intersects with politics which is in turn linked to resistance and creation. This creation produces signs. These signs produce affection, and faces play a political, artistic, and resistance role in artistic activism demonstrations that are linked to affection and collectively manifested.

Masks, from a socio-semiotic perspective, are understood as a discourse that has a double function in the structure of collective enunciation resources: it is a product of affection at play (masks because of helplessness, anger, and pain) that at the same time affects others (passers-by moving around public spaces). Masks show visions of the world. They question time-bound imaginaries and allow for the creation of collective emotion (Illouz, 2007; Verzero, 2022). This way, the concepts of performance, affection/emotions, and discourse will allow us to understand the aesthetic and political meanings derived from the ContraArte and FUNO's interventions. With that aim, we will analyze and interpret photographs of the performances taken from their Facebook pages to identify semiotic instances as visions of the world, fetishes, and taboos (Angenot, 2010). Finally, we will make a comparison between the two actions to identify significant convergences and divergences. As we have said, we will consider faces as significantly relevant semiotic devices, although we will also briefly characterize other body elements and objects that are part of the performance, without which it would be difficult to understand the affective and political dimension of these actions.

Results

Black masks in the 8M day, a ContraArte performance

The group was created in 2008, when the artist Dolores Cáceres and other colleagues, dressed as Chinese farmers, sowed a hectare of soy in the Museo Caraffa's gardens of the City of Córdoba. The action was called "Qué soy" ("What I am"), making a play upon words with "soy" and "sou" (which means "soy" in old Chinese). That action occurred amid a conflict with the agricultural sector for Resolution 125, which caused controversies at a national level, generating roadblocks organized by agrarian sectors against Cristina Fernández de Kirchner's government. The exhibition was rejected by citizens and artists who marched towards the museum, which made police presence necessary. As a result of this dispute, the ContraArte group was created, and its members were artists who were against Cáceres' work. Since then, they carried out actions with Vecinos Unidos en Defensa de un Ambiente Saludable (VUDAS, from San Antonio neighborhood), the Movimiento Campesino de Córdoba, the citizens who showed resistance to the eviction in Villa La Maternidad, and mainly with the Asamblea de Malvinas Argentinas and the blockage against the setting up of the Monsanto multinational plant, in which they participated for more than four years. In addition, they organized interventions in the 24 March walk, the demonstrations for the disappearance of Santiago Maldonado, and the "Marcha de la gorra," among others.

The 8M protest in 2019, was a unique event since there was an ongoing fight to legalize abortion in Argentina, and even though the law did not pass that year, this protest worked as another link of resistance that would lead to the passing of the law a year after. In addition, that year, Mauricio Macri's neoliberal government ended. It left high levels of unemployment, an increase in inequality, debts, and intense repression against dissident groups. In that context, and as every year, the ContraArte group made a public appearance to make an exceptional performance: women dressed in black (mourning) with green scarves and black masks held up signs in the middle of the street with unique themes and world visions (Angenot, 2010) referring to the relationship between the State, the judicial power, the church and the patriarchy (considered as taboos by the group), central actors that create, according to the narrative frame, the submission and even death of those forced to give birth and who are, in many cases, little girls.

Picture 1. ContraArte intervention



Source: Facebook Comunidad ContraArte.

“Girls, not mothers” is one of the main mottos of this intervention, which, apart from the masks, consists of an “Elia’s bed” (named like that by the artist) that works as a hospital bed where illegal abortions are presumably performed. The demand is apparent: the State must legalize abortion and grant women sovereignty to decide what they want to do with their bodies. What is more, the church’s traditional role in a city like Córdoba is crucial. That is why female activist artists question this conservative imaginary using the religious theme. Around them, there are other women with their faces covered. They are probably citizens marching on their own and not active members of the ContraArte group. Another possibility is that they are guests of the group who walk along the procession dressed in black without masks.

Now, the meanings that masks create are related to a face that is hidden, and that has a solid black tone in which it is almost impossible to find traces of skin, a typical rigidity of masks (as opposed to masks that only cover eyes or make-up) that attribute a ritual and religious character to faces. We can consider that these are mourning masks in memory of those who are gone. All the artists wear the same mask and are observed and accompanied by other uncovered faces. Maybe it is death and life coming together to demand justice. This is where affection starts to be created as a collective power because, in semiotic terms, masks operate as a frontier between those lost lives and those behind those devices, presented as a reaction-action that looks for justice and makes death visible and legible. They are thus masks that represent death and show anger and hopelessness, but at the same time, show resistance, a device that covers a living face that long for another world of other possibilities.

The masks do not show smiles; they are serious and match the mourning atmosphere. The cheekbones have a standard shape, as well as the forehead that covers the face up to the hairline, which is practically the only thing that can be seen. Masks cover the skin, from the green scarf to the hairline. In another picture, we can also see girls with green make-up, a different form of concealment of the face, but that has a special aesthetic-political effect when they come together with the ones with black masks. Are they nieces, daughters, or neighbors? What we do know is that they are girls, not mothers.

Resistance masks in the 24M day, FUNO action

The group was founded in 2012 after a call by the drama group Tres Gatos Locos. They proposed a horizontal type of organization, with a centralizing phase and the division of tasks in “circles”: “action” (dramaturgy and movements), “visuals” (graphics and visual design), “Com&log” (communication and logistics), “abundance” (finances), “identity,” “focus” (audiovisual, photographic, etc. records) and the circle FUNAS (which is in charge of the feminist agenda). So far, they have made more than 30 actions in different places of the country using the epic genre, irony, and humor as resources and starting points.

As we have said, 2019 was a period of tedium after four years of Mauricio Macri’s administration. Just like the 8M had a particular year, it was also memorable for the 24M, after the former president said that the ‘human rights racket’ had to come to an end and did not promote consistent policies to take the last military dictatorship genocides to court. However, it is not only that, but there were also significant events against human rights, such as Santiago Maldonado’s death. He was protesting the eviction of ancestral lands traditionally occupied by the Mapuche community. Protesters were dispersed by National Border Patrol officers in the early morning of August 1, 2017. Then, the Security Minister, Patricia Bullrich, justified the repression of the Mapuche people. This case made thousands of people angry, and on March 24, they took to the streets to protest executive power.

Picture 2. FUNO intervention.



Source: Facebook Colectivo Fin de UN Mundo

The action places women dressed in black (showing grief again) with a white piece of fabric in time and space (Buenos Aires, 24M). The group planned and coordinated the performance with rehearsed choreographies and precise instructions, which sets a difference from the *ContraArte* performance, a less spectacular action with a modest display. A choreography shows resistance signs using humor, a carnivalesque device developed by Bakhtin (1987). He identified an inversion of the daily experience and beliefs in those forms of protests that bring a suspension of reality to draw new meaning coordinates. What takes relevance as a discursive regularity is life, resistance, and humor (considered as fetishes by the group). An intense life is presented to alleviate the pain created by the death and the disappearances resulting from the last military dictatorship. Laughter, songs, and dance are seen in the pictures exhibiting women of different ages, creating a spectacular multi-choral composition.

The masks of this group are white, which generally represents peace and life and contrasts with the masks of the previous action. Another difference is the size of the object. Since it does not cover the entire face, it only covers the upper part of the nose and the forehead. In this way, faces create another effect, and the mouth has a significant role. The mask creates an aesthetic difference and a political-affective difference since the collective identity of the masks allows us to see a range of lips, teeth, tongues, and cheekbones that contort. Even the voice range is different because mouths are not covered.

With the face covered and the impossibility of identifying the people behind the masks creates a unique effect for a 24M. What is at stake is precisely the identity: the identity of the missing people, of the genocides, and of all the victims that somehow suffered during the dictatorship. Masks, in this case, could be considered a play of what can and cannot be seen. It is also not a coincidence that some of the pictures published on Facebook show people with masks on their head, leaving faces uncovered for a short period. Beyond those few pictures, most of the albums show a collective identity under the white masks as a significant center that displaces the black fabric from the rest of the body to a less important place. It is maybe about how carnival and joy beat death.

Discussion

Both interventions construct different political-aesthetic meanings of resistance with performances in public spaces. The concealment of the face covers an identity (the person's facial features) but shows another one (the one of the mask). It allows the creation of a collective identity with a specific purpose: truth, justice, and a step towards human rights, in the case of FUNO, and the legalization of abortion and more rights for women, in the case of ContraArte. It is about themes and world visions that question time-bound imaginaries. Everyone is equal under masks, and everyone shows expressions of resistance: the first group giving (new) meaning to death and the ones responsible (as taboo) for it, and the other one reclaiming joy, humor, and laughter (as a fetish).

The differences are noticeable: how they address the themes, the colors, the aesthetics of the masks, and the possibilities of gestures that those devices offer. However, they use masks in common: why do they choose a mask that covers the entire face or the eyes to perform on such important dates? Furthermore, affection is a possible answer to the extent that a collective identity strengthens the demand: they all look the same, and everyone wearing masks is a pictorial project that creates a new distribution of the sensible on the symbolic plane (Rancière, 2009) on the Argentine streets.

Emotions can be thought of as a way of knowing that generates a politicization of the individuals. In these actions, performances are a mediator that triggers affection in the ones who participate in the performance. This is evident in the pictures of both interventions when we see the contagious effects created among the occasional passers-by who dance, accompany, and hum. Those emotions are also triggered by the life and death masks when they show knowledge and emotions about the present situation in Argentina. In the case of FUNO, the triggered emotions are joy, hope, humor, and love, and in the case of ContraArte, they show pain, hopelessness, and anger. While in the first action, we can see a funeral procession, in the second one, there is an atmosphere of canivalesque joy.

These actions have a "ritualization" character as a dynamic social practice process that stages repetitive conventions. It is a matter of thinking about performance as a ritualization process in which a memory is updated, and the passage to the symbolic fact is allowed. In this sense, the mask is a link in that recognizable ritual state for citizens as an artifact representing both a protest situation and a space for celebration.

If we recover Bakhtin's proposal (1987), we can see two different uses of the mask: one more linked to the grotesque (as in the case of ContraArte with the black mourning masks) and another more linked to the festive carnival (as the white masks in FUNO). They are two ways of expressing visions of the world as a subversive power: what the social drama of the time challenges (abortion) and a way to face the pain of March 24 through joy and humor.

Finally, the collective as a transformative power is completed with the occasional passer-by, whose face we see in pictures on Facebook. In that sense, it is crucial to follow Ahmed (2017), when she says that we interpret emotions and feelings of a specific moment we live in, but also because what we feel can depend on the past, and we can also say simultaneous, interpretations to refer to the contagious effect that is created in social protests. This is related to the discursive semiotic perspective since, as Angenot (2010), and Bakhtin (1987) state, every discourse (in this case, performance) interacts with previous and simultaneous ones building an infinite semiosis. Masks, on their part, establish links between us and other faces and masks that are part of the collective memory.

Conclusion

Doing research on faces and, more precisely, on ways of concealment in social protests is a topic that becomes more relevant in the current digital era in which the biopolitical control of the faces through facial recognition is being debated. Whether it is to avoid these forms of surveillance or to emphasize different demands through protesting, the artistic activism groups propose new ways of affection using artistic resources on faces such as masks that cover the eyes or the entire face. Masks can be then thought of as a symbology play and multipurpose figures, as a mismatch and a double identity: the one that it hides and the one that it shows. Wearing a mask creates a physical transformation, a new face, and new meanings.

This paper had the purpose of analyzing the creation of aesthetic and political meanings in two Argentinean performances and the concealment of the face with different mask was taken as the central axis. Masks that cover the eyes or the entire face convey themes, world visions and question time-bound imaginaries by showing the face of death or contrasting it against the life that is impersonated in a carnivalesque time-space. ContraArte puts on display the social drama of an era and FUNO tries to show other possible horizons with joy; both actions activate collective resistance emotions and knowledge about certain events in two very significant dates for the Argentine history.

In the case of ContraArte, outrage, anger, and rage are used to criticize the world and question the occasional passer-by, while in the case of FUNO, semiotic regularity refers to joy and celebration. Two different horizons of meaning, but they have the questioning and exposure of feelings in common. In that sense, masks play a significant role since they are discursive organizers. A big part of what happens is triggered by the aesthetics that cover faces as a resistance policy.

It will be necessary for future generations to delve into the affections theory and choose other comparative instances of concealment of the face using a variety of devices. It is not a coincidence that many demonstrations of artistic activism use masks. This may be so because they offer possibilities and aesthetic creativity to convey different emotions, and there is also a political potentiality that the concealment of the face produces in social protests.

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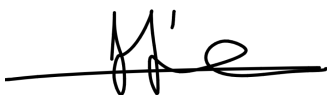
Applicants

ASSISTANT COMMISSIONER OF POLICE, NORTH WEST METRO REGION and others

Respondents

This is the annexure marked "SS-21" now produced and shown to Sarah Schwartz at the time of affirming her affidavit on 7 January 2026.

Before me:



Sophie L'Estrange, Australian Legal Practitioner

Annexure "SS-21"

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Anti-Masking Statutes and Anonymous Protest in the Age of Surveillance

Nicholas Doherty

I. INTRODUCTION

In the fall of 1845, the Hudson Valley in New York was home to what would come to be known as the Anti-Rent Wars.¹ At the time, large parts of upstate New York were controlled by a few wealthy families who had been granted vast tracts of land, referred to as manors, by the Dutch crown when the state was originally settled.² These landowners, called “patroons,” rented land to tenant farmers in what essentially operated as a feudal system.³ By the time the Anti-Rent Wars began, more than 250,000 people, roughly eight percent of the population of New York, lived and farmed on land controlled by patroons under long-term or lifetime leases.⁴ These leases permanently tied the leaseholders to the land with no opportunity to buy it.⁵

The Anti-Rent Wars began in 1839 when Stephen Van Rensselaer IV, a wealthy patroon who had recently inherited the Manor of Rensselaerswyck from his father, demanded back rent from his tenants and sought to evict those who could not pay.⁶ When local sheriffs were sent to serve the farmers with eviction notices and perform distress sales, they were met by groups of

¹ David Levine, *History of America's Other Revolution: The Anti-Rent Wars*, HUDSON VALLEY MAGAZINE (July 30, 2015), <http://www.hvmag.com/Hudson-Valley-Magazine/August-2015/History-of-Americas-Other-Revolution-The-Anti-Rent-Wars/> [https://perma.cc/V95B-4QYG].

² *Id.*

³ *Id.*

⁴ *Id.*; Reeve Huston, *The Parties and “The People”: The New York Anti-Rent Wars and the Contours of Jacksonian Politics*, 20 J. OF THE EARLY REPUBLIC 241 (2000).

⁵ Huston, *supra* note 4.

⁶ Herb Hallas, *Halloween History: New York's Anti-Mask Law*, NEW YORK HISTORY BLOG (2013), <http://newyorkhistoryblog.org/2020/10/30/halloween-history-new-yorks-anti-mask-law/> [https://perma.cc/B3FC-6T8G].

armed young men who were dressed as Native Americans and wearing masks to hide their identities.⁷

The masked men threatened—and eventually assaulted—the sheriffs in an attempt to stop the evictions and distress sales.⁸ These skirmishes continued as a downturn in the economy led more and more patroons to seek higher rents, and by 1845, three officials had been killed by masked anti-renters.⁹ The governor of New York responded by urging the state legislature to pass a law making it a crime for any person to “appear in any road or public highway, or in any field, lot, wood or enclosure,” with their face “painted, discolored, covered, or concealed.”¹⁰ The legislature passed the measure, our nation’s first anti-masking statute, but made sure to include an exception that allowed the wealthy patroons to continue holding masquerade balls.¹¹

Today, what have come to be known as “anti-masking” laws, like the New York statute passed in response to the Anti-Rent Wars, are on the books in jurisdictions across the United States and around the world.¹² While these laws are rarely identical, the term “anti-masking law” generally refers to any ordinance that makes it a crime to wear a mask, face paint, or other face coverings in public. Most anti-masking statutes restrict the wearing of masks or face coverings only under certain circumstances. These circumstances vary widely depending on the jurisdiction, and often reflect the event that inspired the legislature to adopt them. Anti-masking statutes range from narrow bans that *prohibit* wearing masks only in certain places or situations

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ L. M. Bogad, *Facial Insufficiency Political Street Performance in New York City and the Selective Enforcement of the 1845 Mask Law*, 47 *DRAMA REV.* 75, 78 (2003).

¹² Lydia Smith, *Drivers Wearing Face Veil in Germany Will Now be Fined as Controversial Ban Comes into Force*, *INDEPENDENT* (Sept. 23, 2017), <http://www.independent.co.uk/news/world/europe/driver-burqa-headscarf-veil-burqa-ban-traffic-controversial-law-germany-a7962626.html> [<https://perma.cc/8YF8-ZXA4>].

(like while committing a crime), to more general bans that *allow* wearing masks only in certain circumstances (like while playing sports).¹³

A. Burqa Bans and Religiously Targeted Anti-Masking Statutes

Lawmakers generally pass anti-masking laws with the stated intention of helping police enforce the law more efficiently by making the perpetrators of crimes more readily identifiable.¹⁴ Unfortunately, in many instances, the bans are passed not in the interest of public safety, but to criminalize the wearing of religious garb and impose the values of those in power on religious minorities and immigrants.¹⁵ While the focus of this article is on the unconstitutionality of general anti-masking provisions in the context of free association and political speech, it is incredibly important to note that in the United States, and around the world, women who choose to wear the burqa or other religious coverings are being used as political pawns by xenophobic politicians who pass anti-masking statutes as a thinly veiled form of discrimination.¹⁶ Burqa bans and other statutes aimed at preventing individuals from expressing or practicing their religion, while usually similar to general anti-masking laws, represent a different set of cultural and constitutional issues that will not be specifically discussed by this article.

B. How do Anti-Masking Statutes Work?

As mentioned above, anti-masking statutes can be divided into the following two distinct categories: “general” anti-masking provisions and “narrow” anti-masking provisions. General provisions proscribe the wearing

¹³ Southern Poverty Law Center, *Is the Practice of ‘Anti-Masking’ Laws Exposing Violent Haters or Denying Their Constitutional Rights?*, UNMASKING THE KLAN (2017), <https://www.splcenter.org/fighting-hate/intelligence-report/1999/unmasking-klan> [https://perma.cc/KBX9-5N92].

¹⁴ *Id.*

¹⁵ Liam Stack, *Burqa Bans: Which Countries Outlaw Face Coverings?*, N.Y. TIMES (Oct. 19, 2017) <https://www.nytimes.com/2017/10/19/world/europe/quebec-burqa-ban-europe.html> [https://perma.cc/62MG-DYWC].

¹⁶ *Id.*

of masks to conceal a person's identity in public, regardless of coexisting criminality. Historically, people have been convicted under general anti-masking laws for everything from wearing a Ku Klux Klan hood to sporting a wrestling mask to entertain children.¹⁷

General anti-masking laws almost always contain numerous exceptions. West Virginia, for example, has a broad anti-masking law but makes numerous exceptions including masks worn by individuals who are under the age of sixteen, masks worn as part of holiday costumes, and masks worn in theatrical productions.¹⁸ As with any law containing numerous exceptions, it can sometimes be hard to say when exactly wearing a mask is acceptable and by whom. These decisions often give law enforcement officials leeway to arrest masked individuals even if they might fall under one of the exceptions. Law enforcement is able to use this power to stop protests or rallies, even when those involved are otherwise behaving lawfully and have received permission for the demonstration.

Narrow anti-masking provisions prohibit wearing masks or face coverings under specific circumstances, generally during the commission of a crime or when in groups (essentially only during marches or protests). With some narrow anti-masking provisions, these circumstances are extremely specific. In Ohio, for example, it is illegal for two or more people to wear "white caps, masks or other disguises" while committing a misdemeanor, a law that is clearly intended to apply to the Ku Klux Klan and no one else.¹⁹ Currently, in the United States, at least eighteen states, the District of Columbia, and

¹⁷ See *Daniels v. State*, 448 S.E.2d 185 (Ga. 1994). In *Daniels*, the defendant's conviction for wearing a football helmet and wrestling mask to entertain children in his neighborhood was overturned by the Georgia Supreme Court because the court found that the defendant did not possess actual intent sufficient to sustain conviction; *State v. Miller*, 398 S.E.2d 547 (Ga. 1990).

¹⁸ W. VA. CODE § 61-6-22.

¹⁹ Matthew Haag, *Is It Illegal to Wear Masks at a Protest? It Depends on the Place*, N.Y. TIMES (Apr. 26, 2017), https://www.nytimes.com/2017/00/26/us/protests-masks-laws.html?_r=0 [<https://perma.cc/R5ZH-JJTS>].

numerous local jurisdictions have either general or narrow anti-masking laws.²⁰

While anti-masking laws are, at least in theory, passed to preserve law and order, they also have dangerous free speech and equal protection implications. The Supreme Court, quoting John Stuart Mill, has stated that “[a]nonymity is a shield from the tyranny of the majority. It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation—and their ideas from suppression—at the hand of an intolerant society.”²¹ In jurisdictions with anti-masking statutes, citizens are denied the ability to participate in political demonstrations anonymously. By denying individuals this right, anti-masking laws pose a threat to the vibrancy of American democracy by stifling political dissent and chilling political discourse.

The 2016 presidential election and the first years of the Trump presidency have seen heightened levels of political protest and numerous examples of public demonstrations of political dissent, highlighting the reality that public demonstrations, even in the age of social media, are an important element of our democratic society.²² The ability of citizens to protest publicly as a means of expressing political dissent or showing support for a political idea is critical to preserving our democracy and ensuring that a healthy debate about the future of our nation can be carried out in the public sphere.

Section II of this article will discuss the origins of anti-masking laws, paying particular attention to the historical context of masked protests in the United States. Section III will discuss support and opposition for anti-

²⁰ Maha Ahmed & Madison Pauley, *Wearing Masks at Protests Didn't Start With the Far Left*, MOTHER JONES (Oct. 2, 2017) <http://www.motherjones.com/polipoli/2017/09/masks-protests-antifa-black-bloc-explainer/> [<https://perma.cc/Y7U9-RTDG>]; Melissa Kaplan, *State Codes Related to Wearing Masks*, ANAPSID (Sept. 29, 2017), <http://www.anapsid.org/cnd/mcs/maskcodes.html> [<https://perma.cc/9RDR-Y7J7>].

²¹ *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 357 (1995).

²² Peter Beinart, *The Rise of the Violent Left*, THE ATLANTIC, Sept. 2017, <https://www.theatlantic.com/magmagaz/archive/2017/09/the-rise-of-the-violent-left/534192/> [<https://perma.cc/M7M4-VNAG>].

masking statutes, focusing on the impact statutes have on law enforcement, relevant constitutional issues, and the influences of modern technology and social media in the context of the surveillance state. Section IV will discuss federal grant programs and the ways that the federal government can encourage local jurisdictions to modify or eliminate anti-masking statutes. Section IV will explore the costs of using grant programs to encourage local jurisdictions to eliminate anti-masking statutes as well as the costs likely to be associated with implementation. Section V will address likely opposition to the proposed grant program.

II. BACKGROUND

Political dissent is an important American tradition that ensures the vibrancy of American democracy and helps to hold those in power accountable. General anti-masking laws hinder the exercise of political dissent and constitute a violation of the constitutionally protected rights to free speech and association enjoyed by Americans. As such, Congress should enact a statute incentivizing the repeal of local general anti-masking statutes by granting those jurisdictions without general anti-masking statutes with a five percent bonus in the funds distributed by the Justice Department as part of the Justice Assistance Grant Program.

The idea of anonymous protest is one that has been around almost as long as political protest itself.²³ As early as the Italian Renaissance, theater performers wore masks and face paint so that they could satirize the behavior of politicians and powerful citizens without being recognized at a time when doing so publicly could have resulted in retribution or even physical danger.²⁴

This tradition of using anonymity to protect individuals who criticized those in power continued through the Renaissance and eventually found its

²³ POLITICS AND THE MASK, MICHIGAN STATE UNIVERSITY MUSEUM (2017), http://museum.msu.edu/exhibitions/virtual/mask/dialog/politics_and_the_mask.html [perma.cc/C5CP-MW9H].

²⁴ *Id.*

way across the Atlantic. Arguably the most famous “masked” protest in American history occurred on December 16, 1773, when demonstrators, who had painted their faces with soot and dressed as Mohawk Indians, boarded three ships owned by the East India Company and dumped 342 chests of tea in Boston Harbor to protest British colonial rule.²⁵ The reasons the demonstrators at the Boston Tea Party painted their faces and wore Mohawk disguises were twofold: first, to protect their identities, and second, because the Mohawk image was emerging as a symbol of independence and liberty in the United States in a time before patriotic images like Uncle Sam had been developed.²⁶

Like the demonstrators at the Boston Tea Party, other groups in American history have recognized that masks can protect anonymity while conveying powerful symbolic messages. There is perhaps no better illustration of these dual purposes being put to use than that of the Ku Klux Klan. In the early twentieth century, masked protest took a decidedly darker turn as members of the Ku Klux Klan adopted their now infamous hooded white robes.²⁷ The robes worn by members of the Ku Klux Klan both protected the anonymity of the Klansmen and amplified the fear felt by those who encountered them.²⁸ Many of today’s anti-masking statutes were specifically enacted to stop the Ku Klux Klan from marching in their hooded robes and include references to wearing hoods in public, as well as masks and other face coverings, for this reason.

²⁵ ENCYCLOPAEDIA BRITANNICA, BOSTON TEA PARTY, <https://www.britannica.com/event/Boston-Tea-Party> (last updated Apr. 5, 2019) [<https://perma.cc/V5CQ-N9TQ>].

²⁶ *Mohawk was Emerging as a Symbol of Liberty in the New Land*, BOSTON TEA PARTY HISTORICAL SOCIETY (Oct. 16, 2017, 2:50 PM), <http://www.boston-tea-party.org/mohawks.html> [<https://perma.cc/H6WQ-2QC9>].

²⁷ *Ku Klux Klan Robes*, THE ANTI-DEFAMATION LEAGUE, (Oct. 16, 2017), <https://www.adl.org/education/refrefferen/hate-symbols/kkk-robos> [<https://perma.cc/H6HQ-W6BZ>].

²⁸ Elaine Frantz Parsons, *Midnight Rangers: Costume and Performance in the Reconstruction-Era Ku Klux Klan*, 92 J. AM. HIST. 811, 813 (2005) [<https://perma.cc/RPN8-8JR2>].

Masks and face coverings aren't just worn by white supremacists. Anti-fascists, like the Antifa activists who have gained notoriety since the 2016 presidential election, are known to employ a practice called "black bloc" whereby activists wear all black and cover their faces as a means of unifying protestors and protecting their identities.²⁹ Black-bloc tactics employed by Antifa demonstrators were originally used by protestors in Nazi Germany and later by anti-communist protestors during the Cold War era.³⁰ Black bloc methods are frequently employed by protestors in situations where anonymity is vital. For example, the Germans who demonstrated against the Nazis and, later, against communism, faced the threat of summary execution if they were identified.³¹

Today, masks are worn by protestors in connection with a variety of social and political movements.³² Masked protest was closely associated with the Occupy Wall Street movement where supporters frequently wore the Guy Fawkes masks. This mask in particular, has come to be connected with not only the Occupy movement but with protests against the modern socioeconomic order more generally.³³ From black bloc protestors, anarchists, and Antifa to Anonymous and the Occupy movement, political dissenters have long used masks to protect their anonymity and help convey their message.³⁴ This long tradition of masked protest, for purposes both

²⁹ Sarah Ganim & Chris Welch, *Unmasking the Leftist Antifa Movement*, CNN (Nov. 21 2017), <http://www.cnn.com/2017/08/18/us/unmasking-antifa-anti-fascists-hard-left/index.html> [https://perma.cc/6MXC-EB83].

³⁰ *Id.*

³¹ *Mobile Killing Squads*, UNITED STATES HOLOCAUST MEMORIAL MUSEUM, <https://www.ushmm.org/outreach/en/article.php?ModuleId=10007710#> [https://perma.cc/535L-B98P].

³² Ahmed & Pauley, *supra* note 20.

³³ W. J. T. Mitchell, *Image, Space, Revolution: The Arts of Occupation*, 39 CRITICAL INQUIRY 8, 9 (2012).

³⁴ Francis Dupuis-Deri, *The Black Blocs Ten Years after Seattle: Anarchism, Direct Action, and Deliberative Practices*, 4 J. FOR THE STUDY OF RADICALISM 46 (2010), https://www.academia.edu/2399623/The_Black_Blocs_Ten_Years_after_Seattle_Anarchism_Direct_Action_and_Deliberative_PractiPra [https://perma.cc/PJX6-NHYQ]; Ahmed & Pauley, *supra* note 20.

patriotic and repugnant, is a part of the political tradition of the United States and, when coupled with constitutional issues, is part of the reason that anti-masking statutes inspire such energetic debate.

The first anti-masking statute in the United States was passed in response to the violence of the Anti-Rent Wars, but most anti-masking laws have their origins in the period between 1920 and 1960.³⁵ These laws were almost all passed with the goal of preventing Ku Klux Klansmen from concealing their identities while terrorizing their communities.³⁶ While the Ku Klux Klan has weakened since the 1970s, anti-masking laws have remained on the books across the country.³⁷

While today, Ku Klux Klan marches and rallies are, fortunately, exceedingly rare, anti-masking laws are still being used to stop protests, particularly in instances when authorities feel the need to stop demonstrations that politicians and civic leaders view as undesirable. In 2011 and 2012, the anti-masking law passed in New York following the Anti-Rent Wars 166 years earlier was used again to arrest and charge protestors associated with the Occupy Wall Street movement for wearing Guy Fawkes masks during protests.³⁸ Further, new anti-masking laws are regularly proposed by legislators as an effort to appear “tough on crime” in jurisdictions around the country, frequently in response to political dissent and protests.³⁹ In Washington State, for example, state Senator Jim Honeyford introduced a

³⁵ Southern Poverty Law Center, *supra* note 13.

³⁶ *Id.*

³⁷ Southern Poverty Law Center, *Ku Klux Klan*, TOP TAKEAWAYS, <https://www.splcenter.org/fighting-hate/extremist-files/ideology/ku-klux-klan> [https://perma.cc/QP4C-V9E6].

³⁸ Ahmed & Pauley, *supra* note 20.

³⁹ Joseph O’Sullivan, *Wearing Masks, Hoods at Protests Could Become Crime Under New Bill*, SEATTLE TIMES (Aug. 31, 2017), <http://www.seattletimes.com/seattle-news/politics/ditch-the-guy-fawkes-mask-new-bill-would-outlaw-masks-and-hoods-at-protests/> [https://perma.cc/3TA8-7S2U]; The Associated Press, *Arizona Lawmaker Working on Bill to Ban Masks at Protests*, WASHINGTON TIMES (Aug. 24, 2017), <http://www.washingtontimes.com/news/2017/aug/24/arizona-lawmaker-working-on-bill-to-ban-masks-at-p/> [https://perma.cc/SU9Q-79JV].

bill in May of 2017 that would prohibit the wearing of masks in public.⁴⁰ Senator Honeyford cited the Seattle World Trade Organization riots in 1999, known as the “Battle in Seattle,” along with recent May Day demonstrations as inspiration for his proposed anti-masking statute for Washington.⁴¹ The ACLU of Washington State has opposed Senator Honeyford’s proposed statute, which would go so far as to require individuals to obtain written permission before wearing a mask on another person’s private property, as unconstitutional.⁴²

Similarly, anti-masking laws have become more and more common internationally, often as a result of increased immigration and the fear of terrorism. Many of the laws that have been proposed and enacted recently, in the United States but particularly in Europe, are essentially prohibitions on the religious garb worn by immigrants coming primarily from the Middle East and Northern Africa.⁴³ Across Europe, as tension surrounding the influx of immigrants and refugees has increased along with fear of terrorism and violence, lawmakers have moved to introduce legislation like the “burka bans” passed by France in 2010 and by Austria in 2017.⁴⁴

⁴⁰ Washington Senate Bill 5941 (proposed).

⁴¹ O’Sullivan, *supra* note 39.

⁴² Sydney Brownstone, *State Senator Introduces Bill to Ban Masks and Hoods in Public*, STRANGER (May 22, 2017), <http://www.thestranger.com/slog/2017/05/22/25159343/state-senator-introduces-bill-to-ban-masks-and-hoods-in-public> [https://perma.cc/6HDL-F4LM].

⁴³ See, e.g., Pete Allen, *France’s Senate Backs National Assembly and Bans Women from Wearing the Burka in Public*, DAILY MAIL (Sept. 15, 2010), <http://www.dailymail.co.uk/news/article-1312016/Frances-Senate-bans-women-wearing-burka-public.html> [https://perma.cc/VSP2-N246]; Mike Wright, *Austria’s ‘Burka Ban’ Comes into Force, Prohibiting Face Veils in Public Places*, TELEGRAPH (Oct. 1, 2017), <http://www.telegraph.co.uk/news/2017/10/01/austrias-burka-ban-comes-force-prohibiting-face-veils-public/> [https://perma.cc/5L8P-YGGE].

⁴⁴ *Id.*

III. SUPPORT AND OPPOSITION FOR ANTI-MASKING LAWS

The number of states with anti-masking laws on the books, combined with the number of proposed statutes, demonstrates that legislatures around the United States still believe that anti-masking laws serve an important role in preventing violence at protests, riots, and political gatherings.⁴⁵ There is an undeniable law enforcement benefit to disallowing masks. Masked protestors are, obviously, more difficult for law enforcement to identify and eventually prosecute.

A. Impacts on Law Enforcement in the Age of Social Media

Police have increasingly used social media and the internet to identify individuals who have perpetrated violence during protests, sometimes by posting on social media and asking for help identifying perpetrators.⁴⁶ There is likely a concern among politicians that repealing statutes that make it easier for police to identify criminals will allow their political opponents to paint them as being weak on crime and may even lead to increasing criminality at protests.

In addition to assisting with policing during protests, the origins of many anti-masking laws as tools for ending the terror of the Ku Klux Klan in jurisdictions across the United States means that any discussion about repealing anti-masking laws happens in the shadow of our nation's history of racism. Opponents of repeal can paint any effort to rescind anti-masking statutes as a boon to the Ku Klux Klan, an accusation no politician is eager to face. The ability of police to prevent Ku Klux Klan members from

⁴⁵ See, e.g., Jayme Fraser, *Bill to Ban Masks at Protests That Become Riots Divides Police, Civil Rights Advocates*, MISSOULIAN (Mar. 22, 2017), http://missoulain.com/news/government-and-politics/bill-to-ban-masks-at-protests-that-become-riots-divides/article_bf34d218-2cb5-5e0d-95fa-9b7b8162fddc.html [<https://perma.cc/XAS3-BJ77>].

⁴⁶ Frances Robles, *Two Men Arrested in Connection With Charlottesville Violence*, N.Y. TIMES (Aug. 26, 2017), https://www.nytimes.com/2017/00/26/us/charlottesville-arrests.html?smid=tw-nytimes&smtyp=cur&_r=0 [<https://perma.cc/3A9U-R2FA>].

marching through their communities while wearing their hoods is a valuable tool to maintain peace in communities where the group is still active and repeal would make it more difficult to prevent Klan activities.⁴⁷ Given that the Ku Klux Klan is widely and properly recognized as a hate group, some Klansmen would no doubt take advantage of the right to wear a hood while they marched, both to spread fear and to protect their reputations.

B. Constitutional Issues

Despite the law enforcement benefits of anti-masking statutes, they have long been opposed by a variety of groups, ranging from the ACLU to the Ku Klux Klan, as a violation of individual Constitutional rights under the First Amendment right to free speech and the Due Process Clause.⁴⁸ This opposition is based on the idea that there is a constitutionally protected right to engage in speech, even when, and perhaps *particularly* when, that speech is unpopular or considered to be outside the scope of what is polite. Opponents of anti-masking laws have argued that wearing masks is a form of protected “symbolic speech” of the sort that the Supreme Court has previously held to be protected by the First Amendment.⁴⁹

Anti-masking laws are frequently used by police to target protestors in what many consider an infringement on individual rights to free speech and free association.⁵⁰ In *NAACP v. Alabama*, the Supreme Court stated that “effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus

⁴⁷ See *Miller*, 398 S.E.2d at 672.

⁴⁸ American Knights of the Ku Klux Klan, Case No. 3:98-CV- 403RM (N.D. Ind. May 4, 1999); *State Anti-Mask Law Violates Right to Speech*, ACLU (October 18, 2000), <http://www.aclumich.org/article/sstat-anti-mask-law-violates-right-speech> [<https://perma.cc/XZ3R-UPTJ>]; Southern Poverty Law Center, *supra* note 35.

⁴⁹ See *Texas v. Johnson*, 491 U.S. 397, 404 (1989).

⁵⁰ See e.g. Benjamin R. Freed, *Occupy's Halloween Party Might Break D.C.'s Anti-Mask Law*, DCIST (Oct. 5, 2012), <https://dcist.com/story/12/10/05/occupys-halloween-party-might-break/> [<https://perma.cc/9XG5-PXY6>].

between the freedoms of speech and assembly.”⁵¹ The Court has further found that this First Amendment protection of the right to association extends beyond association for political purposes.⁵² This protection applies even to groups that are identified as hate groups and whose ideas are not only unpopular, but abhorrent.⁵³

In addition to the right of free association, the Supreme Court has found that citizens have the right to associate anonymously. Absent a compelling need, the Court has held that the government cannot require a group to release the names of its members.⁵⁴ The Court has found that “anonymity is a shield from the tyranny of the majority. It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation - and their ideas from suppression - at the hand of an intolerant society.”⁵⁵ It is hard to argue logically that the right to associate freely, and to do so anonymously, does not extend to the realm of political protests and voicing political dissent. The right to engage politically while remaining anonymous should not be limited to our living rooms.

C. Social Media and Privacy Considerations in the Surveillance State

There are also more general privacy-based arguments against anti-masking laws. This opposition comes from individuals concerned with preserving individual privacy, particularly with respect to participation in politically charged events or protests.⁵⁶ Privacy in the public sphere has eroded rapidly as technology has progressed. For example, New York Civil Liberties Union volunteers have counted more than 3000 visible security and CCTV cameras

⁵¹ NAACP v. State of Alabama *ex rel.* Patterson, 357 U.S. 449, 460 (1958).

⁵² Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 766-70 (1976).

⁵³ Collin v. Smith, 578 F.2d 1197, 1203 (7th Cir. 1978).

⁵⁴ NAACP, 357 U.S. at 458-59.

⁵⁵ *McIntyre*, 514 U.S. at 357.

⁵⁶ Omer Tene, *Privacy, Masks and Religion*, THE CENTER FOR INTERNET AND SOCIETY, (Sept. 1, 2012, 5:39 PM), <http://cyberlaw.stanford.edu/blog/2012/09/privacy-masks-and-religion> [https://perma.cc/3YT3-ZZME].

in Manhattan.⁵⁷ Today almost every step a person takes while walking from Central Park to lower Manhattan is on camera.⁵⁸ As privacy in public has become less common, the ability to congregate in public anonymously has naturally been diminished. This increased surveillance and the inability to voice political dissent anonymously has necessarily had a chilling effect on political speech, particularly when that speech is unpopular or controversial.

This constant surveillance, both by stationary and cellphone cameras, played a large role in the aftermath of the Charlottesville protests. Following the protests, images of protestors on both sides were shared on social media, resulting in retaliation both online and in person.⁵⁹ The Twitter account @YesYoureRacist, which had 407,000 followers as of October 2017, has been calling out racism online since 2012.⁶⁰ Following the Charlottesville protests, @YesYoureRacist and others online got to work sharing photos and videos of the protests as broadly as possible and asking individuals on social media to help identify the white nationalist protestors pictured.⁶¹ Once these protestors were identified, sometimes incorrectly, many of them understandably faced a backlash on social media and, in some instances, termination by their employers.⁶²

Recently, protestors have become more concerned about protecting their anonymity as they become increasingly aware of the dangers posed by “doxing.”⁶³ Doxing is a form of cyber-harassment whereby a person’s

⁵⁷ NY CIVIL LIBERTIES UNION, *NYCLU Surveillance Camera Project*, <https://www.nyclu.org/en/nyclu-surveillance-camera-project> [https://perma.cc/L3HP-3AFX].

⁵⁸ Brian Palmer, *Big Apple is Watching*, SLATE (May 3, 2016), http://www.slate.com/articles/news_and_politics/explainer/2010/05/big_apple_is_watching_you.html [https://perma.cc/DUV8-3LXY].

⁵⁹ Alyssa Newcomb, *Twitter Users Are Outing Charlottesville Protestors*, NBC (Oct. 22, 2017), <https://www.nbcnews.com/tech/social-media/twitter-users-are-outing-charlottesville-protesters-n792501> [https://perma.cc/5G8E-4V7K].

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

personal information is posted online.⁶⁴ This information often includes an individual's home address, phone number, social security number, or employment information.⁶⁵ Doxing increased in visibility following the white supremacist rallies in Charlottesville, Virginia, in August 2017, but the practice has existed for nearly as long as the internet.⁶⁶ Following the events in Charlottesville, both white supremacists and counter-protestors participated in doxing members of the opposition who were identified in pictures online.⁶⁷

In some situations, individuals were incorrectly identified as having been marching in support of white supremacy at the Charlottesville protests.⁶⁸ Following the protests, Kyle Quinn, a professor of biomedical engineering at the University of Arkansas, was identified by Twitter account @YesYoureRacist as one of the white supremacist protestors at the Charlottesville protests in a tweet that was shared more than 11,000 times.⁶⁹ The only problem was that Mr. Quinn wasn't at the protest; in fact he was more than 1000 miles away in Fayetteville, Arkansas.⁷⁰ Immediately after being misidentified as a white supremacist, Mr. Quinn's Twitter and email were bombarded by messages calling him a racist, threats against him and his

⁶⁴ Julia M. MacAllister, *The Doxing Dilemma: Seeking A Remedy for the Malicious Publication of Personal Information*, 85 FORDHAM L. REV. 2451, 2453 (2017).

⁶⁵ *Id.*

⁶⁶ Nellie Bowles, *How 'Doxing' Became a Mainstream Tool in the Culture Wars*, N.Y. TIMES (Aug. 30, 2017), <https://www.nytimes.com/2017/08/30/technology/doxing-protests.html> [<https://perma.cc/F97F-TTQF>].

⁶⁷ Micah Lee, *How Right-Wing Extremists Stalk, Dox, and Harass Their Enemies*, THE INTERCEPT (Sept. 6, 2017), <https://theintercept.com/2017/09/06/how-right-wing-extremists-stalk-dox-and-harass-their-enemies/> [<https://perma.cc/H7DW-8QD9>]; Bowles, *supra* note 66.

⁶⁸ Laura Sydel, *Kyle Quinn Hid At A Friend's House After Being Misidentified On Twitter As A Racist*, NPR (Nov. 22, 2017), <https://www.npr.org/sections/alltechconsidered/2017/08/17/543980653/kyle-quinn-hid-at-a-friend-s-house-after-being-misidentified-on-twitter-as-a-rac> [<https://perma.cc/4KYM-J798>].

⁶⁹ Rozina Sini, *Professor Wrongly Labelled as Racist in Charlottesville*, BBC (Aug. 15, 2017), <http://www.bbc.com/news/world-us-canada-40935419> [<https://perma.cc/9FW3-24A2>].

⁷⁰ *Id.*

wife, and demands that he lose his job at the University of Arkansas. Professor Quinn's home address was shared online, at which point he contacted the police.⁷¹ Professor Quinn and his wife were forced to hide out at a friend's house in an effort to ensure their safety.

Professor Quinn's story is far from unique. Following the Boston Marathon bombing in 2013, users on Reddit and other internet forums scoured pictures from the scene near the bombing to identify "suspects."⁷² Users developed a theory that Sunil Tripathi, a 22-year-old Brown University student, was one of the bombers.⁷³ This rumor was not based on any real facts. Sun Tripathi had actually been missing for more than a month, and the Facebook page his family had set up to aid in their search was quickly inundated by hateful posts.⁷⁴ The family was forced to take the Facebook page down and were overwhelmed by calls from media.⁷⁵ Reddit eventually apologized, but not until after Sun Tripathi's family had been put through hours of harassment and stress.⁷⁶

A major driver of the increased need for privacy is undoubtedly the ongoing collision of social media and political protest.⁷⁷ Starting with the uprisings during the Arab Spring in early 2011, the internet and social media have increasingly been used to promote and document political uprisings and demonstrations.⁷⁸

It is hard to argue that forcing white nationalists to answer for their hateful rhetoric via online identification is necessarily a bad thing, and therefore it

⁷¹ Sydell, *supra* note 68.

⁷² Steve Henn, *Social Media's Rush To Judgment In The Boston Bombings*, NPR (Apr. 23, 2013), <https://www.npr.org/sections/alltechconsidered/2013/04/23/178556269/Social-Medias-Rush-To-Judgment-In-The-Boston-Bombings> [<https://perma.cc/6HFG-E36Q>].

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Clay Shirky, *The Political Power of Social Media: Technology, the Public Sphere, and Political Change*, 90 FOREIGN AFFAIRS 28, 29 (2011).

⁷⁸ Zeynep Tufekci & Christopher Wilson, *Social Media and the Decision to Participate in Political Protest: Observations From Tahrir Square*, 62 J. OF COMM. 363, 363 (2012).

might make sense to not permit them to wear masks. However, in certain instances, protestors have desired to cover their faces not out of cowardice, but out of concern for their safety. In 1979, Iranian-Americans sued the State of California over its anti-masking law, arguing that it put their family members in Iran in danger by not allowing them to protect their identities while protesting the country's new leadership.⁷⁹ The court agreed, and the law was struck down.⁸⁰

The competing support and opposition to anti-masking laws has generated considerable litigation. Courts that have evaluated anti-masking laws have struggled with the tension between public safety interests and First Amendment protections that the laws create. Courts have come down on different sides of the issue, but most find that anti-masking laws are constitutional.

In *State v. Miller*, the Georgia Supreme Court overturned a lower court ruling and upheld Georgia's ban on the wearing of Klan masks stating that "[t]he state interests furthered by the Anti-Mask Act lie at the very heart of the realm of legitimate government activity."⁸¹ Similarly, in *Church of the American Knights of the Ku Klux Klan v. Kelly*, the Klan, represented by the New York Civil Liberties Union, challenged the New York Anti-Mask statute, but the court upheld the ban, stating "[w]hile the First Amendment protects the rights of citizens to express their viewpoints, however unpopular, it does not guarantee ideal conditions for doing so."⁸²

Unlike the Georgia Supreme Court, the United States Supreme Court has not taken an anti-masking case, allowing the conflicting rulings of state and

⁷⁹ Haag, *supra* note 19.

⁸⁰ Ghafari v. Mun. Court, 87 Cal. App. 3d 255 (Cal. Ct. App. 1978).

⁸¹ Peter Applebome, *Georgia Supreme Court Reinstates Ban on Wearing of Klan Masks*, N.Y. TIMES (Dec. 6, 1990), <http://www.nytimes.com/1990/12/06/us/georgia-supreme-court-reinstates-ban-on-wearing-of-klan-masks.html> [<https://perma.cc/9LGV-R8GF>].

⁸² Associated Press, *Supreme Court Rejects KKK Mask Case* (Dec. 6, 2004), <http://www.foxnews.com/story/2004/12/06/supreme-court-rejects-klk-mask-case.html> (last updated Jan. 14, 2015) [<https://perma.cc/Q3G2-VZUV>].

local courts to stay in effect. This has created a patchwork of anti-mask jurisprudence that has the result of giving some United States citizens the right to wear masks when expressing political dissent while others cannot. The Supreme Court *has* ruled on cases relating to other forms of anonymous political speech, specifically pamphleteering.⁸³ The Court has held that the right to engage in political speech is protected by the First Amendment and that the Framers intended these First Amendment protections to include a right to engage in anonymous free speech in the vein of Benjamin Franklin's Silence Dogwood letters. Accordingly, in *Virginia v. Black*, the Supreme Court ruled that Virginia's ban on cross burning was not unconstitutional, but that the state was required to prove that a defendant had an "intent to intimidate."⁸⁴

IV. PROPOSED STATUTE

General anti-masking statutes prohibiting the wearing of masks or face coverings in public without any associated criminal activity infringe on the ability of citizens to exercise their rights to free speech and anonymous association. As such, this article proposes that Congress immediately enact legislation whereby jurisdictions without general anti-masking statutes receive additional funds through the Justice Department grant system. Because criminal law is almost exclusively a state law issue, the federal government lacks the power to unilaterally overturn all general anti-masking statutes. Congress does, however, have the ability to encourage states to act through the use of federal funds. In *United States v. Butler*, the Supreme Court concluded that Congress has broad authority to tax and spend for the general welfare, and that this power permitted the federal government to place conditions on federal money granted to states.

⁸³ *McIntyre*, 514 U.S. at 357.

⁸⁴ *Virginia v. Black*, 538 U.S. 343, 363 (2003).

A. Federal Grants

The federal government regularly transfers funds to state and local government for a number of reasons.⁸⁵ In 2016 alone, the federal government transferred \$660 billion in grant money to state and local government.⁸⁶ In the past, the federal government has used this grant money to encourage states to adopt certain legislation. Federal priorities, for example raising the drinking age to 21, have seen the federal government use conditional grants to create policy in areas in which it does not have a constitutionally based power to legislate.

B. Restrictions on Conditional Federal Grants

In 1987, under pressure from Mothers Against Drunk Driving, Congress passed 23 U.S.C. § 158A, the National Minimum Drinking Age Act, in an attempt to force states to raise the drinking age to twenty-one.⁸⁷ The law reduced the amount of federal highway funds the Department of Transportation was authorized to grant to any state that did not raise their drinking age.⁸⁸ The state of South Dakota refused to raise its drinking age to twenty-one and instead challenged the Act, claiming it was a violation of the Tenth and Twenty-First Amendments.⁸⁹

The court in *South Dakota v. Dole* found that Congress had authority under its spending power to restrict grant funds in the manner prescribed by the National Minimum Drinking Age Act so long as the exercise of the spending power (1) is designed to promote the general welfare; (2) any conditions are unambiguous and thereby enable the States to exercise their choice

⁸⁵ ROBERT JAY DILGER, CONG. RESEARCH SERV., R40638, FEDERAL GRANTS TO STATE AND LOCAL GOVERNMENTS: A HISTORICAL PERSPECTIVE ON CONTEMPORARY ISSUES 2 (2018), <https://fas.org/sgp/crs/misc/R40638.pdf> [<https://perma.cc/TG4S-5E4L>].

⁸⁶ *Id.* at 7.

⁸⁷ Mark Meierhenry, *The History of South Dakota v. Dole*, 52 S.D. L. REV. 454, 455 (2007).

⁸⁸ *South Dakota v. Dole*, 483 U.S. 203, 205 (1987).

⁸⁹ *Id.* at 205–06.

knowingly, cognizant of the consequences; (3) there is a connection between the program that the federal funds were designated for and Congress's stated goal; (4) the condition is not otherwise unconstitutional; and (5) and the condition is not coercive.

The federal government uses federal funds to help fund crime prevention using grants to state and local governments through a variety of programs.⁹⁰ Many of these grants are awarded by the Justice Department through the Office of Justice Programs' Justice Assistance Grant Program (JAG). In 2016 alone, more than \$274 million in JAG funding was distributed to state and local governments.⁹¹

JAG funds are apportioned using a four-step calculation process that distribute funds based on a state or territory's share of violent crime in relation to its population. The distribution essentially divides the total amount of funding available in half and distributes one half based on population and one half based on the rate of violent crime.⁹² States that have both a small population and account for a small portion of the violent crimes committed in the United States receive a minimum distribution.⁹³ The distribution is equivalent to 0.25 percent of the funds available for the year.⁹⁴ For example, in 2016, Wyoming accounted for 0.10 percent of the nation's total violent crime and 0.18 percent of the population.⁹⁵ The total amount available that year was \$274.9 million, meaning under the initial distribution, Wyoming received 0.10 percent of \$137.4 million for its share of violent crime and 0.18 percent of \$137.4 million for its share of the population. This total, about

⁹⁰ OFFICE OF JUSTICE PROGRAMS-ABOUT, <https://ojp.gov/about/about.htm> [<https://perma.cc/CYX5-KDCW>].

⁹¹ Alexia D. Cooper, Bureau of Justice Statistics, NCJ 250157, *Justice Assistance Grant Program 1* (2016) <https://www.bjs.gov/content/pub/pdf/jagp16.pdf> [<https://perma.cc/BYB2-DYBG>].

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

\$380,000, is significantly less than the minimum JAG allocation for the year, which was \$687,266 or 0.25 percent of the total available funds.

The funds provided by the JAG programs are used for a variety of purposes, including supporting law enforcement; drug treatment; crime prevention and education; programs supporting and protecting victims and witnesses; and planning, evaluation, and technology improvements in police departments across the county.⁹⁶ These funds are distributed to state and local police in every state in the country. In 2016, a total of 1,501 local governments were eligible for awards, either directly or in conjunction with their county government.⁹⁷ Two states had more than 100 local governments eligible to receive JAG grants.⁹⁸

In order to encourage states to repeal general anti-masking statutes, Congress should provide a five percent JAG funding bonus to state and local governments that do not have a general anti-masking statute or who repeal their general anti-masking statutes. While some lawmakers would no doubt be concerned that repealing an anti-masking statute would make policing more difficult for law enforcement officers and might be politically unpopular, they could use the promised JAG funds to soften the blow. Lawmakers and law enforcement agencies would be able to use these funds to increase police manpower, train officers to better respond to protests, or even to help combat the opioid epidemic.

Because even small states are guaranteed JAG funds, every state will have an incentive not to pass or maintain a general anti-masking statute. Even the smallest states that receive the minimum amount in JAG funding would receive tens of thousands of dollars by keeping an anti-masking statute off the books. Additionally, this funding bonus would avoid the challenges posed by an obvious alternative, a penalty aimed at jurisdictions who maintain general anti-masking statutes. A penalty or some sort of condition on existing

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

federal funds may be effective but would risk reducing funds for important law enforcement programs. A penalty would also potentially face challenges from states and local jurisdictions arguing that the condition, overturning anti-masking statutes, would be unconstitutionally coercive.

C. Social Justice Considerations

We live in an era when political dissent is more important than ever. As the Trump presidency proceeds, it has become increasingly clear that the president and his administration are uncomfortable with criticism.⁹⁹ The administration's belief that criticism and dissent are unpatriotic poses a challenge to democratic norms designed to help the population as a whole hold our leaders accountable. At a time when it is more important than ever for Americans to be involved in the political process, and when our nation is more politically divided than ever, it is crucial that individuals be able to protest the government anonymously, without risking losing their jobs or being threatened because they are pictured on social media and then doxed by people who do not agree with their positions.

The tension between liberty and security is one that has challenged the United States and other democracies, and it will continue to do so. In an era when fears of terrorism, gun violence, and civic unrest are at an all-time high, it can be tempting to allow the government to impose restrictions on our liberties in exchange for feeling more secure. It is critical that we resist these temptations and continue to embrace the rights that makes democracy worth having, chief among them being our ability to criticize the government and express political dissent. Maintaining a democracy requires bravery on the

⁹⁹ Aaron Blake, *The Trump White House's Increasingly Authoritarian Response to Criticism*, WASH. POST, (Oct. 21, 2017), https://www.washingtonpost.com/news/the-fix/wp/2017/10/09/kellyanne-conway-and-the-white-houses-very-authoritarian-attitude-toward-criticism/?noredirect=on&utm_term=.bcba1f23da71 [https://perma.cc/7KKR-4EXT].

part of individual citizens. In this case, it means protecting the rights of all individuals, whether or not we agree with them, to protest anonymously.

While general anti-masking statutes are a serious constraint on the right of citizens to voice their dissent anonymously, it is important to note that they exist within a larger context of government repression of dissent. Police tactics that interfere with peaceful protests in the name of preserving order and keeping the peace are threats to our democracy. It is important that they be examined and that policymakers consider the balance between security and allowing political dissent when determining whether they should be allowed.

D. Costs

The financial costs of implementing the proposed five percent JAG grant funding boost would be substantial, but would provide additional funds for important services at the state and local level while serving the purpose of eliminating unconstitutional general anti-masking provisions. If every jurisdiction receiving a JAG grant in 2016 complied with the proposed requirement and eliminated general anti-masking provisions, the cost to the Justice Department would be \$13.7 million a year. This \$13.7 million could have a significant impact on the ability of local government to provide needed services, but would represent a minute portion of the overall federal budget, which totaled \$3.8 trillion in fiscal year 2015.

The amount of JAG funding granted by the Justice Department varies from year to year, so the cost of the five percent increase would also vary. Looking at JAG expenditures from the past three years, outlays have averaged \$273.86 million a year, meaning that the five percent boost associated with implementing this proposal would cost an average of \$13.67 million a year, assuming the JAG program continues to be funded at its current rate.

The proposed budget request for the Justice Department for fiscal year 2018 was \$27.7 billion, with \$1.93 billion designated for various state and

local grant programs.¹⁰⁰ The allocation of \$14 million, an amount that could be in line with five percent of the average JAG grant allocation, would amount to just 0.007 percent of the Department's total budget for state and local grants. Even with the costs associated with developing, implementing, and managing the plan, the costs to the Justice Department of protecting the ability of Americans to express political dissent anonymously would be minimal and the funds distributed would help state and local jurisdictions to better achieve the goals that inspired the JAG program in the first place.

JAG Grant Spending and Cost of 5% Funding Boost		
	JAG Expenditures Without 5% Boost	JAG Expenditures With 100% Utilization
2014	\$290.9 million ¹⁰¹	\$305.4 million
2015	\$255.8 million ¹⁰²	\$268.6 million
2016	\$274.9 million ¹⁰³	\$288.6 million
Average	\$273.86 million	\$287.53 million

¹⁰⁰ U.S. Dept. of Justice, FY 2018 Budget Request At A Glance (2018) <https://www.justice.gov/jmd/page/file/968216/download> [https://perma.cc/7D3D-KP2X].

¹⁰¹ Alexia D. Cooper & Kimberly Martin, Bureau of Justice Statistics, NCJ 247137, *Justice Assistance Grant Program, 2014*, 1 (2014)

<https://www.bjs.gov/content/pub/pdf/jagp14.pdf> [https://perma.cc/E7V2-ELPM].

¹⁰² Alexia D. Cooper, Bureau of Justice Statistics, NCJ 249105, *Justice Assistance Grant Program, 2015*, 1 (2015) <https://www.bjs.gov/content/pub/pdf/jagp15.pdf> [https://perma.cc/27CH-6G8W].

¹⁰³ Cooper, *supra* note 91, at 1.

E. Implementation

Congress created the JAG grant program as part of the Consolidated Appropriations Act of 2005.¹⁰⁴ Changes to the program, like those proposed in this article, would require Congressional approval. Congress could amend the scope of the program to allow the Justice Department to implement the proposed changes as part of the appropriations process. The change would first need to be approved by the appropriate appropriations subcommittees in the Senate and House of Representatives (called the Subcommittee on Commerce, Justice, Science, and Related Agencies in both), be approved by the Appropriations Committee in both chambers and then be passed as part of the act and signed into law. Congress could also make the change as a stand-alone bill, but because it involves changing appropriations to a federal agency, the appropriations process is the most likely route for Congress to take.

The implementation of the program would necessarily involve the Justice Department and would require that the Department develop specific criteria with respect to what would be considered a general anti-masking statute under the terms of the program. My proposal would be to include any statute or ordinance that criminalizes the wearing of masks, hoods, face paint, or other items intended to obscure a person's identity without corresponding criminal activity. This would require a careful review of the anti-masking statutes in each jurisdiction where they have been enacted to determine whether the statute complied with the requirement. Fortunately, the Justice Department employs more than 10,000 attorneys and has considerable resources at its disposal with which to review the anti-masking laws currently in place in the United States.¹⁰⁵

Once the Justice Department has determined which jurisdictions comply with the requirement, those jurisdictions would be eligible for the five percent

¹⁰⁴ *Id.*

¹⁰⁵ U.S. Dept. of Justice, *supra* note 100.

boost in JAG grant funding. The Department's existing system for determining the amount that each state and local jurisdiction receives would remain unchanged with the five percent bonus being applied last. Jurisdictions that maintained or passed anti-masking laws that failed to comply with the Justice Department requirement at any point during the fiscal year prior to distribution would be ineligible for funds, but they would be eligible the year following a repeal. This will give the Justice Department enough time to determine which jurisdictions will be eligible for the bonus in the future and so better budget for future JAG grant spending.

It is likely that managing the program will require the Justice Department to invest resources in determining whether any given jurisdiction has enacted an anti-masking statute during the previous year that would put that jurisdiction out of compliance. These costs would be difficult to ascertain initially but should be consistent once the program is operating.

V. LIKELY OPPOSITION

Opposition to the proposed JAG grant funding increase for jurisdictions that overturn their general anti-masking statutes will likely come in the following two main forms: opposition to the revocation of the anti-masking statutes generally, and opposition to using the JAG grant system to convince jurisdictions to revoke their statutes.

While the constitutional rights to free speech and free assembly are critical to the health of American democracy, and while the United States has a long history of anonymous political dissent in the form of masked protest, there will be those who oppose the elimination of general anti-masking statutes. The origin of many anti-masking statutes in preventing intimidation and terrorism by hooded members of the Ku Klux Klan is incredibly powerful. Individuals who consider the origins of anti-masking statutes, but not their implications for free speech and voicing political dissent, could easily see any effort to repeal the statutes as an effort to help the Ku Klux Klan cause damage in our communities.

Concerns that overturning anti-masking statutes will benefit the Ku Klux Klan are far from baseless; in fact many of the challenges to anti-masking statutes have been brought by modern affiliates of the Ku Klux Klan. But the Klan's diminished status and the ability adopt narrow anti-masking statutes that criminalize wearing a mask or hood for purposes of intimidation or while committing a crime can reduce the ability of the Ku Klux Klan to utilize repeal of anti-masking laws to their benefit.

Fortunately, the Ku Klux Klan of today is not the force it once was. At the height of its power, during the Civil Rights Movement in the 1960s, members of the Ku Klux Klan used a campaign of fear to control minorities in the South and maintain the Jim Crow-era status quo that had for so long codified white supremacy.¹⁰⁶ In 1965, Klan membership was estimated to be between 35,000 and 50,000.¹⁰⁷ The violence of the Klan of that time left an indelible mark on the psyche of the United States, and the South in particular. The Klan of today, by contrast, is a shadow of what existed during the Civil Rights Movement. The organization has splintered into local chapters and has no unifying national leadership.¹⁰⁸ This fortunate reduction in the Klan's power has come following years of the Klan being decimated by internal struggles, lawsuits, and the incarceration of many of its leaders.¹⁰⁹

The reduced power of the Klan must be considered in weighing the impact of repealing anti-masking legislation. While it is undeniable that anti-masking statutes were passed in an attempt to stop the Klan's violence, the statutes did little to stop it from terrorizing the South during the Civil Rights era and beyond. While any law that hinders the ability of the modern Klan to continue to inspire fear in individuals by marching in public, it is important to note that most anti-masking statutes do not stop the Klan from marching

¹⁰⁶ Southern Poverty Law Center, *Ku Klux Klan: A History of Racism and Violence*, 45 (2011), <https://www.splcenter.org/sites/default/files/Ku-Klux-Klan-A-History-of-Racism.pdf> [<https://perma.cc/D6SP-393W>].

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

in their robes with their faces uncovered. The history of anti-masking statutes and their origins with respect to the Ku Klux Klan are important to consider, but in the broad scheme of free speech and other constitutional rights, it is necessary to allow unpopular speech, including symbolic speech in the form of masked protests by groups supporting ideologies of hate, in order to preserve the ability for Americans to speak out and voice their dissent.

Other opposition to repealing general anti-masking statutes will come from law enforcement and individuals who are concerned that repealing anti-masking statutes would lead to lawlessness and violence at protests and rallies. Masked protestors are, obviously, much more difficult to identify, meaning that when they commit acts of violence, particularly when they do so in crowds of other individuals wearing masks, the police have a harder time apprehending them. Some may further argue that not allowing protestors to wear masks discourages unlawful behavior in the first place by dramatically increasing the likelihood that any wrongdoing would result in apprehension and punishment.

While it is important to recognize that repealing anti-masking statutes may make policing more difficult, it is also important to keep in mind that individuals set on acting violently at protests will likely find ways to circumvent anti-masking statutes. Protestors can wear masks while committing acts of violence and then take them off or, more likely, just ignore the anti-masking statute altogether and run from any police officers who try to apprehend them. Again, here it is important to keep in mind the importance of protecting the right of Americans to express political dissent and the impact that anti-masking laws actually have on crime prevention.

Other criticism of the proposed scheme will likely be focused on the cost and the means of implementation. Spending several million dollars every year to keep anti-masking statutes off the books might seem like a high price to pay. In addition, using the JAG grant scheme as a vehicle for convincing states and localities to repeal anti-masking statutes will make the program

more difficult for the Justice Department to implement and result in increased costs for managing the program.

While the cost of the program should be considered, it is important to keep in mind that the funds being offered are not being wasted but instead helping to support state and local law enforcement. The JAG program has limits on what funds can be used for. JAG awards are only to be used to support law enforcement, prosecution and courts, prevention and education, corrections and community corrections, drug treatment, technology improvements, and victim and witness programs. Increasing the funds available to state and local government in pursuit of these ends will have benefits beyond ensuring that Americans can fully exercise their constitutional right to express dissent; they will have a beneficial impact on communities across the country.

VI. CONCLUSION

The United States has long prided itself on being a force for democracy and a place where people with opposing ideologies and ideas are free to engage in a debate over how best to ensure that our nation continues to thrive. It is imperative that we recognize the importance of dissent in this process and recognize that in an increasingly interconnected world, it is important that we make it possible for people to express their dissent without fear of being doxed or fired because some individuals might not agree with them. The ability to express dissent anonymously, and to use masks to convey meaning, is an important part of the American tradition.

General anti-masking statutes inhibit the ability of Americans to express their dissent and hinder the national dialogue that is so important in a democracy. It is important that we do everything we can to ensure that they are repealed. By incentivizing states and local jurisdictions to repeal their general anti-masking statutes using the JAG grant process, we would ensure that Americans are able to exercise their rights as citizens and that our law enforcement agencies are better funded and more able to keep our communities safe.

Certificate Identifying Annexure

No. 1612 of 2025

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law and Human Rights

TARNEEN ONUS BROWNE and BENJAMIN ZABLE

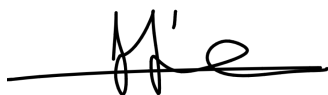
Applicants

ASSISTANT COMMISSIONER OF POLICE, NORTH WEST METRO REGION and others

Respondents

This is the annexure marked “SS-22” now produced and shown to Sarah Schwartz at the time of affirming her affidavit on 7 January 2026.

Before me:



Sophie L'Estrange, Australian Legal Practitioner

Annexure “SS-22”

Filed on behalf of (name & role of party)	Tarneen Onus Browne, First Applicant and Benjamin Zable, Second Applicant		
Prepared by (name of person/lawyer)	Sarah Schwartz		
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Address for service (include state and postcode)	17/461 Bourke Street, Melbourne VIC 3000		

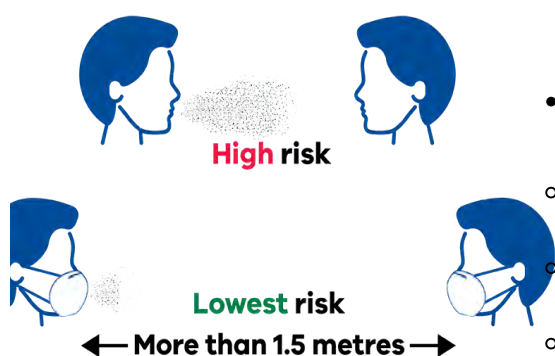
Face masks and COVID-19

Face masks can stop or slow viruses from spreading. Face masks lower your chance of catching and spreading an airborne virus. That's why wearing a high-quality and well-fitted face mask can help protect you and those around you from COVID-19.

When to wear a face mask

We recommend wearing a mask:

- for at least 7 days if you have COVID-19 and:
 - you need to leave home
 - you are indoors, or
 - you cannot maintain physical distance
- if you are a close contact and you need to leave



home

- if you are visiting or working in a sensitive setting such as hospitals and aged care facilities.

Choosing a face mask

High-quality and well-fitted face masks can stop or slow viruses spreading.

Respirator masks (N95 and P2), KN95 masks and KF94 masks help protect against airborne or aerosol transmission. They are more effective than surgical masks. Surgical masks help protect against larger droplets. Cloth masks are the least effective.

Choosing a more protective respirator or mask is recommended if:

- you are caring for someone in your home who is sick with COVID-19
- you are at **high risk of severe illness from COVID-19**
 (<http://www.betterhealth.vic.gov.au/covid-19/covid-19-antiviral-medicine>)

- you are visiting someone at high risk of severe ¹⁸⁹illness
- you are visiting a setting where people may be more vulnerable to COVID-19 such as a hospital or aged care facility
- in large crowded areas – especially if there are many people not wearing masks or if it is not possible to physically distance
- you are not up to date with **COVID-19 vaccination**
(<http://www.betterhealth.vic.gov.au/covid-19/covid-19-immunisation>)

Recommended face masks

Different types of masks provide different levels of protection. Wear the most protective mask you can. Make sure that it fits well and that there are no air gaps on the side.

The following face masks are recommended, 1 being the best protection:

1. **N95 or P2 respirator mask:** These are high filtering masks. If they fit correctly, they provide the best protection. Respirator masks with straps that go around the head are likely to fit better and give more protection than respirator masks with ear loops.
2. **KN95 mask or KF94 mask:** These are high filtering masks but are not as well fitted as a respirator. They usually have ear loops, so they don't achieve a good seal between the mask and the face as an N95 or P2 respirator mask.
3. **Surgical or medical mask:** These provide good protection when worn correctly, fitting snugly over your nose, mouth and chin. You may get a better fit by shortening the ear loops by tying a knot or wearing a cloth mask on top of a surgical or medical mask.
4. **Reusable 3 layer cloth mask:** These can provide protection if they are made of tightly woven fabric and are machine-washed every day.

How to use a face mask

Here's how to use your face mask:

- Wash your hands before touching the mask.
- The mask should comfortably and snugly cover your mouth, nose and chin.
- Adjust the mask so there are no air gaps on the side.
- Avoid touching the mask while it is on.
- Replace the mask when it gets wet or dirty, or when the straps are stretched so that the mask no longer fits snugly against your face. Dispose into waste bin after use.
- If you use a disposable mask again, you should store it in a clean, dry place, such as a paper bag between uses. Do not attempt to wash or sterilise it. This advice on re-use is

for the general public only. It is not intended for healthcare settings.

- Wash your hands after touching or removing the mask.

Children and face masks

Children should follow the same protective measures as adults, for example, wear a face mask if they have COVID-19 or are a close contact. This is especially if they are at a higher risk of serious illness from COVID-19.

Children aged 2 years or younger should not wear a mask, because it is a choking and suffocation risk.

Where to get help

- Visit your GP (doctor)
(<https://www.healthdirect.gov.au/australian-health-services>)
- Please keep Triple Zero (000)
) for emergencies only

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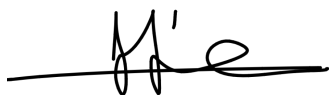
Applicants

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Respondents

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Before me:



Sophie L'Estrange, Australian Legal Practitioner

Annexure "SS-23"

Filed on behalf of (name & role of party)	Tarneen Onus Browne, First Applicant and Benjamin Zable, Second Applicant		
Prepared by (name of person/lawyer)	Sarah Schwartz		
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International Covenant on Civil and Political Rights

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Human Rights Committee

General comment No. 37 (2020) on the right of peaceful assembly (article 21)*

I. Introduction

1. The fundamental human right of peaceful assembly enables individuals to express themselves collectively and to participate in shaping their societies. The right of peaceful assembly is important in its own right, as it protects the ability of people to exercise individual autonomy in solidarity with others. Together with other related rights, it also constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism. Peaceful assemblies can play a critical role in allowing participants to advance ideas and aspirational goals in the public domain and to establish the extent of support for or opposition to those ideas and goals. Where they are used to air grievances, peaceful assemblies may create opportunities for the inclusive, participatory and peaceful resolution of differences.

2. The right of peaceful assembly is, moreover, a valuable tool that can and has been used to recognize and realize a wide range of other rights, including economic, social and cultural rights. It is of particular importance to marginalized individuals and groups. Failure to respect and ensure the right of peaceful assembly is typically a marker of repression.

3. The first sentence of article 21 of the International Covenant on Civil and Political Rights provides that: “The right of peaceful assembly shall be recognized.” The right is articulated in similar terms in other international and regional instruments,¹ and its content has been elaborated upon by monitoring bodies, for example in their views, concluding observations, resolutions, interpretive guidelines and judicial decisions.² In addition to being

* Adopted by the Committee at its 129th session (29 June–24 July 2020).

¹ For example, the Universal Declaration of Human Rights (art. 20 (1)); the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (art. 11); the American Convention on Human Rights (art. 15); and the African Charter on Human and Peoples’ Rights (art. 11). The Arab Charter on Human Rights protects the right for citizens (art. 24). Specific obligations relating to participation in peaceful assemblies can also be found in the Convention on the Rights of the Child (art. 15); the International Convention on the Elimination of All Forms of Racial Discrimination (art. 5 (d) (ix)); and the African Charter on the Rights and Welfare of the Child (art. 8).

² For examples from the regional mechanisms, see Organization for Security and Cooperation in Europe (OSCE), Office for Democratic Institutions and Human Rights, and European Commission for Democracy through Law (Venice Commission), *Guidelines on Freedom of Peaceful Assembly*, 3rd ed. (Warsaw/Strasbourg, 2019); African Commission on Human and Peoples’ Rights, *Guidelines on Freedom of Association and Assembly in Africa* (Banjul, 2017) and *Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa* (Banjul, 2017); and Inter-American Commission on Human Rights, Office of the Special Rapporteur for Freedom of Expression, *Protest and Human Rights: Standards on the rights involved in social protest and the obligations to guide the response of the State* (2019).



bound by international law to recognize the right of peaceful assembly, the vast majority of States also recognize the right in their national constitutions.³

4. The right of peaceful assembly protects the non-violent gathering by persons for specific purposes, principally expressive ones.⁴ It constitutes an individual right that is exercised collectively.⁵ Inherent to the right is thus an associative element.

5. Everyone has the right of peaceful assembly: citizens and non-citizens alike. It may be exercised by, for example, foreign nationals,⁶ migrants (documented or undocumented),⁷ asylum seekers, refugees⁸ and stateless persons.

6. Article 21 of the Covenant protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. They are protected under article 21 whether they are stationary, such as pickets, or mobile, such as processions or marches.

7. In many cases, peaceful assemblies do not pursue controversial goals and cause little or no disruption. The aim might indeed be, for example, to commemorate a national day or celebrate the outcome of a sporting event. However, peaceful assemblies can sometimes be used to pursue contentious ideas or goals. Their scale or nature can cause disruption, for example of vehicular or pedestrian movement or economic activity.⁹ These consequences, whether intended or unintended, do not call into question the protection such assemblies enjoy. To the extent that an event may create such disruptions or risks, these must be managed within the framework of the Covenant.

8. The recognition of the right of peaceful assembly imposes a corresponding obligation on States parties to respect and ensure its exercise without discrimination.¹⁰ This requires States to allow such assemblies to take place without unwarranted interference and to facilitate the exercise of the right and to protect the participants. The second sentence of article 21 provides grounds for potential restrictions, but any such restrictions must be narrowly drawn. There are, in effect, limits on the restrictions that may be imposed.

9. The full protection of the right of peaceful assembly is possible only when other, often overlapping, rights are also protected, notably freedom of expression, freedom of association and political participation.¹¹ Protection of the right of peaceful assembly is often also dependent on the realization of a broader range of civil and political rights, and economic, social and cultural rights. Where individuals' conduct places them outside the scope of the protection of article 21, for example because they are behaving violently, they retain their other rights under the Covenant, subject to the applicable limitations and restrictions.

10. The way in which assemblies are conducted and their context changes over time. This may in turn affect how they are approached by the authorities. For example, given that emerging communications technologies offer the opportunity to assemble either wholly or partly online and often play an integral role in organizing, participating in and monitoring physical gatherings, interference with such communications can impede assemblies. While surveillance technologies can be used to detect threats of violence and thus to protect the public, they can also infringe on the right to privacy and other rights of participants and

³ A total of 184 of the 193 States Members of the United Nations recognize the right to peaceful assembly in their constitutions. See www.rightofassembly.info.

⁴ *Kivenmaa v. Finland* (CCPR/C/50/D/412/1990), para. 7.6; *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 9.3; and *Poplavny and Sudalenko v. Belarus* (CCPR/C/118/D/2139/2012), para. 8.5.

⁵ General comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 9.

⁶ General comment No. 15 (1986) on the position of aliens under the Covenant, paras. 1–2; and CCPR/C/KWT/CO/3, para. 42.

⁷ CCPR/C/DOM/CO/6, para. 32.

⁸ CCPR/C/NPL/CO/2, para. 14.

⁹ CCPR/C/KOR/Q/4, para. 26.

¹⁰ International Covenant on Civil and Political Rights, art. 2 (1).

¹¹ A/HRC/39/28, para. 14.

bystanders and have a chilling effect. Moreover, there is increased private ownership and other forms of control of publicly accessible spaces and communication platforms. Considerations such as these need to inform a contemporary understanding of the legal framework that article 21 requires.

II. Scope of the right of peaceful assembly

11. Establishing whether or not someone's participation in an assembly is protected under article 21 entails a two-stage process. It must first be established whether or not the conduct of the person in question falls within the scope of the protection offered by the right, in that it amounts to participation in a "peaceful assembly" (as described in the present section). If so, the State must respect and ensure the rights of the participants (as described in section III below). Second, it must be established whether or not any restrictions applied to the exercise of the right are legitimate in that context (as described in section IV below).

12. Participating in an "assembly" entails organizing or taking part in a gathering of persons for a purpose such as expressing oneself, conveying a position on a particular issue or exchanging ideas. The gathering can also be intended to assert or affirm group solidarity or identity. Assemblies may, in addition to having such aims, serve other goals, such as an entertainment, cultural, religious or commercial objective, and still be protected under article 21.

13. While the notion of an assembly implies that there will be more than one participant in the gathering,¹² a single protester enjoys comparable protections under the Covenant, for example under article 19. Although the exercise of the right of peaceful assembly is normally understood to pertain to the physical gathering of persons, article 21 protection also extends to remote participation in, and organization of, assemblies, for example online.¹³

14. Peaceful assemblies are often organized in advance, allowing time for the organizers to notify the authorities to make the necessary preparations. However, spontaneous assemblies, which are typically direct responses to current events, whether coordinated or not, are equally protected under article 21. Counterdemonstrations occur when one assembly takes place to express opposition to another. Both assemblies can fall within the scope of the protection of article 21.

15. A "peaceful" assembly stands in contradistinction to one characterized by widespread and serious violence. The terms "peaceful" and "non-violent" are thus used interchangeably in this context. The right of peaceful assembly may, by definition, not be exercised using violence. "Violence" in the context of article 21 typically entails the use by participants of physical force against others that is likely to result in injury or death, or serious damage to property.¹⁴ Mere pushing and shoving or disruption of vehicular or pedestrian movement or daily activities do not amount to "violence".

16. If the conduct of participants in an assembly is peaceful, the fact that certain domestic legal requirements pertaining to an assembly have not been met by its organizers or participants does not, on its own, place the participants outside the scope of the protection of article 21.¹⁵ Collective civil disobedience or direct action campaigns can be covered by article 21, provided that they are non-violent.¹⁶

17. There is not always a clear dividing line between assemblies that are peaceful and those that are not, but there is a presumption in favour of considering assemblies to be peaceful.¹⁷ Moreover, isolated acts of violence by some participants should not be attributed

¹² *Coleman v. Australia* (CCPR/C/87/D/1157/2003), para. 6.4.

¹³ See A/HRC/41/41.

¹⁴ OSCE and Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, para. 51.

¹⁵ European Court of Human Rights, *Frumkin v. Russia* (application No. 74568/12), judgment of 5 January 2016, para. 97.

¹⁶ CCPR/C/CHN-MAC/CO/1, para. 16.

¹⁷ A/HRC/31/66, para. 18.

to others, to the organizers or to the assembly as such.¹⁸ Thus, some participants in an assembly may be covered by article 21, while others in the same assembly are not.

18. The question of whether or not an assembly is peaceful must be answered with reference to violence that originates from the participants. Violence against participants in a peaceful assembly by the authorities, or by agents provocateurs acting on their behalf, does not render the assembly non-peaceful. The same applies to violence by members of the public aimed at the assembly, or by participants in counterdemonstrations.

19. The conduct of specific participants in an assembly may be deemed violent if authorities can present credible evidence that, before or during the event, those participants are inciting others to use violence, and such actions are likely to cause violence; that the participants have violent intentions and plan to act on them; or that violence on their part is imminent.¹⁹ Isolated instances of such conduct will not suffice to taint an entire assembly as non-peaceful, but where it is manifestly widespread within the assembly, participation in the gathering as such is no longer protected under article 21.

20. The carrying by participants of objects that are or could be viewed as weapons or of protective equipment such as gas masks or helmets is not necessarily sufficient to deem those participants' conduct violent. That has to be determined on a case-by-case basis, dependent on, among other considerations, domestic regulation on the carrying of weapons (especially firearms), local cultural practices, whether there is evidence of violent intent, and the risk of violence presented by the presence of such objects.

III. Obligation of States parties regarding the right of peaceful assembly

21. The Covenant imposes the obligation on States parties "to respect and to ensure" all the rights in the Covenant (art. 2 (1)); to take legal and other measures to achieve this purpose (art. 2 (2)); and to pursue accountability, and provide effective remedies for violations of Covenant rights (art. 2 (3)).²⁰ The obligation of States parties regarding the right of peaceful assembly thus comprises these various elements, although the right may in some cases be restricted according to the criteria listed in article 21.

22. States must leave it to the participants to determine freely the purpose or any expressive content of an assembly. The approach of the authorities to peaceful assemblies and any restrictions imposed must thus in principle be content neutral,²¹ and must not be based on the identity of the participants or their relationship with the authorities. Moreover, while the time, place and manner of assemblies may under some circumstances be the subject of legitimate restrictions under article 21, given the typically expressive nature of assemblies, participants must as far as possible be enabled to conduct assemblies within sight and sound of their target audience.²²

23. The obligation to respect and ensure peaceful assemblies imposes negative and positive duties on States before, during and after assemblies. The negative duty entails that there be no unwarranted interference with peaceful assemblies. States are obliged, for example, not to prohibit, restrict, block, disperse or disrupt peaceful assemblies without compelling justification, nor to sanction participants or organizers without legitimate cause.

¹⁸ Inter-American Court of Human Rights, *Women Victims of Sexual Torture in Atenco v. Mexico*, judgment of 28 November 2018, series C, No. 371, para. 175; and European Court of Human Rights, *Frumkin v. Russia*, para. 99.

¹⁹ Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (A/HRC/22/17/Add.4, appendix), para. 29 (f).

²⁰ See also general comment No. 31.

²¹ *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 9.6. See also *Amelkovich v. Belarus* (CCPR/C/125/D/2720/2016), para. 6.6; and CCPR/C/GNQ/CO/1, paras. 54–55.

²² *Strizhak v. Belarus* (CCPR/C/124/D/2260/2013), para. 6.5.

24. Moreover, States parties have certain positive duties to facilitate peaceful assemblies and to make it possible for participants to achieve their objectives.²³ States must thus promote an enabling environment for the exercise of the right of peaceful assembly without discrimination, and put in place a legal and institutional framework within which the right can be exercised effectively. Specific measures may sometimes be required on the part of the authorities. For example, they may need to block off streets, redirect traffic or provide security. Where needed, States must also protect participants against possible abuse by non-State actors, such as interference or violence by other members of the public,²⁴ counterdemonstrators and private security providers.

25. States must ensure that laws and their interpretation and application do not result in discrimination in the enjoyment of the right of peaceful assembly, for example on the basis of race, colour, ethnicity, age, sex, language, property, religion or belief, political or other opinion, national or social origin, birth, minority, indigenous or other status, disability, sexual orientation or gender identity, or other status.²⁵ Particular efforts must be made to ensure the equal and effective facilitation and protection of the right of peaceful assembly of individuals who are members of groups that are or have been subjected to discrimination, or that may face particular challenges in participating in assemblies.²⁶ Moreover, States have a duty to protect participants from all forms of discriminatory abuse and attacks.²⁷

26. The right of peaceful assembly does not exempt participants from challenges by other members of society. States must respect and ensure counterdemonstrations as assemblies in their own right, while preventing undue disruption of the assemblies to which they are opposed.²⁸ States must in principle take a content-neutral approach to counterdemonstrations, which must be allowed to take place, as far as possible, within sight and sound of the assemblies against which they are directed.

27. The possibility that a peaceful assembly may provoke adverse or even violent reactions from some members of the public is not sufficient grounds to prohibit or restrict the assembly.²⁹ States are obliged to take all reasonable measures that do not impose disproportionate burdens upon them to protect all participants and to allow such assemblies to take place in an uninterrupted manner (see also para. 52 below).

28. A functioning and transparent legal and decision-making system lies at the core of the duty to respect and ensure peaceful assemblies. Domestic law must recognize the right of peaceful assembly, clearly set out the duties and responsibilities of all public officials involved, be aligned with the relevant international standards and be publicly accessible. States must ensure public awareness about the law and relevant regulations, including any procedures to be followed by those wishing to exercise the right, who the responsible authorities are, the rules applicable to those officials, and the remedies available for alleged violations of rights.

29. States parties must ensure independent and transparent oversight of all bodies involved with peaceful assemblies, including through timely access to effective remedies, including judicial remedies, or to national human rights institutions, with a view to upholding the right before, during and after an assembly.

²³ Since issuing its Views in *Turchenyak et al. v. Belarus* (CCPR/C/108/D/1948/2010 and Corr.1), the Committee has often repeated that steps taken by States in response to an assembly “should be guided by the objective to facilitate the right” (para. 7.4). See also CCPR/C/BEN/CO/2, para. 33, A/HRC/20/27, para. 33, and Human Rights Council resolution 38/11.

²⁴ *Alekseev v. Russian Federation*, para. 9.6.

²⁵ CCPR/C/GEO/CO/4, para. 8; CCPR/C/MNG/CO/6, paras. 11–12; CCPR/C/RUS/CO/7, para. 10; and CCPR/C/PRY/CO/3, para. 9. See also CRC/C/KEN/CO/3-5, paras. 27–28; and United Nations Declaration on the Rights of Indigenous Peoples, art. 2.

²⁶ A/HRC/31/66, para. 16.

²⁷ CCPR/C/CHL/CO/6, para. 19. See also *Fedotova v. Russian Federation* (CCPR/C/106/D/1932/2010), para. 10.4.

²⁸ European Court of Human Rights, *Plattform “Ärzte für das Leben” v. Austria* (application No. 10126/82), judgment of 21 June 1988, para. 32.

²⁹ African Commission on Human and Peoples’ Rights, *Guidelines on Freedom of Association and Assembly in Africa*, para. 70 (a).

30. The role of journalists, human rights defenders, election monitors and others involved in monitoring or reporting on assemblies is of particular importance for the full enjoyment of the right of peaceful assembly. Those persons are entitled to protection under the Covenant.³⁰ They may not be prohibited from, or unduly limited in, exercising these functions, including with respect to monitoring the actions of law enforcement officials. They must not face reprisals or other harassment, and their equipment must not be confiscated or damaged.³¹ Even if an assembly is declared unlawful or is dispersed, that does not terminate the right to monitor. It is a good practice for independent national human rights institutions and non-governmental organizations to monitor assemblies.

31. States parties hold the primary responsibility for the realization of the right of peaceful assembly. However, business enterprises have a responsibility to respect human rights, including the right of peaceful assembly of, for example, communities affected by their activities and of their employees.³² Private entities and broader society may be expected to accept some level of disruption as a result of the exercise of the right.

32. Given that peaceful assemblies often have expressive functions, and that political speech enjoys particular protection as a form of expression, it follows that assemblies with a political message should enjoy a heightened level of accommodation and protection.³³

33. Article 21 and its related rights do not only protect participants while and where an assembly is ongoing. Associated activities conducted by an individual or by a group, outside the immediate context of the gathering but which are integral to making the exercise meaningful, are also covered. The obligations of States parties thus extend to actions such as participants' or organizers' mobilization of resources; planning; dissemination of information about an upcoming event;³⁴ preparation for and travelling to the event;³⁵ communication between participants leading up to and during the assembly; broadcasting of or from the assembly; and leaving the assembly afterwards. These activities may, like participation in the assembly itself, be subject to restrictions, but these must be narrowly drawn. Moreover, no one should be harassed or face other reprisals as a result of their presence at or affiliation with a peaceful assembly.

34. Many associated activities happen online or otherwise rely upon digital services. Such activities are also protected under article 21. States parties must not, for example, block or hinder Internet connectivity in relation to peaceful assemblies.³⁶ The same applies to geotargeted or technology-specific interference with connectivity or access to content. States should ensure that the activities of Internet service providers and intermediaries do not unduly restrict assemblies or the privacy of assembly participants. Any restrictions on the operation of information dissemination systems must conform with the tests for restrictions on freedom of expression.³⁷

35. While all organs of State carry the obligation to respect and ensure the right of peaceful assembly, decisions on assemblies are often taken at the local level. States must therefore ensure adequate training and resources for officials involved in these decisions at all levels of government.

³⁰ *Zhagiparov v. Kazakhstan* (CCPR/C/124/D/2441/2014), paras. 13.2–13.5. See also the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

³¹ CCPR/C/MRT/CO/1, para. 22. See also General Assembly resolution 66/164.

³² Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework.

³³ General comment No. 34 (2011) on the freedoms of opinion and expression, paras. 34, 37–38 and 42–43. See also CCPR/C/LAO/CO/1, para. 33.

³⁴ *Tulzhenkova v. Belarus* (CCPR/C/103/D/1838/2008), para. 9.3.

³⁵ *Evrezov et al. v. Belarus* (CCPR/C/112/D/1999/2010 and Corr.1), para. 8.5.

³⁶ CCPR/C/CMR/CO/5, para. 41.

³⁷ General comment No. 34, para. 34.

IV. Restrictions on the right of peaceful assembly

36. While the right of peaceful assembly may in certain cases be limited, the onus is on the authorities to justify any restrictions.³⁸ Authorities must be able to show that any restrictions meet the requirement of legality, and are also both necessary for and proportionate to at least one of the permissible grounds for restrictions enumerated in article 21, as discussed below. Where this onus is not met, article 21 is violated.³⁹ The imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations on it.⁴⁰ Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect.

37. The prohibition of a specific assembly can be considered only as a measure of last resort. Where the imposition of restrictions on an assembly is deemed necessary, the authorities should first seek to apply the least intrusive measures. States should also consider allowing an assembly to take place and deciding afterwards whether measures should be taken regarding possible transgressions during the event, rather than imposing prior restraints in an attempt to eliminate all risks.⁴¹

38. Any restrictions on participation in peaceful assemblies should be based on a differentiated or individualized assessment of the conduct of the participants and the assembly concerned. Blanket restrictions on peaceful assemblies are presumptively disproportionate.

39. The second sentence of article 21 provides that no restrictions may be placed on the exercise of the right of peaceful assembly other than those imposed in conformity with the law. This poses the formal requirement of legality, akin to the requirement that limitations must be “provided by law” in other articles of the Covenant. Restrictions must thus be imposed through law or administrative decisions based on law. The laws in question must be sufficiently precise to allow members of society to decide how to regulate their conduct and may not confer unfettered or sweeping discretion on those charged with their enforcement.⁴²

40. Article 21 provides that any restrictions must be “necessary in a democratic society”. Restrictions must therefore be necessary and proportionate in the context of a society based on democracy, the rule of law, political pluralism and human rights, as opposed to being merely reasonable or expedient.⁴³ Such restrictions must be appropriate responses to a pressing social need, relating to one of the permissible grounds listed in article 21. They must also be the least intrusive among the measures that might serve the relevant protective function.⁴⁴ Moreover, they must be proportionate, which requires a value assessment, weighing the nature and detrimental impact of the interference on the exercise of the right against the resultant benefit to one of the grounds for interfering.⁴⁵ If the detriment outweighs the benefit, the restriction is disproportionate and thus not permissible.

41. The last part of the second sentence of article 21 sets out the legitimate grounds on which the right of peaceful assembly may be restricted. This is an exhaustive list, consisting of the following grounds: 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.

42. The “interests of national security” may serve as a ground for restrictions if such restrictions are necessary to preserve the State’s capacity to protect the existence of the nation,

³⁸ *Gryb v. Belarus* (CCPR/C/103/D/1316/2004), para. 13.4.

³⁹ *Chebotareva v. Russian Federation* (CCPR/C/104/D/1866/2009), para. 9.3.

⁴⁰ *Turchenyak et al. v. Belarus*, para. 7.4.

⁴¹ OSCE and Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, paras. 132 and 220–222.

⁴² *Nepomnyashchiy v. Russian Federation* (CCPR/C/123/D/2318/2013), para. 7.7; and general comment No. 34, para. 25.

⁴³ General comment No. 34, para. 34.

⁴⁴ *Toregozhina v. Kazakhstan* (CCPR/C/112/D/2137/2012), para. 7.4.

⁴⁵ *Ibid.*, paras. 7.4 and 7.6. See also OSCE and Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, para. 131.

its territorial integrity or political independence against a credible threat or use of force.⁴⁶ This threshold will only exceptionally be met by assemblies that are “peaceful”. Moreover, where the very reason that national security has deteriorated is the suppression of human rights, this cannot be used to justify further restrictions, including on the right of peaceful assembly.⁴⁷

43. For the protection of “public safety” to be invoked as a ground for restrictions on the right of peaceful assembly,⁴⁸ it must be established that the assembly creates a real and significant risk to the safety of persons (to life or security of person) or a similar risk of serious damage to property.⁴⁹

44. “Public order” refers to the sum of the rules that ensure the proper functioning of society, or the set of fundamental principles on which society is founded, which also entails respect for human rights, including the right of peaceful assembly.⁵⁰ States parties should not rely on a vague definition of “public order” to justify overbroad restrictions on the right of peaceful assembly.⁵¹ Peaceful assemblies can in some cases be inherently or deliberately disruptive and require a significant degree of toleration. “Public order” and “law and order” are not synonyms, and the prohibition of “public disorder” in domestic law should not be used unduly to restrict peaceful assemblies.

45. The protection of “public health” may exceptionally permit restrictions to be imposed, for example where there is an outbreak of an infectious disease and gatherings are dangerous. This may in extreme cases also be applicable where the sanitary situation during an assembly presents a substantial health risk to the general public or to the participants themselves.⁵²

46. Restrictions on peaceful assemblies should only exceptionally be imposed for the protection of “morals”. If used at all, this ground should not be used to protect understandings of morality deriving exclusively from a single social, philosophical or religious tradition,⁵³ and any such restrictions must be understood in the light of the universality of human rights, pluralism and the principle of non-discrimination.⁵⁴ Restrictions based on this ground may not, for instance, be imposed because of opposition to expressions of sexual orientation or gender identity.⁵⁵

47. Restrictions imposed for the protection of “the rights and freedoms of others” may relate to the protections under the Covenant or other human rights of people not participating in the assembly. At the same time, assemblies are a legitimate use of public and other spaces, and since they may entail by their very nature a certain level of disruption to ordinary life, such disruptions must be accommodated, unless they impose a disproportionate burden, in which case the authorities must be able to provide detailed justification for any restrictions.⁵⁶

48. In addition to the general framework for restrictions provided for in article 21, as discussed above, additional considerations are relevant to restrictions on the right of peaceful assembly. Central to the realization of the right is the requirement that any restrictions, in principle, be content neutral, and thus not be related to the message conveyed by the assembly.⁵⁷ A contrary approach defeats the very purpose of peaceful assemblies as a

⁴⁶ Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights (E/CN.4/1985/4, annex), para. 29.

⁴⁷ *Ibid.*, para. 32.

⁴⁸ CCPR/C/MKD/CO/3, para. 19; and *Alekseev v. Russian Federation*, para. 9.5.

⁴⁹ Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, para. 33.

⁵⁰ *Ibid.*, para. 22.

⁵¹ CCPR/C/KAZ/CO/1, para. 26; and CCPR/C/DZA/CO/4, paras. 45–46.

⁵² European Court of Human Rights, *Cisse v. France* (application No. 51346/99), judgment of 9 April 2002.

⁵³ General comment No. 22 (1993) on the right to freedom of thought, conscience and religion, para. 8.

⁵⁴ General comment No. 34, para. 32.

⁵⁵ *Fedotova v. Russian Federation*, paras. 10.5–10.6; and *Alekseev v. Russian Federation*, para. 9.6.

⁵⁶ *Stambrovsky v. Belarus* (CCPR/C/112/D/1987/2010), para. 7.6; and *Pugach v. Belarus* (CCPR/C/114/D/1984/2010), para. 7.8.

⁵⁷ *Alekseev v. Russian Federation*, para. 9.6.

potential tool of political and social participation that allows people to advance ideas and establish the extent of the support that they enjoy.

49. The rules applicable to freedom of expression should be followed when dealing with any expressive elements of assemblies. Restrictions on peaceful assemblies must thus not be used, explicitly or implicitly, to stifle expression of political opposition to a government,⁵⁸ challenges to authority, including calls for democratic changes of government, the constitution or the political system, or the pursuit of self-determination. They should not be used to prohibit insults to the honour and reputation of officials or State organs.⁵⁹

50. In accordance with article 20 of the Covenant, peaceful assemblies may not be used for propaganda for war (art. 20 (1)), or for advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (art. 20 (2)). As far as possible, action should be taken in such cases against the individual perpetrators, rather than against the assembly as a whole. Participation in assemblies whose dominant message falls within the scope of article 20 must be addressed in conformity with the requirements for restrictions set out in articles 19 and 21.⁶⁰

51. Generally, the use of flags, uniforms, signs and banners is to be regarded as a legitimate form of expression that should not be restricted, even if such symbols are reminders of a painful past. In exceptional cases, where such symbols are directly and predominantly associated with incitement to discrimination, hostility or violence, appropriate restrictions should apply.⁶¹

52. The fact that an assembly provokes or may provoke a hostile reaction from members of the public against participants, as a general rule, does not justify restriction; the assembly must be allowed to go ahead, and its participants must be protected (see para. 18 above). However, in the exceptional case where the State is manifestly unable to protect the participants from a severe threat to their safety, restrictions on participation in the assembly may be imposed. Any such restrictions must be able to withstand strict scrutiny. An unspecified risk of violence, or the mere possibility that the authorities will not have the capacity to prevent or neutralize the violence emanating from those opposed to the assembly, is not enough; the State must be able to show, based on a concrete risk assessment, that it would not be able to contain the situation, even if significant law enforcement capability were to be deployed.⁶² Less intrusive restrictions, such as postponement or relocation of the assembly, must be considered before resort to prohibition.

53. The regulation of the time, place and manner of assemblies is generally content neutral, and while there is some scope for restrictions that regulate these elements, the onus remains on the authorities to justify any such restriction on a case-by-case basis.⁶³ Any such restrictions should still, as far as possible, allow participants to assemble within sight and sound of their target audience, or at whatever site is otherwise important to their purpose.⁶⁴

54. Concerning restrictions on the time of assemblies, participants must have sufficient opportunity to manifest their views or to pursue their other purposes effectively.⁶⁵ Peaceful assemblies should generally be left to end by themselves. Restrictions on the precise time of day or date when assemblies can or cannot be held raise concerns about their compatibility

⁵⁸ CCPR/C/MDG/CO/4, para. 51.

⁵⁹ CCPR/C/79/Add. 86, para. 18; and general comment No. 34, para. 38.

⁶⁰ General comment No. 34, paras. 50–52; International Convention on the Elimination of All Forms of Racial Discrimination, art. 4; and Committee on the Elimination of Racial Discrimination, general recommendation No. 35 (2013) on combating racist hate speech. See also the Rabat Plan of Action, para. 29, and the Beirut Declaration on Faith for Rights (A/HRC/40/58, annexes I and II).

⁶¹ OSCE and Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, para. 152. See also European Court of Human Rights, *Fáber v. Hungary* (application No. 40721/08), judgment of 24 October 2012, paras. 56–58.

⁶² *Alekseev v. Russian Federation*, para. 9.6.

⁶³ OSCE and Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, para. 132.

⁶⁴ *Turchenyak et al. v. Belarus*, para. 7.4.

⁶⁵ European Court of Human Rights, *Éva Molnár v. Hungary* (application No. 10346/05), judgment of 7 October 2008, para. 42.

with the Covenant.⁶⁶ Assemblies should not be limited solely because of their frequency. The timing, duration or frequency of a demonstration may, for example, play a central role in achieving its objective. However, the cumulative impact of sustained gatherings may be weighed in a proportionality assessment of a restriction. For example, certain assemblies held regularly at night in residential areas might have a significant impact on those living nearby.

55. As for restrictions on the element of place, peaceful assemblies may in principle be conducted in all spaces to which the public has access or should have access, such as public squares and streets.⁶⁷ While rules concerning public access to some spaces, such as buildings and parks, may also limit the right to assemble in such places, the application of such restrictions to peaceful assemblies must be justifiable in terms of article 21. Peaceful assemblies should not be relegated to remote areas where they cannot effectively capture the attention of those who are being addressed, or the general public.⁶⁸ As a general rule, there can be no blanket ban on all assemblies in the capital city,⁶⁹ in all public places except one specific location within a city⁷⁰ or outside the city centre,⁷¹ or on all the streets in a city.

56. The designation of the perimeters of places such as courts, parliaments, sites of historical significance or other official buildings as areas where assemblies may not take place should generally be avoided, *inter alia*, because these are public spaces. Any restrictions on assemblies in and around such places must be specifically justified and narrowly circumscribed.⁷²

57. While gatherings in private spaces fall within the scope of the right of peaceful assembly,⁷³ the interests of others with rights in the property must be given due weight. The extent to which restrictions may be imposed on such a gathering depends on considerations such as whether the space is routinely publicly accessible, the nature and extent of the potential interference caused by the gathering with the interests of others with rights in the property, whether those holding rights in the property approve of such use, whether the ownership of the space is contested through the gathering and whether participants have other reasonable means to achieve the purpose of the assembly, in accordance with the sight and sound principle.⁷⁴ Access to private property may not be denied on a discriminatory basis.

58. As far as restrictions on the manner of peaceful assemblies are concerned, participants should be left to determine whether they want to use equipment such as posters, megaphones, musical instruments or other technical means, such as projection equipment, to convey their message. Assemblies may entail the temporary erection of structures, including sound systems, to reach their audience or otherwise achieve their purpose.⁷⁵

59. In general, States parties should not limit the number of participants in assemblies.⁷⁶ Any such restriction can be accepted only if there is a clear connection with a legitimate ground for restrictions as set out in article 21, for example where public safety considerations dictate a maximum crowd capacity for a stadium or a bridge, or where public health considerations dictate physical distancing.

60. The wearing of face coverings or other disguises by assembly participants, such as hoods or masks, or taking other steps to participate anonymously may form part of the expressive element of a peaceful assembly or serve to counter reprisals or to protect privacy, including in the context of new surveillance technologies. The anonymity of participants

⁶⁶ CCPR/C/KOR/CO/4, para. 52; and CCPR/C/TJK/CO/3, para. 49.

⁶⁷ Inter-American Commission on Human Rights, *Protest and Human Rights*, para. 72.

⁶⁸ CCPR/C/KAZ/CO/1, para. 26.

⁶⁹ CCPR/C/DZA/CO/4, para. 45.

⁷⁰ *Turchenyak et al. v. Belarus*, para. 7.5.

⁷¹ *Sudalenko v. Belarus* (CCPR/C/113/D/1992/2010), para. 8.5.

⁷² *Zündel v. Canada* (CCPR/C/78/D/953/2000), para. 8.5.

⁷³ *Giménez v. Paraguay* (CCPR/C/123/D/2372/2014), para. 8.3; and European Court of Human Rights, *Annenkov and others v. Russia* (application No. 31475/10), judgment of 25 July 2017, para. 122.

⁷⁴ European Court of Human Rights, *Appleby and others v. United Kingdom* (application No. 44306/98), judgment of 6 May 2003, para. 47.

⁷⁵ European Court of Human Rights, *Frumkin v. Russia*, para. 107.

⁷⁶ CCPR/C/THA/CO/2, para. 39.

should be allowed unless their conduct presents reasonable grounds for arrest,⁷⁷ or there are other similarly compelling reasons, such as the fact that the face covering forms part of a symbol that is, exceptionally, restricted for the reasons referred to above (see para. 51). The use of disguises should not in itself be deemed to signify violent intent.

61. While the collection of relevant information and data by authorities may under certain circumstances assist the facilitation of assemblies, it must not result in suppressing rights or creating a chilling effect. Any information gathering, whether by public or private entities, including through surveillance or the interception of communications, and the way in which data are collected, shared, retained and accessed, must strictly conform to applicable international standards, including on the right to privacy, and may never be aimed at intimidating or harassing participants or would-be participants in assemblies.⁷⁸ Such practices should be regulated by appropriate and publicly accessible domestic legal frameworks that are compatible with international standards and subject to scrutiny by the courts.⁷⁹

62. The mere fact that a particular assembly takes place in public does not mean that participants' privacy cannot be violated. The right to privacy may be infringed, for example, by facial recognition and other technologies that can identify individual participants in a crowd.⁸⁰ The same applies to the monitoring of social media to glean information about participation in peaceful assemblies. Independent and transparent scrutiny and oversight must be exercised over the decision to collect the personal information and data of those engaged in peaceful assemblies and over its sharing or retention, with a view to ensuring the compatibility of such actions with the Covenant.

63. The freedom of public officials to participate in peaceful assemblies should not be limited more than is strictly required by the need to ensure public confidence in their impartiality, and thus their ability to perform their service duties,⁸¹ and any such restrictions must comply with article 21.

64. Requirements for participants or organizers either to arrange for or to contribute towards the costs of policing or security,⁸² medical assistance or cleaning,⁸³ or other public services associated with peaceful assemblies are generally not compatible with article 21.⁸⁴

65. Organizers and participants are expected to comply with the legal requirements made of an assembly, and they may be held accountable for their own unlawful conduct, including the incitement of others.⁸⁵ If, in exceptional circumstances, organizers are held accountable for damage or injuries for which they were not directly responsible, it must be confined to cases in which evidence shows that the organizers could reasonably have foreseen and prevented the damage or injuries.⁸⁶ It is good practice for organizers to appoint stewards or marshals where necessary, but this should not be a legal requirement.

66. Authorities may not require pledges or undertakings from individuals not to organize or participate in future assemblies.⁸⁷ Conversely, no one may be forced to participate in an assembly.⁸⁸

⁷⁷ OSCE and Venice Commission, *Guidelines on Peaceful Assembly*, para. 153; and African Commission on Human and Peoples' Rights, *Guidelines on Freedom of Association and Assembly in Africa*, para. 81.

⁷⁸ A/HRC/31/66, para. 73.

⁷⁹ CCPR/C/KOR/CO/4, paras. 42–43.

⁸⁰ A/HRC/44/24, paras. 33–34.

⁸¹ OSCE and Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, para. 110.

⁸² CCPR/C/CHE/CO/4, para. 48.

⁸³ *Poliakov v. Belarus* (CCPR/C/111/D/2030/2011), paras. 8.2–8.3; and CCPR/C/BLR/CO/5, para. 51 (a).

⁸⁴ African Commission on Human and Peoples' Rights, *Guidelines on Freedom of Association and Assembly in Africa*, para. 102 (b).

⁸⁵ A/HRC/31/66, para. 26.

⁸⁶ OSCE and Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, para. 224.

⁸⁷ CCPR/C/KHM/CO/2, para. 22; and CCPR/C/JOR/CO/5, para. 32.

⁸⁸ CCPR/C/TKM/CO/2, para. 44.

67. Where criminal or administrative sanctions are imposed on organizers of or participants in a peaceful assembly for their unlawful conduct, such sanctions must be proportionate, non-discriminatory in nature and must not be based on ambiguous or overbroadly defined offences, or suppress conduct protected under the Covenant.

68. While acts of terrorism must be criminalized in conformity with international law, the definition of such crimes must not be overbroad or discriminatory and must not be applied so as to curtail or discourage the exercise of the right of peaceful assembly.⁸⁹ The mere act of organizing or participating in a peaceful assembly cannot be criminalized under counter-terrorism laws.

69. Recourse to courts or other tribunals to seek a remedy concerning restrictions must be readily available, including the possibility of appeal or review. The timeliness and duration of such proceedings against restrictions on an assembly must not jeopardize the exercise of the right.⁹⁰ The procedural guarantees of the Covenant apply in all such cases, and also to issues such as detention or the imposition of sanctions, including fines, in connection with peaceful assemblies.⁹¹

V. Notification regimes

70. Having to apply for permission from the authorities undercuts the idea that peaceful assembly is a basic right.⁹² Notification systems requiring that those who intend to organize a peaceful assembly must inform the authorities in advance and provide certain salient details are permissible to the extent necessary to assist the authorities in facilitating the smooth conduct of peaceful assemblies and protecting the rights of others.⁹³ At the same time, this requirement must not be misused to stifle peaceful assemblies and, as in the case of other interferences with the right, must be justifiable on the grounds listed in article 21.⁹⁴ The enforcement of notification requirements must not become an end in itself.⁹⁵ Notification procedures should be transparent, not unduly bureaucratic,⁹⁶ their demands on organizers must be proportionate to the potential public impact of the assembly concerned, and they should be free of charge.

71. A failure to notify the authorities of an upcoming assembly, where required, does not render the act of participation in the assembly unlawful, and must not in itself be used as a basis for dispersing the assembly or arresting the participants or organizers, or for imposing undue sanctions, such as charging the participants or organizers with criminal offences. Where administrative sanctions are imposed on organizers for failure to notify, this must be justified by the authorities.⁹⁷ Lack of notification does not absolve the authorities from the obligation, within their abilities, to facilitate the assembly and to protect the participants.

72. Any notification requirements for pre-planned assemblies must be provided for in domestic law. The minimum period of advance notification might vary according to the context and level of facilitation required, but it should not be excessively long.⁹⁸ If restrictions are imposed following a notification, they should be communicated early enough to allow time for access to the courts or other mechanisms to challenge them. Any notification regime should exclude assemblies for which the impact of a gathering on others can reasonably be expected to be minimal, for example because of its nature, location or limited size or duration.

⁸⁹ CCPR/C/SWZ/CO/1, para. 36; and CCPR/C/BHR/CO/1, para. 29. See also A/HRC/40/52.

⁹⁰ CCPR/C/POL/CO/6, para. 23.

⁹¹ *E.V. v. Belarus* (CCPR/C/112/D/1989/2010), para. 6.6.

⁹² CCPR/C/MAR/CO/6, para. 45; CCPR/C/GMB/CO/2, para. 41; and African Commission on Human and Peoples' Rights, *Guidelines on Freedom of Association and Assembly in Africa*, para. 71.

⁹³ *Kivenmaa v. Finland*, para. 9.2. See also African Commission on Human and Peoples' Rights, *Guidelines on Freedom of Association and Assembly in Africa*, para. 72.

⁹⁴ *Kivenmaa v. Finland*, para. 9.2. See also *Sekerko v. Belarus*, para. 9.4.

⁹⁵ *Popova v. Russian Federation* (CCPR/C/122/D/2217/2012), para. 7.5.

⁹⁶ *Poliakov v. Belarus*, para. 8.3.

⁹⁷ See, e.g., *Popova v. Russian Federation*, paras. 7.4–7.5. See also A/HRC/31/66, para. 23.

⁹⁸ CCPR/CO/83/KEN, para. 23; CCPR/C/CHE/CO/4, para. 48; and CCPR/C/DZA/CO/4, para. 45.

Notification must not be required for spontaneous assemblies for which there is not enough time to provide notice.⁹⁹

73. Where authorization regimes persist in domestic law, they must in practice function as a system of notification, with authorization being granted as a matter of course, in the absence of compelling reasons to do otherwise. Notification regimes, for their part, must not in practice function as authorization systems.¹⁰⁰

VI. Duties and powers of law enforcement agencies

74. Law enforcement officials involved in policing assemblies must respect and ensure the exercise of the fundamental rights of organizers and participants, while also protecting journalists,¹⁰¹ monitors and observers, medical personnel and other members of the public, as well as public and private property, from harm.¹⁰² The basic approach of the authorities should be, where necessary, to seek to facilitate peaceful assemblies.

75. Relevant law enforcement agencies should as far as possible work towards establishing channels for communication and dialogue between the various parties involved in assemblies, before and during the assembly, aimed at promoting preparedness, de-escalating tensions and resolving disputes.¹⁰³ While it is good practice for organizers and participants to engage in such contact, they cannot be required to do so.

76. Where the presence of law enforcement officials is required, the policing of an assembly should be planned and conducted with the objective of enabling the assembly to take place as intended, and with a view to minimizing the potential for injury to any person and damage to property.¹⁰⁴ The plan should detail the instructions and equipment for and the deployment of all relevant officials and units.

77. Generic contingency plans and training protocols should also be developed by relevant law enforcement agencies, in particular for policing assemblies of which the authorities are not notified in advance and which may affect public order.¹⁰⁵ Clear command structures must exist to underpin accountability, as must protocols for recording and documenting events, ensuring the identification of officers and reporting any use of force.

78. Law enforcement officials should seek to de-escalate situations that might result in violence. They are obliged to exhaust non-violent means and to give prior warning if it becomes absolutely necessary to use force, unless doing either would be manifestly ineffective. Any use of force must comply with the fundamental principles of legality, necessity, proportionality, precaution and non-discrimination applicable to articles 6 and 7 of the Covenant, and those using force must be accountable for each use of force.¹⁰⁶ Domestic legal regimes on the use of force by law enforcement officials must be brought into line with the requirements enshrined in international law, guided by standards such as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*.¹⁰⁷

79. Only the minimum force necessary may be used where it is required for a legitimate law enforcement purpose during an assembly. Once the need for any use of force has passed, such as when a violent individual is safely apprehended, no further resort to force is permissible.¹⁰⁸ Law enforcement officials may not use greater force than is proportionate to

⁹⁹ *Popova v. Russian Federation*, para. 7.5. See also European Court of Human Rights, *Éva Molnár v. Hungary*, para. 38.

¹⁰⁰ CCPR/C/UZB/CO/5, paras. 46–47; and CCPR/C/JOR/CO/5, para. 32.

¹⁰¹ CCPR/C/AGO/CO/1, para. 21; CCPR/C/GEO/CO/4, para. 12; and CCPR/C/KOR/CO/4, para. 52.

¹⁰² A/HRC/31/66, para. 41.

¹⁰³ *Ibid.*, para. 38.

¹⁰⁴ Human Rights Council resolution 38/11; and A/HRC/26/36, para. 51.

¹⁰⁵ A/HRC/31/66, para. 37.

¹⁰⁶ General comment No. 36 (2018) on the right to life, paras. 13–14.

¹⁰⁷ United Nations publication, Sales No. E.20.XIV.2. See also the Code of Conduct for Law Enforcement Officials.

¹⁰⁸ Code of Conduct for Law Enforcement Officials, art. 3.

the legitimate objective of either dispersing an assembly, preventing a crime or effecting or assisting in the lawful arrest of offenders or suspected offenders.¹⁰⁹ Domestic law must not grant officials largely unrestricted powers, for example to use "force" or "all necessary force" to disperse assemblies, or simply to "shoot for the legs". In particular, domestic law must not allow use of force against participants in an assembly on a wanton, excessive or discriminatory basis.¹¹⁰

80. Only law enforcement officials trained in the policing of assemblies, including on the relevant human rights standards, should be deployed for that purpose.¹¹¹ Training should sensitize officials to the specific needs of individuals or groups in situations of vulnerability, which may in some cases include women, children and persons with disabilities, when participating in peaceful assemblies. The military should not be used to police assemblies,¹¹² but if in exceptional circumstances and on a temporary basis they are deployed in support, they must have received appropriate human rights training and must comply with the same international rules and standards as law enforcement officials.¹¹³

81. All law enforcement officials responsible for policing assemblies must be suitably equipped, including where needed with appropriate and fit-for-purpose less-lethal weapons and protective equipment. States parties must ensure that all weapons, including less-lethal weapons, are subject to strict independent testing, and that officers deployed with them receive specific training, and must evaluate and monitor the impact of weapons on the rights of those affected.¹¹⁴ Law enforcement agencies must be alert to the potentially discriminatory impacts of certain policing tactics, including in the context of new technologies, and must address them.¹¹⁵

82. Preventive detention of targeted individuals to keep them from participating in assemblies may constitute arbitrary deprivation of liberty, which is incompatible with the right of peaceful assembly.¹¹⁶ This is especially the case if detention lasts more than a few hours. Where domestic law permits such detention, it may be used only in the most exceptional cases,¹¹⁷ for no longer than absolutely necessary and only where the authorities have proof of the intention of the individuals involved to engage in or incite acts of violence during a particular assembly, and where other measures to prevent violence from occurring will clearly be inadequate.¹¹⁸ Practices of indiscriminate mass arrest prior to, during or following an assembly are arbitrary and thus unlawful.¹¹⁹

83. Powers of "stop and search" or "stop and frisk", applied to those who participate in assemblies, or are about to do so, must be exercised based on reasonable suspicion of the commission or threat of a serious offence, and must not be used in a discriminatory manner.¹²⁰ The mere fact that authorities associate an individual with a peaceful assembly does not constitute reasonable grounds for stopping and searching them.¹²¹

84. Containment ("kettling"), where law enforcement officials encircle and close in a section of the participants, may be used only where it is necessary and proportionate to do so, in order to address actual violence or an imminent threat emanating from that section. Necessary law enforcement measures targeted against specific individuals are often

¹⁰⁹ Ibid., commentary to art. 3.

¹¹⁰ CCPR/C/MAR/CO/6, paras. 45–46; and CCPR/C/BHR/CO/1, para. 55.

¹¹¹ CCPR/C/KHM/CO/2, para. 12; CCPR/C/GRC/CO/2, para. 42; and CCPR/C/BGR/CO/4, para. 38.

¹¹² CCPR/C/VEN/CO/4, para. 14; and African Commission on Human and Peoples' Rights, *Guidelines on Policing Assemblies in Africa*, para. 3.2.

¹¹³ Code of Conduct for Law Enforcement Officials, art. 1.

¹¹⁴ General comment No. 36, para. 14. See also *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, section 4; and *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, principles 2 and 3.

¹¹⁵ CCPR/C/GBR/CO/7, para. 11; and A/HRC/44/24, para. 32.

¹¹⁶ CCPR/C/MKD/CO/3, para. 19.

¹¹⁷ General comment No. 35 (2014) on liberty and security of person, para. 15.

¹¹⁸ European Court of Human Rights, *S., V. and A. v. Denmark* (application Nos. 35553/12, 36678/12 and 36711/12), judgment of 22 October 2018 (Grand Chamber), paras. 77 and 127.

¹¹⁹ CCPR/C/CAN/CO/6, para. 15.

¹²⁰ CCPR/C/GBR/CO/7, para. 11; and CCPR/C/USA/CO/4, para. 7.

¹²¹ A/HRC/31/66, para. 43.

preferable to containment. Particular care must be taken to contain, as far as possible, only people linked directly to violence and to limit the duration of the containment to the minimum necessary. Where containment is used indiscriminately or punitively, it violates the right of peaceful assembly, and may also violate other rights such as freedom from arbitrary detention and freedom of movement.¹²²

85. Only in exceptional cases may an assembly be dispersed. Dispersal may be resorted to if the assembly as such is no longer peaceful, or if there is clear evidence of an imminent threat of serious violence that cannot be reasonably addressed by more proportionate measures, such as targeted arrests. In all cases, the law enforcement rules on use of force must be strictly followed. Conditions for ordering the dispersal of an assembly should be set out in domestic law, and only a duly authorized official may order the dispersal of a peaceful assembly. An assembly that remains peaceful while nevertheless causing a high level of disruption, such as the extended blocking of traffic, may be dispersed, as a rule, only if the disruption is “serious and sustained”.¹²³

86. Where a decision to disperse is taken in conformity with domestic and international law, force should be avoided. Where that is not possible in the circumstances, only the minimum force necessary may be used.¹²⁴ As far as possible, any force used should be directed against a specific individual or group engaged in or threatening violence. Force that is likely to cause more than negligible injury should not be used against individuals or groups who are passively resisting.¹²⁵

87. Less-lethal weapons with wide-area effects, such as tear gas and water cannons, tend to have indiscriminate effects. When such weapons are used, all reasonable efforts should be made to limit risks, such as causing a stampede or harming bystanders. Such weapons should be used only as a measure of last resort, following a verbal warning, and with adequate opportunity given for assembly participants to disperse. Tear gas should not be used in confined spaces.¹²⁶

88. Firearms are not an appropriate tool for the policing of assemblies.¹²⁷ They must never be used simply to disperse an assembly.¹²⁸ In order to comply with international law, any use of firearms by law enforcement officials in the context of assemblies must be limited to targeted individuals in circumstances in which it is strictly necessary to confront an imminent threat of death or serious injury.¹²⁹ Given the threat that such weapons pose to life, this minimum threshold should also be applied to the firing of rubber-coated metal bullets.¹³⁰ Where law enforcement officials are prepared for the use of force, or violence is considered likely, the authorities must also ensure that adequate medical facilities are available. It is never lawful to fire indiscriminately or to use firearms in fully automatic mode when policing an assembly.¹³¹

89. The State is responsible under international law for the actions and omissions of its law enforcement agencies. With a view to preventing violations, States should consistently promote a culture of accountability for law enforcement officials during assemblies. To

¹²² European Court of Human Rights, *Austin and others v. United Kingdom* (application Nos. 39629/09, 40713/09; and 41008/09), judgment of 15 March 2012 (Grand Chamber), para. 68.

¹²³ A/HRC/31/66, para. 62.

¹²⁴ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principle 13; and A/HRC/26/36, para. 75.

¹²⁵ *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, para. 2.10.

¹²⁶ S/2009/693, annex, para. 62; and *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, para. 7.3.7.

¹²⁷ African Commission on Human and Peoples’ Rights, *Guidelines on Policing Assemblies in Africa*, para. 21.2.4.

¹²⁸ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principle 14.

¹²⁹ General comment No. 36, para. 12; and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principles 9 and 14.

¹³⁰ *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, para. 7.5.8.

¹³¹ A/HRC/31/66, paras. 60 and 67 (e). See also Office of the United Nations High Commissioner for Human Rights and United Nations Office on Drugs and Crime, *Resource book on the use of force and firearms in law enforcement* (New York, United Nations, 2017), p. 96.

enhance effective accountability, uniformed law enforcement officials should always display an easily recognizable form of identification during assemblies.¹³²

90. States have an obligation to investigate effectively, impartially and in a timely manner any allegation or reasonable suspicion of unlawful use of force or other violations by law enforcement officials, including sexual or gender-based violence, in the context of assemblies.¹³³ Both intentional and negligent action or inaction can amount to a violation of human rights. Individual officials responsible for violations must be held accountable under domestic and, where relevant, international law, and effective remedies must be available to victims.¹³⁴

91. All use of force by law enforcement officials should be recorded and reflected promptly in a transparent report. Where injury or damage occurs, the report should contain sufficient information to establish whether the use of force was necessary and proportionate by setting out the details of the incident, including the reasons for the use of force, its effectiveness and the consequences of it.¹³⁵

92. Any deployment of plain-clothed officers in assemblies must be strictly necessary in the circumstances and such officers must never incite violence. Before conducting a search, making an arrest or resorting to any use of force, plain-clothed officers must identify themselves to the persons concerned.

93. The State is ultimately responsible for law enforcement during an assembly and may delegate tasks to private security service providers only in exceptional circumstances. In such cases, the State remains responsible for the conduct of those service providers.¹³⁶ This is in addition to the accountability of the private security service providers under domestic and, where relevant, international law.¹³⁷ The authorities should set out in national legislation the role and powers of private security service providers in law enforcement, and their use of force and training should be strictly regulated.¹³⁸

94. The use of recording devices by law enforcement officials during assemblies, including body-worn cameras, may play a positive role in securing accountability, if used judiciously. However, the authorities should have clear and publicly available guidelines to ensure that their use is consistent with international standards on privacy and does not have a chilling effect on participation in assemblies.¹³⁹ Participants, journalists and monitors also have the right to record law enforcement officials.¹⁴⁰

95. The State is fully responsible for any remotely controlled weapons systems it uses during an assembly. Such methods of force delivery may escalate tensions and should be used only with great caution. Fully autonomous weapons systems, where lethal force can be used against assembly participants without meaningful human intervention once a system has been deployed, must never be used for law enforcement during an assembly.¹⁴¹

VII. Assembly during states of emergency and armed conflict

96. While the right of peaceful assembly is not listed as non-derogable in article 4 (2) of the Covenant, other rights potentially applicable to assemblies, such as those enshrined in

¹³² European Court of Human Rights, *Hentschel and Stark v. Germany* (application No. 47274/15), judgment of 9 November 2017, para. 91; and CAT/C/DEU/CO/6, para. 40.

¹³³ CCPR/C/COD/CO/4, paras. 43–44; and CCPR/C/BHR/CO/1, para. 36. See also *The Minnesota Protocol on the investigation of potentially unlawful death* (United Nations publication, Sales No. E.17.XIV.3).

¹³⁴ General Assembly resolution 60/147, annex.

¹³⁵ *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, paras. 3.3–3.5.

¹³⁶ General comment No. 36, para. 15.

¹³⁷ *International Code of Conduct for Private Security Service Providers* (2010).

¹³⁸ *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, para. 3.2.

¹³⁹ CCPR/C/CHN-HKG/CO/3, para. 10; and CCPR/C/CHN-MAC/CO/1, para. 16.

¹⁴⁰ A/HRC/31/66, para. 71.

¹⁴¹ *Ibid.*, para. 67 (f).

articles 6, 7 and 18, are non-derogable. States parties must not rely on derogation from the right of peaceful assembly if they can attain their objectives by imposing restrictions in terms of article 21.¹⁴² If States derogate from the Covenant in response, for instance, to mass demonstrations that include acts of violence, they must be able to justify not only that such a situation constitutes a threat to the life of the nation, but also that all measures derogating from their obligations under the Covenant are strictly required by the exigencies of the situation and comply with the conditions in article 4.¹⁴³

97. In a situation of armed conflict, the use of force during peaceful assemblies remains regulated by the rules governing law enforcement, and the Covenant continues to apply.¹⁴⁴ Civilians in an assembly are protected from being targeted with lethal force unless and for such time as they take a direct part in hostilities, as that term is understood under international humanitarian law. In such a circumstance, they may be targeted only to the extent that they are not otherwise protected under international law from attack. Any use of force under applicable international humanitarian law is subject to the rules and principles of distinction, precautions in attack, proportionality, military necessity and humanity. In all decisions on the use of force, the safety and protection of assembly participants and the broader public should be an important consideration.

VIII. Relationship between article 21 and other provisions of the Covenant and other legal regimes

98. The full protection of the right of peaceful assembly depends on the protection of a range of rights. Use of unnecessary or disproportionate force or other unlawful conduct by State officials during an assembly may breach articles 6, 7 and 9 of the Covenant.¹⁴⁵ An extreme case, in which participants in peaceful assemblies are subjected to unlawful force or conduct as part of a widespread or systematic attack directed against any civilian population, may also constitute, where the other relevant criteria are met, a crime against humanity.¹⁴⁶

99. Restrictions on people's ability to travel, including abroad (art. 12 (2)), in order to participate in assemblies, marches and other moving assemblies may violate their freedom of movement (art. 12 (1)). Official decisions restricting the exercise of assembly rights must be open to legal challenge in a process that meets fair and public hearing requirements (art. 14 (1)).¹⁴⁷ Surveillance of those involved in assemblies and other data-gathering activities may violate their right to privacy (art. 17). Religious assemblies may also be protected under the freedom to manifest one's religion or beliefs (art. 18).¹⁴⁸ The right of peaceful assembly is more than just a manifestation of freedom of expression (art. 19 (2)); it often has an expressive element, and the rationale for the recognition of these two rights and the acceptable restrictions overlap in many ways. Freedom of access to information held by public bodies (art. 19 (2)) underlies the ability of the public to know about the legal and administrative framework applicable to assemblies and enables them to hold public officials accountable.

100. Freedom of association (art. 22) also protects collective action, and restrictions on this right often affect the right of peaceful assembly. The right of political participation (art. 25) is closely linked to the right of peaceful assembly, and in relevant cases, restrictions must be justified under the conditions set out in both article 21 and article 25.¹⁴⁹ The right to non-

¹⁴² General comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency, para. 5. See also CCPR/C/128/2, para. 2 (c).

¹⁴³ General comment No. 29, paras. 5–9.

¹⁴⁴ General comment No. 36, para. 64.

¹⁴⁵ CCPR/C/ISR/CO/3, para. 9; CCPR/C/UZB/CO/3, para. 8; *Olmedo v. Paraguay* (CCPR/C/104/D/1828/2008), para. 7.5; and *Benítez Gamarra v. Paraguay* (CCPR/C/104/D/1829/2008), para. 7.4.

¹⁴⁶ Rome Statute of the International Criminal Court, art. 7.

¹⁴⁷ *Evrezov et al. v. Belarus*, paras. 3.3 and 8.9.

¹⁴⁸ General comment No. 22, para. 8.

¹⁴⁹ *Sudalenko v. Belarus*, para. 8.6.

discrimination protects participants against discriminatory practices in the context of assemblies (arts. 2 (1), 24 and 26).

101. Participation in peaceful assemblies may be restricted in accordance with article 21, however, in order to protect the rights and freedoms of others.

102. The right of peaceful assembly has an intrinsic value. It is, moreover, often exercised with the aim of advancing the implementation of other human rights and other norms and principles of international law. In such cases, the duty to respect and ensure the right of peaceful assembly derives its legal justification also from the importance of the broader range of other rights, norms and principles whose implementation it advances.

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Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law and Human Rights

TARNEEN ONUS BROWNE and BENJAMIN ZABLE

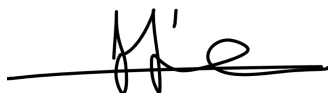
Applicants

ASSISTANT COMMISSIONER OF POLICE, NORTH WEST METRO REGION and others

Respondents

This is the annexure marked "SS-24" now produced and shown to Sarah Schwartz at the time of affirming her affidavit on 7 January 2026.

Before me:



Sophie L'Estrange, Australian Legal Practitioner

Annexure "SS-24"

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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS
(OSCE/ODIHR)

GUIDELINES

ON FREEDOM OF PEACEFUL ASSEMBLY

(3rd EDITION)

Edited Version

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I. Introduction

A. The Importance of the Right to Freedom of Peaceful Assembly

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

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

3. The right to freedom of peaceful assembly complements and intersects with other civil and political rights. The right to freedom of expression is of particular relevance given the expressive nature of assemblies that impact public opinion (whereupon these two rights are engaged simultaneously).³ Freedom of assembly also interrelates with the right to freedom of association,⁴ the right to participate in public affairs⁵ and the right to vote.⁶ In addition, it is one of a cluster of rights that underpins a broader 'right to protest'.⁷ Furthermore, the right to freedom of assembly may overlap with the right to manifest one's religion or belief in community with others.⁸ Recognizing the interrelation and interdependence of these different rights is vital to ensuring that the right to freedom of peaceful assembly is afforded practical and effective protection.⁹

B. Freedom of assembly and the right to freedom of expression

4. Freedom of expression includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers.¹⁰ Given the expressive nature of many assemblies and the role that they play in protecting opinion, the European Court of Human Rights has recognized in its case law that freedom of peaceful assembly and freedom of expression are often, in practice, closely associated.¹¹

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

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

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

⁴ Article 22, ICCPR and Article 11, ECHR.

⁵ Article 25(a), ICCPR.

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

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

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

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

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

¹¹ See, for example, *Ezelin v. France*, Application No 11800/85, 26 April 1991, paras. 37 and 51. See also *Whitney v. California*, U.S. Supreme Court 274 U.S. 357, 375 (1927): ("[F]reedom to think as you will and to speak as you

Thus, certain restrictions or bans on assemblies may also automatically affect the right of individuals or groups to express their opinion on a given matter, and in numerous cases, the European Court of Human Rights has evaluated the right to freedom of peaceful assembly in light of the right to freedom of expression of the assembly organizers and participants.

C. Freedom of assembly and the right to freedom of association

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

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

think are means indispensable to the discovery and spread of political truth; ...without free speech and assembly discussion would be futile; [...] with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; [...] the greatest menace to freedom is an inert people; [...] public discussion is a political duty [...]" (Brandeis, J. concurring.)). With respect to the ICCPR, see UN Human Rights Committee General Comment 34: Article 19: freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, para. 4.

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

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

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

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

¹⁶ *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, Application nos. 29221/95 and 29225/95 2 October 2001, para. 92: "while past findings of national courts which have screened an association are undoubtedly relevant in the consideration of the dangers that its gatherings may pose, an automatic reliance on the very fact that an organization has been considered anti-constitutional – and refused registration – cannot suffice to justify under Article 11(2) of the Convention a practice of systematic bans on the holding of peaceful assemblies"; see also *Kunz v. New York*, 340 U.S. 290, 294 (1951); *Healy v. James*, 408 U.S. 169, 186 (1972): "Guilt by association alone, without (establishing) that an individual's association poses the threat feared by the Government, is an impermissible basis upon which to deny First Amendment rights." quoting *United States v. Robel*, 389 U.S. 258, 265 (1967)).

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

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

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

E. Freedom of assembly and protest

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

10. While the 'right to protest' is not *expressly* recognized in either regional or international human rights treaties, the right to peaceful protest is generally protected under international human rights law through a combination of the inter-related rights discussed above.²⁵ The

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

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

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

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

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

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

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

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

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

European Court of Human Rights has also emphasized that the right to freedom of expression includes the choice of the form in which ideas are conveyed, particularly in the case of symbolic protest activities.²⁶

F. Civil disobedience

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

G. The Focus of these Guidelines

12. The focus of these Guidelines is narrower than the scope of the right to freedom of peaceful assembly. These Guidelines are primarily focused on ‘assemblies’ that are an intentional gathering of a number of individuals in a publicly accessible space for a common expressive purpose.³⁰ The Guidelines apply primarily to assemblies held in ‘public spaces’ – sites that are open to the public and which, independently of possible private ownership, are generally accessible to everyone (see further, para 61 and footnote 79 - German Federal Constitutional Court, Judgment of 22 February 2011 (Frankfurt Airport Decision), 1 BvR 699/06).

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

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

- Forms of individual protest that do not involve the gathering of a group of persons.³² An individual protester should not, for example, be required to notify the authorities

Rapporteur for Freedom of Expression, ‘*Protest and Human Rights*’ (Thematic report of the IACHR Special Rapporteur for Freedom of Expression, Edison Lanza, forthcoming 2018).

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

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

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

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

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

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

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

beforehand.³³ Nonetheless, an individual protester exercising his or her right to freedom of expression, where physical presence is an integral part of that expression, should be afforded protections equivalent to the protections afforded to persons who gather together as part of an assembly;

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

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

II. Section A: Overview and Guiding Principles

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

A. The Right to Freedom of Peaceful Assembly

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

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

19. **Defining peaceful.** The term ‘peaceful’ includes conduct that may annoy or give offence to individuals or groups opposed to the ideas or claims that the assembly is seeking to promote. It also includes conduct that temporarily hinders, impedes or obstructs the

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

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

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

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

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

B. Assemblies and New Technologies

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

C. Core State Obligations

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

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

- **Counter demonstrations.** Individuals have a right to assemble as counter-demonstrators to express their disagreement with the views expressed at a public assembly. The coincidence in time and venue of the two assemblies is likely to be an essential part of the message to be conveyed by the second assembly. Counter-demonstrations shall be facilitated so that they occur within 'sight and sound' of their target unless this does not physically interfere with the other assembly and does not give rise to a risk of imminent violence that cannot be mitigated or prevented;³⁸
- **Simultaneous assemblies.** Where prior notification is submitted for two or more assemblies at the same place and time, simultaneous events should be facilitated where possible. Simply prohibiting an assembly in the same place and at the same time as an already notified or planned public assembly, in cases where both can reasonably be accommodated, is likely to amount to a disproportionate and possibly discriminatory response. As such, a 'first come, first served' rule must not be implemented in a way that enables some assembly organizers to 'block-book' particular locations to the exclusion of other groups; and
- **Spontaneous and non-notified assemblies.** The emergence of new technologies has greatly enhanced the possibility of spontaneous assemblies, and these should be regarded as an expected (rather than exceptional) feature of a healthy democracy. All reasonable and appropriate measures should be taken to ensure that spontaneous and non-notified

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

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

assemblies are facilitated and protected in the same way as assemblies that are planned in advance.

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

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

D. Notification, Good Administration and Legal Remedies

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

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

27. **Legal remedies and accountability of the decision-making authority.** Those seeking to exercise the right to freedom of peaceful assembly should have recourse to a prompt and effective remedy against decisions that allegedly disproportionately, arbitrarily or illegally restrict or prohibit assemblies. Court decisions should be issued in a timely manner, so that the appeal or challenge can be resolved before the assembly is planned to take place.

³⁹ *Vyerentsov v. Ukraine*, Application no. 20372/11, para. 52.

⁴⁰ *Genderdoc-M. v. Moldova*, Application no. 9106/06, paras. 48-55.

⁴¹ *Skiba v. Poland*, Application no. 10659/03, 7 July 2009 (dec.).

⁴² However, the subjection of assemblies to an authorisation procedure does not normally encroach upon the essence of the right. Such a procedure is in-keeping with the requirements of Article 11 § 1 ECHR, if only in order that the authorities may be in a position to ensure the peaceful nature of a meeting (*Rassemblement jurassien v. Switzerland*, Application no. 8191/78, 10 October 1978, DR 17, p. 119; *Christian Zilibierberg/Moldova* (admissibility decision), Application no. 61821/00, 4 May 2004).

E. Restrictions on an Assembly

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

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

30. **Illegitimacy of content-based restrictions.** Any restrictions on assemblies should not be based on the content of the message(s) that they seek to communicate within the limits set by Article 10§2 ECHR and Article 19 (3) ICCPR. Restrictions must not be justified simply on the basis of the authorities' own disagreement with the merits of a particular protest – and so both criticism of government policies or ideas contesting the established order by non-violent means are deserving of protection. States are also obligated to protect citizens against content-based restrictions imposed by third party actors that may include Internet Service Providers (ISPs).⁴³

F. Policing assemblies

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

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

33. **Accountability of law enforcement personnel.** In the event that force is used at an assembly, it should trigger an automatic and prompt review process. Where injuries or deaths result from the use of force by law enforcement personnel, an independent, open, prompt and effective investigation must be undertaken. Law enforcement personnel should also be held

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

liable for failing to intervene where such intervention may have prevented other officers from using excessive force.

G. Roles and rights of third parties at assemblies

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

H. Arrest and Detention of Assembly Participants

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

I. Penalties Imposed After an Assembly

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

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

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

J. Accountability of State Authorities

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

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

III. Section B: Guiding Principles: Interpretive Notes

A. The Right to Freedom of Peaceful Assembly

1. Defining assembly

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

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

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

44. A wide range of different events fall within the scope of freedom of peaceful assembly – planned and organized assemblies, unplanned and spontaneous assemblies (paragraph

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

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

79),⁴⁶ static assemblies (such as public meetings, ‘flash mobs’,⁴⁷ sit-ins⁴⁸ and pickets)⁴⁹ and moving assemblies (including parades, processions and convoys).⁵⁰ The right to freedom of peaceful assembly also extends to repeat assemblies (paragraph 80), simultaneous assemblies (paragraph 78) and counter-demonstrations (paragraph 77), although “the right to counter-demonstrate cannot extend to inhibiting the exercise of the right to demonstrate.”⁵¹

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

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

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

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

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

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

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

⁵² Recommendation CM/Rec (2014) 6 of the Committee of Ministers to member States on a Guide to human rights for Internet users: everyone has “the right to peacefully assemble and associate with others using the internet.” Also, Human Rights Council, Resolution 21/16, (October 2012), UN Doc. A/HRC/RES/21/16, and Resolution 24/5 (October 2013), UN Doc. A/HRC/RES/25/5, both entitled *The rights to freedom of peaceful assembly and of association*. See also the Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, of 4 February 2016, para. 10: “Although an assembly has generally been understood as a physical gathering of people, it has been recognized that human rights protections, including for freedom of assembly, may apply to analogous interactions taking place online.”

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

2. Defining ‘peacefulness’

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

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

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

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

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

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

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

country's territorial boundaries⁵⁸ or to fundamental constitutional provisions⁵⁹ so long as this is done in a non-violent manner.

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

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

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

people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea."

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

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

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

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

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

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

question remains peaceful in his or her own intentions or behaviour.”⁶⁴ Isolated incidents of sporadic violence, even if committed by participants in the course of a demonstration, are by themselves insufficient to justify extensive restrictions on or even dissolutions of assemblies and their peaceful participants.⁶⁵ Violence calls instead for a measured and graduated response that fully respects the doctrine of proportionality (see paragraphs 47 and 156).

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

3. Participation in assemblies

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

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

4. Planning and organisation of assemblies

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

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

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

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

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

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

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

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

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

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

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

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

60. **Freedom to determine the duration of an assembly.** Generally, assembly organizers have the right to determine the duration of an assembly so that they have sufficient time and opportunity to interact with one another and to manifest their views.⁷⁷ The duration of an assembly may itself also be part of its message – for example, where an assembly seeks to coincide precisely with other contemporaneous events. In cases involving assemblies of particularly long duration, any limitations will only be permissible following an individual assessment of the case at hand, bearing in mind the level of interference, and the extent to which the assembly organizers and participants have had the opportunity to interact with one

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

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

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

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

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

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

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

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

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

another and to communicate their message⁷⁸ (see also 'Restrictions on an assembly' in paras. 28 to 30).

5. The location of assemblies

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

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

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

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

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

⁸¹ "In a democratic society urban space is not only a field of movement, but also a space for participation"; Spanish Constitutional Court, judgment STC 193/2011 of 12 December 2011 [English translation]. Cf. EU Court of Justice, *Eugen Schmidberger, Internationale Transporte und Planzuge v. Republik Österreich* (C-112/00, judgment of 12 June 2003). In *Patyi and Others v. Hungary*, Application No. 35127/08, 17 January 2008) paras. 42-43, the Court

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

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

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

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

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

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

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

⁸⁵ See, for example, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report to the UN General Assembly (Comparative study of enabling environments for associations and businesses, Doc. A/70/266, 4 August 2015, paras. 102-104: "The Special Rapporteur reiterates the legitimacy of expressive assemblies held by civil society organizations vis-à-vis corporate events, interests or property. A proper balancing of competing interests should be informed by objective criteria in accordance with international law." In *Knight First Amendment Institute at Columbia University and Others v. Donald J. Trump and others*, 17 Civ. 5205, the Court (paras. 48-9) noted how the nature of space (as private or public) often changes: "... the entire concept of a designated public forum rests on the premise that the nature of a (previously closed) space has been changed. See also *Cornelius*, 473 U.S. at 802. To take two examples, if a facility initially developed by the government as a

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

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

B. Assemblies and New Technologies

65. **Importance of the Internet to the right to assemble.** Internet-based technologies play an increasingly instrumental part in the exercise of the right to freedom of peaceful assembly and it is hard to imagine an assembly that does not involve some form of reliance on the Internet.⁸⁶ In many areas, the Internet is accessible, cheap, fast, borderless and has reduced the cost of communicating with others.⁸⁷ However, the so-called ‘digital divide’ continues to exist and states are under increasing obligations to reduce it, given the importance of the Internet to everyday life⁸⁸ and to political participation in particular. The Internet can also carry a protest message, and even help to ‘create’ a protest message through access to information, including by enabling access to other jurisdictions and support from abroad.

66. **Acknowledgement of online rights.** The ECHR, the ICCPR and other international instruments apply both offline and online.⁸⁹ The role of the Internet and social media in the

military base – plainly not a public forum under *Greer*, 424 U.S. at 838 – is subsequently decommissioned and repurposed into a public park, ... the present use of the facility as a park would bear much more heavily on the forum analysis than its historical origins as a military installation. Similarly, if a privately constructed airport were subsequently taken over by a public agency, forum analysis would focus on its current use as a public airport rather than its prior use as a private one. Cf. *ISKCON*, 505 U.S. at 681 (‘The practices of privately held transportation centers do not bear on the government’s regulatory authority over a publicly owned airport.’).” Available at: <https://knightcolumbia.org/sites/default/files/content/Cases/Wikimedia/2018.05.23%20Order%20on%20motions%20for%20summary%20judgment.pdf>.

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

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

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

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

mobilisation of assemblies is increasingly pivotal to the exercise of the right to peacefully assemble. As noted throughout these Guidelines, assemblies organized partly online carry with them different practical considerations than offline assemblies. This includes, but is not limited to, considerations of notification (see paragraph 112 below), use of public space and privacy rights.

Recommendation of the Committee of Ministers to member States on a Guide to human rights for Internet users of 16 April, 2014⁹⁰ advises Internet users on their rights in the following manner:

“Assembly, association and participation

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

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

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

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

67. **Responsibility to facilitate Internet access.** Increasing access to the Internet is one of the ways in which states can partially discharge their duty to facilitate assemblies, and increasingly such access is becoming a right.⁹¹ Council of Europe and United Nations documents have been calling for “applying a human-rights based approach in providing and expanding Internet access”⁹² and highlighting the fundamental nature of Internet access as a conduit for the exercise of human rights and freedoms, in particular the right to freedom of opinion and expression⁹³ – calling on state parties to “take all necessary steps to foster the independence of these new media and to ensure access of individuals thereto.”⁹⁴ Some UN consultative documents also mention (but do not define) the idea and nature of this new “human rights space”⁹⁵ in the context of assemblies. States should therefore work to extend Internet access, which in practice involves working to remove barriers to access such as high costs, burdensome administrative requirements and the need for residence permits. States should also work towards ensuring free Internet in public places and internet accessibility in geographically remote places. Moreover, states should be particularly cautious in restricting Internet access in any way when it is being utilized for the purposes of facilitating an assembly online. In this evolving sphere, it cannot be excluded that any interference with the freedom of expression and freedom of assembly, for instance through blocking, filtering, slowing down or shutting down Internet services may amount to a disproportionate interference with the exercise of these rights. The UN Human Rights Committee has considered any restriction on the operation of information dissemination systems is not legitimate unless it conforms with the test for restrictions on freedom of expression under international law.⁹⁶

is narrowly construed and applied, and does not encroach on the essence of the right to freedom of assembly and association.”

⁹⁰ CM/Rec(2014)6

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

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

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

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

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

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

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

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

70. **Access to the Internet and social media.** Access to the Internet and social media should not be blocked before or during assemblies. Since the planning and organization of an assembly is likewise covered by the right to freedom of peaceful assembly, websites and other electronic tools used to advertise and inform about an assembly shall not be restricted or blocked; any attempts to do so would usually constitute a violation of this right. In its case law, the European Court of Human Rights has recognized the public-service value of the Internet and its importance for the enjoyment of a range of human rights.¹⁰¹ Internet access itself has increasingly been understood as a right, and support has grown for effective policies to attain universal access to the Internet and to overcome the 'digital divide'.¹⁰² Moreover, participants, or prospective participants have the right to receive information about upcoming or ongoing

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

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

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

¹⁰⁰ *Ibid.*

¹⁰¹ *Kalda v. Estonia* (2016), *op. cit.*, note 70, para. 52 and *Jankovskis v. Lithuania* (2017), *op. cit.*, note 70, para.62.

¹⁰² *Ibid.*

assemblies.¹⁰³ Thus, states must ensure that the dissemination of information to publicize forthcoming assemblies, including on-line, is not impeded in any way¹⁰⁴, for instance by blocking social media. As the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has noted, cutting off users from Internet access, regardless of the justification provided, is disproportionate and a violation of Article 19, paragraph 3, ICCPR.¹⁰⁵

71. Limits on state surveillance of assembly-related activities on the Internet.¹⁰⁶

While the benefits of amplifying the message of assemblies through technology are numerous, the same technology can also be used against protesters who use it to co-ordinate their efforts. Traditional assemblies allow participants, if they so desire, a certain level of anonymity or at least a smaller likelihood of being ‘singled out’ or identified. Even the wearing of masks, for expressive purposes, is considered legitimate under international law (see paragraph 153). However, the use of new technologies does not always offer the same anonymity, due to the availability of surveillance and tracking tools used by the state or third parties. States should therefore refrain from using surveillance tools to track (or less still, persecute) persons taking part in assemblies and protest actions. Such technologies include police video recordings¹⁰⁷ and facial recognition tools, surveillance of the Internet portals and social media sites used by activists and identification of a person’s whereabouts through location tracking (to establish attendance at a demonstration or rally). Such tools should only be employed where such interference can be justified based on strictly proven and proportional grounds of national security or public order and should be subject to judicial review.

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

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

C. Core State Obligations

74. Scope of obligations. States bound by human rights instruments and politically binding OSCE commitments,¹⁰⁹ which confer protection on the right to freedom of peaceful assembly, have a general legal obligation to ensure the protection of the rights contained

¹⁰³ Article 19, ICCPR; Article 10, ECHR.

¹⁰⁴ See, for example, UN Human Rights Committee Views (on the Merits), *Schumilin v. Belarus* (1784/2008) 5 September 2012, U.N. Doc. CCPR/C/105/D/1784/2008.

¹⁰⁵ Report of the UN Special Rapporteur (2011), A/HRC/17/27 *op. cit.*, note 93, para. 78.

¹⁰⁶ *Big Brother Watch and Others v. UK* (Application nos. 58170/13, 62322/14 and 24960/15), judgment of 13 September 2018.

¹⁰⁷ An example of arrests based on police filming of protesters can be seen in the case of the Kurdish protests in Turkey in 2008 (where amongst others, minors were filmed throwing rocks at police and arrested). See *Gülçü v. Turkey*, Application No 17526/10, 19 January 2016, para. 6: “According to a report prepared by four police officers on 21 July 2008 following the examination of video footage of the demonstration recorded by the police...”

¹⁰⁸ See OSCE, “Freedom of expression on the Internet: A study of legal provisions and practices related to freedom of expression, the free flow of information and media pluralism on the Internet in OSCE participating States”, 2010.

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

therein for all individuals under their jurisdiction.¹¹⁰ As emphasized by the UN Human Rights Committee's General Comment 31, these obligations extend to all branches of government – legislative, executive and judicial – “and other public or governmental authorities, at whatever level – national, regional or local”,¹¹¹ including (for states with a federal structure) “all parts of federal states without any limitations or exceptions.”¹¹²

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

76. The presumption in favour of (peaceful) assemblies. Freedom of peaceful assembly is recognized as a fundamental right in a democratic society and should be enjoyed, as far as possible, without regulation.¹¹⁵ This protective principle should be reflected in national constitutions and in relevant legislation and should be interpreted broadly by all state bodies.¹¹⁶ As a consequence, the relevant public authorities should remove all unnecessary legal and practical obstacles to the right to freedom of peaceful assembly. In particular, the organization and conduct of assemblies should not be subject to burdensome bureaucratic requirements (see, in particular, paras; 112 below). Moreover, the presumption in favour of (peaceful) assemblies also includes an obligation of tolerance and restraint towards peaceful assemblies in situations where relevant procedures and formalities have not been followed (see paragraphs 112 and 114).¹¹⁷

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

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

¹¹² *Ibid.*

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

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

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

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

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

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

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

79. **Facilitation of spontaneous and other non-notified assemblies.** Assemblies may take place without any advance planning in direct response to some occurrence, incident, other assembly, or widely disseminated statement of public interest and a perceived need for an immediate reaction.¹²² The emergence of new technologies has greatly enhanced the possibilities of such occurrences. The need to protect spontaneous assemblies as an

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

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

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

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

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

expected (rather than exceptional) feature of a healthy democracy has been recognized in numerous domestic laws and court decisions,¹²³ and should be facilitated and protected in the same way as assemblies that are planned in advance. The domestic legal framework should ensure that spontaneous assemblies can lawfully be held and laws regulating freedom of assembly should explicitly exempt such assemblies from prior notification requirements, for example where timely notification has not been feasible or would have rendered such an event moot.¹²⁴

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

81. Duty to protect and facilitate controversial but peaceful assemblies. State authorities must protect the organizers and participants of peaceful assemblies that espouse views that are controversial or unpopular, which may generate hostile opposition, and shall protect peaceful assemblies from any person or group that intentionally seeks to limit or destroy the rights of others to assemble. In cases where assemblies annoy or give offence to persons opposing the message, the obligations of the state go beyond a mere duty not to interfere – rather, there may be a need for active police measures to protect assembly organizers and participants from attacks by third parties.¹²⁵ Potential disorder arising from hostility directed against those participating in a peaceful assembly must not be used to justify disproportionate restrictions on the assembly.¹²⁶ However, an assembly may be prohibited as a last resort measure when the risk of violent counter-demonstrations may not otherwise be prevented or mitigated (see paragraph 133). The principle of proportionality must always be respected.¹²⁷ The state has the duty to ensure that counter-demonstrators do not constitute

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

Polish Constitutional Tribunal, Judgment of 10 July 2008 No. P 15/08 (105/6/A/2008).

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

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

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

¹²⁷ ECtHR, *Ollinger v. Austria* (Application no. 76900/01, 26 June 2006). See also *Rabbae, A.B.S. and N.A v the Netherlands*, Views adopted 14 July 2016, CCPR/C/117/D/2124/2011, Paragraph 10.4, in which the Committee emphasized that Article 20(2) should be crafted narrowly in order to ensure that other equally fundamental

an undue and serious interference with the main event's ability to convey its message (see paragraph 78).¹²⁸

82. Duty to facilitate assemblies at the organizer's preferred location and within 'sight and sound' of the intended audience. Assemblies should be able to effectively communicate their message and must therefore be facilitated within 'sight and sound' of their target audience¹²⁹ unless compelling reasons (that conform with the permissible justifications for imposing limitations under Article 21 ICCPR or Article 11(2) ECHR) necessitate a change of venue. In those cases, alternative sites should be provided that are as close as possible to the initially proposed site.

83. Duty to facilitate access to public spaces and privately-owned equivalents. State authorities shall facilitate access to suitable public space,¹³⁰ and should provide adequate security and safety measures, including traffic and crowd management¹³¹ and first-aid services.¹³² Similar facilitation duties may arise in cases of privately-owned spaces where these places are the physical and functional equivalents of public places.¹³³ Thus, where the owner of a space capable of accommodating an assembly does not give permission for an assembly and where the bar on access to property has the effect of preventing any effective exercise of freedom of expression or assembly, or where it destroys the essence of such rights, the state may have a positive obligation to ensure access to such a privately-owned place for the purposes of holding an assembly.¹³⁴ This is particularly the case where public spaces suitable for assemblies, e.g., streets or squares, have been privatized, and where any prohibitions against assemblies would significantly reduce access to spaces otherwise suitable for peaceful assemblies.¹³⁵ The same may apply to spaces open to the public (such

Covenant rights, including freedom of expression are not infringed. See also Committee on the Elimination of Racial Discrimination (CERD) 'General Recommendation No 35: Combating racist hate speech' (26 September 2013) UN Doc CERD/C/GC/35, Paragraph 20. The CERD has recognized that, 'measures to monitor and combat racist speech should not be used as a pretext to curtail expression of protest at injustice, social discontent or opposition.'

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

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

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

¹³¹ In *Güleç v. Turkey*, Application No 21593/93, 27 July 1998, the Court emphasized the importance of law enforcement personnel being appropriately resourced: "gendarmes used a very powerful weapon because they did not have truncheons, riot shields, water cannon, rubber bullets or tear gas. The lack of such equipment is all the more incomprehensible and unacceptable because the province [...] is in a region in which a state of emergency has been declared." See further, "Policing Assemblies", Amnesty International, December 2013, Chapter 6. https://www.amnesty.nl/content/uploads/2017/01/policing_assemblies_26022015_light.pdf?x56589; see also *Forsyth County, Ga. V. Nationalist Movement*, 505 U.S. 123 (1992) (charges for police services based on costs for maintaining public peace violate right to freedom of assembly).

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

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

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

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

as in privately-owned shopping centres), many of which fulfil a function similar to that of more traditional public spaces, such as streets and squares. Prohibiting assemblies at such locations could seriously inhibit the rights to freedom of speech and assembly by precluding access to an intended audience.¹³⁶ Generally, in cases where people are prevented from holding assemblies in privately owned places, the rights of the property owner must be balanced against the competing right to freedom of peaceful assembly. The latter should prevail where there is no adequate alternative public space that would allow an assembly to take place in sight and sound of its intended audience and if the owner's right to enjoyment of his or her private property will not be significantly disrupted. In this context, state authorities should ensure that facilitating the assembly does not impose out-of-pocket costs on the private property owner.¹³⁷ On the other hand, the state should take care neither to regulate nor interfere with private assemblies that take place inside buildings.

84. Duty to take special measures to adequately facilitate assemblies associated with individuals or groups most at risk. The state should take positive measures to facilitate assemblies associated with individuals and groups that have historically faced discrimination, or are otherwise marginalized or at risk.¹³⁸ In doing so, the state should address specific needs

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

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

¹³⁸ Including LGBTI+ individuals and groups; young people; women; persons with disabilities; members of minority groups; indigenous peoples; internally displaced persons; and non-nationals, including refugees, asylum seekers and migrant workers. See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/26/29, 14 April 2014, para. 74 (e). See also for example, UN Human Rights Council, Resolution on the Promotion and Protection of Human Rights in the Context of Peaceful Protests, A/HRC/RES/22/10, 9 April 2013, para. 6; see also OSCE/ODIHR, *Guidelines on the Protection of Human Rights Defenders* (ODIHR: Warsaw, 2014), para. 16. See further the UN Special Rapporteur on Human Rights Defenders, "Commentary to the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms", July 2011, available at:

<https://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf> pp. 18-22; See in particular, the Joint report of the Special Rapporteurs (2016), A/HRC/31/66, *op. cit.*, note 52, para. 16: "[p]articular effort should be made to ensure equal and effective protection of the rights of groups or individuals who have historically experienced discrimination. This includes women, children and young people, persons with disabilities, non-nationals (including asylum seekers and refugees), members of ethnic and religious minorities, displaced persons, persons with albinism, indigenous peoples and individuals who have been discriminated against on the basis of their sexual orientation or gender identity (A/HRC/26/29). This duty may require that authorities take additional measures to protect and facilitate the exercise of the right to freedom of assembly by such groups."

and challenges confronting those persons or groups before, during and after assemblies.¹³⁹ This includes integrating a gender and diversity perspective into efforts to create a safe and enabling environment for the exercise of the right to freedom of peaceful assembly;¹⁴⁰ special protection measures developed in consultation with persons at risk, such as early warning systems to trigger the launch of protective measures;¹⁴¹ and public statements in advance of assemblies to advocate, without ambiguity, a tolerant, conciliatory stance.¹⁴²

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

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

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

88. Duty to de-escalate tensions. If a dispute arises during the course of an assembly, communication between the organizer and the competent state authorities may be an appropriate means by which to reach an acceptable resolution. A number of countries have units within police forces specifically set up to deal with de-escalation through dialogue.¹⁴⁷ At the same time, such dialogue will only be possible if both parties – law enforcement and organizers/participants – agree to it. If organizers or participants are unwilling to engage, then

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

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

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

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

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

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

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

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

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

this should be accepted and should not, of itself, impact detrimentally on the performance of the state's human rights obligations in relation to the assembly. Where voluntary dialogue is not possible, the relevant law enforcement bodies must still ensure that their actions are aimed at deescalating tensions. Public statements by state authorities and law enforcement in advance of demonstrations should clearly advocate for a tolerant, conciliatory stance and warn potential law-breakers about possible sanctions.¹⁴⁸

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

Chicago Code - Streets, Public Ways, Parks, Airports and Harbors - Use of Public Ways and Places – Requirements and Restrictions – Parade, paragraph 10-8-330

"[...] Once the last unit has started on the parade route, the department of streets and sanitation will begin cleaning the street, and the police department will reopen the street to traffic as street cleaning is completed. Once the last parade unit has completed the parade route, all parade participants must disperse from the street so that it may be safely cleaned and reopened to traffic. [...]"

Article 10, Law on Public Assemblies, Republic of Moldova (2008)

"(4). Public authorities shall take the necessary measures for providing any services requested by the organizer that are normally provided by the subordinated bodies and by the publicly administered enterprises."

Article 20, Law on Public Assemblies, Republic of Moldova (2008)

"(3). Local public authorities cannot request fees for providing any services for the holding of assemblies that are normally provided by the subordinated bodies and by the publicly administered enterprises."

Article 18, Law on Rallies, Meetings, Demonstrations, Marches and Picketing, Russian Federation (2004, as amended in 2016)

"[T]he maintenance of public order, regulation of road traffic, sanitary and medical service with the objective of ensuring the holding of the public event shall be carried out on a free basis [by the authorities]."

D. The legal framework and the principle of legality

90. **Compliance with international and regional standards.** The international and regional standards concerning respect for, facilitation and protection of the right to freedom of peaceful assembly derive mainly from two legal instruments: the ICCPR¹⁴⁹ and the ECHR,¹⁵⁰

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

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

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

and their optional protocols and protocols, respectively. The American Convention on Human Rights is also of particular relevance to member countries of the Organization of American States.¹⁵¹ Other relevant treaties include the UN Convention on the Rights of the Child¹⁵² and the Charter of Fundamental Rights of the European Union.¹⁵³ The key provisions in relation to the right to freedom of peaceful assembly are reproduced in the Annex to these Guidelines.

91. The significance of these treaties and documents derives, in part, from the jurisprudence developed by their respective monitoring bodies – the European Court of Human Rights, the UN Human Rights Committee¹⁵⁴ and the Inter-American Commission on Human Rights. This body of case law is integral to the interpretation of these standards and should be fully shared and understood by those charged with implementing domestic laws on freedom of assembly.

92. **Derogations from international human rights obligations must be exceptional, temporary, and both geographically and materially limited.** In times of war or public emergency threatening the life of the nation, states may take exceptional measures derogating from their obligation to guarantee freedom of peaceful assembly (see Article 4 ICCPR and Article 15 ECHR). They may however do so only where this is strictly required by the exigencies of the situation, and if such measures are consistent with their other obligations under international law.¹⁵⁵ In particular, the crisis or emergency must be actual or imminent, and one “which affects the whole population and constitutes a threat to the organized life of the community of which the State is composed”,¹⁵⁶ meaning, essentially, that the fundamental capacity of a state to function effectively must be compromised.¹⁵⁷ States seeking to derogate from their human rights commitments must officially declare a state of emergency¹⁵⁸ in compliance with relevant constitutional and other legal provisions governing the exercise of emergency powers.¹⁵⁹ Any derogations must be strictly limited temporally, geographically and materially.¹⁶⁰ In situations that do not meet this high threshold for derogations, the possibility of imposing proportionate and content-neutral time, place and manner restrictions on public assemblies specifically tailored to the particular situation at hand should be sufficient.¹⁶¹ Generally, emergency powers must be tailored to an immediate and urgent crisis and shall

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

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

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

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

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

¹⁵⁶ *Lawless v. Ireland* (No. 3), Application No 332/57, 1 July 1961, para. 28. See also, UN Human Rights No. 29, Article 4: Derogations during a State of Emergency, CCPR/C/21/Rev.1/Add.11, 31 August 2001, especially para. 3. The Siracusa Principles, Annex, UN Doc E/CN.4/1984/4 (1984) at paras. 40-41, emphasize that neither ‘[e]conomic difficulties per se’ nor ‘[i]nternal conflict and unrest that do not constitute a grave and imminent threat to life of the nation’ can justify derogations under Article 4. See also, the Questiaux Principles: Nicole Questiaux, Study of the implications for human rights of recent developments concerning situations known as states of siege or emergency, UN doc. E/CN.4/Sub.2/1982/15, 27 July 1982.

¹⁵⁷ UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report on the human rights challenge of states of emergency in the context of countering terrorism, A/HRC/37/52, of 27 February 2018, paras. 7 and 12.

¹⁵⁸ UN Human Rights Committee, General Comment No. 29, *op. cit.*, note 156, para. 2; notified to other State parties through the intermediary of the UN Secretary General (Article 4(3) ICCPR), the Secretary General of the Council of Europe (Article 15(3) ECHR) and the OSCE (Paragraph 28.10, Moscow Meeting of the Conference on the Human Dimension, 1991). The human rights and fundamental freedoms to be restricted must be explicitly mentioned.

¹⁵⁹ UN Human Rights Committee General Comment No. 29, para. 2

¹⁶⁰ UN Human Rights Committee General Comment No. 29, para. 4

¹⁶¹ UN Human Rights Committee, General Comment No. 29, para. 5: “the possibility of restricting certain Covenant rights under the terms of, for instance, freedom of movement (art. 12) or freedom of assembly (art. 21) is generally sufficient during such situations [of emergency] and no derogation from the provisions in question would be justified by the exigencies of the situation.”

not be used as a means to limit legitimate dissent, protest, expression and the work of civil society.¹⁶²

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

Spain, Constitution of 29 December 1978, art. 21

"The right to peaceful, unarmed assembly is recognized. The exercise of this right does not require prior authorization[....] In the cases of meetings in places of public transit and of manifestations prior notification shall be given to the authorities, which can only forbid them when there are reasons based on disturbances of public order with danger for persons or property."

Sweden, Instrument of Government (1974:152) chapter 2, art. 1

"Everyone shall, in their relations with public institutions, be guaranteed to [...] (3) freedom of assembly: freedom to organize and to attend assemblies for disseminating information, expressing an opinion or for other similar purpose, or for the purpose of presenting artistic work; (4) freedom to demonstrate: freedom to organize or attend demonstrations in a public place [...]."

Finland, Constitution, 731/1999, section 13

"Everyone has the right to arrange meetings and demonstrations without a permit, as well as the right to participate in them. [...] More detailed provisions on the exercise of the freedom of assembly and the freedom of association are laid down by an Act."

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

95. Laws governing the conduct of elections. Assemblies taking place immediately before, during or after an election period should not be regulated by special legislation. Rather, the general law on assemblies should be sufficient to cover assemblies associated with election campaigns, an integral part of which is the organisation of public events (see also

¹⁶² See, Report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, A/HRC/37/52, 27 February 2018, para. 49.

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

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

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

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

'*Freedom of assembly, the right to vote and the right to participation*' in paragraph 7, Section A above.¹⁶⁷ Moreover, elections should never be seen as a pretext for unduly restricting the right to freedom of peaceful assembly.¹⁶⁸ All peaceful assemblies, including those critical of ruling parties should be entitled to equal treatment.¹⁶⁹ Bans on assemblies immediately prior to an election must be used as a last resort, always complying with the principles of necessity and proportionality. The threshold for imposing such restrictions should be higher than usual, due to the importance of debate prior to elections. The criteria of "necessity in a democratic society" and "proportionality" should be interpreted more narrowly during elections.

1. Requirements of the legal framework

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

97. **Clarity regarding the mandate and procedures of decision-makers.** The mandate, duties and powers of the authority responsible for making decisions in relation to the holding

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

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

¹⁶⁹ *Ibid.*

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

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

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

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

98. **Foreseeability.** As the European Court of Human Rights has stated, the requirement that any restrictions on assemblies be ‘prescribed by law’ not only requires that the restriction should have an explicit basis in domestic law, but also refers to the quality of the law in question. The relevant legislation should be “accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.”¹⁷⁵ While the foreseeability requirement does not mean that a single consolidated law on freedom of peaceful assembly need be enacted, it does at least require consistency between the various laws that might be invoked to regulate freedom of peaceful assembly. Any law that regulates freedom of peaceful assembly should not contradict provisions contained in other legislation in order to help ensure the overall consistency and transparency of the legislative framework.

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

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

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

¹⁷⁵ See, for example, *Vyerentsov v. Ukraine* (2013), *op. cit.*, note 37, paras. 52 and 54, and the sources cited therein. See also *Mkrtchyan v. Armenia*, Application No 6562/03, 11 January 2007, paras. 39-43. In *Mkrtchyan*, the Court ruled that it was not sufficiently clear whether the laws of the former Soviet Union continued to apply in Armenia, and that Armenia could therefore not rely on a Soviet Law which had approved, *inter alia*, the Decree on ‘Rules for Organising and Holding of Assemblies, Rallies, Street Processions and Demonstrations in the USSR’ of 28 July 1988, in order to impose a fine for organizing an ‘unlawful procession’. See also U.S case of *Connolly v. General Construction Company*, 269 U.S. 385, 46 S.Ct. 126 (1926), where the court found that “[a] criminal statute cannot rest upon an uncertain foundation. The crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue.” In this context, see also *Coates v. Cincinnati*, 402 U.S. 611 (1971).

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

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

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

E. Protection based on equality and non-discrimination

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

107. **Children.** Article 15 of the UN Convention on the Rights of the Child requires state parties to recognize the rights of children to organize and participate in peaceful assemblies.¹⁹⁴ Thus, relevant legislation should reflect the state’s duty to facilitate the exercise of the right to freedom of peaceful assembly for children, as well. Moreover, when implementing such legislation, state authorities should take steps to create a conducive environment that allows children and young people to exercise this right in practice.¹⁹⁵ Any blanket ban preventing individuals below a certain age from participating in peaceful public assemblies would be contrary to this principle.¹⁹⁶ While certain restrictions may be placed on the exercise of the right to assemble by children, in view of the responsibilities of organizers or due to relevant safety concerns,¹⁹⁷ any such restrictions must follow the requirements set out in international human rights instruments.¹⁹⁸ In particular, when adopting any limits to the organization of or participation in a peaceful assembly by children, full account needs to be taken of the best interests of the individual child and of his/her evolving capacity.¹⁹⁹ Public officials should be

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

¹⁹¹ Article 1, UN Convention on the Rights of Persons with Disabilities

¹⁹² *Ibid.* Article 2, UN Convention on the Rights of Persons with Disabilities

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

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

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

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

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

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

¹⁹⁹ See Article 3 para. 1 of the UN CRC which states that, “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best

adequately trained and instructed accordingly²⁰⁰ (see also paragraphs 84 and 85). In addition, the right to freedom of assembly also includes the right to choose *not* to participate in assemblies. It is particularly important in this regard that children are protected from coerced participation in assemblies.

108. National, ethnic, religious or linguistic minorities. The freedom to organize and participate in public assemblies applies to all sections of a population, including to minority and indigenous groups. Article 7 of the Council of Europe Framework Convention on National Minorities (1995) states that countries shall ensure respect for the right of every person belonging to a national minority to, among others, peacefully assembly. Assemblies aiming to achieve the recognition of a minority group in a country or demanding autonomy or even secession of part of a country's territory and/or fundamental constitutional changes do not automatically amount to a threat to the country's territorial integrity and national security, unless they actually incite violence in the pursuit of these aims.²⁰¹ The duty to facilitate the exercise of the rights to freedom of peaceful assembly of national, ethnic, religious or linguistic minorities may however require certain additional measures, such as multilingual documents in areas with large percentages of persons not fluent in the primary language of the local jurisdiction.²⁰²

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

110. Law enforcement and state officials. Legislation should not limit the freedom of peaceful assembly of law enforcement personnel (including the police and military) or state officials, unless the reasons for restrictions are directly connected with their service duties. In such cases, restrictions should be imposed only insofar as this is deemed necessary for them to properly fulfil their professional duties.²⁰⁴ The ECHR permits "lawful restrictions on the exercise of the rights to freedom of assembly and association by members of the armed forces, of the police, or of the administration of the State."²⁰⁵ Any such restrictions must be

interests of the child shall be a primary consideration." See also Article 5 of the UN CRC which states that, "States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention."

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

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

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

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

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

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

designed to ensure that the responsibilities of those in the services concerned are properly discharged and that any need for the public to have confidence in their neutrality is maintained.²⁰⁶ Such neutrality should, however, not be interpreted so as to unnecessarily restrict the freedom to hold and express opinions.

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

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

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

F. Notification, good administration and legal remedies

111. **Overview.** This section addresses the main procedural issues that commonly arise in relation to the facilitation of freedom of assembly, including in particular the notification process. While there is no universal blueprint for the design of these procedures – and the particular procedures relating to the holding of assemblies will vary by country, as will the level of detail provided in laws or by-laws – human rights standards imply the need for procedural safeguards in relevant legislation and operating procedures.

1. Notification procedures

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

113. **International standards do not require the advance notification of assemblies.** It is not necessary under international human rights law for domestic legislation to require advance notification of an assembly. Thus, certain countries do not require advance

Rights and Fundamental Freedoms of Armed Forces Personnel (ODIHR, Warsaw, 2008), pages 22-23 and Chapter 8; OSCE, *Guidebook on Democratic Policing*, May 2008, paras. 9 and 12.

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

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

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

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

notification for any type of assembly,²¹⁰ and others require notification only for certain types of assembly. There may, however, be legitimate reasons for requiring advance notification of certain types of assembly, depending on their size, nature and location. Prior notice can enable the state to better ensure the peaceful nature of an assembly²¹¹ and to put in place arrangements to facilitate the event, or to protect public order, public safety and the rights and freedoms of others. In consequence, a notification requirement will often be compatible with the permissible limitations laid down in Article 11 ECHR and Article 21 ICCPR.²¹²

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

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

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

²¹² See U.N. Human Rights Committee, *Kivenmaa v. Finland* (Communication no. 412/1990, 31 March 1994), para 9.2. The European Court of Human Rights has held that since States have a right to require notification, 'they must be able to apply [proportionate] sanctions to those who participate in demonstrations that do not comply with the requirement'. See, *Ziliberberg v. Moldova*, Application No 61821/00, admissibility decision of 4 May 2004. Similarly, in *Rai and Evans v. United Kingdom*, Application nos. 26258/07 and 26255/07, admissibility decision of 17 November 2009, the imposition of a low-level fine for failure to comply with a lawful authorization requirement covering assemblies in a limited, security-sensitive area, was held to be proportionate and so did not constitute a violation of Article 11 ECHR.

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

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

Finland, Assembly Act 22.4.1999/530, section 14

“Notification of a public event

[...] no notification need be made on a public event which, owing to the low number of participants, the nature of the event or the place of the event, does not require measures for the maintenance of order or security nor for the prevention of inconvenience to the bystanders or damage to the environment, nor special traffic arrangements.”

Article 3, Law on Public Assemblies, Republic of Moldova (2008):

“Definitions

‘Assemblies with a small number of participants’ – public assemblies that gather less than 50 persons.”

Article 12(5), Law on Public Assemblies, Republic of Moldova (2008):

“Exceptions from notification

It is not obligatory to notify local public authorities in the case of assemblies with a small number of participants.”

District of Columbia, First Amendment Assemblies Act 2004, section 105:

“A person or group who wishes to conduct a First Amendment assembly on a District street, sidewalk, or other public way, or in a District park, is not required to give notice or apply for approval of an assembly plan before conducting the assembly where: 1) The assembly will take place on public sidewalks and crosswalks and will not prevent other pedestrians from using the sidewalks and crosswalks; 2) The person or group reasonably anticipates that fewer than 50 persons will participate in the assembly, and the assembly will not occur on a District street; or 3) The assembly is for the purpose of an immediate and spontaneous expression of views in response to a public event.”

2. Notification rather than authorization.

115. Legal provisions concerning assemblies may require the organizer to submit an advance notice of intent to hold an assembly (see, in this context, the above section on the freedom to plan and organize assemblies, para 54).²¹⁵ The European Court of Human Rights has not found systems of prior authorisation to be incompatible with the Convention. The Human Rights Committee, on the other hand, has declared its preference for the notification system, rather than the authorisation system. In a number of jurisdictions, authorisation or permit procedures have been declared unconstitutional.²¹⁶ In any case, a notification regime, which is preferable for being less intrusive into the right to freedom of peaceful assembly in view of the proportionality principle, should not be turned into a *de facto* authorisation procedure.²¹⁷ Nonetheless, a permit requirement based on a legal presumption that a permit for use of a public place will be issued (unless the relevant state authorities can provide evidence to justify a denial) can serve the same purpose as advance notification.²¹⁸ The criteria for restricting an assembly should be confined to considerations of time, place and manner, and should not provide a basis for content-based regulation. Above all, state authorities shall not deny the right to assemble because they disagree with the merits of holding an event for the organizer’s stated purpose.²¹⁹

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

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

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

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

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

118. **Notification processes should be clear, fair, transparent and easy to follow.** Regulatory requirements, including procedures to inform authorities about an assembly should be clear and simple to follow for everyone, and it should be sufficient for organizers to notify one single authority (not multiple authorities). Public authorities should ensure that notification remains possible via a variety of means, including online, by mail, email or hand delivery. The notification procedures should be easily accessible to everyone, including in other languages or in Braille.²²¹ The process should be fair and transparent, so that all persons wishing to organize an assembly may do so on an equal basis (see 'Equality and non-discrimination', paragraph 101 *et seq.*), and are aware of the different steps that they need to take to ensure that their event may take place.

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

120. **The need for an expeditious notification process.** Since the timing of an assembly may be of vital importance²²⁴, the required period of notice before an assembly should not be unnecessarily lengthy (normally no more than a few days). It should, however, be long enough

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

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

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

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

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

to provide the relevant state authorities with adequate time to plan and prepare for the event,²²⁵ for the competent public authority to give a prompt official response to the initial notification, and for prompt administrative and judicial recourse, should the legality of any restrictions imposed be challenged. While laws may legitimately specify a minimum period of advance notification prior to an assembly, any maximum notification period should not preclude the advance planning of large-scale assemblies.²²⁶ Undue attempts to use the notification procedure to ‘block book’ particular locations – for instance on significant dates or anniversaries – should not be allowed (see ‘Facilitation of simultaneous assemblies’ paragraph 78 above).

121. Documenting and sharing the notification with relevant agencies. The official who receives the notice should promptly issue a receipt explicitly confirming that notice has been received. The receipt should be issued regardless of whether the official believes that it contains all information required by law. The official may, though, note in the receipt that certain information required by law is lacking so that the organizers may take action to provide this information. Once notification has been submitted, a request to provide further information relating to the same assembly should not be treated as a requirement to re-notify the authorities. Furthermore, the mere fact that no receipt has been issued by the authorities should not affect the validity of the notification or render the assembly unlawful – otherwise, the receipting process (which should be solely for the purpose of documenting submission) would change notification into a *de facto* authorization procedure. The notice should also be promptly communicated by the receiving authority to all state organs involved in the regulatory process, including relevant law enforcement agencies.

Article 2, Assembly Act, Portugal

“Persons or entities wishing to hold assemblies, rallies, demonstrations or parades in public places or open to the public shall notify, in writing, at least two days in advance, the District’s Civil Governor or the Mayor of the Town Hall, depending on whether the assembly will take place at in the district capital or not. [...] The entity which receives the notification shall provide a notice of receipt.”

Kyrgyzstan, The Law of the Kyrgyz Republic on Peaceful Assemblies, Article 11

“Peaceful Assembly Notification

(4) Persons notifying about a peaceful assembly shall have the right to demand, and public authorities and local self-government shall have the responsibility to provide on the same day, a written confirmation that the notification has been received.

(5) A written receipt confirmation sent by local self-government or local state administration shall include information about the name of the body of local self-government or local state administration, the name, family name and patronymic of an official having received the notification, date and time of receipt.”

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

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

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

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

²²⁸ *Bączkowski and Others v. Poland* (2007), *op. cit.*, note 182, para. 83.

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

Bulgaria, Draft Law on Meetings, Rallies and Manifestations, 2009, article 20

“Consideration of notification

The competent authority shall consider a notification within 48 hours of receiving it, in the order in which notifications have been received.

[...]

(3) Should the competent authority fail to issue a decision prohibiting holding of the public event within the time limit under paragraph 1, the organizers shall have the right to conduct the public event at the time and under the terms and conditions set forth in the notification.”

124. **Voluntary participation of organizers in pre-event planning with relevant authorities.** Dialogue and other forms of co-operation between organizers of an assembly and the relevant state authorities may be useful to ensure the smooth conduct of the assembly. At the same time, involvement in prior negotiations on the part of the organizers should be entirely voluntary. Unwillingness or refusal to engage in dialogue with the authorities should not have negative repercussions for the organizers or their assembly in relation to either the processing of the notification or the performance of the state’s positive obligations to facilitate and protect a peaceful assembly.

2. Legal remedies

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

126. **Timeliness of court decisions.** Court decisions should be issued in a timely manner, so that the appeal or challenge, can be resolved before the assembly is planned to take place.²³² In case of insufficient time, courts or tribunals should have the authority to issue

²²⁹ See for example, UN Human Rights Council, Resolution on the Promotion and Protection of Human Rights in the Context of Peaceful Protests, A/HRC/RES/22/10, 9 April 2013, para. 15.

²³⁰ See, for example, *Makhmudov v. Russia*, Application No 25082/04, 26 July 2007, para. 68.

²³¹ See, instead of others, *Lashmankin and Others v. Russia* (2017), *op. cit.*, note 50, para. 343.

²³² Concluding observations of the Human Rights Committee, Poland, CCPR/C/POL/CO/6, 27 October 2010, para. 23 (on the 2010 Assemblies Act): “the length of the appeals procedure against a prohibition to hold an assembly may jeopardize the enjoyment of the right of peaceful assembly.” In light of this, the Committee recommended that Poland, “should introduce legislative amendments to the Assemblies Act in order to ensure that appeals against a

interim orders or rulings pending final resolution of the case. A heavy case-load cannot serve as justification for delays in judicial proceedings.²³³ This requirement for an expeditious appeal mechanism should be provided for in law.²³⁴

Bulgaria, Law on Gatherings, Meetings and Manifestations, SG 10/2 February 1990, amend. SG 11/29 January 1998, article 12, paragraphs 3-5):

“3) The prohibition is imposed by way of a written act, stating the motives, within 24 hours following the notification.

(4) The organizer of the gathering, meeting or manifestation is entitled to file an appeal against the prohibition under the preceding paragraph with the Executive Board of the Municipal People's Council, and the latter renders its decision within a term of 24 hours.

(5) In those cases where the body under the preceding paragraph fails to render its decision within the specified term, the gathering, meeting or manifestation can be held.”

Article 14(2) Law on Assemblage and Manifestations, Republic of Georgia (1997, as amended in 2015)

“The decision of an executive body of local self-government regarding the prohibition of holding an assembly or demonstration may be appealed in court, which shall make a final decision within two working days.”

Kyrgyzstan, The Law of the Kyrgyz Republic on Peaceful Assemblies, article 14

“Prohibition or Restriction of Assemblies

(3) An application for prohibiting or restricting an assembly shall be considered by court within 24 hours from the time of its submittal.

(4) The burden of proof for the grounds to prohibit or restrict an assembly in the court shall be with the applicant, who filed a lawsuit.

(5) Any doubts in the grounds to prohibit or restrict an assembly shall be in favour of the implementation of the right to peaceful assembly.

(6) A court decision of first instance prohibiting or restricting an assembly may be appealed in a higher court within 24 hours after passing judgment. Appeals against court decisions prohibiting or restricting an assembly shall be considered by higher courts within 24 hours after their submittal. Decisions of higher courts shall enter into force on the date they are made.

(7) Court prohibition or restriction decisions shall be notified to assembly organizers and participants by local self-government and the interior bodies verbally and in writing within 24 hours after the decision is made.”

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

G. Restrictions Imposed Prior To or During an Assembly

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

ban to hold a peaceful assembly are not unnecessarily protracted and are dealt with before the planned date.” See also, *Bączkowski and Others v. Poland* (2007), *op. cit.*, note 182, paras. 68-78, affirming that the organisers of a public event were entitled to judicial remedy before the date of the planned event. See also Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), paras. 24.4. See further *Nat'l Socialist Party of Am. v. Village of Skokie*, 432 U.S. 43 (1977) (requiring an expeditious review of a court decision upholding a permit denial).

²³³ *Lashmankin and Others v. Russia* (2017), *op. cit.*, note 50, para. 350.

²³⁴ *Ibid.* See also *Bączkowski v. Poland* (2007), *op. cit.*, note 182, paras. 81-84.

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

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

131. Restrictions should be necessary and proportionate to achieving a legitimate aim. Restrictions to the right to freedom of peaceful assembly, whether set out in law or applied in practice, must be both necessary to achieve a legitimate aim, and proportionate to such aim.²³⁹ Necessity denotes a ‘pressing social need’ for the restriction in question; this means that a restriction must be considered imperative, rather than merely ‘reasonable’ or ‘expedient’.²⁴⁰ The means used should be proportional to the aim pursued, which also means that where a wide range of interventions may be suitable, preference should always be given to the least restrictive or invasive means.²⁴¹ The relevant state authorities should review and debate a range of restrictions, rather than viewing the choice as simply between non-intervention or prohibition. The reasons provided by the authorities for any restriction(s) should be relevant and sufficient,²⁴² convincing and compelling,²⁴³ and based on a comprehensive assessment of the relevant facts.²⁴⁴ Moreover, the interference should go no further than is justified by a

²³⁵ See *Hyde Park v. Moldova No.2* (2009), *op. cit.*, para. 27, note 120. In this case, it was emphasized that the reasons for restrictions must be provided by the legally mandated authority. The Court noted that the reasons cited by the Municipality for restricting a demonstration were not compatible with the relevant Assemblies Act, and it was not sufficient that compatible reasons were later given by the Court since the Courts were not the legally mandated authority to regulate public assemblies and could not legally exercise this duty either in their own name or on behalf of the local authorities.

²³⁶ The terms used in domestic legislation to differentiate between types of assembly must be defined with sufficient clarity – see, for example, *Chumak v. Ukraine* (2018), *op. cit.*, note 50, para. 47.

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

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

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

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

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

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

²⁴³ *Ibid.*, para. 64.

²⁴⁴ *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), *op. cit.*, note 16, para. 87. See also, *United Communist Party of Turkey and Others v. Turkey*, Application No 19323/92, 30 January 1998, para.

legitimate aim.²⁴⁵ The principle of proportionality requires that there be an objective and detailed evaluation of the circumstances affecting the holding of an assembly. Thus, the state must demonstrate that any restrictions promote a substantial interest that would not be achieved, or would be achieved less effectively, without the restriction. The principle of proportionality also requires that authorities should generally not impose restrictions that would fundamentally alter the character of an event (such as relocating assemblies to less central areas of a city).²⁴⁶

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

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

47. For the U.S. standard, see *U.S. v. Alvarez*, U.S., 132 S.Ct. 2537, 2549-2551 (2012) and *Police Dep't of City of Chicago v. Mosley*, 408 U.S. 92 (1972) (where the court invalidated an ordinance banning picketing near a school on the ground that the ordinance contained only a ban on labor picketing which was considered discriminatory).

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

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

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

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

²⁴⁹ See Report of the UN Special Rapporteur (2013), A/HRC/23/39, *op. cit.*, note 56, para. 63: “...blanket bans, are intrinsically disproportionate and discriminatory measures as they impact all citizens willing to exercise their right to freedom of peacefully assembly”. See also Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at para.29.3 (English translation): “The state may not prohibit holding meetings, processions and pickets at foreign missions; only these activities shall not be too noisy and aggressive. However, even in these cases ... this issue shall be solved on the level of *application* of legal norms” (emphasis added). While the Court noted (at para.28.1) that s.22(2) Vienna Convention on International Diplomatic Relations (1961) requires host states “to undertake all the adequate measures to protect premises of the mission from any

134. **The burden of proof for restrictions.** Mere suspicions, fears or presumptions are not sufficient to warrant the imposition of prior restrictions on assemblies; the European Court of Human Rights has held that “[t]he mere probability of tension and heated exchange between opposing groups during a demonstration is not enough to justify the prohibition of an assembly.”²⁵⁰ The Court has further held that “[t]he burden of proving the violent intentions of the organizers of a demonstration lies with the authorities.”²⁵¹

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

1. Grounds for Restricting Freedom of Peaceful Assembly

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

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

kind of breaking in or incurring losses and to avert any disturbance of peace of the mission or violation of its respect”, it concluded (at para.28.3) that there “is no norm which assigns the state with the duty of fully isolating foreign diplomatic and consular missions from potential processions, meetings or pickets.” See also, David Mead, *op. cit.*, note 34, at pp.101-2. See *Carey v. Brown*, 447 U.S. 455, 465 (1980) (invalidates a statute that had “apparent over inclusiveness and under inclusiveness” and was not a narrowly tailored solution to accomplish the government’s stated aim of protecting privacy interests).

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

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

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

²⁵³ United Nations, Economic and Social Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4, Annex (1985). See also the link between human rights and security made in OSCE commitments, for example, the Charter of Paris (1990)

138. **Public safety.** Public safety concerns may arise when the presence or conduct of assembly participants creates a significant and imminent danger of physical injury for other participants, public authorities or passers-by, or of damage to property. Examples include cases where moving vehicles form part of an assembly and may pose dangers for individuals at an assembly, where pyrotechnics are used during assemblies, or where they pass by or are held close to potentially hazardous and secure facilities.²⁵⁴ In such instances, extra precautionary measures should generally be preferred over more extensive restrictions on the assembly itself. While organizers and stewards may provide assistance, states retain primary responsibility for the protection of public safety and security, have a positive obligation to provide adequately resourced policing arrangements and intervene when necessary. This duty should not be assigned or delegated to the organizers or stewards of an assembly. Generally, public authorities should also ensure proper access to nearby emergency health care facilities during assemblies (both for people involved in an assembly and for the general public).

Chicago Code - Streets, Public Ways, Parks, Airports and Harbors - Use of Public Ways and Places – Requirements and Restrictions – Public Assembly, paragraph 10-8-334,

“In order to protect the health and safety of the public, if at any time during the occurrence of the public assembly, the public assembly is substantially interfering with pedestrian traffic, safe ingress to or egress from buildings, or access by emergency responders, in the area contiguous to the activity, members of the police department are authorized to establish a pedestrian pathway on the sidewalk for the purpose of pedestrian traffic, ingress to or egress from surrounding buildings, and access for emergency responders; provided that the pedestrian pathway shall be reasonable in size and allow use of the remaining sidewalk by the participants in the public assembly. After that portion of the sidewalk has been established as a pedestrian pathway and communicated to the participants, the participants shall not obstruct pedestrian traffic, ingress to or egress from the surrounding buildings, or access by emergency responders, in the pedestrian pathway.”

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

(preamble), noting that “[h]uman rights and fundamental freedoms are the birthright of all human beings, are inalienable and are guaranteed by law. Their protection and promotion is the first responsibility of government. Respect for them is an essential safeguard against an overmighty State. Their observance and full exercise are the foundation of freedom, justice and peace.”

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

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

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

should be understood to involve an interest in preventing imminent violent conduct.²⁵⁷ On the other hand, the mere fact that the content or manner in which an assembly is conducted may annoy, offend, shock or disturb others, or that such assembly may cause some temporary disruptions of daily life, or affect the aesthetic appearance of a public space, does not by itself amount to a disruption of public order. For that reason, prior restrictions imposed due to the possibility of minor, isolated or sporadic incidents of violence are likely to be disproportionate.²⁵⁸

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

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

of violent confrontation between the two groups – a general problem of public order – is concerned” (see *Öllinger*, cited above, § 47). Experience with past disorders is less relevant where the situation, as in the present case, allows the authorities to take preventive measures, such as police presence keeping the two assemblies apart and offering a sufficient degree of protection, even if there was a history of violence at similar events necessitating police intervention.

²⁵⁷ *Gün and Others v. Turkey*, (2013), *op. cit.*, note 113, paras. 49-50.

²⁵⁸ *United Macedonian Organisation Ilinden and Ivanov v. Bulgaria* (No. 2), Application No 37586/04, 8 October 2011), para. 134.

²⁵⁹ While Article 11(2) ECHR speaks of ‘the prevention of disorder or crime’, Article 21 ICCPR does not specifically mention the prevention of crime as a legitimate aim.

²⁶⁰ *Schwabe and M.G. v. Germany* (2011), *op. cit.*, note 63, para. 85.

²⁶¹ *Shimovolos v. Russia*, Application No 30194/09, 21 June 2011, para. 55.

²⁶² *Hakobyan and Others v. Armenia*, Application No 34320/04, 10 April 2012, para. 122; *Saghatelyan v. Armenia*, Application No 23086/08 20 September 2018, paras. 242-243.

²⁶³ *R (on the application of Laporte) v. Chief Constable of Gloucester Constabulary* (2006) UKHL 55, para. 15.

²⁶⁴ Manfred Nowak’s commentary on the ICCPR cites assemblies near or passing ‘natural-protection or water-conservation grounds’ (in relation to public health) as a particular example. See Nowak, *op. cit.*, note 44, p. 493.

crowds in a shopping area, at a concert, or a sports event. In particular, there should be no blanket bans on assemblies at health facilities such as hospitals, as the question of whether health is endangered by such gatherings must be assessed by reference to facts of the individual cases, not in abstract.²⁶⁵ Generally, assemblies should be organized and policed in such a manner that they do not block access to hospitals and similar institutions, especially emergency access.

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

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

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

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

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

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

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

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

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

demonstration which blocked the Brenner Motorway between Germany and Italy for almost 30 hours was *not* a disproportionate restriction on the free movement of goods under Article 28 EC Treaty. This was for three reasons: (1) the disruption was a relatively short duration and on an isolated occasion; (2) measures had been taken to limit the disruption caused; (3) excessive restrictions on the demonstration could have deprived the demonstrators of their rights to expression and assembly, and indeed possibly caused greater disruption. In the case of *Shell Netherlands v Greenpeace*, the Amsterdam District permitted protests to be held on privately owned property (garage forecourts) even where these disrupted the commercial activity of the garages (by blocking access to the petrol pumps). The Court noted that "[a] company such as Shell, which performs or wishes to perform activities that are controversial in society, and to which many people object, can and must expect that action will be taken to try to persuade it to change its views." While the Court did impose a number of stringent conditions on such protests, Shell's proprietary interests were not viewed as an automatic bar on protest activity. See, *Case number: 525686/KG ZA 12-1250*. The judgment (in Dutch) is available at: <<http://uitspraken.rechtspraak.nl/#ijn/BX9310>>. For a summary (in English) see, 'Dutch court rejects Shell protest ban' (5 October 2012), available at: <<http://www.bbc.co.uk/news/world-europe-19853007>>.

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

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

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

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

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

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

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

2. Categories of restrictions

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

146. **Restrictions on time or duration.** Restrictions imposed on the time or duration of an assembly must be based on an assessment of the individual circumstances of each case.²⁸⁰

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

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

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

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

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

²⁸⁰ See, for example, *Çiloğlu and Others v. Turkey*, Application no. 73333/01, 6 March 2007, (in French only), in which the Court noted that unlawful weekly sit-ins (every Saturday morning for over three years) of around 60 people in front of a High School in Istanbul had become an almost permanent event which disrupted traffic and

The touchstone established by the European Court of Human Rights is that demonstrators ought to be given sufficient opportunity to manifest their views.²⁸¹ In some cases, the protracted duration of an assembly may itself be integral to the message that the assembly is attempting to convey or to the effective expression of that message.

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

clearly caused a breach of the peace. It thus found that when dispersing the assembly, the authorities had reacted within the margin of appreciation afforded to States in such matters. Similarly, in *Cisse v. France* (2002), *op. cit.*, note 55, paras. 39-40, the evacuation of a church in Paris which a group of 200 illegal immigrants had occupied for approximately two months was held to constitute an interference (albeit justified on public health grounds, para.52) with the applicant's right to freedom of peaceful assembly. Also worth noting is the UK case concerning 'Aldermaston Women's Peace Camp' (AWPC) which, over the past 23 years, had established a camp on government owned land close to an Atomic Weapons Establishment. The women camped on the second weekend of every month during which time they held vigils, meetings and distributed leaflets. In the case of *Tabernacle v. Secretary of State for Defence* [2009], a 2007 by-law which attempted to prohibit camping in tents, caravans, trees or otherwise in 'controlled areas' was held to violate the appellant's rights to freedom of expression and assembly. The court noted that the particular manner and form of this protest (the camp) had acquired symbolic significance inseparable from its message.

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

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

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

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

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

²⁸⁶ OSCE/ODIHR 10 February 2014, Opinion on Amendments to Certain Laws of Ukraine Passed on 16 January 2014, Opinion-Nr.: GEN -UKR/244/2014 [RJU], para. 59: "[...] imposing criminal liability for all activities that block access to public and private buildings, however temporary, would potentially criminalize any larger assembly that takes place near a building. At the same time, depending on the circumstances, smaller assemblies would also be affected, e.g., if there is only one access road to a particular government building which forms the target of the message of participants in a peaceful assembly."

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

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

Article 1, Decree of the President in force of Law ‘On procedure of organization and conduct of peaceful assemblies, mass-meetings, processions, pickets and demonstrations in the Republic of Kazakhstan’ (1995) with changes from 20.12.2004

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

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

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

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

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

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

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

“...the forms of expression of public, group and personal interests and protest referred to in the legislation as assemblies, meetings, processions and demonstrations shall also include hunger-strikes in public places and putting up yurts, tents, other constructions and picketing.”

Section 11, Assembly Act, Finland (1999, as amended 2001)

“In a public meeting, banners, insignia, loudspeakers and other regular meeting equipment may be used and temporary constructions erected. In this event, the arranger shall see to it that no danger or unreasonable inconvenience or damage is thereby caused to the participants, bystanders or the environment.”

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

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

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

District of Columbia, First Amendment Assemblies Act 2004, section 104

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

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

“(c) No time, place, or manner restriction regarding a First Amendment assembly shall be based on the content of the beliefs expressed or anticipated to be expressed during the assembly, or on factors such as the attire or appearance of persons participating or expected to participate in an assembly, nor may such restrictions favour non-First Amendment activities over First Amendment activities.”

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

151. **Restrictions in the context of combating terrorism and violent extremism should be interpreted narrowly.** Domestic legislation designed to counter ‘terrorism’ or ‘violent extremism’ must not impose any limitations on fundamental rights and freedoms, including the right to freedom of peaceful assembly, that are not strictly necessary for the protection of national security and the rights and freedoms of others.³⁰⁰ Any such legislation should therefore clearly define the term ‘terrorism’ (or associated terms such as ‘extremism’) so as not to include a wide range of activities (e.g., the organization of or participation in assemblies).³⁰¹ Moreover, the designation of specific locations as prohibited areas, even on grounds of national security, constitutes a blanket prohibition. This is likely to be regarded as a disproportionate interference with the right to freedom of assembly because it precludes consideration of the specific circumstances (see paragraph 133 above). Reliance on counter-terrorism powers (conceivably including stop and search, administrative detention and border control measures) must also be shown to be necessary and strictly proportionate *in each application*. Any discretionary counter-terrorism powers afforded to law enforcement officials should be narrowly framed and include adequate safeguards to reduce the potential for arbitrariness. Such safeguards might include prior judicial review, the right to appeal against state actions, an express limitation to permissible detention periods, and a requirement that law enforcement officers have ‘reasonable suspicion’ that one’s activity is connected to

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

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

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

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

'terrorism' before certain powers may be invoked.³⁰² Furthermore, mere expressions of opinion, individually or as part of a peaceful assembly, should not be the object of counter-terrorism measures if they do not directly incite violence or other unlawful acts (e.g., unlawful incitement to hatred).³⁰³ This means that laws prohibiting the public provocation of terrorism³⁰⁴ should establish criminal liability only for activities that necessarily and directly imply the use or threat of violence with the intention to spread fear and provoke terror, where there is both an *intention* to incite violence/unlawful acts and a *likelihood* that such violence/unlawful acts will occur.³⁰⁵ Counterterrorism laws should not be abused to limit the protest activities of political opponents or critical civil society activists.

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

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

152. **Restricting symbolic displays of insignia and other objects.** Display of symbols such as flags, insignia and other expressive items is protected communication that is entitled to the same freedom of speech and assembly protections as other forms of communication. Even where the insignia, uniforms, costumes, emblems, music, flags, signs or banners played or displayed during an assembly conjure memories of a painful historical past, this in general should not of itself be a reason to interfere with the right to freedom of peaceful assembly.³⁰⁶

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

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

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

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

³⁰⁶ *Fáber v. Hungary* (2012), *op. cit.*, note 31, paras. 56-59; cf. also the 'Red Star' case of *Vajnai v. Hungary*, Application No 33629/06, 8 July 2008, para. 49, where the Court found that there was "no real and present danger of any political movement or party restoring the Communist dictatorship."; cf. *Lehideux and Isorni v. France*, (55/1997/839/1045), 23 September 1998. In the case of *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), *op. cit.*, para. 73, note 16, the Court rejected the Bulgarian government's assertion that national security concerns arose, noting that "the context of the difficult transition from totalitarian regimes to democracy,

In cases where the respective insignia or symbols are prohibited from being displayed by law, law enforcement should first attempt to confiscate the prohibited items, while letting the assembly proceed (provided it continues to remain peaceful). On the other hand, where this leads to violence, or where such symbols are intrinsically and exclusively associated with acts of physical violence or expressions of racism or other similar expressions, the assembly might legitimately be restricted to prevent the occurrence or reoccurrence of such violence, unlawful intimidation or other significant violations of valid criminal laws.

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

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

3. Restrictions on organizers

155. Organizers should not be required to pay for the facilitation of peaceful assemblies by the state. State authorities should not make the policing or facilitation of a peaceful assembly contingent on the payment of the respective costs by the organizers. The facilitation of assemblies is an inherent part of the role of law enforcement and needs to be undertaken by the state regardless of the nature, size or other circumstances surrounding an assembly. Moreover, organizers of public assemblies should not be required to obtain public liability insurance prior to holding their event. Such a requirement conditions the right to freedom of assembly on the ability of organizers or representatives to obtain insurance on the commercial, profit-making insurance market. Obliging assembly organizers to pay such costs would create a significant deterrent for those wishing to enjoy their right to freedom of peaceful assembly and is likely to be prohibitively expensive.

Sweden, Public Order Act (1993:1617), chapter 2, section 16

“Conditions (set by police authority) may not lead to an organizer being burdened with unnecessary costs or otherwise unnecessarily impede organizing an assembly or event.”

and due to the attendant economic and political crisis, tensions between cohabiting communities ... were particularly explosive.” See also *Association of Citizens Radko & Paunkovski v. the Former Yugoslav Republic of Macedonia*, Application No [74651/01](#), 15 January 2009.

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

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

Russia, Federal Law on Rallies, Meetings, Demonstrations, Marches and Picketing, No. 54-FZ, 2004 (as amended in 2016), article 18

“Provision on conditions for holding a public event

[...] (3) The maintenance of public order, regulation of road traffic, sanitary and medical service with the objective of ensuring the holding of the public event shall be carried out on a free basis.”

Kyrgyzstan, The Law of the Kyrgyz Republic on Peaceful Assemblies, article 6

“Responsibilities of the Interior Bodies

The interior bodies: [...] 8 assist in provision of medical care and safe evacuation from the location of the peaceful assembly.”

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

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

IV. A Human Rights-based Approach to Policing Assemblies

158. **Human rights-based policing.** Law enforcement agencies should adopt a human rights-based approach to all aspects of the planning, preparation and policing of assemblies. This requires that they take into consideration and are fully aware of their duty to facilitate, enable and protect the right to freedom of peaceful assembly. Law enforcement officials should be appropriately trained to deal with public gatherings and on how to adequately prioritize human rights.³¹¹

159. **Duty to visibly wear or display individual identification.** Law enforcement personnel should visibly wear or display some form of identification (such as a nameplate or number) on their uniform and/or headgear during assemblies.³¹² Such identifying information

³⁰⁹ For example, Article 3, Law on Assemblage and Manifestations in the Republic of Georgia (1997, as amended 2009) defines separate roles for ‘Principal’, ‘Trustee’, ‘Organiser’, and ‘Responsible Persons’.

³¹⁰ See, for example, Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at para.34.4 (English translation): “... The requirement to appoint extra keepers of public order in all the cases, when peaceful process of the activity is endangered, exceeds the extent of the collaboration duty of a person.”

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

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

should not be removed or covered during the event. Where law enforcement personnel present during an assembly are not identifiable in this manner, they should identify themselves by name and badge number when asked.³¹³

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

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

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

163. **The role of new technologies in the organization of assemblies.** New technologies play an important role in the organization of assemblies; social media and similar types of communication ensure that assemblies can be organized almost immediately, thus often providing authorities with little time to plan ahead. In the case of smaller gatherings, this will not be a problem, but it may become challenging to manage and police mass demonstrations that gather suddenly. If the police have not had an opportunity to plan for the event and allocate resources, an immediate police response may still be required. In general, the police should have contingency plans in place to cover such situations.³¹⁷ Often, authorities may only find out about such assemblies because they trawled the Internet for relevant information. In such

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

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

cases, it is important that any information gathered in this manner is used for the sole purpose of police preparedness and to prevent disorder during larger assemblies, and not for purposes of general profiling or monitoring or even surveillance of the activities of targeted individuals or groups.

A. Duty to establish effective channels of communication

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

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

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

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

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

³²⁰ *Ibid*, para. 72.

³²¹ *Ibid*, para. 73.

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

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

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

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

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

169. **Dialogue and mediation procedures.** The designated public authorities and law enforcement officials should make every effort to reach a mutual agreement with the organizers of an assembly on the time, place, and manner of the event. Mediation procedures may be helpful to ensure that such dialogue results in a solution that is acceptable to all parties. Such procedures should be conducted on a purely voluntary basis and are usually best mediated by individuals or organizations not affiliated with either the state authorities, or the organizers. Mediation is usually most successful when conducted at the earliest possible opportunity, and often helps prevent the escalation of conflicts between the state and the organizers, and the ensuing imposition of potentially arbitrary or unnecessary restrictions. Law enforcement officers should send clear messages before and during assemblies that inform organizers and participants of the overall approach that the police will take in the management of the assembly (no surprises policy), to help reduce the potential for conflict escalation.³²⁸

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

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

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

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

Extract from the 2016 OSCE/ODIHR Human Rights Handbook on Policing Assemblies, p. 52:

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

170. Duty to facilitate peaceful assemblies that do not have identified organizers.

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

171. Duty to facilitate assemblies without advance notification or that deviate from the terms of notification.

The authorities must take reasonable and appropriate measures to facilitate assemblies that are convened at short notice or in response to an urgent or emerging situation (including spontaneous assemblies, flash mobs and non-notified assemblies) as long as they are peaceful in intent and execution.³²⁹ The European Court of Human Rights has stated that “a decision to disband assemblies solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction of freedom of peaceful assembly.”³³⁰ The same applies if a small assembly is scheduled to take place and ends up being larger than expected due to an unexpectedly high turnout or continuing past the agreed or specified time for the ending of the assembly.

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

³³⁰ *Bukta and Others v. Hungary* (2007), *op. cit.*, note 46, para.36. See also the subsequent decision of the Hungarian Constitutional Court, *Decision 75/2008*, (V.29.) AB, finding that “[...] [...] it is unconstitutional to prohibit merely on the basis of late notification the holding of peaceful assemblies that cannot be notified three days prior to the date of the planned assembly due to the causing event.” It is noteworthy that in the case of *Aldemir and Others v. Turkey*, Application nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, 18 December 2007, the dissenting opinion of Judges Türmen and Mularoni stated that the judgment failed “to provide any guidelines as to the circumstances under which non-compliance with the regulations may justify intervention by the security forces.” See also *Biçici v. Turkey*, Application No 30357/05, 27 May 2010), para. 56, (see below excessive use of force in the dispersal of assemblies). See also *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1038 (9th Cir. 2008) (stating that a government restriction on assembly must be limited to serving genuine government interest). Also see *Collins v. Jordan*, 110 F.3d 1363, 1378 (9th Cir. 1996) cited in footnote 65 (noting that under California law a spontaneous assembly can only be dispersed as unlawful when it constitutes a clear and present danger).

1. Digital image recording by the authorities

172. **Overt and covert surveillance of assembly participants should be strictly regulated and should follow a published policy.** Digital images of organizers and participants in an assembly should not be recorded, except where specifically authorized by law and necessary in cases where there is probable cause to believe that the planners, organizers or participants will engage in serious unlawful activity. In general, intrusive overt or covert surveillance methods should only be applied where there is clear evidence that imminent unlawful activities, such as violence or use of fire arms are planned to take place during an assembly.³³¹ The use of image recording for the purpose of identification (including facial recognition software)³³² should be confined to those circumstances where criminal offences are actually taking place, or where there is a reasonable suspicion of imminent criminal behaviour. In all situations, there should be adequate safeguards against abuse.³³³ The taking and retention of digital imagery for purposes of identifying persons engaged in lawful activities, or the retention of data extracted from such images (such as details of an individual's presence at an assembly) in a permanent or systematic record may give rise to violations of the right to privacy.³³⁴ Moreover, the use of digital image recording devices by law enforcement officers during a public assembly may have a 'chilling effect' on freedom of assembly and curtail the exercise of this right.³³⁵ Laws, and policies of law enforcement agencies should codify operating procedures relating to digital recording at public assemblies, including a description of the (lawful and legitimate) purposes for and the circumstances in which such activities may take place, and procedures and policies for the retention and processing of resulting data.³³⁶ The information obtained in this manner should be destroyed after a reasonable period set out in law.³³⁷

2. Use of undercover law enforcement personnel

173. **The deployment of undercover police must be exceptional and strictly regulated by law.** In some countries, law enforcement officers have, in the past, infiltrated assemblies and pretended to be participants. The use of undercover police officers, however, is only ever permissible (and only exceptionally so) if the purpose of collecting information during an assembly is to investigate specific criminal acts. In all cases, such practices must be subject

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

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

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

³³⁴ The existence of a reasonable expectation of privacy is a significant, though not conclusive, factor in determining whether the right to private and family life protected by Article 8 ECHR is, in fact, engaged. See *P.G and J.H. v. United Kingdom*, Application no. 44787/98, 25 September 2001, para. 57. At the same time, a person's private life may be engaged in circumstances outside their home or private premises. See, for example, *Herbecq and Another v. Belgium*, Application nos. 32200/96 and 32201, Commission decision of 14 January 1998. In the case of *Friedl v. Austria*, Application no. 15225/89, 26 January 1995, the police photographed a participant in a public demonstration in a public place, confirmed his identity, and retained a record of his details. They did so only after requesting that the demonstrators disperse, and the European Commission held that the photographing did not constitute an infringement of Article 8. On the other hand, warrantless electronic monitoring of genuinely private activities violates the right not to be subjected to arbitrary searches and seizures; see *United States v. Jones*, U.S. 132 S.Ct. 935 (2012) (stating that the GPS monitoring of an individual's movement constitutes search and seizure governed by guarantees against unreasonable searches and seizures). In the case of *Amann v. Switzerland*, Application No 27798/95, 16 February 2000), paras.65-67, the compilation of data by security services was held to constitute an interference with the applicants' private lives despite the fact that covert surveillance methods were not used. See also the UK case of *Wood v. MPC* [2009] EWCA Civ 414. See also the European Commission on Human Rights in *Friedl v. Austria*, Application No 15225/89, Commission decision of 31 January 1995, cited in the judgment (see above) regarding the use of photographs.

³³⁵ Joint report of the UN Special Rapporteurs (2016), UN Doc. A/HRC/31/66, *op. cit.*, note 52, para. 76.

³³⁶ *Ibid.*, para. 78.

³³⁷ *Ibid.*

to continuous and strict independent oversight and scrutiny. Collecting information on assembly participants in the absence of a concrete criminal investigation constitutes an interference with the participants' rights to freedom of assembly and privacy. As such, the exceptional circumstances in which undercover law enforcement officials may be deployed (either before, during or after assemblies) should be fully and clearly regulated in law, following a published policy that is compatible with international human rights standards. Any such legislation and policy should specify the permissible methods of gathering information, the purposes for which any information gathered may be used, the specific law enforcement agencies/personnel that may obtain access, and for how long the data obtained may be stored.

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

Poland, Transgressions Code, article 52, paragraph 1 (Law on Assemblies, 1990, article 14)

"Whoever: 1) disturbs or attempts to disturb the organisation or progress of an assembly that has not been prohibited [...] shall be liable to the penalty of detention for up to two weeks, limitation of liberty for up to two months, or fine."

Malta, Public Meetings Ordinance, 1937, as amended in 2007, section 18

"Any person who shall form part of any assembly with intent to break up a meeting lawfully convened or to disturb public peace at any such meeting, shall, on conviction, be liable to imprisonment from seven days to three months."

3. Restraint, intervention and dispersal

175. Protection of the right to life. The state has a positive obligation to protect the right to life (Article 6 ICCPR and Article 2 ECHR) and the right to freedom from inhuman or degrading treatment (Article 7 ICCPR and Article 3 ECHR). These rights enshrine some of the most basic values protected by international human rights law, from which no derogation is permitted.³³⁸ These rights must be protected in the context of all assemblies, whether or not an assembly itself falls within the protective scope of the right to freedom of peaceful assembly (see in particular, 'Duty to protect other rights, even in the context of non-peaceful assemblies' and 'Use of firearms' paragraphs 183 *et seq.*).

176. Duty to exercise restraint and take steps to de-escalate tensions. Any actions by law enforcement personnel to intervene and disperse an assembly, or use force should always be applied with restraint. Where an assembly occurs in violation of applicable laws, but is otherwise peaceful, the police response should be guided by non-intervention or the de-escalation of tensions through voluntary dialogue, persuasion and negotiation (see paragraph 32 above).³³⁹ The dispersal of an event may increase tensions or lead to violence and thus create more problems for law enforcement than its accommodation and facilitation³⁴⁰ (although the police may be allowed a margin of appreciation, dispersal should remain a measure of last resort). Furthermore, the costs of protecting freedom of assembly and other

³³⁸ See, for example, *Giuliani and Gaggio v. Italy*, Application No 23458/02, 24 March 2011, para. 174.

³³⁹ OSCE/ODIHR, Human Rights Handbook on Policing Assemblies, 2016, p. 30.

³⁴⁰ In the case of *Aldemir v. Turkey* (application nos. Applications nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02 paras. 45 and 46), the Court noted that the violent character of the demonstration was caused by swift police intervention.

fundamental rights are likely to be significantly lower than the costs of policing disorder borne of dispersal or suppression, even in the case of minor violations of the law. Post-event prosecution for violation of the law always remains an option. (see paragraphs 221 *et seq.*)

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

178. No prevention of participation across borders. States should also not put in place discriminatory measures (including through visa requirements) to impede participation in an assembly across borders, e.g., where the prospective participants are not allowed to enter based solely on how they look, what opinions they hold or due to the fact that they are not citizens of the state where the assembly is to be held.³⁴² The unilateral temporary suspension of the Schengen Agreement between EU member states, and the ensuing re-imposition of border controls in order to prevent citizens from neighbouring states from participating in an assembly, may impose disproportionate and blanket restrictions on the freedom of movement and the right to freedom of peaceful assembly of those travelling to participate in or observe an assembly.³⁴³

179. Dispersal of assemblies should be a last resort. Dispersal is not permissible unless there is an imminent threat of violence³⁴⁴ or where an assembly would otherwise be unlawful because it violates applicable criminal law and constitutes a serious violation of the rights of others, under circumstances in which prosecutions of demonstrators after the assembly is not a safer and more practicable alternative. Dispersal may, at some point, be deemed necessary in the interests of public order or health, depending on the size, location and circumstances of

³⁴¹ A violation of Article 11 ECHR was found in the ECtHR case of *Nisbet Özdemir v. Turkey*, Application No 23143/04, 19 January 2010, (only in French), where the applicant was arrested while on her way to an unauthorised demonstration to protest against the possible intervention of US forces in Iraq. See also the facts of *Gasparyan v. Armenia* (No.2), Application No 22571/05, 16 June 2009; and note 263 above, referring to *R (on the application by Laporte) (FC) v. Chief Constable of Gloucestershire* [2006] HL 55; and the report by the U.N. Special Representative of the Secretary-General on the Situation of Human Rights Defenders, *Human Rights Defenders: Note by the Secretary-General* U.N. Doc. A/61/312, 5 September 2006. See also *McCarthy v. Barrett*, 804 F. Supp. 2d 1126, 1135-1138 (W.D. Wash. 2011) (finding that the implementation of a ban preventing demonstrators from entering a protest zone violates freedom of speech and association).

³⁴² see *Djavit An v. Turkey* (2003), *op. cit.*, note 1, paras. 59-62.

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

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

an assembly.³⁴⁵ Dispersal should not, however, occur unless law enforcement officials have previously made efforts to resolve a tense situation by reasonable, less invasive measures, and to facilitate and maintain the peaceful nature of an assembly.

180. Clear communication of (possibility of) dispersal. If dispersal is deemed necessary, the assembly organizer and participants should be clearly and audibly informed. Participants should be given reasonable time to disperse voluntarily and only if they fail to do so may law enforcement officials intervene further. Dispersal should occur without the use of force, unless this becomes necessary due to the circumstances. Third parties (such as monitors, journalists, and photographers) may be asked to disperse where they are interfering with the ability of the police to maintain order, but should not be prevented from observing and recording the policing operation from a location that allows them to do so, while neither obstructing nor interfering with the dispersal.³⁴⁶

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

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

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

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

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

(e)(1) If and when the [police] determines that a[n] ... assembly, or part thereof, should be dispersed, the [police] shall issue at least one clearly audible and understandable order to disperse using an amplification system or device, and shall provide the participants a reasonable and adequate time to disperse and a clear and safe route for dispersal.

(2) Except where there is imminent danger of personal injury or significant damage to property, the MPD shall issue multiple dispersal orders and, if appropriate, shall issue the orders from multiple locations. The orders shall inform persons of the route or routes by which they may disperse and shall state that refusal to disperse will subject them to arrest.

(3) Whenever possible, MPD shall make an audio or video recording of orders to disperse.”

4. The Use of Force

181. Principles governing the use of force. Force should only be applied to the minimum extent necessary, following the principles of restraint, proportionality, minimization of damage and the preservation of life. International documents give detailed guidance regarding the use of force when dispersing unlawful non-violent and violent assemblies. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide that “[i]n the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.”³⁴⁷ Law enforcement officials should only employ force on an exceptional basis,

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

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

³⁴⁷ *Ibid*, Principle 13. On means and measures to fully implement the UN Basic Principles, see also, Amnesty International “Guidelines for implementation of the UN Basic Principles on the use of force and firearms by law

and only after announcing this by issuing a clear and unambiguous warning, and providing the individuals present with sufficient time to heed any related police orders and to exit the area.

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

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

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

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

enforcement officials", in particular chapter 7 on the use of force in public assemblies. *Graham v. Connor*, 490 U.S. 386 (1989) (objectively unreasonable use of force by police gives rise to a claim for damages by victim).

³⁴⁸ UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, *op. cit.*, para.1.

³⁴⁹ OSCE/ODIHR Human Rights Handbook on Policing Assemblies, 2016, pp. 77-81.

³⁵⁰ Joint report of the UN Special Rapporteurs (2016), A/HRC/31/66, *op. cit.*, note 52, para. 9.

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

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

- Pepper spray or other hand-held irritant chemicals should only be used where the subjects' behaviour represents a serious risk to public order or the physical integrity of police officers.³⁵³ If used, decontamination procedures must be followed immediately;
- The use of plastic/rubber bullets, baton rounds, attenuated energy projectiles (AEPs), or water cannons and other forceful methods of crowd control must be strictly regulated and recorded (how many rubber bullets/cans of tear gas/etc. discharged);³⁵⁴
- Tear gas canisters should never be fired directly at or against a person;³⁵⁵
- Electrical discharge weapons may only be used in situations where there is a real and immediate threat to life or risk of serious injury and where other less coercive methods have failed or are impracticable; such weapons should never be used for the sole purpose of securing compliance with an order;³⁵⁶
- Devices with indiscriminate effects such as tear gas or water cannons should be used for the purpose of dispersal only and should not be used where people (participants / bystanders; violent / peaceful persons) cannot leave the scene. They should only be used if violence has reached such a level that targeting individuals engaged in violence is not a possible or sufficient response.³⁵⁷
- Any use of force (including with batons, rubber bullets, etc.) should not be directed at peaceful demonstrators or by-standers, but only at persons engaged in violence.
- Police regulations should clearly exclude equipment or weaponry that is so inaccurate as to cause significant and indiscriminate injuries or that may cause disproportionate levels of harm.

Section 15(2), Act XXXIV on the Police, Hungary (1994):

"Of several possible and suitable options for Police measures or means of coercion, the one which is effective and causes the least restriction, injury or damage to the affected person shall be chosen."

Extract from: Principles for Promoting Police Integrity (United States Department of Justice)³⁵⁸

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

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

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

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

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

³⁵⁷ Cf. Amnesty International Netherlands Guidelines, Guideline no. 7h) and section 7.4.2, p. 157-8.

³⁵⁸ United States Department of Justice, *Principles for Promoting Police Integrity*, at paras.1 and 4.

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

187. **Legal provisions on the use of force.** The inappropriate, excessive or unlawful use of force by law enforcement officials before, during or after assemblies violates human rights and fundamental freedoms, undermines police-community relationships, and can cause widespread tension and unrest. The use of force should therefore be regulated by domestic law, which should in turn comply with international human rights law.³⁶¹ Domestic law should set out the circumstances that justify the use of force (including the need to provide adequate prior warnings,³⁶² law enforcement command structures and authorization procedures), as well as the level of force acceptable to deal with various threats. Adequate safeguards should be put in place at the state level to ensure that the use of force during public assemblies remains limited to exceptional cases. These should include “(a) implementation of mechanisms to prohibit, in an effective manner, the use of lethal force as recourse in public demonstrations; (b) implementation of an ammunition registration and control system; and (c) implementation of a communications records system to monitor operational orders, those responsible for them, and those carrying them out”.³⁶³

Greece, Code of Police Ethics (Presidential Decree 254/2004)

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

³⁵⁹ Principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, *op. cit.*, note 347, provides that: “Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

³⁶⁰ See Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, to the Human Rights Council, UN Doc. A/HRC/26/36, 1 April 2014 at para. 75. See further, Principle 14 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, *op. cit.*, note 347: “In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.” See also OSCE/ODIHR Human Rights Handbook on Policing Assemblies, p. 82

³⁶¹ Paragraph 13 of Resolution 690 on the *Declaration on the Police* adopted by the Parliamentary Assembly of the Council of Europe in 1979 states that, “police officers shall receive clear and precise instructions as to the manner and circumstances in which they may make use of arms.” Similarly, paragraph 1 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, *op. cit.*, note 347, provides that Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. The European Court of Human Rights has noted that “... [a]s the text of Article 2 itself shows, the use of lethal force by police officers may be justified in certain circumstances. Nonetheless, Article 2 does not grant a *carte blanche*. Unregulated and arbitrary action by State agents is incompatible with effective respect for human rights. This means that, as well as being authorised under national law, policing operations must be sufficiently regulated by it, within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force.” See *Giuliani and Gaggio v. Italy*, Application No 23458/02, 25 August 2009 (referred to the Grand Chamber on 1 March 2010), paras. 204-205.

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

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

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

B. Roles and rights of third parties at assemblies

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

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

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

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

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

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

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

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

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

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

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

vis assembly participants and the public at large during large gatherings, and the methods used to control or disperse protesters or to preserve public order.³⁷⁰

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

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

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

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

Article 17, Law on Public Assemblies of the Republic of Moldova (2008):

“Observance of Assemblies

Any person can make video or audio recording of the assembly.

Access of the press is ensured by the organizers of the assembly and by the public authorities.

Seizure of technical equipment, as well as of video and audio recordings of assemblies, is only possible in accordance with the law.”

195. **Types of media representatives.** Today, the production and distribution of news is widely dispersed, as technology has made it possible for a variety of people and organizations to perform journalistic acts and roles.³⁷⁷ The respect for and protection of journalists should therefore not be limited to those formally recognized as journalists, but should cover “community media workers and citizen journalists and others who may be using new media

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

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

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

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

³⁷⁴ *Ibid.*

³⁷⁵ OSCE Representative on Freedom of the Media, “Special Report: Handling of the media during political demonstrations, Observations and Recommendations”, Summary of Recommendations para. 4.

³⁷⁶ See *Pentikäinen v. Finland* (2015), *op. cit.*, note 346, para. 89.

³⁷⁷ Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors, adopted by the Committee of Ministers on 30 April 2014 at the 1198th meeting of the Ministers’ Deputies.

as a means of reaching their audiences.”³⁷⁸ Moreover, “the function of the press includes the creation of forums for public debate, [...] [and] the realisation of this function is not limited to the media or professional journalists.”³⁷⁹

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

197. **The need to respect and protect the rights of journalists and other media representatives.** During assemblies, law enforcement and other state representatives need to ensure the safety of media professionals to the maximum extent, regardless of whether they represent national or foreign media.³⁸⁰ This is a precondition for assuring these persons’ freedom of expression.³⁸¹ Law enforcement need to protect media professionals from violence or harm emanating from third persons, but are also obliged to exercise restraint and refrain from interfering with the work of journalists and other media representatives. The need to ensure safety should not be used by states as a pretext to unnecessarily limit the rights of media professionals, including the rights to freedom of movement and access to information.³⁸²

198. **Right to report at all forms of assembly.** The fact that an assembly did not follow existing notification requirements, or state constraints or conditions does not restrict the media’s right to access or cover it.³⁸³ The mere occurrence of a demonstration, regardless of whether it is compliant with domestic legislation or not, may be newsworthy. “The media is impartial to the circumstances under which an event takes place,” and thus it is the media’s duty to provide accurate coverage of all assemblies.³⁸⁴ To that end, the police must facilitate the exercise of press rights at all assemblies equally.

199. **Communication between the police and media.** The police should maintain open lines of communication with the media to reduce the risk of conflict.³⁸⁵ Moreover, post-event debriefing by the police should be standard practice and should also address media safety.³⁸⁶ The media must be free to “carry out their work independently, without undue interference and without fear of violence or persecution.”³⁸⁷

200. **Freedom from arbitrary arrest or detention.** The police must not subject media actors to arbitrary arrest or unlawful detention in connection with their coverage of an assembly.³⁸⁸ Moreover, law enforcement must respect not only a media actor’s physical integrity but also that of his or her equipment and material. As stated by the OSCE Special Representative on Freedom of Media: “Willful attempts to confiscate, damage or break journalists’ equipment in an attempt to silence reporting is a criminal offence, [...] and

³⁷⁸ “UN Plan of Action on the Safety of Journalists and the Issue of Impunity,” (UNESCO and OHCHR, Geneva, June 2017), available at: <<http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/safety-of-journalists/un-plan-of-action/>>

³⁷⁹ *Társaság a Szabadságjogokért v. Hungary*, Application No 37374/05, 14 April 2009, para. 27.

³⁸⁰ Guidelines of the Committee of Ministers, *op. cit.*, note 371, para. 2.

³⁸¹ Declaration of the Committee of Ministers, *op. cit.*, note 378.

³⁸² Guidelines of the Committee of Ministers *op. cit.*, note 371, para. 2.

³⁸³ *Ibid*, pp. 3-4.

³⁸⁴ *Ibid*, p. 4.

³⁸⁵ See OSCE Representative on Freedom of the Media, *Safety of Journalists Guidebook* (2nd edition), pp. 68-69.

³⁸⁶ See Chapter 6, “Policing Public Assemblies”, in paras. 31-33.

³⁸⁷ EU Human Rights Guidelines on Freedom of Expression Online and Offline, *op. cit.*, note 365, para. 28. See also, UN Resolution on the safety of journalists and the issue of impunity (A/RES/68/163), adopted by the UN General Assembly at its sixty-eighth session on 18 December 2013.

³⁸⁸ See OSCE Representative on Freedom of the Media, *Safety of Journalists Guidebook* (2nd edition), pp. 68-69

[c]onfiscation by the authorities of printed material, footage, sound clips or other reportage is an act of direct censorship.”³⁸⁹

201. **Proportionality of restrictions to media access.** The European Court of Human Rights has stated that there must always be a clear legal basis for restricting access of a journalist to a location where possibly unauthorised assemblies are occurring, rather than merely resorting to unsupported security assertions to limit access.³⁹⁰ Moreover, in the event that a media representative is not wearing special clothing or badges identifying him or her as a journalist, the representative should still be permitted to conduct his/her journalistic work without interference once his/her identity and profession are known to be police.³⁹¹ In that case, the respective journalist should likewise receive the protection usually afforded to all other members of the media.³⁹²

202. **Dispersal orders.** Journalists are not participants in, but rather observers of, an assembly. In principle, therefore, dispersal orders directed at assembly participants should not oblige journalists to leave the area (unless their individual safety is endangered).³⁹³ Media representatives should not be prevented from observing and recording the policing operation, unless (exceptionally) their continued physical presence will significantly hinder or obstruct law enforcement officers in doing their work. In such cases, media representatives should be given clear instructions, and sufficient time to disperse. Other opportunities should then be provided to them to enable them to continue to adequately cover the assembly. If media representatives refuse to comply with a lawful dispersal order, the police may respond in a proportionate manner.³⁹⁴

203. **Accountability of state bodies.** Police conduct must be subject to judicial control, and officers must be held accountable for any violations of norms governing the use of force and police conduct.³⁹⁵ In the case of violence against media representatives, as in all other instances of possible unlawful use of force, a thorough and independent investigation must be conducted and, if warranted, criminal charges should be sought—ultimately “to take all necessary steps to bring the perpetrators of crimes against journalists and other media actors to justice.”³⁹⁶ In addition, states should establish, if they have not already, professional sanctions for police officers who commit violent acts against media actors.

2. Facilitating independent monitoring of assemblies

204. **The right to monitor assemblies.** The right to be physically present in order to observe a public assembly is part of the general human right to receive and impart information (a corollary of the right to freedom of expression).³⁹⁷ Furthermore, media and other reports about an assembly can be an important element for the assembly organizers and participants to get their message across and therefore the possibility to monitor and report on assemblies

³⁸⁹ OSCE Representative on Freedom of the Media, *op. cit.*, Summary of Recommendations, para. 4.

³⁹⁰ See *Gsell v. Switzerland*, Application No 12675/05, 8 October 2009 (only in French), paras. 54-60.

³⁹¹ See *Najafli v. Azerbaijan* (2012) *op. cit.*, note 369, paras. 67-69.

³⁹² *Ibid.*

³⁹³ See *Pentikäinen v. Finland* (2015), *op. cit.*, note 346, paras. 95-115.

³⁹⁴ See in this context *Pentikäinen v. Finland* (2015), *op. cit.*, note 346, para. 91, stressing that journalists cannot claim immunity from criminal liability for the sole reason that the commission of an offence was committed during the performance of their journalistic functions.

³⁹⁵ See *Najafli v. Azerbaijan* (2012), *op. cit.*, note 369, para. 39.

³⁹⁶ Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors, adopted by the Committee of Ministers on 13 April 2016 at the 1253rd meeting of the Ministers' Deputies.

³⁹⁷ See, *inter alia*, *Castells v. Spain* (1992), *op. cit.*, note 366, para.43; *Pentikäinen v. Finland* (2015), *op. cit.*, note 346, para. 107; See also *Glik v. Cuncliffe*, 655 F.3d 78 (1st Cir. 2011) (noting that a private person's video recording of police conduct is part of the right to freedom of speech and press). Also see *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995) and *Martin v. City of Struthers*, 319 U.S. 141, 146-147 (1943) (where the court noted that the “Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved.”). See also Joint report of the Special Rapporteurs (2016), A/HRC/31/66, *op. cit.*, note 52, para 68.

forms an essential part of the right to freedom of peaceful assembly. For the purposes of these Guidelines, monitors are defined as non-participant third party individuals or groups whose primary aim is to observe and record the actions and activities taking place at public assemblies. The monitoring of public assemblies provides a vital source of independent information about the activities of both participants and law enforcement officials during such events and helps ensure the accountability of the latter. Next to observing assemblies for more general human rights abuses, monitors should ideally also pay attention to possible discriminatory behaviour on the side of law enforcement and see whether special protection was provided to groups and individuals considered to be particularly at risk.

205. **Ethical issues.** The purpose of monitoring assemblies should be to ensure that the right to freedom of peaceful assembly is guaranteed in practice, and to improve the protection and respect for human rights overall. In this context, monitors should respect the human rights of all parties, and should aim to 'do no harm'. Monitors should demonstrate respect for the law at all times and should seek to maintain their independence and objectivity throughout their activities. The OSCE/ODIHR has developed a handbook and training programme for monitoring freedom of assembly, which may provide good practice examples and useful guidance for potential monitors in this context.³⁹⁸ This handbook also contains a Code of Conduct for Freedom of Assembly Monitors, which highlights and seeks to clarify some key ethical issues for monitors. This further includes the principle of non-interference in the assembly process, the need to base conclusions on first-hand observations or clear or convincing facts or evidence, limited communication with the media, maintaining personal safety, clear identification as a monitor at all times, and maintaining high levels of personal discretion and professional behaviour. While not binding, the purpose of this Code of Conduct is to help monitoring organizations ensure that the validity and effectiveness of their final reports and statements are not compromised in any way.

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

207. **Duty to protect and facilitate independent monitoring of assemblies.** Individuals and groups should be permitted to operate freely in the context of monitoring assemblies, and the exercise of the right to freedom of peaceful assembly. State authorities should not prevent monitoring activities, irrespective of whether an assembly has complied with the requisite notification requirements, or whether it is peaceful or not.³⁹⁹

208. **Dispersal orders.** Monitors are observers of, rather than participants in, an assembly. In principle, therefore, dispersal orders directed at assembly participants should not oblige monitors to leave the area (unless their individual safety is endangered).⁴⁰⁰ Monitors should not be prevented from observing and recording a policing operation, unless (exceptionally) their continued physical presence will significantly hinder or obstruct law enforcement officers in doing their work. In such cases, monitors should be given clear instructions and sufficient time to disperse, and should be directed to a safe location from which they may continue to observe the event. If monitors refuse to comply with a lawful dispersal order, the police may respond in a proportionate manner.⁴⁰¹

209. **Categories of monitors.** The freedom to monitor public assemblies should be guaranteed to civil society actors who may be performing the role of 'social watchdogs' due to

³⁹⁸ See further, OSCE-ODIHR *Handbook on Monitoring Freedom of Peaceful Assembly* (ODIHR, Warsaw, 2011).

³⁹⁹ See also Joint report of the Special Rapporteurs (2016), UN Doc. A/HRC/31/66, *op. cit.*, note 52, para. 70.

⁴⁰⁰ See *Pentikäinen v. Finland* (2015) *op. cit.*, note 346, paras. 95-115

⁴⁰¹ *Op. cit.*

their contribution to informed public debate.⁴⁰² Independent monitoring may be carried out by individuals, local NGOs, human rights defenders,⁴⁰³ national human rights institutions, international human rights organizations, or intergovernmental organizations (such as the Council of Europe, the OSCE/ODIHR or the UN, particularly its Office of the High Commissioner for Human Rights and special thematic rapporteurs).⁴⁰⁴ Ideally, monitoring teams should be from diverse backgrounds and gender balanced.

210. **Focus of monitoring activities.** Monitoring public assemblies can be a difficult task, and the precise role of monitors will depend on why, and by whom, they have been deployed.⁴⁰⁵ Monitors may, for example, be tasked with focusing on particular aspects of an assembly such as:

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

⁴⁰² The European Court of Human Rights has repeatedly recognized civil society's important contribution to the discussion of public affairs. See, for example, *Steel and Morris v. United Kingdom*, Application No 68416/01, 15 February 2005, para. 89: "...in a democratic society even small and informal campaign groups, ..., must be able to carry on their activities effectively and ... there exists a strong public interest in enabling such groups and individuals outside the mainstream to contribute to the public debate by disseminating information and ideas on matters of general public interest..." See also *Társaság a Szabadságjogokért v. Hungary* (2009), *op. cit.*, note 380, para. 36, in which the Hungarian Civil Liberties Union was regarded as performing the role of a 'social watchdog'. Cf. also the ODIHR *Guidelines on the Protection of Human Rights Defenders*, (ODIHR: Warsaw, 2014), para. 62: "Human rights defenders and their organizations play a crucial watchdog role in any democracy and must, therefore, be permitted to freely observe public assemblies"; *Glik v. Cunneiffe*, 655 F.3d 78 (1st Cir. 2011) (stipulating that a private person's video recording of police conduct is part of the right to freedom of speech and press). Also see *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995).

⁴⁰³ Some examples of such monitoring reports include, "Breakdown of Trust – A Report on the Corrib Gas Dispute", Frontline, 2010, available at: <<http://www.frontlinedefenders.org/node/2527>>; and "Freedom of Assembly: Review of the Situation, Russia 2008", Demos Center, Youth Human Rights Movement, Movement of Civil Actions GROZA, and Interregional Human Rights Group, available at <<http://article20.org>>. See also paragraph 3 of "Ensuring Protection – European Union Guidelines on Human Rights Defenders", Council of the EU (Foreign Affairs), 2008: "Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence." See Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, U.N. Doc. A/HRC/4/37, 24 January 2007 at para. 29. See also "Human Rights Defenders in the OSCE Region: Challenges and Good Practices", OSCE, 2008.

⁴⁰⁴ See, for example, "Note by the Secretary-General on Human rights defenders: Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms", (A/62/225 Sixty-second session) at paras. 91-92 regarding the monitoring role performed by the Office of the High Commissioner for Human Rights (OHCHR) during the April 2006 protests in Nepal: "The OHCHR monitoring role has been acknowledged as fundamental in containing human rights violations and in documenting those that occurred for accountability purposes." See further, Office of the High Commissioner for Human Rights, "The April protests: democratic rights and the excessive use of force, Findings of OHCHR-Nepal's monitoring and investigations", Kathmandu, September 2006.

⁴⁰⁵ See, for example, Christina Loudes, *Handbook on Observations of Pride Marches* (ILGA-Europe, June 2006). See also, Jennifer Prestholdt, "Familiar Tools, Emerging Issues: Adapting traditional human rights monitoring to emerging issues", 2004, available in Russian, Polish, Ukrainian, Kyrgyz and English at <<http://www.newtactics.org/en/FamiliarToolsEmergingIssues>>.

211. **Right to digitally record and photograph at assemblies.** Monitors should not be prevented by law enforcement officials from using digital imagery recording equipment at an assembly, including the related policing operation. In general, they should have the right to record the assemblies themselves, as well as the actions of law enforcement officials at such events. This also includes the right to record an interaction in which participants are being recorded by state agents, sometimes referred to as the right to “record back”.⁴⁰⁶ Monitors should only be required to surrender digitally recorded images to law enforcement agencies if this is set out in a court order; in that case, the original owner should be entitled to retain an exact copy.⁴⁰⁷ In any event, confiscation, seizure and/or destruction of notes and digital recording equipment without due process should be prohibited and punished.⁴⁰⁸

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

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

213. **Increased risk to health associated with diversity of weapons.** Recent years have seen increasing diversity in crowd control weapons, which in some instances also include former military grade weaponry. Often, the use of such weapons is insufficiently regulated or known, which leads to widespread use or misuse of such weapons, resulting in injury, disability or death of participants in assemblies.⁴⁰⁹ Crowd control techniques and weapons routinely

⁴⁰⁶ Joint report of the UN Special Rapporteurs (2016) UN Doc. A/HRC/31/66, *op. cit.*, note 52, para. 71.

⁴⁰⁷ See *Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2011) (stipulating that a private person’s video recording of police conduct is part of the right to freedom of speech and press). Also see *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995). See more recently, *Ahmad v. City of St Louis* No. 4:17 CV 2455 CDP, 2017 WL 5478410 (E.D. Mo. Nov. 15, 2017). Here, a federal judge ruled that the St. Louis Metropolitan Police Department must immediately adopt protocols to protect the constitutional rights of those observing or recording protest activity (officers were shown to ‘have exercised their discretion in an arbitrary and retaliatory fashion to punish protesters for voicing criticism of police or recording police conduct.’) See also, *Fields v. City of Philadelphia* 862 F.3d 353 (3d Cir. 2017) and commentary on the case at *Harvard Law Review*, Vol. 131, No. 7, 2018, p.2049; Calvert Clay, “The Right to Record Images of Police in Public Places: Should Intent, Viewpoint, Or Journalistic Status Determine First Amendment Protection”, *UCLA Law Review Disc.* Vol. 64, 2016, pp.230-253; Ashley Billam, “The Public’s Evolution from News Reader to News Gatherer: An Analysis of the First Amendment Right to Video record Police”, *Kansas Law Review* Vol. 66, 2017, pp.149-180; Vincent Nguyen, “Watching Big Brother: A Citizen’s Right to Record Police”, *Fordham Intell. Prop. Media & Ent. L.J.* Vol. 28, No.3, 2018, p.637; Matt Ford, “A Major Victory for the Right to Record the Police”, *The Atlantic*, 7 July 2017, available at: <<https://www.theatlantic.com/politics/archive/2017/07/a-major-victory-for-the-right-to-record-police/533031/>>. For an example of police guidance, see: Cambridge Police Department (US), “Public Audio/Video Recordings of Police Actions”, (Policy & Procedures, No. 427, February 2014) Available at: <http://www.cambridgema.gov/~media/Files/policedepartment/Policies/publicaudiovideorecordingsofpoliceaction_s2014.pdf>.

⁴⁰⁷ Ibid.

⁴⁰⁸ Joint report of the UN Special Rapporteurs (2016) UN Doc. A/HRC/31/66, *op. cit.*, note 52, para. 71.

⁴⁰⁹ See the report “Lethal in Disguise: The Health Consequences of Crowd-Control Weapons”, (Physicians and Human Rights and International Network of Civil Liberties Organisations, 2016) available at: <<http://physiciansforhumanrights.org/library/reports/lethal-in-disguise.html>>.

used during assemblies such as plastic bullets, chemical irritants such as tear gas, water cannons, disorientation devices such as flashbang or stun grenades or acoustic weapons such as sonic cannons have evolved quite significantly, and pose much greater risks to people's health than they used to.⁴¹⁰

214. Duty to facilitate access to medical practitioners. It is, thus, all the more important that state authorities ensure that appropriate medical provision is available and accessible to all participants in public assemblies, as well as to non-participants who might be in the vicinity, and to police officers. Medical provision may be provided by health care professionals working professionally or voluntarily, or by volunteer organizations or street medics.⁴¹¹ Doctors and other medical personnel have an ethical duty to prevent illness and to care for the sick and wounded, regardless of political affiliation, official or unofficial status, race, or religion. The authorities must refrain from interfering with this professional duty and the general functions of health systems and medical provisions at all times, including during disorder and violence.⁴¹²

215. Medical treatment should be provided on the basis of need. Medical treatment should be based on priority of need and should be available to people who have been detained or arrested. In this context, the special needs of potentially vulnerable assembly participants such as children, pregnant women or persons with disabilities needs to be taken into account. Also, emergency vehicles need to be given speedy access to the injured and medical personnel, including people working on a volunteer basis, should be able to treat the injured without being targeted by the police or other assembly participants.⁴¹³

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

C. Arrest and Detention of Assembly Participants

217. The containment (or 'kettling') of assembly participants is only permissible in exceptional circumstances. During assemblies, individuals should only be confined to designated areas in exceptional circumstances, such as actual or imminent violence, and where no other measure short of dispersing the assembly would resolve the issue. Strategies requiring assembly participants to remain in one confined area under police control (known as 'kettling' or 'corralling') should generally be avoided, as they do not distinguish between participants and non-participants, or between peaceful and non-peaceful participants.

⁴¹⁰ Thus, kinetic impact projectiles (plastic bullets) can cause serious injury, disability and death, particularly if fired at close range; chemical irritants ("tear gas") cause irritation to eyes, dermal pain, respiratory distress, and psychological disorientation, and may cause serious injury and death; water cannons can cause injury to eyes and may cause hyperthermia or frostbite if used in cold weather; disorientation devices (flashbang or stun grenades) may fragment when exploding and carry risks of blast injuries; while acoustic weapons (sonic cannons) have the potential to cause significant harm to the ears, including hearing loss. See also *Ali Güneş v. Turkey*, (2012) *op. cit.*, note 353; *Izci v. Turkey* (2013), *op. cit.*, note 353.

⁴¹¹ See, for example <<https://atlantaresistancemedics.wordpress.com/the-library/history/>> for a history of volunteer protest medics.

⁴¹² See, "Contempt for Freedom: State Use of Tear Gas as a Weapon and Attacks on Medical Personnel in Turkey", (Physicians for Human Rights, 2013) <<http://physiciansforhumanrights.org/library/reports/contempt-for-freedom.html>>

⁴¹³ *Ibid.*

Allowing some individuals to cross a police line while at the same time preventing others from doing so is also discriminatory and may exacerbate tensions, while an absolute cordon permitting no egress from a particular area potentially violates individual rights to liberty and freedom of movement.⁴¹⁴ The practice of kettling may also be particularly detrimental to vulnerable individuals such as children, pregnant women, and persons with disabilities, especially if those disabilities affect mobility.⁴¹⁵ Where it is used, it should be for the shortest time possible, and should involve clear communication to participants about the reasons for kettling, and proper care for those in need of assistance, including access to toilets and drinking water. Kettling should not be used for the purposes of gathering intelligence on participants, and people contained in this manner should not be compelled to disclose personal information before being permitted to leave the contained area.⁴¹⁶

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

“Use of police lines

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

218. Mass arrests or detentions should be avoided. Law enforcement should in principle avoid mass arrests, which are frequently considered to be arbitrary under international human rights law⁴¹⁷ and contrary to the presumption of innocence.⁴¹⁸ Mass deprivation of liberty resulting from the simultaneous arrest of innocent persons and those believed to have violated the law should not be conducted simply because law enforcement agencies do not have sufficient resources to effect individual arrests of wrongdoers. Adequate resourcing forms part of the positive obligation that states are under to protect freedom of peaceful assembly (see paragraph 75 above), as well as the right not to be arbitrarily deprived of freedom.

219. Clear and accessible protocols for the stop, search and arrest or detention of assembly participants must be established. It is of paramount importance that states establish clear and prospective protocols for the lawful stop and search or arrest/detention of participants during assemblies. Such protocols should have a clear legal basis (see paragraphs 90 *et seq.* ‘Principle of legality’). Participants in assemblies should not be

⁴¹⁴ See further note 274 above. See also *Vodak v. City of Chicago*, 639 F.3d 738, 742-747 (7th Cir. 2011) (stating that unjustified corraling [kettling] and arresting participants in a public assembly to maintain public order violates right to freedom of speech and right against unreasonable searches and seizures). Also see *Stauber v. City of New York*, No. 03 CIV. 9162 (RWS), 2004 WL 1593870, at *1 (S.D.N.Y. July 16, 2004), as amended (July 19, 2004), amended, No. 03 CIV.9162 RWS, 2004 WL 1663600 (S.D.N.Y. July 27, 2004) (unreported settlement of suit against police precluding the further use of large pens which prevent demonstrators from entering and exiting at will). See Report of the UN Special Rapporteur (2014), UN Doc. A/HRC/26/29, *op. cit.*, note 138, para. 40, where the Rapporteur considered such tactics to have a “powerful chilling effect on the exercise of freedom of peaceful assembly.”

⁴¹⁵ *Ibid.*

⁴¹⁶ See Report of the UN Special Rapporteur (2013), A/HRC/23/39, *op. cit.*, note 56, paras. 53-54, and Addendum to the report. A/HRC/23/39/Add.1, *op. cit.*, note 327, para. 36-38.

⁴¹⁷ Amnesty International, Fair trial manual, 2nd edition, p. 34. See also HRC Concluding Observations: Canada, UN Doc. CCPR/C/CAN/CO/5 (2005) para. 20.

⁴¹⁸ HRC Concluding Observations, Burkina Faso, UN Doc. CCPR/C/BFA/CO/1 (2016), para 37: “concern that punishment of acts of vandalism committed during demonstrations on the public highway, is not in conformity with the Covenant, and notably with the principle of the presumption of innocence and individual criminal responsibility, as it allows for every member of a group to be held criminally responsible, regardless of whether the perpetrator of the offence has been identified or not.”

subjected to unreasonable searches and seizures.⁴¹⁹ State protocols should provide guidance as to when measures involving search and seizure are legal and appropriate, how they should be conducted, and what should happen to individuals following arrest. In principle, a police search may only be justified if it is prescribed by law (which should require such measures only, for example, where there is probable cause or reasonable suspicion of a crime), necessary and proportionate, and respects human dignity.⁴²⁰ The retention of fingerprints, cellular samples and DNA profiles of arrested persons suspected but not convicted of offences must be strictly limited by law.⁴²¹ Moreover, police searches of individuals should be undertaken by trained police officer of the same sex, which requires that the composition of police units should be gender balanced wherever possible.⁴²² Stop, search and arrest protocols should also clearly define and prohibit ethnic profiling. Identity checks should be considered justified only if necessary to protect the rights and freedoms of others – for example when there is reasonable suspicion that checked individuals may engage in violence or otherwise criminal behaviour, or on the basis of other limitation grounds contained in international instruments. Otherwise, such checks could have a chilling effect on participation in assemblies. Any alleged cases of abuse of power, or of ‘racial’ or other discrimination or ‘racially’ motivated misconduct by the police should be investigated effectively and the perpetrators adequately punished.⁴²³

220. Threshold for the arrest and detention of participants during an assembly. The arrest and/or detention of participants during an assembly (for committing administrative, criminal or other offences) should meet a high threshold of probable cause in each individual case and particularly in cases involving mere administrative offences.⁴²⁴ Where feasible, it may often be more appropriate to delay the arrest of assembly participants for illegal acts that took place prior to or during an assembly until after the event is over. Moreover, only individuals directly involved in illegal acts should be targeted for arrest,⁴²⁵ and they should be released as soon as the reasons for their detention are no longer applicable. Even short periods of detention will directly affect participants’ right to assemble, their liberty of movement (Article 12 ICCPR and Article 2 of Protocol 4, ECHR), and may amount to a deprivation of

⁴¹⁹ See e.g., *Terry v. Ohio*, 392 U.S. 1 (1968) (stating that even a brief on-street detention of a pedestrian for brief questioning triggers the constitutional guarantee against unreasonable searches and seizures).

⁴²⁰ The ECtHR generally analyses whether (i) search measures are necessary and proportional to the legitimate aim, (ii) there is an effective oversight mechanism in place, (iii) the authorization to conduct such searches is subject to effective judicial review and action for damages, (iv) there are temporal and geographical restrictions to the said powers of search, (v) the modalities for carrying out stop and search measures are clearly stated, and (vi) there are any caveats to the decision to stop and search individuals (for instance, the necessity to demonstrate reasonable suspicion) (see for example, *Gillan and Quinton v. United Kingdom* (2010), *op. cit.*, note 172, paras. 80-83 and 86. Regarding human dignity, see for example, *Selmouni v. France*, Application No 25803/94, 28 July 1999, para. 99: “[i]n any event, the Court reiterates that, in respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3.”

⁴²¹ See *S. and Marper v. United Kingdom* (2008), Applications nos. 30562/04 and 30566/04, 4 December 2008 in which the blanket and indiscriminate nature of powers concerning the retention of such data led the Court to find a violation of the right to private and family life.

⁴²² UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (“Bangkok Rules”), 22 July 2010, Rule 19.

⁴²³ See Council of Europe European Commission against Racism and Intolerance (ECRI), General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, 29 June 2007, paras. 1 and 9; see also OSCE, *Publication on “Police and Roma and Sinti: Good Practices in Building Trust and Understanding”* (2010), pp.10 and 58.

⁴²⁴ See for example, U.S. District Court, Southern District of New York, 30 September 2012, *Hacer Dinler et al. v. The City of New York*, No. 04 Civ 7921 (unpublished) pp. 4-7, regarding the unconstitutional nature of ‘group probable cause’. Also see *Ybarra v. Illinois*, 444 U.S. 85, 91 (1975) (individualized, not group, probable cause required to search or seize an individual).

⁴²⁵ “Climate conference mass arrests illegal, court upholds”, January 25, 2012 <<http://cphpost.dk/news/climate-conference-mass-arrests-illegal-court-upholds.628.html>>; “More demonstrators may receive police compensation”, February 3, 2012 <<http://cphpost.dk/news/more-demonstrators-may-receive-police-compensation.717.html>>; “Mass arrests after football game may have been illegal”, December 3, 2013 <<http://cphpost.dk/news/mass-arrests-after-football-game-may-have-been-illegal.7977.html>>.

liberty under Article 9 ICCPR and Article 5 ECHR (the right to liberty and security of person).⁴²⁶ Detention should thus be used only if there is a pressing need to prevent the commission of serious criminal offences and where an arrest is absolutely necessary (e.g., due to violent behaviour). States should ensure that protesters are not detained simply for expressing disagreement with police actions during an assembly.⁴²⁷ The UN Human Rights Committee has stated that “[a]rrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including [in cases involving] freedom of assembly.”⁴²⁸

D. Penalties imposed after an assembly

221. **No penalty without a (sufficiently clear) law.** After an assembly, the imposition of sanctions and penalties is only permissible if they were already prescribed by law at the time the assembly took place, as otherwise this may violate the principle that individuals may not be punished for acts that were not criminalized at the time when they were committed.⁴²⁹ The same applies to punishment based on a law that was insufficiently clear, which would violate the principle of legality and foreseeability of legislation; legislation that does not adhere to these principles would not be a justifiable basis by which to restrict important human rights such as freedom of peaceful assembly.⁴³⁰

222. **Any penalties imposed must be necessary and proportionate.** Unnecessary or disproportionately harsh sanctions for behaviour during assemblies could, if known in advance, inhibit the holding of such events and have a chilling effect that may prevent participants from attending. Such sanctions could thus constitute an indirect violation of the freedom of peaceful assembly.⁴³¹ Penalties for minor offences that do not threaten to cause or result in significant harm to public order or to the rights and freedoms of others should accordingly be low and the same as minor offences unrelated to assemblies. In cases involving minor administrative violations, it may be inappropriate to impose any sanction or penalty on assembly participants and organizers.⁴³²

⁴²⁶ See further, UN Human Rights Committee, General Comment No. 35 on Article 9 (Liberty and Security of Person), CCPR/C/GC/35, 16 December 2014; *Brega and Others v. Moldova*, Application No 61485, 24 January 2012, paras. 37-44.

⁴²⁷ US Justice Department (Civil Rights Division), “Investigation of the Ferguson Police Department”, March 4, 2015: “Even profane backtalk can be a form of dissent against perceived misconduct. In the words of the Supreme Court, “[t]he freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.” [citing *Hill*, 482 U.S. at 463]. Ideally, officers would not encounter verbal abuse. Communities would encourage mutual respect, and the police would likewise exhibit respect by treating people with dignity. But, particularly where officers engage in unconstitutional policing, they only exacerbate community opposition by quelling speech.” <https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf>. See also note 408 above concerning retaliatory action against individuals recording the police.

⁴²⁸ UN Human Rights Committee, General comment No. 35, *op. cit.*, note 427, para. 17.

⁴²⁹ Article 15, ICCPR: “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.”

⁴³⁰ See *Vyerentsov v. Ukraine* (2013), *op. cit.*, note 37; *Mrktchyan v. Armenia* (2007), *op. cit.*, note 175, paras. 40-43.

⁴³¹ *Gün and Others v. Turkey*, (2013), *op. cit.*, note 113, paras. 82-84; see also *Yilmaz Yildiz and others v. Turkey* (2014), *op. cit.*, note 265, paras. 34 and 48; see also UN Human Rights Committee, Views (on the merits): *Igor Bazarov v. Belarus* (1934/2010) 24 July 2014, CCPR/C/111/D/1934/2010, paras. 7.2-7.4.

⁴³² See *Kudrevičius and Others v. Lithuania* (2015), *op. cit.*, note 49, para. 149: “At the same time, the freedom to take part in a peaceful assembly is of such importance that a person cannot be subject to a sanction – even one at the lower end of the scale of disciplinary penalties – for participation in a demonstration which has not been prohibited, so long as that person does not himself commit any reprehensible act on such an occasion”, citing *Ezelin v. France* (1991), *op. cit.*, note 11, para. 53; The Court has held that this is true also when the demonstration results in damage or other disorder (see *Taranenko v. Russia*, (2014), *op. cit.*, note 60, para. 88.

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

224. Liability should be based on individual culpability and must be supported by evidence. Organizers and stewards are obliged to make reasonable efforts to comply with legal requirements and to ensure that their assemblies are peaceful. However, they should not be held liable for the failure to perform their responsibilities in cases where they are not individually responsible, e.g., where property damage or disorder, or violent acts are caused by assembly participants or onlookers acting independently.⁴³³ Liability will only exist where organizers or stewards have personally and intentionally incited, caused or participated in actual damage or disorder.⁴³⁴ In particular, an organizer should not be liable for the actions of individual participants, or for the conduct of stewards who do not act in accordance with the terms of their briefing,⁴³⁵ unless, for example, he/she explicitly incited them to commit such acts (in this case the organizer would be responsible for her/his own actions – incitement – not for the action of the participants). Individual liability will arise for any steward or participant if he or she intentionally, or with criminal negligence, commits an offence during an assembly or intentionally fails to follow the lawful directions of law enforcement officials. However, if an assembly degenerates into serious public disorder, it is the responsibility of the state, not the organizer, representative, or event stewards, to limit the damage caused. Assembly organizers and representatives should under no conditions be obliged to pay for damages caused by other participants in an assembly (unless they incited, or otherwise directly caused them).

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

226. Penalties for participation. Participation in a peaceful assembly, even if unauthorized, should never be treated as a serious offence that leads to severe penalties.⁴³⁶ Participants in a peaceful assembly should not be subject to criminal sanctions⁴³⁷ or deprivation of liberty merely for participating in an assembly.⁴³⁸ The European Court of Human

⁴³³ Joint report of the UN Special Rapporteur (2016), A/HRC/31/66, *op. cit.*, note 52, para. 26: “While organizers should make reasonable efforts to comply with the law and to encourage peaceful conduct of an assembly, organizers should not be held responsible for the unlawful behaviour of others. To do so would violate the principle of individual liability, weaken trust and cooperation between assembly organizers, participants and the authorities, and discourage potential assembly organizers from exercising their rights.”

⁴³⁴ See *Ezelin v. France* (1991), *op. cit.*, note 11, para. 53, where the Court found that even though the applicant had not disassociated himself from criminal acts committed during an assembly, he had not committed any of these acts himself; the imposition of the administrative fine against him was thus not necessary in a democratic society; and *Sergey Kuznetsov v. Russia*, (2008), *op. cit.*, note 80, paras. 43-48.

⁴³⁵ See, for example, Republic of Latvia Constitutional Court, *Judgment in the matter No. 2006-03-0106* (23 November 2006), at para.34.4 (English translation): “If too great a responsibility before the activity, during it or even after the activity is laid on the organiser of the activity ... then at other time these persons will abstain from using their rights, fearing the potential punishment and additional responsibilities.”; *NAACP v. Claiborne Hardware*, 458 U. S. 886, 922-932 (1982).

⁴³⁶ *Gün and Others v. Turkey* (2013), *op. cit.*, para. 83, note 113; *Akgöl and Göl v. Turkey*, Application Nos 28495/06 and 28516/06, 17 May 2011, para. 43.

⁴³⁷ See *Akgöl and Göl v. Turkey* (2011) *op. cit.*, note 437, para. 43.

⁴³⁸ See *Gün and Others v. Turkey* (2013), *op. cit.*, note 113, para. 83.

Rights has held that “[w]hile rules governing public assemblies, such as the system of prior notification, are essential for the smooth conduct of public demonstrations, since they allow the authorities to minimise the disruption to traffic and take other safety measures, their enforcement cannot become an end in itself”.⁴³⁹ Moreover, the European Court of Human Rights has considered it disproportionate to sanction participants in an assembly that has not been prohibited if they themselves did not commit any reprehensible act on such occasion,⁴⁴⁰ nor punish individuals for taking part in an unlawful assembly if they were not aware of the unlawful nature of the event.⁴⁴¹

227. Penalties for failure to comply with a dispersal order. Imposing punishment on organizers or participants for failure to comply with a dispersal order if the order was given with insufficient clarity would violate a persons’ right to freedom of assembly (and related rights). Likewise, punishment for failure to comply with a dispersal order without having been given a reasonable opportunity to do so will constitute an unnecessary interference with freedom of peaceful assembly.⁴⁴² Organizers of an assembly should never be held liable for failure of others to comply with a dispersal order.

228. Penalties for acts of ‘civil disobedience’. Civil disobedience, i.e., non-violent actions that, while in violation of the law, are undertaken for the purpose of amplifying or otherwise assisting in the communication of a message, may also constitute a form of assembly. If those who incite, or engage in, acts of civil disobedience are subject to legal punishment for their acts, this should always be proportionate.⁴⁴³ Sanctions shall take the nature of the unlawful conduct into account, but neither the offense nor the penalty must ever be increased due to the content of the expression or message that accompanies the unlawful conduct. Under no circumstances should a protestor engaged in civil disobedience be punished more severely than a person who committed the identical offense without expressive intent.

229. Actions under the direction of law enforcement officials. A participant should not be held liable for anything done under the direction of a law enforcement official. This means, for example, that if a location for a public assembly was initially approved, and later arbitrarily revoked, participants in the assembly will not be liable for violating the law.⁴⁴⁴

230. No penalties for viewpoints. A penalty should not be imposed or enhanced based on the content of the message communicated by an assembly or the viewpoints expressed by its participants, unless this message constitutes incitement to violence, hatred or discrimination.⁴⁴⁵ While expression should normally be protected even if it is hostile or insulting to other individuals, groups or particular sections of society, the advocacy of national, racial or

⁴³⁹ See *Primov and Others v. Russia* (2014), *op. cit.*, note 30, para. 118.

⁴⁴⁰ *Ezelin v. France* (1991), *op. cit.*, note 11., para. 53; *NAACP v. Claiborne Hardware*, 458 U. S. 886 (1982).

⁴⁴¹ An example of such a defence is contained in Sections 6(7) and 6(8), Public Processions (Northern Ireland) Act 1998. There may be a number of ways to provide for the ‘reasonable excuse’ defence in the law, but good practice suggests that words such as ‘without reasonable excuse’ should be clearly identified as a defence to the offence where it applies, and not merely as an element of the offence which would have to be proved or disproved by the prosecution. See Preliminary Comments on the Draft Law “On Amendments to Some Legislative Acts of the Republic of Kazakhstan on National Security Issues”, OSCE-ODIHR Opinion-Nr. GEN-KAZ/002/2005, 18 April 2005. See also *Cox v. Louisiana*, 379 U.S. 536, 553-558 (1965).

⁴⁴² *Frumkin v. Russia* (2016), *op. cit.*, note 292, para. 166.

⁴⁴³ See for example, UN High Commissioner for Human Rights, Report on Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, A/HRC/22/28, 21 January 2013, para. 51. See *Steel and Morris v. United Kingdom* (2005), *op. cit.*, note 403; and regarding specifically online civil disobedience, see for example, Council of Europe MSI-INT, “Report on Freedom of Assembly and Association on the Internet”, 10 December 2015, paras. 58-61.

⁴⁴⁴ See *Cox v. Louisiana*, 379 U.S. 536, 538-551 (1965).

⁴⁴⁵ See for example, *Rufi Osmani and Others v. the Former Yugoslav Republic of Macedonia* (2001), Application no. 50841/99, 11 October 2001. In *Gregory v. City of Chicago*, 394 U.S. 111 (1969), the court found that the mere presence of hostile onlookers was insufficient evidence to sustain a conviction of protestors for disorderly conduct. Similarly, in *Cantwell v. Connecticut*, 310 U.S. 296, (1940) provocative speech in front of hostile onlookers was not considered to be a valid basis for a disorderly conduct conviction.

religious hatred that constitutes unlawful incitement to discrimination or violence should be punishable by law.⁴⁴⁶ Moreover, specific instances of hate speech “may be so insulting to individuals or groups as not to enjoy the level of protection afforded by Article 10 of the European Convention on Human Rights to other forms of expression. This is the case where hate speech is aimed at the destruction of the rights and freedoms laid down in the Convention or at their limitation to a greater extent than provided therein.”⁴⁴⁷ Even then, the mere act of resorting to such speech by participants in an assembly does not justify the dispersal of the event. In such cases, law enforcement officials should take measures only against the particular individuals involved.⁴⁴⁸

⁴⁴⁶ Article 20(2) ICCPR. For the U.S. rule, see *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992) (on the other hand, a hate speech law only directed at race-based fighting words violates the right to freedom of speech because it is discriminatory and did not uniformly prohibit all fighting words).

⁴⁴⁷ Principle 4 of the Council of Europe Committee of Ministers Recommendation No. R(97)20. The appendix to Recommendation No. R(97)20 defines ‘hate speech’ as “covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.” See further, the UN Convention on the Elimination of All Forms of Racial Discrimination, and Resolution (68) 30 of the Committee of Ministers on Measures to be taken against incitement to racial, national and religious hatred. See, for example, the Austrian Constitutional Court judgment of March 16 2007 (B 1954/06) upholding a prohibition on an assembly because (in part) national-socialist slogans had been used at a previous assembly (in 2006) with the same organiser. The Austrian National-Socialist Prohibition Act 1947 prohibited all national-socialist activities. See also the Holocaust denial cases: UN Human Rights Committee, *Ernst Zündel v. Canada* (953/2000, admissibility) 27 July 2003, UN Doc. CCPR/C/78/D/953/2000, para. 5.5: “The restriction ... served the purpose of protecting the Jewish communities’ right to religious freedom, freedom of expression, and their right to live in a society free of discrimination, and also found support in article 20, paragraph 2, of the Covenant”; and *Robert Faurisson v. France* (No.550/1993, admissibility), 8 November 1996, UN Doc. CCPR/C/58/D/550/1993, para. 9.6: “Since the statements ... read in their full context, were of a nature as to raise or strengthen anti-Semitic feelings, the restriction served the respect of the Jewish community to live free from fear of an atmosphere of anti-Semitism.” For the U.S. rule, see *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992) (noting that a hate speech law only directed at race-based fighting words violates the right to freedom of speech because it is discriminatory and did not uniformly prohibit all fighting words).

⁴⁴⁸ In the case of *Incal v. Turkey*, Application No 22678/93, 9 June 1998, for example, the applicant’s conviction for helping to prepare a political leaflet which urged the population of Kurdish origins to band together and ‘set up Neighbourhood Committees based on the people’s own strength’ was held by the Court to have violated the applicant’s freedom of expression under Article 10. Read in context, the leaflet could not be taken as an incitement to the use of violence, hostility or hatred between citizens. In this context, see also the case of *Virginia v. Black*, 538 U.S. 343, 363-368 (2003) (regarding a case where the expressive burning of a Ku Klux Klan cross not actually proven be intentional intimidation of identifiable persons constituted protected speech and could thus not be punished on the grounds it was legally presumed to be an intimidating act.) In the case of *Gregory v. City of Chicago*, 394 U.S. 111 (1969), the mere presence of hostile onlookers was insufficient evidence to sustain a conviction of protestors for disorderly conduct; In *Cantwell v. Connecticut*, 310 U.S. 296, (1940), provocative speech in front of hostile onlookers was not considered to be a valid basis for a disorderly conduct conviction. In the case of *Cisse v. France* (2002), *op. cit.*, note 55, para. 50, the ECtHR stated that “[t]he Court does not share the Government’s view that the fact that the applicant was an illegal immigrant sufficed to justify a breach of her right to freedom of assembly, as ... [inter alia] ... peaceful protest against legislation which has been contravened does not constitute a legitimate aim for a restriction on liberty within the meaning of Article 11(2).” See also *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), *op. cit.*, note 16, paras. 102-3, and *United Macedonian Organisation Ilinden and Others v. Bulgaria*, Application No 59491/00, 19 January 2006, para. 76. In the case of the *Christian Democratic People’s Party v. Moldova*, Application No 28793/02, 14 February 2006, the Court was ‘...not persuaded that the singing of a fairly mild student song could reasonably be interpreted as a call to public violence.’ In the following ECtHR case of the *Christian Democratic People’s Party v. Moldova* (No.2) (2010), *op. cit.*, note 126, para. 27, the Court rejected the Moldovan government’s assertion that that the slogans, “Down with Voronin’s totalitarian regime, “Down with Putin’s occupation regime”, even when accompanied by the burning of a picture of the President of the Russian Federation and a Russian flag, amounted to calls to violently overthrow the constitutional regime, to hatred towards the Russian people, or to an instigation to a war of aggression against Russia. The Court noted that these slogans should rather “be understood as an expression of dissatisfaction and protest” – “a form of expressing an opinion in respect of an issue of major public interest, namely the presence of Russian troops on the territory of Moldova.” See also *Fáber v. Hungary* (2012), *op. cit.*, note 31, para. 56 where the Court stated that: “even assuming that some demonstrators may have considered the flag as offensive, shocking, or even ‘fascist’, for the Court, its mere display was not capable of disturbing public order or hampering the exercise of the demonstrators’ right to assemble as it was neither intimidating, nor capable of inciting to violence by instilling a deep-seated and irrational hatred against identifiable persons (see *Sürek v. Turkey* (No. 1), Application No 26682/95, 8 July 1999, para. 62. The Court stresses that ill feelings or even outrage, in the absence of intimidation, cannot represent a pressing social need for the purposes of Article 10 para. 2, especially in view of the fact that the flag in question has never been outlawed.” See also *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

231. **Fair-trial standards.** After assemblies, organizers or participants may be taken to court to establish potential wrongdoing. All proceedings that may affect the civil rights and obligations of these individuals, or relate to criminal charges levelled against them, should provide basic fair-trial rights as set out in relevant international instruments.⁴⁴⁹ These include access to a fair and public hearing within a reasonable time before an independent and impartial tribunal established by law. Similar considerations apply in the case of certain administrative procedures that are comparable to criminal procedures by nature and based on the severity of potential sanctions.⁴⁵⁰ In the case of criminal charges, additional fair-trial guarantees apply, including the right to be informed promptly and in a language that one understands of the charges, to be given adequate time to prepare one's defence, the right to defence council, equality of arms with respect to the examination of evidence, and, where needed, free interpretation.⁴⁵¹

E. Accountability of state authorities and/or state officials

232. **Types of liability.** Public authorities must comply with their legal obligations and should be accountable for any failure – procedural or substantive – to do so, regardless of whether this omission takes place before, during or after an assembly. Individual liability should be gauged according to the relevant principles of administrative or criminal law. When it comes to the use of excessive force, depending on the level of seriousness of the offence, various forms of liability may be appropriate. This may include civil liability to compensate victims for injuries and, in more serious cases, disciplinary liability of the law enforcement officer(s) involved. Excessive use of force may also constitute ill-treatment within the meaning of Article 3 ECHR.⁴⁵² Where certain acts amount to torture, inhuman or degrading treatment or punishment, criminal liability, in combination with adequate compensation for injuries and suffering, is the only appropriate response. Civil, disciplinary and criminal liability may also be appropriate, depending on the circumstances and gravity of the individual case. These types of liability may also arise where injuries result from a lack of police response, for example where insufficient protection is given to assembly participants against violent third parties.

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

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

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

“[G]overnments shall ensure that the arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.”⁴⁵³

1. Accountability of law enforcement authorities and personnel

233. **Monitoring and evaluation of state conduct during and after an assembly.** The compliance of law enforcement officials with international human rights standards should be closely monitored and evaluated after the event.⁴⁵⁴ It is good practice for an independent

⁴⁴⁹ See Article 14 of the ICCPR and Article 6 ECHR.

⁴⁵⁰ See, *mutatis mutandis*, *Engel and Others v. the Netherlands*, Application Nos 5100/71, 5101/71, 5102/71, 5354/72, and 5370/72, 8 June 1976, para. 82.

⁴⁵¹ For further detail, see Article 14 para. 3 of the ICCPR and Article 6 para.3 ECHR.

⁴⁵² *Huseynov v. Azerbaijan* (2015), *op. cit.*, note 34, paras. 51-76.

⁴⁵³ See also *Simsek and Others v. Turkey* (2005), *op. cit.*, note 351, para. 91.

⁴⁵⁴ In a number of countries (including Hungary, Sweden, Moldova and the United Kingdom) high profile inquiries have been instigated in the aftermath of misuse of police powers during public demonstrations. Their recommendations have emphasized, amongst other things, the importance of narrowly framed powers and rigorous

oversight body to review and report on any large scale or contentious policing operation relating to public assemblies.⁴⁵⁵ The respective complaints mechanism should be adequate, prompt, subject to public scrutiny (open and transparent), and should ensure the victim's/complainant's involvement in the process.⁴⁵⁶ In Northern Ireland, for example, human rights experts from the police oversight body (the Policing Board) routinely monitor all elements of police operations related to controversial assemblies.⁴⁵⁷ It is also good practice for such a body to publish statistics on the number of complaints received, their nature and consequences to ensure transparency.⁴⁵⁸ In certain cases, there may also be a monitoring role for the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment⁴⁵⁹ or for national human rights institutions. The expectation that criminal or disciplinary proceedings will be brought against a police officer against whom there is evidence of misconduct is an important protection against impunity and essential for public confidence in the police complaints system. The prosecution authority, police and independent police complaints body should give reasons for their decisions relating to criminal and disciplinary proceedings for which they are responsible.

234. Duty to conduct an effective investigation into abuse of power, including violent incidents and to provide effective remedies to victims. Any abuse of state powers and violations of the law by state officials, including instances of unlawful dispersal or early termination of assemblies, should lead to prompt and independent investigations. This applies equally to acts of violence, threats of violence, or incitement to hatred against participants in an assembly by other participants, counter-demonstrators, law enforcement officials or third persons. Those responsible should be sanctioned in an appropriate manner and victims should be informed about possible remedies.⁴⁶⁰ When investigating such cases, the

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

⁴⁵⁵ Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police, CommDH(2009)4, 12 March 2009: "An independent and effective police complaints system is of fundamental importance for the operation of a democratic and accountable police service. Independent and effective determination of complaints enhances public trust and confidence in the police and ensures that there is no impunity for misconduct or ill-treatment. A complaints system must be capable of dealing appropriately and proportionately with a broad range of allegations against the police in accordance with the seriousness of the complainant's grievance and the implications for the officer complained against. A police complaints system should be understandable, open and accessible, and have positive regard to and understanding of issues of gender, "race", ethnicity, religion, belief, sexual orientation, gender identity, disability and age. It should be efficient and properly resourced, and contribute to the development of a caring culture in the delivery of policing services.

⁴⁵⁶ See Council of Europe Commissioner for Human Rights, Opinion concerning Independent and Effective Determination of Complaints against the Police, CommDH(2009)4, 12 March 2009; and Council of Europe, Recommendation Rec(2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics, para. 61.

⁴⁵⁷ For further details, see <http://www.nipolicingboard.org.uk/index/publications/human-rights-publications/content-previous_hr_publications.htm>.

⁴⁵⁸ UNODC, *Handbook on Police Accountability, Oversight and Integrity* (2011), page 36, available at <http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/PoliceAccountability_Oversight_and_Integrity_10-57991_Ebook.pdf>.

⁴⁵⁹ See, for example, the CPT report on its visit to Italy in 2004, published on 17 April 2006 regarding the events that took place in Naples (on 17 March 2001) and in Genoa (from 20 to 22 July 2001) and actions taken in response to the allegations of ill-treatment made against the law-enforcement agencies. The CPT stated that it wished "to receive detailed information on the measures taken by the Italian authorities to prevent the recurrence of similar episodes in the future (relating, for instance, to the management of large-scale public-order operations, training of supervisory and operational personnel and monitoring and inspection systems)."

⁴⁶⁰ See for example, UN Human Rights Council, Resolution on the Promotion and Protection of Human Rights in the Context of Peaceful Protests, A/HRC/RES/22/10, April 2013, para. 156; and UN High Commissioner for Human

authorities should, as the European Court of Human Rights has held, "do whatever is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of violence induced by, for instance, racial or religious intolerance, or violence motivated by gender-based discrimination".⁴⁶¹ Where there are allegations of excessive or otherwise unlawful use of force by law enforcement officers, the authorities should conduct effective investigations⁴⁶² into such actions in such a way as to ensure the accountability of the relevant police officers.⁴⁶³

235. Use of standards and need for investigations. When judging whether a state action or reaction was reasonable and proportionate, it is necessary to conduct an objective and real-time evaluation of the totality of circumstances.⁴⁶⁴ The European Court of Human Rights has, in recent case law, ordered states to develop clear sets of rules concerning the implementation of directives relating to the use of force, including tear gas, as well as a system guaranteeing adequate training of law enforcement personnel and sufficient control and supervision of such personnel during assemblies. Moreover, the European Court of Human Rights has required states to conduct an effective *ex post facto* review of the necessity, proportionality and reasonableness of any use of force, especially against people who do not put up violent resistance.⁴⁶⁵

236. Accountability for violations of the right to life. The right to life (Article 6 ICCPR, Article 2 ECHR) covers not only cases of intentional killing, but also cases where the use of force unintentionally results in the deprivation of life. The protection of this right entails "a stricter and more compelling test of necessity".⁴⁶⁶ This means that the Government will need to demonstrate with convincing arguments that the use of force was necessary in the given circumstances and not excessive, meaning that other, less invasive measures would not have achieved the intended effect.⁴⁶⁷ As the European Court of Human Rights has held, "there can

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

⁴⁶¹ *Identoba and Others v. Georgia* (2015), *op. cit.*, note 114, para. 67.

⁴⁶² The European Court of Human Rights has established five principles for the effective investigation of complaints against the police that engage Article 2 (right to life) or 3 (right to be free from torture or ill-treatment) of the European Convention on Human Rights: 1) Independence: there should not be institutional or hierarchical connections between the investigators and the officer complained against and there should be practical independence; 2) Adequacy: the investigation should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible; 3) Promptness: the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law; 4) Public scrutiny: procedures and decision-making should be open and transparent in order to ensure accountability; and f) Victim involvement: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests. These five principles must be adhered to for the investigation of a death or serious injury in police custody or as a consequence of police practice.

⁴⁶³ *İzci v. Turkey* (2013), *op. cit.*, note 353, para. 98.

⁴⁶⁴ In this regard, the ECtHR has held that 'the use of force by agents of the State in pursuit of one of the aims delineated in paragraph 2 of Article 2 of the Convention may be justified ... where it is *based on an honest belief which is perceived, for good reasons, to be valid at the time but which subsequently turns out to be mistaken*'. To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and those of others.' See, for example, *Giuliani and Gaggio v. Italy* (2011) *op. cit.*, note 338, para. 178, and the cases cited there. The US standard applicable to official use of excessive force is that the use of force must be objectively reasonable: see *Graham v. Connor*, 490 U.S. 386 (1989).

⁴⁶⁵ *İzci v. Turkey* (2013), *op. cit.*, note 353, paras. 98-99.

⁴⁶⁶ See *Washington v. Glucksberg*, 521 U.S. 702, 710-17 (1997) (stressing that the government has a compelling interest in preserving human life).

⁴⁶⁷ See for example, *Güleç v. Turkey* (1998) *op. cit.*, note 131, where the applicant's son was killed by security forces who fired on unarmed demonstrators (during a spontaneous, unauthorised demonstration) to make them

be no such necessity where it is known that the person to be arrested poses no threat to life or limb and is not suspected of having committed a violent offence, even if a failure to use lethal force may result in the opportunity to arrest the fugitive being lost.”⁴⁶⁸ Any finding of civil or criminal liability for breach of the right to life on the side of the state should lead to compensation of the affected individual's next of kin, independent of the need to identify an individual criminally responsible for the respective act.

237. Liability of law enforcement officials. Law enforcement officials are liable for any failure to fulfil their positive obligations to respect, facilitate and protect the right to freedom of peaceful assembly. Moreover, liability should also extend where “the acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage that State’s responsibility”.⁴⁶⁹ Where a complaint is received regarding the conduct of law enforcement officials or where a person has been seriously injured or deprived of his or her life as a result of the actions of law enforcement officers, an “independent and effective official investigation” must be conducted.⁴⁷⁰ The core purpose of any investigation should be to protect the right to life and physical integrity, and in those cases involving state agents or entities, to ensure their accountability for deaths or physical injuries occurring under their responsibility. The particular form of investigation required to achieve those purposes may vary according to the circumstances.⁴⁷¹ If the use of force is not authorized by law, or if the resort to force is in violation of domestic legislation or international human rights law, law enforcement officers should face civil and/or criminal liability as well as disciplinary action.⁴⁷² The relevant law enforcement personnel should also be held liable for failing to intervene where this may have prevented other officers, or third parties from using excessive force. The individuals responsible for the investigation and those carrying out the inquiries should be independent from those involved in the events, which presupposes not only a lack of hierarchical or institutional connection but also a practical independence.⁴⁷³

V. Annex

A. International and Regional Instruments and Treaties

Within the OSCE space, the standards concerning freedom of peaceful assembly mainly derive from two legal instruments: the International Covenant on Civil and Political Rights (ICCPR)⁴⁷⁴ and the European Convention for the Protection of Human Rights and

disperse. The Court found a violation of Article 2 also because there was no thorough investigation into the circumstances, which needs to take place even in circumstances involving illegal assemblies, violent armed clashes or a high number of fatalities.’ (para.81). See also *Washington v. Glucksberg*, 521 U.S. 702, 710-17 (1997) (stressing that the government has a compelling interest in preserving human life).

⁴⁶⁸ *Nachova and Others v. Bulgaria* (2005), *op. cit.*, note 185, para. 95

⁴⁶⁹ *Solomou and Others v. Turkey* (2008), *op. cit.*, note 146, para.46.

⁴⁷⁰ See *McCann and others v. United Kingdom*, Application No18984/91, 27 September 1995, para.161; *Shanaghan v. United Kingdom*, Application No 37715/97, 4 May 2001, para.88. For cases involving violence against women, see also Report of the UN Special Rapporteur (2010), A/HRC/16/44, *op. cit.*, note 461., para. 109.

⁴⁷¹ *Kelly and others v. United Kingdom* (Application No 30054/96 4 May 2001, para.94; *McShane v. United Kingdom*, Application No [43290/98](#), 28 May 2002, para. 94.

⁴⁷² *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

⁴⁷³ In the case of *Saya and Others v. Turkey*, Application No 4327/02, 7 October 2008, a legal Health Workers’ Trade Union march (for which authorization had been obtained) was stopped by police on May Day and forcefully dispersed. The applicants were taken into custody and released the next day. The ECtHR found that there had been a failure to carry out an effective and independent investigation into their allegations of ill-treatment. In particular, it found that the ‘Administrative Councils’ investigating the cases were not independent since they were chaired by governors and composed of local representatives of the executive and an executive officer linked to the very security forces under investigation. Cf. *Barbu Anghelescu v. Romania*, Application No 46430/99, 5 October 2004 (only in French), *Muradova v. Azerbaijan*, Application No 22684/05, 2 April 2009, para. 99.

⁴⁷⁴ International Covenant on Civil and Political Rights (ICCPR) (General Assembly resolution 2200A (XXI) of 16 December 1966); cf. also its first Optional Protocol, as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR), (UN General Assembly, 16 December 1966, United Nations Treaty Series, vol. 993, (hereafter: ICESCR). The UDHR is a declaration rather than a binding treaty; the ICCPR and ICESCR were adopted in 1966 to give effect to the principles enunciated in the UDHR. The three documents, the UDHR, ICCPR and ICESCR together constitute the International Bill of Human Rights. The ICCPR sets out universally accepted

Fundamental Freedoms (ECHR) and their optional protocols.⁴⁷⁵ Key OSCE commitments, which are politically binding, are also of relevance in this context.⁴⁷⁶

The right to freedom of peaceful assembly was also among the rights proclaimed in the 1948 Universal Declaration of Human Rights.⁴⁷⁷ In addition, the American Convention on Human Rights is of particular relevance to member countries of the Organization of American States,⁴⁷⁸ as is the African Charter on Human and Peoples' Rights to member States of the African Union.⁴⁷⁹ Other relevant treaties include the UN Convention on the Rights of the Child,⁴⁸⁰ the Charter of Fundamental Rights of the European Union,⁴⁸¹ and the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States (the CIS Convention).⁴⁸²

The significance of these treaties and instruments derives, in part, from the jurisprudence developed by their respective monitoring bodies – the UN Human Rights Committee,⁴⁸³ the European Court of Human Rights, the Inter-American Commission on Human Rights,⁴⁸⁴ and the African Court on Human and Peoples' Rights.⁴⁸⁵ This body of case-law is integral to the

minimum standards in the area of civil and political rights. The obligations undertaken by States ratifying or acceding to the Covenant are meant to be discharged as soon as a State becomes party to the ICCPR (Articles 2 par 1 and 2, ICCPR).

⁴⁷⁵ The Council of Europe's European Convention on Human Rights, Rome, 4 November 1950, ETS No. 5, entry into force 3 September 1953, is the most comprehensive and authoritative human rights treaty for the European region. The treaty has been open for signature since 1950. All member States of the Council of Europe are required to ratify the Convention within one year of the State's accession to the Statute of the Council of Europe. The ECHR sets forth a number of fundamental rights and freedoms, and parties to it are obliged to secure these rights and freedoms to everyone within their jurisdiction (Article 1 ECHR).

⁴⁷⁶ Copenhagen 1990, para. 9: "The participating States reaffirm that... (para. 9.2) - everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards"; Paris 1990 (A New Era of Democracy, Peace and Unity): "We affirm that, without discrimination, every individual has the right to (...) freedom of [...] peaceful assembly (...)".

⁴⁷⁷ Universal Declaration of Human Rights (UN General Assembly 10 December 1948, 217 A (III), (hereafter: UDHR), Article 20.

⁴⁷⁸ As provided by Article 44 of the American Convention, "[a]ny person or group of persons, or any nongovernmental entity legally recognized in one or more member States of the Organization [of American States], may lodge petitions with the [Inter-American] Commission [on Human Rights] containing denunciations or complaints of violation of this Convention by a State Party." See further Annex A.

⁴⁷⁹ Organization of the African Unity (OAU), African Charter on Human and Peoples' Rights (also known as the *Banjul Charter*), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), hereafter the African Charter, Article 11, which provides that "[e]very individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others".

⁴⁸⁰ United Nations, Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990.

⁴⁸¹ European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02.

⁴⁸² Commonwealth of Independent States, *Convention on Human Rights and Fundamental Freedoms*, Minsk, 26 May 1995, 3 IHRR 1, 212 (1996). The CIS Convention was opened for signature on 26 May 1995 and came into force on 11 August 1998. It has been signed by seven of the twelve CIS member States (Armenia, Belarus, Georgia, Kyrgyzstan, Moldova, Russia and Tajikistan) and ratified by Belarus, the Kyrgyz Republic, the Russian Federation and Tajikistan. See further, for example, the ECtHR's Decision on the Competence of the Court to Give an Advisory Opinion concerning 'the coexistence of the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States and the European Convention on Human Rights' (2 June 2004).

⁴⁸³ See Manfred Nowak, *op. cit.*, note 44, pp. 481-494; Melissa Castan and Sarah Joseph, *The International Covenant on Civil and Political Rights* (third edition) (New York: OUP: 2013), part III, section 19.

⁴⁸⁴ See, for example, Organisation of American States, Annual Report of the Office of the Special Rapporteur for Freedom of Expression (2005), Chapter 5, "Public Demonstrations as an exercise of freedom of expression and freedom of assembly"; Human Rights Defenders: Note by the Secretary-General, U.N. Doc. A/62/225, 13 August 2007, Section D at pp.8-14: "Monitoring the right to protest at the regional level: jurisprudence and positions of regional mechanisms."

⁴⁸⁵ See, African Court on Human and Peoples' Rights <<http://en.african-court.org/>>; African Commission on Human and Peoples' Rights <<http://www.achpr.org/>>. See also, *Guidelines on Freedom of Association and Assembly in Africa* (2017), available at: <http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf>.

interpretation of these standards, and should be fully understood and applied by those charged with implementing domestic laws on freedom of peaceful assembly. It is recommended, therefore, that governments ensure that accurate translations of key cases decided by international decision-making bodies are made widely available.⁴⁸⁶ Furthermore, recognizing the doctrine of subsidiarity, regional courts should remain open to a dialogic consideration of the leading judgments of national courts in OSCE and Council of Europe states.

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

Article 20(1), Universal Declaration of Human Rights

Everyone has the right to freedom of peaceful assembly and association.⁴⁸⁷

Article 21, International Covenant on Civil and Political Rights

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Article 11, European Convention on Human Rights

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 15, UN Convention on the Rights of the Child

States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 5, International Convention on the Elimination of All Forms of Racial Discrimination

In compliance with the fundamental obligations laid down in article 2 of this

Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(...)

(d) Other civil rights, in particular:

(...)

(viii) The right to freedom of opinion and expression;

(ix) The right to freedom of peaceful assembly and association;

Article 15, American Convention on Human Rights

The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary

⁴⁸⁶ Unofficial translations of judgments of the European Court of Human Rights are available on its website; for more information, see <http://www.echr.coe.int/Pages/home.aspx?p=caselaw/HUDOC/translations>.

⁴⁸⁷ See Article 29, UDHR for a general limitations clause.

in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedoms of others.

Article 12, Charter of Fundamental Rights of the European Union

Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 11, African Charter on Human and Peoples' Rights

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

Article 12, Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States (the CIS Convention)

Everyone shall have the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, public order, public health or morals or for the protection of the rights and freedoms of others. This Article shall not preclude the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or by members of the law-enforcement or administrative organs of the State.

Article 7, Council of Europe Framework Convention for the Protection of National Minorities⁴⁸⁸

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

OSCE Copenhagen Document 1990

[The participating States reaffirm that]:

[E]veryone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards.

⁴⁸⁸ It is noted here that in accordance with its Article 27, the Framework Convention may also be acceded to by other States not members of the Council of Europe at the invitation of the Council of Europe Committee of Ministers.

Certificate Identifying Annexure

No. 1612 of 2025

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law and Human Rights

TARNEEN ONUS BROWNE and BENJAMIN ZABLE

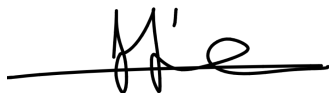
Applicants

ASSISTANT COMMISSIONER OF POLICE, NORTH WEST METRO REGION and others

Respondents

This is the annexure marked "SS-25" now produced and shown to Sarah Schwartz at the time of affirming her affidavit on 7 January 2026.

Before me:



Sophie L'Estrange, Australian Legal Practitioner

Annexure "SS-25"

Filed on behalf of (name & role of party)	Tarneen Onus Browne, First Applicant and Benjamin Zable, Second Applicant		
Prepared by (name of person/lawyer)	Sarah Schwartz		
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Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests

**Report of the Special Rapporteur on the rights to freedom of peaceful
assembly and of association, Clément Nyaletsossi Voule***

Summary

The Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests is part of a technical and practical toolkit developed by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, in collaboration with the United Nations Office on Drugs and Crime and the Office of the United Nations High Commissioner for Human Rights, pursuant to Human Rights Council resolution 50/21. The aim of the Model Protocol and the toolkit, which are based on international human rights laws, standards and good practices, is to enhance the capacity and practices of law enforcement agencies to fulfil their duty to promote and protect human rights in the context of peaceful protests.

* Agreement was reached to publish the present document after the standard publication date owing to circumstances beyond the submitter's control.



I. Introduction

1. The Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests is part of a technical and practical toolkit developed by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, in collaboration with the United Nations Office on Drugs and Crime (UNODC) and the Office of the United Nations High Commissioner for Human Rights (OHCHR),¹ pursuant to Human Rights Council resolution 50/21.
2. The toolkit also includes three supplementary components. Component 1 comprises detailed checklists complementing the main parts of the present Model Protocol. Component 2 contains information on the use of digital technologies by law enforcement in the context of peaceful protests. Component 3 is an outline of a handbook on facilitating peaceful protests for law enforcement officials.² These three components of the toolkit will be made available on the web page of the Special Rapporteur.³
3. The tools are based on existing international human rights law, standards and norms and reflect recommendations and good practices collected during five regional consultations held with law enforcement practitioners and civil society representatives, a global expert consultation on digital technologies and a separate global consultation attended by representatives of States, law enforcement officials, civil society representatives, representatives of regional mechanisms and oversight mechanisms and other relevant experts. Written submissions were provided by States, national human rights institutions, members of civil society and experts.
4. Provisions in the present document are grounded, in particular, on the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, general comment No. 37 (2020) on the right of peaceful assembly of the Human Rights Committee, the Code of Conduct for Law Enforcement Officials,⁴ the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials⁵ and other guiding documents, such as the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, as well as on relevant regional human rights instruments and guidance.⁶

II. Objective and scope

5. The Model Protocol contains practical recommendations aimed at assisting States and their law enforcement agencies and officials in strengthening the required institutional capacity, rules, protocols, strategies and procedures and fulfilling their international human rights obligations, specifically in relation to respecting, promoting and protecting human rights while facilitating a peaceful protest. It is primarily addressed to law enforcement officials, mainly those with decision-making and command powers, at the strategic, tactical and operational levels, who handle the facilitation of peaceful assemblies, in particular protests.

¹ As mandated by Human Rights Council in resolution 50/21, the toolkit was developed in collaboration with UNODC and OHCHR. The Special Rapporteur is responsible for the text produced.

² The handbook will be finalized by the end of 2024.

³ <https://www.ohchr.org/en/special-procedures/sr-freedom-of-assembly-and-association>.

⁴ General Assembly resolution 34/169.

⁵ A/CONF.144/28/Rev.1, chap. I, sect. B.2.

⁶ See, for example, African Commission on Human and Peoples' Rights, *Guidelines on Freedom of Association and Assembly in Africa* (2017) and *Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa* (2017); Inter-American Commission on Human Rights, Office of the Special Rapporteur for Freedom of Expression, *Protest and Human Rights: Standards on the Rights Involved in Social Protest and the Obligations to Guide the Response of the State* (2019); and European Commission for Democracy through Law and Organization for Security and Cooperation in Europe (OSCE), Office for Democratic Institutions and Human Rights, *Guidelines on Freedom of Peaceful Assembly* (2019).

6. The toolkit can further assist States in realizing their human rights obligations, which require them to adopt legislative, judicial, administrative, educative and other appropriate measures and to provide effective remedies for human rights violations.⁷ It can also serve as a useful tool for civil society and other stakeholders working towards ensuring the human rights-compliant facilitation of peaceful protests by law enforcement.

7. In the present document, “law enforcement officials” refers to all officers of the law, whether appointed or elected, who exercise police powers, as defined in the Code of Conduct for Law Enforcement Officials,⁸ in particular those engaged in the facilitation of protests.

8. The Model Protocol should be read and implemented as a whole. Although the Model Protocol is focused on peaceful protest, as requested by the Human Rights Council in its resolution 50/21, its provisions and recommendations apply to all forms of peaceful assembly, irrespective of whether they take place outdoors, indoors or online, are organized or spontaneous or are held simultaneously. The provisions in the present document should in no circumstances be interpreted in such a way as to restrict the right to freedom of peaceful assembly or to infringe on human rights.

III. Effective facilitation of peaceful protests

A. General principles and norms

9. The following principles derive from international human rights law and instruments and should be upheld by all branches of government (executive, legislative and judicial) and other public and governmental authorities at the national, regional and local levels.⁹ Law enforcement officials should strive to uphold these principles, recognizing that their law enforcement role must always be performed within a human rights framework.

10. The right to freedom of peaceful assembly is fundamental for enabling the full enjoyment and realization of the civil, political, economic, social and cultural rights enshrined in the International Covenant on Civil and Political Rights and in the International Covenant on Economic, Social and Cultural Rights. This right is vital for upholding democracy, achieving a just and peaceful society and advancing fair development and climate justice.

11. Peaceful protest is an important form of the exercise of the rights to freedom of peaceful assembly, of expression, of association and of participation in the conduct of public affairs, and it is protected under these rights, which are enshrined in the International Covenant on Civil and Political Rights and in the Universal Declaration of Human Rights.¹⁰

12. Everyone has the right to freedom of peaceful assembly without discrimination based on race, colour, ethnicity, age, sex, language, property, religion or belief, political or other opinion, national or social origin, birth, minority, Indigenous or other status, disability, sexual orientation or gender identity or other status.¹¹

13. States and their law enforcement agencies are obliged not to impose undue restrictions or interfere in peaceful assemblies.

14. States and their law enforcement agencies and officials have a positive obligation to facilitate peaceful assemblies, including protests, by ensuring that those taking part can safely conduct their activities without discrimination or abuse, including from non-State actors, such as other members of the public, counterdemonstrators, armed groups and private

⁷ Human Rights Committee, general comment No. 31 (2004), paras. 6–8.

⁸ Commentary to art. 1.

⁹ Human Rights Committee, general comment No. 37 (2020) on the right of peaceful assembly, para. 4.

¹⁰ See, for example, International Covenant on Civil and Political Rights, art. 19 on the right to freedom of expression, art. 21 on the right to freedom of peaceful assembly, art. 22 on the right to freedom of association, and art. 25 on the right to participate in public affairs; and Universal Declaration of Human Rights, art. 20 on the right to freedom of peaceful assembly.

¹¹ Human Rights Committee, general comment No. 37 (2020), paras. 6 and 25.

security providers, while respecting participants' rights and agency and making it possible for participants to achieve their objectives.¹²

15. Specific, supportive and protective efforts should be made to facilitate the right to freedom of peaceful assembly of individuals or groups that may be in situations of vulnerability, that have been subjected to discrimination or marginalization or that may face particular challenges in participating in assemblies, such as women, children, Indigenous Peoples, migrants, lesbian, gay, bisexual, transgender, queer and intersex persons, persons of African descent, persons belonging to minority groups and persons with disabilities.

16. Children, defined as persons under 18 years of age, enjoy the right to freedom of peaceful assembly on an equal footing with adults.¹³ Measures tailored to the specific needs and rights of children should be planned and implemented to facilitate the right of children to take part in and organize peaceful protests.¹⁴

17. Media workers, monitors and other observers, lawyers, human rights defenders and medical personnel contribute to the full enjoyment of the right to freedom of peaceful assembly. They should be protected and their work facilitated, even if the protest is dispersed or declared "unlawful".¹⁵ The right to freedom of peaceful assembly covers the right to monitor.¹⁶

18. Notification requirements in national law must never be enforced to restrict the right to freedom of peaceful assembly. Non-compliance with any notification requirement does not displace the obligation of the authorities to facilitate a protest and to protect its participants, including from violence or interference by non-State actors. National laws should not require prior authorization for assemblies and must also enable the holding of spontaneous assemblies.¹⁷

19. Protest should be presumed to be peaceful, unless there is compelling evidence to the contrary, and should continue to be regarded as peaceful, unless participants engage in widespread and serious violence.¹⁸

20. Any restriction to the right to freedom of peaceful assembly should only be imposed on a case-by-case basis, meet the strict requirements of legality, legitimacy, necessity, proportionality and non-discrimination and be imposed for the shortest possible period of time.

21. Restrictions on exercising the right to freedom of peaceful assembly can be imposed only exceptionally in the interests of national security, public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.¹⁹

22. Restrictions imposed in relation to the prohibition of any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence²⁰ must comply with the six-part threshold set out in the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.²¹

23. States should only consider the prohibition of a specific assembly as a measure of last resort and only after the authorities have exhausted other less intrusive measures.²²

24. Any restriction should be subject to prompt, competent, independent and impartial administrative or judicial review, and those affected should have access to timely and

¹² Ibid., para. 24.

¹³ Convention on the Rights of the Child, art. 15.

¹⁴ See for more United Nations Children's Fund, *Free and Safe to Protest: Policing Assemblies Involving Children* (2023).

¹⁵ A/HRC/50/42, para. 78 (k).

¹⁶ Human Rights Committee, general comment No. 37 (2020), para. 30.

¹⁷ A/HRC/20/27, paras. 14, 28 and 72.

¹⁸ Human Rights Committee, general comment No. 37 (2020), paras. 15 and 17.

¹⁹ Ibid., para. 41.

²⁰ International Covenant on Civil and Political Rights, art. 20.

²¹ A/HRC/22/17/Add.4, appendix.

²² Human Rights Committee, general comment No. 37 (2020), para. 37.

effective remedies.²³ Blanket bans should not be imposed, because they fail to pass the tests of necessity and proportionality.

25. When facilitating assemblies, law enforcement officials should strictly comply with the international standards on the use of force, in particular the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and aim to avoid the use of force entirely. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials should minimize damage and injury and respect and preserve human life.²⁴

26. Under no circumstances should law enforcement officials violate the absolute prohibition of torture and other ill-treatment in the context of peaceful protests, even when a protest is considered to be no longer peaceful. The unlawful use of force during assemblies may constitute a violation of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment.²⁵

27. Additional efforts should be made towards fulfilling the duty to facilitate peaceful protests in times of crisis, periods of transition and during peace processes, recognizing the essential role that peaceful protests have in achieving inclusive and human rights-compliant crisis management, conflict resolution and the building of sustainable peace and democracy.²⁶

28. The imposition of a state of emergency must not be used as a pretext by States to infringe on the right to freedom of peaceful assembly and must be done in strict compliance with international human rights law.²⁷

29. States and law enforcement officials must ensure that any response to protests prevents violations of and fully protects those rights from which no derogation is permitted, including during the imposition of a state of public emergency.²⁸

30. In situations of armed conflict, including military occupation, international human rights law and international humanitarian law are complementary and mutually reinforcing, and States must comply with their applicable obligations under international human rights law and standards during peaceful protests, including in relation to the use of force and firearms.²⁹

31. Pursuant to the United Nations Guiding Principles on Business and Human Rights, States and private companies should ensure accountability and due diligence regarding the design, production, transfer, procurement and use of any weapons, equipment and technology used by law enforcement officials in the context of peaceful protests.

32. Digital technologies should not be used to categorize, profile or remotely identify individuals, including by biometric means, during protests, given that they are discriminatory and inconsistent with the obligation of law enforcement officials to facilitate peaceful protests.³⁰

²³ Ibid., para. 29.

²⁴ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, paras. 2, 3 and 5.

²⁵ A/72/178, para. 34.

²⁶ In line with A/HRC/50/42 and A/78/246.

²⁷ In line with Human Rights Committee, general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency; Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights; and Special Rapporteur on the rights to freedom of peaceful assembly and of association, Special Rapporteur on Freedom of Expression of the Inter-American Commission on Human Rights, Special Rapporteur on Human Rights Defenders and focal point for reprisals in Africa and Chairman of the African Commission on Human and Peoples' Rights and OSCE Office for Democratic Institutions and Human Rights, "Joint declaration on protecting the right to freedom of peaceful assembly in times of emergencies" (2022), available at

<https://www.ohchr.org/sites/default/files/documents/issues/fassociation/2022-09-15/JointDeclarationProtectingRightFreedomInTimesEmergencies15Sept2022.pdf>.

²⁸ International Covenant on Civil and Political Rights, art. 4 (2).

²⁹ In line with Human Rights Council resolution 50/21 and Human Rights Committee, general comment No. 36 (2018) on the right to life.

³⁰ A/HRC/44/24, para. 53 (f).

33. In the light of the pace of technological change, untested or unproven new technologies or technologies that have evolved should not be deployed during protests. Such technologies should be subject to full, independent human rights review and technical testing, in line with international human rights standards, that must also evaluate the likely impact on individuals and groups in situations of vulnerability.

B. Prerequisites for the effective facilitation of peaceful protests

34. States should foster a climate of respect and promotion of the right to freedom of peaceful assembly, including through an enabling legal framework. All laws, regulations, guidance and policies, including those related to national security, public order, emergencies, countering terrorism and violent extremism, technology or financial crimes, should be in line with international human rights law and must be publicly accessible. Their interpretation and application must not result in undue restrictions on freedom of peaceful assembly.

35. States should establish human rights-based, democratic, professional, ethical, inclusive and representative law enforcement agencies that are independent of political pressure and are accountable and responsive to the diverse needs of individuals and communities. Diversity within law enforcement agencies should be encouraged, including by increasing the representation of women, throughout the ranks and in decision-making positions.³¹

36. Victim-centred accountability measures and prompt, impartial and effective remedies should be available for all who have suffered human rights violations by law enforcement officials or other actors in the context of peaceful protests and should meet the differentiated needs of victims.³²

37. To ensure effective accountability, States must bring those responsible, including superior officials, to account for acts or omissions resulting in human rights violations in the context of protests. Immunities for law enforcement officials, such as those related to the use of force in the context of peaceful protests, should be proscribed. Appropriate and gender-sensitive legal, institutional and policy measures should be adopted, including within the security sector, to prevent the recurrence of human rights violations, including sexual and gender-based violence. The work of oversight bodies should be promoted, adequately resourced and supported.

38. Authorities should strictly refrain from deploying in the context of peaceful protests the army or any military-type units, tactics or equipment or other units outside the official law enforcement chain of command. Any unit involved should fall under the command of law enforcement authorities or agencies and follow the laws and regulations applying to law enforcement.³³

C. Key principles for the use of digital technologies in the facilitation of protests

39. Any use of digital technologies to facilitate a protest should be solely aimed at enabling the right to freedom of peaceful assembly. Protests should not be seen as opportunities for surveillance or the pursuit of broader law enforcement objectives through the use of digital technologies.

40. Legal frameworks related to digital technologies conforming to international human rights law and standards, including data protection laws and robust regulation and oversight mechanisms, must be established and supported by practical guidance. The acquisition and use of any digital technologies in the context of protests must meet the requirements of legality, necessity and proportionality. This must be demonstrated effectively and supported by appropriate evidence.

³¹ A/HRC/50/42, para. 52.

³² A/HRC/53/38, paras. 67 and 82 (h).

³³ Human Rights Committee, general comment No. 37 (2020), para. 80.

41. Internet shutdowns, surveillance on the basis of group affiliation and the targeted use of spyware in the context of protests are actions that are incompatible with international human rights law and must not be used.³⁴

IV. Broader human rights-based policing principles relevant to the facilitation of peaceful protests

42. For the effective facilitation of peaceful protests, law enforcement officials must be guided at all times throughout a protest cycle by the primary duties to facilitate the right to freedom of peaceful assembly and promote and protect human rights and freedoms and by the principles of non-discrimination, precaution and accountability. Law enforcement decisions, strategies and actions should be based on the concepts of knowledge, facilitation, communication and differentiation and must be aimed at de-escalating and preventing tension and recourse to the use of force.

43. A culture of respect and accountability for human rights and non-discrimination should be fostered, incorporating a policy of zero tolerance of any abuse by law enforcement officials in the context of protests, including sexual and gender-based violence, discrimination and torture and other ill-treatment.

A. Community-oriented policing and transparent communication

44. Communication with the public is key to explaining the role and objectives of law enforcement in relation to upcoming protest events. Law enforcement agencies should proactively develop meaningful and long-term community-oriented policing strategies and seek to establish and build trust with communities and civil society. Such communication should start well in advance of any specific protest.

45. All law enforcement interactions and communications should be carried out with honesty and transparency, and a “no surprises” approach should be applied, whereby law enforcement officials are clear and open with organizers, participants and community members about their policing intentions and plans. Law enforcement officials should focus on seeking to reassure the public, recognizing that, in different contexts, a visible law enforcement presence may or may not provide such reassurance and that alternative ways of providing such reassurances may be more effective. Communication strategies should include opportunities to provide feedback that can inform decision-making and enable law enforcement officials to gain a better understanding of community dynamics, grievances, protection needs and cultural and other sensitivities, which need to be considered in the context of protests.

46. Law enforcement agencies and officials should:

(a) Conduct regular community impact assessments, which should be considered at the planning stage and during the facilitation of protests;

(b) Attempt to engage with communities and civil society, whose members show a reciprocal willingness to engage with law enforcement officials, through public consultation meetings and other types of community forums. Engagement must always be entirely voluntary and should be aimed at meaningful dialogue and offering opportunities to hear concerns and influence law enforcement decision-making;

(c) Consider prioritizing advance communication and information exchange with key stakeholders to establish channels for dialogue with the aims of promoting preparedness, de-escalating tensions and resolving disputes. The relevant stakeholders may vary depending on the context, scale and type of protest, but they may potentially include representatives of national human rights institutions, ombudspersons’ offices, national preventive mechanisms and other independent oversight bodies, such as those focusing on the protection of children

³⁴ [A/HRC/44/24](#), paras. 18 and 53 (b).

and young people, or on privacy, civil society organizations, academia and business and residential communities, human rights defenders and medical personnel;

(d) Put in place a comprehensive media strategy ensuring that officials and public messages use neutral language and avoid stigmatizing or hostile rhetoric regarding a protest, its organizers or participants or other actors involved;

(e) Make law enforcement operations transparent by making disaggregated data on law enforcement actions in the context of protests accessible to the public;

(f) Proactively address and respond to public inquiries, media requests and reports from monitors and other relevant stakeholders concerning past and ongoing protests.

B. Training

47. Initial and ongoing human rights-oriented and gender-inclusive training of law enforcement officials is essential for the effective facilitation of protests. Practical and skills training courses should be available to all law enforcement officials involved in facilitating protests, in particular commanding officers. Refresher courses should be required at least once a year and/or before deployment to a protest, especially when a mass protest is anticipated. Mandatory testing, in accordance with appropriate proficiency standards, should be implemented for officials involved in protests. Officials who do not pass the test must not be involved in the facilitation of a protest.

48. Law enforcement officials should:

(a) Ensure that officers receive adequate and continuous training in facilitating, respecting and protecting human rights in the context of peaceful protests, according to international human rights standards, reflecting real-world experiences and incorporating good practices and lessons learned from past experiences;

(b) Establish a training curriculum that is competency-based and emphasizes learning practical skills and prioritizing facilitation, communication, negotiation, de-escalation and human rights-compliant crowd facilitation techniques.³⁵ Training courses should include tailored sessions on the prevention of sexual and gender-based violence and on the specific needs of individuals and groups in situations of vulnerability;

(c) Ensure that commanders receive training on human rights-compliant decision-making;

(d) Include training on the human rights implications of any digital technologies used in the context of protests. Officials need to understand how digital technologies work, as well as the capabilities and limitations of the respective technologies and any human rights implications, including in relation to the right to freedom of peaceful assembly;

(e) Include practical training³⁶ on the use of force and the authorized instruments of force in the context of protests, in line with international human rights standards;

(f) Ensure that officials have proficiency in using instruments of force and other equipment, in line with established human rights standards, and that authorization to use instruments of force or equipment is only given to those officers with such proficiency. Refresher training courses and requalification in such cases should be annual, and officers who fail to pass must have their authorization to use such instruments of force or equipment withdrawn;

(g) Record the types and dates of training courses and refresher courses undertaken by each officer and/or unit so that commanders can select and deploy appropriate officers to specific protests.

³⁵ See OHCHR *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials* (forthcoming).

³⁶ Ibid.

C. Accountability

49. Accountability is a core principle for the effective exercise of the right to freedom of peaceful assembly, which should underpin all stages of any law enforcement operation. To ensure effective accountability in the context of protests, law enforcement agencies should develop preventive measures and institutional and regulatory frameworks for integrity and oversight, ensure the impartial and timely investigation and the application of appropriate sanctions in cases of human rights violations and guarantee support for victims.

50. Accountability, including command accountability, applies at all stages of a protest. Superior officials should be held accountable for their decisions or if they did not take all measures in their power to prevent, suppress or report the unlawful use of force or firearms and if they knew or should have known that law enforcement officials under their command had engaged in such abuses.

51. Law enforcement officials should:

(a) Ensure the clear and individual identification of all officers and units involved in a protest at all times, including through their wearing name badges or identification numbers and displaying rank insignia, which should be visible and non-removable. In all cases, commanders should know which officer is active in which area and the tasks and instruments of force for which they are responsible;

(b) Develop a robust, transparent and auditable record-keeping system for all decisions, actions and orders made by commanders at all levels and the rationale behind them;

(c) Develop clear guidelines on self-reporting for officials, including on the use of force and instruments of force, in line with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, and on describing what occurred, when, where and why. A culture of accountability and transparency should be fostered, without fear of repercussions. Measures must be taken to ensure the protection of whistle-blowers;

(d) Establish transparent lines of command with clear tasks, responsibilities and decision-making processes informed by ongoing risk assessment. Law enforcement agencies need to make sure that all orders and instructions passed through the line of command are lawful. Mechanisms and procedures should be put in place to allow officials to report and object to carrying out manifestly unlawful orders;³⁷

(e) Retain effective command and control for all forces and units involved in facilitating protests. This also includes maintaining the overall responsibility and control for the application of equipment, including any digital technologies, in operations that involve multiple partners;

(f) Actively cooperate with the relevant authorities and oversight bodies in charge of investigations to ensure effective prosecutions and sanctions of law enforcement officials, including commanders, who have perpetrated human rights violations. Those facing allegations of human rights violations should be removed from facilitating protests until the completion of an effective investigation and the establishment of responsibility;

(g) Ensure the public availability of protocols, procedures and guidance related to protests and the use of force, including detailed lists of law enforcement units, weapons and equipment used for the facilitation of protests;

(h) Consider establishing an independent multi-stakeholder reference group to advise law enforcement agencies on human rights protection and/or to act as a critical sounding board, especially in cases of mass protests or protests that extend over a long period of time.

³⁷ Ibid.

52. To facilitate accountability for the use and application of digital technologies, law enforcement officials should ensure that the oversight mechanisms incorporate appropriate human rights safeguards.

53. Law enforcement officials should:

(a) Ensure that a transparent and auditable record is made of all pertinent decision-making concerning digital technologies;

(b) Ensure that retained data pertaining to the use of force and human rights violations is used solely for the purposes of investigating and prosecuting crime and is only available for those purposes, and establish a presumption of non-retention for other digital data gathered with respect to a protest;

(c) Develop procedures to enable protest participants to challenge the collection, analysis, storage and sharing of their data by State and non-State actors and to call for the deletion of data, as necessary. These procedures should include special considerations for children.

D. Well-being of law enforcement officials

54. The safety, health and well-being of law enforcement officials is important for ensuring the human rights-compliant facilitation of peaceful protests. This requires establishing an organizational environment that is respectful of officers' dignity and physical and moral integrity and that allows for them to continue to exercise their duties in a professional manner and with respect for human rights. An overworked, stressed or exhausted law enforcement official, while operating in a stressful environment, which may be the case in some protests, risks making errors of judgment resulting in human rights violations. Commanders must balance operational effectiveness with the health and safety of officers, ensuring that officers' ability to carry out their duties is not compromised.

55. Law enforcement officials should:

(a) Develop guidelines that ensure the resilience of officers and commanders. Such guidelines should include the following recommendations:

(i) Secure the availability of a standby team, if officers are tired and need to rotate during a protest;

(ii) Specify appropriate conditions for officers, including designated rest areas away from protest sites with the availability of gender-appropriate facilities;

(iii) Detail appropriate protective equipment for safeguarding officers' physical safety and health, along with weather protection equipment, hydration packs, first aid kits and other essentials for health maintenance;

(iv) In case of high-intensity protests or extreme weather conditions or during a pandemic, introduce more frequent rotations to manage officers' stress and fatigue;

(v) Guarantee that officers receive adequate time off between shifts and after deployment for rest and recuperation. Additional time off may be considered if the officers show signs of cumulative stress;

(vi) Specify fair compensation for overtime or hazard pay due to extended hours or dangerous conditions;

(b) Ensure the immediate and appropriate provision of medical treatment for injured officers, followed by long-term medical support, whenever required. Law enforcement agencies should also extend support to families of officers who were killed, injured or experienced trauma in the context of protests;

(c) Provide officers who work in units that are routinely exposed to highly stressful situations with psychosocial support and relevant medical assessments, including a system where they can self-refer to such services;

(d) Provide opportunities for officers to seek medical and psychosocial assistance in a confidential manner, including by police counsellors or external clinical psychologists specializing in post-traumatic stress management.

V. Before a protest: planning and preparation

56. Timely and thorough planning and preparation aimed at de-escalation and prevention of human rights violations are key to ensuring that law enforcement officials fulfil their duty to facilitate peaceful protests and to prevent such violations while protecting and promoting human rights.

A. Engaging with protest organizers and participants

57. Some level of cooperation and efforts to establish trust with protest organizers and participants can assist in the facilitation of peaceful protests. In the context of such discussions, law enforcement officials and protest organizers and participants may, for example, seek to agree on the parameters of how law enforcement officials can facilitate a protest so that organizers and participants can best achieve their set objectives. Where channels of communication are established with organizers, transparency, accountability and building community partnership should underpin the strategies. Law enforcement officials should openly recognize that engagement on the part of organizers must be entirely voluntary. While it may be a good practice for organizers and participants to engage in such contact, they cannot be required to do so.³⁸

58. Law enforcement officials should:

(a) Reach out to organizers, including when the organizers are children, to discuss, among other things, protest objectives and facilitation strategies. Law enforcement officials should maintain a summary record of such communication or of the attempts to engage in such communication;

(b) Desist from repeat attempts to contact organizers who have made it clear that they do not wish to engage with law enforcement officials. Lack of engagement should not be used to penalize protest organizers or participants;

(c) Consider consulting with and involving other stakeholders in the design of strategies to facilitate a protest, recognizing that some stakeholders may be better placed to engage constructively with organizers than law enforcement officials. Such stakeholders might include relevant civil society representatives, lawyers, mediators, human rights defenders or oversight bodies;

(d) Designate a point of contact at the tactical command level directly involved in the facilitation of a protest to be available for ongoing communication with protest organizers;

(e) Communicate, whenever relevant, the agreements made during engagement with organizers through public channels, emphasizing that organizers should not be held responsible for the actions of protest participants.

B. Planning and information-gathering

59. Law enforcement agencies should continuously gather information, in strict compliance with international human rights standards, to inform the development of a strategic plan, which should include legitimate and clearly defined law enforcement objectives, type of the operation, planned tactics and tactical deployment of personnel. Law enforcement officials should also conduct a thorough evidence-based risk assessment to

³⁸ Human Rights Committee, general comment No. 37 (2020), para. 75.

anticipate potential risks related to a protest and to develop concrete measures for the prevention and mitigation of those risks.³⁹

60. Law enforcement officials should:

(a) Put robust measures and safeguards in place to prevent human rights violations during information-gathering, including the violation of privacy rights, and to prevent gathered information from being used or misused in violation of participants' rights. Any techniques used by law enforcement officials for gathering information relevant to a protest should be guided by appropriate human rights principles;

(b) Refrain from profiling individuals on the basis of their previous organization or participation in protests and refrain from introducing any kind of "restriction lists" by issuing bans on the organization of or participation in a protest without a legal basis, unless there is evidence of a risk of imminent violence;

(c) Refrain from introducing undercover operations in the context of protests, given that such techniques create a deeply chilling effect and often result in human rights violations. Any undercover operations, when justified, must be authorized and kept under continual review by a judicial authority and such authority should be provided with all relevant information to enable robust scrutiny of the legality, necessity and proportionality of any such operation;⁴⁰

(d) Consider at the planning phase the needs, risks and safety concerns of individuals and groups in situations of vulnerability, such as by ensuring access to protest sites for persons with disabilities, mitigating the risks for persons belonging to minority groups, including lesbian, gay, bisexual, transgender, queer and intersex persons, engaging more female officers in the facilitation of protests mainly attended by female participants;

(e) Hold pre-protest briefings, especially with the commanding officers that are to be involved in facilitating the protest, to ensure a proper understanding of their role in the broader plan for the effective facilitation of the protest. Officers should be reminded of law enforcement objectives, the outcomes of risk assessments, the reason for a protest and its objectives, internal authorization procedures, communication channels and any last-minute changes;

(f) Develop strategies for inter-agency communication with other regulatory authorities to exchange information concerning a protest and to ensure their prompt collaboration, whenever necessary;

(g) Adopt processes and procedures to ensure the facilitation of simultaneous protests and counterprotests, guaranteeing equal protection of rights without discrimination, favour or bias towards any of the groups;

(h) Develop protection strategies aimed at securing protest participants and bystanders from other actors, including counterprotesters, external threats and other violent elements, provocateurs and non-State actors.

61. While the use of digital technologies can play an important role in the planning and engagement that enable law enforcement officials to facilitate peaceful protests and ensure the safety of participants, it is imperative that law enforcement agencies ensure that any use of digital technologies is compliant with international human rights standards. This requires an assessment of all human rights implications, including less visible impacts, such as the creation of any chilling effects that affect the free participation and exercise of fundamental freedoms in online and offline spaces, as well as any actions that are discriminatory or bear an adverse psychological impact on individuals.

62. Law enforcement officials should:

(a) Ensure that the overall approach guiding any use of digital technologies in the context of protests is premised on a limiting principle to circumscribe the use of such technologies, rather than an authorizing principle intended to expand their use. The request

³⁹ In line with Human Rights Committee, general comment No. 37 (2020), para. 52.

⁴⁰ A/HRC/31/66, para. 78 (f).

for the use of digital technologies should be evidence-based and fully justified, and the authorization process should evaluate legality, necessity and proportionality. There should be no blanket authorization of the use of digital technologies in information-gathering or the facilitation of a peaceful protest;

(b) Develop and implement a human rights-based approach to govern the authorization and use of digital technologies for information-gathering in the context of protests. Decisions should be made on a case-by-case basis and aligned with the specific law enforcement objective and circumstances;⁴¹

(c) Ensure that the threshold for using digital technologies for gathering information on the evolving situation is high and that less intrusive techniques, such as constructive dialogue with organizers, are utilized wherever possible;

(d) Ensure that the use of digital technologies to assess the evolving situation for the purposes of facilitating protests does not lead to intelligence-gathering with regard to peaceful protesters for unrelated law enforcement objectives.

C. Equipment

63. All officers should be properly equipped for the role that they are being assigned to in the context of the protest. Command decisions about the type of equipment to be used should be guided by a risk assessment, recognizing that the pre-emptive deployment of excessively protected and equipped officers can have a chilling effect on participants and, on occasion, raise the level of tension. In circumstances where officers face a real risk of physical attack, the provision of adequate protective equipment, such as helmets and shields, is likely to decrease the requirement for the use of force. Law enforcement agencies and relevant authorities should conduct an evidence-based needs assessment before the procurement of any equipment and tools, ensuring that such a process and the relevant decisions are transparent and that all the equipment is serviceable.⁴²

64. Law enforcement officials should:

(a) Ensure that the procurement of any equipment, including digital technologies, is contingent on the successful completion of a rigorous human rights due diligence process. This should include an examination of the potential utility of the equipment and the potential human rights implications linked to its use in the context of protests, including for individuals in situations of vulnerability and for children;

(b) Implement strategies to guide decisions about utilizing equipment that is strictly appropriate to the situation and proportionate to the context and actual threat;

(c) Ensure that all equipment is logged out to individuals and uniquely marked and identifiable to assist in tracking, returning and reporting on its use;

(d) Ensure that equipment, including digital technologies, meets human rights due diligence standards and is authorized for use only by appropriately trained officers.

D. Individuals and groups in situations of vulnerability

65. To protect and facilitate the right to freedom of peaceful assembly of individuals and groups in situations of vulnerability, which may include, women, children, Indigenous Peoples, migrants, persons of African descent, persons belonging to minority groups, lesbian, gay, bisexual, transgender, queer and intersex persons, persons with disabilities and others, law enforcement officials should:

⁴¹ A/HRC/44/24, para. 53 (j) (ii).

⁴² In line with the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, paras. 4.2.1 and 4.4.1.

(a) Develop and implement specific supportive strategies aimed at promoting and protecting the rights of individuals and groups in situations of vulnerability in the context of protests. It is recommended that such strategies include:

- (i) Guidance on the use of equipment considering the disproportionate impact on these individuals and groups, as relevant;
- (ii) Protocol on the prevention and provision of immediate response to harassment or attacks on these groups, including sexual and gender-based violence;
- (iii) Systems for the continuous monitoring of potential threats or acts of retaliation against these groups, including information-sharing and education of the community about the prohibition of retaliation against protest participants, highlighting the specific risks faced by these groups;
- (iv) Development of a missing child plan;

(b) Foster communication with relevant stakeholders, including civil society organizations and community leaders, to understand the specific protection needs of such individuals and groups. Law enforcement officers should try to involve, as appropriate, representatives from the identified groups in the planning stages of a protest to ensure that their perspectives are considered, including through voluntary engagement with children when a protest is organized by children and/or when children are expected to take part;

(c) Ensure that information about a protest and communication during a protest is available in multiple languages, including disability-inclusive language and child-friendly language, as appropriate;

(d) Ensure that deployed officers are trained to mitigate and respond to the specific protection needs of these groups and that dedicated rapid response teams are available to provide assistance, whenever required;

(e) Consider establishing specific complaint mechanisms within independent investigation units or oversight bodies, including the development of separate mechanisms for children and for victims of sexual and gender-based violence.

E. Media workers, monitors and others involved in monitoring, reporting and legal and medical assistance

66. Law enforcement agencies have a duty to facilitate the work of independent monitors and other observers,⁴³ journalists, media workers, human rights defenders and others involved in monitoring or reporting on protests, as well as of lawyers⁴⁴ and medical personnel. These groups may not be prohibited from, or unduly limited in, exercising their functions, including if a protest is dispersed or declared “unlawful”.⁴⁵

67. Law enforcement officials should:

(a) Where they are willing to engage with law enforcement officials, establish communication channels with the identified groups to notify them of anticipated protests and to exchange any relevant information before, during and after a protest, including for the purposes of reporting any undue restrictions or violations that occurred in the context of a protest;⁴⁶

(b) Encourage the identified groups, whenever possible, to wear highly visible identification to facilitate their work and to ensure that they can get access to specifically designated areas or to cross through police lines;

⁴³ [A/62/225](#), para. 91.

⁴⁴ See more on the role of lawyers in [A/HRC/47/24/Add.3](#).

⁴⁵ Human Rights Committee, general comment No. 37 (2020), para. 30.

⁴⁶ More information can be found in OSCE Office for Democratic Institutions and Human Rights, *Handbook on Monitoring Freedom of Peaceful Assembly*, 2nd ed. (2020).

(c) Refrain from conducting accreditation processes or requiring formal accreditation or other forms of authorization for media workers, monitors and other observers, lawyers and medical personnel to gain access to a protest site;

(d) Ensure that media workers, monitors and other observers are able to photograph or record actions and activities at a protest, including law-enforcement operations, and that such recordings are not confiscated, seized and/or destroyed without due process and may be used as evidence in relevant disciplinary, administrative or criminal proceedings;⁴⁷

(e) Ensure that any restrictions that may be imposed on protests do not impede the ability of the identified groups to carry out their activities, including during curfews, dispersals or arrests.

VI. During a protest: facilitation, restraint and de-escalation

68. Law enforcement officials must make every effort to facilitate peaceful protests in ways that respect the objectives and preferences of protest organizers and leaders by acting at all times in accordance with their obligation to respect and protect human dignity and maintain and uphold the human rights of all involved in a protest.⁴⁸ Law enforcement officials must remain neutral and impartial throughout any protest, prevent harm and protect the right to life, liberty and security of person of those involved, while also fulfilling their duty to maintain public safety and social peace.⁴⁹ The deployed officers should adhere to the cross-cutting principles of participation, accountability, non-discrimination, differentiation and attention to vulnerability and equality.

69. During a protest, law enforcement officials must protect and facilitate participants' right to freedom of expression, so that participants are able to freely voice their opinions, slogans and chants and display written placards, signs, banners and symbols, such as flags, or other media of expression, as long as they do not incite discrimination, hostility or violence.⁵⁰ The limitation of freedom of expression must remain an exception. To determine whether a statement may amount to a criminal offence and justify restrictions under article 20 of the Covenant, each of the following six parts of the higher threshold test, established under the Rabat Plan of Action, should be fulfilled, by assessing: (a) social and political context; (b) status of the speaker; (c) intent to incite the audience against a target group; (d) content and form of the speech; (e) extent of its dissemination; and (f) likelihood of harm, including imminence and direct impact.⁵¹

A. Evidence-based risk assessment

70. Ongoing human rights-compliant collection of information can help law enforcement officials to act in a timely manner to prevent violence or escalation and to distinguish between peaceful protesters and individuals who are involved in violence. As the event progresses and new information comes to light, the policing plan must be kept under review to ensure that tactical approaches can be adjusted, where necessary.

71. Law enforcement officials should:

(a) Employ the least intrusive methods while gathering information, conducting assessments and collecting evidence during a protest, which should be done in full compliance with protections against arbitrary or unlawful infringement of participants' rights;

(b) Ensure that any decision to utilize surveillance strategies and/or to record participants is exceptional and limited to distinct law enforcement purposes, such as directly

⁴⁷ Human Rights Committee, general comment No. 37 (2020), para. 30.

⁴⁸ Code of Conduct for Law Enforcement Officials, art. 2.

⁴⁹ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

⁵⁰ Human Rights Committee, general comment No. 37 (2020), paras. 32, 46, 49 and 51.

⁵¹ See [A/HRC/22/17/Add.4](#), appendix.

aiding the prevention, investigation and prosecution of a specific criminal offence occurring within the context of the protests. Facial recognition technologies and other biometric systems must not be utilized to identify individuals who are peacefully participating in a protest;⁵²

(c) Apply strict law enforcement protocols to govern the collection, retention and use of data collected during a protest, in accordance with a commitment to safeguard the rights and privacy of individuals;⁵³

(d) Refrain from interpreting with suspicion any tactics utilized by an individual or group of individuals during a protest with the ostensible intention of preserving their anonymity. Individuals have a legitimate expectation of a degree of anonymity in online and offline spaces.⁵⁴

B. Differentiated and negotiated law enforcement techniques

72. Law enforcement officials must prevent and minimize any tension or violence from occurring in the context of protests through the use of timely, pre-emptive and appropriate de-escalation tactics based on the principles of communication, negotiation, community engagement, restraint and minimal use of force.

73. Law enforcement officials should:

(a) Maintain clear communication channels with all officers deployed during a protest ensuring that they have direct access to commanders' directives in order to avoid confusion, miscommunication and misconduct due to failure to provide clear and consistent communication to all protest areas;

(b) Engage regularly with human rights legal advisers in the command centre and consider making command decisions informed by their advice;

(c) Deploy operational commanders with the capacity to make tactical decisions on the ground to ensure alternatives to the use of force, according to the circumstances, including by maintaining direct communication and negotiating with relevant stakeholders and protest organizers and participants. Law enforcement officials may consider involving trained dialogue officers for negotiations, such as advanced police negotiation teams or liaison teams, dialogue police units or others. It is also recommended to engage, whenever relevant, trusted civil society partners to help to resolve misunderstandings and to de-escalate potential tensions.

74. Law enforcement officials must differentiate between participants in a protest on the basis of their individual conduct in order to continue facilitating the rights of those who remain peaceful and to prevent the violence from spreading.⁵⁵ This requires dynamic decision-making and targeted and differentiated response.

75. Law enforcement officials should:

(a) Consider the deployment of appropriate techniques to de-escalate tension and violence, such as the facilitation of a safe movement of the crowd, the establishment of buffer zones between opposing groups, the positioning of barriers or strategic positioning of officers to prevent escalation or damage and tactical withdrawal;

(b) Identify individuals or groups who are instigating violence or engaging in violent or criminal behaviour without disrupting the peaceful majority or the protest;

(c) Ensure that containment tactics, such as "kettling", are used only when it is necessary and proportionate to do so to address actual violence or an imminent threat, while avoiding the disproportionate restriction of protestors' rights.⁵⁶ In such cases, law

⁵² [A/HRC/44/24](#), para. 53 (f).

⁵³ *Ibid.*, para. 53 (j) (iii).

⁵⁴ [A/HRC/31/66](#), para. 77.

⁵⁵ Human Rights Committee, general comment No. 37 (2020), paras. 17–20.

⁵⁶ *Ibid.*, para. 84.

enforcement officials must ensure that every effort is made to identify those in need of access to food or medicine, monitors and other observers, medical personnel, individuals or groups in situations of vulnerability, including children, and those who are not violent, to help them to move outside the containment area.

C. Lawful dispersal of a protest

76. Dispersal of a protest should be done on an exceptional basis and as a measure of last resort, under the condition that a protest as a whole and in its entirety is no longer peaceful or there is an imminent wide-ranging threat of violence and serious injury.⁵⁷ In exceptional cases, when a peaceful protest needs to be dispersed, for instance, when there has been a “serious and sustained” disruption, law enforcement officials need to have the tools in place to assess the situation, including in consultation with the protest organizers, in order to disperse the crowd without the use of force.⁵⁸ Any dispersal, however, should be authorized only when law enforcement officials have exhausted every effort to resolve the disruption or risk of violence by reasonable and less intrusive measures.

77. Law enforcement officials should:

(a) Inform participants of the decision to disperse a protest in a clear, audible and understandable manner by providing specific reasons for dispersal, instructions on how to disperse safely and reasonable timing for voluntary dispersal. Officers need to ensure that instructions are adapted to the needs of, and accessible for, individuals and groups in situations of vulnerability, including children;

(b) Allow monitors, media representatives and other groups involved in monitoring or reporting on the protest not to disperse so that they can freely monitor and report on the actions of law enforcement officials;⁵⁹

(c) Facilitate the work of medical personnel during dispersal by ensuring their access to the protest site to provide prompt and unobstructed assistance to those requiring assistance;

(d) Take measures to facilitate the safe and peaceful dispersal of the protest, with particular attention given to the individuals and groups in situations of vulnerability, including children, and providing them with additional assistance, when required;

(e) Consider other de-escalation and negotiation techniques, if participants fail to disperse voluntarily, such as involving civil society and community leaders in negotiations on dispersal.

D. Differentiated and proportionate police response

78. At all times, law enforcement officials must follow the principle of precaution, which requires that all feasible steps are taken and all possible alternatives are considered, including all non-violent means, to prevent and avoid the use of force in the context of protests.⁶⁰ Any decision to use force must comply with the principles of legality, necessity, proportionality, precaution, non-discrimination and accountability and be in line with the relevant provisions of international human rights standards, including the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement. All the law enforcement actions regarding the use of force must be pre-considered.

⁵⁷ Ibid., para. 85.

⁵⁸ Ibid.

⁵⁹ Ibid., para. 30.

⁶⁰ Ibid., para. 78.

79. Law enforcement officials should:

(a) Apply all possible non-violent means before using force, such as the gradual increase of the level of law enforcement presence proportionate to the context and actual threat through the deployment of additional units and adequate equipment;

(b) Take extra precautions to protect from harm individuals and groups in situations of vulnerability when using any force in the context of protests. This can include, for instance, giving additional considerations when using less-lethal weapons in the proximity of children, pregnant women, older persons, persons with disabilities, persons with intellectual or psychosocial disabilities and persons under the influence of drugs or alcohol;⁶¹

(c) Consider that, if mounted or canine units are used, they operate under the use of force framework. Although mounted and canine units are often considered to be less-lethal mediums, there is a potential to cause serious bodily injury, harm or even death, if they are not used correctly. Such units must be deployed in a culturally sensitive manner, given that even the mere presence of dogs and horses can lead to an unnecessary escalation of tension;

(d) Ensure that only law enforcement officials who have been properly trained on the use of force and the use of relevant equipment are deployed for that purpose;

(e) In the case of use of force, ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;

(f) Make all reasonable efforts to limit the use of and risks of less-lethal weapons with wide-area effects, such as tear gas and water cannons, which could cause a stampede or harm bystanders. Tear gas may only be used in response to widespread violence in a protest when it is not possible to contain the violence by more targeted measures against the violent individuals;⁶²

(g) Ensure that kinetic impact projectiles, including rubber bullets, if authorized in very exceptional circumstances to protect against an imminent threat of injury or harm from a violent individual, are never fired indiscriminately into a crowd, nor especially targeted at the head or torso⁶³ of an individual. The risk of bystanders must also be taken into account;⁶⁴

(h) Ensure that firearms or other lethal weapons are never used in the dispersal of protests, even when such protests may have become violent or partially violent. Firearms may only be used to protect against imminent threat to life of oneself or others, in accordance with principle 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

E. “Stop and search” practices, arrest and detention in the context of protests

80. “Stop and search” practices,⁶⁵ arrest and detention in the context of peaceful protests must be done in compliance with all relevant international human rights standards and must not be used as a method or tactic to intimidate or impede protest participants or organizers. Law enforcement officials should never detain protesters on the basis of their intention to organize, participate or legitimately engage in a protest. In case of lawful stops and searches and the detention and arrest of protest participants and organizers, clear and transparent protocols must be followed, with special attention given to ensuring non-discrimination and the prevention of torture and other ill-treatment.

81. Law enforcement officials should:

(a) Ensure that law enforcement officials have justification for employing “stop and search” practices relevant to a protest, for instance, on the basis of intelligence that

⁶¹ United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, para. 2.7.

⁶² Ibid., para. 6.3.4.

⁶³ Ibid., para. 7.5.3.

⁶⁴ Ibid., para. 6.3.4.

⁶⁵ Human Rights Committee, general comment No. 37 (2020), para. 83.

participants plan to engage in violence or a crime, taking into account the actual circumstances and risks. Each use of the procedure must be justified and recorded;

(b) Consider engaging with relevant oversight bodies to agree on protocols that may allow for arrested protest participants to be accompanied during detention;

(c) Put in place appropriate measures that consider the rights, needs and protections of individuals and groups in situations of vulnerability during detention;

(d) In the exceptional cases when protest participants are detained, law enforcement agencies need to ensure that:

(i) All aspects of the arrest and detention are conducted in a lawful manner and that detention facilities comply with international human rights standards, considering the requirements to separate men and women, to ensure that counterprotestors are not brought to the same location as protestors and, where it may be necessary to detain children (as a last resort), they are not held alongside adults);⁶⁶

(ii) The right to access to a lawyer and the right to have someone informed of an individual's detention is guaranteed;

(iii) Detained persons are released or brought before a judicial authority within a legal time frame;

(iv) Access to medical treatment and exams is provided;

(v) Access to mechanisms to report any abuse or misconduct is established;

(e) Record disaggregated information on the arrests and detention to identify and address any patterns of discrimination and ensure that the rights of those arrested are protected throughout the legal process. Regularly updated records of detained protest participants should be accessible to families, oversight bodies and other relevant stakeholders;

(f) Guarantee that any investigations and interviews⁶⁷ of protest participants and organizers are conducted with full respect for human rights, by ensuring protection from torture and other cruel, inhuman or degrading treatment or punishment and providing access to independent complaints mechanisms and effective remedies.

VII. After a protest: reporting and investigation

A. Return and evaluation of equipment

82. When returning equipment, law enforcement agencies should verify inventory against pre-event records to ensure that the same amount of equipment, including weapons, is returned after a protest and that any use is duly recorded and reported. Any mismatch in the number of returned items must be promptly investigated, according to established disciplinary and other independent oversight procedures.

83. Law enforcement officials should:

(a) Verify that all equipment is returned and document any use or damage, including the use of less-lethal weapons and digital technologies;

(b) Ensure that, in circumstances where it is evident that the equipment has been used, for instance, where ammunition depleted or the officer returns fewer items than were issued, this triggers the expectation of some notification about the circumstances in which the equipment was used, including the specific time and justification.

⁶⁶ See United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

⁶⁷ In line with Principles on Effective Interviewing for Investigations and Information-Gathering.

B. Debriefing and reporting

84. Law enforcement agencies should conduct debriefings following a protest to review and evaluate the law enforcement operation, any operational or logistical errors and the possible human rights impacts of applied tactics. It is recommended that all officers who took part in the facilitation of the protest be involved, regardless of their rank. In case of human rights violations, it is recommended that law enforcement agencies compile a publicly accessible lessons learned report aimed at the improvement of institutional processes, capacities and facilitation tactics for future protests. Law enforcement agencies should ensure that the recommendations from debriefings and lessons learned reports inform the next protest operation and the planning phase.

85. Law enforcement officials should:

(a) Hold various types of debriefings after a protest, including “hot” (or immediate), formal, thematic and multi-agency debriefings. Feedback from debriefings should be shared with protest organizers, community members and other relevant stakeholders, including oversight bodies;

(b) In case of human rights violations, prepare a lessons learned report with feedback from all levels of command structure and external stakeholders;

(c) Share the results of debriefings and lessons learned reports with all commanders, training units, relevant agencies and the public. If required, law enforcement agencies may then consider changing any relevant policy, guideline or training aspect.

86. Where any allegations or suspicion exist of misuse of authority or force or other misconduct leading to human rights violations in the context of protests, such as torture and other ill-treatment, including sexual and gender-based violence, law enforcement agencies should ensure that self-reporting is completed by officers who were deployed at the time of the incident and were in the vicinity of the incident. Law enforcement officials should understand that accurate reporting is not punitive, but a means to ensure integrity and professionalism and to improve trust in and the legitimacy of the police service.

87. Law enforcement officials should:

(a) Promote individual and credible self-reporting that is based on clear guidelines and procedures, including a standardized form. As a good practice, officers should not collaborate when filing the reports;

(b) Regularly analyse self-reported data to detect patterns in use of force and non-compliance with standards and instances of unlawful use of force. The procedures should be in place to investigate and ensure accountability for all instances of unlawful use of force. Law enforcement agencies should also implement reforms and address training needs where patterns of non-compliance are evident.

C. Investigations following a protest

88. An impartial, thorough and prompt investigation⁶⁸ should be conducted in case of any allegation or reasonable suspicion of unlawful use of force or other abuse or act that may amount to torture or other ill-treatment, including sexual or gender-based violence, in the context of protests.⁶⁹ Any incident of injury or death resulting from the use of force or firearms should automatically be reported and investigated through an effective and independent oversight system. Intentional and negligent action or inaction should be investigated across the chain of command. Investigations and adjudications related to protests should be carried out by civilian institutions and not military or other special courts.

⁶⁸ See Minnesota Protocol on the Investigation of Potentially Unlawful Death.

⁶⁹ Human Rights Committee, general comment No. 37 (2020), para. 90.

89. Law enforcement officials should:

(a) Establish a robust procedure for the independent gathering, storage and preservation of evidence, including digital evidence. For protests where the use of force and human rights violations are reported, any relevant evidence or information should be retained and made available to internal and external oversight bodies, civil society organizations, victims and their representatives to facilitate the attribution of responsibility and measures of accountability;

(b) Handle all the internal investigation reports with the utmost sensitivity to protect the privacy and rights of all involved, especially children and victims of sexual and gender-based violence, and hand them over to independent oversight mechanisms and investigative bodies and for prosecutions;

(c) Involve, consult and update victims and their representatives throughout the investigation processes, including on investigative strategies, and refrain from invoking national security grounds for concealing evidence from victims and their representatives;

(d) Follow the obligation of compliance and transparency in communication with relevant independent oversight bodies, including in relation to their requests;

(e) Make public any reports and findings of investigations on the use of force, deaths, injuries and other incidents that occurred in the context of protests.

D. Penalties and fines in the context of protests

90. Law enforcement agencies and other relevant bodies, including the prosecution service and the judiciary, must ensure that charges brought against those lawfully detained in the context of protests are consistent with legal standards and proportionate to the nature and severity of the alleged offence. Charges carrying disproportionately harsh penalties would violate the right to freedom of peaceful assembly and other relevant rights and have a chilling effect on public participation in future protests.⁷⁰

91. Law enforcement officials should:

(a) Refrain from criminalizing protest organizers for not fully complying with the requirement of notification or with other conditions imposed on a protest during the notification process, as well as for actions conducted by other participants;

(b) Refrain from sanctioning children or their families or guardians for the participation of children in a peaceful protest.

⁷⁰ Human Rights Committee, general comment No. 37 (2020), para. 71.

Certificate Identifying Annexure

No. 1612 of 2025

Federal Court of Australia

District Registry: Victoria

Division: Administrative and Constitutional Law and Human Rights

TARNEEN ONUS BROWNE and BENJAMIN ZABLE

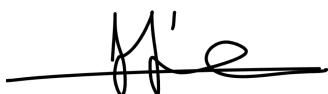
Applicants

ASSISTANT COMMISSIONER OF POLICE, NORTH WEST METRO REGION and others

Respondents

This is the annexure marked "SS-26" now produced and shown to Sarah Schwartz at the time of affirming her affidavit on 7 January 2026.

Before me:



Sophie L'Estrange, Australian Legal Practitioner

Annexure "SS-26"

Filed on behalf of (name & role of party)	Tarneen Onus Browne, First Applicant and Benjamin Zable, Second Applicant		
Prepared by (name of person/lawyer)	Sarah Schwartz		
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Agenda items 2 and 3

Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

Impact of new technologies on the promotion and protection of human rights in the context of assemblies, including peaceful protests

Report of the United Nations High Commissioner for Human Rights *

Summary

In the present report, the United Nations High Commissioner for Human Rights focuses on new technologies, including information and communications technology, and their impact on the promotion and protection of human rights in the context of assemblies, including peaceful protests. Given the importance of the enjoyment of the right of peaceful assembly for democracies, it is concluded in the report that every effort should be made to ensure full enjoyment of this right. Certain new technologies can be enablers for the exercise of the right of peaceful assembly. At the same time, the use of some such technologies to surveil or crack down on protesters can lead to human rights violations, including infringement of the right to peaceful assembly. Regulatory frameworks that are in line with human rights norms and standards are needed to avoid unlawful limitations by Governments on the right of peaceful assembly and related rights.

* The present report was submitted after the deadline in order to reflect the most recent developments.



I. Introduction

1. In its resolution 38/11, the Human Rights Council requested the United Nations High Commissioner for Human Rights to prepare a thematic report on new technologies, including information and communications technology (ICT), and their impact on the promotion and protection of human rights in the context of assemblies, including peaceful protests. The present report is submitted in line with that request.

2. The Office of the United Nations High Commissioner for Human Rights (OHCHR) sought contributions from States and relevant partners, such as United Nations agencies, regional organizations, national human rights institutions, civil society organizations and relevant special procedure mandate holders.¹

3. The present report contains an examination of new technologies, including ICT, and their impact on the promotion and protection of human rights in the context of assemblies, including peaceful protests. In the report, it is recalled that the right of peaceful assembly is protected under international human rights law. It is also noted that the effective use of new technologies can enable the exercise of human rights in the context of assemblies. The report also includes an examination of the human rights challenges posed by State interference with the availability and use of new technologies in the context of assemblies; the use of new technologies to track protesters; and the use of new less-lethal weapons and ammunition technology in the context of assemblies. Finally, the report contains some conclusions and recommendations.

II. Exercise of human rights in the context of assemblies, including peaceful protests

4. The right to peaceful assembly plays an important role in mobilizing the population, permitting the formulation and expression of grievances and aspirations, facilitating the celebration of events and, importantly, influencing public policies.² The year 2019 was momentous, with protests taking place in many countries in all regions. That discontent has continued in 2020. The factors causing people to protest were, and continue to be, complex and varied. Structural and institutional racial discrimination, worsening socioeconomic conditions, corruption, inequality and the denial of other human rights were some of the common root causes. Many of these concerns lie at the core of the 2030 Agenda for Sustainable Development and may have been exacerbated by the coronavirus disease (COVID-19) crisis. Most protests began peacefully. Nevertheless, in some countries, security personnel at times met protests with the excessive use of force, including lethal force. Some protesters have resorted to violence, resulting in the escalation of tensions and violent confrontations with the security forces. New technologies have played a role in many of these protests, either as an enabler for their organization and coordination or as a tool to restrict or infringe upon protesters' human rights.

5. The right of peaceful assembly includes the right to hold meetings, sit-ins, strikes, rallies, events or protests, both offline and online.³ It serves as a vehicle for the exercise of many other rights guaranteed under international law, with which it is linked intrinsically and that form the basis for participating in peaceful protests,⁴ in particular the rights to freedom of expression and to take part in the conduct of public affairs. These rights are provided for in the Universal Declaration of Human Rights (art. 20 (1)), the International Covenant on Civil and Political Rights (art. 21) and the Convention on the Rights of the Child (art. 15). Other relevant instruments include the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the Declaration on Human Rights Defenders),

¹ Submissions are available at www.ohchr.org/EN/Issues/RuleOfLaw/Pages/CallforInput.aspx.

² A/HRC/20/27, para. 24.

³ Human Rights Council resolutions 21/16 and 24/5.

⁴ A/HRC/20/27, para. 12.

which also sets out applicable normative standards and principles⁵ and, at the regional level, various guidelines on the application of the right of peaceful assembly.⁶

6. The right of peaceful assembly is not absolute, however, as it can be limited under strict conditions.⁷ When limiting the right, States should always be guided by the principle that the restrictions must not impair the essence of the right.⁸ Furthermore, restrictions may be imposed only if they are prescribed by law and proportionate in the circumstances. States must show that the restrictions were necessary in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others. Finally, States must also protect participants against possible abuses by non-State actors, such as interference or violence by other members of the public or counter-demonstrators.

III. New technologies as enablers for the exercise of human rights in the context of peaceful protests

7. New technologies, in particular ICT, have a positive, transformative potential. These technologies enable people to exercise the right of peaceful assembly and related rights through their use: in mobilizing for and organizing peaceful protests; in forming networks and coalitions; and in becoming better informed about assemblies and the reasons behind them, thus driving social change. New technologies may also be useful in increasing transparency and accountability for violations and abuses that may occur during protests.

8. Individuals use ICT to organize assemblies, as it provides a relatively easy and accessible means of communicating quickly and efficiently, spreading messages to a large audience at a low financial cost.⁹ In some instances, social media networks are used to facilitate the coordination of assemblies.¹⁰ The speed with which information travels via new technologies supports the arrangement of spontaneous demonstrations. Messaging and social networking platforms that use encryption technology to prevent monitoring enhance the security of civil society groups' digital communication, while also providing tools specifically geared to network organizing at the grass-roots level.¹¹ To protect the safety of communications, some messaging platforms have adopted the use of end-to-end encryption. Other examples are smartphone applications that have been developed to help move the protests to key geographic areas in order to maximize their impact, and the creation of automated chatbots by civil society to provide legal aid to protesters facing arrest.¹²

9. States also use ICT to facilitate the management of assemblies. For example, the guidelines on demonstrations developed by the municipality of Amsterdam advise local authorities to consult social media before a demonstration to help estimate the number of potential participants and to use social media to communicate with demonstrators. Other authorities use social media to coordinate efforts and exchange information with organizers, in particular during large-scale assemblies.¹³

⁵ General Assembly resolution 53/144, annex; see, in particular, arts. 6 and 12.

⁶ See African Commission on Human and Peoples' Rights, *Guidelines on Freedom of Association and Assembly in Africa* (2017), and Organization for Security and Cooperation in Europe (OSCE), *Guidelines on Freedom of Peaceful Assembly*, 2nd ed. (Warsaw, OSCE, 2010).

⁷ CCPR/C/120/D/2142/2012; CCPR/C/117/D/2082/2011; and CCPR/C/117/D/2089/2011.

⁸ Human Rights Committee, general comment No. 27 (1999) on freedom of movement.

⁹ Contributions of Mauritius, the Ukrainian Parliament Commissioner for Human Rights, the National Human Rights Commission of Mexico, the Special Rapporteur for freedom of expression of the Inter-American Commission on Human Rights, the Amman Center for Human Rights Studies, the Human Rights House Foundation and the Digital Rights Foundation.

¹⁰ Contributions of Guyana, Italy and the South African Human Rights Commission.

¹¹ A/HRC/41/41, para. 26.

¹² Contribution of the European Center for Not-for-Profit Law.

¹³ Contributions of Romania and the Office for Democratic Institutions and Human Rights (ODIHR) of OSCE.

10. ICT is useful for sharing information, thus creating a dynamic constituency and enabling people to be more informed and empowered. It can enable traditionally marginalized groups to access information more readily and to better enjoy their right of peaceful assembly. Such groups include civil rights and racial equality activists; environmental and land rights defenders; women human rights defenders; lesbian, gay, bisexual, transgender and intersex activists; people living in remote areas; and indigenous peoples. Live streaming and other forms of information-sharing online open up space for people who are not able to participate in physical demonstrations – for example, diaspora communities and people with disabilities.¹⁴

11. Technology can also increase transparency and accountability for violations and abuses that may occur during protests. ICT enables the live streaming of assemblies through social media and the documentation of human rights violations through the use of smartphone cameras and other recording devices.¹⁵ This is particularly important when the media is unwilling or unable to cover certain protests.¹⁶

12. The use of body cameras by security officials can also help to ensure transparency and accountability for violence or human rights violations. Provided they are used properly, continuously and in a legal and legitimate manner, they can offer a useful record of an event.¹⁷ United Nations special rapporteurs have observed that the appropriate use of body cameras by law enforcement personnel in the context of assemblies could assist the work of internal investigations or civilian oversight mechanisms. They considered that such cameras have the potential to promote accountability, where adequate safeguards are in place.¹⁸ In some instances, the presence of cameras can also discourage law enforcement officials from resorting to violence.¹⁹ The special procedure mandate holders warned that a delicate balancing of potential intrusions into privacy should be considered (see paras. 16–23 below).

13. Assemblies have taken place by way of physical gatherings for many years, but are now increasingly also happening online.²⁰ People can use online spaces to participate in a virtually connected civil society, using those spaces to connect with others, exchange strategies and organize.²¹ The #MeToo movement is a recent example of this phenomenon.²² The Special Rapporteur on the rights to freedom of peaceful assembly and of association has reiterated the obligation for States to ensure that online assemblies are facilitated in accordance with international human rights standards.²³ He has also observed that the rights of freedom of peaceful assembly and of association are often seamlessly exercised online and offline.²⁴ Moreover, there are also responsibilities for the social media companies that control online spaces, particularly with regard to encryption, content moderation, and algorithmic amplification, as will be discussed below.

14. Given the ways in which Internet-based technologies can serve as enablers for the exercise of human rights in the context of assemblies, it is crucial that States close the digital divide²⁵ and secure Internet access for their population.²⁶ The Human Rights Council²⁷ and

¹⁴ Contributions of the Association for Progressive Communications and WITNESS.

¹⁵ Contributions of Defensoría del Pueblo de la Nación Argentina, the National Human Rights Commission of Mexico, ODIHR, WITNESS and the Human Rights House Foundation.

¹⁶ Contribution of the Digital Rights Foundation.

¹⁷ Contributions of Armenia, North Macedonia and Romania.

¹⁸ A/HRC/31/66, para. 92.

¹⁹ Contribution of the Association for Progressive Communications.

²⁰ Contributions of Ecuador, the Special Rapporteur for freedom of expression of the Inter-American Commission on Human Rights, and Amnesty International. See also www.vukacoalition.org.

²¹ A/HRC/41/41, para. 23.

²² Contribution of the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

²³ A/HRC/29/25/Add.1, para. 34.

²⁴ A/HRC/41/41, para. 28.

²⁵ The term “digital divide” refers to the gap between individuals, households, businesses and geographic areas at different socioeconomic levels with regard to their opportunities to access ICTs and to their use of the Internet for a wide variety of activities (A/HRC/35/9, para. 3).

²⁶ A/HRC/27/33, para. 22.

²⁷ Human Rights Council resolution 38/7.

the General Assembly²⁸ have recognized the role of the Internet as a driving force in accelerating progress towards development. Sustainable Development Goal 9 of the 2030 Agenda for Sustainable Development includes a commitment to significantly increase access to information and communications technology and to strive to provide universal and affordable access to the Internet in least developed countries by 2020 (target 9.c).

15. Despite its positive, transformative potential, the use of ICT has also enabled dangerous and hateful speech against certain racial²⁹ and religious groups, as well as gender-based discrimination, attacks and violence, including violence against women and girls.³⁰ This often reflects and may exacerbate harmful racial and gender-based stereotypes, discrimination and violence offline. Online violence against certain racial and religious minorities and women and girls has risen sharply over the past few years, and can result in women limiting their participation on online platforms.³¹ This is particularly true in cases where assemblies are organized by civil rights and racial equality activists and women and girls. Online violence and abuse against racial and religious minorities and women and girls has led many to self-censor or limit their online interactions, restricting them from exercising their rights, including their right to freedom of peaceful assembly.³² The racial and gender-specificities and scope for ICT to be used to intimidate, threaten and harm women and girls, including offline, requires careful and deeper reflection as well as tailor-made responsive action.

IV. Disabling the channels to organize: interferences with the availability and use of new technologies in the context of assemblies

16. The Human Rights Council has repeatedly expressed concern about measures to prevent or disrupt access to, or dissemination of, information online in violation of international human rights law. The Council has unequivocally condemned such measures, and it has called upon all States to refrain from adopting them and to bring them to an end.³³

17. Interference with access to and the availability and use of new technologies in the context of peaceful protests poses multiple human rights challenges. Such interference includes the filtering of content related to protests, the blocking of websites or certain platforms used to mobilize protesters, the closure of accounts belonging to activists or organizers, or the shutdown of the Internet and communications networks.

18. Internet shutdowns, also called “network shutdowns”, “kill switches” or “blackouts”, are a particularly pernicious way of interfering with ICT and thus also with assemblies. Shutdowns constitute measures to intentionally prevent or disrupt access to or dissemination of information online in violation of human rights law.³⁴ Such measures are becoming increasingly common. In recent years, the Human Rights Committee has expressed concern about the shutdown of Internet access for months at a time in some countries.³⁵ Civil society organizations have documented an increase of over 30 per cent in 2019, with 213 documented cases of shutdowns in 33 countries.³⁶ Compared with previous years, in 2019, shutdowns also lasted longer, had a more targeted geographical scope³⁷ and were increasingly acknowledged by governments.

²⁸ General Assembly resolution 73/179.

²⁹ A/HRC/26/49, para. 18.

³⁰ A/HRC/32/42, para. 70.

³¹ A/HRC/35/9, para. 35, and A/HRC/38/47, para. 25.

³² Contribution of Amnesty International.

³³ Human Rights Council resolutions 32/13, 38/7 and 38/11.

³⁴ A/HRC/35/22, para. 8.

³⁵ CCPR/C/CMR/CO/5, para. 41. See also CCPR/C/KAZ/CO/2 and CCPR/C/IRN/CO/3.

³⁶ www.accessnow.org/cms/assets/uploads/2020/02/KeepItOn-2019-report-1.pdf.

³⁷ The exception are shutdowns in Africa, which for the most part affected entire countries. See www.accessnow.org/cms/assets/uploads/2020/02/KeepItOn-2019-report-1.pdf.

19. At least 65 Internet shutdowns took place during protests in 2019, jeopardizing the right of peaceful assembly both online and offline.³⁸ The interference with access to and the availability and use of the Internet thwarts the capacity of individuals to organize themselves and assemble. Shutdowns have a chilling effect on the right of peaceful assembly as they undermine the publicizing of assemblies and restrict possibilities to mobilize large groups effectively and quickly. Shutdowns also have a negative impact on the right to freedom of expression and access to information³⁹ and are of particular concern in contexts where the traditional media is controlled by the government and where the Internet may be the only space for the free expression of various views.⁴⁰

20. In addition to impairing access to information, freedom of expression and the right to peaceful assembly, the negative economic impact of Internet shutdowns has been estimated to be significant.⁴¹ Shutdowns also have severe effects on the ability to realize economic and social rights, given the number of essential activities and services they affect, including access to emergency services, health information, mobile banking, transportation and educational materials. As highlighted by the High Commissioner, shutting down, restricting or blocking the Internet, or placing restrictions on secure and confidential communications, may well exacerbate, rather than curtail, tensions.⁴² In some countries, links have been drawn between Internet shutdowns and increased levels of violence and unrest, the commission of human rights violations, and an increased sense of fear within communities.⁴³ All these factors tend to highlight that the negative effects of shutdowns may outweigh any purported benefits for the country concerned.⁴⁴

21. The High Commissioner has emphasized that blunt measures such as blanket Internet shutdowns, sometimes for prolonged periods, contravene international law,⁴⁵ affecting States' obligations to respect, in addition to freedom of expression and the right to peaceful assembly, a wide range of rights, including freedom of association and of movement and the rights to health and education. These views have been shared by experts from international and regional human rights mechanisms.⁴⁶ In its general comment No. 34 (2011) on the freedoms of opinion and expression, the Human Rights Committee stated that any restrictions on the operation of websites, blogs or any other Internet-based, electronic or other such information dissemination system, including systems to support such communication, were only permissible if they were compatible with article 19, paragraph 3, of the International Covenant on Civil and Political Rights. It stated that generic bans on the operation of certain sites and systems were not compatible with paragraph 3. It also noted that it was inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it might be critical of the government or the political social system espoused by the government.⁴⁷

22. The Special Rapporteur on the right to privacy noted that Internet shutdowns had become a disturbing trend in the context of elections, often carried out under the pretext of posing a risk to national security or preventing the spread of hate speech, disinformation or public disorder.⁴⁸ Similarly, the Special Rapporteur on the rights to freedom of peaceful assembly and of association recalled that shutdowns and the blocking of entire websites

³⁸ Ibid.

³⁹ Contribution of Italy.

⁴⁰ Contribution of Comisión para los Derechos Humanos del Estado Zulia.

⁴¹ www.brookings.edu/research/internet-shutdowns-cost-countries-2-4-billion-last-year/; and www.top10vpn.com/cost-of-internet-shutdowns/.

⁴² <https://news.un.org/en/story/2016/12/548052-silencing-opposition-not-solution-un-rights-chief-says-internet-blackout-looms>.

⁴³ Contribution of Access Now; A/HRC/41/41, para. 51.

⁴⁴ A/HRC/41/41, para. 53.

⁴⁵ www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24945&LangID=E.

⁴⁶ See communications AL CMR 2/2017, dated 3 February 2017 (in French); AL CMR 1/2018, dated 25 April 2018 (in French); and UA ETH 5/2016, dated 7 October 2016. Available at spcommreports.ohchr.org.

⁴⁷ Human Rights Committee, general comment No. 34 (2011), para. 43.

⁴⁸ Contribution of the Special Rapporteur on the right to privacy. See also https://cipesa.org/?wpfb_dl=294.

constituted an extreme and disproportionate measure that could not be justified in any circumstance. The Special Rapporteur on the right to freedom of opinion and expression, and his peers from regional organizations, also stated that shutting down entire parts of communications systems can never be justified under human rights law.⁴⁹ He asked States and other actors to refrain from imposing Internet or telecommunications network disruptions and shutdowns.⁵⁰ Likewise, the Special Rapporteur on freedom of expression of the Organization of American States noted that cuts in Internet service and blanket Internet shutdowns were likely to contravene freedom of expression, unduly restricting the right to receive and impart information and to assemble online.⁵¹

23. While it is primarily the duty of States to avoid resorting to shutdowns, private companies also have a responsibility in this regard. Requests from States to switch off communications are implemented by providers that operate networks or facilitate network traffic. These providers could play a role in challenging Internet shutdown requests from governments and keep their customers informed of developments.⁵² It is also critical that private companies ensure the greatest possible transparency in their actions when they implicate the freedom of peaceful assembly and other fundamental rights,⁵³ including through reporting government requests for shutdowns and the implementation of any disruption orders.

V. New technologies and the surveilling of protesters

24. Safe and confidential communications play a key role in the planning and holding of peaceful protests.⁵⁴ Technology-enabled surveillance poses significant risks to the enjoyment of human rights in peaceful assemblies and is an important contributor to the shrinking of civic space in many countries. New technologies have significantly expanded the abilities of State authorities to surveil protests, protest organizers and participants. These technologies are used to monitor the planning and organization of protests – for example, through the hacking of the digital tools used by those seeking to assemble. They are also used to conduct surveillance during protests – for example, through the use of biometrics-based facial recognition technology and the interception of communications. In response to this trend, the Human Rights Council has underlined the importance of privacy online for the realization of the rights of peaceful assembly and association. It has also emphasized that technical solutions to secure and to protect the confidentiality of digital communications, including measures for encryption and anonymity, can be important to ensure the enjoyment of these rights.⁵⁵ In his report on the right to privacy in the digital age, the High Commissioner outlined key safeguards that States should implement for surveillance measures.⁵⁶ National legal frameworks, based on the principles of necessity and proportionality, are needed to regulate the use of surveillance tools.⁵⁷

25. Similarly, the Special Rapporteur on the right to freedom of opinion and expression has called for strict limitations on restrictions to encryption and anonymity in order to ensure compliance with the principles of legality, necessity, proportionality and legitimacy.⁵⁸ Such restrictions are often used by law enforcement and intelligence agencies as quick reactions to terrorism, while failing to meet imperatives of necessity and proportionality, and

⁴⁹ www.osce.org/fom/154846.

⁵⁰ www.osce.org/representative-on-freedom-of-media/425282.

⁵¹ Contribution of the Special Rapporteur on the freedom of expression of the Organization of American States.

⁵² Contribution of AI Sur.

⁵³ A/HRC/32/38, para. 89.

⁵⁴ Contribution of Privacy International; A/HRC/31/66, para. 75.

⁵⁵ Human Rights Council resolutions 34/7 and 38/7.

⁵⁶ A/HRC/39/29.

⁵⁷ Contribution of AI Sur.

⁵⁸ A/HRC/29/32, para. 56.

consequently undermining trust in the rule of law.⁵⁹ Other experts have recalled the importance of judicial control and proportionality when anonymity is lifted.⁶⁰

26. The Special Rapporteur on the rights to freedom of peaceful assembly and of association has called for the prohibition of indiscriminate and untargeted surveillance of those exercising their right of peaceful assembly, in both physical and digital spaces. He underscored that surveillance of protesters should only be conducted on a targeted basis, and only when there is reasonable suspicion that they are engaging in or planning to engage in serious criminal offences, based on principles of necessity and proportionality and with judicial supervision.⁶¹ The General Assembly has also recognized that States should refrain from employing unlawful or arbitrary surveillance techniques, which could include forms of hacking.⁶²

27. Despite these warnings, States continue to unduly resort to intrusive online surveillance and the hacking of the ICT tools used by those planning or organizing protests as well as protesters themselves. Surveillance software is used to infiltrate protesters smartphones, often after they are duped into downloading certain applications. These applications give unimpeded access to protesters' phones and their contacts, chat messages, phone conversations, and photos and videos shared on social media and communication platforms.⁶³ Another cause for concern is the hacking of the social media accounts of protesters and organizers. Some State authorities use hacked devices to create false accounts to impersonate protest organizers and spread false information, or endanger followers, including through doxing (i.e., maliciously publishing personal information to encourage physical harm to protesters and organizers).

28. The monitoring of and interference with protesters' use of mobile phones is another practice with considerable negative impacts on assemblies. Authorities use a variety of devices impersonating mobile phone traffic base stations to intercept mobile phone traffic and track the location of mobile phone users. These devices typically capture the International Mobile Subscriber Identity and the International Mobile Station Equipment Identifier of mobile phones, which are unique to each mobile phone and SIM card. International Mobile Subscriber Identity catchers can be widespread, easy to transport, and can, in some cases, cover entire cities. Once connected to such a catcher, mobile phones reveal information that can identify their users. These catchers are often used to block or intercept data transmitted and received by mobile phones, including the content of calls, text messages and websites visited. In this way, such devices are used for the surveillance of individuals assembling or associating with others.⁶⁴ This type of identity catcher can potentially capture the call activity of thousands of people. Awareness of this risk often has a disturbing effect on individuals, dissuading them from exercising their right to peaceful assembly in order to avoid having their communications recorded and monitored.

29. Online surveillance technologies and interference in communications often lead to harassment and intimidation.⁶⁵ For instance, International Mobile Subscriber Identity catchers may be used to send messages to mobile phones in order to intimidate potential participants. These technologies have a chilling effect on demonstrations, as people fear subsequent reprisals for planning or participating in protests.⁶⁶ In some countries, individuals who post information about protests or use social media to raise politically sensitive issues, face prosecution. As a result, protesters feel compelled to self-censor, keep a low social media

⁵⁹ Ibid., paras. 36 and 59, and A/HRC/40/52/Add.1. See also

www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24637&LangID=E.

⁶⁰ Contribution of the Special Rapporteur on freedom of expression of the Organization of American States.

⁶¹ A/HRC/41/41, para. 57.

⁶² General Assembly resolution 73/179.

⁶³ Contribution of Access Now.

⁶⁴ Contribution of the International Network of Civil Liberties Organizations (INCLO).

⁶⁵ Ibid.

⁶⁶ Contribution of Defensoría del Pueblo de la Nación Argentina.

profile, communicate only via secure messaging apps, delete protest-related conversations and only use prepaid SIM cards.⁶⁷

30. Another development that is particularly problematic is the practice of routinely making audiovisual recordings of assembly participants, often in combination with the deployment of facial recognition technology. Such automated technology relies on the comparison of the digital representation of a face captured in a digital image – known as a “template” – with other templates in a database. From the comparison, a higher or lower probability is deduced that the person is indeed the person to be authenticated or identified. The probability threshold to consider two or more templates a match is determined by the users of the system. When footage obtained from closed circuit television video cameras deployed in public spaces is compared in near real-time with images in databases, this is referred to as live facial recognition technology.

31. The use of facial recognition technology brings about significant risks for the enjoyment of human rights, including the right of peaceful assembly. Despite remarkable accuracy gains in recent years, this technology is still prone to errors. For example, an image may be falsely considered a match (known as a “false positive”), with significant consequences to a person’s rights, including in cases where a person is wrongly flagged as a suspect of a crime and may be detained and prosecuted. When facial recognition technology is used on a large number of people, even low rates of error may result in the inaccurate flagging of hundreds of individuals.

32. Moreover, facial recognition technology may perpetuate and amplify discrimination, including against Afrodescendants and other minorities, women or persons with disabilities,⁶⁸ because it can be used to profile individuals on the basis of their ethnicity, race, national origin, gender and other characteristics. This technology may also lead to unintended discrimination in light of the fact that its accuracy depends on factors such as skin colour or gender, and experience has shown lower accuracy rates for the recognition of dark-skinned persons and women.⁶⁹

33. The use of facial recognition technology to identify persons in the context of assemblies has considerable adverse effects on the rights to privacy, freedom of expression and peaceful assembly, if effective safeguards are not in place. A person’s image constitutes one of the key attributes of her or his personality as it reveals unique characteristics distinguishing her or him from other persons.⁷⁰ Recording, analysing and retaining someone’s facial images without her or his consent constitute interferences with a person’s right to privacy. By deploying facial recognition technology at assemblies, these interferences occur on a mass and indiscriminate scale, as this requires the collection and processing of facial images of all persons captured by the camera equipped with or connected to a facial recognition technology system.

34. Assemblies traditionally have allowed participants a certain level of protection against being singled out or identified.⁷¹ This protection was already considerably weakened by many States that routinely made audiovisual recordings of assembly participants.⁷² The rise of facial recognition technology has led to a paradigm shift in comparison with practices of audiovisual recordings, as it dramatically increases the capacity to identify all or many participants in an assembly in an automated fashion. This is particularly problematic if live facial recognition technology is deployed, permitting real-time identification as well as

⁶⁷ Contributions of Access Now and Amnesty International.

⁶⁸ Contributions of Amnesty International and the Digital Rights Foundation.

⁶⁹ See Joy Buolamwini and Timnit Gebru, “Gender shades: intersectional accuracy disparities in commercial gender classification”, *Proceedings of Machine Learning Research*, vol. 81 (2018), pp. 1–15; and Inioluwa Deborah Raji and Joy Buolamwini, “Actionable auditing: investigating the impact of publicly naming biased performance results of commercial AI products”, Conference on Artificial Intelligence, Ethics and Society (2019).

⁷⁰ European Court of Human Rights, *Reklos and Davourlis v. Greece* (application No. 1234/05), judgment of 15 April 2009, para. 40.

⁷¹ OSCE/ODIHR, *Guidelines on Freedom of Peaceful Assembly*, 3rd ed. (2019), para. 71.

⁷² *Ibid.*, para. 172.

targeted surveillance and tracking of participants. Faulty live identification may also lead to undue interventions in peaceful assemblies by security forces. The negative effects of the use of facial recognition technology on the right of peaceful assembly can be far-reaching, as United Nations human rights experts have pointed out.⁷³ Many people feel discouraged from demonstrating in public places and freely expressing their views when they fear that they could be identified and suffer negative consequences.⁷⁴

35. Audiovisual recording and facial recognition techniques should only be used when such measures meet the three-part test of legality, necessity and proportionality. The possibility that recourse to facial recognition technology during peaceful protests could ever meet the test of necessity and proportionality, given its intrusiveness and serious chilling effects, has been questioned.⁷⁵ Authorities should generally refrain from recording assembly participants. As required by the need to show proportionality, exceptions should only be considered when there are concrete indications that serious criminal offences are actually taking place or that there is cause to suspect imminent and serious criminal behaviour, such as violence or the use of firearms. Existing recordings should only be used for the identification of assembly participants who are suspects of serious crimes.⁷⁶

36. While the use of facial recognition technology in the context of peaceful assemblies is discouraged, governments that still deploy this technology should ensure that they do so on a clear legal basis, including a robust, human rights-compliant regulatory framework. In addition, the authorities that continue to use audiovisual recording and facial recognition techniques should put in place a regulatory framework that contains provisions effectively protecting personal data, including with regards to facial images and the data derived from them. Measures should provide for the immediate deletion of all data, except for the specific segments that may be necessary for the conduct of criminal investigations and the prosecution of violent crimes. All persons concerned should have the right to access and to request the rectification and expungement of such information that is stored without a legitimate purpose and a legal basis, except when this would frustrate criminal investigations or prosecutions for which these data are needed.⁷⁷

37. Furthermore, any use of audiovisual recording and facial recognition technology must be subject to robust and well-resourced oversight mechanisms. While part of the oversight can be carried out by independent and impartial data protection authorities, States should consider additional measures, including the involvement of an independent body, preferably of a judicial nature, in charge of authorizing the use of facial recognition technology measures in an assembly context. In any case, any use of recording and facial recognition technology should be open to judicial challenge. In all circumstances, the authorities should be transparent about the use of recording and facial recognition technology and always notify members of the public when they are, or may be, recorded and/or when their images may be processed in a facial recognition system.⁷⁸

38. A welcome approach is that of a number of cities, which have already adopted bans and moratoriums on government use of facial recognition technology.⁷⁹ Despite serious concerns about the adverse human rights impact of facial recognition technology, however, police forces in several countries continue to use these technologies as regular policing tools in the context of peaceful assemblies, often with weak regulatory frameworks and oversight, or with none at all. This is a worrying trend, which may result in public spaces being systematically kept under surveillance by cameras and facial recognition technology. States should consistently conduct human rights due diligence not only before deploying facial

⁷³ A/HRC/31/66, para. 76, and CCPR/C/CHN-MAC/CO/1, para. 16.

⁷⁴ European Union Agency for Fundamental Rights, “Facial recognition technology: fundamental rights considerations in the context of law enforcement” (Vienna, 2020), p. 20; contributions of the Netherlands Institute for Human Rights and the Association for Monitoring Equal Rights. See also A/HRC/31/66, para. 76; and OSCE/ODIHR, *Guidelines on Freedom of Peaceful Assembly*, para. 172.

⁷⁵ FRA study, p. 34.

⁷⁶ OSCE/ODIHR, *Guidelines on Freedom of Peaceful Assembly*, para. 172.

⁷⁷ A/HRC/39/29, paras. 27–33.

⁷⁸ A/HRC/31/66, para. 78.

⁷⁹ <https://nymag.com/intelligencer/2020/01/why-we-should-ban-facial-recognition-technology.html>.

recognition technology devices but also throughout the entire life cycle of these tools.⁸⁰ Further in-depth studies about the accuracy and risks entailed by the use of facial recognition technology are needed to increase the understanding of its potential impact.

39. The use of surveillance technologies has grown rapidly over recent years with the support of the private sector. All business enterprises, including those that develop new technologies that are used to monitor the activities of civil society actors, have a responsibility to respect human rights, in line with the Guiding Principles on Business and Human Rights.⁸¹ They should have in place a policy commitment to meet that responsibility and carry out due diligence processes to identify, prevent, mitigate and account for how they address their impacts on human rights. In addition, they are expected to establish and maintain processes to address the adverse human rights impact they cause or to which they contribute. In particular, through their role in the development and provision of facial recognition technology, companies may contribute to human rights violations stemming from its use by State authorities. Corporate secrecy often prevents sufficient public scrutiny of facial recognition technology as a commercial product. As a result, companies are not fully accountable for the claims they make about the accuracy of facial recognition products or the implications for individuals' rights. The lack of transparency and oversight also contributes to a lack of available remedies.⁸²

40. Surveillance technologies are traded around the globe, making them easily accessible for a broad range of uses, including to carry out and facilitate unlawful and arbitrary surveillance. Adequate export control regimes for the sale of surveillance technology can be a powerful tool for limiting such abuses. States should refrain from granting export licences if there are indications that the surveillance tools at issue could be used in the importing country to violate or abuse human rights. Against the background of widespread abuse of surveillance technologies around the world, the Special Rapporteur on the right to freedom of opinion and expression has called for States to impose a moratorium on granting export licences for surveillance technologies until the use of those technologies can be technically restricted to lawful purposes that are consistent with human rights standards, or until it can be ensured that those technologies will only be exported to countries in which their use is subject to authorization – granted in accordance with due process and the standards of legality, necessity and legitimacy – by an independent and impartial judicial body.⁸³ The High Commissioner supports this call.

VI. Other new technologies and assemblies: less-lethal weapons and ammunition technology

41. Less-lethal weapons and ammunition play a critical role in law enforcement, both in situations where some degree of force is necessary but where the use of firearms would be unlawful, and also as an alternative to lethal force.⁸⁴ Appropriate less-lethal weapons should therefore be made available to law enforcement officials.⁸⁵ Although such weapons entail a lower risk of causing death or serious injury than firearms, however, less-lethal weapons may nonetheless kill or inflict serious injury if not used by trained law enforcement officials according to their specifications and international law principles on the use of force.⁸⁶

42. Batons, pepper spray and tear gas have already been used in law enforcement for many decades. Advances in technology have led to the development and use of a number of new

⁸⁰ A/HRC/43/29, paras. 51 and 60.

⁸¹ A/HRC/17/31, annex.

⁸² AI Now, written testimony to the House of Representatives of the United States of America, dated 15 January 2020.

⁸³ A/HRC/41/35, para. 49.

⁸⁴ See *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, advance edited version (2020). Available at www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf.

⁸⁵ Human Rights Council resolution 25/38.

⁸⁶ See *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*.

types of less-lethal weapons and ammunition, which are used to crack down on protesters, including: conducted-energy weapons, such as Taser guns; advanced kinetic impact projectiles, such as attenuating energy projectiles; drones and autonomous systems that employ tear gas and other less-lethal ammunition; pepper balls and pepper-ball launchers; dazzling weapons; acoustic weapons; and malodorants. In 2020, OHCHR issued an advanced edited version of the forthcoming publication *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*. The Guidance was elaborated in collaboration with the Geneva Academy of International Humanitarian Law and Human Rights and the Centre for Human Rights at the University of Pretoria, South Africa.

43. Under international law, the use of less-lethal weapons and ammunition is subject to strict compliance with the principles of necessity and proportionality.⁸⁷ Although they are regarded as less lethal, they still present serious risks of harm,⁸⁸ and calls have been made for certain less-lethal weapons and ammunition to be prohibited in the management of assemblies.⁸⁹ One State indicated that its police forces did not have recourse to new less-lethal weapons and sub-munition technology in assemblies.⁹⁰ Inputs for the present report noted the trauma caused to people and communities by inappropriate use that in some cases has led to injury or death, and the resulting effect of dissuading people from exercising their right of peaceful assembly.⁹¹ The Human Rights Committee has been critical about use of force violations by law enforcement officials in the context of protests in various countries.⁹² The Committee of the Rights of the Child expressed concern about physical violence against children, including the disproportionate use of tear gas and pepper spray during forced evictions for urban infrastructure projects,⁹³ and about the use on children of high-frequency ultrasound devices, as well as flash ball devices and Taser guns.⁹⁴ The Committee recommended that the concerned State reconsider or ban the use of high-frequency ultrasound and flash ball devices and other harmful devices.⁹⁵

44. Similar concerns have also been expressed by special rapporteurs⁹⁶ and in the context of the universal periodic review.⁹⁷ The Special Rapporteur on extrajudicial, summary or arbitrary executions has previously observed that advances in technology come with a heightened responsibility for States and others who use them and a need to ensure monitoring and accountability.⁹⁸ Under international human rights law and principles on the use of force, States must ensure that law enforcement officials are held accountable for any decision to use force,⁹⁹ following effective, transparent, prompt, independent and impartial investigations.¹⁰⁰ Where an investigation into the use of force by law enforcement officials reveals evidence that a death or injury may have been caused unlawfully, the State should ensure that perpetrators are prosecuted through a judicial process and, if convicted, given appropriate punishment.¹⁰¹

45. Some less-lethal weapons deliver force autonomously or by remote control, which raises complex questions concerning accountability for human rights violations, including the right to life. The Human Rights Committee has recommended that these weapons systems

⁸⁷ Human Rights Committee, general comment No. 36 (2018) on the right to life, para. 14.

⁸⁸ INCLO, “Unhealed wounds – the faces behind the injuries of crowd-control weapons”. Available at www.inclo.net/projects/unhealed-wounds/.

⁸⁹ Contribution of Amnesty International.

⁹⁰ Contribution of Switzerland.

⁹¹ Contributions of Omega Research Foundation and the Human Rights House Foundation.

⁹² CCPR/C/IRQ/CO/5, para. 41; CCPR/C/KOR/CO/4, para. 52; and CCPR/C/MKD/CO/3, para. 19.

⁹³ CRC/C/BRA/CO/2-4, para. 35.

⁹⁴ CRC/C/FRA/CO/4, para. 47.

⁹⁵ Ibid., para. 49.

⁹⁶ www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25269&LangID=E.

⁹⁷ A/HRC/30/12, para. 176.223; A/HRC/41/6, paras. 125.55–125.56; A/HRC/39/10, para. 129.73.

⁹⁸ A/69/265, para. 67.

⁹⁹ *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, para. 3.1.

¹⁰⁰ *The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016): The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* (United Nations publication, Sales No. E.17.XIV.3), para. 20.

¹⁰¹ Ibid., para. 8 (c).

not be developed or put into operation unless it has been established that their use conforms to international human rights law.¹⁰² Special rapporteurs have further recommended that fully autonomous weapons systems that employ lethal or less-lethal force without meaningful human intervention once deployed should never be used for law enforcement during an assembly.¹⁰³

46. Lack of proper training on the use of less-lethal weapons is also a major concern. Such training is needed to ensure that these weapons are not used in a way that gives rise to unintended, harmful and sometimes lethal consequences for protesters and bystanders.¹⁰⁴ Given that less-lethal weapons can become lethal or cause serious injury, law enforcement officials must be properly trained in their use.¹⁰⁵ The Special Rapporteur on extrajudicial, summary or arbitrary executions, noting that protesters and bystanders have been wounded or killed following the use of less-lethal weapons, called for law enforcement officials to be trained on each type of device provided to them. In some cases, licences may be required for specific devices.¹⁰⁶

47. The absence of adequate provisions in national law regarding the use of less-lethal weapons, including on the type and scope of technologies that can be acquired and used for national security purposes, is another cause for concern.¹⁰⁷ Only 12 States are reported to have specific laws on their use.¹⁰⁸ Increasingly, advanced technologies require a more detailed national regulatory framework and guidance on the development and use of new less-lethal weapons, including on how to ensure respect for human rights in their use.¹⁰⁹ New law enforcement weapons should be tested prior to their use by a legally constituted, independent, multidisciplinary and transparent panel of experts that is free of direct commercial or law enforcement interests. Mandatory monitoring should also be required for the use of such weapons.¹¹⁰

48. When making business decisions and entering into business relationships, companies should apply human rights due diligence to avoid infringing on the human rights of individuals and should address the potential adverse human rights impacts these decisions may entail. Business enterprises developing and manufacturing less-lethal weapons should address the human rights impacts of such weapons. Concerns have been raised about the development of new less-lethal weapons and ammunition by private companies without a clearly defined law enforcement purpose and lacking evidence of their operational advantage.¹¹¹ Private companies that develop and manufacture less-lethal weapons should provide information about specific risks these weapons may pose to human rights, be transparent about technical specifications and conduct safety analyses.¹¹²

VII. Conclusions and recommendations

49. **Given the importance of the enjoyment of the right of peaceful assembly for democracies, States must ensure that this right can be enjoyed to the greatest extent possible. Furthermore, States should endeavour to fully understand the causes behind protests, including structural discrimination, restrictions on fundamental freedoms and socioeconomic inequalities.**

¹⁰² Human Rights Committee, general comment No. 36, para. 65.

¹⁰³ A/HRC/31/66, para. 67.

¹⁰⁴ Contributions of Defensoría del Pueblo de la Nación Argentina, Italy, ODIHR and the Omega Research Foundation.

¹⁰⁵ Contribution of the Omega Research Foundation.

¹⁰⁶ A/69/265, para. 74.

¹⁰⁷ Contribution of the National Human Rights Institution of Mexico and the Ukrainian Parliament Commissioner for Human Rights.

¹⁰⁸ <https://rightofassembly.info>.

¹⁰⁹ A/69/265, para. 73.

¹¹⁰ Ibid., para. 75.

¹¹¹ Contribution of Amnesty International.

¹¹² See *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*.

50. Any restriction on peaceful assembly must have a basis in law, be necessary to achieve one of the permissible aims and be proportionate. Furthermore, restrictions must not involve discrimination on any ground. In addition, more effort is needed from States to ensure accountability for human rights violations and abuses in the context of assemblies, and all victims should have access to a remedy.

51. New technologies can be enablers for the exercise of the right of peaceful assembly and related rights by facilitating mobilization for and the organization of protests. Such technologies may enable the holding of assemblies online and may facilitate and enhance the involvement and participation of those often marginalized. ICT can also support the proper management of assemblies and increase transparency and accountability.

52. At the same time, new technologies bring considerable risks to those wishing to engage in peaceful assemblies, including the potential use of such technologies to surveil or crack down on protesters, leading to human rights violations. These new technologies are being developed at a rapid pace and the recourse to them by States is becoming more common. They are often deployed without the application by States or companies of human rights due diligence and in the absence of a regulatory framework that is in line with human rights norms and standards. As a result, surveillance spreads, online civic space is reduced and a chilling effect on the right of peaceful assembly ensues.

53. In this context, the High Commissioner recommends that States:

Internet-based technologies as enablers

(a) Close the digital divide and secure affordable Internet access for the greatest number of people in order to increase the use of Internet-based technologies as enablers and facilitators for the exercise of human rights in the context of assemblies;

Network shutdowns

(b) Avoid resorting to disruptions and shutdowns of Internet or telecommunications networks at all times and particularly during assemblies, including those taking place in electoral contexts and during times of unrest;

(c) Repeal or amend, as appropriate, laws and policies that permit such network disruptions and shutdowns, and refrain from adopting any such laws and policies in the future;

Surveillance

(d) Ensure that any interference with the right to privacy, including by communications surveillance and intelligence-sharing, complies with international human rights law, including the principles of legality, necessity and proportionality;

(e) Promote and protect strong encryption and anonymity options online, and ensure that laws provide for judicial supervision for any lifting of anonymity;

(f) Prohibit the use of surveillance techniques for the indiscriminate and untargeted surveillance of those exercising the right of peaceful assembly and association, both in physical spaces and online, and ensure that targeted surveillance measures are authorized only when there is reasonable suspicion that a particular individual has committed or is committing a criminal offence, or is engaged in acts amounting to a specific threat to national security;

(g) Ensure that an assessment of the risk of human rights violations and abuses facilitated by surveillance technology is a key factor in decisions on export licences;

Facial recognition technology

(h) Never use facial recognition technology to identify those peacefully participating in an assembly;

(i) Refrain from recording footage of assembly participants, unless there are concrete indications that participants are engaging in, or will engage in, serious criminal activity, and such recording is provided by law, with the necessary robust safeguards;

(j) Establish a moratorium on the use of facial recognition technology in the context of peaceful assemblies, at least until the authorities responsible can demonstrate compliance with privacy and data protection standards as well as the absence of significant accuracy issues and discriminatory impacts, and until the following recommendations are implemented:

(i) Systematically conduct human rights due diligence before deploying facial recognition technology devices and throughout the entire life cycle of the tools deployed;

(ii) Establish effective, independent and impartial oversight mechanisms for the use of facial recognition technology, such as independent data protection authorities, and consider imposing a requirement of prior authorization by an independent body for the use of facial recognition technologies in the context of assemblies;

(iii) Put in place strict privacy and data protection laws that regulate the collection, retention, analysis and otherwise processing of personal data, including facial templates;

(iv) Ensure transparency about the use of image recordings and facial recognition technology in the context of assemblies, including through informed consultations with the public, experts and civil society, and the provision of information regarding the acquisition of facial recognition technology, the suppliers of such technology and the accuracy of the tools;

(v) When relying on private companies to procure or deploy these facial recognition technologies, request that companies carry out human rights due diligence to identify, prevent, mitigate and address potential and actual adverse impact on human rights and, in particular, ensure that data protection and non-discrimination requirements be included in the design and the implementation of these technologies;

(k) Given the frequency with which less-lethal weapons and ammunition have caused substantial harm in the context of peaceful assemblies, apply the standards of necessity and proportionality rigorously to their use, including by refraining from the use of such weapons in situations of crowd control that can be addressed through less harmful means,¹¹³ and ensure that the use of less lethal weapons is closely monitored;

(l) Take into account the *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement*, which supplements and complements the Code of Conduct for Law Enforcement Officials¹¹⁴ and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;¹¹⁵

(m) Ensure mandatory training for all law enforcement personnel on less-lethal weapons and ammunition, including on international norms and standards on the use of force and human rights, and restrict the use of less-lethal weapons and ammunition to law enforcement officials who have undergone appropriate training;

(n) Ensure accountability for human rights violations related to the improper use of less-lethal weapons and ammunition by law enforcement in the context of assemblies through judicial or non-judicial mechanisms, such as commissions of inquiry or disciplinary boards, and ensure that investigations into the misuse of less-lethal

¹¹³ Human Rights Committee, general comment No. 36, para. 14.

¹¹⁴ General Assembly resolution 34/169, annex.

¹¹⁵ General Assembly resolution 45/166.

weapons and ammunition by law enforcement are effective, transparent, prompt, independent and impartial.

54. In addition, the High Commissioner recommends that business enterprises:

(a) Make all efforts to meet their responsibility to respect all human rights, including through the full operationalization of the Guiding Principles on Business and Human Rights, which implies conducting effective human rights due diligence across their operations and in relation to all human rights, including the right of peaceful assembly, and taking appropriate action to prevent, mitigate and address actual and potential impacts;

(b) In particular, carry out, as part of due diligence, a thorough human rights impact assessment prior to any potential transaction involving surveillance technologies;

(c) Also carry out human rights due diligence to identify, prevent, mitigate and account for any adverse human rights impacts of the use of facial recognition technology before deploying and throughout the entire life cycle of facial recognition tools;

(d) Challenge Internet shutdown requests from governments through available legal procedures and keep their customers informed of any such requests and any disruption orders implemented;

(e) When developing and manufacturing less-lethal weapons and ammunition, provide information about specific risks these weapons and ammunition may pose, and be transparent about technical specifications, design features and safety analyses conducted.
