

B. Best practices related to the right to freedom of peaceful assembly⁷

1. Definition of a peaceful assembly

24. An “assembly” is an intentional and temporary gathering in a private or public space for a specific purpose. It therefore includes demonstrations, inside meetings, strikes,⁸ processions, rallies or even sits-in. Assemblies play a vibrant role in mobilizing the population and formulating grievances and aspirations, facilitating the celebration of events and, importantly, influencing States’ public policy.

⁷ The Special Rapporteur extensively refers to the OSCE/ODIHR *Guidelines on Freedom of Peaceful Assembly* (2007, Warsaw, second ed.), which he considers the most advanced set of good practices available at the time of drafting.

⁸ Due to word limit, the report will not cover strikes.

25. The Special Rapporteur agrees that international human rights law only protects assemblies that are peaceful, i.e. those that are not violent, and where participants have peaceful intentions, which should be presumed.⁹ According to the European Court of Human Rights, “an individual does not cease to enjoy the right to 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 question remains peaceful in his or her own intentions or behaviour”.¹⁰

2. The right to hold and to participate in a peaceful assembly

26. Fundamentally, the Special Rapporteur considers as a best practice the presumption in favour of holding peaceful assemblies, as stressed by the OSCE/ODIHR Panel of Experts on Freedom of Peaceful Assembly. Such a presumption should be “clearly and explicitly established in the law”,¹¹ enshrined either in constitutions or in laws governing peaceful assemblies (e.g. as in Armenia and Romania).

27. The Special Rapporteur stresses that the enjoyment of the right to hold and participate in peaceful assemblies entails the fulfilment by the State of its positive obligation to facilitate the exercise of this right. In this regard, he highlights the Law on Assembly in Armenia, which states that the police shall be obliged to facilitate peaceful assemblies (art. 32, para. 2). He further notes with interest the statement of the Her Majesty’s Inspectorate of Constabulary of the United Kingdom, an independent assessment institution, which stated that “the police as a service has recognized and adopted the correct starting point for policing protest as the presumption in favour of facilitating peaceful protest”.¹²

28. The Special Rapporteur believes that the exercise of fundamental freedoms should not be subject to previous authorization by the authorities (as explicitly expressed in the Spanish Constitution), but at the most to a prior notification procedure, whose rationale is to allow State authorities to facilitate the exercise of the right to freedom of peaceful assembly and to take measures to protect public safety and order and the rights and freedoms of others.¹³ Such a notification should be subject to a proportionality assessment, not unduly bureaucratic¹⁴ and be required a maximum of, for example, 48 hours prior to the day the assembly is planned to take place. A notification procedure is in force in several countries, including Armenia, Austria, Canada, Cote d’Ivoire, Finland, Indonesia, Morocco, the Occupied Palestinian Territory, Portugal, Senegal, Serbia, and the United Republic of Tanzania. Prior notification should ideally be required only for large meetings or meetings which may disrupt road traffic.¹⁵ In the Republic of Moldova, any assembly of fewer than 50 participants may take place without prior notification and the change from an authorization to a notification procedure fostered an increase in the number of individuals exercising their right to freedom of peaceful assembly. In this context, the Special Rapporteur regrets that the law on demonstrations recently adopted by referendum in the canton of Geneva, Switzerland, provides for a fine of up to 100,000 Swiss francs for

⁹ *Guidelines on Freedom of Peaceful Assembly*, p. 33.

¹⁰ European Court of Human Rights, *Ziliberberg v. Moldova*, application No. 61821/00 (2004).

¹¹ *Guidelines on Freedom of Peaceful Assembly*, p. 13.

¹² See submission by the United Kingdom in addendum 1 to the present report.

¹³ *Guidelines on Freedom of Peaceful Assembly*, p. 63. Inter-American Commission on Human Rights, report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124 para. 57.

¹⁴ See submission by the OSCE-ODIHR Panel of Experts in addendum 1 to the present report.

¹⁵ *Guidelines on Freedom of Peaceful Assembly*, p. 63.

anyone who, inter alia, does not request an authorization to demonstrate or does not respect the content of the authorization.¹⁶

29. Should the organizers fail to notify the authorities, the assembly should not be dissolved automatically (e.g. as in Austria) and the organizers should not be subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment. This is all the more relevant in the case of spontaneous assemblies where the organizers are unable to comply with the requisite notification requirements, or where there is no existing or identifiable organizer. In this context, the Special Rapporteur holds as best practice legislation allowing the holding of spontaneous assemblies, which should be exempted from prior notification. This is the case for example, in Armenia, Estonia, Germany, the Republic of Moldova and Slovenia. In this connection, the European Court of Human Rights has emphasized 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”.¹⁷

30. In the case of simultaneous assemblies at the same place and time, the Special Rapporteur considers it good practice to allow, protect and facilitate all events, whenever possible. In the case of counter-demonstrations, which aim at expressing discontent with the message of other assemblies, such demonstrations should take place, but should not dissuade participants of the other assemblies from exercising their right to freedom of peaceful assembly. In this respect, the role of law enforcement authorities in protecting and facilitating the events is crucial.

31. With regard to the responsibilities of organizers, the Special Rapporteur is of the opinion that “organizers should not incur any financial charges for the provision of public services during an assembly (such as policing, medical services and other health and safety measures)”.¹⁸ He is informed that, in Austria, there are no fees to be paid for the protection of assemblies.¹⁹ Most importantly, “assembly organizers and participants should not be considered responsible (or held liable) for the unlawful conduct of others... [and, together with] assembly stewards, should not be made responsible for the maintenance of public order”.²⁰ The Special Rapporteur considers as a good practice, when necessary, the use of stewards appointed by the organizers of an assembly, i.e. persons who provide assistance to them by, inter alia, informing and orienting the public during the event. Stewards should be clearly identifiable and properly trained.

32. The Special Rapporteur notes the increased use of the Internet, in particular social media, and other information and communication technology, as basic tools which enable individuals to organize peaceful assemblies. However, some States have clamped down on these tools to deter or prevent citizens from exercising their right. In this connection, the Special Rapporteur refers to a recent report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, in which he recommended, inter alia, that “all States [should] ensure that Internet access is maintained at all times, including during times of political unrest” (A/HRC/17/27, para. 79) and “any determination

¹⁶ As of May 2012, the law is the subject of an appeal before the Swiss Federal Tribunal.

¹⁷ European Court of Human Rights, *Bukta and Others v. Hungary*, application No. 25691/04 (2007). “Special circumstances” refer to cases when “an immediate response to a current event is warranted in the form of a demonstration”.

¹⁸ See submission by the OSCE/ODIHR Panel of Experts to the addendum to the present report.

¹⁹ See the submission of the Austrian national human rights institution.

²⁰ See submission by the OSCE/ODIHR Panel of Experts.

on what [website] content should be blocked must be undertaken by a competent judicial authority or a body which is independent of any political, commercial, or other unwarranted influences” (para. 70).

3. The right to be protected from undue interference

(a) Positive obligation

33. The Special Rapporteur stresses that States have a positive obligation to actively protect peaceful assemblies. Such obligation includes the protection of participants of peaceful assemblies from individuals or groups of individuals, including agents provocateurs and counter-demonstrators, who aim at disrupting or dispersing such assemblies. Such individuals include those belonging to the State apparatus or working on its behalf. The organizers and stewards of assemblies should not assume this obligation. The Special Rapporteur believes that such responsibility should always be explicitly stated in domestic legislation, as it is in, *inter alia*, the Republic of Moldova, Serbia and Slovenia. In Armenia, organizers may request police officials to remove provocateurs from the assembly venue (even if in practice the implementation of this provision is reportedly sometimes problematic). The Special Rapporteur holds as a good practice the establishment in Estonia of a Police Rapid Response Unit (riot police) which aims at protecting peaceful demonstrators against attacks by provocateurs and counter-demonstrators and is trained in how to separate the main provocateurs from peaceful demonstrators.

34. The Special Rapporteur expresses his utmost concern in relation to peaceful assemblies that were either not allowed or violently dispersed in a number of countries, such as in Bahrain, Belarus, China, Egypt, the Islamic Republic of Iran, Malawi, Malaysia, Sri Lanka and the Syrian Arab Republic.²¹

35. The right to life (art. 3 of the Universal Declaration on Human Rights and art. 6 of the Covenant on Civil and Political Rights) and the right to be free from torture or cruel, inhuman or degrading treatment or punishment (art. 5 of the Declaration and art. 7 of the Covenant) should be the overarching principles governing the policing of public assemblies, as stated by several countries. In this regard, soft law provisions – the Code of Conduct for Law Enforcement Officials (in particular articles 2 and 3) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (in particular principles 4, 9 and 13) – aim at guiding law enforcement officials when policing peaceful protests. In this connection, the Inter-American Court on Human Rights stated that the “pretext of maintenance of public security cannot be invoked to violate the right to life ... the State must ensure that, if it is necessary to resort to physical means ... members of its armed forces and its security bodies will use only those means that are indispensable to control such situations in a rational and proportional manner, and respecting the rights to life and to humane treatment”.²² The Special Rapporteur on extrajudicial, summary or arbitrary executions also stated that “the only circumstances warranting the use of firearms, including during demonstrations, is the imminent threat of death or serious injury” (A/HRC/17/28, para. 60). With regard to the use of tear gas, the Special Rapporteur recalls that gas does not discriminate between demonstrators and non-demonstrators, healthy people and people with health conditions. He also warns against any modification of the chemical composition of the gas for the sole purpose of inflicting severe pain on protestors and, indirectly, bystanders.

²¹ See, *inter alia*, reports on summaries of individual cases raised by special procedures mandate holders, and on observations on communications transmitted to Governments and replies received, as well as press releases issued by such mandate holders and high-level United Nations officials.

²² Inter-American Court of Human Rights judgement, *Caracazo v. Venezuela* (2002), para. 127.

36. The Special Rapporteur also refers to the Inter-American Commission on Human Rights list of administrative controls that should be put in place at the State level to ensure use of force during public assemblies on an exceptional basis. Among others, “(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; (c) implementation of a communications records system to monitor operational orders, those responsible for them, and those carrying them out”.²³

37. The Special Rapporteur is opposed to the practice of “kettling” (or containment) whereby demonstrators are surrounded by law enforcement officials and not allowed to leave. He notes with satisfaction the statement of the Toronto police (Canada) which decided to abandon the practice following controversy arising from the policing of the G-20 Summit in Toronto in 2010.

38. In general, the Special Rapporteur stresses the utmost importance of genuine dialogue, including through negotiation, between law enforcement authorities and organizers in order to ensure the smooth conduct of the public assembly, as it has reportedly been the case in, inter alia, Guatemala, Hungary, Mexico and Switzerland.

(b) *Negative obligation*

39. States also have a negative obligation not to unduly interfere with the right to peaceful assembly. The Special Rapporteur holds as best practice “laws governing freedom of assembly [that] both avoid blanket time and location prohibitions, and provide for the possibility of other less intrusive restrictions ... Prohibition should be a measure of last resort and the authorities may prohibit a peaceful assembly only when a less restrictive response would not achieve the legitimate aim(s) pursued by the authorities.”²⁴

40. As mentioned earlier, any restrictions imposed must be necessary and proportionate to the aim pursued. Reference to the proportionality test is found in legislation governing peaceful assemblies in a number of countries, including New Zealand and Switzerland. In addition, such restrictions must be facilitated within “sight and sound” of its object and target audience,²⁵ and “organizers of peaceful assemblies should not be coerced to follow the authorities’ suggestions if these would undermine the essence of their right to freedom of peaceful assembly”.²⁶ In this connection, he warns against the practice whereby authorities allow a demonstration to take place, but only in the outskirts of the city or in a specific square, where its impact will be muted.

41. The Special Rapporteur further concurs with the assessment of the ODIHR Panel of Experts that “the free flow of traffic should not automatically take precedence over freedom of peaceful assembly”.²⁷ In this regard, the Inter-American Commission on Human Rights has indicated that “the competent institutions of the State have a duty to design operating plans and procedures that will facilitate the exercise of the right of assembly ... [including] rerouting pedestrian and vehicular traffic in a certain area”.²⁸ Furthermore, the Special Rapporteur points to a decision of the Spanish Constitutional Court which stated that “in a democratic society, the urban space is not only an area for circulation, but also for participation”.

²³ Report on the Situation of Human Rights Defenders in the Americas, para. 68.

²⁴ See submission by the OSCE/ODIHR Panel of Experts.

²⁵ *Guidelines on Freedom of Peaceful Assembly*, p. 59.

²⁶ See submission by the OSCE/ODIHR Panel of Experts.

²⁷ *Ibid.*

²⁸ Report on Citizen Security and Human Rights, OEA/Ser.L/V/II, para. 193. Available from www.cidh.oas.org/countryrep/Seguridad.eng/CitizenSecurity.Toc.htm

42. The Special Rapporteur stresses the importance of the regulatory authorities providing assembly organizers with “timely and fulsome reasons for the imposition of any restrictions, and the possibility of an expedited appeal procedure”.²⁹ The organizers should be able to appeal before an independent and impartial court, which should take a decision promptly. In several States, the regulatory authority has the obligation to justify its decision (e.g. Senegal and Spain). In Bulgaria, the organizer of an assembly may file an appeal within three days of receipt of a decision banning an assembly; the competent administrative court shall then rule on the ban within 24 hours, and the decision of the court shall be announced immediately and is final. Similarly, in Estonia, a complaint may be filed with an administrative court, which is required to make a decision within the same or next day; the organizers may also launch a complaint with the Estonian Ombudsman.

(c) *Build and strengthen the human rights capacity of administrative and law enforcement officials*

43. It is important that States ensure that administrative and law enforcement officials are adequately trained in relation to the respect of the right to freedom of peaceful assembly.

44. In countries where a regime of authorization is in place, the Special Rapporteur believes that administrative officials in charge of issuing authorizations should be subject to oversight on a regular basis in order to make sure that they do not arbitrarily reject requests to hold public assemblies (e.g. Slovenia). In this context, a workshop on the implementation of the law on peaceful assembly for the attention of administrative officials in charge of implementing the law was organized in Slovenia.

45. The Special Rapporteur notes with satisfaction that, in most countries which responded to the questionnaire, capacity-building activities on international human rights law, and sometimes on international humanitarian law, are provided to law enforcement, notably in police academies, and other authorities (e.g. Cote d’Ivoire, Croatia, Cuba, Estonia, Honduras, Germany, Guatemala, Iraq, Mexico, Morocco, Peru, Senegal, Spain, Switzerland, United Kingdom and Uruguay). Such trainings were delivered in cooperation, inter alia, with national human rights institutions (e.g. Denmark, Hungary, Indonesia, Iraq, Malaysia, Mexico, Nepal, New Zealand, the Occupied Palestinian Territory, Paraguay, United Republic of Tanzania and Uganda), the Office of the United Nations High Commissioner for Human Rights (e.g. Mexico and Uganda), the OSCE/ODIHR (e.g. Armenia and Bulgaria), the European Commission (e.g. Bulgaria), NGOs (e.g. Armenia, Bulgaria, Canada, Croatia, Denmark, Malaysia and Serbia), universities (e.g. Morocco and Mexico), and the International Committee of the Red Cross (Peru). The Special Rapporteur stresses the need to provide regular follow-up trainings.

46. Several good initiatives were brought to the attention of the Special Rapporteur, which should be replicated. In Burkina Faso, a seminar on “public demonstration and human rights: what strategy for a better collaboration between the different actors” was conducted by the Ministry of Justice and the Promotion of Human Rights for the benefit of security forces and NGOs. In Slovenia, training initiatives for law enforcements officials on the use of non-lethal instruments of constraint (such as batons, tear gas and water canons) when maintaining public order were delivered. In the United Kingdom, the police of several counties appointed an independent human rights lawyer to advise them on the legality and human rights implications of large-scale public order operations in relation to controversial protests.

²⁹ See submission by the OSCE/ODIHR Panel of Experts.

47. The Special Rapporteur further considers as best practices training materials developed with a view to preventing discriminatory treatment and measures against women, minors, persons with disabilities, indigenous peoples, individuals and groups of individuals belonging to minorities and other marginalized groups (e.g. Mexico, Serbia, Slovenia and Spain).

4. Monitoring peaceful assemblies

48. The Special Rapporteur refers to the report to the General Assembly of the then Special Representative of the Secretary-General on the situation of human rights defenders, who stated that “monitoring of assemblies can provide an impartial and objective account of what takes place, including a factual record of the conduct of both participants and law enforcement officials. This is a valuable contribution to the effective enjoyment of the right to peaceful assembly. The very presence of human rights monitors during demonstrations can deter human rights violations. It is therefore important to allow human rights defenders to operate freely in the context of freedom of assembly” (A/62/225, para. 91).³⁰ Such defenders include members of civil society organizations, journalists, “citizen journalists”, bloggers and representatives of national human rights institutions.

49. In this regard, the Special Rapporteur considers good practice the invitation of the London Metropolitan Police to Liberty, an independent human rights organization, to act as independent observers when they were policing a Trades Union Congress march in London in 2010. He also refers to the statement of the Vice-Chair of the Malaysian Human Rights Commission (SUHAKAM) made during the panel discussion on the promotion and protection of human rights in the context of peaceful protests, at the nineteenth session of the Human Rights Council (A/HRC/19/40, para. 33). The Vice-Chair highlighted, inter alia, the monitoring role played by SUHAKAM during a sensitive public demonstration, by deploying teams of observers.

50. In this connection, the Special Rapporteur supports the call of the ODIHR Panel of Experts to undertake capacity-building activities for the benefit of NGOs and human rights defenders on the ground to monitor assemblies and their policing on a systematic basis. In this context, ODIHR trained assembly monitors in Armenia, Georgia, Kazakhstan, Kyrgyzstan and Republic of Moldova, and issued the new *Handbook on Monitoring Freedom of Assembly* in September 2011.³¹

³⁰ A/62/225, para. 91.

³¹ OSCE/ODIHR, 2011, Warsaw. Available from www.osce.org/odihr/82979.